

Implementation of International Legal Frameworks to Combat Domestic Violence in Ukraine and Colombia¹

La implementación de marcos jurídicos internacionales para combatir la violencia intrafamiliar en Ucrania y en Colombia

[Artículos]

Laura C. Gamarra-Amaya²

Iryna Hloviuk³

Serhii Ablamskyi⁴

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Abstract

This article provides a comparative analysis of law enforcement's approach to domestic violence in Ukraine and Colombia, two countries with vast cultural and demographical differences. Drawing upon an extensive review of existing literature and empirical research, the study delves into the various ways in which law enforcement can play a part in the restoration of fundamental rights for victims, shedding light on its underlying factors of systematicity and *non bis in idem*, and the interplay of individual, legal, and societal

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² LL.M in International Legal Studies from Georgetown University. Professor of International Law, Universidad Católica de Colombia. Email: lcgamarra@ucatolica.edu.co; ORCID: <https://orcid.org/0000-0002-0823-6224>

³ Doctor of Law, Professor, Honored lawyer of Ukraine, Professor of the Department of Criminal Law Disciplines, Institute of Law, Lviv State University of Internal Affairs (Lviv, Ukraine). Email: irynavasgloviuk@gmail.com; ORCID: <https://orcid.org/0000-0002-5685-3702>

⁴ PhD in Law, Associate Professor, Head of the Department of Scientific Activity Organization and Intellectual Property Protection, Kharkiv National University of Internal Affairs (Kharkiv, Ukraine). Email: ablamu4@gmail.com; ORCID: <https://orcid.org/0000-0003-4716-3985>

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influences. It begins by defining domestic violence and identifying how, from a legal standpoint, both countries have addressed the physical, emotional, sexual, and economic abuse suffered by victims of domestic violence. The article discusses potential solutions and emphasizes the importance of implementing relevant international and regional instruments. Overall, it aims to deepen the understanding of domestic violence in Ukraine and Colombia by synthesizing existing research, highlighting the complex dynamics involved, and exploring strategies for prevention and intervention by law enforcement. By raising awareness and fostering a comprehensive approach, it contributes to the collective efforts intended to eradicate domestic violence and create a safer and more equitable society for all.

Keywords: domestic violence, Colombia, Ukraine, Istanbul Convention, Belém do Pará Convention, international law

Resumen

Este artículo ofrece un análisis comparativo del enfoque de las fuerzas del orden frente a la violencia doméstica en Ucrania y Colombia, dos países con grandes diferencias culturales y demográficas. Con base en una extensa revisión de la literatura y de las investigaciones empíricas existentes, se profundiza en las diversas formas en que la aplicación de la ley puede desempeñar un papel en la restauración de los derechos fundamentales de las víctimas, arrojando luz sobre los factores subyacentes de la sistematicidad y *non bis in idem*, y la interacción de influencias individuales, legales y sociales. El artículo comienza por definir la violencia doméstica e identificar cómo, desde el punto de vista legal, ambos países han abordado el maltrato físico, emocional, sexual y económico que sufren las víctimas de violencia doméstica. Al analizar posibles soluciones, se enfatiza la importancia de la implementación de los instrumentos internacionales y regionales pertinentes. En general, el objetivo es profundizar la comprensión de la violencia doméstica en Ucrania y Colombia mediante la síntesis de los estudios existentes al destacar las dinámicas complejas involucradas y al explorar las estrategias para la prevención e intervención por parte de las fuerzas del orden. Mediante la sensibilización y el fomento de un enfoque integral, se pretende contribuir a los esfuerzos colectivos destinados a erradicar la violencia doméstica y crear una sociedad más segura y equitativa para todos.

Palabras clave: violencia doméstica, Colombia, Ucrania, Convención de Estambul, Convención de Belém do Pará, derecho internacional.

Introduction

Home is the place where affective relationships coexist with complex family structures. Because of this, family ties become frayed when aggressive behaviors occur among members of the family nucleus, leading to a reiterated and habitually accepted dynamic. This is why the highest rate of violence in our society is concentrated in the home and why it is necessary to give special protection to the victims of such behaviors.

Domestic violence refers to any form of abusive behavior or violence that occurs within a close relationship, typically involving spouses or partners. Still, it can also occur between family members or household members. It is a serious social issue that affects individuals and families worldwide, regardless of age, gender, socioeconomic status, or cultural background (Canton, 2021).

Forms of domestic violence can include physical abuse (such as hitting, slapping, or choking), sexual abuse (forced sexual acts or unwanted sexual advances), emotional or psychological abuse (such as threats, intimidation, humiliation, or control), and financial abuse (limiting access to money or resources). It is important to note that domestic violence is not limited to physical violence but can encompass a range of behaviors that exert power and control over the victim (Camacho & Rodriguez, 2020).

Domestic violence has severe consequences for victims, including physical injuries, emotional trauma, and long-lasting psychological effects. It can lead to isolation, low self-esteem, anxiety, depression, and, in extreme cases, even death. Children who witness domestic violence are also greatly affected, and it can have a lasting impact on their well-being and development (Garcia-Moreno et al., 2006).

According to the analysis of numerous publications, in recent years, the recurrence of domestic violence incidents has equated to a pandemic. This comparison is not accidental, as both phenomena are spontaneous, negatively affect human life and health, and destroy the best stereotypes about the family, causing various kinds of trauma. Being a commonplace evil, domestic violence constantly attracts attention from the international community, which has taken significant steps to prevent and combat this phenomenon (Ablamskyi & Lukianenko, 2022).

International Framework

Colombia and Ukraine have vast language, religion, culture, and history differences. However, both countries are dealing with the devastating effects of domestic violence in their societies by enforcing both domestic and international regulations. This section will discuss the main international instruments that regulate domestic violence in both jurisdictions.

The Belém do Pará Convention, also known as the Convention of Belém do Pará or the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, is an international human rights treaty adopted by the member states of the Organization of American States (OAS) in 1994. It is named after the city of Belém do Pará in Brazil, where the convention was signed (Organization of American States, 2023).

According to its preamble, it aims to address and combat violence against women by promoting and protecting their rights. It defines violence against women as any act or conduct that causes physical, sexual, or psychological harm or suffering, as well as threats of such acts and the denial of women's human rights. The convention recognizes that violence against women is a violation of their human rights and fundamental freedoms and acknowledges the historical and structural inequality that contributes to such violence (Organization of American States, 2023).

Art. 93 of the Colombian Constitution establishes the supremacy of international law and imposes that the rights granted by the Constitution should be interpreted according to international law (Gamarra-Amaya, 2022). Colombia is a signatory to the Belém do Pará Convention and has ratified it. By ratifying the convention, Colombia has committed to implementing measures to prevent, punish, and eradicate violence against women. This includes adopting legislative, judicial, administrative, and other measures to protect women's rights and ensure access to justice for victims of violence. The convention also emphasizes the importance of educating and raising awareness about gender-based violence and promoting gender equality (Organization of American States, 2023).

In Colombia, the Belém do Pará Convention has played a significant role in shaping policies and legislation related to gender-based violence and women's rights. It has provided a framework for the development of laws, programs, and institutions aimed at preventing and addressing violence against women. Additionally, the convention has contributed to raising awareness about the issue and promoting a culture of respect for women's rights in the country (Bustamante Arango & Vásquez Henao, 2011).

A Worldwide Problem with a Domestic Legislative Agenda

Ukraine's attention to the problem of domestic violence, although determined by international standards, was manifested in the formation of national legislation and practice to fight it, even before the ratification of the Istanbul Convention. A clear indication of this statement is the adoption of the Law of Ukraine "On Domestic Violence Prevention and Counteraction" of December 7, 2017, and amendments to the Criminal Code and the Criminal Procedure Code of Ukraine to implement the provisions of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Verkhovna Rada of Ukraine, 2017).

Therefore, at the legislative level, not only the national framework for combating domestic violence was outlined, but also procedural issues of restrictive orders and administrative-tortious responses to domestic violence (Code of Ukraine on Administrative Offenses, CUAO) were regulated.

It is worth noting that in 2022, there were 962 domestic violence convictions, according to Art. 126-1 of the Criminal Code of Ukraine (CCU), and 99,758 incidences under Art. 173-2 of the CUAO (perpetration of domestic violence, gender-based violence, failure to comply with an urgent restraining order, or failure to report the place of temporary residence).

In Colombia, domestic violence is a crime under Art. 229 of the Criminal Code: “Anyone who physically or psychologically mistreats any member of their family nucleus will be imprisoned for four (4) to eight (8) years if the conduct does not constitute a crime punishable by a major penalty.” It is a subsidiary crime, that is, one that “can only be applied if the conduct is not subsumed into another that more severely punishes the transgression of the same legal right” (Sentencia 12820 de 2000, p. 12). In this regard, the Supreme Court of Justice has said that it is a criminal type that refers to general crimes against life, personal integrity, personal autonomy and freedom, integrity, and sexual formation. Likewise, the Court affirms that, although the behaviors of sexual abuse are typified differently, they also entail a physical and psychological affectation, which can be punishable within the specific type of Intrafamily Violence (C-674-05 de 2005).

Art. 229 of the CCC is developed thoroughly in Law 1959/2019, known as the Intrafamily Violence Act. This law was designed to prevent, punish, and eradicate intrafamily violence in all forms and establishes the rights of victims, protection measures, and sanctions for aggressors (L. 1959 de 2019). Some of its highlights include:

Broad definition of intrafamily violence: Art. 1 of Law 1959 defines intrafamily violence as any action or omission that causes physical, psychological, or sexual harm, as well as any form of mistreatment, abuse, threat, coercion, or deprivation of liberty that occurs between members of a family, regardless of marital status.

Rights of victims: The legislation establishes the rights of victims of domestic violence, including the right to life, physical integrity, health, security, personal liberty, and privacy, among others. The right to receive assistance and comprehensive care from the state is also recognized.

Protection measures: The law contemplates various protection measures for victims, including restraining orders, prohibitions on approaching, police protection measures, and housing assignments. These measures aim to guarantee the safety and protection of the victims and prevent the repetition of violence.

Reporting and prosecution: Any person can report domestic violence, whether it is the direct victim, a family member, a witness, or a professional who detects signs of violence. The law also establishes the duty of the authorities to investigate and punish cases of domestic violence, as well as help and support the victims.

Sanctions: The legislation contemplates sanctions for the aggressors, including protection measures, restraining orders, arrests, fines, and even deprivation of liberty. The obligation of the aggressors to receive treatment and participate in rehabilitation programs is also established.

Legal Framework – The Istanbul Convention and its Principles

The Istanbul Convention, also known as the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, is a legally binding international treaty that aims to prevent and combat violence against women and domestic violence. It was adopted by the Council of Europe in 2011 and entered into force in 2014 (Council of Europe Portal, 2023b).

The Istanbul Convention recognizes that violence against women is a human rights violation and a form of gender-based discrimination. It applies to all forms of violence against women, including domestic, physical, sexual, psychological, and economic abuse. The convention also addresses issues such as forced marriage, female genital mutilation, and stalking (Council of Europe Portal, 2023b).

One of the Istanbul Convention's significant aspects is its comprehensive approach to addressing domestic violence. It requires state parties to take measures to protect victims, prosecute offenders, and promote gender equality. It emphasizes the importance of providing support and services to victims, including shelters, helplines, and counseling (Council of Europe Portal, 2023b).

The Istanbul Convention also promotes international cooperation and coordination among states to prevent and combat violence against women. It establishes a monitoring mechanism to ensure the effective implementation of its provisions, including regular reporting and evaluation by the Council of Europe's Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO; Council of Europe Portal, 2023a).

Although comprehensive and practical, the Istanbul Convention has faced controversy and opposition in certain countries. Critics argue that the convention undermines traditional family values or interferes with national sovereignty. However, many countries and human rights organizations see the convention as an essential tool in addressing gender-based violence and protecting women's rights (Ratner, 1997).

The Istanbul Convention (Council of Europe Portal, 2023b), in terms of substantive law, indicates the need to criminalize: intentional behavior that leads to a serious violation of mental integrity through coercion or threats (Art. 33); deliberate behavior, which consists in repeatedly carrying out threatening behavior directed at another person, causing them to

fear for their safety (Art. 34); intentional behavior, which involves committing acts of physical violence against another person (Art. 35); sexual violence, including rape (Art. 36); forced marriage (Art. 37); female genital mutilation (Art- 38); forced abortion and forced sterilization (Art. 39); sexual harassment (Art. 40). These actions have already been typified as crimes under Ukrainian law; and as such, intentional behavior that leads to a serious violation of mental integrity through coercion or threats, specifically threats to life or bodily integrity are defined by Art. 126-1 of the CCU as domestic violence (psychological); intentional behavior, which consists in committing acts of physical violence against another person (can be classified depending on the nature and consequences - as deliberate murder, intentional grievous bodily harm, intentional moderate bodily harm, intentional light bodily harm, beatings and beatings, torture); sexual violence, including rape, which is criminalized by several articles of the CCU (rape, sexual violence, committing acts of a sexual nature with a person under the age of sixteen, molestation of minors); forced marriage (Art. 151-2 of the CCU); female genital mutilation (genital mutilation is a serious physical injury); forced abortion and forced sterilization (forcing abortion or sterilization without the victim's voluntary consent is provided for in Art. 134 of the CCU). However, Arts. 34 and 40 of the Istanbul Convention, which refer to stalking and sexual harassment, have not been criminalized under Ukrainian law, neither under the CCU nor under the CUAO. Although in the position of Art. 1(14) of the Law of Ukraine "On Domestic Violence Prevention and Counteraction," harassment and intimidation are considered psychological violence, it should be noted that

to protect their rights, victims of stalking can file a report with the police and state in it that they suffered from violence under the article, in particular psychological, for which liability is provided for in Art. 173-2 of the Code of Ukraine on Administrative Offenses. (Nikitina, 2021).

Also, if there are signs, such harassment can be qualified as a threat to kill and as a violation of privacy (if there is evidence of illegal collection, storage, use, destruction, dissemination of confidential information about a person, or illegal change of such information). Considering the issue of criminalization of stalking, Kharytonova (2022) notes that

the place of this criminal offense at the current stage of the development of legislation should most likely be found in Chapter II or III of the Special Part of the Criminal Code, and features protected from discrimination should be provided as qualifying.

It is worth noting the difference in the types of violence, in particular, the absence of the crime of sexual violence in Art. 126-1 of the CCU. The crimes of sexual violence and rape are codified in Art. 153 of the CCU.

According to Art. 40 of the Istanbul Convention, the Parties shall take the necessary legislative or other measures to ensure that any form of unwanted verbal, non-verbal, or physical conduct of a sexual nature, the purpose or effect of which is to violate the dignity of a person, in particular by creating an intimidating, hostile, humiliating or offensive environment, was subject to criminal or other legal sanctions (Council of Europe Portal, 2023b). The CCU has an article on coercion into sexual intercourse, which is often interpreted as sexual harassment (harassment). However, the objective side is different because it provides for forcing a person without his voluntary consent to perform an act of a sexual nature with another person, and this falls under another article of the Istanbul Convention, namely Art. 36 (although there are disputes in the doctrine about how to interpret “another person”; Dudorov & Khavroniuk, 2019). In this context, Kharytonova (2022) rightly suggests that the provisions of Part 1, Art. 154 of the CCU should be formulated as follows: “Undesirable for the victim sexual action that created an intimidating, hostile, humiliating or offensive environment for them.” As for the regulation of this issue in the CUAO, the following definition can be proposed: “An undesirable act of a sexual nature for the victim, which was intended to create an intimidating, hostile, humiliating or offensive environment for them” (since the current version of Art. 173-2 of the CUAO does not provide for administrative liability for sexual harassment).

Therefore, the analysis of the CCU demonstrates that the standards of the Istanbul Convention are taken into account as follows:

First, separate components of crimes that reflect intentional behavior should be criminalized under the convention, such as the crime of domestic violence, which accumulates several manifestations of intentional behavior (except for sexual violence, which is criminalized in other articles of the CCU).

In addition, factors that reflect intentionality, aggravating factors, and qualifying features should be criminalized. At the same time, it should be noted that in addition to the CCU, the CUAO includes an article on committing domestic violence, gender-based violence, failure to comply with an urgent restraining order, or failure to report the place of temporary residence (Art. 173-2 of the CUAO). The objective side of such an offense is the commission of domestic violence, gender-based violence, that is, the intentional commission of any actions (actions or inactions) of a physical, psychological, or economic nature (the use of violence that did not cause bodily harm, threats, insults or harassment, deprivation of housing, food, clothing, other property or funds to which the victim has a legal right), as a result of which the physical or mental health of the victim may have been or has been harmed. The sanction of Art. 173-2 of the CUAO also provides for administrative arrest for a period of up to ten days, and this, based on the decision of the ECtHR in the case “Gurepka v. Ukraine” (European Court of Human Rights, 2010),

indicates the criminal nature of the sanction and proceedings. In this connection, several problematic aspects arise: (1) distinguishing between a crime and an administrative offense; (2) a discussion on the possibility of criminal prosecution if the person has already been prosecuted (application of the principle of *non bis in idem* during the investigation of domestic violence); (3) or preliminary prosecution for administrative responsibility is mandatory for qualification under Art. 126-1 of the CCU.

Under Colombian law, stalking and sexual violence are criminal offenses that are addressed in various articles of the CCC. Here is an overview of the relevant provisions:

Stalking (*acoso*): Stalking is covered under Art. 134B of the CCC. Stalking is the repeated and unwanted pursuit, surveillance, monitoring, or harassment of a person through various means, causing fear, distress, or interference in their privacy, freedom, or integrity. It can involve physical presence, electronic communication, or any other contact form. Stalking is a crime punishable by imprisonment for twelve to thirty-six months, and the penalty may be increased if aggravating circumstances are present.

Sexual violence (*violencia sexual*): Sexual violence encompasses a range of criminal acts, including sexual assault, rape, and other forms of sexual abuse. The CCC addresses these offenses in several articles:

Sexual abuse (*abuso sexual*): Art. 208 defines sexual abuse as any non-consensual sexual act or contact involving physical or psychological violence, coercion, or abuse of authority. It includes acts such as unwanted touching, fondling, or other forms of sexual contact. The penalties for sexual abuse range from four to 12 years of imprisonment.

Rape (*violación*): Art. 210 deals with the offense of rape, which involves sexual penetration, against the will of the victim, through violence, threat, intimidation, or taking advantage of the victim's incapacity to resist. Rape is punishable by imprisonment for a term of 12 to 30 years.

Aggravated sexual violence (*violencia sexual agravada*): Art. 211 addresses aggravated sexual violence, which includes rape committed by multiple individuals, rape resulting in the victim's death, or rape involving particularly cruel or degrading circumstances. The penalties for aggravated sexual violence range from 16 to 50 years of imprisonment.

Crime or Administrative Offense? Classifying Acts of Domestic Violence

Since both the CCU and the Criminal Procedure Code of Ukraine (CPCU) refer to “criminal proceedings regarding a criminal offense related to domestic violence,” there is a question as to whether or not the wording “criminal proceedings regarding a criminal offense related to domestic violence” covers only Art. 126-1 of the CCU. An unequivocal

answer to this question is of great importance, as it affects the possibility of concluding agreements in criminal proceedings and closing the criminal proceedings. It is worth noting that Article 55 of the Istanbul Convention sets forth the conditions of criminal proceedings, in particular: the Parties shall ensure that the investigation or prosecution of the offenses established under Articles 35, 36, 37, 38, and 39 of this Convention *do not depend entirely* on the report or complaint submitted by the victim if the offense was committed in whole or in part on its territory, and that the proceedings may continue even if the victim withdraws their statement or complaint. In our opinion, the wording “do not depend entirely” is rather vague, although it is understandable that different countries with different procedural procedures will implement these standards. According to the CPCU, intentional bodily injury of moderate severity without aggravating circumstances, intentional minor bodily injury, intentional purpose of hitting, beating or committing other violent acts, without aggravating circumstances, domestic violence, threatening to kill without aggravating circumstances, leaving in danger without aggravating circumstances, failure to provide assistance to a person who is in a life-threatening condition, without aggravating circumstances, coercion into marriage, rape without aggravating circumstances, sexual violence (Part 1, Art. 153 of the CCU), coercion into sexual intercourse, violation of the confidentiality of correspondence, telephone conversations, telegraphic or other correspondence transmitted by means of communication or through a computer, without aggravating circumstances, evasion of the payment of alimony for the maintenance of children without aggravating circumstances, evasion of the payment of funds for the upkeep of disabled parents without aggravating circumstances, violation of the inviolability of private life, are those acts in respect of which proceedings are carried out in the form of a private prosecution, i.e., it begins only at the request of the victim, however, it cannot be closed due to the refusal of the trial, if there are marks of domestic violence.

The Constitution guarantees the right to due process in all criminal proceedings in Colombia. Those related to domestic violence have an added level of complexity since, in many cases, the victims and the perpetrators live under the same roof. However, there is a legal duty to protect the victims’ rights, enshrined in several legal instruments. First, Art. 16 of Law 360/1997 established a Special Prosecutor’s Office dedicated solely to investigating sexual crimes (L. 360 de 1997). Secondly, Law 1257/2008 adopts norms to guarantee a life free of violence for women. Out of the different types of violence against women that this law outlines, there is an emphasis on domestic violence of a gendered nature, that is, violence committed by a victim’s partner or ex-partner. Victims have the right to receive comprehensive care, including medical and psychological care, the right to counsel and legal advice, the right to legal and injunctive relief, the right to protection mechanisms, and the right to immediate protection (Parra-Barrera et al., 2021).

It is worth emphasizing throughout this paper that domestic violence is a crime of a heinous nature because it affects those who, in many cases, are unaware of the protection mechanisms set up by the legal apparatus. In some cases, criminal prosecution may go along with a civil action to recover monetary damages incurred by the victim. In recent years, the Colombian Constitutional Court has openly acknowledged the possibility that in family court proceedings where issues of gender violence are aired, the victim may be compensated to guarantee the fundamental right of women to live free of violence and to be fully repaired (Rueda, 2020).

In decision SU-080 of 2020, the Constitutional Court awarded damages to the plaintiff in a divorce proceeding because she had suffered several instances of domestic violence by her ex-husband. This is groundbreaking, not because the plaintiff received funds, but because this is the first time such financial compensation comes as a result of reparations for domestic violence and not on the grounds of necessity (JEP, 2020). The Court recognized the lack of protection of the right to comprehensive reparation for women victims of domestic violence within divorce proceedings or cessation of civil effects. This is because, in these proceedings, there is no suitable mechanism to repair the damage caused by domestic violence.

The Joint Chamber of the Ukrainian Criminal Court of Cassation of the Supreme Court (2020), in Res. No. 453/225/19, interpreted that

“A crime related to domestic violence should be considered any criminal offense, the circumstances of which testify to the presence in the act of at least one of the elements (marks) listed in Art. 1 of the Law of Ukraine on Domestic Violence Prevention and Counteraction regardless of whether they are indicated in the incriminating article (part of the article) of the CCU as marks of the primary or qualified component of the crime (Resolution No. 453/225/19, 2020)”.

This resolution reflects the gender-sensitive judicial practice regarding the victim-centered understanding of the signs of domestic violence, which is also supported by the doctrine (Kharytonova & Titko, 2020). In this aspect, it is worth considering the requirements of Part 1 of Art. 48 of the Istanbul Convention stipulates that “Parties shall take the necessary legislative or other measures to prohibit mandatory alternative dispute resolution processes, including mediation and conciliation, concerning all forms of violence that fall within the scope of this Convention.” There are no mandatory alternative processes under Ukrainian law. However, a reconciliation agreement may be concluded (only at the victim’s initiative, his representative, or legal representative).

Before 2012, the crime of domestic violence in Colombia required a prior complaint. Law 1542/2012 (L. 1542 de 2012), which reformed Art. 74 of Law 906/2004, excluded domestic

violence from the crimes requiring a complaint to initiate criminal action. Thus, since a complaint is no longer necessary, there is no need for conciliation or mediation as a procedural requirement for exercising criminal action. It is already considered a crime since it threatens the preservation of the family unit and the family as the essential nucleus of society. Some authors have noted that there should not be a total abandonment of alternative dispute mechanisms in matters of domestic violence since, in many cases, this is not a recurring problem and may simply have corresponded to an isolated situation (Rendon et al., 2019). This opinion, while partially valid, does not acknowledge the wide range of harmful physical, psychological, and mental effects caused by even a single occurrence of domestic violence (Tauchen et al., 1985) and the grounds why countries across the world are improving the rate of prosecution for the crime of domestic violence. International efforts to combat gender and domestic violence have been enshrined in instruments such as the Istanbul Convention.

Reconciliation, Forgiveness, and Exemption of Criminal Liability

To begin the discussion on whether reconciliation or forgiveness of the perpetrator in a domestic violence case can lead to the release of criminal liability, we must first discuss the concept of forgiveness. Recently, scholars have studied how forgiveness as an intervention tool can help families and individuals find a way to resolve their conflicts, restore damaged relationships, and release past anger, anger, and revenge. Choosing to forgive is a voluntary act that frees a person from the need to seek revenge for past insults or harm through a leveling or restructuring process. This freedom is not inconsistent with the state doing its job under the Constitution and the laws and protecting citizens who have been harmed because of intrafamily violence. Forgiveness has been visualized as a powerful therapeutic tool that frees the person from anger. It helps the person in the following way: a) releasing painful past experiences, b) facilitating reconciliation with the person(s) who caused harm, and c) decreasing the probability that anger prevents good relationships and losing the fear of being harmed again (Vargas Núñez et al., 2017). Reconciliation, or forgiveness in cases of domestic violence, refers to the process of attempting to repair and restore the relationship between the victim and the offender. While reconciliation can be a personal choice for some individuals, it is crucial to prioritize the safety and well-being of the victim. The most important point is that reconciliation alone should never release an offender from criminal liability. Domestic violence is a serious crime, and the legal consequences for perpetrators can vary depending on the jurisdiction and the severity of the offense. Legal systems around the world view domestic violence as a violation of the law, and criminal charges can be pursued irrespective of any attempts at reconciliation (Walby et al., 2014).

In Colombia, family structures are of utmost importance; therefore, the State apparatus works to preserve them. The 1991 Constitution recognizes the existence of nuclear two-parent families and single-parent and extended families. Since the legal recognition of single-sex marriages, the legal definition of family also includes those who fall outside the heteronormative standard for Colombia (Mazuera Ayala et al., 2021). Therefore, victims of domestic violence have an additional mechanism for criminal prosecution, which is the family commissary. It is important to note that these instances are not mutually exclusive; according to Law 575/2000,

Anyone who, within their family context, is a victim of physical or mental harm, threat, injury, offense, or any other form of aggression by another member of the family group may request, without prejudice to the criminal complaints that may arise, the Family Commissary of the place where the events occurred and in his absence the Municipal Civil Judge or municipal promiscuous judge, a protective order that puts an end to the violence, mistreatment or aggression or prevents it from taking place when it is imminent (ICBF, n.d.).

The Colombian Ministry of Justice has set forth the following procedure in cases of domestic violence (L. 294 de 1996): Once a victim of Domestic Violence, to whom the aggressor has caused physical, mental, sexual or patrimonial damage, or offense, threat or injury, coercion or arbitrary deprivation of liberty shows up at the police station, the Family Commissary or the interdisciplinary team in charge, must carry out the corresponding interview. To do so, they must meet certain preconditions. In cases where the risk to the victim prevents them from being interviewed, the competent authority will proceed to adopt provisional protection measures. After interviewing the victim, an order of protection must be issued containing the description of the crime of domestic violence, the violated rights, the rules to be applied, and the procedure to be followed must be straightforward. Houses of Justice, local community outreach centers where people can exercise their rights, will decide whether or not to grant the order of protection. If they are not granted, the procedure could become a barrier to access to justice for the victims. The police stations refer the case to the Prosecutor's Office (Indaburu Pazzini & Sarmiento Moreno, 2020).

In cases in which the perpetrator does not comply with the protection measures that have been imposed, an incident of non-compliance with protection measures will be opened. After a hearing before at the police station, fines will be imposed ranging from 2 to 10 monthly minimum wages. This decision is transmitted to a judge, who will proceed to reject, admit, or modify it. After the decision, the offender will have five days to pay the fine (Indaburu Pazzini & Sarmiento Moreno, 2020). If they do not comply, the fine becomes prison time, meaning that each month of minimum wages the defendant owes will be converted into a day of prison. In addition, in the Houses of Justice, attention and psychological help are given to both the victims and the perpetrators, and the programs

beneficial to them for resolving the conflict are developed jointly, that is, always involving both parties (Summers, 2012).

In Ukraine, the perpetrator can be released from criminal liability under Art. 46 of the CCU if they reconcile with the victim without any specifics regarding the fact that it is a criminal offense related to domestic violence. This indicates that although efforts have been made, the full implementation of the standards of the Istanbul Convention has not been achieved. Draft Law No. 9093 is currently being debated, which amends the CPCU regarding conciliation agreements and criminal proceedings in the form of private prosecution in connection with the ratification of the Istanbul Convention (Draft Law No. 9093 of 2023). The main provisions of this draft law include (1) the extension of the condition that a reconciliation agreement can be concluded only at the initiative of the victim, his representative, or legal representative for criminal proceedings regarding a criminal offense against a person's sexual freedom and sexual integrity; criminal offense provided for in Part 2, Art. 134 of the CCU (coercion to abortion without the victim's voluntary consent), Part 4, Art. 134 of the CCU (coercion to sterilization without the victim's voluntary consent), Part 5 of Art. 134 of the CCU (coercion to sterilization without the victim's voluntary consent if it caused the death of the victim or other serious consequences), or Art. 151-2 of the CCU (coercion to marriage). At the same time, in practice, there is a problem that court judgments approving agreements do not specify who initiated the agreement or even state that the agreement was concluded at the initiative of the parties, which is a violation of even current norms. Accordingly, to eliminate this problem, it seems appropriate to amend Art. 471 of the CPCU, namely to provide that "The parties to the conciliation agreement shall be indicated (and in the cases provided for by the second paragraph of part 1 of Art. 469 of this Code - also on whose initiative the agreement was concluded), ..."

Draft Law No. 9093 also provides for 2) removal from the list of private prosecution proceedings of illegal abortion or sterilization, forced marriage, rape without aggravating circumstances, sexual violence, and forced intercourse. In addition, it is provided:

If the offense is committed against a minor, an underage person, or a person recognized as legally incompetent or with limited legal capacity, criminal proceedings in the form of a private indictment *may be initiated* based on an application by parents (adoptive parents), guardians or custodians, adult close relatives or family members, representatives of guardianship and guardianship bodies, institutions and organizations under the care of a person, teacher, psychologist or doctor, who became aware of the commission of an offense against a minor, an underage person or a person recognized as incompetent under the procedure established by law or limited capacity.

In general, supporting such proposals, we note that the wording of the concepts “minor” and “underage person” is gender-neutral. It is also important to clarify that in cases where an offense is committed against a minor, an underage person, or a person recognized as legally incompetent or with limited legal capacity (they are vulnerable), criminal proceedings must be initiated in connection with which it is inappropriate to use the phrase “may be.” This wording differs from Part 1 because the meaningful emphasis is placed on the victim’s initiative, which is not the case in Part 2. We consider it appropriate also to indicate another person who became aware of the offense committed against a minor, an underage person, since in the conditions of war, there may be situations when the child does not have legal representatives and has not yet had time to receive the help of a psychologist or a doctor.

Meanwhile, another vision of solving this issue is proposed (JustTalk, 2023), which indicates the urgent need for further discussions and agreements on the implementation mechanism of the Istanbul Convention.

Systematization of Domestic Violence as a Mark of Crime

Whether domestic violence needs to be systematic to be considered a crime depends on the jurisdiction and the specific laws in place. In many legal systems, individual acts of domestic violence can be considered criminal offenses, regardless of whether they are part of a broader pattern of systematic abuse. These individual acts may include assault, battery, sexual assault, harassment, or other relevant crimes. Each act can be prosecuted separately (Parra-Barrera et al., 2021).

However, in some jurisdictions, there may be specific laws or provisions that recognize and address the pattern or systematic nature of domestic violence. These laws may enable authorities to consider the cumulative effect of multiple acts of abuse, resulting in enhanced penalties or specific legal measures to protect victims from ongoing harm (Londoño Toro et al., 2017).

In Ukraine, a mere statement or complaint about the commission of domestic violence will not always be a reason for starting a pretrial investigation of a criminal offense provided for in Art. 126-1 of the CCU. After all, in the disposition of Art. 126-1 of the CCU stipulates that domestic violence is

intentional, systematic perpetration of physical, psychological, or economic violence against a spouse or ex-spouse or another person with whom the perpetrator is (was) in a family or close relationship, which leads to physical or psychological suffering, health disorders, loss of working capacity, emotional dependence or deterioration of the victim’s quality of life.

The construction of the disposition of the provisions of Art. 126-1 of the CCU shows that its provisions, unlike paragraph 3 of Art. 1 of the Law of Ukraine “On Prevention and Combating Domestic Violence” and Art. 173-2 of the CUAO, provide for such signs of the objective side as the intentional, systematic commission of a specific type of violence. Therefore, the first factor to differentiate domestic violence as a criminal offense from domestic violence as an administrative offense is the systematic nature of its commission. However, systematicity as a feature is characteristic only of Art. 126-1 of the CCU since, according to the Law of Ukraine “On Domestic Violence Prevention and Counteraction,” other acts, such as rape, may also have signs of domestic violence. However, systematicity is not required for qualification under Art. 152 of the CCU (2001).

The doctrine expresses the following opinion: the phrase “systematic perpetration of physical, psychological, or economic violence” describes the act. Therefore, the crime is completed by committing at least one of the three forms of violence (physical, psychological, or economic) for the third time, resulting in at least one of the consequences specified in the law. Systematic means the constant repetition of the same or similar actions (or inaction), each of which may create the impression of insignificance. However, collectively, they affect the victim exceptionally negatively, and the intensity of this impact may depend on the aggressiveness of each act and their number (Dudorov & Khavroniuk, 2019). This position was reflected in the practice of the Cassation Criminal Court of the Supreme Court (Resolution No. 583/3295/19, 2021). Moreover, the sign of the systematic nature of domestic violence indicates its continuing nature as a crime, which indicates the “impossibility of considering individual facts of domestic violence as separate acts that must be separately entered into the Unified Register of Pretrial Investigations” (Resolution No. 585/3184/20, 2022).

At the same time, the following question arises: we are talking about systematicity in the sense that one form of domestic violence must be applied systematically or for the qualification under Art. 126-1 of the CCU, the system can be manifested by various forms of domestic violence. From the standpoint of the standards of the Istanbul Convention and the need to protect victims, the correct interpretation is that it does not matter for systematicity whether one or different forms of domestic violence took place. This is precisely the interpretation provided by the Criminal Court of Cassation of the Supreme Court, noting that

the system can be constituted as repeatedly applied one of the three forms of violence defined in Art. 126-1 of the Criminal Code, as well as the different variability of the combination of physical, psychological, and economic violence against the same victim or persons.
(Resolution No. 585/3184/20, 2022)

It is this understanding that has led to legal positions regarding the burden of proof (the prosecution must prove systematicity; (Resolution No. 236/2450/20, 2021)) that all data on cases of domestic violence are proper since any previous episodes of domestic violence are included in the subject of proof of the prosecution under Art. 126-1 of the CCU (Resolution No. 236/2450/20, 2021).

A single act of domestic violence can be either a criminal offense or an administrative misdemeanor, depending on whether or not it was committed systematically. This is also a problem because, in the context of the practice of the ECtHR, it is criminal. Ukraine has two “criminalized” acts with significantly different sanctions. However, the CUAO does not have marks of systematicity, and the disposition has other consequences, which, unlike the CCU, may have potential. Accordingly, “administrative misdemeanor, the responsibility for which occurs under Art. 173-2 of the CUAO, the commission of domestic violence, which is not long-term or systematic, can be recognized. Instead, systematicity as a sign of a criminally punishable act means repeating identical or similar actions or inactions, each of which may create the impression of being insignificant. However, their actions in their totality reach the level of quality when they acquire the characteristics of a criminal offense, leading to consequences determined by the disposition of Art. 126-1 of the CCU (physical or psychological suffering, health disorders, loss of working capacity, emotional dependence, or deterioration of the quality of life”; Resolution No. 585/3184/20, 2022). In addition, the Criminal Court of Cassation of the Supreme Court pointed out that “damage to the physical or psychological health of the victim, provided for in Art. 173-2 of the CUAO, precisely to distinguish from the damage defined in Art. 126-1 of the CCU is not covered by “physical or psychological suffering, disability, emotional dependence, deterioration of the quality of life of the victim”” (Resolution No. 127/813/21, 2023).

In Colombia, systematicity is not a requirement for any gender-related or domestic violence crimes. The CCC and the various laws designed to protect women’s rights make it clear that even a single offense can carry significant criminal consequences (Vargas Sandoval, 2020). However, upon closer inspection, it is found that several court decisions impose an undue burden on the victim, which amounts to an element of systematicity. In a case decided in March of 2023 in which a former supervisor was convicted of the crime of sexual harassment, the Supreme Court makes repeated statements regarding the systematic nature of the crime:

Regarding the guiding verbs that describe the typical conduct injurious to the legal right of freedom, integrity, and sexual formation, it has been said that they suppose the habituality or permanence in time of the proceeding in the accused, tending to break the will of the victim that, it is worth clarifying, it can be any person without distinction of their gender, so that they agree to a sexual pretension of the perpetrator, so that isolated and random acts, even if they are permeated with sexual content, are not included in this criminal type. (SP124-2023, 2023)

In another case, the Court remarks that the defendant made repeated efforts to kiss his subordinate. Because of this, the conduct amounts to sexual harassment under the civil code (T-400/22 de 2022). This analysis of the language of the highest courts shows that the judicial system has imposed parameters beyond what is established by law, which raises the question of who benefits from these additional parameters.

Proving Domestic Violence as a Crime and the Principle of non bis in idem

Non bis in idem is a Latin phrase that translates to “not twice for the same.” It is a legal principle prohibiting someone from being tried or punished twice for the same offense or action. The principle is double jeopardy or *ne bis in idem* (Ramírez Barbosa, 2008).

The principle of *non bis in idem* safeguards against multiple prosecutions and punishments for the same conduct, ensuring that individuals are protected from double jeopardy. It prevents the state from repeatedly bringing charges against an individual for the same offense or subjecting them to multiple punishments for the same conduct (Loayza & Piérola, 1998).

The principle is widely recognized and incorporated into legal systems worldwide, including civil and common law jurisdictions. In Colombia, the principle of *non bis in idem* is protected under Art. 29 of the Colombian Constitution:

Due process will be applied to all judicial and administrative actions. No one may be tried except under pre-existing laws to the act imputed to them before a competent judge or Court and with observance of the fullness of the forms proper to each trial. In criminal matters, the permissive or favorable law, even when it is later, will be applied in preference to the restrictive or unfavorable one. (Colombia, 1991)

The principle aims to prevent double jeopardy or multiple prosecutions for the same offense. *Non bis in idem* prohibits an individual from being tried more than once for the same offense. Once a final judgment has been reached in a criminal case, the principle prevents the authorities from initiating another trial for the same offense.

The link between criminal law and administrative sanctioning law is undeniably close since, in many cases, the legislator, in order to reinforce the legal protection of fundamental rights and thus exert greater social control, makes some conducts both criminal and administrative sanctions, depending on the gravity (Ramírez Barbosa, 2008). Since the crime of domestic violence under Art. 126-1 of the CCU requires that the offense be systematic, the defense will often argue that the offender has already been prosecuted for an administrative offense. That one episode (the third) does not constitute a systematic pattern because it is one.

It is essential to document every instance of domestic violence in order to prove its systematic nature, but no more so than other evidence provided by law. Therefore, it does not matter whether the facts of the acts of violence were recorded in a police administrative report, restraining order, or other document. Accordingly, the systematic nature of domestic violence, which the perpetrator persistently continues to commit, can be confirmed by the previous bringing of the perpetrator to administrative responsibility at least twice for committing an offense under Art. 173-2 of the CUAO. Therefore, a statement of domestic violence must contain, among other things, information about the systematic nature of the unlawful acts that constitute domestic violence. The information on bringing a person to administrative liability for committing domestic violence should also be provided (Buller et al., 2018).

For law enforcement to start an investigation into domestic violence in Ukraine, there must have been at least three instances of either administrative (Art. 173-2 of the CUAO) or criminal (for example, Arts. 125-126 of the CCU regarding the same victim) liability, as well as the last fact for which a person was not brought to administrative liability (Ablamskyi & Bakumov, 2023).

The doctrine is substantiated in detail, taking into account the positions of the ECtHR in the case of Galović v. Croatia (Application no. 45512/11; European Court of Human Rights, 2021) that there is no violation of the principle of *non bis in idem* if according to the last act, which is qualified under Art. 126-1 of the CPCU, the offender was not held criminally liable; however, the previous rulings of the courts under Art. 173-2 of the CUAO is considered to qualify for systematic violence (Hloviuk & Oleg, 2021). This is primarily because, as stated in the decision Galović v. Croatia (European Court of Human Rights, 2021),

domestic violence is rarely a one-off incident; it usually encompasses cumulative and interlinked physical, psychological, sexual, emotional, verbal, and financial abuse of a close family member or partner transcending the circumstances of an individual case ... domestic violence could be understood as a particular form of a continuous offense characterized by an ongoing pattern of behavior in which each incident forms a building block of a broader pattern.

In conclusion, in the Court's opinion, the aims of punishment, whereby different aspects of the same conduct are addressed, ought to be considered as a whole and have, in the present case, been achieved through two foreseeable complementary types of proceedings, which were sufficiently connected in substance and in time, as required by the Court's case-law, to be considered to form part of an integral scheme of sanctions under Croatian law for offenses of domestic violence. There was an adequate level of interaction between the courts in those proceedings, and the punishments imposed, taken together, did not make the

applicant bear an excessive burden but were proportionate to the seriousness of the offense (Resolution No. 585/3184/20, 2022).

The judicial practice of the Supreme Court does not recognize a violation of this principle if it is said that the perpetrator was criminally liable for previous episodes of domestic violence but not for the last one, and information was entered into the Unified Register of Pretrial Investigations. In particular, it found the appellate Court's reasoning unfounded that

the commission of domestic violence on October 19, 2020, does not constitute a criminal offense provided for in Art. 126-1 of the Criminal Code, due to the lack of a mandatory mark of the objective party as systematic, based on the principle of *non bis in idem*, that is, the impossibility of bringing to legal responsibility a second time for those offenses for which he has already borne responsibility. At the same time, the person was not brought to administrative liability for the act committed on October 19, 2020. The systematicity of domestic violence, which persistently continues to be committed by the guilty person, can be confirmed by previously bringing them to administrative liability at least twice for committing the offense provided for in Art. 173-2 of the CUAO. Under such circumstances, the fact that a person was previously held administratively liable for committing an administrative offense provided for in Art. 173-2 of the CUAO does not rule out the presence of a criminal offense in their actions if they continue to commit domestic violence, the number of episodes of which is at least three in total, and these systematic actions entailed the consequences specified in Art. 126-1 of the Criminal Code (Resolution No. 585/3184/20, 2022).

However, in criminal proceedings, without actually conducting an investigation based on an application under Art. 126-1 of the CCU, pretrial investigation bodies used materials related to the facts of previously committed administrative offenses under Part 1 of Art. 173-2 of the CUAO concerning the same victim, and for which they were already prosecuted, a violation of this principle was recognized (Resolution of the Criminal Court of Cassation of the Supreme Court № 663/3390/19, 2021).

Thus, the principle of *non bis in idem* is one of the main ones during the pretrial investigation and is especially important during the investigation of domestic violence. This statement considers the analysis of Art. 126-1 of the CCU, where the legislator emphasized such a feature as *systematicity*, which is decisive when qualifying an act under the specified article. Despite the legal practice developed today, specific questions still arise when applying Art. 126-1 of the CCU: a) how many cases of violence must be recorded in order to assert systematic domestic violence; b) in what way should cases of violence be recorded in order to define the act as systematic; c) in what period such cases of violence must be committed in order to qualify the act as systematic domestic violence; d) whether the following cases of violence that took place after the occurrence of a criminal offense are taken into account, the information about which was entered into the Unified Register of

Pretrial Investigations upon the fact of the commission of a criminal offense, provided for in Art. 126-1 of the CCU; e) whether previous cases of bringing a person to administrative liability for some of the committed acts of violence are considered in the context of “systematicity” for the qualification of the act under Art. 126-1 of the CCU.

In Colombia, the principle of *non bis in idem* prohibits multiple prosecutions for the same offense. However, it does not prevent the application of different legal aspects of the same conduct. For example, an individual can face criminal and administrative proceedings for separate legal aspects of the same conduct, such as criminal liability and administrative sanctions. This is evidenced by the dual nature of domestic violence prosecution in some cases, as discussed previously (ICBF, n.d.). There are certain limitations and exceptions to the principle of *non bis in idem*, like when there is a change in the legal classification of the offense or when the first trial was not completed due to procedural reasons or violations of fundamental rights. A new trial may be initiated without violating the principle in such cases.

Conclusions

This comparative law paper examined the issue of domestic violence in Ukraine and Colombia, highlighting key similarities and differences in their legal frameworks, enforcement mechanisms, and societal attitudes. Through this analysis, it can be concluded that Ukraine and Colombia have taken significant steps to address domestic violence by enacting specific legislation under their respective regional human rights protection mechanisms and implementing protective measures of a criminal or administrative nature.

Ukraine, a country that in the last year has been the victim of aggression by Russia, has a comprehensive legal framework under the umbrella of the Istanbul Convention that provides a broad definition of domestic violence and emphasizes the protection of victims. However, the main challenge is imposing appropriate punishments to the perpetrators through implementing and enforcing these laws. Colombia has also made progress in combating domestic violence through its legal framework, including the establishment of specialized courts and protective measures for victims. Nonetheless, the country’s ingrained family values challenge the enforcement of laws and access to justice.

In Ukraine, there is the danger of domestic violence offenses going underreported and thus not meeting the systematicity requirement for the offense to become a crime. Added to the scourge of war, limitations in law enforcement capacity, lack of training, and inadequate coordination among relevant institutions hamper effective responses to domestic violence cases. On the other hand, Colombia’s family commissaries make the effective prosecution of the crime of domestic violence difficult, as there is an emphasis on protecting family structures that sometimes hinder the work of the prosecutor.

In Ukraine, to initiate the investigation into committing a criminal offense, it must be shown that the offender was subjected to administrative liability at least three times. If a person was not brought to administrative liability but systematically committed actions (domestic violence), then it is possible to immediately talk about criminal responsibility for the relevant actions if other procedural sources of evidence exist.

If a person has previously been brought to administrative liability for committing an administrative offense, this does not exclude the possibility of bringing such a person to criminal liability. In this case, the commission of an offense under Art. 173-2 of the CUAO will be considered to determine the systematic nature of domestic violence. Accordingly, it will not be considered a violation of the *non bis in idem* principle when investigating this category of criminal proceedings. At the same time, if a person has committed domestic violence several times and has been held administratively liable for each such act, then bringing them to criminal liability for these acts is a violation of the *non bis in idem* principle. Pretrial investigation authorities should take into account that the fact of documenting domestic violence is relevant for proving systematic nature, but no more than other evidence provided for by law.

Both countries need to strengthen their law enforcement agencies, enhance training programs, and improve collaboration between different stakeholders to ensure comprehensive support for victims under ratified international and regional instruments, such as the Istanbul Convention and the Belém do Pará Convention, demonstrating their commitment to combating domestic violence, and acknowledging that while international obligations provide a framework for addressing domestic violence, effective implementation and enforcement require sustained efforts at the national level.

In conclusion, domestic violence remains a significant challenge in both Ukraine and Colombia, despite progress made in legal frameworks and societal attitudes. Addressing this issue requires a multifaceted approach that includes legislative reforms, enhanced law enforcement, improved support systems for victims, and continued efforts to change societal perceptions. By learning from each other's experiences and implementing best practices, both countries can strive towards more comprehensive and effective measures to combat domestic violence and protect the rights and well-being of all individuals affected by it.

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