




The impact of the Istanbul Convention on legislative and legal practices regarding the appointment of responsibility for domestic violence: gaps and inconsistencies


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Abstract

The article dwells upon the current Ukrainian legislation, which is being changed both at the legislative and legal level in connection with ratification of international conventions and practice of the ECtHR, which is the source of criminal responsibility under the Law of Ukraine "On the implementation of decisions and application of the practice of the European Court of Human Rights". Although the Istanbul Convention was signed by Ukraine back in 2011, it was ratified only on February 1, 2022. However, over the past 5 years, the national legislation has been brought into line with the requirements of the Convention and the practice of the ECtHR, but the change of legislation must be in line with the national legislation. We analyzed these inconsistencies and conflicts, which, in our view, relate more to the responsibility for the act of domestic violence. The types of punishment and penalties do not correspond to the purpose of the punishment, which is studied in more detail in the article. Besides, a large number of repetition and recidivism shows that the purpose of punishment, namely the correction of the sentenced person, does not reach its goal. The judicial statistics concerning administrative and criminal responsibility over the last three years was analyzed. The analyzed data of the polled police officers who are responsible for the regulation of problems in the family related to domestic violence are presented. As a result, conclusions and proposals to the current legislation were developed to improve the situation in the appointment of penalties and punishment for domestic violence.

Keywords: Domestic Violence, Punishment, Penalty, Responsibility; Istanbul Convention.

Introduction

The Istanbul Convention was opened for signature on May 11, 2011 in Istanbul (Turkey), which came into force on August 1, 2014. It is important that it is time-unbound, meaning that it can be signed by any country since 2011. The first country to ratify it was Turkey on March 12, 2012. In the next few years it was

signed by 36 countries of the world, and already at the beginning of 2018, it was ratified by 45 countries (Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention).., 2011). The purpose of the Convention is to prevent violence, protect victims and "end the impunity of criminals". The Convention does not require the legalization of same-sex marriage or other regulation of private life, does not address sexual orientation, gender identity or transgenderism, and does not regulate family structures since it does not define "family" and nor promote a particular type of family arrangement. The Convention only protects women, but it does not regulate religious norms or beliefs (Council of Europe, 2018).

Ukraine signed the Istanbul Convention in 2011, and since that time, changes in regulatory and legal acts have been gradually taking place at the legislative level, which affected changes in administrative and criminal procedural legislation. Before the ratification of the Istanbul Convention in Ukraine, the problem of domestic violence arose. As is known, any family relationship was a matter of private prosecution, and even when it came to a fight or infliction of bodily harm, and at the request of the victim or other persons (family members, children, neighbors), the police required a statement from the victim in order to draw up a report or to initiate a criminal investigation. But even at this stage, most victims refused to make statements, and accordingly, the offender avoided responsibility (Beschastnyi et al., 2019). Thus, Article 173² "Commitment of domestic violence, gender-based violence, failure to comply with an urgent restraining order or failure to report the place of temporary stay" appeared in the Administrative Code of Administrative Offenses, Article 126¹ "Domestic violence" was introduced in the criminal legislation, Article 91¹ "Restrictive measures applied to persons guilty of domestic violence" was added, Clause 6-1, Part 1, Article 67 of the Criminal Code, Article 390¹, Part 3 of Article 447 and Clause 7 of Article 284 were changed. The article is focused on the analysis of the impact of the change on the practical application of these articles, the effectiveness of types of administrative fines and criminal punishments related to domestic violence, using a systematic, comparative legal, empirical method (Criminal Procedural Code of Ukraine, 2013).

With the beginning of martial law on the territory of Ukraine on February 24, 2022, the number of criminal offenses related to domestic violence is increasing. Therefore, it is necessary to analyze whether all the changes that have taken place during the last five years are effective. Therefore, the purpose of the study is to assess the effectiveness of measures aimed at harmonizing national legislation with international standards for assigning responsibility for domestic violence. Consequently, the main emphasis is on identifying gaps and inconsistencies between international standards established by the Convention and national legislation and case law.

The object of the study is the efficiency of legislative changes and the effectiveness of assigning responsibility to persons who have committed offenses related to domestic violence. The subject is the normative and legal foundations of administrative, criminal, and criminal procedural legislation related to domestic violence. In order to achieve the purpose of the study, the following objectives were set:

- to investigate the principles of equality, legality, punishment of persons because, while ratifying the conventions, the legislator forgets about the basic principles of the Constitution, which leads to the fact that when committing the same act, a special subject (a person in a family relationship) becomes an aggravating circumstance, according to Clause 6 of Article 67 of the Criminal Code of Ukraine;
- to analyze the ratio of committed administrative offenses in relation to criminal offenses related to domestic violence;

- to investigate the results of the implementation of Art. 126¹ of the Criminal Code of Ukraine related to a public accusation, comparing it with the previous reaction, when domestic violence cases could be closed based on the statement of the victim;
- to analyze how the law was changed in connection with the ratification of the Istanbul Convention;
- to study inconsistencies between the national legislation and the Convention;
- to analyze the quantitative and regional data on those prosecuted for committing domestic violence;
- to explore case law regarding the effectiveness of sentencing for domestic violence;
- to develop proposals for improving national legislation and eliminating contradictions related to the ratified Convention.
- to identify the key features of forensic psychological examination of victims of psychological violence.

The study analyzed statistical data on cases of domestic violence. According to the statistics, the percentage of domestic violence increases every year, which indicates the insufficient effectiveness of penalties applied to offenders who commit domestic violence. Moreover, the national case law for bringing such offenders of domestic violence to justice were also analyzed. It was concluded that the main type of punishment is community service, while imprisonment and restriction of liberty exist in the sanction of the article only before a release with probation. Having analyzed the data, we come to the conclusion that a punishment in the form of a fine is not an effective form of punishment. The normative and legal side of the criminalization of domestic violence was also analyzed. As a result, it was concluded that the legislator punishes rape in the family and close relationships more severely than rape by a stranger.

The establishment of emotional states of the accused during the commission of a criminal offense is an important aspect of modern legal and psychological discourse. In this regard, there is an urgent need for forensic psychological examination of victims of domestic violence. The hostilities enhance the problem of violence since aggression, a change in the usual way of life, the need to adapt to new circumstances can be those factors that affect the commission of domestic violence. Therefore, the ECtHR case law on domestic violence was analyzed, which allowed to assert that it should be taken into account by Ukrainian courts when deciding cases of domestic violence.

During the research, a number of research methods were used. In order to obtain real information, in addition to case law, a questionnaire was conducted among police officers assigned to the special unit "Polina", which deals with responding to calls from the public regarding domestic violence. During the survey of this special unit (which is directly involved in bringing offenders to administrative and criminal responsibility for domestic violence), it was concluded that the state should interfere in family relations in cases of domestic violence. In addition, it is noteworthy that amendments to the national legislation on domestic violence that have been introduced over the past 3 years are effective.

In addition, the analysis established that the Istanbul Convention has a significant impact on legislation and law enforcement regarding criminal responsibility for domestic violence. Accordingly, certain changes to the current legislation of Ukraine aimed at countering mental violence were suggested, i.e., to establish criminal responsibility for threats and persecution.

Ukrainian legislation before and after the Istanbul Convention: its application and results

Having ratified the Istanbul Convention in 2022 as one of the most important international norms and legal acts in the field of human rights protection, Ukraine has undertaken to ensure the proper functioning of the principle of gender equality of women and men in all spheres of social life in Ukraine. Nevertheless, before the ratification of the Convention, Ukrainian legislation on domestic violence had some gaps and inconsistencies with international standards. For example, although Ukraine had laws and regulations prohibiting domestic violence and providing legal responsibility for it, they did not always meet international standards in aspects such as victim protection, prevention, and effectiveness of justice.

However, after the ratification of the Convention by Ukraine, certain changes were made in national legislation and case law. For example, some laws governing the prevention and combating of domestic violence have been adopted or amended, taking into account the requirements of the Convention. Thus, the Draft Law on amendments to the Code of Administrative Offences of Ukraine (CAO) in connection with the ratification of Convention No. 8329 of January 2, 2023 (2023a) is aimed to bring the norms of the CAO and the Law of Ukraine "On Ensuring Equal Rights and Opportunities for Women and Men" in line with the provisions of the Convention and improve the procedure for considering cases of administrative offenses.

Moreover, the Draft Law on amendments to the Criminal Procedure Code (CPC) of Ukraine regarding the conclusion of an agreement on reconciliation and criminal proceedings in the form of a private prosecution in connection with the ratification of Convention No. 9093 of March 13, 2023 (2023b) is aimed at improving the system of protection against gender-based and domestic violence. In particular, it is focused on the implementation of Art. 55 of the Convention, which provides for the obligation of the State to ensure that the investigation or prosecution of the offenses defined by the Convention does not depend entirely on the notification or complaint filed by the injured person and that the proceedings can continue even if the injured person withdraws his/her application or complaint.

The Draft Law on amendments to the CPC of Ukraine on improving the procedure for pre-trial investigation and trial in criminal proceedings for crimes related to sexual violence committed in the context of armed conflict No. 9351 of June 5, 2023 (2023c) seeks to improve the procedure for the investigation and trial of cases of sexual violence committed in the conditions of the armed aggression of the Russian Federation against Ukraine. In particular, it aims to ensure the confidentiality of victims during the pre-trial investigation and trial of this category of cases.

Apart from that, the Draft Law on amendments to certain laws of Ukraine on preventing violence and preventing child abuse No. 6393-d of June 9, 2023 (2023d) provides for the introduction of measures for effective protection against bullying (harassment) of children and other members of groups, where children are staying for the purpose of training, creativity, recreation, rest, treatment, etc., as well as improving the current legislation to counter such a type of violence as bullying. In particular, a new edition of the Law of Ukraine "On prevention and counteraction to domestic violence" (2023) was adopted in the first reading.

Accordingly, we can say that national legislation is already partially built on the norms of the Istanbul Convention. Therefore, it does not need radical changes in terms of countering domestic violence. Along with this, the Convention significantly raises standards and establishes guarantees for real protection against

violence and discrimination. In general, we assess the legislative changes proposed by the draft laws as positive, aimed at fulfilling Ukraine's obligations and the real implementation of the provisions of the Convention. In this regard, it is worth noting that the ratification of the Convention was an impetus for lawmaking and intensified the activities of human rights and public organizations that protect the rights of women and other victims of violence. Given the grave consequences of the war and the significant number of victims of various forms of violence, it is necessary to emphasize the importance of prompt elaboration of draft laws and timely amendments to national legislation on domestic violence.

Analysis of quantitative and statistical data on persons who have committed domestic violence

To achieve the goal, it is necessary to refer to the quantitative and statistical data on persons brought to administrative and criminal responsibility who committed domestic violence. The website of the judicial authorities of Ukraine presents statistical information related to domestic violence (Nalyvaiko et al., 2018). On the basis of the indicated data, we analyzed the trends that occur in bringing perpetrators to justice in relation to domestic violence. It is known that responsibility for domestic violence appeared as early as 2017 in accordance with the Law of Ukraine dated 06.12.2017 No. 2227-VIII "On Amendments to certain laws of Ukraine in connection with the ratification of the Council of Europe Convention on the prevention of violence against women and domestic violence". This law became part of a complex of laws dedicated to the implementation of gender policies in the national legal space, which must be understood in their systemic connections and interactions (Law of Ukraine No. 2227-VIII..., 2018) from Law of Ukraine No. 2229-VIII "On preventing and combating domestic violence" (2017); Law of Ukraine No. 2866-IV "On ensuring equal rights and opportunities for women and men" (2018); Law of Ukraine dated 06.12.2017 No. 2227-VIII "On Amendments to Certain Laws of Ukraine in Connection with the Ratification of the Council of Europe Convention on the Prevention of Violence Against Women and Domestic Violence and Combating These Phenomena" (2018); Law of Ukraine No. 2334-VIII "On Amendments to the Criminal Code of Ukraine on the Protection of Children from Sexual Abuse and Sexual Exploitation" (2018).

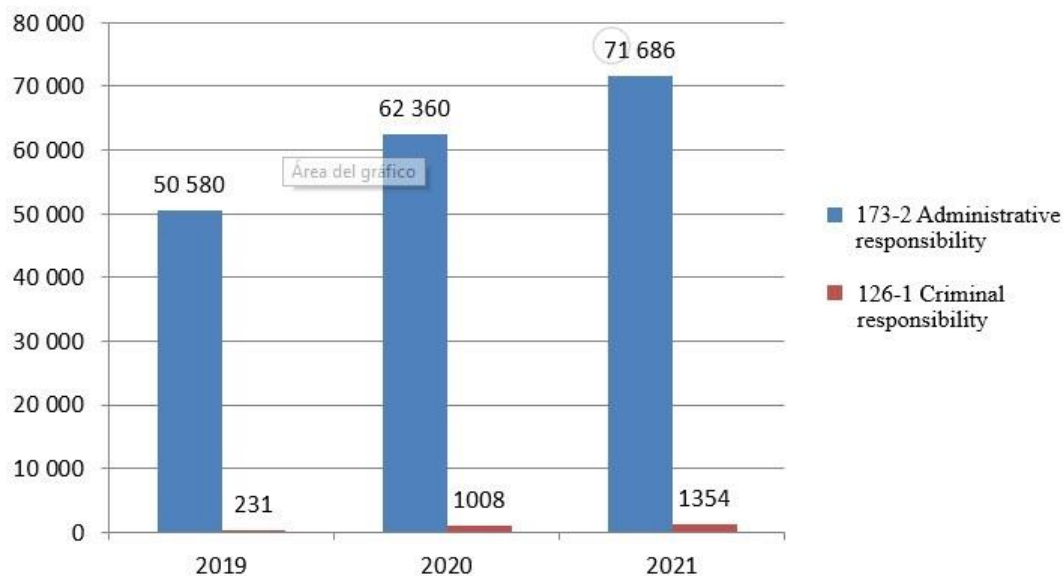
However, it took time for the population and government officials to become familiar with the innovation. Before the adoption of the changes, the precincts were very reluctant to respond to calls related to domestic violence, due to the fact that they came to warn the offender, but the legislation did not allow to significantly influence the specified socially dangerous act. In addition, the social aspect also had an impact, namely, that the victims called the police, but even before the patrol police showed up to respond to the call, the victim had already refused to appeal. Even if there was a desire to punish the offender on the part of the victim during the preparation of the report by the district police officer, the victim refused and took the statement from the police the very next day. All this happened in connection with the fact that the persons live together and after committing domestic violence, the offender instilled psychological influence on the victim.

Ukraine signed the Istanbul Convention on November 7, 2011, but the Convention was ratified with declarations by Law No. 2319-IX dated June 20, 2022 , and entered into force on November 1, 2022 (Law of Ukraine No. 2319-IX... , 2022) . Already on July 18, the general secretary of the deputy Secretary General of the Council of Europe Bjorna Berge received the ratification documents. Therefore, with the adoption of

these Laws, the number of appeals is increasing, and, accordingly, the data on domestic violence are increasing. We believe that it is the legislative changes that have influenced the fact that domestic violence is emerging from a number of latent crimes. Victims are no longer ashamed to talk about the domestic violence against them. Because the criminalization of an act cannot lead to an increase in the rates of committing the specified act, it is precisely the change of view on this act that gives the victim confidence that it makes sense to fight this socially dangerous act in the legal field.

We would like to start analyzing the data from 2019, because even accepting responsibility for domestic violence in 2017 did not reproduce the indicators in the statistics until 2019. In 2017-2018, no person was prosecuted for domestic violence. The analyzed data is shown in Figure 1. So, we can observe an increase every year by more than 10,000 cases of domestic violence as an administrative legal offense. There is also an increase in sentences for committing domestic violence as a criminal offense in 2019 - 231 sentences, 2020 - 1008, 2021 - 1,354. However, unlike administrative responsibility, the dynamics of growth is slowing down.

Figure 1: The ratio of the number of persons prosecuted for committing domestic violence to administrative liability and criminal liability

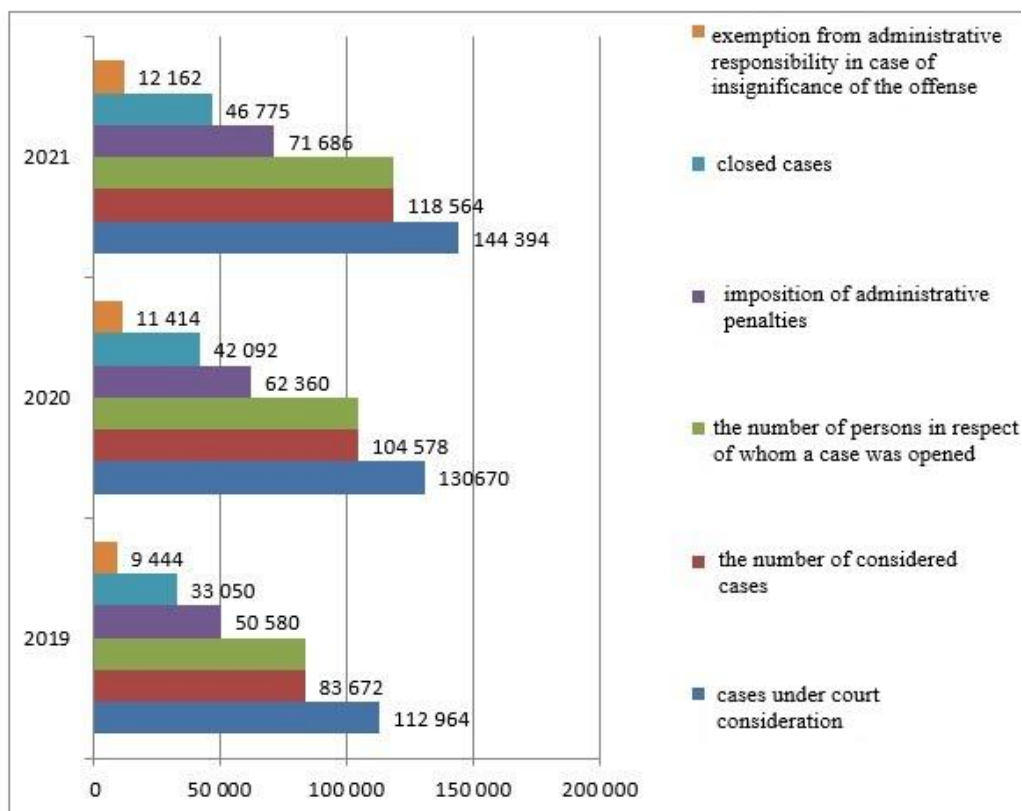


Moreover, we wanted to pay attention to the percentage of persons brought to administrative responsibility for domestic violence in relation to other administrative offenses. Thus, in 2019, 657,185 administrative offenses were reviewed, of which 112,964 (17.1%) were cases related to domestic violence, and 50,580 (7.7%) were held liable under Art. 173² of the Code of Criminal Procedure. In 2020, 720,916 administrative offenses were considered, of which 130,670 (4.5%) were related to domestic violence and 62,360 (8.65%) were prosecuted. In 2021, 968,245 people were prosecuted of them, 144,394 (15%) were prosecuted for domestic violence, and 71,686 (7.4%) were prosecuted under 173² of the Code of Criminal Procedure. We believe that this is a very large percentage if compared with the number of all criminal punishments, only if we take into account criminal offenses against life and health in 2019, 15,139 of which sentences were related to domestic violence, 231 (1.5%), 2020, 17,818 sentences, 1,008 (5.65%), in 2021, 19,228 of which

were sentences for domestic violence under Art. 126¹ of the Criminal Code of Ukraine 1,354, which is 7% (Judicial power of Ukraine, 2022).

According to the analyzed statistics, the percentage of domestic violence is increasing every year, which indicates the insufficient effectiveness of those penalties and punishments applied to persons who have committed domestic violence. Figure 2 shows the 3-year trend in judicial trends in the stages of court proceedings, the number of fines imposed and those released on the basis of a determination of insignificance. The increase in the number of applications for administrative responsibility for domestic violence has increased due to the visibility of cases. Thus, an information campaign is currently being conducted in Ukraine during which victims are explained that to endure violence is not normal and encouraged to talk about it.

Figure 2: Dynamics of the judiciary trends in relation to the stages of court proceedings, the number of fines imposed and those released based on the determination of insignificance for the period 2019-2021



Regulatory and legal side of criminalization of domestic violence

Amendments to the Criminal Code of Ukraine and criminalization of domestic violence in the Criminal Code of Ukraine under Art. 126¹, as well as the transfer of domestic violence from cases of private prosecution to public prosecution should improve the indicators of prosecution of offenders (Petrenko et al., 2019). According to changes in the procedural legislation, when domestic violence is committed, it is necessary to

answer in court, because if the victim refuses to be charged, there is no longer a reason to close criminal proceedings, as well as for criminal offenses under articles 1261 of the Criminal Code of Ukraine "Domestic violence", 134 of the Criminal Code of Ukraine "Illegal abortion or sterilization", 1512 of the Criminal Code of Ukraine "Forced marriage", part 1 of Article 152 of the Criminal Code of Ukraine "Rape", part 1 of Article 153 of the Criminal Code of Ukraine "Sexual violence", 154 of the Criminal Code of Ukraine "Coercion to enter into sexual relations" in accordance with Article 477 the Criminal Procedure Code of Ukraine and according to the above changes, in the form of a private charge is carried out (Law of Ukraine No. 2227-VIII ..., 2018). In general, such changes correspond to Art. 55 of the Convention regarding cases in which the victim withdraws his/her statement or complaint about a criminal offense under Article 126 1 of the Criminal Code of Ukraine, the proceedings may be continued under Clause 7 Part 1 of Article 284 of the Criminal Code of Ukraine. But it is not clear whether this is possible only in cases of domestic violence or in general. All the listed compositions fall under this rule. Accordingly, does it matter that the offender and the victim were in a previous family relationship when qualifying the above listed compositions? If it is extended to all articles regardless of previous family relations, then in this case it contradicts the provisions of the implemented convention on domestic violence.

Having studied the regulatory and legal aspect of private prosecution, let's analyze the attitude of the Supreme Court of the panel of judges of the First Judicial Chamber of the Criminal Court of Cassation in case No. 647/1931/19 proceedings No. 51-174km20 of April 7, 2020 (Resolution of the Criminal Court of Cassation No. 647/1931/19..., 2020). At a meeting of three Supreme Court Courts presided over by Bushchenko. and judges Golubytskyi, Shevchenko agreed with the judgment of the prosecution regarding the expanded scope of criminal offenses related to domestic violence and referred to it and Art. 125 of the Criminal Code of Ukraine, namely, regarding the refusal of the victim (mother) from the private prosecution of her son, who inflicted minor bodily injuries on her with an ax. Accordingly, the public accusation also includes Art. 125 of the Criminal Code of Ukraine "Intentional light bodily harm" (Judicial power of Ukraine, 2022).

In addition, in this case, the application of Art. 477 of the CCP and Art. 284 of the Criminal Procedure Code is possible only for special subjects, namely according to clause 3 part 1 of article 1 of the law "On prevention and counteraction of domestic violence", they can only be persons who lived in the family or within the limits of the place of residence, or between relatives, or between former or current spouses, or between other persons who live (lived) together as a family, but are not (were not) in a family relationship or married to each other.

In our opinion, this contradicts the principle of legality and equality, when in some cases the victim's statement is required in the case of rape, and in the case of rape by an ex-husband, this statement may be absent. It is known that rape refers to a latent form of crime, when the victim does not have a great desire to report it. Thus, in such a case, victims of domestic violence are more protected by the law in the event of a public accusation than rape victims who were not previously acquainted with the offender. In our opinion, this contradicts the formal logic in which the degree of social danger of the criminal is higher when the victim is not an acquaintance, than in those cases when they previously had sexual intercourse, but at this very time, for example, a woman refused a man and he against his will, having previously had a family relationship with this woman raped her (Filei et al., 2020). Sometimes, despite the fact that the state wants to "keep up" with European legislation, the essence of the act itself is lost. Thus, Table 1 provides a

comparison of the legislative regulation of responsibility for rape, from which it can be seen that the legislator punishes rape in family and close relationships more severely than the rape by a stranger. According to the current version, if a person rapes an unknown person at night in a park or, guided by the helpless state of an unknown person, rapes her, then this is a minor crime, then if the wife refuses her husband saying that she has a headache, and he commits vaginal penetration without her voluntary consent, it is a serious crime and is punishable by up to 10 years of imprisonment.

Table 1: Regulation of responsibility for rape

Article 152. Rape	
1. Committing acts of a sexual nature, related to vaginal, anal or oral penetration into the body of another person using genitalia or any other object, without the victim's voluntary consent (rape).	2. Rape committed repeatedly or by a person who previously committed any of the criminal offenses provided for in Articles 153-155 of this Code, or committing such acts against a spouse or ex-spouse or another person with whom the perpetrator is (was) in a family or close relationship , or against a person in connection with the performance of an official, professional or public duty by this person, or regarding a woman who was known to the perpetrator to be pregnant.
It is punishable by imprisonment for a term of three to five years.	It is punishable by imprisonment for a term of five to ten years.
A minor crime	A grave crime

Currently, we would like to draw attention to the fact that in most cases, if a special subject is provided for in the disposition of the article and he is not an official, this circumstance aggravates criminal liability and vice versa, if any person who is not an official is provided for in the disposition of the article, in most cases it affects responsibility as a mitigating circumstance (intentional killing by the mother of her newborn child, Article 117 of the Criminal Code of Ukraine). Therefore, in our opinion, persons who are in a family relationship with the victim cannot influence the degree of the committed socially dangerous act, but there are other norms that state the opposite, so according to Law of Ukraine No. 2227-VIII of 06.12.2017 "On the introduction of of amendments to the Criminal and Criminal Procedural Codes of Ukraine in order to implement the provisions of the Council of Europe Convention on the Prevention of Violence against Women and Domestic Violence" changes were made and paragraph 6-1 appeared. It states that the commission of a criminal offense against a spouse or a former spouse or other person with whom the offender is (was) in a family or close relationship is an aggravating circumstance (Law of Ukraine No. 2227-VIII..., 2018).

Psychiatric aspects of domestic violence

As a rule, it is difficult to imagine a situation where the aggressor uses only one type of violence. On the contrary, victims often suffer from the simultaneous manifestation of different types of violence. Being closely related, each violence has a certain impact on the mental state of a person and life in general. The psychiatric aspects of domestic violence are important for understanding and combating this problematic phenomenon. Domestic violence can have a serious impact on the mental health of victims as well as the psychological states of abusers (Levchenko et al., 2021).

In many cases, victims of domestic violence can acquire a range of mental disorders such as anxiety disorders, depression, post-traumatic stress disorder, and substance abuse disorders. One of the main mental consequences of domestic violence is post-traumatic stress disorder (PTSD). Victims of domestic violence can experience obsessive memories, nightmares, anxiety and acute psychological distress (Guliyeva et al., 2018). In some cases, depression, anxiety and sleep disorders, and psychosomatic symptoms may develop. These disorders can affect their ability to function expediently in everyday life and engage effectively in study or work.

The main factors that provoke mental consequences of domestic violence include constant stress, feelings of helplessness and control by the abuser, rejection of support, and low self-esteem. Victims often feel guilt, shame and fear, which can lead to internal conflict and deterioration of mental state. Mental violence is very often a result of physical and sexual violence. However, in most cases it is not considered a direct object of investigation and the reason for the appointment of forensic examinations of violence (Britchenko et al., 2018).

Emotional states are among the most significant triggers of family violence. The emotional states of the accused, which are the trigger for violence, are of particular importance because they can cause reactions towards other family members (Haltsova et al., 2021). Therefore, the establishment of the emotional states of the accused at the time of committing a criminal offense is a particularly important part of the work of an expert psychologist on family violence. The theoretical analysis revealed the following relationship between emotional states and types of family violence (Table 2):

Table 2: Relationship between emotional states and types of family violence.

Types of family violence	Provoking emotional states
Physical violence	Physiological affect; high levels of frustration. The victim may suffer physical injuries that can have physical and emotional consequences.
Mental violence	High levels of mental tension, resulting in insecurity, low self-esteem, despair, depression and anxiety. The victim can be constantly in a state of stress and panic.
Emotional abuse	Shame, guilt, failure and loss of self-esteem. This can lead to the development of anxiety disorders and depression.
Sexual abuse	Sexual dysfunction, suicide and loss of self-belief.

The Ukrainian context of this phenomenon is no exception. In this regard, the study of the psychiatric aspects of domestic violence in Ukraine is relevant. Domestic violence has become one of the most pressing social problems of the modern Ukrainian family. So, there is an urgent need for forensic psychological examination of domestic violence victims in modern scientific and psychological discourse. According to statistics from the Ministry of Internal Affairs of Ukraine, about 145 thousand cases of domestic violence were registered in 2020. However, these are only official statistics, while many cases remain unreported (Volodina et al., 2020).

According to the 2019 National Report on Violence in Ukraine, more than 60% of cases of violence relate to domestic one. According to the official data of the National Police of Ukraine provided in response to the request, in 2022 there were 244,381 appeals regarding the facts of domestic violence, which is 40% more than in the previous year (144,394) and 15% more than in 2020 (208,748) and 41% more than in 2019 (141,814) (Association of Women Lawyers of Ukraine "YurFem", 2022a).

The statistics show that during martial law domestic violence in Ukraine has not lost its relevance, there is no doubt about the importance of this problem for the society. It can be assumed that armed conflict exacerbates the problem of violence since aggression, a change of the usual lifestyle, the need to adapt to new circumstances can be those factors that influence the commission of domestic violence. Women are the main category of victims although domestic violence can also affect men, children and the elderly. The study conducted by the National Center for Forensic Psychiatry of Ukraine demonstrated that more than 70% of women who were victims of domestic violence had signs of anxiety and depressive disorders and PTSD. (Association of Women Lawyers of Ukraine "YurFem", 2022b).

Another research project conducted in Ukraine showed that children who witnessed domestic violence have a significantly higher risk of developing various mental disorders, including anxiety, depression and behavioral disorders. These studies demonstrate the need for psychiatric support for victims of domestic violence in Ukraine (Association of Women Lawyers of Ukraine "YurFem", 2022c). Yet, are the victims ready to talk about violence, receive assistance and defend their right to personal integrity and security?

Public attention to the problem of domestic violence, its coverage in the media, massive public activity in this regard, of course, the legislative work led to the fact that Ukrainian society does not consider domestic violence through the prism of the problem of someone else's family and does not silence these cases. On the contrary, the society tries to help the victims (Voloshyn, 2022). Narratives like "she is guilty herself", "you know that it unnerves him", which results in blaming the victim for what happened, are now being eradicated. There is a tendency for the society to recognize that the problem of violence is not limited to the boundaries of a particular family (Yatskevich, 2020). This is confirmed by information on the number of people who apply to law enforcement agencies in the interests of victims, as mentioned above.

It is important to ensure access to psychological assistance, psychotherapy and psychiatric counseling for victims, as well as to conduct educational activities in order to comprehensively understand the problem of domestic violence and its psychological consequences for the society. These factors highlight the importance of providing a comprehensive approach to combating domestic violence that includes not only legal and social measures, but also psychiatric support for victims and abusers.

The ECtHR case law on domestic violence

There is also the ECtHR case law, because the Istanbul Convention is not a full-fledged mechanism, no matter how extensive the system of international mechanisms for the protection of human rights, so let's turn to the best international standards for protection against domestic violence.

The basic decision of the ECtHR is "landmark decisions", which is the case *Opuz v. Turkey* (ECtHR Application No. 33401/02..., 2009), in which for the first time a violation of Article 14 "Prohibition of discrimination" was recognized in combination with a violation of Articles 2 and 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 regarding domestic violence. The main thing in this decision is that the ECtHR recognized that there is a connection between the perpetration of domestic violence that is precisely related to gender, namely that the majority of victims of domestic violence are women. Having determined that this is a systemic problem. Here the imbalance of society and the government is connected. From the point of view of society, men dominate law enforcement and judicial

institutions, that is why they commit violence against women. The decision of the Court will be the state's obligation to protect women from domestic violence. The main thing was that the Court obliged the state to guarantee security in the sphere of human rights observance in the private sphere.

This confirms the decisions of the Supreme Court, which we considered earlier regarding Ukraine's refusal to classify domestic violence as a crime that is subject to private prosecution. It is interesting that the ECtHR referred this case to *erga omnes* due to the fact that section 1 of the Convention states that the Court provides the final authoritative interpretation of rights and freedoms, and also considers whether national authorities have sufficiently adopted the principles arising from its decisions on similar issues, even if they concern other states (ECtHR Application No. 33401/02..., 2009).

It is important in this matter the Convention on the Elimination of Discrimination against Women of 1979, in which the CEDAW Committee, in accordance with the Optional Protocol to the Convention of 1999, gives the right to consider individual and group complaints of applicants against participating states (including Ukraine). regarding the violation of their rights and compliance with CEDAW standards - in the case of *AT v Hungary* (CEDAW Document UN Doc A/60/38..., 2005).

These were the first and fundamental decisions in which the Committee confirmed gender-based violence against women, which it recognized as a form of discrimination prohibited by Article 14 of the Convention. At the same time, this was the first decision in which the Committee provided the meaning and content of the states' obligations regarding "due diligence" to a specific set of facts related to domestic violence. The Committee recognized the responsibility of the state itself for its failure to sufficiently effectively protect the applicant from domestic violence, and also noted that the legal and institutional structure of the state party regarding domestic violence did not sufficiently meet international standards, and the existing means of protection did not provide effective support for victims, in addition condemned the low priority given by domestic courts to domestic violence cases and the prevailing gender stereotypes, which the Committee believed were the root causes of gender-based violence.

Requirements for the states that are parties to the convention are as follows:

- carry out strict legal protection relatively gender violence;
- guarantee, provision the priority of women's rights on life and physical and mental integrity compared to the rights of offenders;
- eradicate the causes of gender-based violence.

The ECtHR case law is a source of criminal responsibility according to Art. 17 Law of Ukraine "On the implementation of decisions and application of the European Court of Human Rights case law" (Law of Ukraine No. 3477-IV..., 2006). All these recommendations should be taken into account by Ukrainian courts when deciding cases related to domestic violence.

Quantitative and statistical data on case law regarding prosecution of persons who have committed domestic violence

All these changes in the legislation are a consequence of Ukraine joining the Council of Europe Convention on preventing and combating violence against women and domestic violence. So, for example, at the stage of the pre-trial investigation, before the adoption of the specified changes, the victim had the right to

withdraw the statement at any stage of the pre-trial investigation, moreover, and even during a trial. If we take the data for 2019 from the register of pre-trial investigation, it can be seen from the statistics that guilty verdicts were issued in 235 cases, of which punishments are associated with isolation from society in 62 verdicts, namely 23 - in the form of deprivation of liberty, 39 - in the form of restriction of liberty and 42 sentences were arrest, in addition, 131 sentences were issued not related to isolation from society, and in the form of community service - 129 and fine - 2 sentences. If we look at the regional statistics in Ukraine, Zhytomyr was the first city in terms of the number of punishments imposed - 27 sentences, Lviv was the second city - 25 sentences, and Kherson was the third city - 21 sentences.

Next, the most interesting data, which was one of the goals of writing the article, namely to trace how the statistics changed in connection with the adoption of the law prohibiting the application of Art. 284 of the Criminal Procedure Code on closing criminal proceedings in connection with reconciliation with the victim. Thus, we already know that there were 235 guilty verdicts, while exemption from punishment in connection with the refusal of the indictment, clause 7 of Art. 284 of the Criminal Procedure Code. It states that the victim and her representatives can refuse to charge in criminal proceedings in the form of a private indictment regardless of the law that was passed on December 6, 2017 No. 2227-VIII, which was supplemented by clause 7 of Art. 284 of the Criminal Procedure Code with the following words "except for criminal proceedings related to a criminal offense related to domestic violence".

However, this law entered into force one year after its publication, except for subsection 3 of paragraph 1 of section I of this law (regarding article 67 of the Criminal Code of Ukraine), which enters into force on the day following the publication of this Law (Law of Ukraine No. 2227-VIII..., 2018). Although since December 7, 2018 there was already a ban on closing criminal proceedings in the event of domestic violence, throughout 2019 the court closed cases in the event of domestic violence in accordance with clause 7 Art. 284 of the Criminal Code of Ukraine, as evidenced by the following analyzed statistical data, namely, 102 cases were closed at the stage of judicial review.

It is even more interesting that the specified changes, regarding the impossibility of terminating criminal proceedings in cases related to domestic violence, are based on Art. 55 of the "Council of Europe Convention on preventing and combating violence against women and domestic violence". It is established that the parties ensure the investigation or criminal prosecution of the offenses provided for in Art. 35 of the CE Convention "Physical Violence", Art. 36 of the CE Convention "Sexual Violence", "Rape", Art. 37 of the CE Convention "Forced marriage", Art. 38 of the CE Convention "Female Genital Mutilation" and Art. 39 of the CE Convention "Forced Abortion and Forced Sterilization" of this Convention, did not depend entirely on the notification or complaint submitted by the victim if the offense was committed in whole or in part on its territory, and that the proceedings could continue if the victim withdrew his statement or complaint (Glowyuk , 2019).

So, in this definition of Art. 55 of the Convention of the Council of Europe, the word "does not depend entirely" is questionable, which, guided by formal logic, means that there is no direct prohibition. So, the bodies of judicial investigation and the judicial authorities can decide this at their own discretion. In order to implement the provisions of the Convention, the clarified rules of proceedings in the form of private prosecution, which include domestic violence, illegal abortion or sterilization, forced marriage, sexual violence were excluded from the Criminal Procedure Code of Ukraine (Criminal Procedural Code of Ukraine, 2013).

However, these changes have not yet had an effect for the legislative regulation of the Article 46 of the Criminal Code of Ukraine "Exemption from criminal responsibility in connection with the reconciliation of the guilty party with the victim" and Art. 45 of the Criminal Code of Ukraine "Exemption from criminal liability in connection with active repentance", as well as the entire Section IX "Exemption from criminal responsibility", which in the latest edition prohibits the reconciliation of the guilty with the victim in the articles related to corruption and crimes related to traffic safety. Yet, the ratified Istanbul Convention and the Resolutions of the Supreme Court do not refer to this norm. In court, the victim can reconcile with the offender, this happens even at the stage of the pre-trial investigation, but does not affect the result. Therefore, in our opinion, it is necessary to introduce a ban in this Section in the same way as in the CPC, if the legislator considers it appropriate and the Istanbul Convention was ratified on November 1, 2022. For example, it should be put in the following version (Table 3).

Table 3: Comparison of Article 45 of the CCU in the current and proposed versions

Current edition	Proposed revision
<p>Article 45. Exemption from criminal liability in connection with active repentance A person who for the first time committed a criminal misdemeanor or a careless minor crime, except for corruption criminal offenses or criminal offenses related to corruption, violations of traffic safety rules or operation of transport by persons who drove vehicles under the influence of alcohol, drugs or other intoxication or were under the influence of drugs that reduce attention and reaction speed, is released from criminal liability if, after committing a criminal offense, he/she sincerely repented, actively contributed to the detection of a criminal offense and fully compensated for the damage caused or eliminated the damage caused.</p>	<p>Article 45. Exemption from criminal liability in connection with active repentance A person who for the first time committed a criminal misdemeanor or a careless minor crime, except for corruption criminal offenses or criminal offenses related to corruption, domestic violence, violations of traffic safety rules or operation of transport by persons who drove vehicles under the influence of alcohol, drugs or other intoxication or were under the influence of drugs that reduce attention and reaction speed, is released from criminal liability if, after committing a criminal offense, he/she sincerely repented, actively contributed to the detection of a criminal offense and fully compensated for the damage caused or eliminated the damage caused.</p>

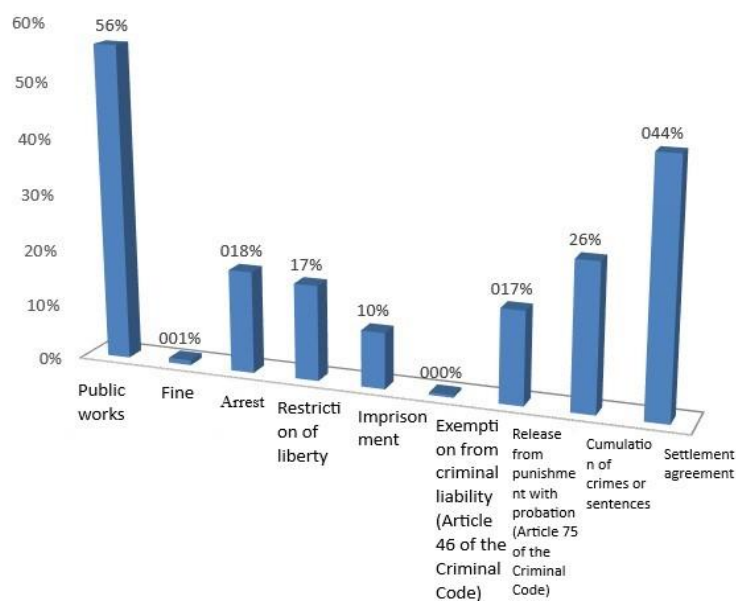
Therefore, in order to support the specified contradictions in the law, we will analyze the quantitative (Table 3) and statistical (Figure 3) data on case law regarding the prosecution of persons who have committed domestic violence.

All given data are based on the number of sentences under Art. 126¹ "Domestic violence", processed using the register of court decisions, when each case was reviewed, and regional crime on this issue was determined. However, there are also statistical data that are processed by the judiciary independently and are available on the "Judicial Authority of Ukraine" website. Thus, from Table 2, it can be seen that the number of court decisions regarding the recognition of guilt of persons who have committed a criminal offense is provided for in Art. 126¹. 232 persons were convicted, of which 102 criminal cases were closed on the basis of Clause 7 of Art. 284 of the Criminal Procedure Code, with the already accepted ban on closing such cases. However, we can hope that they were committed before the entry into force and in accordance with Art. 58 of the Constitution of Ukraine and Art. 4 and 5 of the Criminal Code of Ukraine, the law does not have retroactive effect and the time of committing a criminal violation of rights is determined at the time of its commission. However, the court chose a different way if prosecution was possible.

According to the types of punishments, 129 persons were punished by public works, 42 persons were arrested, 39 were punished by restriction of liberty, 23 were imprisoned, and 2 were fined. It is interesting that 60 persons who were sentenced to imprisonment were released from serving the sentence with probation, which means that almost all persons who were sentenced to these types of punishments were released from the courtroom and went to their families. Simple math here: 39 – restriction of liberty and 23 – deprivation of liberty, $39+23=62$ persons, of which 60 were released and 2 were serving actual punishment. So let's analyze it, but it is not surprising that there will be a high percentage of relapse in this case.

It is interesting that the "Judiciary of Ukraine" website does not provide data on those released on the basis of Art. 75 of the Criminal Code of Ukraine "Release from punishment with probation". However, there are data on persons who were released on the basis of Art. 45 of the Criminal Code of Ukraine "Exemption from criminal liability in connection with active repentance" and Art. 46 of the Criminal Code of Ukraine.

Figure 3: Statistical indicators of case law regarding the prosecution of persons who have committed domestic violence "Release from criminal liability in connection with the transfer of a person to bail"



In connection with the data analyzed and presented in Figure 3, it turns out that the main type of punishment is community service, while deprivation of liberty and restriction of liberty exist in the sanction of the article only to release with probation. If you examine the essence of the punishment itself, it turns out that those who are sentenced to deprivation of liberty and restriction of liberty are more socially dangerous, guided by the features of the punishment system, according to which all punishments under Art. 51 of the Criminal Code of Ukraine are arranged according to their degree of severity. So, it turns out that community service is ranked second in terms of severity from less severe to more severe, while restriction of liberty is ninth and imprisonment is twelfth, respectively.

According to the specified characteristics, persons sentenced to community service are less socially dangerous than those sentenced to restriction of liberty and deprivation of liberty. However, when serving sentences, persons sentenced to community service must work 4 hours a day free of charge for society for a period of 15 days (in cases where the smallest number of hours is assigned) to 2 months (60 days in the case when the largest number of hours are assigned), when those persons who are assigned deprivation of liberty and restriction of liberty for a year (from 1 to 3) shall not to systematically commit administrative offenses, and not just any, but only those that indicate unwillingness to embark on the path of correction (Criminal Code of Ukraine, 2001) and not to commit any new criminal offense in accordance with the provisions of Article 126¹ of the Criminal Code of Ukraine, which does not have qualifying features such as, for example, repetition. According to this wording of the law, it turns out that in order to consider that a person does not fulfill Art. 76 of the Criminal Code of Ukraine, namely, the duties assigned to a person who is released on probation, it is necessary that he commits domestic violence three times, then the court will consider that the person did not fulfill the assigned duties or committed, for example, a criminal offense provided for in Art. 125 of the Criminal Code of Ukraine or Art. 126 of the Criminal Code of Ukraine or others. Even the indication of Part 2 of Article 76 of the Criminal Code of Ukraine does not correct these gaps, because in Article 91¹ of the Criminal Code of Ukraine, which states that the following restrictions may be imposed on a person who has been released on probation, namely: 1) a ban on being in the same place of residence with a person who suffered from domestic violence; 2) restriction of communication with the child if domestic violence is committed against the child or in his/her presence; 3) prohibition to approach a place on a specified distance where a person who has suffered from domestic violence may live permanently or temporarily, stay in connection with work, study, treatment or for other reasons; 4) prohibition of correspondence, telephone conversations with a person who suffered from domestic violence, other contacts through means of communication or electronic communications personally or through third parties; 5) referral to a program for offenders or a probation program (Criminal Code of Ukraine, 2001).

However, all these prohibitions are imposed for a period of 1 to 3 months and may be extended up to 12 months in accordance with Part 3 of Art. 91¹ of the Criminal Code of Ukraine. So this ban can be much shorter than the probation of a convicted person under Art. 126¹ of the Criminal Code of Ukraine, and released under Art. 75 of the Criminal Code of Ukraine.

So, from the analyzed situation, it turns out that if the offender, who was charged under Art. 126¹ of the Criminal Code of Ukraine "Domestic violence" and sentenced to 2 years' imprisonment, from which he was released with probation for a term of 2 years on the basis of Art. 75 of the Criminal Code of Ukraine, will commit a new administrative offense related to domestic violence, Art. 173² of the Code of Criminal Procedure in relation to another family member (for example, mother). According to the Criminal Code, this is not a reason for canceling the probation, and even if he does it a second time, it is also not a reason and only when there is a systematic violation of Art. 173² of the Code of Ukraine on Administrative Offenses, namely three or more times, then there is a reason to cancel the probation. According to the current law, the perpetrator may even commit domestic violence against the victim several times, but only after the expiration of the period indicated in Part 3 of Article 91 of the Criminal Code of Ukraine, namely after 3 months, in some cases up to 12 months (Code of Ukraine on Administrative Offenses, 2023).

A fine as a type of punishment for domestic violence

Having analyzed the inconsistency with the ratified Conventions of the current criminal legislation regarding the transfer of a private prosecution to a public prosecution of cases related to domestic violence, while this happened in the criminal procedural legislation, namely in relation to part 4 of Art. 477 of the Criminal Procedure Code and clause 7 of Art. 284, it is proposed to amend the current Article. 91¹ of the Criminal Code of Ukraine in relation to persons released on probation, if the bans would extend to the entire period for which the court determined the probationary period.

This is not the end of the inconsistencies between the verdicts and the determination of the degree of danger of the committed criminal offense. We came to the conclusion that almost all 96.6% of persons sentenced to imprisonment or restriction of liberty (accounting for 27% of the total number of punishments for domestic violence in 2019) are released under Art. 75 of the Criminal Code of Ukraine "Exemption from punishment with probation".

The majority serve their punishment in the form of community service - 56%, but in our view, the most severe form in connection with the analyzed situation is arrest, which is imposed in 18% of cases. Arrest is a punishment that, according to the law on criminal responsibility, is prescribed from 1 to 6 months and takes place in conditions of strict isolation from society where a domestic abuser can fully experience the punishment for the committed criminal offense, while with other types of punishment, he does not experience direct punishment.

As for the fine as a type of punishment for domestic violence, it is assigned less than 1% of all other types of punishments in connection with the fact that: 1. It is not provided for in the sanction of the article, and accordingly it is assigned only on the basis of Art. 73 of the Criminal Code of Ukraine, when a person cannot be sentenced to another punishment and one punishment is transferred to another; 2. Almost all persons who commit domestic violence are not employed and do not have higher education, and in most cases even secondary special education, accordingly they do not have the opportunity to pay a fine (see Table 4).

Table 4: Quantitative indicators regarding the imposition of a penalty in the form of a fine as an administrative delict

	Warning	Fine	Paid removal of the item	Confiscation of the item, money	Deprivation of a special right	Public work	Socially useful work	Corrective work	Administrative arrest
2019	19	44,091				4,859			1 611
2020	41	55,473				5,277			1,569
2021	23	64,812				5,332			1 519

Having analyzed the fine as a type of punishment under the criminal law, we suggest looking at the statistics on the imposition of fines as an administrative-legal delict (Table 4).

Figure 4 provides statistics on the imposition of a fine for an administrative offense for the period from 2013 to 2021. The data demonstrate the dynamics of the application of fines for domestic violence during the specified period, which allows to assess the effectiveness of measures taken in the context of the Istanbul Convention. This clearly reflects changes in legal practice and approaches to prosecution for domestic violence.

Figure 4: Statistical indicators on the imposition of penalty in the form of a fine as an administrative legal delict

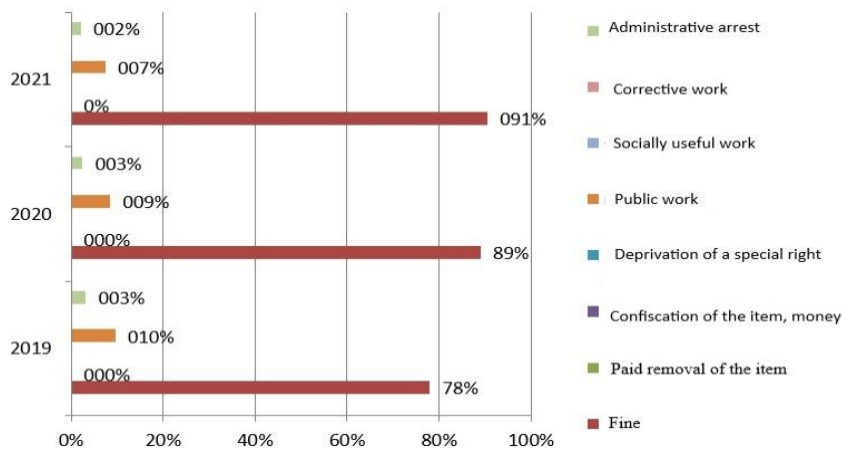
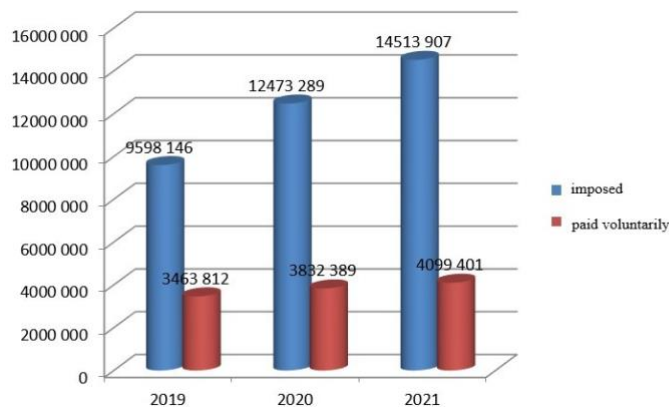


Figure 5 illustrates the amount of fines in UAH that were imposed or paid voluntarily for cases of domestic violence in accordance with the norms of the Istanbul Convention. The data demonstrate the financial consequences of applying fines within the framework of national legislation, which was adapted in accordance with the requirements of the convention. The analysis of these data reveals gaps and inconsistencies in law enforcement that affect measures to counter domestic violence.

Figure 5: The number of fines in hryvnia equivalent that were imposed or paid voluntarily



In the future, we will trace how the situation has changed in recent years with regard to the specified characteristics. Table 5 provides the quantitative data of persons convicted of domestic violence cases in 2019, taking into account the availability of education and work. In the future, we will identify how the situation has changed in recent years according to these signs.

Table 5: Quantitative characteristics of persons regarding the availability of education and work among convicts for 2019

	The total number of persons convicted of domestic violence	Employed	Unemployed	Higher education	Special education	General education
2019	235	37	198	7	19	191
2020	778	112	666	19	190	564
2021	1 231	103	1128	52	282	882

Table 6 shows the characteristics of convicts regarding the availability of education and work in different regions for 2019. These data facilitate a comparative analysis and allows to identify regional differences in the context of the socio-economic status of persons who have committed domestic violence.

Table 6: Characteristics of convicts regarding availability of education and work in different regions for 2019

Region	No education	Higher Education	Special technical education	General education	Unemployed
Vinnitsia	0	0	1	9	8
Volyn	0	0	0	0	0
Dnipropetrovsk	0	0	6	10	16
Donetsk	0	0	4	9	12
Zhytomyr	0	0	4	19	22
Zakarpattia	0	0	2	9	8
Zaporizhzhia	0	0	1	4	4
Ivano-Frankivsk	0	0	0	10	4
Kyiv	0	1	0	1	2
Kirovohrad	0	0	1	2	3
Luhansk	0	0	0	5	3
Lviv	0	2	3	20	23
Mykolayiv	0	0	2	5	4
Odesa	0	0	1	10	11
Poltava	0	0	1	4	4
Rivne	0	0	2	6	7
Sumy	0	1	2	10	7
Ternopil	0	1	2	10	7
Kharkiv	0	0	1	5	6
Kherson	0	1	1	19	18
Khmelnitsk	0	0	0	4	2
Cherkasy	0	0	0	2	2
Chernivtsi	1	1	0	15	17
Chernihiv	0	0	0	2	0
the city of Kyiv	0	2	2	2	2
In total	1	7	19	191	198

Having analyzed the persons found guilty of committing a criminal offense, we come to the conclusion that even 0.82% of the punishment in the form of a fine corresponds almost completely to the number of persons who have a higher education, on average 3%, and the average percentage of employed people is 15%. Therefore, in our opinion, a fine should be imposed in an exceptional case, because a fine exists as a type of administrative penalty, which was imposed on the guilty person no less than three times in order to bring him/her to justice, and accordingly, it is not an effective type of punishment.

Questionnaire of the "Polina" unit

The survey conducted among the employees of the POLINA division clearly demonstrates the level of their awareness and practical approaches to solving the problem of domestic violence. The collected data provide a deeper understanding of the current state of theoretical training of police officers, the effectiveness of existing legal norms, and identify the main gaps in the current system of preventing and combating domestic violence. The following tables and diagrams contain the results of this questionnaire, which allow to draw conclusions about the need to improve further the legal framework and methods of working with offenders. On the basis of the conducted questionnaire, tables and diagrams were constructed with answers to the questions of the questionnaire:

Table 8: Questionnaire questions

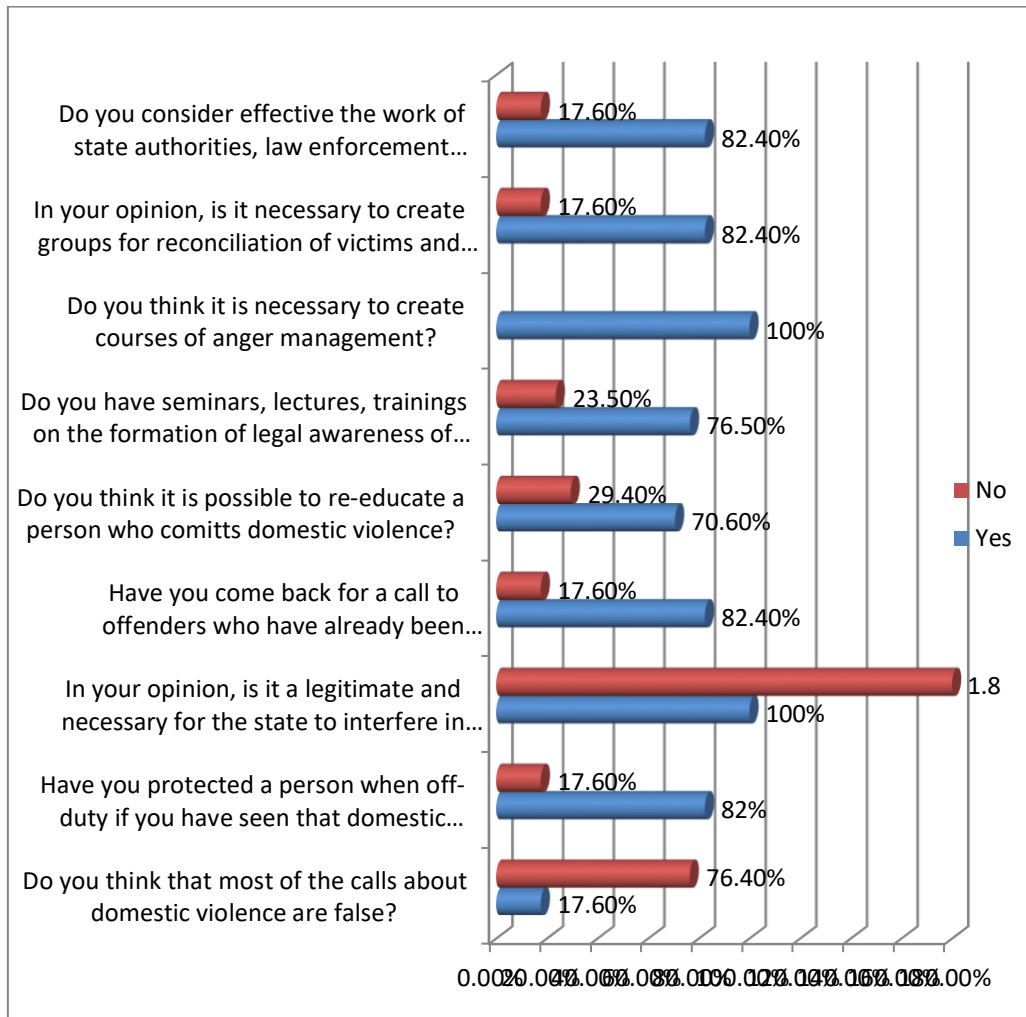
QUESTIONNAIRE No. 2 (for the division "POLINA")		220 people
Is it domestic violence?		
a.	A form of domestic violence consisting of slapping, kicking, pushing, etc., including beatings, restriction of will and free movement, beatings, physical injuries of various degrees of severity, including leaving in danger, causing death, etc.	11.8%
b.	A form of domestic violence consisting of verbal insults, threats, humiliation, harassment, intimidation, other actions aimed at restricting a person's will, other actions that include causing the victim to feel fear about his/her safety or the safety of third parties, including cause emotional insecurity, regarding the impossibility of self-defense, etc.	88.2%
c.	A form of domestic violence, which consists in any acts of a sexual nature, which are committed against a person against his/her will and without his/her consent, or in the presence of a child, forcing him/her to have sexual intercourse with another person, as well as any acts against sexual freedom or sexual integrity of a person, etc.	
2. At what time of the day there are most calls to the "POLINA" mobile police teams regarding domestic violence?		
a.	In the morning	
b.	During the day	
c.	In the evening	70.5%
d.	At night	29.5%
3. In your opinion, how should the state protect people from mental violence?		
a.	Send to anger management courses	
b.	Impose punishment associated with isolation from society	11.8%
c.	Impose punishment not connected with isolation from society	11.8%
d.	Warn by imposing fines (administrative responsibility)	
e.	Refer the offender to a medical institution, with the aim of psychological and psychiatric correction of behavior	76.5%

2. In your opinion, would the number of cases of mental violence decrease if Ukraine introduced the "Ukrainian Claire's Law"¹, according to the provisions of which any person, when building a partnership or family relationship, will be able to apply to law enforcement agencies in order to check whether the partner has "violent past", and if he has had any, to know which one.		
a.	Yes, the number of cases of domestic violence would decrease	64.7%
b.	No, the number of cases of domestic violence would not decrease	35.3%

Having analyzed the questionnaire data of police officers who are directly involved in bringing offenders to administrative and criminal responsibility, we come to the conclusion that practical officers, first of all, have theoretical understanding of the legal regulations and the definition of what domestic violence is. This statement is based on the fact that 88.2 % of the surveyed officers correctly defined domestic violence, and in addition, 76.5% testify that seminars and lectures on improving theoretical material on the specified topic are constantly held in the workplace. Secondly, 76.5% chose sending the offender to a medical institution, with the aim of psychological and psychiatric correction of behavior as an effective form of correction. In addition, 100% of respondents noted that anger management courses should be developed in the state and 82.4% that reconciliation should take place, but with the participation of a mediator. It was also noted that in 82.4% of cases they had to come back for calls, which again indicates the insufficient effectiveness of sanctions and punishments at the moment. In addition, 100% of respondents noted that the state should intervene in family relations in cases of domestic violence, and they also believe that changes in the legislation regarding domestic violence are effective in 82.4% of cases.

Figure 7: Questions and answers of the survey and their statistical presentation

¹ Clare's Law (2014), also known as the Domestic Violence Disclosure Scheme (DVDS) is a law enforcement policy giving people the right to know if their current or ex-partner has any previous history of violence or abuse. The scheme is named after Clare Wood, who was murdered by her abusive ex-boyfriend in 2009.



The last thing I would like to emphasize is the statement that in response to a question regarding borrowing from the Ukrainian legislation "Claire Law", 64.7% claimed that it would reduce the number of offenses. In case of adoption of the Ukrainian "Claire's Law" variant, any person when building a partnership or family relationship, will be able to contact the law enforcement authorities in order to check whether the partner has had a "violent past", and if so, which one. At the same time, it is necessary to entrust the police with the duty to conduct a review by carrying out an inspection and to inform the applicant about the information that has become known during the inspection (Zizek, 2009).

Conclusion

During the research, it was established that the Istanbul Convention has a significant impact on the legislation and case law regarding the criminal responsibility for domestic violence. An actual task when dealing with criminal offenses related to family violence is a detailed analysis of the emotional state at the time of committing a criminal offense, as well as taking into account the conditions for mental processes in the family system, in particular, the principle of mutual conditioning of emotional processes. The level of competence of a specialist should include the ability to differentiate the emotional states of the accused, taking into account the different specifics of each individual case.

When ratifying international conventions, Ukraine does not take into account the principles of equality, legality, punishment, and accordingly the legislator forgets that they are the main principles of the Constitution, which leads to the fact that when the same act is committed, a special subject (a person who is in a family relationship) becomes an aggravating circumstance that, according to Clause 6-1 of Art. 67 of the Criminal Code of Ukraine.

It is necessary to bring the punishment of persons who commit rape against persons with whom they are in family relations in line with the degree of public danger. When imposing a punishment, it is necessary to take into account the degree of social danger of a person upon release from punishment with probation. It is important to add to Part 2 Art. 126¹ regarding the repeated commission or fine imposed for the commission of an administrative offense under Art. 173², who are on probation under Art. 126¹.

It is necessary to bring Chapter 9 "Exemption from criminal responsibility" of the Criminal Code of Ukraine into compliance with the ratified Convention regarding cases related to domestic violence. It is also important to change part 3 of Art. 91¹ and set out in the following version "Measures provided for by part one of this article may be applied for a period of one to three months and, if necessary, may be extended for a period determined by the court, but not more than 12 months, in cases where the person is released from punishment with probation for the entire duration of the probation".

Based on the results of the research, certain changes to the current legislation of Ukraine aimed at countering mental violence are proposed, namely: to establish criminal liability for threats, harassment; to supplement Part 6 of Art. 91¹ of the Criminal Code of Ukraine as another type of coercive measures of a medical nature - psychological and psychiatric correction of behavior; to adopt the Ukrainian "Claire's Law"; to introduce mediation services, anger management courses, etc. at the legislative level.

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