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# The Implementation of the Istanbul Convention in Eastern Europe

**Supervisor**

Ch. Prof. Sara De Vido

**Assistant supervisor**

Ch. Prof. Jan Andrzej Zielonka

**Graduand**

Giada Tosatto

Matriculation Number 851865

**Academic Year**

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## TABLE OF CONTENTS

Abbreviations

Abstract

Introduction

1. Different Positions in Relation to the Istanbul Convention
  - 1.1. The Istanbul Convention and its Purpose
  - 1.2. Bulgaria: The Debate on the Conformity of the Convention with the Constitution
  - 1.3. Poland: Discussion on Withdrawing from the Convention
    - 1.3.1. A Possible Decrease in Women's Rights: Abortion in Poland
  - 1.4. Russian Federation: The Rejection of the Convention
  - 1.5. Ukraine: Politics, Religion and Mentality against the Convention
2. Domestic Violence
  - 2.1. Introduction and Main Concepts
  - 2.2. Domestic Violence in Bulgaria, Poland and Ukraine: A Private Matter
  - 2.3. Domestic Violence in Russia and its Decriminalisation
3. Sexual Violence, Including Rape
  - 3.1. Introduction and Main Concepts
  - 3.2. Common Issues
    - 3.2.1. "Rape Culture"
    - 3.2.2. Why Victims Do Not Report Rapes
    - 3.2.3. Sexual Intimate Partner Violence
  - 3.3. Sexual Violence in Bulgaria: The Need of the Evidence that She Fought Back
  - 3.4. Sexual Violence in Poland: Victim's Behaviour on Trial
  - 3.5. Sexual Violence in Russia: The Key Role of Violence
    - 3.5.1. Sexist Humour in the Russian Media and its Dangers
  - 3.6. Sexual Violence in Ukraine: The Will to Be in Line with International Standards
    - 3.6.1. A Further Problem in Ukraine: Conflict Related Sexual Violence
  - 3.7. Start by Acknowledging: The #янебоюсьсказати Campaign in Ukraine and the #янебоюсьсказать Campaign in Russia (#Iamnotafraidtospeak)
4. Female Genital Mutilation
  - 4.1. Introduction and Main Concepts
  - 4.2. Female Genital Mutilation in Bulgaria, Poland and Ukraine: Absence or Ignorance?

### 4.3. Female Genital Mutilation in Russia: Focus on the Republic of Dagestan

Conclusions

Bibliography

## ABBREVIATIONS

ANNA	National Centre for the Prevention of Violence
AUCCRO	All-Ukrainian Council of Churches and Religious Organisations
BIRN	Balkan Insight
CEDAW	Committee on the Elimination of Discrimination against Women
CoE	Council of Europe
CRSV	Conflict related sexual violence
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EIGE	European Institute for Gender Equality
EU	European Union
FGM	Female genital mutilation
FIGO	International Federation of Gynaecology and Obstetrics
GREVIO	Group of Experts on Action Against Violence Against Women and Domestic Violence
IC	Istanbul Convention
LGBTQI+	Lesbian, gay, bisexual, transgender, queer and intersex
LPADV	Law on the Protection against Domestic Violence
NGO	Non-governmental organisation
OSCE	Organisation for Security and Co-operation in Europe
RF	Russian Federation
SVA	Society and Values Association
UN	United Nations
UNFPA	United Nations Population Fund
UNHCHR	UN High Commissioner for Human Rights
UNHCR	UN High Commissioner for Refugees
USSR	Union of Soviet Socialist Republics
VAW	Violence against women
WHO	World Health Organization

## ABSTRACT

Lo scopo della mia tesi è quello di analizzare se e come l'attuazione della Convenzione del Consiglio d'Europa sulla prevenzione e la lotta contro la violenza nei confronti delle donne e la violenza domestica, meglio conosciuta come Convenzione di Istanbul (IC), potrebbe migliorare e influenzare le norme vigenti riguardo la violenza contro le donne in quattro Paesi slavi, la Bulgaria, la Polonia, la Federazione Russa (RF) e l'Ucraina. Più precisamente prenderò in considerazione tre forme di violenza: la violenza domestica, la violenza sessuale incluso lo stupro e la mutilazione genitale femminile (FGM). Analizzerò fino a che punto le donne sono protette attualmente e se questi Paesi potrebbero aumentare la protezione dei diritti delle donne ratificando o non denunciando (in base alla posizione dello Stato nei confronti della IC) la Convenzione di Istanbul.

La scelta di questi quattro Paesi è stata dettata dal fatto che sono tutti Paesi slavi e hanno tutti una posizione diversa nei confronti della Convenzione, le tre forme di violenza, invece, sono state scelte per motivi diversi. Ho scelto la violenza domestica perché è una forma molto allargata di violenza che include molti scenari ed è esplicitamente menzionata nel titolo ufficiale della Convenzione; la violenza sessuale perché la mia percezione come donna è quella che ci siano ancora molti pregiudizi sull'argomento, specialmente sul ruolo che l'uso della forza e la nozione di consenso ricoprono in questo tipo di violenza; la FGM è stata scelta perché un argomento inusuale in Europa perché considerato come un problema legato all'Africa, ma sarà spiegato che, in realtà, tocca anche il territorio europeo. La scelta di analizzare proprio l'attuazione della Convenzione di Istanbul è stata presa perché in Europa è il primo strumento sulla violenza contro le donne che vincola legalmente gli Stati Membri e perché l'anno scorso<sup>1</sup> avveniva il decimo anniversario dell'apertura alla firma della Convenzione, esattamente l'11 maggio 2011.

Nel primo capitolo presenterò la Convenzione di Istanbul e le diverse posizioni di Bulgaria, Polonia, Russia e Ucraina nei suoi confronti. La Convenzione di Istanbul è uno strumento internazionale vincolante che è entrato in vigore il primo agosto 2014 e ha lo scopo di prevenire e combattere la violenza di genere contro le donne, intesa come violenza compiuta contro quest'ultime solo per il fatto che sono donne, e la

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<sup>1</sup> 2021, anno in cui ho iniziato a lavorare a questa tesi.

violenza domestica. La Bulgaria ha firmato la Convenzione il 21 Aprile 2016, nonostante ciò non l'ha ratificata e la sua Corte Costituzionale l'ha dichiarata incostituzionale nel 2018; la Polonia l'ha firmata il 18 dicembre 2012, ratificata il 27 aprile 2015 e ora, come affermato nell'estate del 2020, la vuole denunciare; la RF è l'unico Paese membro del Consiglio d'Europa, assieme all'Azerbaijan, a non averla firmata, mentre l'Ucraina ha firmato la IC l'11 novembre 2011, ma non l'ha ratificata. In Bulgaria il dibattito sulla ratifica della IC e sulla sua conformità rispetto alla Costituzione Bulgara si basa principalmente su idee errate nei riguardi della Convenzione, come il fatto che introdurrebbe l'ideologia gender e permetterebbe i matrimoni tra persone dello stesso sesso.<sup>2</sup> In realtà questi concetti esulano dagli scopi della Convenzione, che tocca l'argomento del matrimonio solo per vietare quello forzato, così come con il termine gender non vuole stare ad indicare un terzo genere diverso da quello biologico, ma indica i ruoli e i comportamenti attribuiti a uomini e donne e dettati dal costruito sociale. Nonostante ciò, la Corte Costituzione Bulgara ha dichiarato la IC anticostituzionale a causa della necessità di discernere le nozioni di "sesso" e "genere", quest'ultimo concetto andrebbe contro la Costituzione a causa della sua dimensione sociale che va al di là del concetto di sesso biologico.<sup>3</sup> Similmente, la Polonia vuole denunciare la IC a causa della presunta imposizione da parte di quest'ultima della teoria gender che danneggerebbe la "famiglia tradizionale" e altre tradizioni patriarcali radicate nella popolazione polacca<sup>4</sup> che l'influenza della Chiesa Cattolica contribuisce a rafforzare.<sup>5</sup> La popolazione polacca è comunque divisa nei confronti della IC, una parte ne lotta contro e supporta una nuova convenzione che andrebbe a salvaguardare la famiglia,<sup>6</sup> l'altra supporta la IC e protesta contro la denuncia<sup>7</sup> sapendo che ciò comporterebbe una diminuzione dei diritti delle donne, compreso quello dell'aborto, molto discusso nel Paese e che, anche se non esplicitamente incluso nella Convenzione a causa del suo legame con

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<sup>2</sup> Popova Juliana, Koev Krasimir, Popova Ana. "The Istanbul Convention and its Political, Social and Cultural Reflections in the Danube Space: The Case with Bulgaria." *Journal of Danubian Studies and Research*. Vol. 10, No. 1/2020. Pag. 529-532.

<sup>3</sup> Darakchi Shaban. "The Western Feminists Want to Make Us Gay": Nationalism, Heteronormativity, and Violence Against Women in Bulgaria in Times of "Anti-gender Campaigns". *Sexuality & Culture*. 23. 2019. Pag. 1210-1211. Accessed May 10, 2021. <https://doi.org/10.1007/s12119-019-09611-9>

<sup>4</sup> Akesel Eda. "Istanbul Convention: Poland." Blog *Oluşturun*. Mar 4, 2021. Accessed May 8, 2021. <https://edaksel.com/2021/03/04/istanbul-convention-poland>

<sup>5</sup> Akesel, "Istanbul Convention: Poland.", op. cit.

<sup>6</sup> Ciobanu Claudia. "Poland begins to push in region to replace Istanbul Convention with "Family Rights" treaty." *Balkan Insight*. Oct 6, 2020. Accessed Dec 12, 2021. <https://balkaninsight.com/2020/10/06/family-rights-treaty/>

<sup>7</sup> Tilles Daniel. "Poland to begin withdrawal from international convention on violence against women." *Notes from Poland*. Jul 25, 2020. Accessed Apr 15, 2021. <https://notesfrompoland.com/2020/07/25/poland-to-begin-withdrawal-from-international-convention-on-violence-against-women/>

morale ed eticità, può essere incluso nella definizione di violenza contro le donne come descritta dalla IC.<sup>8</sup>

La RF non ha firmato la IC e a supporto di tale decisione ha argomentato spiegando che alcune disposizioni della IC non sono in linea con i valori morali tradizionali difesi dalla Russia<sup>9</sup> e che le misure messe in atto dalla RF per combattere violenza domestica e violenza di genere sono sufficienti.<sup>10</sup> Anche in Ucraina il ritardo nella ratifica della IC è causata dall'incomprensione del concetto di genere introdotto dalla Convenzione e dall'opposizione della Chiesa ad essa.<sup>11</sup>

Il secondo capitolo tratterà la violenza domestica che, secondo la definizione della IC, include la violenza fisica, psicologica, sessuale ed economica che accade all'interno della sfera domestica.<sup>12</sup> Questo tipo di violenza può colpire, oltre alle donne, anche gli uomini, perciò la IC dà la possibilità agli Stati Membri di applicare le disposizioni a riguardo anche agli uomini.<sup>13</sup> Nonostante ciò, questo lavoro si basa sulla violenza contro le donne, in quanto sono quelle più soggette a subire tale violenza.

In Bulgaria, Polonia e Ucraina la violenza domestica è vista come una questione privata e, solitamente, in questi Paesi viene messa al primo posto la protezione dell'integrità della famiglia rispetto alla protezione della donna.<sup>14</sup> In tutti e tre i Paesi la definizione di violenza domestica è più ristretta rispetto a quella prevista dalla IC e perciò copre un minor numero di casi, lasciando alcune vittime non protette. La definizione della Bulgaria, inoltre, prevede la "sistematicità"<sup>15</sup> della violenza, richiedendo quindi più atti di violenza, in questo modo le vittime sono esposte inutilmente a una maggior quantità di violenza e si presenta il rischio che alcuni atti di violenza vengano percepiti come accettabili in quanto non criminalizzati.

Il caso della Russia sarà analizzato a parte in quanto quest'ultima ha decriminalizzato la violenza domestica e, al momento, questa non è esplicitamente inclusa nel Codice Penale russo, ma ad essa vengono applicate disposizioni generiche sui danni alla

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<sup>8</sup> 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence. Istanbul. 2011. CETS No. 210. Art. 3a.

<sup>9</sup> United Nations Human Rights Council, Working Group on the Universal Periodic Review, Thirtieth session. "National report submitted in accordance with paragraph 5 of the annex to resolution 16/21 of the Human Rights Council. Russian Federation." Mar 1, 2018. Accessed Feb 14, 2022. <https://www.ohchr.org/EN/HRBodies/UPR/Pages/RUindex.aspx>

<sup>10</sup> Pompala Patrycja. "Istanbul Convention in Eastern Europe." Anti-Discrimination Centre. Mar 7, 2019. Accessed May 19, 2021. <https://adcmemorial.org/en/news/istanbul-convention-in-eastern-europe/>

<sup>11</sup> Elsner Regina. "Orthodoxy, gender, and the Istanbul Convention: mapping the discourse in Ukraine." *ZOiS Report*. 2/2021. Pag. 4.

<sup>12</sup> 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence. Istanbul. 2011. CETS No. 210. Art. 3b.

<sup>13</sup> Grans Lisa. "The Istanbul Convention and the Positive Obligation to Prevent Violence." *Human Rights Law Review*. 18. 10.1093. 2018. Pag. 137

<sup>14</sup> Social Institutions & Gender Index. "Bulgaria." 2019. Accessed May 26, 2021. <https://www.genderindex.org/wp-content/uploads/files/datasheets/2019/BG.pdf>

<sup>15</sup> Criminal Code of the Republic of Bulgaria. General part. Additional Provisions. Explanation of certain words. Art. 93.31.

salute della persona.<sup>16</sup> La decriminalizzazione della violenza domestica ha inoltre comportato un aumento dei casi registrati, ciò può avere due spiegazioni: la decriminalizzazione ha trasmesso l'idea che la violenza fosse consentita oppure il risalto che i media hanno dato alla notizia ha generato maggiore consapevolezza nelle donne che hanno deciso di contattare la polizia a riguardo.<sup>17</sup>

L'argomento trattato nel terzo capitolo sarà la violenza sessuale incluso lo stupro. La violenza sessuale, oltre allo stupro, include altri atti come avances di carattere sessuale non richieste, molestia sessuale, matrimonio forzato, negazione dell'uso di contraccettivi e di metodi che proteggono dalle malattie sessualmente trasmissibili, aborto forzato, atti di violenza contro l'integrità sessuale delle donne, come la mutilazione genitale femminile, l'obbligo alla prostituzione e il traffico di esseri umani per lo sfruttamento sessuale.<sup>18</sup>

In primo luogo analizzerò dei problemi comuni come la cosiddetta "cultura dello stupro", il fatto che le vittime non denunciino le violenze subite e la violenza sessuale da parte del partner. La "cultura dello stupro" si basa sulla su concetti tradizionali e popolari che vedono la donna e la sua sessualità come un oggetto di proprietà dell'uomo. Queste idee sono incorporate in tutta la società e sono tra quelle che la IC cerca di eliminare perché alla base della violenza di genere che vede la donna come inferiore. È possibile notare, inoltre, come la popolazione percepisca lo stupro in modo più ristretto rispetto a quello previsto dagli standard internazionali, solitamente lo stupro è visto come perpetrato da uno sconosciuto con l'uso della forza, quando in realtà può essere commesso anche da una persona vicina alla vittima sulla base della mancanza del consenso di quest'ultima.

Le idee e gli stereotipi legati alla violenza sessuale arrivano a spostare la colpa sulla vittima, queste idee e stereotipi sono propri anche degli agenti di polizia che a volte trattano anche in modo derisorio la vittima,<sup>19</sup> e, aggiunti alla vergogna dell'aver subito uno stupro, portano le vittime a non denunciare tali atti.<sup>20</sup> Gli atti meno denunciati

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<sup>16</sup> Human Rights Watch. "I Could Kill You and No One Would Stop Me. Weak State Response to Domestic Violence in Russia." 2018. Pag. 21; 23.

<sup>17</sup> Human Rights Watch, "I Could Kill You and No One Would Stop Me. Weak State Response to Domestic Violence in Russia.", op. cit., pag. 35.

<sup>18</sup> World Health Organization. "World report on violence and health." WHO Library Cataloguing-in-Publication Data. 2002. Pag. 149-150.

<sup>19</sup> ANNA - National Centre for the Prevention of Violence. "Violence against women in the Russian Federation." Alternative Report to the United Nations Committee on the Elimination of Discrimination Against Women. 46th session, Jul 2010. Examination of the 6th and 7th reports submitted by the Russian Federation. With the support of the International Federation for Human Rights. Pag. 26.

<sup>20</sup> Kościańska Agnieszka. "„The ordinary recklessness of girls...”: Expert witnesses and the problem of rape in Poland." Zeszyty Etnologii Wrocławskiej. Nr 2014/1(20), ISSN 1642-0977. 2014. Pag. 102.



sono quelli effettuati dal partner<sup>21</sup> e sono quelli ritenuti meno gravi, la tolleranza nei confronti della violenza sessuale da parte del partner deriva dall'obbligo patriarcale della donna di concedersi al marito ogniqualvolta quest'ultimo lo richieda,<sup>22</sup> questo comporta la necessità di una maggiore sensibilizzazione a riguardo e richiederebbe la specifica criminalizzazione.

Dopo di ciò, analizzerò la situazione nei singoli Paesi. Trovo importante sottolineare come la definizione di stupro si basi sul concetto di consenso solo in Polonia ed in Ucraina, anche se non sempre i giudici si basano su questo requisito.<sup>23</sup> Le definizioni in Bulgaria e nella RF si basano sull'uso della forza, ciò però esclude gli atti di violenza in cui la vittima non vuole o è impossibilitata a lottare contro il proprio aggressore.

Per quanto riguarda la Russia presenterò anche il problema dell'umorismo sessista nei media che porta a rafforzare l'oggettificazione e la disumanizzazione della donna.<sup>24</sup> Nel caso ucraino riporterò il problema della violenza sessuale legata ai conflitti armati, in tal riguardo, ratificando la IC, l'Ucraina si impegnerebbe a cercare di combattere il problema attivamente.

Infine presenterò la campagna ucraina *#янебоюсьсказати* (*#nonhopauradiparlare*) e la sua versione russa *#янебоюсьсказать* che hanno avuto luogo su Facebook. Questo tipo di iniziativa può essere visto come l'inizio della sensibilizzazione della società, in quanto ha dato la possibilità alle vittime di esprimersi, ma anche di aumentare la consapevolezza di uomini e donne riguardo all'argomento della violenza sessuale.

Il quarto e ultimo capitolo sarà dedicato alla mutilazione genitale femminile. Esistono varie forme di questo tipo di violenza, ma in generale si può definire come qualsiasi procedura atta alla parziale o totale rimozione delle parti genitali esterne femminili o alla loro lesione senza motivi medici.<sup>25</sup>

Riguardo i quattro Paesi analizzati, si sa che la pratica è attivamente attuata tra le popolazioni musulmane delle zone montane della Repubblica del Dagestan.<sup>26</sup> La

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<sup>21</sup> Mogilevkina Iryna, Odind Viveca. "Some reproductive and sexual health indicators in rape victims in Ukraine." *cent.eur.j.med* 1. 2006. Pag. 410. Accessed May 4, 2021. <https://doi.org/10.2478/s11536-006-0040-9>

<sup>22</sup> Htun Mala, Jensenius Francesca R. "Fighting Violence Against Women: Laws, Norms & Challenges Ahead." The MIT Press on behalf of American Academy of Arts & Sciences. *Daedalus*. Vol. 149, No. 1, Women & Equality. Winter 2020. Pag. 148.

<sup>23</sup> Kościańska Agnieszka. "Gender on Trial. Changes in Legal and Discursive Practices Concerning Sexual Violence in Poland from the 1970s to the Present." *Ethnologia Europaea*. 50(1): 111–127. 2020. Pag. 112.

<sup>24</sup> Hybrid Warfare Analytical Group. "How Russian Pop-Culture Reflects Misogynistic Policies." Ukraine Crisis media center. Jul 14, 2020. Accessed May 23, 2021. <https://uacrisis.org/en/how-russian-pop-culture-reflects-misogynistic-policies>

<sup>25</sup> World Health Organization. "Female genital mutilation." Jan 21, 2022. Accessed Jan 25, 2022. <https://shortest.link/2Een>

<sup>26</sup> Антонова Ю. А., Сиражудинова С. В. "Производство калечащих операций на половых органах у девочек. Отчет по результатам качественного исследования в Республике Дагестан." Правовая инициатива по России. Москва. 2016. С. 26. [Antonova Yu.A., Sirazhudinova S.V. "Female Genital Mutilation of Girls in Dagestan (Russian Federation). Report based on the results of a qualitative study on female genital mutilation performed on girls." Russian Justice Initiative. Moscow. 2016.]

Russia, ratificando la Convenzione, dovrebbe attivamente cercare di porre fine a questa pratica nella regione sensibilizzando la popolazione sui problemi che la FGM comporta alla salute della vittima, sia a breve che a lungo termine, incluso il rischio di morte.<sup>27</sup>

La FGM è solitamente una pratica presente in Africa, Asia e in Medio Oriente, ma in Europa sono presenti comunità originarie dai Paesi dove questa forma di violenza è praticata e ciò ha portato il Consiglio d'Europa a decidere di affrontare il problema<sup>28</sup> e ad includere esplicitamente la FGM nel testo della IC.<sup>29</sup>

La presenza di queste comunità in Bulgaria, Polonia e Ucraina è minima e in questi Stati non sono riportati casi di FGM, essi dovrebbero comunque sensibilizzare la popolazione a riguardo in quanto l'assenza di casi potrebbe essere causata dall'ignoranza sull'argomento.

Tutti e quattro gli Stati, in aggiunta, come specificato dalla IC,<sup>30</sup> sarebbero obbligati a dare asilo alle donne sulla base del rischio di essere sottoposte alla FGM. Le comunità straniere che la praticano, infatti, solitamente la effettuano prima di arrivare in Europa o quando in viaggio fuori da essa.<sup>31</sup>

In conclusione argomenterei che l'attuazione della IC in questi quattro Stati porterebbe un impatto positivo sui diritti umani delle donne in quanto Bulgaria, Polonia, Russia e Ucraina sarebbero obbligate ad adottare ulteriori misure, rispetto a quelle attuali, atte a prevenire ed eliminare la violenza di genere, ad esempio tramite la modifica della loro legislazione e la sensibilizzazione della popolazione.

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<sup>27</sup> WHO, "Female genital mutilation.", op. cit.

<sup>28</sup> Council of Europe. "The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence. A tool to end female genital mutilation." Council of Europe Publishing. Nov, 2014. Pag. 4.

<sup>29</sup> 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence. Istanbul. 2011. CETS No. 210. Art. 38.

<sup>30</sup> 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence. Istanbul. 2011. CETS No. 210. Art. 60.

<sup>31</sup> European Institute for Gender Equality. "Female genital mutilation in the European Union and Croatia." European Union. ISBN 978-92-9218-118-5. doi:10.2839/23199. 2013. Pag. 25.

## INTRODUCTION

The scope of this thesis is to analyse how the Istanbul Convention (IC) could improve and influence national norms with regards to violence against women (VAW) in four Slavic countries: Bulgaria, Poland, the Russian Federation (RF) and Ukraine. Namely I will take into account domestic violence, sexual violence including rape and female genital mutilation (FGM). These three issues will be examined in relation to the national legislation of the above-mentioned countries and to the IC, I will analyse to what extent women are protected, and whether these countries could implement women's protection by ratifying or not withdrawing from (depending on the position of the State) the IC.

The four Eastern European countries that will be taken into consideration have been chosen because of two main reasons: they all are Slavic countries and they have different positions in regard to the IC.

These countries are classified as "Slavic" because historians believe that the ancestors of these populations were all part of the Slavic tribes that lived in the geographic area that extends from the river Vistula to the river Dnieper (according to the most accepted theory) and that later migrated to different directions forming the three groups in which historians are used to divide Slavs today: East Slavs, West Slavs, and South Slavs.<sup>32</sup> According to this division, this work will take into consideration countries of all three groups, in fact, Bulgaria is a South Slavic country, Poland is considered a West Slavic country, Russia and Ukraine are included in the group of the East Slavic countries.<sup>33</sup>

With regards to the second reason why I have chosen to analyse these countries, thus the different positions of these countries in relation to the IC, Bulgaria has signed the Convention, but has not ratified it, furthermore its Constitutional Court has declared that the Convention does not conform to the Bulgarian Constitution.<sup>34</sup> On the other hand, Poland has ratified the Convention, but following Turkey's path, it has declared its willingness to withdraw from it because of the influence of the Catholic Church, and because the Convention contains concepts that are opposed to Poland's tradition and culture, as stated by Andrzej Duda, the current President of Poland. Furthermore, Polish Government has linked the IC to the promotion of LGBTQI+

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<sup>32</sup> Garzaniti Marcello. "Gli Slavi. Storia, culture e lingue dalle origini ai giorni nostri." Carocci Editore. 2019. Pag. 45; 111.

<sup>33</sup> Garzaniti, "Gli Slavi. Storia, culture e lingue dalle origini ai giorni nostri.", op. cit., pag. 26; 28-29.

<sup>34</sup> Constitutional Court of the Republic of Bulgaria (2018b). Decision No 13, Sofia, 27 July 2018, promulgated SG issue 65/7 August 2018 (Решение № 13, София, 27 юли 2018 г., (обн., ДВ, бр. 65 от 07.08.2018 г.)). Retrieved 30 August 2021, from <http://constcourt.bg/bg/Acts/GetHtmlContent/f278a156-9d25-412d-a064-6ffd6f997310>

families and ideology.<sup>35</sup> The Russian Federation, on the other hand, is one of the two countries that have not signed the IC, the reason given to this choice is that part of the Convention does not accord with Russia's traditional moral and with its framework for the State family policy. The RF also claimed that its legislation is sufficient to combat domestic violence and to prevent violence against women, although, in contrast with the previous statement, it promised to improve the existing legislation.<sup>36</sup> And lastly, Ukraine's position is similar to Bulgaria's one: it has signed the Convention, but has not ratified it because of the will to protect the traditional family, which is connected to the terminology relating to gender used in the IC. This terminology would have obliged Ukraine to include more comprehensive and potentially effective strategies in its legislation against domestic violence.<sup>37</sup>

The reasons why I have chosen to analyse domestic violence, sexual violence including rape, and FGM are different. I have chosen domestic violence because it is a wide form of violence that can include many scenarios; furthermore, it is explicitly mentioned in the official title of the IC: the "Council of Europe Convention on preventing and combating violence against women and domestic violence". Sexual violence including rape will be analysed because my perception as a woman is that there are still a lot misconceptions on this topic especially on the role of the use of violence and of consent and I would like to examine the importance of the latter. FGM was chosen because it is still an uncommon topic in Europe as it is mostly considered an African issue, but as it will be explained, this type of violence is present also in Europe.

The choice of the IC, as an international treaty which could help improve and influence national norms, has been dictated by the fact that the Convention is a great step forward taken by the Council of Europe (CoE) to provide a legal framework in order to prevent and combat all forms of violence against women and domestic violence,<sup>38</sup> as the full name of the Convention states: the "Council of Europe Convention on preventing and combating violence against women and domestic violence". Furthermore, the tenth anniversary of the Convention occurred last year, on May 11<sup>th</sup> 2021, as it was opened for signature on May 11<sup>th</sup> 2011.

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<sup>35</sup> Tilles, "Poland to begin withdrawal from international convention on violence against women.", op. cit.

<sup>36</sup> Pompala, "Istanbul Convention in Eastern Europe.", op. cit.

<sup>37</sup> Zоргdrager Heleen. "Ukrainian churches in defence of 'traditional values': two case studies and some methodological considerations." *Religion, State & Society*. 48:2-3. 2020. Pag. 94; 95. Accessed May 9, 2021. <https://doi.org/10.1080/09637494.2020.1757372>

<sup>38</sup> De Vido Sara. "The Ratification of the Council of Europe Istanbul Convention by the EU: A Step Forward in the Protection of Women Violence in the European Legal System." *European Journal of Legal Studies*. Vol. 9, No. 2, 2016. Pag. 70.

The articles of the Convention that will be analysed in this work are the articles of the first Chapter, which provide with the purposes of the Convention, relevant definitions, and general obligations; some articles of the second, third, and fourth Chapter of the IC will be taken in to consideration as well, as they address integrated policies, prevention and support services; some articles of the fifth Chapter of the Convention will be included in this study as they address the covered issues, after that, some articles of the sixth and seventh Chapter will be addressed as they cover investigation, prosecution, procedural law, protective measure, migration, and asylum, and lastly I will mention also the article that regulates reservations which is in the twelfth Chapter of the IC.

The first Chapter of my thesis will introduce the IC and its purpose and, after that, the following Sub-chapters will focus on each of the chosen countries separately outlining their peculiar position in relation to the Convention and why they should ratify the Convention in the case of Bulgaria and Ukraine, sign and ratify it in the case of Russia, or not withdraw from it in the case of Poland. This Chapter will include also a Sub-Chapter about abortion in Poland as it is an important issue in regards to women's rights in the aforementioned country.

Each of the following three Chapters will define one of the of the three above-mentioned issues, namely domestic violence in Chapter 2, sexual violence including rape in Chapter 3 and FGM in Chapter 4, and they will all be introduced with the relevant main concepts.

Subsequently in Chapter 2 I will analyse the situation of domestic violence in Bulgaria, Poland, and Ukraine together as in all of these countries domestic violence is perceived as a private matter, after that I will discuss separately the situation in the RF because of the decriminalisation of domestic violence that occurred in this country. In Chapter 3, which is dedicated to sexual violence, I will examine some common issues, such as the so-called "rape culture", the reasons why victims do not report rapes, and sexual intimate partner violence. After that, I will analyse individually the situation of Bulgaria, Poland, Russia, and Ukraine in relation to sexual violence. The part on Bulgaria will highlight the fact that it seems that Bulgarian women have to prove that they have fought back against the perpetrator, the part on Poland will draw attention to the fact that in court, sometimes, what is on trial is the victim's behaviour. The Sub-chapter regarding the RF will be about the key role of violence in cases of sexual violence and rape in this country; after that, I will focus also on the sexist humour in the Russian media and on the danger that this type of humour can create.

The last country to be analysed will be Ukraine and I will focus on the changes it made to try to make its legislation on sexual violence in line with international standards. In regards to Ukraine, I will also take into consideration conflict-related sexual violence because it can be considered a topical issue at the current moment due to the Russia-Ukraine crisis. The last part of the third Chapter will present the #янебоюсьсказати (#Iamnotafraidtospeak) campaign in Ukraine, which became the #янебоюсьсказать campaign in Russia, and how this campaign can be a first step for acknowledging the problem of sexual violence.

The fourth and last Chapter will be about FGM. After the main concepts, I will analyse the situation in Bulgaria, Poland, and Ukraine together due to the lack of detailed and specific data, but I will also argue that this lack of data might be caused by the ignorance on this specific topic. Russia will be analysed separately and I will focus on the situation in the Republic of Dagestan where FGM is known to be practiced and seems to be part of the culture and customs of its population. A small digression on the performance of FGM in a clinic in Moscow will be present as well.

# Chapter 1

## DIFFERENT POSITIONS IN RELATION TO THE ISTANBUL CONVENTION

### *1.1. The Istanbul Convention and its Purpose*

The Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, also known as the Istanbul Convention (IC), is an international treaty adopted in 2011 by the Committee of the Ministers of the Council of Europe, and it entered into force on August 1<sup>st</sup> 2014. The IC is a great step forward taken by the CoE to provide a legal framework in order to prevent and combat all forms of violence against women and domestic violence<sup>39</sup> as it is the first instrument in Europe that legally binds State Parties concerning VAW.<sup>40</sup> Although the concept of VAW was first used in the 1960s and 1970s by feminists, the global community addressed it as an issue only in 1993 with the Vienna Declaration of the World Conference on Human Rights. Over the years the concept of VAW has expanded, if at first it included only rape and physical battery, it now includes a wide array of behaviours such as stalking, psychological violence, FGM, harassment, as well as forced pregnancy testing, to mention a few.<sup>41</sup>

VAW is still a topical issue: in 2019 the UN reported that 18% of women aged 15 to 49 have suffered physical or sexual violence<sup>42</sup> and the latest data collected by the World Health Organization (WHO) and available in spring 2021 show that worldwide the 30% of women have experienced sexual and/or physical intimate partner violence or non-partner sexual violence.<sup>43</sup> Moreover, as States are recalling “family traditions and values”, a decrease in women’s rights has been documented:<sup>44</sup> in the past decade States like the RF and Poland went through a process that could be called “illiberal turn” and which was characterised by the rejection of the so-called Western

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<sup>39</sup> De Vido, “The Ratification of the Council of Europe Istanbul Convention by the EU: A Step Forward in the Protection of Women Violence in the European Legal System.”, op. cit., pag. 70.

<sup>40</sup> Council of Europe. “Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence”. Council of Europe. 2011.

<sup>41</sup> Htun, Jensenius, “Fighting Violence Against Women: Laws, Norms & Challenges Ahead.”, op. cit., pag. 144; 146.

<sup>42</sup> United Nations. “The Sustainable Development Goals Report.” New York. 2019. Pag. 8. Accessed Nov 18, 2021. <https://unstats.un.org/sdgs/report/2019/The-Sustainable-Development-Goals-Report-2019.pdf>

<sup>43</sup> World Health Organization. “Violence Against Women.” Mar 9, 2021. Accessed Jan 17, 2022. <https://www.who.int/news-room/fact-sheets/detail/violence-against-women>

<sup>44</sup> Studer Camille. “The Istanbul Convention and the Global Fight to End Violence Against Women: Where Do We Stand?” Azickia. Sep 23, 2020. Accessed September 6, 2021. <https://azickia.org/the-istanbul-convention-and-the-global-fight-to-end-violence-against-women-where-do-we-stand?lang=en>

values and by conservative policies centred on family rights.<sup>45</sup> Poland, for example, amended its legislation on abortion<sup>46</sup> making it more restrictive and making illegal abortion even in case of “severe and irreversible fetal defect or incurable illness that threatens the fetus’ life”.<sup>47</sup> The RF, instead, decriminalised some forms of domestic violence in 2017.<sup>48</sup>

In contrast to this trend towards the decrease in the protection of women’s rights, in order to prevent all forms of violence included in the IC, State Parties shall exercise due diligence, which means that they are required to adopt adequate legislation, and subsequently to plan their response, allowing relevant authorities to diligently prevent such acts.<sup>49</sup> However, during the drafting of the Convention some delegates questioned the “due diligence” notion in terms of its application to the prevention of violence against women.<sup>50</sup> This debate emerged because due diligence is an obligation of conduct, not an obligation of end result, and it is not possible to assess in advance if a State is fulfilling or breaching this obligation, only once the harm has happened, an *ex post facto* review is possible. This obligation is therefore characterised by uncertainty as well as by flexibility as only after the harm occurred, it will be possible to assess whether the State conduct and the measures it took to prevent VAW and domestic violence were complying with the due diligence standards in the given circumstances.<sup>51</sup>

The purposes of the IC, as described in the first article of the Convention, are the protection of women from all forms of violence, the prevention, the prosecution, and the elimination of VAW and domestic violence, the elimination of all forms of discrimination against women, the promotion of equality between men and women, the protection and assistance of victims of VAW and domestic violence, the promotion of international cooperation with regard to the elimination of VAW and domestic violence, and the support and the assistance in the creation of an integrated approach to eliminate VAW and domestic violence. Furthermore, as listed in art. 2, the scope

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<sup>45</sup> Gjengedal Kjerstin. Translated by Cathinka Dahl Hambro. “The nuclear family has become a political tug-of-war in Russia and Poland.” *Kilden. Genderresearch.no*. Jan 26, 2021. Accessed May 23, 2021. <https://kjonnsforskning.no/en/2021/01/nuclear-family-has-become-political-tug-war-russia-and-poland>

<sup>46</sup> Sentence of the Constitutional Court of the Republic of Poland of 22 October 2020. Sygn. akt K 1/20.

<sup>47</sup> Human Rights Watch. “Poland’s Constitutional Tribunal Rolls Back Reproductive Rights.” Oct 22, 2020. Accessed Nov 20, 2021. <https://www.hrw.org/news/2020/10/22/polands-constitutional-tribunal-rolls-back-reproductive-rights>

<sup>48</sup> Rodina Elena. “Women ‘have finally started talking’: Three female journalists on covering sexual violence in Russia.” *Committee to Protect Journalists*. Mar 4, 2021. Accessed Apr 24, 2021. <https://cpj.org/?p=86866>

<sup>49</sup> 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence. Istanbul. 2011. CETS No. 210. Art. 5: *Parties shall refrain from engaging in any act of violence against women and ensure that State authorities, officials, agents, institutions and other actors acting on behalf of the State act in conformity with this obligation. Parties shall take the necessary legislative and other measures to exercise due diligence to prevent, investigate, punish and provide reparation for acts of violence covered by the scope of this Convention that are perpetrated by non-State actors.*

<sup>50</sup> Grans, “The Istanbul Convention and the Positive Obligation to Prevent Violence.”, op. cit., pag. 136; 145-146.

<sup>51</sup> Stoyanova Vladislava. “Due Diligence versus Positive Obligations.” Eds. *International Law and Violence Against Women: Europe and the Istanbul Convention*. Routledge. 2020.



of the IC is to be applied in both “times of peace and in situations of armed conflict” to “all forms of VAW, including domestic violence, which affects women disproportionately” and to “all victims of domestic violence”, paying particular attention to women victims of gender-based violence. The following articles of the first Chapter of the IC include definitions and provisions on fundamental rights, equality and non-discrimination, State obligations and due diligence, and gender-sensitive policies. The Convention outlines the definitions of “violence against women”, “domestic violence”, “gender”, “gender-based violence against women”, “victim” and “women”. It is important to underline here two of these definitions: the IC defines “violence against women” as

“a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life”<sup>52</sup>

and its definition of “women” explicitly includes girls under the age of 18.<sup>53</sup>

The second, the third, and the fourth Chapter of the Convention respectively outline provisions on integrated policies and data collection, prevention, and protection and support. The fifth Chapter of the IC is entitled “Substantive law” and it includes articles on civil lawsuits, on remedies and compensation, on the application of the criminal offenses, on the jurisdiction, on sanctions, on measures and on aggravating circumstances, on sentences passed by another Party, and on the prohibition of mandatory alternative dispute resolution processes or sentencing, as well as articles on specific issues such as forced marriage, psychological violence, stalking, physical violence, sexual violence, including rape, FGM, forced abortion, forced sterilisation, sexual harassment, aiding, abetting, and crimes of “honour”.

The sixth Chapter is titled “Investigation, prosecution, procedural law and protective measures” and it accounts general obligations, immediate response, prevention and protection, risk assessment and risk management, emergency barring orders, restraining or protection orders, investigation evidence, *ex parte* and *ex officio* proceedings, measures of protection, legal aid, and the statute of limitation.

The seventh Chapter of the IC is about migration and asylum and it takes into consideration residence status, gender-based asylum claims, and the principle of

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<sup>52</sup> 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence. Istanbul. 2011. CETS No. 210. Art. 3a.

<sup>53</sup> 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence. Istanbul. 2011. CETS No. 210. Art. 3e.

non-refoulement. After this, the eighth Chapter covers international co-operation with general principles, measures relating to persons at risk, to information, and to data protection.

A specific monitoring mechanism formed by an independent group of experts called GREVIO, the Group of Experts on Action Against Violence Against Women and Domestic Violence, is in charge of monitoring the implementation of the provisions of the IC by the Parties. This group of experts, as well as the procedure it shall follow, general recommendations, and parliamentary involvement in the monitoring, are settled by the ninth Chapter of the IC.

Relationship with other international instruments, amendments to the Convention, and final clauses are respectively settled by Chapters ten, eleven and twelve of the IC.

As above-mentioned, the scope of the IC covers violence against women and, consequently, the Convention applies to all girls and women, although it is worth mentioning that, when ratifying the Convention, States can decide to apply it also to men and boys for what concerns domestic violence<sup>54</sup> as men can be victims of this type of violence as well, notwithstanding women are affected disproportionately by it. Moreover, it is important to underline that the Convention does not explicitly mention that it deals with “male violence against women” because during the drafting some delegates highlighted that VAW can be committed by women as well, and the example advanced in support to this claim was FGM,<sup>55</sup> which will be discussed in Chapter 4 of this work.

In the following parts of this Chapter, I will analyse the different positions of Bulgaria, Poland, Russia, and Ukraine in relation to the IC. In Bulgaria there has been a discussion on whether the IC conforms to the Bulgarian Constitution or not, and the Constitutional Court sentenced that it does not because of the issues related to the notion of gender. In Poland the debate is about the withdrawal from the Convention because of the previously mentioned traditional and family values. The RF has not signed the Convention as it claimed that its measures to combat domestic violence and gender-based violence are fully sufficient. Similar issues as in Bulgaria are present in Ukraine, where the ratification of the Convention is blocked by politics, religion, and mentality.

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<sup>54</sup> Grans, “The Istanbul Convention and the Positive Obligation to Prevent Violence.”, op. cit., pag. 137.

<sup>55</sup> Grans, “The Istanbul Convention and the Positive Obligation to Prevent Violence.”, op. cit., pag. 137.

## 1.2. Bulgaria: The Debate on the Conformity of the Convention with the Constitution

Bulgaria signed the IC on April 21<sup>st</sup> 2016, however, the Bulgarian Constitutional Court with the decision no. 13 of the 27<sup>th</sup> July 2018 has declared that the Convention does not conform to the Bulgarian Constitution and Bulgaria has not ratified the Convention. Before this decision made by the Bulgarian Constitutional Court, there have been public discussions about the ratification of the IC by Bulgaria and the different parties that participated in this debate had opposite and extreme points of view.<sup>56</sup> The populist wing pressed to reject the Convention, instead the centrist-right, pro-European, populist ruling party was in favour of ratifying it.<sup>57</sup> The debate did not start immediately when the Foreign Minister Ekaterina Zacharieva officially signed the Convention on April 21<sup>st</sup> 2016, on the contrary, this event had almost no public reaction, the debate on the ratification was incited by the coalition partner of the ruling party at the Government, this coalition partner could be defined of nationalistic right and it stood against the ratification of the IC. At the same time, the debate became highly emotional and it was surrounded by cyber bullying practices and hate speech.<sup>58</sup> Strong internal resistances to the ratification of the IC are not uncommon in Eastern Europe and in Orthodox countries, the only exceptions are Serbia, Montenegro, and North Macedonia, but in their cases the ratification was one of the requirements to qualify for the EU membership.<sup>59</sup> The main reasons of this resistance in Eastern Europe can be found in the fear of the introduction of the so-called gender ideology and in some misconceptions on the Convention, according to which, the IC would lead to same-sex marriages. In Bulgaria the idea about the legalisation of gay marriage as a consequence of the IC was firstly spread by the websites “glasove.com” and “bultimes.com”,<sup>60</sup> however the IC refers to marriage only in relation to forced marriages (art. 37) and does not cover the topic of same-sex marriages because it goes beyond the purposes of the Convention.

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<sup>56</sup> Popova, Koev, Popova, “The Istanbul Convention and its Political, Social and Cultural Reflections in the Danube Space: The Case with Bulgaria.”, op. cit., pag. 528.

<sup>57</sup> Bankov Kristian. “Cyberbullying and hate speech in the debate around the ratification of the Istanbul convention in Bulgaria: a semiotic analysis of the communication dynamics.” *Social Semiotics*. 30:3. 2020. Pag. 344. Accessed May 10, 2021. <https://doi.org/10.1080/10350330.2020.1731175>

<sup>58</sup> Bankov, “Cyberbullying and hate speech in the debate around the ratification of the Istanbul convention in Bulgaria: a semiotic analysis of the communication dynamics.”, op.cit., pag. 344-345.

<sup>59</sup> Bankov, “Cyberbullying and hate speech in the debate around the ratification of the Istanbul convention in Bulgaria: a semiotic analysis of the communication dynamics.”, op.cit., pag. 346.

<sup>60</sup> Popova, Koev, Popova, “The Istanbul Convention and its Political, Social and Cultural Reflections in the Danube Space: The Case with Bulgaria.”, op. cit., pag. 529-532.

The presence of misinformation was perceived by Bulgarians, in fact, a study from a team of students of the Sofia University supervised by Prof. Snezhana Popova showed that 74% of the respondents believed that the lack of sufficient information was one of the reasons of the controversies on the IC in the Bulgarian society.<sup>61</sup> The study reported also a lack of sufficient understanding of the content of the Convention.<sup>62</sup> In 2019, the disinformation about the scope and purposes of the IC in Bulgaria was noticed as well by Dunja Mijatović, the Commissioner for Human Rights of the Council of Europe, in her report she stated that the lack of information and the misinformation regarding the IC are deeply embedded in the stereotypes about gender roles in the Bulgarian society.<sup>63</sup>

In addition to the above-mentioned factors, the opponents of the Convention used also linguistic and value arguments in support of their thesis against the IC.<sup>64</sup> One of these arguments was based on the word “gender” included in the Convention, which defines it as: “the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men”.<sup>65</sup> The Bulgarian language does not provide with an adequate translation for this concept and in the Bulgarian text of the IC the word “gender” has been translated as “sex” and after that as “social sex”, this translation caused the spreading of the idea among the Bulgarian audience that the IC would have introduced a “third social sex” different from the biological one and that it would have created the prerequisites for the introduction of the “gender ideology”.<sup>66</sup> In fact, other studies showed that the Bulgarian population often associates the meaning of “gender”, transliterated as “џендър” in Cyrillic letters in Bulgarian, with “transgender”, “third sex”, “homosexuality”, “homosexual individual”, “transsexual person”, “transvestite”, “hermaphrodite”, “person with unclear sexual orientation”, and “sexually perverted unmoral person”, which are all characterized by

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<sup>61</sup> Angelova Anna, Uzunova Borislava, Stoilova Deliya, Filipova Dessislava, Yotovska Dobromira, Teneva Iva, Yosifov Konstatin-Kiril, Nikolova Madlen, Grozeva Plamena, Ivanova Plamena, Yordanova Svetlana, Gerasimova Ralena, Velkova Siana, Ulyanova Siyana, Paunova Tsveta. “The Debate about the Istanbul Convention (Convention on Preventing and Combating Violence against Women and Domestic Violence) in Bulgarian Media.” Medialog. Faculty of Journalism and Mass Communication, University of Sofia “St. Kliment Ohridski”. 2018. Pag. 291. [original in Bulgarian “Дебатът около Истанбулската конвенция в българските медии. Изследвание на екип студенти по „Европеистика“, ФФ.”]

<sup>62</sup> Popova, Koev, Popova, “The Istanbul Convention and its Political, Social and Cultural Reflections in the Danube Space: The Case with Bulgaria.”, op. cit., pag. 533-534.

<sup>63</sup> Mijatović Dunja, Commissioner for Human Rights of the Council of Europe. “Report following her visit to Bulgaria from 25 to 29 November 2019.” CommDH(2020)8. Strasbourg. Mar 31, 2020. Pag. 17.

<sup>64</sup> Popova, Koev, Popova, “The Istanbul Convention and its Political, Social and Cultural Reflections in the Danube Space: The Case with Bulgaria.”, op. cit., pag. 534.

<sup>65</sup> 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence. Istanbul. 2011. CETS No. 210. Art. 3c.

<sup>66</sup> Popova, Koev, Popova, “The Istanbul Convention and its Political, Social and Cultural Reflections in the Danube Space: The Case with Bulgaria.”, op. cit., pag. 534-535.

pejorative connotations and, consequently, the definition of “gender” among Bulgarians has been linked to the idea of something bad and shameful.<sup>67</sup>

Nevertheless, the concept of gender was firstly introduced in Bulgaria in the mid-1990s and it was translated as “genus”, since then, numerous Bulgarian linguists and translation specialists have published studies about the adequate translation of the word “gender” with scientific argumentation. This issue is present also in other languages and, among different approaches, the Dutch one implies not translating the notion from English and this approach is succeeding, also outside the Netherlands, including in Bulgaria, where it was argued that the word “gender” (“пол” in the Bulgarian language) already exists. What does not exist in the Bulgarian language are words for concepts like “sociosex”, simply because until recently there was no need for such words as people did not think about these concepts which are new. These notions created the need of introducing “gender” as a separate category in order to discern between the biological sex and the sex as social construct.<sup>68</sup>

However, the negative attitude towards the so-called “gender” is not only due to the linguistic field, but it is originated also by the traditional and patriarchal values, by the conservatism of Bulgarian people related to sexual issues, and by cultural reflections.<sup>69</sup> Religion was another of the main themes addressed during the debate: the creation of humans as men and women in the Bible was used to oppose the concept of “gender”, which was linked to the images of gay pride manifestations and other images connected to the LGBTQI+ community.<sup>70</sup>

As a matter of fact, the above-mentioned values are well-rooted in the Bulgarian society: a survey in 2008 showed that Bulgarians are not comfortable in the presence of a neighbour or of a person in a position of power with different sexual orientation;<sup>71</sup> and, since 2012, the Society and Values Association (SVA) (“Ассоциация общество и ценности”) has been fighting in support of the traditional family by opposing European Union (EU) documents and initiatives.<sup>72</sup> Among the various initiatives of the SVA, there is also an online petition called “gender ideology” created in September

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<sup>67</sup> Bankov, “Cyberbullying and hate speech in the debate around the ratification of the Istanbul convention in Bulgaria: a semiotic analysis of the communication dynamics.”, op.cit., pag. 347; 349. And Popova, Koev, Popova, “The Istanbul Convention and its Political, Social and Cultural Reflections in the Danube Space: The Case with Bulgaria.”, op. cit., pag. 537.

<sup>68</sup> Popova, Koev, Popova, “The Istanbul Convention and its Political, Social and Cultural Reflections in the Danube Space: The Case with Bulgaria.”, op. cit., pag. 536.

<sup>69</sup> Popova, Koev, Popova, “The Istanbul Convention and its Political, Social and Cultural Reflections in the Danube Space: The Case with Bulgaria.”, op. cit., pag. 538.

<sup>70</sup> Bankov, “Cyberbullying and hate speech in the debate around the ratification of the Istanbul convention in Bulgaria: a semiotic analysis of the communication dynamics.”, op.cit., pag. 357.

<sup>71</sup> Popova, Koev, Popova. “The Istanbul Convention and its Political, Social and Cultural Reflections in the Danube Space: The Case with Bulgaria.”, op. cit., pag. 538.

<sup>72</sup> Darakchi, ““The Western Feminists Want to Make Us Gay”: Nationalism, Heteronormativity, and Violence Against Women in Bulgaria in Times of “Anti-gender Campaigns”.”, op. cit., pag. 1209-1210.

2017, its purpose, in line with the common ideas that were explained above concerning the word “gender”, is the protection of the traditional gender roles, which – according to the SVA members – are threatened by the IC.<sup>73</sup>

In conclusion, in Bulgaria the heated discussion between the different parties, as there were also several initiatives supporting the ratification of the Convention, led the ruling party to bring the bill for ratification of the IC before the Constitutional Court of the Republic of Bulgaria in March 2018.<sup>74</sup> The Court made the decision to consider the IC not conform to the Bulgarian Constitution because of the necessity of discerning the notions of “sex” and “gender”.<sup>75</sup> In fact, the argumentations of the judges who made this decision were mainly based on the semantics of the concept of “gender” and, according to them, by dividing the biological and social dimensions of “sex”, the IC goes beyond the traditional view about sexually binary people<sup>76</sup> and this concept does not align with the notion of man and woman included in the Bulgarian Constitution.<sup>77</sup> The Court referred to art. 47(2) of the Bulgarian Constitution, which aims to protect mothers and to guarantee them the essential assistance they need,<sup>78</sup> and stated that “the female biological sex was related to the following social roles – “mother,” “giving birth,” and “obstetric care.””, in this sense, using the rights of mothers to define the social role of women, the Court reduced women to their role of childbearing.<sup>79</sup> However, as underlined by Judge Penchev’s dissenting opinion, art. 2(5) of Bulgaria’s Law on the Equality between Women and Men establishes that Bulgaria shall overcome gender-based stereotypes and, in section 1(1) of its Additional Provisions, this law includes the possibility for both men and women to develop “their personal abilities and make choices without limitations of the social role of their sex”.<sup>80</sup> Nevertheless, he added that one should also notice that the Constitution is the supreme law in Bulgaria and that other laws cannot contravene it.<sup>81</sup> Ratifying the IC would make Bulgaria implement the above-mentioned provision of Bulgaria’s Law, in fact as per art. 12 of the IC:

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<sup>73</sup> Darakchi, ““The Western Feminists Want to Make Us Gay”: Nationalism, Heteronormativity, and Violence Against Women in Bulgaria in Times of “Anti-gender Campaigns””, op. cit., pag. 1210.

<sup>74</sup> Darakchi, ““The Western Feminists Want to Make Us Gay”: Nationalism, Heteronormativity, and Violence Against Women in Bulgaria in Times of “Anti-gender Campaigns””, op. cit., pag. 1210.

<sup>75</sup> Constitutional Court of the Republic of Bulgaria (2018b). Decision No 13, Sofia, 27 July 2018, promulgated SG issue 65/7 August 2018 (Решение № 13, София, 27 юли 2018 г., (обн., ДВ, бр. 65 от 07.08.2018 г.)). Retrieved 30 August 2021, from <http://constcourt.bg/bg/Acts/GetHtmlContent/f278a156-9d25-412d-a064-6ffd6f997310>.

<sup>76</sup> Popova, Koev, Popova, “The Istanbul Convention and its Political, Social and Cultural Reflections in the Danube Space: The Case with Bulgaria.”, op. cit., pag. 537.

<sup>77</sup> Darakchi, ““The Western Feminists Want to Make Us Gay”: Nationalism, Heteronormativity, and Violence Against Women in Bulgaria in Times of “Anti-gender Campaigns””, op. cit., pag. 1210-1211.

<sup>78</sup> Constitution of the Republic of Bulgaria. Chapter 2. Fundamental Rights and Duties of Citizens. Art. 47(2).

<sup>79</sup> Vassileva Radosveta. “Bulgaria’s Constitutional Troubles with the Istanbul Convention.” *VerfBlog*. Aug 2, 2018. Accessed May 8, 2021. <https://doi.org/10.17176/20180803-101332-0>

<sup>80</sup> Dissenting opinion of Judge Konstantin Penchev on K.D. No. 3 / 2018.

<sup>81</sup> Dissenting opinion of Judge Konstantin Penchev on K.D. No. 3 / 2018.

“Parties shall take the necessary measures to promote changes in the social and cultural patterns of behaviour of women and men with a view to eradicating prejudices, customs, traditions and all other practices which are based on the idea of the inferiority of women or on stereotyped roles for women and men”.<sup>82</sup>

After the ratification, Bulgaria shall, in fact, take action in order to eradicate all the patriarchal values that lead to VAW and that are embedded in its society as previously mentioned. Bulgaria shall, after the ratification, aim to achieve the abolishment of traditions in which women are humiliated because of the idea that they are inferior (art. 12 of the IC), to achieve social awareness and change mentalities. It shall in fact promote awareness and education on the forms of violence covered by the Convention and on other issues related to equality between men and women and to stereotyped gender roles (art. 13 and 14 of the IC). Awareness and education should therefore also include the concept of gender as indicated in the Convention, which means as:

“the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men”<sup>83</sup>

and therefore, not linked to a third gender as believed by the Bulgarian public. It would be necessary also to spread the notion of “gender-based VAW” as any form of violence that women suffer only because they are women or that affects them disproportionately (art. 3d of the IC); once again the IC does not refer to the third gender. This could however be a vicious circle as the ratification of the IC by the Bulgarian State would bring awareness and information on these topics, but in order to ratify the IC, as shown before, more awareness and information on the relevant issues are needed.

At the same time, the dissenting opinions of Judges Dimitrov, Nenkov and Angelov alluded that also some non-legal factor could have influenced the decision of the Court, namely political campaigns and the public turmoil fuelled by conservative groups.<sup>84</sup>

Lastly, as reported by Dunja Mijatović, Bulgaria does not consider taking further steps in order to ratify the IC in the foreseeable future, and the Bulgarian authorities decided to rely on the UN Convention on the Elimination of all Forms of Discrimination against

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<sup>82</sup> 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence. Istanbul. 2011. CETS No. 210. Art. 12.1.

<sup>83</sup> 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence. Istanbul. 2011. CETS No. 210. Art. 3c.

<sup>84</sup> Dissenting opinion of Judge Rumen Nenkov and Georgi Angelov on K.D. No. 3 / 2018. And Dissenting opinion of Judge Filip Dimitrov on K.D. No. 3 / 2018.

Women, which was ratified by Bulgaria in 1982, to enhance the situation in the country in regards to VAW and domestic violence.<sup>85</sup>

### *1.3. Poland: Discussion on Withdrawing from the Convention*

Poland signed the IC on December 18<sup>th</sup> 2012 and ratified it on April 27<sup>th</sup> 2015, however, during summer 2020 Polish Politicians expressed their intention to withdraw from the Convention following the path of Turkey that officially denounced the IC on March 22<sup>nd</sup> 2021.

The Convention was ratified by the previous Government led by the centrist Civic Platform, and the current Government led by the conservative Law and Justice party has always opposed it.<sup>86</sup> The reason at the roots of the will to withdraw from the IC provided by Poland's Justice Minister, Zbigniew Ziobro, in July 2020 was that the Convention damages Poland's traditional families and the functioning social culture.<sup>87</sup> This statement was based on cultural patriarchal traditions and patriarchal customs supported by the Catholic Church, which influenced Poland in the past and is still influencing it nowadays.<sup>88</sup> One of the biggest fears of the Polish Government is, in fact, – and once again – the imposition of the so-called “gender ideology”, which, according to the point of view linked to the patriarchal tradition, would destroy the “traditional family” as the notion of “gender” is connected to the LGBTQI+ community and to reproductive rights.<sup>89</sup> This is considered a problem because the LGBTQI+ community and reproductive rights are in contrast with Poland's cultural traditions and customs developed under the influence of the Catholic Church, these traditions establish that a family should be composed only by a heterosexual married couple (in contrast with LGBTQI+ community's rights) with children (not in line with women's reproductive rights) and they require women's subordination to men.<sup>90</sup>

Once again, as it was analysed in the previous sections on Bulgaria and as it will be analysed in the case of Ukraine, there has been a misinterpretation of the IC and this is due to the conservative nature of national values also in the case of Poland.<sup>91</sup>

In addition to this, in July 2020 Polish Prime Minister Mateusz Morawiecki asked the Polish Constitutional Court to examine whether the IC conforms to the Polish

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<sup>85</sup> Mijatović, “Report following her visit to Bulgaria from 25 to 29 November 2019.”, op. cit., pag. 19.

<sup>86</sup> Tilles, “Poland to begin withdrawal from international convention on violence against women.”, op. cit.

<sup>87</sup> Akesel, “Istanbul Convention: Poland.”, op. cit.

<sup>88</sup> Akesel, “Istanbul Convention: Poland.”, op. cit.

<sup>89</sup> Akesel, “Istanbul Convention: Poland.”, op. cit.

<sup>90</sup> Akesel, “Istanbul Convention: Poland.”, op. cit.

<sup>91</sup> Akesel, “Istanbul Convention: Poland.”, op. cit.



Constitution or not,<sup>92</sup> although there have been some speculations on this decision. In fact, this could be a chance to prolong the matter and it would indicate that in Poland strong forces that do not want the country to withdraw from the IC are also present.<sup>93</sup> Morawiecki also stated that Poland is willing to internationally cooperate in order to find another instrument, that should be better than the IC, to combat domestic violence.<sup>94</sup> As published on the same day on Twitter by the Ministry of Foreign Affairs, the “diplomatic activities for the adoption of an international treaty – the convention protecting the rights of families” have been started.<sup>95</sup> Later in September, the Ministry of Foreign Affairs confirmed to Balkan Insight (BIRN) that it was actively working on the creation of an international legal act protecting the rights of the families and it had invited the Governments of the Czech Republic, Slovakia, Slovenia, and Croatia to participate in the issuing of an alternative to the IC.<sup>96</sup> This alternative family rights convention is part of the “Family – yes, Gender – no” initiative of the ultra-conservative group Ordo Iuris and of the Christian Social Congress; their aim is to collect enough signatures to present a citizens’ initiative proposal to the Polish Parliament.<sup>97</sup> In Poland citizens can submit legislative proposal to the Parliament as per art. 118 par. 2 of the Polish Constitution.<sup>98</sup> In order to do this, a legislative initiative committee must be established and it must be composed by at least 15 people, subsequently, in order for this committee to be registered, they have to collect 1,000 “initial” signatures, after that, to submit the proposal to the Parliament they have to collect 100,000 signatures (of people with the right to vote in elections to the Sejm, the lower house of Polish Parliament) in 3 months after the registration of the committee.<sup>99</sup> The law that Ordo Iuris and the Christian Social Congress want to propose would request the President to withdraw from the IC and would request the Government to create a team with the purpose of participating in the drafting procedure of the above-mentioned international convention on family rights although both Ordo Iuris and the Christian Social Congress already have proposed a draft convention<sup>100</sup> to replace the

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<sup>92</sup> Ciobanu, “Poland begins to push in region to replace Istanbul Convention with “Family Rights” treaty.”, op. cit.

<sup>93</sup> Gjengedal, “The nuclear family has become a political tug-of-war in Russia and Poland.”, op. cit.

<sup>94</sup> Ciobanu, “Poland begins to push in region to replace Istanbul Convention with “Family Rights” treaty.”, op. cit.

<sup>95</sup> Paweł Jabłoński, (@paweljablonski), message on Twitter. Jul 30, 2020, 12:14 p.m. Accessed Dec 12, 2021. <https://bit.ly/3m0E0pH>

<sup>96</sup> Ciobanu, “Poland begins to push in region to replace Istanbul Convention with “Family Rights” treaty.”, op. cit.

<sup>97</sup> Ciobanu, “Poland begins to push in region to replace Istanbul Convention with “Family Rights” treaty.”, op. cit.

<sup>98</sup> The Constitution of the Republic of Poland of 2nd April, 1997. Art. 118.2: *The right to introduce legislation shall also belong to a group of at least 100,000 citizens having the right to vote in elections to the Sejm. The procedure in such matter shall be specified by statute.*

<sup>99</sup> Law of 24 June 1999 on the execution of a citizens' legislative initiative. Available in Polish at <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20180002120/O/D20182120.pdf>

<sup>100</sup> The Ordo Iuris Institute for Legal Culture. “Draft of the Convention on the rights of the family.” Accessed Feb 14, 2022. Available at [https://ordoiuris.pl/sites/default/files/inline-files/Convention\\_on\\_the\\_rights\\_of\\_the\\_family.pdf](https://ordoiuris.pl/sites/default/files/inline-files/Convention_on_the_rights_of_the_family.pdf)

IC.<sup>101</sup> According to what was confirmed to BIRN, at least the four above-mentioned Governments of Eastern Europe countries have been contacted by Poland in relation to the creation of this alternative convention.<sup>102</sup> The Czech Republic did not wish to disclose its position on the matter and its spokesperson could only declare to BIRN that the Czech Ministry of Justice received the relevant letter.<sup>103</sup> The same in regards to the receipt of the letter from the Polish Ministry of Justice about the creation of the above-mentioned convention for the protection of the family, of the children, and for the fight against violence was confirmed by the spokesperson of the Slovakian Justice Ministry.<sup>104</sup> Likewise, the Croatian Justice and Administration Ministry affirmed that it had received the aforesaid letter, however, he forwarded it to the Ministry of Labour, Pension System, Family and Social Policy, being it the Ministry in charge of the issues addressed by the new international agreement.<sup>105</sup> The latter Ministry did not make any statement about this matter.<sup>106</sup> Only the Slovenian Justice Ministry, in addition to the confirmation of the receipt of the letter from Poland, affirmed that it already responded negatively to the Polish request underlining its support to the IC.<sup>107</sup> According to the Slovenian Ministry, the content of the new convention is already addressed by the IC, which Slovenia ratified on February 5<sup>th</sup> 2015 and considers it as a strong basis for meeting the challenges in the present society and believes that it also able to prepare the ground for values such as equality and dignity for all citizens.<sup>108</sup> Moreover, in its statement the Slovenian Ministry added that in their opinion, international law, EU legislation, and Slovenian national legislation already provide with appropriate legal frameworks on the above-mentioned topics.<sup>109</sup> BIRN was as well informed by the representatives of two Polish ultra-conservative groups that the above-mentioned alternative convention aroused the interest of some members of the Hungarian and Slovakian Governments, however, BIRN was not provided with any names.<sup>110</sup> In line with this, the spokesperson of Marek Jurek, the head of the Christian Social Congress, implied the interest in the new alternative convention by the countries that had signed the IC, but not ratified it, including Bulgaria, Hungary, Slovakia, the Czech Republic, Latvia, and Lithuania.<sup>111</sup>

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<sup>101</sup> Ciobanu, "Poland begins to push in region to replace Istanbul Convention with "Family Rights" treaty.", op. cit.

<sup>102</sup> Ciobanu, "Poland begins to push in region to replace Istanbul Convention with "Family Rights" treaty.", op. cit.

<sup>103</sup> Ciobanu, "Poland begins to push in region to replace Istanbul Convention with "Family Rights" treaty.", op. cit.

<sup>104</sup> Ciobanu, "Poland begins to push in region to replace Istanbul Convention with "Family Rights" treaty.", op. cit.

<sup>105</sup> Ciobanu, "Poland begins to push in region to replace Istanbul Convention with "Family Rights" treaty.", op. cit.

<sup>106</sup> Ciobanu, "Poland begins to push in region to replace Istanbul Convention with "Family Rights" treaty.", op. cit.

<sup>107</sup> Ciobanu, "Poland begins to push in region to replace Istanbul Convention with "Family Rights" treaty.", op. cit.

<sup>108</sup> Ciobanu, "Poland begins to push in region to replace Istanbul Convention with "Family Rights" treaty.", op. cit.

<sup>109</sup> Ciobanu, "Poland begins to push in region to replace Istanbul Convention with "Family Rights" treaty.", op. cit.

<sup>110</sup> Ciobanu, "Poland begins to push in region to replace Istanbul Convention with "Family Rights" treaty.", op. cit.

<sup>111</sup> Ciobanu, "Poland begins to push in region to replace Istanbul Convention with "Family Rights" treaty.", op. cit.

The Ordo Iuris Institute for Legal Culture describes its new convention as an "opportunity to treat families fairly and with dignity and to stop harmful ideologies" as they believe in the importance to protect the fundamental rights and freedoms of the family, which they consider "the most discriminated social group".<sup>112</sup> In its explanation of reasons why this new convention is needed, Ordo Iuris in fact argues that family, along with marriage, are being attacked by numerous institutions that aims to "undermine fundamental social and legal structures" of various countries.<sup>113</sup> Ordo Iuris, in fact, considers the fight against violence and discrimination as a means to promote the agenda that, according to them, aims to challenge the notions of family and marriage.<sup>114</sup> The Institute also argues that the strong bonds inside the family ensure protection to the family members against violence.<sup>115</sup>

The alternative convention focuses therefore on the family, more precisely on the traditional family because it defines family as a "community of people related by blood, marriage and adoption" and the definition of marriage that it provides includes only the union between a man and a woman.<sup>116</sup> This draft is composed by different Chapters that separately address spouses' rights, parents' rights, children's rights, and domestic violence and violence detrimental to family life.<sup>117</sup> It can be clearly noted that this new convention, that should substitute the IC in Poland, has a different scope and background compared to the IC. In fact, the new convention is focused on the protection of the traditional family and addresses violence in relation to the family, the IC, on the other hand, focuses on violence against women and domestic violence. Although they have some common points in relation to violence, the two documents seem to have different scopes and purposes. The draft convention aims to preserve the traditional family including values such as "the protection of human life from conception to natural death, the recognition of family as the best environment for child's development, and the protection of the identity of marriage",<sup>118</sup> from all the references to violence what emerges is the intention to protect the entity of the traditional family. The IC instead aims to combat and prevent domestic violence and gender-based violence against women, which means violence "directed against a

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<sup>112</sup> The Ordo Iuris Institute for Legal Culture. "The Convention on the Rights of the Family - international guarantee in defence of families". Oct 1, 2018. Accessed Dec 12, 2021. <https://en.ordoiuris.pl/family-and-marriage/convention-rights-family-international-guarantee-defence-families>

<sup>113</sup> Kielmans-Ratyńska Rozalia, Walinowicz Karina, Zych Tymoteusz. "In Defence of Family and Marriage." Ordo Iuris Institute for Legal Culture. 2018. Pag. 1.

<sup>114</sup> Kielmans-Ratyńska, Walinowicz, Zych, "In Defence of Family and Marriage.", op. cit., pag. 1.

<sup>115</sup> Kielmans-Ratyńska, Walinowicz, Zych, "In Defence of Family and Marriage.", op. cit., pag. 1.

<sup>116</sup> The Ordo Iuris Institute for Legal Culture, "Draft of the Convention on the rights of the family.", op. cit.

<sup>117</sup> The Ordo Iuris Institute for Legal Culture, "Draft of the Convention on the rights of the family.", op. cit.

<sup>118</sup> The Ordo Iuris Institute for Legal Culture, "The Convention on the Rights of the Family - international guarantee in defence of families", op. cit.

woman because she is a woman or that affects women disproportionately”.<sup>119</sup> As already mentioned, although the IC requires Parties to pay particular attention to women victims of gender-based violence,<sup>120</sup> State Parties can decide to apply the Convention also to men and boys for what concerns domestic violence.<sup>121</sup>

According to the statement of the Secretary of the European Parliament Forum for Sexual and Reproductive Rights, Neil Datta, to BIRN, this draft is a fake convention, as real treaties emerge “from within a legal order [...] after being supported by member states”.<sup>122</sup> However, the efforts put into the promotion of this alternative draft convention might have had an effect in preventing some States from ratifying the IC and in blocking progresses on LGBTQI+ and women’s rights in general.<sup>123</sup> In fact, this draft convention on family rights addresses also themes like homosexual partnerships and abortion, which are not included in the IC as they go beyond the scope of the IC.<sup>124</sup> Concerning homosexual relations, the IC only mentions sexual orientation in art. 4 para. 3 listing the reasons that should not be ground for discrimination,<sup>125</sup> whereas the draft convention excludes homosexual relations as in the definition of marriage it includes only the union between a man and a woman.<sup>126</sup> In regard to abortion, being it a sensitive topic because of its connection with ethnicity, morality, and religion, the IC takes into consideration only forced abortion criminalising it in art. 39.<sup>127</sup> The draft convention criminalises forced abortion and, in addition to this, it criminalises also the performance of “illegal abortions with her consent”<sup>128</sup> adding another burden on women who seek abortion in Poland, which has one of the most restrictive laws on abortion in Europe.<sup>129</sup> Furthermore, knowing the traditional background of the draft convention and the values it protects, it is possible to interpret the objection to “the lack of respect for human dignity at the earliest stage of life” and to the “mentality which disregards the value of the conception of new human life” in the preamble<sup>130</sup> as an objection to abortion.

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<sup>119</sup> 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence. Istanbul. 2011. CETS No. 210. Art. 3d.

<sup>120</sup> 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence. Istanbul. 2011. CETS No. 210. Art. 2.2.

<sup>121</sup> Grans, “The Istanbul Convention and the Positive Obligation to Prevent Violence.”, op. cit., pag. 137.

<sup>122</sup> Ciobanu, “Poland begins to push in region to replace Istanbul Convention with “Family Rights” treaty.”, op. cit.

<sup>123</sup> Ciobanu, “Poland begins to push in region to replace Istanbul Convention with “Family Rights” treaty.”, op. cit.

<sup>124</sup> Ciobanu, “Poland begins to push in region to replace Istanbul Convention with “Family Rights” treaty.”, op. cit.

<sup>125</sup> 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence. Istanbul. 2011. CETS No. 210. Art. 4.3.

<sup>126</sup> The Ordo Iuris Institute for Legal Culture, Draft of the Convention on the rights of the family, op. cit.

<sup>127</sup> 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence. Istanbul. 2011. CETS No. 210. Art. 39.

<sup>128</sup> The Ordo Iuris Institute for Legal Culture, Draft of the Convention on the rights of the family, op. cit.

<sup>129</sup> Hussein Julia, Cottingham Jane, Nowicka Wanda, and Kismodi Eszter. “Abortion in Poland: Politics, Progression and Regression.” *Reproductive Health Matters*. Vol. 26, no. 52. 2018. Pag. 12. Accessed April 12, 2021. <https://www.jstor.org/stable/26605058>

<sup>130</sup> The Ordo Iuris Institute for Legal Culture, Draft of the Convention on the rights of the family, op. cit.

In addition to the common idea that the IC would promote the rights of LGBTQI+ communities and gender ideology, the conservative Polish critics consider the Istanbul Convention unnecessary, claiming that Poland already has strong measures into force against domestic violence and that it has a relative low rate of reported violence against women.<sup>131</sup> These claims are confuted, however, by a study commissioned by the Polish Government showing that 63% of Polish women have experienced domestic violence in their lives, including four different categories of violence: sexual, physical, psychological, and economic.<sup>132</sup> Furthermore, the official data could not reflect the real scale of violence in families as this phenomenon is largely hidden and many victims do not report the violence nor seek help, the extent of sexual violence is in fact vastly understated in Poland and many victims are not able to talk about the violence they suffered or they do not consider certain behaviours as forms of violence.<sup>133</sup> In this regard, a minority of the population in Poland agree that “rape in marriage does not exist” and that “when it comes to sex, a wife should always agree to what the husband wants”; these beliefs are more common among men than among women.<sup>134</sup> In addition, the majority of Polish people affirm that families affected by domestic violence do not receive adequate help and that the protection guaranteed to the victims by the law is not sufficient – this is in contrast with what was stated by the IC opposers.<sup>135</sup>

In line with the latter opinion on inadequate help and protection in relation to domestic violence, there are protestors that are in favour of the Convention and that in July 2020 asked Marlena Malag, the Family Minister, to resign while protesting dressed as the handmaids from the dystopian book “The Handmaid’s Tale” by Margaret Atwood.<sup>136</sup> By dressing like the handmaids of Atwood’s book, protestors sent a strong message as, in Atwood’s dystopian world, handmaids are considered property of their commander, are deprived of their names, and are sexually abused by their owner (the commander) during their fertile period in order to become pregnant and bear a child.

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<sup>131</sup> Tilles Daniel. “Over 60% of women in Poland have experienced domestic violence, finds leaked report.” Notes from Poland. Aug 17, 2020. Accessed Dec 15, 2021. <https://notesfrompoland.com/2020/08/17/over-60-of-women-in-poland-have-experienced-domestic-violence-finds-leaked-report/>

<sup>132</sup> Kantar. “Nationwide diagnosis of violence in the family. Kantar Poland report to the Ministry of family and Labour and Social Policy.” Oct, 2019. Pag. 55. Accessed Dec 15, 2021. <https://static.im-g.pl/im/5/26198/m26198755,WYNIKI-BADANIA.pdf> [my translation – original in Polish “Ogólnopolska diagnoza zjawiska przemocy w rodzinie. Raport Kantar Polska dla Ministerstwa Rodziny, Pracy i Polityki Społecznej.”]

<sup>133</sup> Tilles, “Over 60% of women in Poland have experienced domestic violence, finds leaked report.”, op. cit.

<sup>134</sup> Tilles, “Over 60% of women in Poland have experienced domestic violence, finds leaked report.”, op. cit.

<sup>135</sup> Tilles, “Over 60% of women in Poland have experienced domestic violence, finds leaked report.”, op. cit.

<sup>136</sup> Tilles, “Poland to begin withdrawal from international convention on violence against women.”, op. cit.

Also, opinion polls show that Polish people do not support Ordo Iuris in their willingness to withdraw from the IC.<sup>137</sup> This is not the first time that in Poland there are protests against the desire of some parties to reduce women's rights, as a matter of fact, the same happened for the restrictions to the abortion legislation.<sup>138</sup> In fact, as stated by Jørn Holm-Hansen, in the past decade in Poland the individual rights of women, but also of children and sexual minorities, have been challenged as a result of the so-called "illiberal turn", which is characterised by the rejection of certain values which are typical of Western countries.<sup>139</sup>

In conclusion, in Poland there are forces against and forces in favour of the IC. The main debate is about the text of the Convention which according to the opposers of the IC is harmful to the Polish family values and traditions which are supported also by the Catholic Church. Nevertheless, the withdrawal from the IC would lead to a decrease in women's rights in Poland and Polish women are protesting against the withdrawal.<sup>140</sup>

Not withdrawing from the Convention would increase awareness on some behaviours that, as mentioned before, are not considered violence and, consequently, the raise of awareness would lead to more women reporting the violence they have suffered as they would be more conscious about it. It would also, as a matter of fact, help women maintaining the rights they have at the present moment and not having them decreased.

### *1.3.1. A Possible Decrease in Women's Rights: Abortion in Poland*

A decrease in women's rights in regards to abortion could be caused by the withdrawal from the IC by Poland, along with the adoption of a convention like the one proposed by Ordo Iuris, because it would criminalise more cases of abortion than the ones criminalised at the moment,<sup>141</sup> and, as previously stated, the law on abortion in Poland is already one of the most restrictive in Europe.<sup>142</sup>

The right to abortion is not addressed by the IC because of the connection of this topic with ethnicity, morality, and religion, the IC addresses only forced abortion criminalising it in art. 39.<sup>143</sup> However, denial and criminalisation of abortion without exceptions can

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<sup>137</sup> Gjengedal, "The nuclear family has become a political tug-of-war in Russia and Poland.", op. cit.

<sup>138</sup> Gjengedal, "The nuclear family has become a political tug-of-war in Russia and Poland.", op. cit.

<sup>139</sup> Gjengedal, "The nuclear family has become a political tug-of-war in Russia and Poland.", op. cit.

<sup>140</sup> Tilles, "Poland to begin withdrawal from international convention on violence against women.", op. cit.

<sup>141</sup> The Ordo Iuris Institute for Legal Culture, "Draft of the Convention on the rights of the family.", op. cit.

<sup>142</sup> Hussein, Cottingham, Nowicka, and Kismodi, "Abortion in Poland: Politics, Progression and Regression.", op. cit., pag. 12.

<sup>143</sup> 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence. Istanbul. 2011. CETS No. 210. Art. 39.

be considered violence against women according to the definition set out in art. 3a of the IC which includes the acts that can cause “physical, sexual, psychological, or economic harm or suffering to women”,<sup>144</sup> and therefore, according to art. 4 para. 1 and art. 5 para. 1, State Parties – Poland is still one of them at the moment<sup>145</sup> – should take all the necessary measures to prevent denial and criminalisation of abortion without exceptions.<sup>146</sup>

Despite the current restrictive law, abortion in Poland was legalised in July 1932 and Poland was the second country in the world, after the Soviet Union (USSR), to legalise abortion.<sup>147</sup> Abortion was permitted if the health or the life of the woman was in danger, or if the pregnancy was the result of crimes such as rape or incest.<sup>148</sup> This law had, however, a further requirement, in addition to the performing physician, other two physicians had to give their consent to the procedure.<sup>149</sup> The right to abortion was expanded in April 1956, when the Polish Parliament legalised also abortion on medical grounds, if the pregnancy was the result of a criminal act, and abortion because of “difficult living conditions” which could be constituted, although it was not explicitly mentioned, by serious malformations of the fetus as well.<sup>150</sup> Excluding amendments on procedural requirements, which took place in 1956, 1959, 1969, 1981, and 1990, access to abortion for Polish women remained unchanged until 1990 when the first non-Communist Government, since the end of the Second World War, was elected in Poland.<sup>151</sup> The new law provided that, in order to proceed with a lawful abortion in the case of “difficult conditions”, the approval of two gynaecologists and the one of a general practitioner were needed, in addition to this, the women had to obtain the psychological counselling by a specialist approved by the State.<sup>152</sup> Additional restrictions were introduced in 1993 when the Polish Parliament removed the possibility to perform a lawful abortion on the grounds of “difficult living condition” and to perform abortions in private clinics.<sup>153</sup> At this point, legal abortion was permitted only in three cases: when the life or health of the woman were at serious risk, when

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<sup>144</sup> 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence. Istanbul. 2011. CETS No. 210. Art. 3a.

<sup>145</sup> February 2022.

<sup>146</sup> 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence. Istanbul. 2011. CETS No. 210. Art. 4.1; 5.1.

<sup>147</sup> United Nations. “Abortion Policies: A Global Review.” Vol. III, Oman to Zimbabwe. New York. 2002. Pag. 38. Accessed Feb 14, 2022. [https://www.un.org/en/development/desa/population/theme/policy/AbortionPoliciesAGlobalReview2002\\_Vol3.PDF](https://www.un.org/en/development/desa/population/theme/policy/AbortionPoliciesAGlobalReview2002_Vol3.PDF)

<sup>148</sup> UN, “Abortion Policies: A Global Review.”, op. cit., pag. 38.

<sup>149</sup> UN, “Abortion Policies: A Global Review.”, op. cit., pag. 38.

<sup>150</sup> UN, “Abortion Policies: A Global Review.”, op. cit., pag. 38.

<sup>151</sup> UN, “Abortion Policies: A Global Review.”, op. cit., pag. 38.

<sup>152</sup> UN, “Abortion Policies: A Global Review.”, op. cit., pag. 38.

<sup>153</sup> UN, “Abortion Policies: A Global Review.”, op. cit., pag. 38.

the pregnancy was the product of incest or rape, or when prenatal test confirmed that the fetus was seriously and irreversibly damaged; in order to proceed, the first and the third case both required the confirmation of two physicians, while the second one required the confirmation of a prosecutor.<sup>154</sup> Nevertheless, in 1994, after the work of women's groups and left-wing political parties, the Parliament approved a bill that allowed abortion on the grounds of socio-economic problems, but it never entered into force.<sup>155</sup> This was due to the fact that in Poland, after the approval of the Parliament, the President has to sign the law in order for it to become effective, however the President, who was against abortion, refused to sign the law and the legislation that entered into force in 1993 remained so.<sup>156</sup> Two years later, after the election of a new President, who was in favour of the introduction of reforms to the legislation on abortion, a new law was approved: it was once again possible to perform abortion on the grounds of difficult living conditions or of a precarious personal situation, but only up until the twelfth week of pregnancy.<sup>157</sup> However, the woman would have to undergo counselling, to give her written consent to the performance of the operations, and the abortion could take place not before three days after the counselling.<sup>158</sup> Furthermore, with this new law, abortions in private clinics were legalised again and the limit on the performance of abortion until the twelfth week was set also for abortions on the grounds of risks to health, of fetal impairment and when the pregnancy was the result of the two already mentioned crimes.<sup>159</sup>

These amendments aroused the hostility of pro-life groups and their validity was challenged before Poland's Constitutional Court by various legislators: they claimed that these new provisions about abortion were unconstitutional because of the implicit guarantee to the right of life in the Polish Constitution.<sup>160</sup> In mid 1997 the Polish Constitutional Tribunal agreed with the statements against the legislation on abortion in force at that time, specifically in regard to the admission of abortion on the base of socio-economic problems, and concluded that human life from the moment at which it arises was not adequately protected.<sup>161</sup> The Polish Government had to enact new provisions conforming to the rule of the Court not later than six months after the

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<sup>154</sup> The Family Planning, Human Embryo Protection and Conditions of Permissibility of Abortion Act of 7 January 1993. Art. 4a.

<sup>155</sup> UN, "Abortion Policies: A Global Review.", op. cit., pag. 38-39.

<sup>156</sup> UN, "Abortion Policies: A Global Review.", op. cit., pag. 39.

<sup>157</sup> UN, "Abortion Policies: A Global Review.", op. cit., pag. 39.

<sup>158</sup> UN, "Abortion Policies: A Global Review.", op. cit., pag. 39.

<sup>159</sup> UN, "Abortion Policies: A Global Review.", op. cit., pag. 39.

<sup>160</sup> UN, "Abortion Policies: A Global Review.", op. cit., pag. 39.

<sup>161</sup> UN, "Abortion Policies: A Global Review.", op. cit., pag. 39.



Court's decision, otherwise the decision could have been overridden by a two thirds majority vote in Parliament: the Parliament, whose majority, at the time of the vote, was composed by pro-life members, supported the decision of the Constitutional Court and re-established the law of 1993<sup>162</sup> which remained into force until 2011, when there was an attempt to ban abortion in any circumstance.<sup>163</sup> Similar attempts were made also in 2013, in 2015<sup>164</sup> and in 2016,<sup>165</sup> when large protests against the ban contributed to the defeat of the draft bill.<sup>166</sup> The same happened in 2018 in order to block another attempt that aimed to restrict the cases in which it is possible to perform a legal abortion.<sup>167</sup>

Since 2016, in fact, two very different legislative initiatives have been proposed to the Polish lower house: the "Stop Abortion" initiative, which aimed to restrict the possibility of performing abortion in order to protect life, and the "Save the Women" initiative, which, at the contrary, aimed to broaden legal abortion.<sup>168</sup> The Sejm immediately rejected the "Save the Women" project and continued to work on the first initiative,<sup>169</sup> which led to the so-called Black Protest, where both men and women protested against the development of the anti-abortion legislation;<sup>170</sup> they were dressed in black, from this comes the name of the protest, as a symbol of grief.<sup>171</sup> The protest made the Sejm reject also the "Stop Abortion" initiative.<sup>172</sup> In 2017 both initiatives were presented again before the Parliament which, once again rejected the pro-abortion one, but accepted for further consideration, although there was no second reading, the pro-life one, which in this redaction aimed to ban abortion in case of serious fetal impairment or incurable life-threatening disease.<sup>173</sup> With regards to abortion in these two cases, a motion with the Constitutional Court was filed claiming their

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<sup>162</sup> UN, "Abortion Policies: A Global Review.", op. cit., pag. 39.

<sup>163</sup> Hussein, Cottingham, Nowicka, and Kismodi, "Abortion in Poland: Politics, Progression and Regression.", op. cit., pag. 12.

<sup>164</sup> Grzymala-Busse Anna. "Why would Poland make its already strict abortion law draconian?" *The Washington Post*. Apr 18, 2016. Accessed Feb 12, 2022. <https://www.washingtonpost.com/news/monkey-cage/wp/2016/04/18/why-would-poland-make-its-already-strict-abortion-law-draconian/>

<sup>165</sup> Maierhofer Waltraud. "Abortion Democracy: Sarah Diehl's advocacy documentary film for women's rights in Poland and South Africa" *Sex Health Issues* 1. 2017. DOI: 10.15761/SHI.1000106

<sup>166</sup> Hussein, Cottingham, Nowicka, and Kismodi, "Abortion in Poland: Politics, Progression and Regression.", op. cit., pag. 12.

<sup>167</sup> Hussein, Cottingham, Nowicka, and Kismodi, "Abortion in Poland: Politics, Progression and Regression.", op. cit., pag. 11.

<sup>168</sup> Czarniawska Agata. "Cultural Clash in the Midst of Pandemic. Essay on protests in Poland." Dec 2020.

<sup>169</sup> Czarniawska, "Cultural Clash in the Midst of Pandemic. Essay on protests in Poland.", op. cit.

<sup>170</sup> WP Wiadomości. "'Black protest'. Demonstrations in many cities in Poland. How many people took part in the demonstrations?" Oct 4, 2016. Accessed Feb 12, 2022. <https://wiadomosci.wp.pl/czarny-protest-manifestacje-w-wielu-miastach-w-polsce-ile-osob-wzielo-udzial-w-demonstracjach-6043943038128769a> [my translation - original in Polish "'Czarny protest". Manifestacje w wielu miastach w Polsce. Ile osób wzięło udział w demonstracjach?"]

<sup>171</sup> Czarniawska, "Cultural Clash in the Midst of Pandemic. Essay on protests in Poland.", op. cit.

<sup>172</sup> Czarniawska, "Cultural Clash in the Midst of Pandemic. Essay on protests in Poland.", op. cit.

<sup>173</sup> Rzeczospolita. "Sejm on abortion: 'yes' for Stop Abortion, 'no' for Save Women." Jan 11, 2018. Accessed Feb 12, 2022. <https://www.rp.pl/prawo-dla-ciebie/art9990301-sejm-o-aborcji-tak-dla-zatrzymaj-aborcje-nie-dla-ratujmy-kobiety> [my translation - original in Polish "Sejm o aborcji: 'tak' dla Zatrzymaj Aborcję, 'nie' dla Ratujmy Kobiety."]

inconsistency with the Polish Constitution,<sup>174</sup> specifically the incompatibility with the articles on human dignity, the right to life and the principle of equality.<sup>175</sup>

The Constitutional Court ruled in favour of the motion three years later, in 2020,<sup>176</sup> and this decision heated protests all over Poland's territory, which caused the delay of the implementation of the Court's decision.<sup>177</sup> It is worth mentioning that, despite the lockdown due to Covid-19 pandemic, protests against the anti-abortion legislation took place anyway, but with different methods: people hold up posters and banners while queuing outside the supermarket or put them in windows and on balconies along with black umbrellas, which became a symbol of the previous "Black protests", protestors also tried to flood the social networks with posts on the matter publishing them every day at a certain time.<sup>178</sup>

This controversial and changing position in regards to abortion is due to the fact that abortion in Poland was legalised during the communist period and it was the result of a needs-based approach rather than the result of a fight for the right to it, subsequently, after the fall of the communism, the influence of the Catholic Church prevailed along with its cultural values that prioritise the family and consider women according to their function of reproduction and servants for others.<sup>179</sup> This happened because communism did not change Polish social structure and patriarchal values remained embedded in the Polish population along with the traditional gender roles assigned to men and women.<sup>180</sup> According to the patriarchal point of view that reduces women to their function of child bearers, abortion is perceived as the easy choice resulting from sex without responsibilities, from sex with the only scope of pleasure, from promiscuity.<sup>181</sup> Women are therefore not allowed to enjoy sexual intercourse solely for pleasure and they should accept the consequences of the sexual act, thus pregnancy.<sup>182</sup> Moreover, Polish society judges women and their sexuality and often pregnancy and childbirth are used in order to punish women for

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<sup>174</sup> Case K13/17. Oct 27, 2017. Available in Polish at <https://ipo.trybunal.gov.pl/ipo/view/sprawa.xhtml?&pokaz=dokumenty&sygnatura=K%2013/17>

<sup>175</sup> OKO.Press. "The Constitutional Court will check whether the anti-abortion law is compatible with the constitution. In 1997, the rules were tightened in this way." Nov 3, 2017. Accessed Feb 12, 2022. <https://oko.press/trybunal-konstytucyjny-sprawdzi-ustawa-antyaborcyjna-zgodna-konstytucja-1997-r-sposob-zaostrzono-przepisy/> [my translation – original in Polish "Trybunał Konstytucyjny sprawdzi, czy ustawa antyaborcyjna jest zgodna z Konstytucją. W 1997 roku w ten sposób zaostrozono przepisy."]

<sup>176</sup> Case K13/17. Oct 27, 2017.

<sup>177</sup> Czarniawska, "Cultural Clash in the Midst of Pandemic. Essay on protests in Poland.", op. cit.

<sup>178</sup> Wilczek Maria. "As abortion ban returns to parliament, Polish women find ways to protest amid lockdown." *Notes from Poland*. Apr 14, 2020. Accessed Feb 12, 2022. <https://notesfrompoland.com/2020/04/14/as-abortion-ban-returns-to-parliament-polish-women-find-ways-to-protest-amid-lockdown/>

<sup>179</sup> Nowicka Wanda. "The Struggle for Abortion Rights in Poland." in *SexPolitics. Reports from the Front Lines. Sexual Policy Watch*. Pag. 166-167.

<sup>180</sup> Nowicka, "The Struggle for Abortion Rights in Poland.", op. cit., pag. 174.

<sup>181</sup> Nowicka, "The Struggle for Abortion Rights in Poland.", op. cit., pag. 179.

<sup>182</sup> Nowicka, "The Struggle for Abortion Rights in Poland.", op. cit., pag. 179.

having had sex: it is not uncommon for Polish women in labour to hear midwives claiming that they have to be patient, that they had pleasure therefore now they have to suffer.<sup>183</sup> In public hospitals, also abortion was used as a punishment for women's promiscuity when it was legal, it was in fact often performed without anaesthetic and midwives and doctors made comments similar to the above-mentioned one.<sup>184</sup> It can be deduced, therefore, that suffering absolves women from their "sins", but this makes the child a sole instrument of punishment without considering their future well-being.<sup>185</sup> In addition to this, when it comes to rights, the rights of the fetus are becoming absolute rights, and on the contrary, women's rights are being increasingly restricted and, deprived of their rights, women have the duty to continue the pregnancy until term.<sup>186</sup>

Once again, patriarchal and traditional values, along with Catholic values, have a key role in provisions concerning women, their health and their lives. However, in regards to abortion, it was ascertained that its ban does not result in the elimination of the practice, in fact, it only moves it underground,<sup>187</sup> increasing the risks to women's lives and health. The Soviet Union was in fact the first country that legalised abortion in 1920 and it did so because, among many reasons, it aimed to fight the high death rate caused by illegal abortions.<sup>188</sup> In fact, women who do not want to carry to term the pregnancy and are not allowed to undergo abortion legally, usually seek other methods, which could consist in illegal abortion or abortion outside the territory of their country. An example of this can be the request of Polish women's organisations to the Dutch Non-Governmental Organisation (ONG) "Women on Waves" to sail to a Polish harbour in order to board Polish women and provide them with medical abortions in international waters.<sup>189</sup> In 2003, the ONG sailed to Poland with the Dutch ship "Lagenort" and provided the service twelve miles off the coast, where Dutch law could be applied.<sup>190</sup> Along with medical abortion, they provided with other activities and services such as workshops and information on sexual health.<sup>191</sup> It is important to underline here that there are two different types of abortion, medical and surgical:

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<sup>183</sup> Nowicka, "The Struggle for Abortion Rights in Poland.", op. cit., pag. 179-180.

<sup>184</sup> Nowicka, "The Struggle for Abortion Rights in Poland.", op. cit., pag. 180.

<sup>185</sup> Nowicka, "The Struggle for Abortion Rights in Poland.", op. cit., pag. 180.

<sup>186</sup> Nowicka, "The Struggle for Abortion Rights in Poland.", op. cit., pag. 180.

<sup>187</sup> Brown Karl. "For Girls it is an Honor ...: Women, Work, and Abortion in Communist Hungary, 1948-56" *Journal of Contemporary History*. Mar 25, 2019. Pag. 18. Accessed Feb 12, 2022. <https://doi.org/10.1177/0022009418824390>

<sup>188</sup> Heinemann Isabel. "From "Children by Choice" to "Families by Choice"? 20<sup>th</sup>-Century Reproductive Decision-Making between Social Change and Normative Transitions" in *Children by Choice? Changing Values, Reproduction, and Family Planning in the 20th Century*. De Gruyter Oldenbourg. Berlin. 2018. Pag. 231.

<sup>189</sup> Women on Waves. "Abortion ship Poland 2003" Accessed Feb 13, 2022. <https://www.womenonwaves.org/en/page/954/abortion-ship-poland-2003>

<sup>190</sup> Women on Waves, "Abortion ship Poland 2003", op. cit.

<sup>191</sup> Women on Waves, "Abortion ship Poland 2003", op. cit.

in the first one, the woman is provided with drugs that provoke uterine contractions resulting in a miscarriage similarly to a spontaneous one;<sup>192</sup> the second one includes a vast number of methods based on the mechanical dilatation of the cervix and the removal of the uterine contents,<sup>193</sup> the most common method is the vacuum aspiration.<sup>194</sup>

Another example of women seeking alternative ways to undergo abortion is abortion tourism. Abortion tourism is a form of medical tourism,<sup>195</sup> which is defined as “the practice of traveling to another country with the purpose of obtaining health care”,<sup>196</sup> therefore, it can be easily assumed that abortion tourism refers to women who travel abroad with the purpose to undergo abortion where it is legal.<sup>197</sup> Abortion tourism, however, puts at risk women’s health and well-being because women in these cases usually travel alone<sup>198</sup> and do not know where to seek post-abortion care in case of complications.<sup>199</sup> Polish women travel to different countries with this purpose, the ones with higher income tend to travel to other EU countries such as the Slovak Republic, Germany, Belgium as well as Austria, others choose Eastern Europe countries such as Belarus and Ukraine.<sup>200</sup> However, it should also be considered that abortion tourism might not be accessible to all women, therefore women who live in poverty or in rural areas might not even be able to travel abroad to get an abortion, and it is possible to deduce that they might undergo illegal abortion.

Another destination country for Polish women who seek abortion could be the Czech Republic and, in this regard, Polish Government asked Prague not to approve the provision that would simplify the process to undergo abortion in the Czech Republic for Polish women.<sup>201</sup> The letter from the Polish Government was addressed to the Czech Health Minister, Jan Blatný, who replied that the relevant provision was being debated by the Czech Senate and that he could not influence the decision, however he also

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<sup>192</sup> Hirvonen Ewa. “Polish Abortion Tourism” Laurea University of Applied Sciences. Degree Programme in Global Development and Management in Health Care. Master Thesis. 2017. Pag. 5.

<sup>193</sup> Cabezas E. “Medical versus surgical abortion.” *International Journal of Gynecology & Obstetrics* 63 Suppl. 1. 1999. Pag. S142.

<sup>194</sup> Hirvonen, “Polish Abortion Tourism”, op. cit., pag. 5.

<sup>195</sup> Hirvonen, “Polish Abortion Tourism”, op. cit., pag. 11.

<sup>196</sup> Ginter Peter M., Duncan W. Jack, Swayne Linda E. “The Strategic Management of Health Care Organizations.” 8<sup>th</sup> Edition. Feb 2018. Pag. 98.

<sup>197</sup> Hirvonen, “Polish Abortion Tourism”, op. cit., pag. 11.

<sup>198</sup> 2020 - European Parliament resolution of 26 November 2020 on the de facto ban on the right to abortion in Poland (2020/2876(RSP)). Para. 11.

<sup>199</sup> Hirvonen, “Polish Abortion Tourism”, op. cit., pag. 28.

<sup>200</sup> Connell John. “Medical Tourism.” CAB International. Wallingford. 2011. Pag. 143.

<sup>201</sup> Nault Ashley. “Poland asks Prague to stop “Abortion Tourism” of Polish Women.” *Tourism Review News*. May 9, 2021. Accessed Feb 13, 2022. <https://www.tourism-review.com/diplomatic-protest-against-abortion-tourism-of-polish-women-news12012> and Tilles Daniel. “Poland asked Czech Republic government to prevent “abortion tourism” by Polish women.” *Notes from Poland*. May 4, 2021. Accessed Feb 13, 2022. <https://notesfrompoland.com/2021/05/04/poland-asked-czech-government-to-prevent-abortion-tourism-by-polish-women/>

claimed that the performance of abortion on foreign women complies with both national and European legislation.<sup>202</sup>

In regards to the international community, with its resolution on abortion rights in Poland dated November 26<sup>th</sup> 2020, the European Parliament called for Poland not to apply any further restriction on women's sexual and reproductive rights affirming that the denial of these rights can be considered as a form of gender-based violence.<sup>203</sup>

The European Parliament furthermore condemned the above-mentioned restrictions claiming that they are in contrast with the principle of non-retrogression under international human rights law.<sup>204</sup> The document strongly condemned also the decision made by Poland to officially start the withdrawal from the IC, bringing to attention the fact that the withdrawal would result in a setback in the fields of gender equality, of women's rights, and of the fight against gender-based violence.<sup>205</sup>

The European Parliament is in accordance with the Commissioner for Human Rights of the Council of Europe, Nils Muižnieks, who reported that the ban on abortion in any circumstance would constitute a "serious backsliding on women's rights".<sup>206</sup>

In addition to this, Poland shall also ensure that in the cases in which abortion is allowed at the present moment, therefore according to the provision entered into force in 1993,<sup>207</sup> the practice is granted. There are in fact instances in which the right to abortion, as conceived in the Polish legislation, and access to the procedure have been denied or made very difficult: the case of *Tysiac v. Poland*,<sup>208</sup> the case of *R.R. v. Poland*,<sup>209</sup> as well as *P. and S. v. Poland*<sup>210</sup> can be used as examples.

In *Tysiac v. Poland* the ground for the abortion that has not been performed was the threat to the woman's health. After being examined by more than one physician, the applicant was provided with a certificate by a general practitioner that stated that the pregnancy, her third one, constituted a threat to her health because it could have

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<sup>202</sup> Nault. "Poland asks Prague to stop "Abortion Tourism" of Polish Women.", op. cit. and Tilles, "Poland asked Czech Republic government to prevent "abortion tourism" by Polish women.", op. cit.

<sup>203</sup> 2020 - European Parliament resolution of 26 November 2020 on the de facto ban on the right to abortion in Poland (2020/2876(RSP)). Para. 6.

<sup>204</sup> 2020 - European Parliament resolution of 26 November 2020 on the de facto ban on the right to abortion in Poland (2020/2876(RSP)). Para. 6.

<sup>205</sup> 2020 - European Parliament resolution of 26 November 2020 on the de facto ban on the right to abortion in Poland (2020/2876(RSP)). Para. 8.

<sup>206</sup> Muižnieks Nils, Commissioner for Human Rights of the Council of Europe. "Report following his visit to Poland from 9 to 12 February 2016." CommDH(2016)23. Strasbourg. Jun 15, 2016. Pag. 39.

<sup>207</sup> The Family Planning, Human Embryo Protection and Conditions of Permissibility of Abortion Act of 7 January 1993.

<sup>208</sup> *Tysiac v. Poland*, Appl. no. 5410/03, ECtHR, 20 March 2007.

<sup>209</sup> *R.R. v. Poland*, Appl. no. 27617704, ECtHR, 26 May 2011.

<sup>210</sup> *P. and S. v. Poland*, Appl. no. 57375/08, ECtHR, 30 October 2012.

caused the rupture of her uterus and significant pathological changes in her retina, as she already suffered of short-sightedness.<sup>211</sup> Despite of this, when the applicant has been examined at the public hospital which she contacted in order to obtain the termination of her pregnancy, the physicians that checked her conditions signed a certificate that attested that her shorth-sightedness and her previous two deliveries by Caesarean section could not be considered reasons in order to proceed with the termination of her pregnancy.<sup>212</sup> The applicant gave birth by Caesarean section and, after the delivery, her eyesight badly deteriorated, the women was risking of going blind and was informed that there were no prospects of correcting the changes to her retina because they were at a very advanced stage.<sup>213</sup> The applicant was later recognised as significantly disabled, whereas previously, according to the disability panel, she suffered from a disability of medium severity.<sup>214</sup> She was in addition recognised by the social-welfare centre as unable to take care of her three children because of her incapacity to see from a distance of more than 1.5 metres.<sup>215</sup> The applicant submitted a criminal complaint against the doctor that allegedly prevented her from undergoing abortion on medical grounds as recommended by the general physician.<sup>216</sup> Although the applicant's appeals, the final decision of the District Court was to discontinue the case.<sup>217</sup> Tysiac brought her case before the European Court of Human Rights (ECtHR) and the Court concluded that the Polish legislation does not include "any effective mechanisms capable of determining whether the conditions for obtaining a lawful abortion had been met in her case", and that Poland has in addition breached the applicant's right to respect of her private life causing her severe distress and anguish when considering the possible consequences of her pregnancy and of the childbirth for her health, and did not provide the applicant with procedural instruments that could have allowed her to vindicate her right.<sup>218</sup>

In the case *R.R. v. Poland*, the ground for abortion was the fact that the fetus was seriously and irreversibly damaged. The applicant was informed that the fetus could have been affected with some malformation and she expressed her wish to terminate the pregnancy if the suspicion was proven true.<sup>219</sup> The applicant underwent other ultrasound scans, the possibility that the fetus was suffering from some forms of

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<sup>211</sup> Tysiac v. Poland, para. 10.

<sup>212</sup> Tysiac v. Poland, para. 12-13, 15.

<sup>213</sup> Tysiac v. Poland, para. 15-17.

<sup>214</sup> Tysiac v. Poland, para. 18.

<sup>215</sup> Tysiac v. Poland, para. 31.

<sup>216</sup> Tysiac v. Poland, para. 19.

<sup>217</sup> Tysiac v. Poland, para. 29.

<sup>218</sup> Tysiac v. Poland, para. 124-125.

<sup>219</sup> R.R. v. Poland, para. 9.

malformation was confirmed by the tests and the woman was recommended to undergo genetic tests, like amniocentesis, in order to confirm or dispel this suspicion of either Edwards or Turner syndrome.<sup>220</sup> The applicant was however refused a formal referral to undergo the genetic tests, she was also refused to undergo abortion with the claim that the sole scan could not confirm the diagnosis of fetal severe malformation, these denials happened in more than one hospital.<sup>221</sup> The genetic test was performed only during the twenty-third week of pregnancy and the result needed two weeks to be received, the applicant also wrote a letter to the hospital underlining that she had not received adequate treatment and that she had the sensation that the doctors were intentionally postponing all decisions in her case in order for her to be unable to obtain abortion within the time-limit set by the Polish legislation.<sup>222</sup> On the same day in which she received the result of the genetic test, which confirmed that the fetus was affected by Turner syndrome, she asked to obtain abortion, but her request was denied because at that stage it was too late to perform the practice as the fetus could survive outside the mother's body.<sup>223</sup> After the birth of a girl affected by Turner syndrome, the applicant filed a complaint against the persons involved in her case with the accusation of failing in safeguarding her interests protected by the Polish legislation, on account of the failure by doctors to timely provide her with prenatal examinations.<sup>224</sup> This caused the applicant to be denied information on the fetus' condition and to be deprived of the possibility to decide herself whether she wanted to terminate the pregnancy in a lawful condition or not, as she was obliged to bring the pregnancy to term.<sup>225</sup> The court dismissed all the claiming except for the one against the physician who was found guilty of having disclosed to the public information related to the applicant's health and private life and covered by medical secrecy.<sup>226</sup> After the applicant's appeal, the case was referred to the Supreme Court, which quashed the previous judgement and ruled that the compensation awarded by the lower court was inadequate and awarded the applicant a higher sum.<sup>227</sup> The hospitals were found liable for negligent acts of their employees as they delayed the decision process postponing the genetic tests and performing other tests that were irrelevant for the diagnosis of Turner syndrome, causing unnecessary stress to the

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<sup>220</sup> R.R. v. Poland, para. 12-13, 16.

<sup>221</sup> R.R. v. Poland, para. 14, 17; 20.

<sup>222</sup> R.R. v. Poland, para. 28, 32.

<sup>223</sup> R.R. v. Poland, para. 33.

<sup>224</sup> R.R. v. Poland, para. 37-38.

<sup>225</sup> R.R. v. Poland, para. 38.

<sup>226</sup> R.R. v. Poland, para. 45-47.

<sup>227</sup> R.R. v. Poland, para. 51, 56-57.

applicant.<sup>228</sup> In regard to this case, the ECtHR ruled that Poland failed to provide the applicant with “any effective mechanisms which would have enabled the applicant to seek access to a diagnostic service, decisive for the possibility of exercising her right to take an informed decision as to whether to seek an abortion or not” violating her right to respect for private life and family life.<sup>229</sup> Moreover, the ECtHR determined that Poland breached art. 3<sup>230</sup> of the European Convention on Human Rights (ECHR) because the applicant suffered “acute anguish” due to the fact that health professionals did not properly acknowledge and address her concerns.<sup>231</sup> The ECtHR also highlighted that the applicant was denied of the possibility to make an informed decision on whether to terminate her pregnancy or not within the time-limit provided by Polish legislation.<sup>232</sup>

In the case *P. and S. v. Poland*, the ground for abortion was the fact that the pregnancy was the result of rape. The first applicant claimed that she had been raped, but at the Public University Health Care Unit in Lublin she was told by the medical staff that she could not be neither examined nor provided with medical assistance as she was a minor and they needed the consent of her legal guardian, however a doctor reported the case to the police and notified the first applicant’s parents.<sup>233</sup> The second applicant, the mother of the first applicant, gave her consent for examination: the first applicant was found in a state of emotional shock and was offered psychological help, furthermore, the presence of bruises on the first applicant’s body was confirmed.<sup>234</sup> The first applicant became pregnant as a consequence of the rape and, along with the second applicant, decided that abortion would have been the best option in those circumstances.<sup>235</sup> The first applicant was questioned by the police concerning the rape at the presence of the second applicant and of the alleged perpetrator’s defence lawyer;<sup>236</sup> the District Prosecutor issued a certificate that stated that the pregnancy was the result of an “unlawful sexual intercourse with a minor under 15 years of age”.<sup>237</sup> When the applicants asked for a referral for an abortion, she was advised that it could have been provided by the regional consultant for gynaecology and obstetrics who claimed that he was not obliged to issue the document and suggested

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<sup>228</sup> R.R. v. Poland, para. 61.

<sup>229</sup> R.R. v. Poland, para. 208.

<sup>230</sup> 1950 Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950, ETS No. 5. Art. 3: Prohibition of torture.

<sup>231</sup> R.R. v. Poland, para. 159; 162.

<sup>232</sup> R.R. v. Poland, para. 159.

<sup>233</sup> *P. and S. v. Poland*, para. 6.

<sup>234</sup> *P. and S. v. Poland*, para. 7.

<sup>235</sup> *P. and S. v. Poland*, para. 8.

<sup>236</sup> *P. and S. v. Poland*, para. 9.

<sup>237</sup> *P. and S. v. Poland*, para. 10.



to get the girl marry the perpetrator in order to repair the damage.<sup>238</sup> Other doctors suggested the applicants to meet with a Catholic priest.<sup>239</sup> The applicants were told to address another hospital, where the head of the gynaecological ward stated that the applicants needed more time to take the decision and later made the mother sign a statement where she declared to agree to the procedure of abortion understanding that it could lead to the death of the first applicant.<sup>240</sup> When the first applicant returned alone to the hospital she was de facto obliged to talk with a Catholic priest who tried to convince her not to terminate the pregnancy.<sup>241</sup> The priest and the doctor, furthermore, made the first applicant sign a paper where she stated that she wished to continue the pregnancy, the first applicant claimed that she signed it only because she did not want to be impolite.<sup>242</sup> When the second applicant arrived there was an argument and the doctor stated that she would have not performed the abortion and implied that also the other doctors at the hospital would not have performed the procedure.<sup>243</sup> The case became national news after the second applicant contacted the Federation for Women and Family in Planning in Warsaw for help and after the hospital issued a press release to confirm that it would have not performed an abortion in the first applicant's case.<sup>244</sup> In Warsaw the applicants provided the hospital with the relevant documents in order to obtain a lawful abortion, however the head of the gynaecological ward was informed from the previous hospital that the first applicant did not want to undergo abortion.<sup>245</sup> The applicants were told that, according to the law, they now had to wait other three days before obtaining the abortion and the first applicant was contacted by the Catholic priest, who also went to the Warsaw hospital followed by an anti-abortion activist upsetting the first applicant with their attempt to convince her to continue the pregnancy and with the fact that the hospital did not control who could approach her.<sup>246</sup> Apparently, now also the consent of the father was needed, and both applicants, as well as the father, had to spoke with a psychologist who prepared an opinion on the case.<sup>247</sup> Furthermore, the first applicant was informed that the hospital was receiving a lot of pressure in order not to perform the abortion, this made the applicants feel manipulated and helpless and made them take the

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<sup>238</sup> P. and S. v. Poland, para. 11; 13.

<sup>239</sup> P. and S. v. Poland, para. 12.

<sup>240</sup> P. and S. v. Poland, para. 13-15.

<sup>241</sup> P. and S. v. Poland, para. 16-17; 19.

<sup>242</sup> P. and S. v. Poland, para. 19.

<sup>243</sup> P. and S. v. Poland, para. 19-21.

<sup>244</sup> P. and S. v. Poland, para. 22-24.

<sup>245</sup> P. and S. v. Poland, para. 25.

<sup>246</sup> P. and S. v. Poland, para. 26.

<sup>247</sup> P. and S. v. Poland, para. 27.

decision to leave also the hospital in Warsaw.<sup>248</sup> In addition to this, that day the applicants discovered that the second applicant's parental rights had been restricted and that there was an order to place the first applicant in a juvenile shelter without delay.<sup>249</sup> The second applicant appealed against the decision, the first applicant was questioned on the matter and testified that the pregnancy was the result of rape and that she was not being coerced to terminate the pregnancy.<sup>250</sup> The decision concerning the first applicant's placement in a juvenile shelter was quashed.<sup>251</sup> The second applicant file a complaint also before the Office for Patients' Rights of the Ministry of Health asking them to help the first applicant obtain a lawful abortion, submitting all the relevant documents.<sup>252</sup> After the solution of some issues, an official of the Ministry informed the second applicant that her daughter could obtain abortion in Gdansk where the abortion was in fact performed, but in a clandestine manner although the first applicant had the right to undergo a lawful abortion.<sup>253</sup> On this case, the ECtHR reported that the provisions in the Polish law does not provide Polish women who seek abortion with adequate protection to their personal rights in the context of a controversy concerning the determination of access to lawful abortion.<sup>254</sup>

In conclusion, in accordance with what was reported by the European Parliament and by the Commissioner for Human Rights of the CoE, by withdrawing from the Istanbul Convention Poland would endanger women's rights. The implementation of the Convention in the country would request Poland to at least maintain the rights to abortion that are granted at the moment to Polish women. Denial of abortion can cause severe psychological harm to women<sup>255</sup> as well as physical injuries<sup>256</sup> and for these reasons it can fall under the definition of violence against women set out in art. 3a of the IC.<sup>257</sup> States Parties shall therefore take measures in order to eliminate this kind of violence. The first step in this case could be the raise of awareness on the topic of women rights and the elimination of the stigmatisation of women who undergo

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<sup>248</sup> P. and S. v. Poland, para. 27-28.

<sup>249</sup> P. and S. v. Poland, para. 29.

<sup>250</sup> P. and S. v. Poland, para. 35-36.

<sup>251</sup> P. and S. v. Poland, para. 37.

<sup>252</sup> P. and S. v. Poland, para. 39.

<sup>253</sup> P. and S. v. Poland, para. 40-41.

<sup>254</sup> P. and S. v. Poland, para. 110.

<sup>255</sup> United Nations Human Rights Committee. "Concluding observations on the fourth periodic report of Ireland." Aug 19, 2014. Pag. 3. Accessed Feb 14, 2022. [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fIRL%2fCO%2f4&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fIRL%2fCO%2f4&Lang=en)

<sup>256</sup> De Vido Sara. "Violence against women's health in international law." Melland Schill Studies in International Law. Manchester University Press. 2020. Pag. 23.

<sup>257</sup> 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence. Istanbul. 2011. CETS No. 210. Art. 3a.

the procedure and of the patriarchal values that obliged women to be mothers considering it the right choice to make.<sup>258</sup> The position of pregnant women who want to undergo abortion is very vulnerable<sup>259</sup> and by eliminating gender-based judgments on the matter, Poland would allow them to take the decision themselves, without doctors asking them to address Catholic figures<sup>260</sup> and without being addressed against their will by anti-abortion parties.<sup>261</sup>

Removing the stigma in regards to abortion is fundamental, however, Poland should also, provide with sexual education and relationship education, along with information on sexual and reproductive rights, family planning, contraceptive methods and safe and legal abortion, as well as with information on girls' and women's autonomy and ability to make free and independent decisions about their lives and bodies.<sup>262</sup> The lack of the above-mentioned information can in fact result in a higher rate of unwanted pregnancies.<sup>263</sup>

#### *1.4. Russian Federation: The Rejection of the Convention*

As of today, the Russian Federation is the only country of the Council of Europe, along with Azerbaijan, that has not signed the IC.

As stated by Vladimir Legoyda, the Chairman of the Synodal Department of the Moscow Patriarchate for the Relationship of the Church with society and the media, in Russia all the conservative forces have united against the signature of IC in order to defend the right of the Russian people to adhere to the traditional family values, which means marriage between a man and a woman.<sup>264</sup> Hence it is possible to deduce that in the RF – once again, as in Bulgaria, Poland, and Ukraine<sup>265</sup> – the notion of gender as social constructed role introduced by the Convention has been misunderstood and it has been linked to the gender ideology and the LGBTQI+ community. A proof of the similar idea present in Russia and in Ukraine can be found in one of Telegram message published by Legoyda, he in fact mentioned the position

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<sup>258</sup> De Vido, "Violence against women's health in international law.", op. cit., pag. 59.

<sup>259</sup> P. and S. v. Poland, para. 110.

<sup>260</sup> P. and S. v. Poland, para. 12.

<sup>261</sup> P. and S. v. Poland, para. 26.

<sup>262</sup> 2020 - European Parliament resolution of 26 November 2020 on the de facto ban on the right to abortion in Poland (2020/2876(RSP)). Para. G.

<sup>263</sup> 2020 - European Parliament resolution of 26 November 2020 on the de facto ban on the right to abortion in Poland (2020/2876(RSP)). Para. 7.

<sup>264</sup> Риа Новости. "Легойда: отказ от Стамбульской конвенции сплотил консерваторов России." Июнь 16, 2020. Обновлено Мар 15, 2021. Доступ Мая 23, 2021. <https://ria.ru/20200616/1573030957.html> [Ria Novosti. "Legoyda: The rejection of the Istanbul Convention rallied Russia's conservatives." Jun 16, 2020. Updated Mar 15, 2021. Accessed May 23, 2021. <https://ria.ru/20200616/1573030957.html> - my translation]

<sup>265</sup> The case of Ukraine will be analysed in Sub-chapter 1.5.

of the All-Ukrainian Council of Churches and Religious Organisations (AUCCRO) against the IC in support of his thesis.<sup>266</sup> Logoyda underlined the fact that AUCCRO's members consider unacceptable for the Ukrainian society the imposition of gender's ideology that they believe the IC would impose – but, as already analysed, the IC considers gender as the socially constructed roles without reference to a third gender or to the LGBTQI+ community – Logoyda then linked his position to the protection and the promotion of traditional moral and family values in Russia.<sup>267</sup>

During the last decade, the so-called “illiberal turn” affected the RF and individual rights of women, but also of children and sexual minorities, have been challenged, as seen in the previously analysed Polish case.<sup>268</sup> However, Holm-Hansen underlined that the situation in these two countries, Russia and Poland, is not identical.<sup>269</sup> According to the researcher, the Russian President Vladimir Putin is not an ideologically convinced national conservative, but he takes advantage in covering this position and in the recent years he strengthened his alliance with the Church and other reactionary and patriotic actors.<sup>270</sup>

The decrease in women's rights can be directly proved by the law on the decriminalisation of beatings in the family signed by President Putin on February 7<sup>th</sup> 2017 (federal law dated 7<sup>th</sup> February 2017 N. 8-ФЗ “On amendments to Article 116 of the Criminal Code of the Russian Federation”, in Russian “*О внесении изменения в статью 116 Уголовного кодекса Российской Федерации*”), which led to a high increase in domestic violence and also in violence against children.<sup>271</sup> In 2017, one of the supporters of the decriminalisation of domestic violence was the Senator Elena Mizoulina, she fought for the removal of the term “domestic assault” from the Russian Criminal Code and stated that women are “*weak beings*” and that they should not be “*offended*” when beaten.<sup>272</sup> Nevertheless, there is internal division on this topic, in reality, the speaker of the Federation Council, Valentina Matvienko, underlined more than once that combating domestic violence is a topical issue in the RF and that there

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<sup>266</sup> Vladimir Legoyda (Владимир Легойда), (@vladimirlegoyda), message on Telegram. Jun 16, 2020, 18:20. Accessed Dec 18, 2021.

<sup>267</sup> Vladimir Legoyda (Владимир Легойда), (@vladimirlegoyda), message on Telegram. Jun 16, 2020, 18:20. Accessed Dec 18, 2021.

<sup>268</sup> Gjengedal, “The nuclear family has become a political tug-of-war in Russia and Poland.”, op. cit.

<sup>269</sup> Gjengedal, “The nuclear family has become a political tug-of-war in Russia and Poland.”, op. cit.

<sup>270</sup> Gjengedal, “The nuclear family has become a political tug-of-war in Russia and Poland.”, op. cit.

<sup>271</sup> Тягай Екатерина. “Страна советов. Что мешает улучшить положение женщин в России на законодательном уровне.” *Forbes Woman*. Окт 21, 2019. Доступ Мая 23, 2021. <https://www.forbes.ru/forbes-woman/385837-strana-sovetov-cto-meshaet-uluchshit-polozhenie-zhenshchin-v-rossii-na> [Tyagay Ekaterina. “The country of the Soviets. What prevents improving the status of women in Russia at the legislative level.” *Forbes Woman*. Oct 21, 2019. Accessed May 23, 2021. <https://www.forbes.ru/forbes-woman/385837-strana-sovetov-cto-meshaet-uluchshit-polozhenie-zhenshchin-v-rossii-na> – my translation]

<sup>272</sup> Studer, “The Istanbul Convention and the Global Fight to End Violence Against Women: Where Do We Stand?”, op. cit.

is a bill ready for the adoption of a law on the prevention of domestic violence.<sup>273</sup> However, it is possible to deduce that the patriarchal values, that are still ingrained in the Russian population, are the main argument against this bill on the prevention of domestic violence.<sup>274</sup> In fact, gender violence and discrimination in Russia have historical roots, although the former USSR proclaimed gender equality: the legacy of the “gender paradox” in the USSR, where women had the same political and legal rights as men and the same education and employment possibilities, but were excluded from political institutions, continues to produce its effects on the present-day Russian society.<sup>275</sup>

In relation to these values, the signature and ratification of the IC by the RF would also imply Russia to take action in order to change the above-mentioned inequalities and cultural behaviours as per art. 12, 13 and 14<sup>276</sup> of the IC on prevention, awareness-raising, and education. According to these articles, State Parties shall actively take measures to eradicate all forms of practises, prejudices, traditions, and customs based on gender inequality or on stereotypes, promote or conduct awareness-raising campaigns or programmes, and include teaching materials on the issues covered by the Convention at all levels of education including them also in informal educational facilities. Nevertheless, it is possible to argue that this is one of the reasons why Russia has not signed the Convention, in fact, the RF dismissed the recommendations to ratify the IC stating in its report prepared for the Human Rights Council Universal Periodic Review that some of the provisions of the Convention are not in line with “the country’s principal approaches to the protection and promotion of traditional moral and the framework for the State family policy”.<sup>277</sup> Moreover, Russia considers its measures to combat domestic violence and gender-based violence fully

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<sup>273</sup> Тягай, “Страна советов. Что мешает улучшить положение женщин в России на законодательном уровне.”, указ. соч. [Туагау, “The country of the Soviets. What prevents improving the status of women in Russia at the legislative level.”, op. cit.]

<sup>274</sup> Тягай, “Страна советов. Что мешает улучшить положение женщин в России на законодательном уровне.”, указ. соч. [Туагау, “The country of the Soviets. What prevents improving the status of women in Russia at the legislative level.”, op. cit.]

<sup>275</sup> Hawkins Catherine A., Knox Karen S. “Gender violence and discrimination in Russia: Learning from an American–Russian partnership”. *International Social Work*. Vol. 57(5). 2014. Pag. 512.

<sup>276</sup> 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence. Istanbul. 2011. CETS No. 210. Art. 12.1: *Parties shall take the necessary measures to promote changes in the social and cultural patterns of behaviour of women and men with a view to eradicating prejudices, customs, traditions and all other practices which are based on the idea of the inferiority of women or on stereotyped roles for women and men*; Art. 13.1: *Parties shall promote or conduct, on a regular basis and at all levels, awareness-raising campaigns or programmes, including in co-operation with national human rights institutions and equality bodies, civil society and non-governmental organisations, especially women’s organisations, where appropriate, to increase awareness and understanding among the general public of the different manifestations of all forms of violence covered by the scope of this Convention, their consequences on children and the need to prevent such violence.*; Art. 14.1: *Parties shall take, where appropriate, the necessary steps to include teaching material on issues such as equality between women and men, non-stereotyped gender roles, mutual respect, non-violent conflict resolution in interpersonal relationships, gender-based violence against women and the right to personal integrity, adapted to the evolving capacity of learners, in formal curricula and at all levels of education.*; Art. 14.2: *Parties shall take the necessary steps to promote the principles referred to in paragraph 1 in informal educational facilities, as well as in sports, cultural and leisure facilities and the media.*

<sup>277</sup> UN Human Rights Council, Working Group on the Universal Periodic Review, Thirtieth session, “National report submitted in accordance with paragraph 5 of the annex to resolution 16/21 of the Human Rights Council. Russian Federation.”, op. cit.

sufficient, nevertheless this declaration is in contradiction with its previous statement where the RF promised to improve the existing legislation.<sup>278</sup>

The opinion of third parties is in contrast with the statement of the RF, in fact, in May 2018 during the Universal Periodic Review organized by the UN Human Rights Council, both stakeholders and the UN Committees showed their concern with regards to the situation of women in Russia.<sup>279</sup> The Committee on the Elimination of Discrimination against Women (CEDAW) underlined its concern also about the persistent patriarchy that characterises the Russian society and about the high level of VAW, in particular domestic violence and sexual violence.<sup>280</sup>

Nevertheless, in Russia there are also figures that stand out in the fight against VAW, the three main female figures on this fight are Anna Rivina, Marina Pisklakova-Parker, and Alena Popova.<sup>281</sup> Anna Rivina is the founder of a platform called nasiliu.net where it is possible to report cases of violence and where women who suffered abuses are also provided with legal and psychological assistance.<sup>282</sup> Marina Pisklakova-Parker founded the ANNA Center (the National Centre for the Prevention of Violence) in 1993, which since then has offered various types of support, including legal advice and psychological support, to women victims of violence. Marina Pisklakova-Parker is one of the creators of the first *helpline* for Russian women in distress.<sup>283</sup> Alena Popova is a very popular lawyer in the RF, she started many humanitarian projects including the Protect Women Project and she is also co-author of the law for the prevention of domestic violence.<sup>284</sup>

In conclusion, the RF did not sign the IC stating that the Convention does not conform with its traditions and values and that its measures to fight VAW and domestic violence are sufficient. However, statistics show that this is not the case and that VAW is a topical issue in Russia. Furthermore, the country was urged by the CEDAW “to introduce ex officio prosecution of domestic and sexual violence and ensure that women and girls who are victims of violence have access to immediate means of

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<sup>278</sup> Pompala, “Istanbul Convention in Eastern Europe.”, op. cit.

<sup>279</sup> United Nations Human Rights Council, Working Group on the Universal Periodic Review, Thirtieth session. “Compilation on the Russian Federation. Report of the Office of the United Nations High Commissioner for Human rights.” Mar 19, 2018. Accessed Feb 14, 2022. <https://www.ohchr.org/EN/HRBodies/UPR/Pages/RUindex.aspx> and United Nations Human Rights Council, Working Group on the Universal Periodic Review, Thirtieth session. “Summary of Stakeholders’ submissions on Russian Federation. Report of the Office of the United Nations High Commissioner for Human rights.” Mar 9, 2018. Accessed Feb 14, 2022. <https://www.ohchr.org/EN/HRBodies/UPR/Pages/RUindex.aspx>

<sup>280</sup> Committee on the Elimination of Discrimination against Women. “Concluding observations on the eighth periodic report of the Russian Federation.” Nov 20, 2015.

<sup>281</sup> Studer, “The Istanbul Convention and the Global Fight to End Violence Against Women: Where Do We Stand?”, op. cit.

<sup>282</sup> Studer, “The Istanbul Convention and the Global Fight to End Violence Against Women: Where Do We Stand?”, op. cit.

<sup>283</sup> Studer, “The Istanbul Convention and the Global Fight to End Violence Against Women: Where Do We Stand?”, op. cit.

<sup>284</sup> Studer, “The Istanbul Convention and the Global Fight to End Violence Against Women: Where Do We Stand?”, op. cit.

redress and that perpetrators are prosecuted and punished”.<sup>285</sup> Signing and then ratifying the IC could be an occasion to improve the situation in relation to VAW and domestic violence in the territory of the RF: being the IC binding, Russia would be obliged to comply to the requested standards. This would imply campaigns and programmes to raise awareness on the issue in order to overcome the patriarchal values embedded in the Russian society and that are at the roots of gender-based violence.

### *1.5. Ukraine: Politics, religion and mentality against the Convention*

Ukraine signed the Istanbul Convention on November 7<sup>th</sup> 2011, the same year when the IC was opened for signature, however, until now,<sup>286</sup> it has not ratified it. The Ukrainian Government discussed the ratification more than once: Ukraine came really close to ratifying the IC twice, but both in 2017 and then in 2020 the ratification of the IC was not accomplished due to the intervention of the religious community which stopped the process of ratification, this underlines that religion has a key role in the opposition to the ratification of the IC by Ukraine,<sup>287</sup> as in the previously analysed cases of Poland, where the Catholic Church did not prevent the country from ratifying the IC, but it has been using its influence in support of Poland’s withdrawal from the IC, and of Russia, where the State considers the protection of the traditional values of the Orthodox Church its duty.

Experts noticed that there are two main reasons why Ukraine has not ratified the Convention. The first reason is ideological: the experts highlighted the lack of understanding of some concepts defined in the Convention, one of them, as analysed also in the case of Bulgaria, is the concept of “gender” defined by art. 3c of the IC.<sup>288</sup> Furthermore, opposers of the Convention, who support the “traditional family values”, used this lack of understating in order to speculate and manipulate the notions contained in the IC. In fact, taking again into consideration the concept of “gender”, it possible to notice that it is associated to the destruction of traditional families and to

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<sup>285</sup> CEDAW, “Concluding observations on the eighth periodic report of the Russian Federation.”, op. cit.

<sup>286</sup> February 2022.

<sup>287</sup> Elsner, “Orthodoxy, gender, and the Istanbul Convention: mapping the discourse in Ukraine.”, op. cit., pag. 4.

<sup>288</sup> Куренкова Елена. “Женщина, знай свое право! Что такое Стамбульская конвенция и почему Украина никак ее не ратифицирует?” Громадське. Мар 8, 2021. Доступ Мая 23, 2021. <https://hromadske.ua/ru/posts/zhenshina-znaj-svoe-pravo-cto-takoe-stambul'skaya-konvenciya-i-pochemu-ukraina-nikak-ee-ne-ratificiruet> [Kurenkova Elena. “Woman, know your right! What is this Istanbul Convention and why does Ukraine not ratify it?” Hromadske. Mar 8, 2021. Accessed May 23, 2021. <https://hromadske.ua/ru/posts/zhenshina-znaj-svoe-pravo-cto-takoe-stambul'skaya-konvenciya-i-pochemu-ukraina-nikak-ee-ne-ratificiruet> – my translation]

the introduction of a third gender.<sup>289</sup> Some believe that the ratification of the IC would lead to the disruption of traditional families in Ukraine, but on the contrary, the aim of the Convention is preventing violence against women and domestic violence, which most commonly happen in traditional families rather than in modern or postmodern families, and, as underlined by a study by Yuliya Levchenko, when violence happens, a family is already destroyed; preventing violence and working with abusers as per the IC regulations would help preserving families.<sup>290</sup> Traditional gender roles and stereotypes are, in reality, really embedded in the Ukrainian society, many believe that women should take care of the home and cook for the family, while men should have the dominant role in the household and should financially provide for the family.<sup>291</sup>

Proofs of the misconceptions concerning the introduction of a third gender can be found in the idea of one of the organizers of the association “For Family Values” (“За семейные ценности”) and deputy of the Ukrainian Parliament, according to this idea, there is no difference between the notion of gender (“пол”, the biological sex) and gender (“гендер”, the social construct) and introducing this absence of distinction in the national legislation would lead to the possibility to change the definitions of “man” and “woman” in general.<sup>292</sup> The inadmissibility of the introduction of the concepts contained in the IC for the Ukrainian society and spirituality was invoked also by some Ukrainian deputies in 2016, and they were supported by the Church, which wanted to prevent the “gender ideology” to be imposed in Ukraine.<sup>293</sup> The Church, in fact, labelled the concept of “gender” included in the IC as an “ideology” which would allow people to choose their own “gender” along with the corresponding social role.<sup>294</sup> After that, in 2017 AUCCRO called upon the Verkhovna Rada (the Ukrainian Parliament) not to ratify the IC, stating that the Convention could be an instrument to make new “gender roles” and homosexual relations popular in schools and universities, and exposing their fear of the promotion of same-sex relations through shallow gender

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<sup>289</sup> Куренкова, “Женщина, знай своє право! Что такое Стамбульская конвенция и почему Украина никак ее не ратифицирует?”, указ. соч. [Kurenkova, “Woman, know your right! What is this Istanbul Convention and why does Ukraine not ratify it?”, op. cit.]

<sup>290</sup> Levchenko Yuliya. “Probability of the Istanbul Convention Ratification in Ukraine: Analysis of the Polish Experience.” *Series Philos.-Political Studies*. Issue 31. 2020. Accessed May 9, 2021. <https://doi.org/10.30970/PPS.2020.31.20> [original in Ukrainian “Дуальний характер поглядюів на ратифікацію Стамбульської Конвенції в Україні та Польщі”]

<sup>291</sup> Amnesty International. “Not a Private Matter. Domestic and Sexual Violence against Women in Eastern Ukraine.” Amnesty International Ltd. 2020. Pag. 16.

<sup>292</sup> Куренкова, “Женщина, знай своє право! Что такое Стамбульская конвенция и почему Украина никак ее не ратифицирует?”, указ. соч. [Kurenkova, “Woman, know your right! What is this Istanbul Convention and why does Ukraine not ratify it?”, op. cit.]

<sup>293</sup> Куренкова, “Женщина, знай своє право! Что такое Стамбульская конвенция и почему Украина никак ее не ратифицирует?”, указ. соч. [Kurenkova, “Woman, know your right! What is this Istanbul Convention and why does Ukraine not ratify it?”, op. cit.]

<sup>294</sup> Elsner, “Orthodoxy, gender, and the Istanbul Convention: mapping the discourse in Ukraine.”, op. cit., pag. 12.



equality programmes.<sup>295</sup> During the same year, the Rada approved Bill No. 4952 which criminalises domestic violence and adopted a separate bill to prevent and combat it (Bill No. 5294), however, in the same session, the Parliament voted against the ratification of the IC, this happened because the national legislation does not use the word “gender” and thereby Ukraine can address violence against women in a less comprehensive manner.<sup>296</sup> Notwithstanding this, the aim of the bills was to implement the provisions of the Council of Europe Convention on preventing and combating violence against women and domestic violence,<sup>297</sup> as a consequence they introduced criminal responsibility for domestic violence, which is defined as follows in the Ukrainian Criminal Code:

“the deliberate systematic commission of physical, psychological or economic violence against a spouse or former spouse or other person with whom the perpetrator is (was) in a family or close relationship, resulting in physical or psychological suffering, health disorders, disability, emotional dependence or deterioration of the quality of life of the injured person”<sup>298</sup>

and reviewed criminal responsibility for forced marriage and other related crimes such as extending forced marriage, forced cohabitation, and forced marriage with the aim of traveling to another country.<sup>299</sup> These provisions are in line with the scope of the IC concerning domestic violence and forced marriage, however they do not address the issue of gender-based violence against women as the Convention does, therefore Ukraine do not criminalise violence “directed against a woman because she is a woman or that affects women disproportionately”<sup>300</sup> because of “socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men”<sup>301</sup> as requested by the IC.

In addition to all the above-mentioned reasons, in 2020 the question of the ratification of the IC was taken into account again and consequently AUCCRO stated that “the majority of the Ukrainian population do not support the ratification of the Convention” although AUCCRO did not have any grounds for this statement.<sup>302</sup>

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<sup>295</sup> Zorgdrager, “Ukrainian churches in defence of ‘traditional values’: two case studies and some methodological considerations.”, op. cit., pag. 93.

<sup>296</sup> Zorgdrager, “Ukrainian churches in defence of ‘traditional values’: two case studies and some methodological considerations.”, op. cit., pag. 93-94.

<sup>297</sup> Declaration of the Verkhovna Rada, 2018, N. 5, art, 34.

<sup>298</sup> Criminal Code of the Republic of Ukraine. Chapter II. Criminal offenses against the life and health of a person. Art. 126.

<sup>299</sup> Verkhovna Rada of Ukraine. “Rada introduces criminal responsibility for domestic violence.” Official Webportal. Dec 6, 2017. Accessed Nov 20, 2021. <http://www.nrcu.gov.ua/en/news.html?newsID=65857>

<sup>300</sup> 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence. Istanbul. 2011. CETS No. 210. Art. 3d.

<sup>301</sup> 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence. Istanbul. 2011. CETS No. 210. Art. 3c.

<sup>302</sup> Куренкова, “Женщина, знай своє право! Что такое Стамбульская конвенция и почему Украина никак ее не ратифицирует?”, указ. соч. [Kurenkova, “Woman, know your right! What is this Istanbul Convention and why does Ukraine not ratify it?”, op. cit.]

The second reason why Ukraine has not ratified the IC is the lack of political will to make such a decision, in fact, the current Parliament and President have demonstrated that they are willing to make some reforms only when they can benefit of the increase in their popularity in the short-term.<sup>303</sup>

Moreover, there are also some myths that prevent the IC to be ratified by Ukraine. In Ukraine there is the belief that Europe is imposing the IC to Ukraine and that the Convention is an alien document; this can be refuted by the fact that Ukraine took part in the drafting process of the Convention as member of the temporary committee that worked on the IC.<sup>304</sup> It is also believed that the Council of Europe is humiliating Ukraine by denying it the possibility to introduce amendments to the text of the Convention. Once again this is not true because in case a country wants to present an amendment there is a procedure to be followed, but single countries cannot change the text of the IC at their own will and discretion.<sup>305</sup> Furthermore, this belief does not consider the fact that art. 78 of the IC introduces the possibility for State Parties to make reservations to specific articles and paragraphs which are listed in paragraph 2 and 3 of the above-mentioned article of the Convention.

Nevertheless, a sign of the willingness of the population to ratify the IC can be found in the annual Women's March ("Марш женщин") that takes place in Kiev on the 8<sup>th</sup> of March, in fact, the main request of this march is the ratification of the IC.<sup>306</sup> Participants in the march are aware that women's situation in Ukraine is not improving:<sup>307</sup> in 2017 the UN Committee on the Elimination of Discrimination against Women reported the increase of violence against women since 2014 as well as the strengthening of traditional and patriarchal values which limit women's and girl's rights;<sup>308</sup> a study conducted in 2017 shows that 81% of the women of the twelve Ukrainian communities surveyed reported having suffered psychological violence at least once, the 58% experienced physically assault, 34% of them are victims of sexual coercion, and the 44% were injured as a consequence of intimate partner violence

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<sup>303</sup> Куренкова, "Женщина, знай свое право! Что такое Стамбульская конвенция и почему Украина никак ее не ратифицирует?", указ. соч. [Kurenkova, "Woman, know your right! What is this Istanbul Convention and why does Ukraine not ratify it?", op. cit.]

<sup>304</sup> Levchenko, "Probability of the Istanbul Convention Ratification in Ukraine: Analysis of the Polish Experience.", op. cit., pag. 157.

<sup>305</sup> Levchenko, "Probability of the Istanbul Convention Ratification in Ukraine: Analysis of the Polish Experience.", op. cit., pag. 157.

<sup>306</sup> Куренкова, "Женщина, знай свое право! Что такое Стамбульская конвенция и почему Украина никак ее не ратифицирует?", указ. соч. [Kurenkova, "Woman, know your right! What is this Istanbul Convention and why does Ukraine not ratify it?", op. cit.]

<sup>307</sup> Куренкова, "Женщина, знай свое право! Что такое Стамбульская конвенция и почему Украина никак ее не ратифицирует?", указ. соч. [Kurenkova, "Woman, know your right! What is this Istanbul Convention and why does Ukraine not ratify it?", op. cit.]

<sup>308</sup> Committee on the Elimination of Discrimination against Women. "Concluding observations on the eight periodic report of Ukraine." Mar 9, 2017.

during the year before the survey.<sup>309</sup> As per the latest UN data, in 2020 in Ukraine 86% of the women are victims of rape and the 78% has suffered from domestic violence.<sup>310</sup> Besides, a report issued by an Ukrainian domestic support group stated that during the first month of quarantine due to the Covid-19 pandemic, they received “almost twice as many calls” from women to the hotline,<sup>311</sup> and in response to this, more than 25 thousands Ukrainians signed an online petition<sup>312</sup> to urge President Zelensky to submit the IC to the Parliament for ratification.<sup>313</sup>

In conclusion, Ukraine has not ratified the Convention yet because of the internal influence of the Church and because of the opposers of the Convention who support “traditional family values” and misinterpret the notions included in the Convention, first of all the concept of gender. However, part of the population is in favour of the ratification of the IC and is taking action in order to reach this goal. The ratification of the IC would in fact imply Ukraine to actively take measures in order to improve awareness on the issue of VAW and, as consequence, the ratification would help overcoming traditional gender roles and stereotypes. Ukraine shall also implement its legislation addressing gender-based violence against women, therefore the State shall criminalise violence “directed against a woman because she is a woman or that affects women disproportionately”.

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<sup>309</sup> Burlaka, V., Grogan-Kaylor, A., Savchuk, O., & Graham-Bermann, S. A. “The relationship between family, parent, and child characteristics and intimate-partner violence (IPV) among Ukrainian mothers.” *Psychology of Violence*. 7(3), 469–477. 2017. Accessed Feb 14, 2022. <https://doi.org/10.1037/vio0000085>

<sup>310</sup> Lubrani Osnat, speech by. “Official UN Ukraine Statement on Ratification of the Istanbul Convention” May 26, 2020. Accessed May 9, 2021. <https://ukraine.un.org/en/105055-official-un-ukraine-statement-ratification-istanbul-convention>

<sup>311</sup> La Strada Ukraine. “The number of complaints about domestic violence during quarantine is growing rapidly!” Apr 4, 2020. Accessed Dec 23, 2021. <https://la-strada.org.ua/novyny/elementor-1965.html> [my translation - original in Ukrainian Кількість звернень щодо домашнього насильства під час карантину стрімко зростає!]

<sup>312</sup> Petition №22/087528-en. “We call for the ratification of the Istanbul Convention (Council of Europe Convention on preventing and combating violence against women and domestic violence)” initiated by Zinchuk Victoria Aleksandrovna (Зінчук Вікторія Олександрівна). Date of publication: Feb 24<sup>th</sup> 2020. Accessed Oct 2, 2021. <https://petition.president.gov.ua/petition/87528> [my translation - original in Ukrainian “Закликаємо ратифікувати Стамбульську конвенцію (Конвенцію Ради Європи про запобігання насильству щодо жінок і домашньому насильству та боротьбу з цими явищами)”]

<sup>313</sup> Pilišvili Catherine. “Thousands Urge Ukraine’s President to Help Stop Violence Against Women.” Human Rights Watch. Jul 22, 2020. Accessed Nov 20, 2021. <https://www.hrw.org/news/2020/07/22/thousands-urge-ukraines-president-help-stop-violence-against-women>

## Chapter 2

### DOMESTIC VIOLENCE

#### *2.1. Introduction and Main Concepts*

Domestic violence is included in the official title of the IC, Council of Europe Convention on preventing and combating violence against women and domestic violence, and it is defined as follows:

“all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim”.<sup>314</sup>

Therefore, it is possible to understand that domestic violence includes four different types of violence, namely physical, sexual, psychological, and economic violence, when they occur in the domestic sphere. The meaning of physical, sexual, and psychological violence can be relatively intuitable. The first one causes harm to the victim by the use of physical force and can include acts like slapping, hitting, and pushing.<sup>315</sup> Sexual violence can include a wide range of acts from pressuring or forcing an individual to perform any sexual act, starting from only kissing to sex, against their will to making sexual comments that result in the victim being humiliated or uncomfortable, some examples can be rape, sexual harassment, among others demanding sex in return for favours, unwanted sexual advances, sexual abuse of children, and forced marriage.<sup>316</sup> Psychological violence are such acts that cause psychological harm to the victim for instance humiliating, insulting, pressuring, threatening, and expressing possessiveness or jealousy, however, they are usually the most problematic form of violence to identify.<sup>317</sup> Economic violence, on the other hand, is exerting control over the resources of the household along with blackmailing or threatening to deny access to such resources to the partner.<sup>318</sup>

The definition of domestic violence included in the Istanbul Convention is neutral and it is not linked to the biological sex of the victim because it does not affect only women, but it can affect also children, men and elderly people. In fact, as already mentioned,

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<sup>314</sup> 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence. Istanbul. 2011. CETS No. 210. Art. 3b.

<sup>315</sup> United Nations Population Fund. “Combatting violence against women and girls in Eastern Europe and Central Asia.” Issue brief, 2015. Pag. 5. Accessed Jan 1, 2022. [https://eeca.unfpa.org/sites/default/files/pub-pdf/21770%20Brief\\_web.pdf](https://eeca.unfpa.org/sites/default/files/pub-pdf/21770%20Brief_web.pdf)

<sup>316</sup> UNFPA, “Combatting violence against women and girls in Eastern Europe and Central Asia.”, op. cit., pag. 3.

<sup>317</sup> UNFPA, “Combatting violence against women and girls in Eastern Europe and Central Asia.”, op. cit., pag. 2.

<sup>318</sup> UNFPA, “Combatting violence against women and girls in Eastern Europe and Central Asia.”, op. cit., pag. 4.

State Parties can decide to apply the part of the Convention on domestic violence also to men.<sup>319</sup> However, some commented that this neutrality is due to the result of political compromises as some delegations were unwilling to recognise domestic violence as gender-based violence, although this kind of violence affects women disproportionately,<sup>320</sup> as consequence of the compromises, art. 2.2 of the IC explicitly underlines the need to pay particular attention to women victims of gender-based violence.<sup>321</sup>

Another detail that shall be noticed is the fact that domestic violence can be perpetrated by any family member, not only by the partner.<sup>322</sup> Intimate partner violence, which means that the act of violence is perpetrated by the current or previous spouse or partner in general, is therefore one of the forms of domestic violence, the predominant form in truth, and it is also the most common form of violence experienced by women.<sup>323</sup> Intimate partner violence is dangerous also because its victims are at greater risk to incur in various health problems: physical, sexual, reproductive, and also psychological problems such as depression, alcohol abuse, and suicide.<sup>324</sup>

According to the findings reported by the United Nations Population Fund (UNFPA), in Eastern Europe there are high levels of cultural acceptance of violence in general, but notably within the family because of the social norms that are deeply influenced by the patriarchal culture.<sup>325</sup>

Being domestic violence a very wide topic, it will not be possible to analyse in details each of its aspects and here I will focus on domestic violence as VAW, furthermore in Chapter 3, I will separately examine sexual intimate partner violence, which can be classified as a form of domestic violence.

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<sup>319</sup> Grans, "The Istanbul Convention and the Positive Obligation to Prevent Violence.", op. cit., pag. 137.

<sup>320</sup> Chinkin Christine and Nousiainen Kevät. "Legal Implications of EU Accession to the Istanbul Convention" Luxembourg. 2016. Pag. 43. Accessed Dec 28, 2021. <https://data.europa.eu/doi/10.2838/15851>

<sup>321</sup> 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence. Istanbul. 2011. CETS No. 210. Art. 2.2: *Parties are encouraged to apply this Convention to all victims of domestic violence. Parties shall pay particular attention to women victims of gender-based violence in implementing the provisions of this Convention.*

<sup>322</sup> UNFPA, "Combatting violence against women and girls in Eastern Europe and Central Asia", op. cit., pag. 3.

<sup>323</sup> UNFPA, "Combatting violence against women and girls in Eastern Europe and Central Asia", op. cit., pag. 3.

<sup>324</sup> World Health Organization. "Global and regional estimates on violence against women: prevalence and health effect of intimate partner violence and non-partner sexual violence". Oct 20, 2013. Pag. 2; 21. Accessed Feb 8, 2022. <https://www.who.int/publications/item/9789241564625>

<sup>325</sup> UNFPA, "Combatting violence against women and girls in Eastern Europe and Central Asia.", op. cit., pag. 6.

In the following parts of this Chapter, I will analyse the issue of domestic violence in Bulgaria, Poland, and Ukraine and underline the difficulties linked to the fact that domestic violence is considered a private matter. After that, I will analyse separately the situation in Russia, where domestic violence was quite recently decriminalised.

## *2.2. Domestic Violence in Bulgaria, Poland and Ukraine: A Private Matter*

A survey on VAW in Eastern Europe, that included only Ukraine of the countries analysed in this work and that was led by the Organisation for Security and Co-operation in Europe (OSCE), showed that 30% of the surveyed women considered domestic violence as a private matter and believed that it “should be handled within the family”.<sup>326</sup> This is not only the case of Ukraine, also in Poland domestic violence is perceived as a private matter and there is the common idea that domestic violence should be dealt with within the family and it should not be in the remit of the law.<sup>327</sup> The same perception of domestic violence as a private matter is present in Bulgaria where the protection of the “family integrity” takes priority over the protection of women who suffered domestic violence.<sup>328</sup> In Bulgaria there are persistent sexist stereotypes and prejudices regarding women in the family and they contribute to the underreporting of VAW in the country as they result in both; in domestic violence being socially acceptable, and in victims being hesitant to report.<sup>329</sup>

However, this approach to domestic violence is not so exceptional, in fact, also in most of the EU Member States, VAW and domestic violence were approached as a private matter until the 1990s, when VAW became a fundamental rights concern.<sup>330</sup> VAW and domestic violence are now monitored and also included in gender equality studies, and according to the 2019 statistics, prevalence of domestic violence against women is at 13% in Poland<sup>331</sup> and Ukraine,<sup>332</sup> and at 23% in Bulgaria.<sup>333</sup>

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<sup>326</sup> Organisation for Security and Co-operation in Europe. “Well-being and safety of women: OSCE-led survey on violence against women: main report.” 2019. Pag. 18. Accessed Jan 1, 2022. [https://www.osce.org/files/f/documents/9/2/413237\\_0.pdf](https://www.osce.org/files/f/documents/9/2/413237_0.pdf)

<sup>327</sup> Social Institutions & Gender Index. “Poland.” 2019. Accessed May 26, 2021. <https://www.genderindex.org/wp-content/uploads/files/datasheets/2019/PL.pdf>

<sup>328</sup> Social Institutions & Gender Index, “Bulgaria.”, op. cit.

<sup>329</sup> The Advocates for Human Rights, Bulgarian Gender Research Foundation, Alliance for Protection against Gender-based Violence (the Alliance). “Bulgaria’s Compliance with the Convention on the Elimination of All Forms of Discrimination Against Women.” 70th Session of Committee on the Elimination of All Forms of Discrimination Against Women (PreSessional Working Group) 20 November-24 November 2017. Submitted Sep 29, 2017.

<sup>330</sup> European Union Agency For Fundamental Rights. “Violence against women: an EU-wide survey. Main results.” Publications office of the European Union. 2014. Pag. 7.

<sup>331</sup> Social Institutions & Gender Index, “Poland.”, op. cit.

<sup>332</sup> Social Institutions & Gender Index. “Ukraine.” 2019. Accessed May 26, 2021. <https://www.genderindex.org/wp-content/uploads/files/datasheets/2019/UA.pdf>

<sup>333</sup> Social Institutions & Gender Index, “Bulgaria.”, op. cit.

Dunja Mijatović, the Commissioner for Human Rights of the Council of Europe, believes that the situation in Bulgaria in relation to domestic violence is concerning and that several provisions included in the Bulgarian Criminal Code are not in line with international human rights standards.<sup>334</sup> The Commissioner is in fact preoccupied by the lack of explicit criminalisation of marital rape<sup>335</sup> and by the term “systematic” included in the conditions of domestic violence.<sup>336</sup> As a matter of fact, art. 93.31 of the Bulgarian Criminal Code reads as follows:

“The crime was committed "in conditions of domestic violence" if it is preceded by systematic physical, sexual or mental violence, placement in economic dependence, forced restriction of personal life, personal freedom and personal rights [...]”<sup>337</sup>

As a consequence of the use of the word “systematic”, in order to open a prosecution, authorities require three separate acts of violence perpetrated by the same person.<sup>338</sup> This provision can therefore cause serious risks to the victims of domestic violence because in this way some acts of violence could be not prosecuted and these limits on the possibility to sanction perpetrators can lead to the public idea that domestic violence is acceptable.<sup>339</sup> The requirement of the repetition of the violent behaviour is dangerous because it exposes victims to more violence unnecessarily and to the risk of the escalation of the violence, this requirement, therefore, further jeopardises the security of the victims. It can as well make some acts of violence go unpunished, in the case that “only” one or two acts of violence have been perpetrated by the abuser, and it can spread the inadmissible idea that a certain amount of violence, namely less than three separate acts of violence, is acceptable.

In addition to this, in Bulgaria there are barriers to the victims’ effective access to justice as they, the victims, have the burden, in certain cases of domestic violence, to collect evidence and prove the accusation.<sup>340</sup> Therefore, even when the first barrier, the private matter one, is overcome, there are other obstacles that victims have to face in order to seek justice and help. It is difficult to find help as well, in fact, Bulgaria suffers the lack of support services for victims of domestic violence, especially in rural

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<sup>334</sup> Mijatović, “Report following her visit to Bulgaria from 25 to 29 November 2019.”, op. cit., pag. 19.

<sup>335</sup> It will be analysed in Chapter 3.

<sup>336</sup> Mijatović, “Report following her visit to Bulgaria from 25 to 29 November 2019.”, op. cit., pag. 19-20.

<sup>337</sup> Criminal Code of the Republic of Bulgaria. General part. Additional Provisions. Explanation of certain words. Art. 93.31.

<sup>338</sup> Mijatović, “Report following her visit to Bulgaria from 25 to 29 November 2019.”, op. cit., pag. 20.

<sup>339</sup> Mijatović, “Report following her visit to Bulgaria from 25 to 29 November 2019.”, op. cit., pag. 20.

<sup>340</sup> Mijatović, “Report following her visit to Bulgaria from 25 to 29 November 2019.”, op. cit., pag. 20.

areas:<sup>341</sup> as of 2019 in Bulgaria there were only 5 crisis centres that offer 50 places for women who suffered domestic violence or other forms of violence.<sup>342</sup>

Nevertheless, in 2005 Bulgaria adopted the Protection against Domestic Violence Act, this law contains the definition of domestic violence and provides with protection measures and rights for victims of domestic violence.<sup>343</sup> In this act the definition of domestic violence does not include economic violence,<sup>344</sup> which is the fourth type of violence explicitly mentioned by the IC.<sup>345</sup> However, in line with the IC, the act recognises as potential perpetrators of domestic violence spouses, former spouses, and individuals with whom the victim cohabits or has co-habited,<sup>346</sup> but it seems not to include partners or previous partners if they have not co-habited or were married to the victim.

The following articles of the act regulate the proceedings to impose protection measures, the hearing of cases and the execution of protection orders.<sup>347</sup>

Similarly, in Poland domestic violence is not specifically included in the Criminal Code, however in 2005 Poland passed the Act on counteracting domestic violence, the purpose of this act, which was also later amended, is to improve the effectiveness of the measures against domestic violence and to provide and support actions that raises public awareness on what causes domestic violence and its consequences.<sup>348</sup>

The act provides with the definition of family member and of domestic violence, which is defined as follows:

“a single or recurring wilful action or negligence infringing upon the personal rights or wellbeing of persons listed in point 1, in particular exposing these persons at the risk of losing life, health, compromising their dignity, physical integrity, freedom, including sexual freedom, causing damage to their physical or psychological health, and causing pain and moral suffering in persons subjected to violence.”<sup>349</sup>

This definition explicitly includes physical, sexual, and psychological harm or suffering and it is in line with the definition provided by the IC, but once again, as in the Bulgarian case, it does not mention economic violence. Another lack can be found in

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<sup>341</sup> Mijatović, “Report following her visit to Bulgaria from 25 to 29 November 2019.”, op. cit., pag. 20.

<sup>342</sup> Darakchi, ““The Western Feminists Want to Make Us Gay”: Nationalism, Heteronormativity, and Violence Against Women in Bulgaria in Times of “Anti-gender Campaigns”.”, op. cit., pag. 1213.

<sup>343</sup> Social Institutions & Gender Index, “Bulgaria.”, op. cit.

<sup>344</sup> Protection against domestic violence act. Issue 27 of 29 March 2005. Art. 2.

<sup>345</sup> 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence. Istanbul. 2011. CETS No. 210. Art. 3.b.

<sup>346</sup> Protection against domestic violence act. Issue 27 of 29 March 2005. Art. 3.

<sup>347</sup> Protection against domestic violence act. Issue 27 of 29 March 2005. Art. 7-22.

<sup>348</sup> Social Institutions & Gender Index, “Poland.”, op. cit.

<sup>349</sup> The Act of 29 July 2005 on counteracting domestic violence. (Dz. U. of 20 September 2005), art. 2.2.



the definition of family member, the act, in fact, refers to art. 115.11 of the Polish Penal Code, where a next of kin is:

“a spouse, an ascendant, descendant, brother or sister, relative by marriage in the same line or degree, a person being an adopted relation, as well as his spouse, and also a person actually living in co-habitation.”<sup>350</sup>

This definition limits the protection of the victims because it does not include individuals that are not close relatives, and former partners, which are contemplated in the definition given by the IC.<sup>351</sup>

After the definitions, the act mentions the types of assistance that victims of domestic violence should receive free-of-charge, including medical, psychological, legal, social professional, and family counselling, crisis intervention and support, protection from further harm, provision of a safe shelter and of assistance in finding a new place to live, and medical examination.<sup>352</sup> After that, the act contains provisions in order to improve the protection of victims and to enforce corrective and educational measures, for example the development of prevention programmes and protection programmes, the provision of crisis intervention centres, and the prevention of contact between perpetrators and victims.<sup>353</sup>

Although this act entered into force in 2005, with exception of art. 6.4 and 6.5 that entered into force in 2006,<sup>354</sup> Poland’s measures to combat domestic violence have been criticised by international human rights monitoring mechanisms.<sup>355</sup> The Human Rights Committee was in fact concerned about the absence of immediate protection of the victims and about the inadequate number of emergency shelters and specialised assistance centres.<sup>356</sup> At the same time, the Commissioner for Human Rights of the Council of Europe, Nils Muižnieks, expressed his preoccupation about the roots that gender stereotypes have in the handling of cases by police and courts, albeit measures have been taken by Poland to train police officers, prosecutors, and judges on the topic, they treat women victims of domestic violence with indifference, stigmatization, or incredulity.<sup>357</sup>

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<sup>350</sup> The Penal Code, act of 6 June 1997. Chapter XIV. Explanation of term of the law. Art. 115.11.

<sup>351</sup> 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence. Istanbul. 2011. CETS No. 210. Art. 3.b.

<sup>352</sup> The Act of 29 July 2005 on counteracting domestic violence. (Dz. U. of 20 September 2005), art. 3.1.

<sup>353</sup> The Act of 29 July 2005 on counteracting domestic violence. (Dz. U. of 20 September 2005), art. 4 and 6.

<sup>354</sup> The Act of 29 July 2005 on counteracting domestic violence. (Dz. U. of 20 September 2005), art. 17.

<sup>355</sup> Social Institutions & Gender Index, “Poland.”, op. cit.

<sup>356</sup> United Nations Human Rights Committee. “Concluding observations on the seventh periodic report of Poland.” Nov 23, 2018. Pag. 4. Accessed Feb 14, 2022. [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fPOL%2fCO%2f7&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fPOL%2fCO%2f7&Lang=en)

<sup>357</sup> Muižnieks, “Report following his visit to Poland from 9 to 12 February 2016.”, op. cit., pag. 31.

The situation in Poland concerns, in fact, the Commissioner for Human Rights of the Council of Europe, although Poland has ratified the IC.<sup>358</sup> In its report he underlines the danger of the lack of understanding of domestic violence and of its harmfulness for the victims, this is likewise due to the fact that domestic violence is not perceived as a human rights violation, but as a “private and family matter”.<sup>359</sup> This misconception leads to other wrong beliefs, for example to the idea that sometimes women try to open a criminal procedure in order to obtain “advantageous conditions” in the divorce.<sup>360</sup> The Commissioner was also informed by Polish women’s rights NGOs that survey figures do not reflect the real extent of the issue in the country because of the insufficient awareness and knowledge of what VAW is in all its forms, and first of all of what constitutes domestic violence.<sup>361</sup> They were referring to the findings of the survey led by the European Union Agency for Fundamental Rights, in fact, according to these findings, Poland is the EU country with the lowest rate of VAW with “only” the 13% of Polish women having experienced physical and/or sexual violence by any partner, current and/or previous.<sup>362</sup> In fact, as it will be further analysed in the next Chapter on sexual violence, victims tend to minimise experiences of violence due to many reasons, including loyalty to the abuser<sup>363</sup> and the popular conception of sexual violence, which is usually even more restricted than the legal one.<sup>364</sup>

The issue of unreported violence has been detected also in Ukraine, as the Public Relations Manager at the International Women’s Rights Centre La Strada Ukraine, Lisa Ray, said in an interview to Radio Liberty, the numbers of the official data represent only the 10-15% of the real number of instances.<sup>365</sup> Domestic violence is really a major issue in this country where 66% of Ukrainian women, who have or have had a partner, have suffered some form of violence by the partner.<sup>366</sup> The Ukrainian Criminal Code addresses this issue though art. 126<sup>1</sup>, where it includes physical, psychological, and economic violence,<sup>367</sup> but not sexual violence. Once again, as in

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<sup>358</sup> Muiżnieks, “Report following his visit to Poland from 9 to 12 February 2016.”, op. cit., pag. 32.

<sup>359</sup> Muiżnieks, “Report following his visit to Poland from 9 to 12 February 2016.”, op. cit., pag. 32.

<sup>360</sup> Muiżnieks, “Report following his visit to Poland from 9 to 12 February 2016.”, op. cit., pag. 32.

<sup>361</sup> Muiżnieks, “Report following his visit to Poland from 9 to 12 February 2016.”, op. cit., pag. 32.

<sup>362</sup> European Union Agency For Fundamental Rights. “Violence against women: an EU-wide survey. Main results.”, op. cit., pag. 28-29.

<sup>363</sup> Mogilevkina, Odlind, “Some reproductive and sexual health indicators in rape victims in Ukraine.”, op. cit., pag. 410.

<sup>364</sup> Walby Sylvia, Olive Philippa, Towers Jude, Francis Brian, Strid Sofia, Krizsán Andrea, Lombardo Emanuela, May-Chahal Corinne, Franzway Suzanne, Sugarman David, Bina Agarwal David, Armstrong Jo. “Stopping Rape: Towards a Comprehensive Policy.” Bristol University Press. Bristol. 2015. Pag. 12. Accessed May 23, 2021. <http://www.jstor.org/stable/j.ctv4g1rd0>

<sup>365</sup> Drachuk Sergiy. “Violence against women in Ukraine and the war in Donbas.” *Radio Liberty*. Nov 25, 2014. Accessed Jan 9, 2022. <https://www.radiosvoboda.org/a/26710204.html> [my translation - original in Ukrainian “Насильство проти жінок в Україні та війна на Донбасі.”]

<sup>366</sup> OSCE, “Well-being and safety of women: OSCE-led survey on violence against women: main report.”, op. cit., pag. 23.

<sup>367</sup> Criminal Code of the Republic of Ukraine. Chapter II. Criminal offenses against the life and health of a person. Art. 126<sup>1</sup>.

the case of Bulgaria and Poland, only three out of the four types of domestic violence addressed by the IC are criminalised by the country. However, in accordance with the IC, the Ukrainian legislation includes as possible perpetrators both current and previous spouses, and current and previous family members or partners (those in a close relationship).<sup>368</sup> Despite its criminalisation, more than one third of police officers, judges, and prosecutors in Ukraine still believe that domestic violence is a household issue.<sup>369</sup> In Ukraine, not only the social background that tolerates domestic violence and VAW discourages victims to report, another cause of underreporting is the weakness of the authorities' responses to VAW and domestic violence, moreover in some cases victims noted that reporting worsened the situation, increasing the violence they suffered in the home.<sup>370</sup> In addition to this, it is possible to notice the tolerance of Ukrainian society towards this issue in the sentencing practices in cases of domestic violence related criminal offences. Perpetrators, when found guilty, are in fact less likely to be sentenced to jail, judges in Ukraine tend to suspend sentences or to apply a sentence that does not include detention; a possible reason could be the fact that they consider violence against one's partner as a mitigating factor instead of an aggravating one as per the IC.<sup>371</sup> The Convention lists, in fact, a series of aggravating circumstances to violence against women and domestic violence, and the first instance indicated reads as follows:

“the offence was committed against a former or current spouse or partner as recognised by internal law, by a member of the family, a person cohabiting with the victim or a person having abused her or his authority”.<sup>372</sup>

This lack of action taken against the perpetrators of domestic violence has been reported also in the OSCE-led survey on VAW in Ukraine, where the scarcity, and even total absence in some areas, of shelters and support services for women victims of violence is reported as well.<sup>373</sup>

The implementation of the IC could help improve the situation in these countries: first of all, by ratifying the IC in the case of Bulgaria and Ukraine, and by not withdrawing from the IC in the case of Poland, these countries should criminalise all forms of

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<sup>368</sup> Criminal Code of the Republic of Ukraine, Chapter II. Criminal offenses against the life and health of a person. Art. 126<sup>1</sup>.

<sup>369</sup> DCAF and La Strada-Ukraine. “Criminal Justice Practice and Violence Against Women.”. Kyiv. 2017. Pag. 44. Accessed Jan 10, 2022. [https://www.dcaf.ch/sites/default/files/publications/documents/Criminal%20justice%20practice%20and%20violence%20against%20women\\_engl.pdf](https://www.dcaf.ch/sites/default/files/publications/documents/Criminal%20justice%20practice%20and%20violence%20against%20women_engl.pdf)

<sup>370</sup> DCAF and La Strada-Ukraine, “Criminal Justice Practice and Violence Against Women.”, op. cit., pag. 34.

<sup>371</sup> DCAF and La Strada-Ukraine, “Criminal Justice Practice and Violence Against Women.”, op. cit., pag. 38.

<sup>372</sup> 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence. Istanbul. 2011. CETS No. 210. Art. 46.a.

<sup>373</sup> OSCE, “Well-being and safety of women: OSCE-led survey on violence against women: main report.”, op. cit., pag. V.

domestic violence as per the definition provided by the Convention.<sup>374</sup> Therefore, Bulgaria and Poland shall add in their definition of domestic violence also economic violence, and Ukraine shall include sexual violence. Bulgaria and Poland shall as well widen their notion of who can be a perpetrator of domestic violence including partner and former partners, independently by the fact that they have co-habited with the victim or not. Last but not least important, Bulgaria should remove the requirement of “systematic” violence and criminalise domestic violence at first instance. This requirement puts, in fact, at risk women because they cannot start proceedings against the perpetrator of the violence as soon as they suffer it, but they have to wait for the acts of violence to occur for the third time in order to be allowed to start proceedings. It is possible to notice that this requirement makes women suffer acts of violence unnecessarily and, at the same time, it implicitly allows some acts violence. As a consequence, the first and second act of violence, in fact, can be considered admissible and this can cause the proliferation of ideas that underestimate the danger of single acts of violence.

The amendment of their definition of domestic violence would be the first step for these three countries to ensure a wider protection to women.

After that, in accordance with the articles included in Chapter III<sup>375</sup> of the IC, these States shall improve prevention measures. As in Bulgaria, Poland, and Ukraine domestic violence is considered as a private matter and sexist stereotypes and prejudices are embedded in the societies of these countries, they shall promote changes in the social background in order to eliminate any idea and act linked to the belief that women are inferior to men and to the stereotyped roles that this belief implies. Raising awareness and understanding on what constitutes domestic violence is very important as well, the three countries shall promote or conduct relevant campaigns and programmes and address them to the general public, similarly they shall also include relevant topics, for example equality, non-stereotyped gender roles, gender-based violence, and personal integrity, to mention a few, at all levels of education. However, as above indicated in the Ukrainian case, States shall address awareness raising also to professionals, the latter shall, in fact, be provided with adequate professional training in order to deal with victims and perpetrators, to avoid the worsening of the situation, and not to stigmatise victims which should feel

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<sup>374</sup> 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence. Istanbul. 2011. CETS No. 210. Art. 3.b.

<sup>375</sup> 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence. Istanbul. 2011. CETS No. 210. Art. 12; 13; 14; 15; 16.

protected by the authorities. Trust in the officers is, in fact, a key element for women to report the violence they have been subjected to. Moreover, as included also in the Polish Act on counteracting domestic violence,<sup>376</sup> and in accordance with the IC, States shall develop and implement programmes in order to teach perpetrators how to adopt a non-violent behaviour and to prevent them from reiterate the offence committed. Specifically in relation to the case of Ukraine, the country shall also ensure with adequate measures that victims do not suffer retaliation after reporting violence.<sup>377</sup> It can be deducted, in fact, that if the victim fears of suffering more violence after reporting, the chances that – in this case – she reports to the police decrease drastically. Poland shall instead take action in order to provide victims with immediate protection<sup>378</sup> filling the gap on complying with the IC. The provision included at art. 50 of the Convention, in fact, explicitly requires State Parties to provide victims with "adequate and immediate protection".

Referring to the lack of support to the victims, in order to be in line with the provisions of the IC,<sup>379</sup> Bulgaria, Poland, and Ukraine shall ensure shelters, as well as general and specialist support services in all their territories, improving therefore the access for women, especially in rural areas. As previously stated, in fact, as of now, women in rural areas are in a disadvantaged position compared to women who live in urban areas, because they have access to a lower number of services in support of domestic violence victims.

In conclusion, by ratifying (or by not withdrawing from) the IC, Bulgaria, Poland, and Ukraine shall address the problem of underreporting and encourage also witnesses of violence or any person who has reasonable grounds to believe that any act of VAW or domestic violence may be committed to report it.<sup>380</sup> However, this can only happen with a deep sensibilisation of their populations in regards to the issue of domestic violence.

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<sup>376</sup> The Act of 29 July 2005 on counteracting domestic violence. (Dz. U. of 20 September 2005), art. 6.4.2.

<sup>377</sup> 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence. Istanbul. 2011. CETS No. 210. Art. 56.a.

<sup>378</sup> 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence. Istanbul. 2011. CETS No. 210. Art. 50.

<sup>379</sup> 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence. Istanbul. 2011. CETS No. 210. Art. 20; 22; 23.

<sup>380</sup> 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence. Istanbul. 2011. CETS No. 210. Art. 27.

### *2.3. Domestic Violence in Russia and its Decriminalisation*

The situation about domestic violence in Russia is so precarious that Human Rights Watch titled one of its publications about the matter: “I Could Kill You and No One Would Stop Me”.<sup>381</sup> According to a study led by Russia’s Federal Statistic Service and the Health Ministry, one out of five women in the RF has suffered physical intimate partner violence in their lives.<sup>382</sup> However, the lack of a discrete provision on domestic violence makes it difficult to track the real entity of the issue in Russia and to have comprehensive nationwide statistics. The law of the RF, in fact, does not provide with any distinction between domestic violence and other forms of violence against the person, all these types of violence are included in the provisions that address intentional harm to a person’s health.<sup>383</sup> Therefore, in Russia, domestic violence is addressed as intentional harm to a person’s health and through the offences of battery and “intentional infliction of minor harm”, and for all these kinds of offences, the penalty depends on the degree of the harm inflicted.<sup>384</sup> By including domestic violence in the previously mentioned general forms of offence, Russia does not consider the specific factors linked to domestic violence such as the fact that women are disproportionately affected by it, as a consequence, the RF could fail in preventing gender-based violence and in protecting the victims.

In 2014 Russia had the opportunity to adopt a law on domestic violence, but the State Duma did not take action on the draft of the law on combating and preventing violence within the family although several deputies together with the officials from the Interior Ministry and the Ministry of Labour and Social Protection were consulting the group of practicing lawyers and legal experts who drafted the law.<sup>385</sup> 2 years later, in 2016, another draft was introduced to the State Duma Committee on Affairs of Family, Women and Children, but it was rejected claiming some procedural errors, however Human Rights Watch was informed that these claims were arbitrary and that there

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<sup>381</sup> Human Rights Watch. “I Could Kill You and No One Would Stop Me. Weak State Response to Domestic Violence in Russia.” 2018.

<sup>382</sup> Федеральная служба государственной статистики (Росстат), Министерство здравоохранения Российской Федерации. “Репродуктивное здоровье населения России”. 2011. С. 52. Доступ Янв 11, 2022. [http://www.gks.ru/free\\_doc/new\\_site/population/zdrav/zdravo-2011.pdf](http://www.gks.ru/free_doc/new_site/population/zdrav/zdravo-2011.pdf) [Report by the Federal State Statistics Service and the Ministry of Health. “Reproductive health of the Russian population.” 2011. Pag. 52. Accessed Jan 11, 2022. [http://www.gks.ru/free\\_doc/new\\_site/population/zdrav/zdravo-2011.pdf](http://www.gks.ru/free_doc/new_site/population/zdrav/zdravo-2011.pdf) - my translation]

<sup>383</sup> Human Rights Watch, “I Could Kill You and No One Would Stop Me. Weak State Response to Domestic Violence in Russia.”, op. cit., pag. 21; 23.

<sup>384</sup> Human Rights Watch, “I Could Kill You and No One Would Stop Me. Weak State Response to Domestic Violence in Russia.”, op. cit., pag. 26.

<sup>385</sup> Human Rights Watch, “I Could Kill You and No One Would Stop Me. Weak State Response to Domestic Violence in Russia.”, op. cit., pag. 22.

had been a strong pushback from religious leaders and from supporters of the so-called traditional values.<sup>386</sup>

Despite of this, since July 2016, but only for a short period of time – six months to be precise – the legislation of Russia has distinguished battery among non-family from domestic battery, this was introduced by an amendment initiated by the Russian Supreme Court, which criminalised domestic battery as well as aggravated battery, but reduced criminal penalties for lesser offenses.<sup>387</sup> This provision lasted only six months because, in November 2016, a coalition led by Senator Elena Mizulina, proposed a draft amendment in order to remove first-time offense of domestic battery from the Criminal Code, this amendment was adopted by the Parliament and signed by President Vladimir Putin in February 2017.<sup>388</sup> At the same time, the new amendment removed the explicit mention of domestic violence from the Criminal Code, as a consequence, it removed again the difference between domestic battery and non-domestic battery.<sup>389</sup> Whereas the first amendment was welcomed by lawyers and experts who considered it as a preventive measure against domestic violence,<sup>390</sup> the second one was described as a sign of regression by the CoE Human Rights Commissioner Nils Muižnieks,<sup>391</sup> and was opposed also by the UN High Commissioner for Human Rights (UNHCHR) Zeid Ra'ad Al Hussein,<sup>392</sup> and it was labelled once again as a “clear sign of regression” by the CoE Secretary General Thorbjørn Jagland in its letter to the Chairpersons of the State Duma.<sup>393</sup> The ideas in support of the amendment proposed by Senator Mizulina were in fact in favour of traditional values that “strengthen” the family and that are against Government interference in family life.<sup>394</sup>

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<sup>386</sup> Human Rights Watch, “I Could Kill You and No One Would Stop Me. Weak State Response to Domestic Violence in Russia.”, op. cit., pag. 22-23.

<sup>387</sup> Decision of the Plenary Meeting of the Supreme Court of the Russian Federation No. 37 of July 31, 2015. Available at [http://www.supcourt.ru/Show\\_pdf.php?Id=10240](http://www.supcourt.ru/Show_pdf.php?Id=10240)

<sup>388</sup> Human Rights Watch, “I Could Kill You and No One Would Stop Me. Weak State Response to Domestic Violence in Russia.”, op. cit., pag. 27-28.

<sup>389</sup> Human Rights Watch, “I Could Kill You and No One Would Stop Me. Weak State Response to Domestic Violence in Russia.”, op. cit., pag. 28.

<sup>390</sup> Human Rights Watch, “I Could Kill You and No One Would Stop Me. Weak State Response to Domestic Violence in Russia.”, op. cit., pag. 27.

<sup>391</sup> Муйжниекс Нилс. “В обществе должен произойти культурный сдвиг: нельзя поощрять и оправдывать насилие.” *Коммерсантъ*. Фев 6, 2017. Доступ Янв 13, 2022. <https://www.kommersant.ru/doc/3211703> [Muižnieks Nils. “A cultural shift must take place in society: violence cannot be encouraged and justified.” *Kommersant*. Feb 6, 2017. Accessed Jan 13, 2022. <https://www.kommersant.ru/doc/3211703> – my translation]

<sup>392</sup> Statement by UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein. Geneva. Mar 7, 2017. Accessed Jan 13, 2022. <http://www.unrussia.ru/en/taxonomy/term/4/2017-03-07>

<sup>393</sup> Letter by the Secretary General Thorbjørn Jagland to the Chairpersons of the State Duma. Strasbourg. Jan 16, 2017. Accessed Jan 13, 2022. <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806db822>

<sup>394</sup> Human Rights Watch, “I Could Kill You and No One Would Stop Me. Weak State Response to Domestic Violence in Russia.”, op. cit., pag. 27; 29.

This decriminalisation not only weakened the protection of the victims because of the reduction of penalties for abusers, it also transmitted the idea that it was now possible to beat family members because domestic battery was not considered a criminal offense anymore.<sup>395</sup> Rights advocates and lawyers, who were against the decriminalisation, foresaw an increase in cases of domestic violence supporting their thesis with the reduction of factors that would have deterred offenders.<sup>396</sup> Their forecast became true a few days after the decriminalisation, when, in a post on Facebook, Yevgeny Roizman, the mayor of Yekaterinburg, the third largest city of the RF, declared that the police was called for more than twice as many domestic violence episodes than usual.<sup>397</sup> Before the entry into force of the amendments that decriminalised domestic violence, the police had to answer to about 120-130 calls per day for domestic violence, after the adoption of the new law, the number of calls per day linked to domestic violence raised to 300-350.<sup>398</sup> After one year, a similar assessment was shared also by Alexander Bastrykin, the head of Russia's lead investigative agency, he, in fact, said that the consequence of this decriminalisation was a "sharp increase in family violence offences" which included also acts of violence against children.<sup>399</sup> Also according to the interviews given to the Human Rights Watch by women rights' groups and crisis centres, there was an increase of domestic violence complaints after the above-mentioned amendments, however, some of them stated that this escalation could have also been the effect of the raise of awareness and sensitivity of women on the matter of domestic violence and of their rights.<sup>400</sup>

Nevertheless, another issue related to domestic violence reported by Human Rights Watch is underreporting. In Russia, as in the other countries previously analysed, underreporting is due to many reasons, including social stigma, lack of awareness, lack of trust in the police and their poor response, fear of retaliation, and also fear of losing custody of the children.<sup>401</sup> Also in the RF, domestic violence is perceived as a

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<sup>395</sup> Human Rights Watch, "I Could Kill You and No One Would Stop Me. Weak State Response to Domestic Violence in Russia.", op. cit., pag. 34.

<sup>396</sup> Human Rights Watch, "I Could Kill You and No One Would Stop Me. Weak State Response to Domestic Violence in Russia.", op. cit., pag. 34.

<sup>397</sup> Yevgeny Roizman post on Facebook. Feb 9, 2017. Accessed Feb 9, 2022. <https://www.facebook.com/roizmangbn/posts/1282543421812632>

<sup>398</sup> Yevgeny Roizman post on Facebook, op. cit.

<sup>399</sup> Лента.Ру. "В России зафиксирован всплеск домашнего насилия." Мая 28, 2018. Доступ Фев 9, 2022. [https://m.lenta.ru/news/2018/05/28/domestic\\_violance/](https://m.lenta.ru/news/2018/05/28/domestic_violance/) [Lenta.ru. "A peak in domestic violence has been recorded in Russia" May 28, 2018. Accessed Feb 9, 2022. [https://m.lenta.ru/news/2018/05/28/domestic\\_violance/](https://m.lenta.ru/news/2018/05/28/domestic_violance/) - my translation]

<sup>400</sup> Human Rights Watch, "I Could Kill You and No One Would Stop Me. Weak State Response to Domestic Violence in Russia.", op. cit., pag. 35.

<sup>401</sup> Human Rights Watch, "I Could Kill You and No One Would Stop Me. Weak State Response to Domestic Violence in Russia.", op. cit., pag. 42.



private matter, as consequence, police do not take action when women file a report on the matter, women are believed to be in charge of preserving the family unit and to look for reconciliation and they can also be blamed of having provoked the violence and be accused of deserving it.<sup>402</sup> These stereotypes are embedded also in the female part of the society, for instance a victim of domestic violence mentioned to her psychologist that the police investigator, a woman, told her that something must have been wrong with her – the victim – as the police investigator’s husband did not beat her.<sup>403</sup> This victim blaming, along with the stigmatisation suffered by domestic violence victims in Russia, results in the lack of awareness and understanding of domestic violence by women in general; this is exacerbated in the more remote regions of the RF where domestic violence is considered a normal part of everyday life.<sup>404</sup>

In addition to all the above-mentioned problems, in case a woman tries to seek help and protection by the police, the latter sometimes do not arrive or refuse to take action, as well as fail to protect victims from further violence after reporting, resulting in more risks for the victims, and, in extreme cases, police officers have threatened the victims of making them lose the custody of the children if they do not reconcile with the abuser or change their testimony.<sup>405</sup>

Another barrier preventing victims from reporting is the burden of private prosecution which requires victims to file the complaint with a magistrate judge, gather relevant evidence and witnesses and attend every court hearing, furthermore the victim has also to sustain all the costs, including the cost of the lawyer.<sup>406</sup> If the victim cannot afford a lawyer, she has to find a pro bono one or to represent herself, on the contrary, perpetrators are provided by the State with legal representation for free.<sup>407</sup> It is therefore understandable that one of the main reasons why most of the private prosecutions cases are ceased is the lack of compliance with court requirements, as an ordinary citizen does not have the knowledge to properly present their case in court; in addition to this, victims of domestic violence may suffer of post-traumatic stress disorder and this contributes to make them unable to fulfil all the

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<sup>402</sup> Human Rights Watch, “I Could Kill You and No One Would Stop Me. Weak State Response to Domestic Violence in Russia.”, op. cit., pag. 42.

<sup>403</sup> Human Rights Watch interview with Anna Kokorina. St Petersburg. Dec 7, 2017.

<sup>404</sup> Human Rights Watch, “I Could Kill You and No One Would Stop Me. Weak State Response to Domestic Violence in Russia.”, op. cit., pag. 45.

<sup>405</sup> Human Rights Watch, “I Could Kill You and No One Would Stop Me. Weak State Response to Domestic Violence in Russia.”, op. cit., pag. 46-48.

<sup>406</sup> Human Rights Watch, “I Could Kill You and No One Would Stop Me. Weak State Response to Domestic Violence in Russia.”, op. cit., pag. 59.

<sup>407</sup> Human Rights Watch, “I Could Kill You and No One Would Stop Me. Weak State Response to Domestic Violence in Russia.”, op. cit., pag. 59.

requirements.<sup>408</sup> Another reason why cases are ceased is the reconciliation with the abuser: usually during the court hearings violence has passed and the perpetrator is in the repentance stage promising that violence will not happen again, the victim believes in his words and in his repentance, feels guilty and withdraws the complaint agreeing to reconciliation.<sup>409</sup>

Shelters are the last topic linked to domestic violence addressed by the Human Rights Watch. The ONG noticed the limited number of specialised shelters and underlined that they are located only in the urban areas, limiting the access to women who live in rural areas, furthermore they have high requirements to entry and a huge amount of paperwork, making victims wait for weeks in order to know whether they can be granted a place or not.<sup>410</sup>

Analysing the situation on domestic violence in the RF, also the CoE Human Rights Commissioner Nils Muižnieks urged Russia to sign and ratify the IC.<sup>411</sup> Thus, Russia shall first of all criminalise all forms of domestic violence complying with the definition included in the Convention.<sup>412</sup> The notion should include physical, psychological, sexual, and economic violence, and should include as perpetrator also previous spouses, partners, and previous partners, even though they are not or were not part of the household; the definition included in the previous mentioned first amendment already included spouses, parents, children, adoptive parents and adoptive children, siblings, grandparents and grandchildren, along with persons who “run a common household”.<sup>413</sup>

After that, Russia shall improve prevention. As in the previous cases, also in the RF domestic violence is seen as a private matter and victims are stigmatised: awareness and understanding on the topic shall be therefore promoted through relevant campaigns and programmes in order to bring changes in the social background removing stereotypes related to the traditional social roles of men and women. These campaigns and programmes shall be addressed to both men and women as also women believe in the sexist stereotypes and gender-based roles, and also to

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<sup>408</sup> ANNA, “Violence against women in the Russian Federation”, op. cit., pag. 11.

<sup>409</sup> ANNA, “Violence against women in the Russian Federation.”, op. cit., pag. 11.

<sup>410</sup> Human Rights Watch, “I Could Kill You and No One Would Stop Me. Weak State Response to Domestic Violence in Russia.”, op. cit., pag. 64.

<sup>411</sup> Муйжниекс, “В обществе должен произойти культурный сдвиг: нельзя поощрять и оправдывать насилие.”, указ. соч. [Muižnieks, “A cultural shift must take place in society: violence cannot be encouraged and justified.”, op. cit.]

<sup>412</sup> 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence. Istanbul. 2011. CETS No. 210. Art. 3.b.

<sup>413</sup> Criminal Code of the Russian Federation. Chapter 16. Crimes against human life and health. Art. 116. With amendments from July 2016.

professionals. As previously highlighted, the police in Russia lack of training and sensibilisation on domestic violence, therefore Russia shall provide them with proper training and means in order to protect the victims, to know how to handle such cases, and to separate victims from abusers. This training should stop the above-mentioned police practices of diminishing the seriousness of domestic violence, of not answering calls for domestic violence, and of refusing to file complaints, the training should also make them provide victims with immediate protection. Protective orders are another measure that could be introduced by Russia in order to protect victims from further acts of violence, this mean is requested by art. 53 of the Convention<sup>414</sup> and has been suggested also by the ANNA centre.<sup>415</sup>

In accordance with art. 21<sup>416</sup> of the IC, the RF shall also ensure access to individual and collective complaints, and in line with art. 57,<sup>417</sup> the State shall provide the right to legal assistance and to free legal assistance. Russia shall therefore remove the burdens that victims have to face at the present moment and that put them in a disadvantage position compared to the alleged perpetrators, who are provided with free legal aid.

Lastly, in order to comply with the provisions of the IC,<sup>418</sup> Russia shall ensure shelters, general and specialist support services in all its territory, improving therefore the access for women in rural areas; it shall therefore increase the number of centres, especially in the rural areas, and facilitate the access to them, lightening the above-mentioned administrative procedure which, nowadays, is slowed down and made difficult by bureaucracy.<sup>419</sup>

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<sup>414</sup> 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence. Istanbul. 2011. CETS No. 210. Art. 53.

<sup>415</sup> ANNA, "Violence against women in the Russian Federation.", op. cit., pag. 14.

<sup>416</sup> 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence. Istanbul. 2011. CETS No. 210. Art. 21: *Parties shall ensure that victims have information on and access to applicable regional and international individual/collective complaints mechanisms. Parties shall promote the provision of sensitive and knowledgeable assistance to victims in presenting any such complaints.*

<sup>417</sup> 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence. Istanbul. 2011. CETS No. 210. Art. 57.

<sup>418</sup> 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence. Istanbul. 2011. CETS No. 210. Art. 20; 22; 23.

<sup>419</sup> Human Rights Watch, "I Could Kill You and No One Would Stop Me. Weak State Response to Domestic Violence in Russia.", op. cit., pag. 64.

## Chapter 3

### SEXUAL VIOLENCE, INCLUDING RAPE

#### *3.1. Introduction and Main Concepts*

Sexual violence is considered a violation of human rights by the UN<sup>420</sup> and it is treated as an issue of public health by the WHO.<sup>421</sup> The IC covers sexual violence, including rape in art. 36, according to this article State Parties shall:

“take the necessary legislative or other measures to ensure that the following international conducts are criminalised:

- a. engaging in non-consensual vaginal, anal or oral penetration of a sexual nature of the body of another person with any bodily part or object;
- b. engaging in other non-consensual acts of a sexual nature with a person;
- c. causing another person to engage in non-consensual acts of a sexual nature with a third person”.<sup>422</sup>

Art. 36 includes also the concepts of consent and of intimate partner violence, the first one implies the necessity of the person’s free will and the second one implies that the above-mentioned conducts shall be criminalised also when they are committed by the former or current spouse or partner of the victim.<sup>423</sup> The concept of consent is very important as the absence of consent is considered the essential element of the crime and the CEDAW argued that it should be at the centre of the offence rather than the use of force<sup>424</sup> as it has been commonly believed. In fact, as reported by the ECtHR, rape, which is a form of sexual violence, requires the use of force by the perpetrator and the proof of physical resistance as per its definition in the legislation of some European countries, but this could result in leaving certain types of rape unpunished.<sup>425</sup> In fact, following the idea that violence is at the base of rape and that the proof of the use of force and of physical resistance by the victim is required, the cases when the victim “only” does not give her<sup>426</sup> consent to the sexual act and does not fight back against the perpetrator are not considered rape or, more in general,

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<sup>420</sup> United Nations. “Handbook for legislation on violence against women.” New York. 2010. Pag. 5. Accessed Jan 15, 2022. <https://www.un.org/womenwatch/daw/vaw/handbook/Handbook%20for%20legislation%20on%20violence%20against%20women.pdf>

<sup>421</sup> WHO, “World report on violence and health.”, op. cit., pag. 172.

<sup>422</sup> 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence. Istanbul. 2011. CETS No. 210. Art. 36.1

<sup>423</sup> 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence. Istanbul. 2011. CETS No. 210. Art. 36.2; 36.3.

<sup>424</sup> Report of CEDAW to the General Assembly (A/67/38). 2012. Pag. 31.

<sup>425</sup> M.C. v. Bulgaria, Appl. no. 39272/98, ECtHR, 04 March 2004. Para. 159; 166.

<sup>426</sup> Feminine gender is used here as I am taking into consideration VAW, the same reasoning can be applied to sexual violence against men.

acts of sexual violence leaving victims without protection as their case does not fall into the definition of rape linked to violence.

Punishing rape and all the other types of sexual violence is important because sexual violence has a severe impact on the physical and mental health of the victim, moreover it is linked with a higher risk of a variety of sexual and health problems,<sup>427</sup> such as painful intercourse and vaginal pain, bladder infections, vaginal and anal bleeding, anal or vaginal stretching, as well as sexually transmitted diseases among others.<sup>428</sup> Furthermore, studies showed that experiencing sexual abuse in childhood or adolescence creates a pattern of victimisation during adulthood.<sup>429</sup> Another factor that increases the risk of being victim of sexual violence is the level of education, women that have a higher educational level are more likely to acknowledge the experience of sexual violence because they are more empowered thus more reluctant to patriarchal norms and men, usually the partner in this case, resort to violence with the purpose to regain control over his female partner.<sup>430</sup> In line with this, the journalist Susan Brownmiller claimed that rape is part of the system of threat and intimidation put into action by men in order to keep women subordinated under their control.<sup>431</sup> Other factors that increase the risk of sexual violence are poverty, being young, consuming alcohol or drugs, involvement in sex work and having many sexual partners, although it is not clear if the last one is a cause or a consequence of abuse.<sup>432</sup>

Concerning rape, another factor to be taken into consideration is that its definition in the different national legislations differs from one State to another,<sup>433</sup> moreover the concept of rape in the popular culture is often narrower than the legal definitions.<sup>434</sup> The essence of rape in these different definitions remains the same, that is the coerced violence or penetration of the body, however coercion can be interpreted in different ways such as the use of force or the threat to use it, the absence of consent and also as a wider generalised coercion, other differences can be found in the type of penetration considered, it could be restricted only to the penis or it could include

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<sup>427</sup> WHO, "World report on violence and health.", op. cit., pag 149.

<sup>428</sup> Campbell Jacquelyn C. and Alford Peggy. "The Dark Consequences of Marital Rape." *The American Journal of Nursing*. JVol. 89, No. 7. Jul., 1989. Pag. 948.

<sup>429</sup> WHO, "World report on violence and health.", op. cit., pag. 158.

<sup>430</sup> WHO, "World report on violence and health.", op. cit., pag. 157-158.

<sup>431</sup> Brownmiller Susan. "Against Our Will. Men, Women and Rape." *Open Road Integrated Media*. New York. 1975.

<sup>432</sup> WHO, "World report on violence and health.", op. cit., pag. 157-158.

<sup>433</sup> De Vido, "Violence against women's health in international law.", op. cit., pag. 37.

<sup>434</sup> Walby, Olive, Towers, Francis, Strid, Krizsán, Lombardo, May-Chahal, Franzway, Sugarman, Bina, Armstrong, "Stopping Rape: Towards a Comprehensive Policy.", op. cit., pag. 11.

also any object, and the part of the body penetrated, it could be restricted to the vagina or it could include also the mouth and/or the anus.<sup>435</sup> These differences determine whether the rape can be perpetrated only by a man against a woman or also against a man or even by a woman,<sup>436</sup> however sexual violence against men will not be discussed in this work.

In addition to the repercussions on physical and mental health, research has also shown that sexual violence can have direct and indirect consequences on women's reproductive health, sexual violence can in truth cause reproductive health problems such as unwanted pregnancies and sexually transmitted infections, including HIV.<sup>437</sup> According to definition set above, sexual violence has a broader meaning than rape, as a matter of fact, it includes acts such as unwanted sexual advances, sexual harassment, sexual abuse, forced marriage, denial of the right to use contraception, denial to adopt other measures to protect against sexually transmitted diseases, forced abortion, violent acts against the sexual integrity of women, including FGM and obligatory inspections for virginity, forced prostitution and human trafficking for sexual exploitation.<sup>438</sup>

In the following parts of this Chapter I will firstly introduce common issues present in all the countries analysed such as "rape culture", followed by the reasons why victims do not report rape and sexual intimate partner violence. After that, I will present the present situation and legislation in Bulgaria, Poland, Russia and Ukraine, as each State will be analysed individually. A Sub-chapter will be dedicated also to the sexist humour in the RF and to its dangers and another one to conflict-related sexual violence in Ukraine. In conclusion, I will examine the #янебоюсьсказати (#Iamnotafrittospeak) campaign in Ukraine and in Russia, where it became the #янебоюсьсказать campaign, which can be considered the beginning of the acknowledgment on the sexual violence issue in the two countries.

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<sup>435</sup> Walby, Olive, Towers, Francis, Strid, Krizsán, Lombardo, May-Chahal, Franzway, Sugarman, Bina, Armstrong, "Stopping Rape: Towards a Comprehensive Policy.", op. cit., pag. 12.

<sup>436</sup> Walby, Olive, Towers, Francis, Strid, Krizsán, Lombardo, May-Chahal, Franzway, Sugarman, Bina, Armstrong, "Stopping Rape: Towards a Comprehensive Policy.", op. cit., pag. 12.

<sup>437</sup> Mogilevkina, Odind, "Some reproductive and sexual health indicators in rape victims in Ukraine.", op. cit., pag. 400. And De Vido, "Violence against women's health in international law.", op. cit., pag. 38.

<sup>438</sup> WHO, "World report on violence and health.", op. cit., pag. 149-150.

## 3.2. Common Issues

### 3.2.1. "Rape Culture"

The problem of "rape culture" has its roots in traditional and popular conceptions and ideas about women's bodies and sexuality, these social norms are conditioned by the patriarchal culture,<sup>439</sup> for instance men have usually considered women's sexuality as their property.<sup>440</sup> As a proof of this, originally the aim of rape laws was to protect men's interests: women were property of their fathers and then of their husbands and these men had to protect their "honour" from violation by other men.<sup>441</sup>

The popular notion of rape is generally more restricted than the legal definition, therefore it includes less cases than the ones covered by the law and this can be seen also in the tendency of survivors to avoid the term "rape" and using it only when the circumstances are more extreme than law requirements.<sup>442</sup> It is most likely that the reluctance of victims to define the crime they have suffered as "rape" is related to the stigmatisation of rape victims<sup>443</sup> and to the fact that, in some cases, they are blamed for what happened to them.<sup>444</sup> This social stigma is strictly connected also to another issue: the fact that many victims do not report<sup>445</sup> the crime they have suffered.<sup>446</sup>

An example of these traditional conceptions and of the social stigma can be found in the statement of the applicant in the case *M.C. v. Bulgaria*: describing what happened to her, the applicant stated that "she felt ashamed of the fact that she had "failed to protect her virginity" and of "what people would say about it"" as she lived in a small-town where virginity was considered an "asset" for marriage,<sup>447</sup> furthermore it is possible to find references to the perception of women's sexuality as men's property when she stated that she minimised the facts as suggested by her mother because one of the perpetrators proposed to marry the victim (when she came of age) in order to repair the damage.<sup>448</sup> The notion of "repair through marriage" has in roots in the above-mentioned concepts of women as men's property and of men's honour; marriage would absolve the woman's family of the loss of the virginal daughter as

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<sup>439</sup> Equality Now. A just world for women and girls. "Russian Sexual Violence Awareness Week: Russia is failing to meet international standards on combatting sexual violence." Apr 15, 2021. Accessed May 23, 2021. [https://www.equalitynow.org/russian\\_sexual\\_violence\\_awareness\\_week](https://www.equalitynow.org/russian_sexual_violence_awareness_week)

<sup>440</sup> De Vido, "Violence against women's health in international law.", op. cit., pag. 37.

<sup>441</sup> Randall Melanie and Venkatesh Vasanthi. "The Right to No: State Obligations to Criminalize Marital Rape and International Human Rights Law." *SSRN Electronic Journal*. 10.2139/ssrn.2704099. 2015. Pag. 47.

<sup>442</sup> Walby, Olive, Towers, Francis, Strid, Krizsán, Lombardo, May-Chahal, Franzway, Sugarman, Bina, Armstrong, "Stopping Rape: Towards a Comprehensive Policy.", op. cit., pag. 12.

<sup>443</sup> Walby, Olive, Towers, Francis, Strid, Krizsán, Lombardo, May-Chahal, Franzway, Sugarman, Bina, Armstrong, "Stopping Rape: Towards a Comprehensive Policy.", op. cit., pag. 12.

<sup>444</sup> Gerasymenko G.V. "Gender-Based Violence in Ukraine: Issues of Assessment and Policy Response." *Demography and Social Economy*. No. 3 (25). ISSN 2072-9480. 2015. Pag. 146.

<sup>445</sup> This will be further analysed in the next Sub-chapter.

<sup>446</sup> Social Institutions & Gender Index, "Bulgaria.", op. cit.

<sup>447</sup> *M.C. v. Bulgaria*, para. 37.

<sup>448</sup> *M.C. v. Bulgaria*, para. 38.

only the husband is entitled to exclusive sexual access to a woman and the rapist has taken that exclusive access “spoiling” the woman for use by another man.<sup>449</sup>

Research has shown that it is not uncommon for women to forget, deny, or minimise experiences of sexual violence and this is due to many reasons: shame, fear of reprisals, self-blame, or loyalty to the abuser, as the perpetrator could be the partner.<sup>450</sup> As a matter of fact, another myth to be dispelled is the belief that usually sexual violence is committed by strangers,<sup>451</sup> indeed research showed that the majority of cases of sexual violence against women were committed by a person known by the victim, for example the current or former partner, a friend or a colleague.<sup>452</sup>

The ideas included in the “rape culture” influence also journalists, as matter of fact, for example, in the RF victim-blaming can be perceived in headlines like “She brought it on”, “She provoked”, “She cheated”, this kind of headlines makes the reader judge the woman and look at the man as he was the victim.<sup>453</sup> Other instances can be headlines that underline the altered state of the victim, emphasising that she was drunk or under the effects of drugs or what she was wearing.<sup>454</sup> Another sign of victim-blaming in the press is the use of terms like “confesses” and “admits” in relation to the victim, used in this way, these terms imply that the victim herself was responsible for what happened to her removing therefore the guilt from the abuser.<sup>455</sup> The blame of sexual violence survivors by the media is not uncommon and it is a direct representation of how the society perceives the phenomenon of sexual violence and rape.<sup>456</sup>

Another research conducted by the EU, therefore including only Bulgaria and Poland of the countries analysed in this work, reported that, according to the polled, there are instances in which “sexual intercourse without consent can be justifiable”.<sup>457</sup> The polled were given nine situations and according to 30% of Polish respondents in at least one of them sexual intercourse without consent could be justified, the

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<sup>449</sup> Randall and Venkatesh, “The Right to No: State Obligations to Criminalize Marital Rape and International Human Rights Law.”, op. cit., pag. 50.

<sup>450</sup> Mogilevkina, Odland, “Some reproductive and sexual health indicators in rape victims in Ukraine.”, op. cit., pag. 410.

<sup>451</sup> Kennedy Angie C., Meier Elizabeth, Saba Jessica. “Sexual Violence within Intimate Relationships.” In J. Devaney, C. Bradbury-Jones, R. J. Macy, C. Øverlien, & S. Holt (Eds.), *The Routledge international handbook of domestic violence and abuse*. Routledge. London. 2021. Pag. 13.

<sup>452</sup> Fisher Bonnie S., Cullen Francis T., Daigle Leah E. “The Discovery of Acquaintance Rape: The Salience of Methodological Innovation and Rigor.” *Journal of Interpersonal Violence*. Vol. 20 N. 4. 2005, first published Apr 1, 2005. Pag. 494. Accessed Jan 15, 2022. <https://doi.org/10.1177/0886260504267761>

<sup>453</sup> Rodina, “Women ‘have finally started talking’: Three female journalists on covering sexual violence in Russia.”, op. cit.

<sup>454</sup> Singh Purnima. “How Does The Media Perpetuate Victim Blaming When Reporting GBV?” *Feminism in India*. Oct 22, 2019. Accessed Feb 14, 2022. <https://feminisminindia.com/2019/10/22/media-victim-blaming-gbvmedia/>

<sup>455</sup> Singh, “How Does The Media Perpetuate Victim Blaming When Reporting GBV?”, op. cit.

<sup>456</sup> Singh, “How Does The Media Perpetuate Victim Blaming When Reporting GBV?”, op. cit.

<sup>457</sup> Directorate-General for Communication. “Special Eurobarometer 449: Gender-based violence.” 2016. [https://data.europa.eu/data/datasets/s2115\\_85\\_3\\_449\\_eng?locale=en](https://data.europa.eu/data/datasets/s2115_85_3_449_eng?locale=en)



percentage is higher in Bulgaria, where 43% of respondents said that at least one of the situations could be justified.<sup>458</sup> Some of the justifications were the following: the victim is drunk or on drugs, the victim voluntarily goes home with the perpetrator, the victim wears provocative or sexy clothes, the victim does not clearly say “no” or the victim does not fight back.<sup>459</sup> However, Kanchana Lanzet, an expert on gender issues and former Vice President of the UN Women’s National Committee in Germany, commenting on the study in an interview for DW Akademie said that the use of the expression “sexual intercourse without consent” could have misled the perception of respondents, she considers the term used in the survey only a “fine-sounding phrase for the word “rape”” and thinks that, if the survey had used the word “rape”, the results would have been undoubtedly different.<sup>460</sup> Once again, it is possible to notice how the topic of sexual violence against women is related to ideas and perceptions.

Conservative trends among politicians and laws capable of preserving the so-called “traditional values” certainly do not help improving the above-mentioned conceptions, on the contrary they revitalise and normalise misconception and stereotypes about VAW, for instance the opinion according to which women themselves have caused, provoked or deserved violence.<sup>461</sup> Along with traditional values, also rape myths nourish the so-called “rape culture”.<sup>462</sup> Three types of rape myths exist: about the victim, about the perpetrator, and about the nature of the act of rape.<sup>463</sup> The first type includes the belief that the victim is lying because she has further motives, that she “asked for it” because of her actions for example going to the perpetrator’s house for a drink, that rape happens only to promiscuous women, as well as the idea that she wanted it and later, after the events, changed her story.<sup>464</sup> The second type of myths excuses the perpetrator’s behaviour with phrases like “he did not mean to” and paint a limited picture of those who commit rape such as sex-crazed psychopaths.<sup>465</sup> The last category of the myths related to rape includes ideas such as the fact that rape is trivial, using excuses like “she was not hurt in reality”, these myths also describes

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<sup>458</sup> Directorate-General for Communication, “Special Eurobarometer 449: Gender-based violence.”, op. cit.

<sup>459</sup> Directorate-General for Communication, “Special Eurobarometer 449: Gender-based violence.”, op. cit.

<sup>460</sup> Gopalakrishnan Manasi. “More than a quarter of Europeans say rape can be justified.” *DW Akademie*. Dec 02, 2016. Accessed May 23, 2021. <https://www.dw.com/en/more-than-a-quarter-of-europeans-say-rape-can-be-justified/a-36591603>

<sup>461</sup> Human Rights Watch, “I Could Kill You and No One Would Stop Me. Weak State Response to Domestic Violence in Russia.”, op. cit., pag. 5.

<sup>462</sup> Franiuk Renae, Seefeldt Jennifer L., Cress Sandy L., Vandello Joseph A. “Prevalence and Effects of Rape Myths in Print Journalism: The Kobe Bryant Case.” *Violence Against Women*. Vol 14(3). 2008. Pag. 288. Accessed Feb 14, 2022. <https://doi.org/10.1177/1077801207313971>

<sup>463</sup> Franiuk, Seefeldt, Cress, Vandello, “Prevalence and Effects of Rape Myths in Print Journalism: The Kobe Bryant Case.”, op. cit., pag. 288.

<sup>464</sup> Franiuk, Seefeldt, Cress, Vandello, “Prevalence and Effects of Rape Myths in Print Journalism: The Kobe Bryant Case.”, op. cit., pag. 288-289.

<sup>465</sup> Franiuk, Seefeldt, Cress, Vandello, “Prevalence and Effects of Rape Myths in Print Journalism: The Kobe Bryant Case.”, op. cit., pag. 289.

rape as natural arguing that “men have a biological predisposition to get sex through force”.<sup>466</sup> These myths are sustained by a large part of the population, by both men and women, nevertheless, usually men are more willing to accept them than women.<sup>467</sup> Moreover, the acceptance of these myths has consequences such as greater victim blaming, lower convictions rates for accused abusers, and also shorter sentences.<sup>468</sup>

Overcoming and eliminating this kind of conceptions and ideas is part of the IC objectives, this is in practice one of the first steps to be taken in order to protect women against violence, and to prevent and eliminate VAW, especially in relation to sexual violence against women, which is strictly linked to popular ideas and conceptions. According to the general obligations set in art. 12 of the Convention, State parties shall take action in order to encourage changes in the social and cultural ideas and behaviour based on the notion of the inferiority of women and on stereotypes.<sup>469</sup> With regards the four States taken into consideration, this would imply that they have to actively sensitise and educate all the members of their society on the topic of sexual violence and to combat the patriarchal culture embedded in society.

They should firstly focus on the notion of consent: Russia should include it in its definition of sexual violence and make it the centre of the offence instead of the use of force, as suggested also by the CEDAW.<sup>470</sup> Bulgaria should do the same because also its definition of rape implies the use of force as the key role in the aforesaid act of sexual violence instead of the absence of consent.<sup>471</sup> Ukraine, instead, because of the amendments to its Criminal Code with the aim to conform with the international standards,<sup>472</sup> has included the concept of consent in its definition of rape.<sup>473</sup> In Poland the notion of consent can be implied by the fact that the act of rape is treated as an offence against “sexual freedom” which, in its turn, implies that individuals have the

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<sup>466</sup> Franiuk, Seefeld, Cepsess, Vandello, “Prevalence and Effects of Rape Myths in Print Journalism: The Kobe Bryant Case.”, op. cit., pag. 289.

<sup>467</sup> Franiuk, Seefeld, Cepsess, Vandello, “Prevalence and Effects of Rape Myths in Print Journalism: The Kobe Bryant Case.”, op. cit., pag. 290.

<sup>468</sup> Franiuk, Seefeld, Cepsess, Vandello, “Prevalence and Effects of Rape Myths in Print Journalism: The Kobe Bryant Case.”, op. cit., pag. 290.

<sup>469</sup> 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence. Istanbul. 2011. CETS No. 210. Art. 12.1.

<sup>470</sup> Report of CEDAW to the General Assembly (A/67/38). 2012. Pag. 31.

<sup>471</sup> Criminal Code of the Republic of Bulgaria. Special part. Chapter Two. Crimes against the person. Section VIII. Debauchery. Art. 152(1).

<sup>472</sup> Amnesty International, “Not a Private Matter. Domestic and Sexual Violence against Women in Eastern Ukraine.”, op. cit., pag. 25.

<sup>473</sup> Criminal Code of the Republic of Ukraine. Chapter IV. Crimes against sexual freedom and sexual inviolability of a person. Art. 152.

right to choose in regard of their sexual activity.<sup>474</sup> However, in Poland rape is still perceived by the society as the result of women's behaviour<sup>475</sup> and the Polish legislation is interpreted in a way that requires women to "use active resistance" against the abuser regardless the fact that resistance is not one of the key elements of the Polish definition of rape.<sup>476</sup> This shows that the inclusion of the notion of consent in the national legislation is not sufficient, the four countries should sensitise all the members of their society, including men and boys, on the above-mentioned concept and its importance, eliminating any belief that sexual violence and rape can be justified in certain circumstances; they should focus also on the concept of women's free will and try to eliminate the patriarchal concepts that subordinate women's sexuality to men and other misconceptions rooted in the patriarchal view of society. They should also educate their population on what constitute the crime of sexual violence and of rape in order to have to avoid the underrating of some acts of violence by the victims.

It is important to have this kind of awareness raising and education at all levels in order to have the media to report and describe events without blaming and stigmatising the victims, this should influence the way of thinking in the society, therefore it should contribute to eliminate victims' blaming and stigmatisation among the population.

Lastly, by eliminating the traditional conception of women as men's property, it would be possible to eliminate also the notions of "repair through marriage" which only leads to have the victim closer to the abuser and saves only the "conservative traditional façade". Furthermore, if the victim of rape was forced to marry the abuser, this would make her a victim also of another type of violence, forced marriage, which is covered by the Convention<sup>477</sup> and which State Parties shall criminalise. In the case of forced marriage, which is usually linked to other forms of violence such as physical, psychological, and sexual abuse,<sup>478</sup> the perpetrator becomes the husband of the victim exposing her to the constant risk of violence as she has to live in the same

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<sup>474</sup>Kościańska, "Gender on Trial. Changes in Legal and Discursive Practices Concerning Sexual Violence in Poland from the 1970s to the Present.", op. cit., pag. 114.

<sup>475</sup> Kościańska, "Gender on Trial. Changes in Legal and Discursive Practices Concerning Sexual Violence in Poland from the 1970s to the Present.", op. cit., pag. 114.

<sup>476</sup> Social Institutions & Gender Index, "Poland.", op. cit.

<sup>477</sup> 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence. Istanbul. 2011. CETS No. 210. Art. 37.

<sup>478</sup> Villacampa, "Forced marriage as a lived experience: Victims' voices." *International Review of Victimology*. Vol. 26(3). 2020. Pag. 351. <https://doi.org/10.1177/0269758019897145>

house with her abuser.<sup>479</sup> The violent behaviour of the abusive spouse can begin in order for him to gain control over the other spouse, which is the victim.<sup>480</sup> It is important to underline also the psychological harm that the victim can suffer living with her own abuser: the victim would live in the constant fear of being abused and would also fear repercussions in case she seeks help.<sup>481</sup>

### 3.2.2. *Why Victims Do Not Report Rapes*

As mentioned in the previous Sub-chapter, the social stigma on rape victims results in them not reporting the violence they underwent. In fact, in Poland women seldom report rapes to the police or press charges due to the social stigma of rape and due to the perception of it as the consequence of women's provocation.<sup>482</sup> In a case about a 16-year-old girl gang-raped twice in the 80s in Poland, the first time the girl's parents and stepfather convinced her not to go to the police and during the trial, as she went alone to the police after the second rape, her parents and stepfather, along with the families of the offenders, tried to convince her not to testify and that what happened was not really rape.<sup>483</sup> In Ukraine this social stigma is one of the most common reasons why victims do not report rape along with the belief that rape is a personal and private matter.<sup>484</sup> In line with this, the perception of rape being a private matter makes some believe that the State shall not intervene in these cases.<sup>485</sup> Moreover, the less likely cases of rape to be reported are rapes by the partner.<sup>486</sup>

The results of a study conducted in three universities in Russia are in line with the above-mentioned cases of underreporting: the rate of severe sexual coercion detected by the study was much higher than the official rate of the cases registered by the police.<sup>487</sup> In Bulgaria it is estimated that the real number of rape cases is probably five times greater than the official data from official criminal statistics: the

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<sup>479</sup> Swegman Casey. "The Intersectionality of Forced Marriage with Other Forms of Abuse in the United States." National Resource Center on Domestic Violence. Feb 2016. Pag. 5. Accessed Feb 13, 2022. [https://vawnet.org/sites/default/files/materials/files/2016-09/AR\\_ForcedMarriage.pdf](https://vawnet.org/sites/default/files/materials/files/2016-09/AR_ForcedMarriage.pdf)

<sup>480</sup> Villacampa Carolina. "Forced marriage as a lived experience: Victims' voices.", op. cit., pag. 351.

<sup>481</sup> Swegman, "The Intersectionality of Forced Marriage with Other Forms of Abuse in the United States.", op. cit., pag. 9.

<sup>482</sup> Kościańska, "The ordinary recklessness of girls...": Expert witnesses and the problem of rape in Poland.", op. cit., pag. 102.

<sup>483</sup> Kościańska. "Gender on Trial. Changes in Legal and Discursive Practices Concerning Sexual Violence in Poland from the 1970s to the Present.", op. cit., pag. 111.

<sup>484</sup> Gerasymenko, "Gender-Based Violence in Ukraine: Issues of Assessment and Policy Response.", op. cit., pag. 146.

<sup>485</sup> Duban Elizabeth. "Research on preventing and combating violence against women and domestic violence including in situations of social disadvantage in the Russian Federation." Co-operation on the implementation of the Russian Federation National Action Strategy for Women (2017–2022). Funded by the European Union and the Council of Europe. April 2020. Pag. 12.

<sup>486</sup> Mogilevkina, Odlind, "Some reproductive and sexual health indicators in rape victims in Ukraine.", op. cit., pag. 410.

<sup>487</sup> Lysova Aleksandra V., Douglas Emily M. "Intimate Partner Violence Among Male and Female Russian University Students." *Journal of Interpersonal Violence*. Vol. 23 N. 11. Nov 2008, first published Feb 28, 2008. Pag. 1597. Accessed Apr 29, 2021. <https://doi.org/10.1177/0886260508314320>. And Russian Police Crime Report. "Basic results on crimes in the Russian Federation in 2004." 2004.

majority of female victims do not want to undergo all the process of reporting a case of rape as it could be humiliating.<sup>488</sup>

According to Maria Mokhova, the Executive Director of the independent charity centre for survivors of sexual Violence “Сестры” (“Sisters”), in her interview to DW, it is estimated that in Russia only about 12% of sexual violence victims file complaints,<sup>489</sup> many women prefer not to turn to the police because of the social pressure and because of the reluctance with which the police treat cases of VAW.<sup>490</sup>

To make matters worse, in 2020 the RF passed a new libel law<sup>491</sup> that punishes false accusers of sexual assault which make women more unwilling to report and even share their stories fearing legal action.<sup>492</sup> In relation to this, it is worth underlining that research on VAW showed that over-reporting, which means reporting of abuse when it has not really occurred, has not been found a problem in this field, as being identified as a victim of abuse is very shameful in many societies.<sup>493</sup>

Another reason why victims of rape do not report is the behaviour of the police, in fact, if a woman decides to report to the police, they could refuse to register her complaint, in reality prejudices on victims of sexual violence affect also officers who tend to believe that women provoke sexual assault themselves.<sup>494</sup> According to a research conducted in Ukraine, 39% of police officers considers domestic violence, any type of it, as a private matter, 58% confirmed that “victims of rape are sometimes responsible for what happened to them”, 59% thinks that the majority of domestic violence cases are false and 81% of them confirmed that the priority in this type of cases should always be the reconciliation of partners,<sup>495</sup> as a result women in Ukraine sometimes have to call for months before the police register their complaints.<sup>496</sup>

The ANNA Centre reported the case of a woman who was raped in the yard of her house and who immediately went to the police: the officers spoke to her in a mocking tone, asked her questions that blamed her for being raped, put pressure on her, tried to dissuade her from writing a statement, they were rude to her and she was taken to

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<sup>488</sup> Todorova T., Mechkarsa N., Taneva T. “Violence over Women in Bulgaria.” *Trakia Journal of Sciences*. No 3. 2013. Pag. 255.

<sup>489</sup> Петровская Галина. “Преступления без наказания: жертвы насилия больше не молчат.” *DW Akademie*. Июль 8, 2016. Доступ Янв 17, 2022. <https://shortest.link/2x7M> [Petrovskaya Galina. “Crimes without punishment: victims of violence are no longer silent.” *DW Akademie*. Jul 8, 2016. Accessed Jan 17, 2022. <https://shortest.link/2x7M> – my translation]

<sup>490</sup> Hybrid Warfare Analytical Group, “How Russian Pop-Culture Reflects Misogynistic Policies.”, op. cit.

<sup>491</sup> Федеральный закон от 30.12.2020. № 538-ФЗ “О внесении изменения в статью 128-1 Уголовного кодекса Российской Федерации” [Federal Law of 30.12.2020. № 538-ФЗ “On the amendments to Article 128-1 of the Criminal Code of the Russian Federation” – my translation]

<sup>492</sup> Rodina, “Women ‘have finally started talking’: Three female journalists on covering sexual violence in Russia.”, op. cit.

<sup>493</sup> Mogilevkina, Odlind, “Some reproductive and sexual health indicators in rape victims in Ukraine.”, op. cit., pag. 410.

<sup>494</sup> ANNA, “Violence against women in the Russian Federation.”, op. cit., pag. 26.

<sup>495</sup> DCAF and La Strada-Ukraine, “Criminal Justice Practice and Violence Against Women.”, op. cit., pag. 44-46

<sup>496</sup> Amnesty International, “Not a Private Matter. Domestic and Sexual Violence against Women in Eastern Ukraine.”, op. cit., pag. 44-45.

the hospital only three hours later where however the measures taken were not enough as no measure was taken against sexual transmitted diseases, HIV, and pregnancy and no one took care of her broken nose.<sup>497</sup> This shows a lack of gender-sensitive understanding by the officers, which was reported also by Amnesty International in Ukraine.<sup>498</sup>

In addition, the general distrust on the police and on institutions is generated also by the fact that officers can sometimes be the perpetrators of sexual violence. In 2013 a woman in Ukraine was kidnapped, beaten and raped by two officers who were also, unsuccessfully, protected by their superiors,<sup>499</sup> and in one of the posts connected to the campaign #Iamnotafraidtospeak<sup>500</sup> a women recalled of being harassed by a government official.<sup>501</sup> Another case was reported by Amnesty International, a police officer had to report a case as false as the abuser was a higher rank police officer and the woman had to pay a fine.<sup>502</sup> Another example is the case of *Maslova and Nalbandov v. Russia*, officers forced the first applicant to have vaginal and oral sex with them when she was summoned as she was a witness in a murder case.<sup>503</sup>

However, social conceptions do not affect only reporting to the police, they affect also sharing and opening up with close friends and relatives. In fact, in the case *M.C. v. Bulgaria*, the applicant stated that she was too ashamed to tell her mother about the second rape<sup>504</sup> and in another of the posts connected to the campaign #Iamnotafraidtospeak, a girl described of feeling too ashamed after having suffered sexual violence twice that could not tell it neither to her mother nor to her grandmother.<sup>505</sup>

Once again, the first problem reported concerning the issue of underreporting of rape is the social stigma linked to being a victim of rape, as underlined above, in fact, victims sometimes fear talking about the violence they suffered to their closest relatives. The implementation of the IC in Bulgaria, Poland, Russia, and Ukraine would imply them to take measures in order to make victims able to report safely and

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<sup>497</sup> ANNA, "Violence against women in the Russian Federation.", op. cit., pag. 26.

<sup>498</sup> Amnesty International, "Not a Private Matter. Domestic and Sexual Violence against Women in Eastern Ukraine.", op. cit., pag. 44.

<sup>499</sup> Interfax Ukraine. "Mykolayiv Region's Prosecutors Request Court to Arrest Third Suspect in Vradiivka Rape Case." Jul 3, 2013. Accessed Jan 17, 2022. <https://en.interfax.com.ua/news/general/159207.html>

<sup>500</sup> Which will be analysed at the end of this Chapter.

<sup>501</sup> Aripova Feruza, Johnson Janet Elise. "The Ukrainian-Russia virtual flashmob against sexual assault." *The Journal of Social Policy Studies*. Vol. 16. No. 3. 2018. Pag. 494.

<sup>502</sup> Amnesty International, "Not a Private Matter. Domestic and Sexual Violence against Women in Eastern Ukraine.", op. cit., pag. 10.

<sup>503</sup> *Maslova and Nalbandov v. Russia*, Appl. 839/02, ECtHR, 07 July 2008. Para 14.

<sup>504</sup> *M.C. v. Bulgaria*, para. 37.

<sup>505</sup> Aripova, Johnson, "The Ukrainian-Russia virtual flashmob against sexual assault.", op. cit., pag. 493.

without fears. In order to comply with the IC, in fact, State Parties shall remove all stereotypes and misbeliefs connected to sexual violence and that refrain victims from reporting. In their sensibilisation campaigns, they shall focus on the fact that this type of violence can be perpetrated also by partners and that is not a private matter, victims have therefore the right to report the violence they have suffered.

After ratifying the Convention and not withdrawing from it, they shall train professionals,<sup>506</sup> specifically in this case, officers and judges, that deal with victims of sexual violence, as a consequence, the latter would trust in the police to take action and feel safe when they report and during court hearings. Furthermore, the perpetration of sexual violence by an officer abusing her or his authority, as in the case *Maslova and Nalbandov v. Russia* for example, shall be considered as an aggravating circumstance<sup>507</sup> by State Parties.

Lastly, Article 25 of the IC is dedicated to the support for victims of sexual violence,<sup>508</sup> according to which, victims shall be provided with medical and forensic examination, trauma support and counselling. Medical and forensic examination would imply further training for officers, as previously mentioned officers can lack of gender-sensitive understanding, they should also be aware of the medical issues related to rape, such sexual transmitted diseases, HIV, and pregnancy.

### 3.2.3. Sexual Intimate Partner Violence

Intimate partner violence is defined by the WHO as a “behaviour within an intimate relationship that causes physical, sexual, or psychological harm”<sup>509</sup> and according to a study conducted by the UN Secretary General intimate partner violence is the most common form of violence that women suffer globally.<sup>510</sup> The WHO reported that in some countries nearly one in four women may experience sexual intimate partner violence<sup>511</sup>, other studies reported that one in three women have suffered sexual and/or physical violence perpetrated by the partner, who could be the husband or another male intimate.<sup>512</sup>

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<sup>506</sup> 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence. Istanbul. 2011. CETS No. 210. Art. 15.

<sup>507</sup> 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence. Istanbul. 2011. CETS No. 210. Art. 46.a.

<sup>508</sup> 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence. Istanbul. 2011. CETS No. 210. Art. 25.

<sup>509</sup> WHO, “World report on violence and health.”, op. cit., pag. 89.

<sup>510</sup> United Nations Secretary General. “In-depth study on all forms of violence against women.” UN Doc. A/61/122/Add.1. 2006. Para. 112.

<sup>511</sup> WHO, “World report on violence and health.”, op. cit., pag. 149.

<sup>512</sup> WHO, “Violence Against Women.”, op. cit.

Marital rape is specifically rape perpetrated by the husband, or more in general by the partner, and the concept of this type of rape has been difficult to be recognised worldwide and it is still rejected by some social actors because it opposes two patriarchal principles: the obligation of sex in the marriage and the obedience to the husband's will.<sup>513</sup> In fact, although there have been some exceptions, throughout history husbands have had enforceable "rights" to have sexual intercourse with their wives and the majority of sexual assaults in intimate relations has been condoned as women have been considered property of their husbands.<sup>514</sup> Some European countries had explicit provisions in their penal codes that excluded marital rape, the first one to remove it was most probably the URSS in 1926, as this type of provision was present in the tsarist criminal code, but not in the first soviet criminal code; this happened because sexual freedom was perceived as an essential feature for self-determination and socialism.<sup>515</sup> Poland removed this exemption in 1969, although the definition of rape remained the same as per the Criminal Code version of 1932, the article was placed in another Chapter, which addressed offences against freedom, before it was included in the Chapter with offences against morality; in 1997 it was moved again into the Chapter that aims to protect sexual freedom and morality.<sup>516</sup> Being in the Chapter about offences against freedom made clear the fact that also women have sexual freedom.<sup>517</sup> Nevertheless, in these two countries, Poland and the RF, intimate partner violence is a topical issue and it is not always recognised by courts and by the police.<sup>518</sup> In fact, criminalising marital rape is not enough, it is only the first step, after the criminalisation, social, cultural, and legal barriers must be removed.<sup>519</sup> Cases of spousal sexual violence are often not seen as serious offences by the police and in addition to the reasons why women do not report rape already mentioned in the previous Sub-chapter such as shame, women who suffer marital rape do not know about the existing legal remedies or they feel that they cannot refuse to have sex with their partner.<sup>520</sup> Sometimes women who have suffered sexual

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<sup>513</sup> Htun, Jensenius, "Fighting Violence Against Women: Laws, Norms & Challenges Ahead.", op. cit., pag. 148.

<sup>514</sup> Randall and Venkatesh, "The Right to No: State Obligations to Criminalize Marital Rape and International Human Rights Law.", op. cit., pag. 46-47.

<sup>515</sup> Randall and Venkatesh, "The Right to No: State Obligations to Criminalize Marital Rape and International Human Rights Law.", op. cit., pag. 67-69.

<sup>516</sup> Michalska-Warias Aneta. "Marital Rape in Poland from the Legal and Criminological Perspectives". *Prawo w Działaniu. Sprawy Karne*. 26/2016. Pag. 63-64.

<sup>517</sup> Michalska-Warias, "Marital Rape in Poland from the Legal and Criminological Perspectives", op. cit., pag. 64.

<sup>518</sup> Randall and Venkatesh, "The Right to No: State Obligations to Criminalize Marital Rape and International Human Rights Law.", op. cit., pag. 86.

<sup>519</sup> Randall and Venkatesh, "Criminalizing Sexual Violence Against Women in Intimate Relationships: State. Obligations Under Human Rights Law.", op. cit., pag. 195.

<sup>520</sup> Randall and Venkatesh, "Criminalizing Sexual Violence Against Women in Intimate Relationships: State. Obligations Under Human Rights Law.", op. cit., pag. 195.



intimate partner violence do not even recognise the experience as rape or sexual assault, once again this could be due to the common idea that rape is perpetrated by a stranger and requires the use of force.<sup>521</sup>

In addition to this, sexual intimate partner violence is more likely to happen along with physical and psychological intimate partner violence, stalking, and coercive control.<sup>522</sup>

There are some factors that increase or decrease the possibility of a woman to suffer violence. According to a study conducted in Ukraine and other four countries of the former Soviet Union, if a woman has access to the family income and to the family resources, she is more likely to suffer intimate partner violence, however drinking problems of the partner are the first factor associated with intimate partner violence in all the countries of the study.<sup>523</sup>

In Bulgaria marital rape is not explicitly included in the Criminal Code and after her visit in November 2019 Dunja Mijatović expressed her concern about this lack and about several provisions in the Bulgarian Criminal Code that are not in line with international human rights standards, including the definition of rape.<sup>524</sup> In Ukraine, according to Amnesty International, sexual violence perpetrated by an intimate partner is rarely recognised as violence.<sup>525</sup>

In order to comply with the IC, State Parties shall criminalise sexual intimate partner violence<sup>526</sup> and, as suggested by Dunja Mijatović,<sup>527</sup> criminalising it explicitly would remove any doubt on its criminalisation and ascertain that it will be recognised as violence.

The criminalisation of sexual intimate partner violence should be followed by the elimination and rejection of the patriarchal principles that impose the sexual act in the marriage as an obligation for the woman. In order to improve the situation in their territories, the four States shall therefore promote and organise campaigns addressed to both men and women in order to eradicate these traditional beliefs and support the idea that also women have sexual freedom and focus on the notion of consent, which should be one of the pillars of the definition of sexual violence and rape. As a

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<sup>521</sup> Kennedy, Meier, Saba, "Sexual Violence within Intimate Relationships", op. cit., pag. 13.

<sup>522</sup> Kennedy, Meier, Saba, "Sexual Violence within Intimate Relationships", op. cit., pag. 21.

<sup>523</sup> Ismayilova Leyla. "Spousal Violence in 5 Transitional Countries: A Population-Based Multilevel Analysis of Individual and Contextual Factors." *American Journal of Public Health*. Vol. 105, No. 11. 2015. Pag. e19-e20.

<sup>524</sup> Mijatović, "Report following her visit to Bulgaria from 25 to 29 November 2019.", op. cit., pag. 19.

<sup>525</sup> Amnesty International, "Not a Private Matter. Domestic and Sexual Violence against Women in Eastern Ukraine.", op. cit., pag. 39.

<sup>526</sup> 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence. Istanbul. 2011. CETS No. 210. Art. 36.3.

<sup>527</sup> Mijatović, "Report following her visit to Bulgaria from 25 to 29 November 2019.", op. cit., pag. 19.

consequence, there should be also a sensibilisation on the fact that the use of force should not be a requirement for sexual violence and rape to be recognised.

Once again, in order to try to eliminate the problem of sexual intimate partner violence, by ratifying and not withdrawing from the IC, States shall train professionals in order for them to be able to recognise that violence has occurred and to know how to deal with the victims. The case should not in fact be minimised by the authorities and victims should not feel humiliated and blamed.

### *3.3. Sexual Violence in Bulgaria: The Need of the Evidence that She Fought Back*

According to the Gender Equality Index issued by the European Institute for Gender Equality (EIGE) in 2017, 28% of Bulgarian women has experienced physical and/or sexual violence since they were 15, this percentage is lower than the EU average, however, Bulgaria recorded the highest rate (48%) of women who have experienced physical and/or sexual violence in the year before the survey and did not report.<sup>528</sup> Nevertheless, Bulgaria is not provided with a mechanism for the systematic collection of data on violence against women and domestic violence as reported by the Commissioner for Human Rights of the Council of Europe, Dunja Mijatović, after her visit in November 2019 and this causes difficulties in mapping the peculiarities of these phenomena.<sup>529</sup>

The Criminal Code of the Republic of Bulgaria covers offences related to sexual violence in Section VIII called “Debauchery” from art. 149 to art. 159 and in Section IX called “Trafficking of People” from art. 159a to art. 159d.<sup>530</sup> Rape is specifically criminalised and defined in art. 152 of the Bulgarian Criminal Code:

“A person who has sexual intercourse with a person of the female sex:

1. who is deprived of the possibility of self-defence, and without her consent;
2. by compelling her thereto by force or threat;
3. by reducing her to a state of helplessness [...]”<sup>531</sup>

From this definition it is possible to understand the extent of the offences that can fall into the category of rape according to the Bulgarian legislature: this provision is not

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<sup>528</sup> EIGE, European Institute for Gender Equality. “Gender Equality Index 2017: Bulgaria.” 2017. Pag. 5.

<sup>529</sup> Mijatović, “Report following her visit to Bulgaria from 25 to 29 November 2019.”, op. cit., pag. 16.

<sup>530</sup> Social Institutions & Gender Index, “Bulgaria.”, op. cit.

<sup>531</sup> Criminal Code of the Republic of Bulgaria. Special part. Chapter Two. Crimes against the person. Section VIII. Debauchery. Art. 152(1).

gender neutral, in fact it can be committed only against person of the female sex, the act requires sexual intercourse, which means that it must include the penetration of the vagina with a bodily organ, the use of the words “force” and “threat” can be interpreted as implying the use of physical force by the perpetrator and physical resistance by the victim and the victim must be into a “state of helplessness”.<sup>532</sup> To summarise, in conformity with the Bulgarian Criminal Code, rape can be perpetrated only against women, it includes only the penetration of the vagina by a bodily organ and it implies the use of force or the threat of it and requires the victim to be into a helpless state. Furthermore, the requirement of the use of force entails an inadequate implementation of the laws on rape according to the standards set in the IC, as highlighted by the Advocated for Human Rights, prosecutors are willing to pursue cases only when there is evidence of the victim having fought back against the perpetrator and therefore do not protect the victims that could not fight back or were unwilling to do so.<sup>533</sup> This issue has been underlined also by the ECtHR in the case *M.C. v. Bulgaria*: the Bulgarian prosecutor refused to investigate the rape and then dismissed the request to institute criminal proceedings against the alleged perpetrators therefore the applicant and her mother filed a complaint with the ECtHR.<sup>534</sup> The Court paid attention to the lack of consent and concluded that Bulgarian authorities failed to investigate the circumstances of the rape due to the excessive priority to the “direct” proof the rape, factually the Bulgarian prosecutor did not start the criminal proceeding against the alleged rapists due to the lack of “proof of resistance” and without this “it could not be concluded that the perpetrators had understood that the applicant had not consented”.<sup>535</sup>

It can be also be noticed that, in the Bulgarian case, marital rape<sup>536</sup> is not explicitly mentioned and this concerns the Commissioner for Human Rights of the CoE as explained in the report, Mijatović underlines the fact that numerous provisions in the Bulgarian Criminal Code are not in accordance with international human rights standards.<sup>537</sup> However, a wife can file a complaint against her husband<sup>538</sup> because the violence can be covered by art. 152 of the Bulgarian Criminal Code, if it complies

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<sup>532</sup> Social Institutions & Gender Index, “Bulgaria.”, op. cit.

<sup>533</sup> Council of Europe. “Legislative Review of Bulgarian Criminal Law in Light of the Standards Established by the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence.” 2016. Pag. 21-22. Accessed Jan 18, 2022. <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806922ac>

<sup>534</sup> *M.C. v. Bulgaria*, para. 67.

<sup>535</sup> *M.C. v. Bulgaria*, para. 182.

<sup>536</sup> Which was analysed in the previous Sub-chapter.

<sup>537</sup> Mijatović, “Report following her visit to Bulgaria from 25 to 29 November 2019.”, op. cit., pag. 19.

<sup>538</sup> Social Institutions & Gender Index, “Bulgaria.”, op. cit.

to the requirements. These requirements, as the Commissioner continues to explain,<sup>539</sup> are, nevertheless, below the standards and the recommendations developed by the CEDAW,<sup>540</sup> as the victim can only be a woman, as the lack of consent is not the pillar of the definition of rape, and because, as explained above, it does not cover all forms of rape, including only the penetration of the vagina with a bodily organ.<sup>541</sup>

The Bulgarian Criminal Code covers also other types of sexual violence, art. 153<sup>542</sup> can be addressed to prosecute several cases of sexual harassment, although the Bulgarian Gender Research Foundation noted that, as of 2012, it seems that no case of sexual harassment has been brought under art. 153 of the Criminal Code.<sup>543</sup> Moreover, the Bulgarian Criminal Code addresses cyber harassment with art. 155 and 159 address,<sup>544</sup> which is a forward-thinking step as Bulgaria criminalises types of violence that are relatively new.

According to the studies on sexual violence in Bulgaria, the primary reason for sexual violence over women is the abuse of alcohol and drugs and according to the 91% of Bulgarian women the perpetrators are only men.<sup>545</sup>

It was also reported that the prevalence of rape is very difficult to precisely establish due to the fact that only a limited part of rape is reported to the police and consequently registered in the official statistics, therefore the actual number could be five times greater than the official data.<sup>546</sup> In point of fact, the majority of victims of rape would rather forget about the episode and do not initiate the process of medical examination, police interrogation, and cross-examination in court because it could be humiliating and long lasting.<sup>547</sup> In Bulgaria women do not trust the institutions when they are involved with issues concerning sexual violence due to the lack of sufficient engagement on the part of the latter.<sup>548</sup>

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<sup>539</sup> Mijatović, "Report following her visit to Bulgaria from 25 to 29 November 2019.", op. cit., pag. 19.

<sup>540</sup> Committee on the Elimination of Discrimination against Women. "Concluding observations on the eight periodic report of Bulgaria." Mar 10, 2020. Para. 23-24.

<sup>541</sup> Mijatović, "Report following her visit to Bulgaria from 25 to 29 November 2019.", op. cit., pag. 19.

<sup>542</sup> Criminal Code of the Republic of Bulgaria. Special part. Chapter Two. Crimes against the person. Section VIII. Debauchery. Art. 153.

<sup>543</sup> Bulgarian Gender Research Foundation. "Gender Stereotyping – a pervasive and overlooked source of Discrimination against Women in Bulgaria Special Alternative Report to the 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> governmental report 52<sup>nd</sup> session of CEDAW Committee". Bulgarian Gender Research Foundation, Sofia. 2012. Pag. 19.

<sup>544</sup> Criminal Code of the Republic of Bulgaria. Special part. Chapter Two. Crimes against the person. Section VIII. Debauchery. Art. 155; 159.

<sup>545</sup> Todorova, Mechkarsa, Taneva, "Violence over Women in Bulgaria.", op. cit., pag. 254.

<sup>546</sup> Todorova, Mechkarsa, Taneva, "Violence over Women in Bulgaria.", op. cit., pag. 255.

<sup>547</sup> Todorova, Mechkarsa, Taneva, "Violence over Women in Bulgaria.", op. cit., pag. 255.

<sup>548</sup> Todorova, Mechkarsa, Taneva, "Violence over Women in Bulgaria.", op. cit., pag. 256.

It was also noticed that in Bulgaria the prevalent opinion on sexual violence and on what consists or not in rape is wrong, it was revealed that rapes are not spontaneous as per the traditional idea, they are at least partially premeditated and they are most often caused by the connection between sexuality and the feeling of power and domination, not by the impossibility to control sexual desire.<sup>549</sup>

Ratifying the IC would improve the situation concerning sexual violence in Bulgaria in different ways. First of all, Bulgaria shall amend its definition of rape: it should be gender neutral – although this work focuses on VAW and women are disproportionately affected by sexual violence, the definition should be as wide as possible in order to protect every victim – and it should not require the use of violence, but it should focus on the absence of consent. The latter should be, in fact, the requirement to state whether the violence has occurred or not, instead of the use of force. Bulgaria shall also spread this notion, the notion of consent, among its population and at institutional level, it shall also train police officers in order to eradicate the ideas in contrast with the above-mentioned notion of consent.

Furthermore, as requested by the Commissioner for Human Rights of the CoE, Bulgaria shall explicitly criminalise marital rape in order to avoid any doubt on whether it should be considered violence or not and in order to protect the victims.

The previous mentioned training of police officers is fundamental also because it would increase women's trust in the institutions and it would encourage women to report; proper training would help filling the lack of engagement of the officers perceived by women involved in issues related to sexual violence.

In conclusion, Bulgaria shall focus on sensibilisation in order to prevent sexual violence, it shall promote the notion of rape based on consent and eliminate all the stereotypes and patriarchal traditional ideas linked to it.

### *3.4. Sexual Violence in Poland: Victim's Behaviour on Trial*

According to the research performed by EIGE, 19% of women in Poland have been victim of physical and/or sexual violence at least once in their lives since the age of 15, this percentage is lower than the EU average.<sup>550</sup>

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<sup>549</sup> Todorova, Mechkarsa, Taneva, "Violence over Women in Bulgaria.", op. cit., pag. 255-256.

<sup>550</sup> EIGE, European Institute for Gender Equality. "Gender Equality Index 2017: Poland." 2017. Pag. 5.

Polish law on rape dates back to 1932 and since that year it remained almost unchanged, however it was relatively progressive as the definition of rape was linked neither to the relationship between the rapist and the victim nor to the gender, therefore covering marital rape, rape of a man and also same-sex rape.<sup>551</sup> Furthermore, being in the section of the penal code entitled “lasciviousness” made the meaning of rape broad and made it include all sorts of sexual activity and not only vaginal intercourse; the term “lasciviousness” was replaced in 1997 with the term “sexual act” and according to this rape shall be treated as an offence against “sexual freedom”.<sup>552</sup>

In spite of this, Polish cultural and social practices are not so progressive, in fact, rape is stigmatised by Polish people and it is also perceived as a result of women’s provocative behaviour<sup>553</sup> and in practice the interpretation of the Polish law implies that a women should “use active resistance against the perpetrator in order to make her a credible victim” although as per the legal definition of rape in Poland resistance is not one of the key elements.<sup>554</sup> It possible to find many cases of sexual assault in Poland in which the reliability of the victim is questioned, perpetrators are not charged and victims are considered responsible for what happened<sup>555</sup> and what is on trial is their behaviour.<sup>556</sup> To mention some: in January 2008 the mayor of a Polish city was accused of rape by his assistant who was pregnant, the prosecutor asked for the opinion of an expert who claimed that as the two people were romantically involved, rape could not occur and that she accused him because he left her, however, because of the extent of the news, a second opinion was asked and the mayor was formally charged.<sup>557</sup> In another case a 16-year-old girl was gang-raped in 1982 and 1983, the offenders tried to convince the court that that act was not rape using also the argument that the victim was a “slut” and when they appealed they claimed that because of her reputation and because of the fact that she only said “no” they did not understand that she really meant “no”, this time the offenders were found not guilty because the sexologist called upon by the judge as expert witness stated that the victim had a hypersexual disorder, this diminished the meaning of her “no”, and because the victim

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<sup>551</sup> Kościańska, “Gender on Trial. Changes in Legal and Discursive Practices Concerning Sexual Violence in Poland from the 1970s to the Present.”, op. cit., pag. 114.

<sup>552</sup> Kościańska, “Gender on Trial. Changes in Legal and Discursive Practices Concerning Sexual Violence in Poland from the 1970s to the Present.”, op. cit., pag. 114.

<sup>553</sup> Kościańska, “Gender on Trial. Changes in Legal and Discursive Practices Concerning Sexual Violence in Poland from the 1970s to the Present.”, op. cit., pag. 114.

<sup>554</sup> Social Institutions & Gender Index, “Poland.”, op. cit.

<sup>555</sup> Kościańska, “„The ordinary recklessness of girls...”: Expert witnesses and the problem of rape in Poland.”, op. cit., pag. 99.

<sup>556</sup> Kościańska, “Gender on Trial. Changes in Legal and Discursive Practices Concerning Sexual Violence in Poland from the 1970s to the Present.”, op. cit., pag. 112.

<sup>557</sup> Kościańska, “„The ordinary recklessness of girls...”: Expert witnesses and the problem of rape in Poland.”, op. cit., pag. 99.

could not be defined as a “proper woman” according to Polish standards at the time (she was not interested cooking and cleaning and she liked reading).<sup>558</sup> In 1981 a girl was raped and robbed by men who were friends of a friend of hers, they were charged of stealing, but not of rape as they managed to make the court believe that sex was consensual and they used the fact that the girl had “sexual experience” as an argument.<sup>559</sup> In 1986 a 16-year-old girl was gang-raped, the perpetrators wanted to convince the court that she had initiated sex, her behaviour was discussed too as she followed them to the basement where the act took place which could have been defined as reckless, however the offenders did not convince the judge and they were found guilty, as the victim “was not sexually experienced”.<sup>560</sup> Once again, as seen in the discussion on the withdrawal from the IC, the traditional ideas play a role in the gender and sexuality discrimination.

This kind of stereotypes and concepts linked to gender roles are present also in the courses for sexologists who also can serve as expert witnesses during trials.<sup>561</sup> During the course attended by Agnieszka Kościańska, although rape was defined as “sex against somebody’s will” and although various myths related to rape were deconstructed, there has been also many implicit and explicit statements that were contradictory to definition of rape as breach of someone’s will.<sup>562</sup> The contradictions found were related to the notions of masculinity and femininity, according to the notions in this course, masculinity is defined by violence because of testosterone and, providing that women want masculinity in a men, they desire violence, they also want to be conquered as the nature of femininity is passive, therefore attendant of the course were brought to infer from the above-mentioned statements that if a women is equal to her partner or if her partner is gentle, she dreams about violence, of being raped or image being raped.<sup>563</sup>

As previously stated, the definition of rape included in the Polish law is progressive and inclusive of many possible scenarios, including marital rape, although it is not explicitly mentioned.

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<sup>558</sup> Kościańska, “Gender on Trial. Changes in Legal and Discursive Practices Concerning Sexual Violence in Poland from the 1970s to the Present.”, op. cit., pag. 111-112.

<sup>559</sup> Kościańska, “Gender on Trial. Changes in Legal and Discursive Practices Concerning Sexual Violence in Poland from the 1970s to the Present.”, op. cit., pag. 112.

<sup>560</sup> Kościańska, “Gender on Trial. Changes in Legal and Discursive Practices Concerning Sexual Violence in Poland from the 1970s to the Present.”, op. cit., pag. 112.

<sup>561</sup> Kościańska, “„The ordinary recklessness of girls...”: Expert witnesses and the problem of rape in Poland.”, op. cit., pag. 105.

<sup>562</sup> Kościańska, “„The ordinary recklessness of girls...”: Expert witnesses and the problem of rape in Poland.”, op. cit., pag. 106.

<sup>563</sup> Kościańska, “„The ordinary recklessness of girls...”: Expert witnesses and the problem of rape in Poland.”, op. cit., pag. 106.

However, by not withdrawing from the IC, Poland shall be obliged to raise awareness on the issue in order to eradicate cultural and social practices that differ from the official notion and that lead to violence or not to blame and therefore not to prosecute some acts of violence. Poland shall eliminate at all levels of its society the perception that in cases of violence the victim should scream and use active resistance. Poland shall instead promote and educate its population on the concept of consent and of women's sexual freedom. Especially during trials, Poland shall ensure that courts and judges are aware of the definition of rape based on consent and that they do not follow patriarchal traditions and standards. Poland shall also ensure that educational programmes on the issue of sexual violence, including rape, at all levels, are free of gender-based stereotypes on the roles of men and women.

### *3.5. Sexual Violence in Russia: The Key Role of Violence*

Sexual violence is a topical issue in Russia and it can be confirmed by statistics, in fact in January 2020 there has been an increase of 72.1% of the cases of rape and attempted rape opened by Russian authorities in respect to the cases opened in January 2019.<sup>564</sup> In order to deal with this problem and increase awareness on it in the Russian population, the Russian organisation "Sisters" Centre, which helps and supports survivors of sexual violence and their families, has organised every April since 2018 the "Sexual Violence Awareness Week" in Russia.<sup>565</sup>

The Russian Criminal Code addresses sexual violence in its eighteenth Chapter entitled "Crimes against sexual integrity and sexual freedom of the individual". It criminalises "violent acts of a sexual nature" with art. 132: the article specifies two types of acts, namely sodomy and lesbianism, and after that it refers to "other acts of sexual nature". In order to be criminalised these acts have to be perpetrated with the use of force or the threat of using it against the victim or against another person or using the helpless state of the victim.<sup>566</sup> Art. 133 criminalises the compulsion of a person to have sexual intercourse, to sodomy, lesbianism or to perform any other act

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<sup>564</sup> Информационное агентство России «ТАСС». "Число изнасилований в России выросло на 72% в январе." Фев 28, 2020. Доступ Янв 23, 2022. <https://tass.ru/proisshestiya/7861729> [Russian News Agency TASS. "The number of rapes in Russia increased by 72% in January." Feb 28, 2020. Accessed Jan 23, 2022. <https://tass.ru/proisshestiya/7861729> – my translation]

<sup>565</sup> Equality Now. A just world for women and girls, "Russian Sexual Violence Awareness Week: Russia is failing to meet international standards on combatting sexual violence.", op. cit.

<sup>566</sup> Criminal Code of the Russian Federation. Chapter 18. Crimes against sexual integrity and sexual freedom of the individual. Art. 132.



of sexual nature by blackmail, threat of destruction, damage or seizure of property or using the material dependence or any other dependence of the victim.<sup>567</sup> The following article, art. 134, addresses sexual intercourse and other acts of sexual nature with a person under the age of sixteen, it addresses sexual intercourse, sodomy or lesbianism with a person under the age of sixteen committed by a person who has reached the age of eighteen, with a person who is at least twelve, but has not reached the age of fourteen, it also explicitly criminalises the following cases: when there is more than one victim, when the crime is committed by a group, by a group by prior agreement, by an organized group, by a person who has criminal record for crimes against the sexual integrity of a minor.<sup>568</sup> However, in some cases it includes also the release from the punishment if the perpetrator ceases to be socially dangerous “in connection with marriage with the victim” and the reduction of the punishment if the difference of age between the perpetrator and the victim is less than four years.<sup>569</sup> Art. 135 is entitled “Depraved actions” and it criminalises libidinous acts when they are committed without the use of violence by a person who is at least eighteen against a person or more who has not reached the age of sixteen, against a person or more who is at least twelve, but has not reached the age of fourteen, when they are committed by a group, by a group by prior agreement, by an organized group, by a person who has criminal record for crimes against the sexual integrity of a minor.<sup>570</sup>

Rape is specifically addressed by art. 131 and it is defined as sexual intercourse with the use of violence or the threat of using it against the victim or against another person or using the helpless state of the victim,<sup>571</sup> therefore as per the Russian legal notion rape is not connected to consent, but to the use of violence or the threat of it and accordingly to the general denotation of “sexual intercourse” it includes only vaginal penetration with a bodily organ.

Therefore, it can be noted that the notions included in the Criminal Code of the RF are linked to the so-called traditional values, an example can be art. 134 which includes the possibility of release from the punishment if the perpetrator marries the

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<sup>567</sup> Criminal Code of the Russian Federation. Chapter 18. Crimes against sexual integrity and sexual freedom of the individual. Art. 133.

<sup>568</sup> Criminal Code of the Russian Federation. Chapter 18. Crimes against sexual integrity and sexual freedom of the individual. Art. 134.

<sup>569</sup> Criminal Code of the Russian Federation. Chapter 18. Crimes against sexual integrity and sexual freedom of the individual. Art. 134.

<sup>570</sup> Criminal Code of the Russian Federation. Chapter 18. Crimes against sexual integrity and sexual freedom of the individual. Art. 135.

<sup>571</sup> Criminal Code of the Russian Federation. Chapter 18. Crimes against sexual integrity and sexual freedom of the individual. Art. 131.

victim. The concepts included in the Russian Criminal Code are also connected to popular ideas, for instance the idea of the key role of violence in the criminalised acts instead of consent.

In addition to this, a report issued by Equality Now in 2019 noted that two of the reasons why perpetrators of crimes of sexual violence can escape criminal liability or punishment in the RF and also in the countries of the former USSR are the following: the way sexual violence crimes are defined, limited definitions can in fact leave plenty of non-consensual acts of a sexual character unpunished, and the possibility of direct release of the perpetrator from liability or punishment in certain circumstances,<sup>572</sup> such as the previously mentioned circumstances as per art. 134 of the Russian Criminal Code.

However, it is appreciable that the Criminal Code of the RF explicitly addresses the entailment of sexually transmitted illnesses in general and in particular of HIV in both art. 131 and 132 because it addresses health in general, but also sexual health. In addition to this, the crimes of infecting a person with a sexually transmitted disease and in particular with HIV are specifically addressed by the Russian Criminal Code respectively with art. 121 and 122.<sup>573</sup>

By signing and ratifying the IC, the RF shall comply to it and make some amendments in regard to its legislation about sexual violence and rape.

The first change should be in the requirements for an act to be considered sexual violence: it should not be based on the use of force or on the threat of using it, but on consent, the act should be considered violence when absence of consent subsists. Moreover, Russia shall ensure that all the types of sexual violence criminalised by the IC are criminalised also in its territory and shall make sure that no one of these acts goes unpunished; for instance, the definition of rape shall include a wider range of cases and not only vaginal penetration with a bodily organ.

Moreover, the RF shall remove the possibility for perpetrators to avoid liability and not being punishment. The patriarchal notion of “repair through marriage” should be eradicated and not included as possibility in the Criminal Code, in addition to this, there should not be any reduction of the punishment in relation to the difference of

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<sup>572</sup> Equality Now. A just world for women and girls. “Roadblocks To Justice: How The Law Is Failing Survivors Of Sexual Violence In Eurasia.” Jan 2019. Pag. 8. Accessed Jan 23, 2022. [https://www.equalitynow.org/resource/roadblocks\\_to\\_justice/](https://www.equalitynow.org/resource/roadblocks_to_justice/)

<sup>573</sup> Criminal Code of the Russian Federation. Chapter 16. Crimes against life and health. Art. 121-122.

age between the abuser and the victim, this, in fact, creates the perception that some acts of violence are less serious than others.

In addition, as the concepts analysed are connected to popular and patriarchal ideas, Russia shall promote campaigns in order to eliminate all the notion and stereotypes linked to gender-based roles in order to increase awareness and prevent violence.

### 3.5.1. Sexist Humour in the Russian Media and its Dangers

In the RF gender-based violence, domestic violence and sexual violence are considered a taboo,<sup>574</sup> they are considered a “private matter” which should remain in the family sphere or even only a personal problem of a woman.<sup>575</sup> Despite of this, sexist jokes in humour programs are a trend and people who criticise this type of jokes are blamed for “not having a sense of humour”, but these jokes can be a real danger because they could downgrade the problem and make it dismissible without difficulty, at the same time they help reinforcing stereotypes that objectify and dehumanize women.<sup>576</sup>

A proof of the above-mentioned trend is the significant number of performances on sexist humour at “Comedy Club”, the top comedy show in Russia.<sup>577</sup> One of the sketches that objectifies women is entitled “The Ideal Woman” (“Идеальная Женщина”): here it is possible to order this “ideal woman” through a mobile app, this woman is of course beautiful, ready to do all the housework, loyal and also handpicks other girlfriends for her man, when, almost at the end of the sketch, the two male figures start to fight each other, she suggests to hit her instead and instructs them on how to do it without going to jail.<sup>578</sup> Another of these sketches romanticises rape presenting it as a female fantasy.<sup>579</sup>

In Russia, gender stereotypes and sexism are not present only in comedy shows, but also in mass-market cinema.<sup>580</sup> In 2018, the movie “Crimea Bridge. Made with Love” was centred on the Russian propaganda on annexation of Crimea as well as on the

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<sup>574</sup> Sedysheva Anna. “The #янебоюсьсказать (#Iamnotscaredtospeak) Campaign of July 2016 in Facebook’s Russian Speaking Community: a Discourse Analysis.” *Praktyka Teoretyczna*. N. 4(40)/2018. Pag. 182.

<sup>575</sup> ANNA, “Violence against women in the Russian Federation.”, op. cit., pag. 4.

<sup>576</sup> Hybrid Warfare Analytical Group, “How Russian Pop-Culture Reflects Misogynistic Policies.”, op. cit.

<sup>577</sup> Hybrid Warfare Analytical Group, “How Russian Pop-Culture Reflects Misogynistic Policies.”, op. cit.

<sup>578</sup> Телеканал ТНТ. “Comedy Club: Идеальная женщина.” YouTube. Ноя 27, 2017. Доступ Янв 23, 2022. <https://www.youtube.com/watch?v=wuShxdlQx30> [Telekanal TNT. “Comedy Club: The Ideal Woman.” YouTube. Nov 27, 2017. Accessed Jan 23, 2022. <https://www.youtube.com/watch?v=wuShxdlQx30> – my translation]

<sup>579</sup> Hybrid Warfare Analytical Group, “How Russian Pop-Culture Reflects Misogynistic Policies.”, op. cit.

<sup>580</sup> Hybrid Warfare Analytical Group, “How Russian Pop-Culture Reflects Misogynistic Policies.”, op. cit.

objectified portrayal of women, in fact the main character ambition was to have sex with the local “alpha chick” after having evaluated all the other female alternatives.<sup>581</sup> Another of the many examples that can be made is “Policeman from Rublyovka 2”, it uses for comedic purposes the real story of a policewoman who committed suicide after she was bullied for being raped by a colleague.<sup>582</sup>

Sexist humour can cause its public to become accustomed to sexual violence and to understate its danger and seriousness. In accordance with the IC, after signing and ratifying it, the RF shall raise awareness on the topic of sexual violence and on its seriousness. In order to prevent sexual violence and combat it, Russia shall sensitise its population, including both men and women, and eradicate sexist ideas, such as the belief that women have the fantasy to be raped, shall eliminate the stigmatisation of the victims and all the stereotypes that objectify and dehumanize women. These stereotypes, if not contrasted, can contribute to reduce the severity of the issue of sexual violence as they can create the perception that this type of violence is admissible.

### *3.6. Sexual Violence in Ukraine: The Will to Be in Line with International Standards*

A survey performed in 2014 by GfK Ukraine upon the request of UNFPA showed that 8% of Ukrainian women has experienced sexual violence in their life, the data collected performing this survey were compared to the data collected in 2007 and the result was that the percentage of women who experienced sexual violence had increased as it was 5% in 2007.<sup>583</sup> Statistics showed also that the percentage of women who suffered a “non-family” sexual violence experience increased from 2% in 2007 to 4% in 2014, while the percentage of women who suffered a sexual violence experience from husband or other relatives remained similar, furthermore older women answered that they were victim of sexual violence more often.<sup>584</sup> The survey underlined also a difference between the occurrence of sexual violence from women

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<sup>581</sup> Hybrid Warfare Analytical Group, “How Russian Pop-Culture Reflects Misogynistic Policies.”, op. cit.

<sup>582</sup> Hybrid Warfare Analytical Group, “How Russian Pop-Culture Reflects Misogynistic Policies.”, op. cit.

<sup>583</sup> Volosevych Inna, Konoplytska Tamila, Kostiuhenko Tetiana, Mikhanchuk Darina, Martsenyuk Tamara. “The prevalence of violence against women and girls.” GfK Ukraine. 2014. Pag. 22.

<sup>584</sup> Volosevych, Konoplytska, Kostiuhenko, Mikhanchuk, Martsenyuk, “The prevalence of violence against women and girls.”, op. cit., pag. 22.

who lived in an urban area (7%) and women who lived in rural areas (10%).<sup>585</sup> In the recent years, any type of gender-based violence against women has become a topical subject in Ukraine.<sup>586</sup>

The Criminal Code of the Republic of Ukraine addresses sexual violence in Chapter IV, which is entitled “Crimes against sexual freedom and sexual inviolability of a person”, from art. 152 to art. 156.<sup>587</sup> It refers to rape in art. 152, this article was amended in January 2019 with the purpose of making the legal definition of rape in line with international standards.<sup>588</sup> The definition was therefore broadened and it now includes not only vaginal, but also anal and oral penetration, now it criminalises the penetration using bodily organs and also any other object, moreover the concept of consent was introduced which was not mentioned before.<sup>589</sup>

The following article, namely art. 153, addresses the broader concept of sexual violence and criminalises, in fact, any act of sexual violence not related to penetration and committed without consent.<sup>590</sup>

In Ukraine marital rape is not expressly mentioned in the legal definition of rape, however it is mentioned in paragraph 2 of art. 152 of the Ukrainian Criminal Code which considers aggravating circumstances to rape,<sup>591</sup> also sexual violence perpetrated by the spouse or ex-spouse is considered an aggravating circumstance in paragraph 2 of art. 153.<sup>592</sup>

Marital rape and sexual violence can be prosecuted also referring to art. 154 of the Criminal Code, paragraph 2<sup>593</sup> of this article criminalises forced acts of sexual nature perpetrated by a person “on whom such female or male is financially or officially

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<sup>585</sup> Volosevych, Konoplytska, Kostiuhenko, Mikhanchuk, Martsenyuk, “The prevalence of violence against women and girls.”, op. cit., pag. 23.

<sup>586</sup> Amnesty International, “Not a Private Matter. Domestic and Sexual Violence against Women in Eastern Ukraine.”, op. cit., pag. 14.

<sup>587</sup> Criminal Code of the Republic of Ukraine. Chapter IV. Crimes against sexual freedom and sexual inviolability of a person. Art. 152-156.

<sup>588</sup> Amnesty International, “Not a Private Matter. Domestic and Sexual Violence against Women in Eastern Ukraine.”, op. cit., pag. 25.

<sup>589</sup> Criminal Code of the Republic of Ukraine. Chapter IV. Crimes against sexual freedom and sexual inviolability of a person. Art. 152

<sup>590</sup> Criminal Code of the Republic of Ukraine. Chapter IV. Crimes against sexual freedom and sexual inviolability of a person. Art. 153

<sup>591</sup> Criminal Code of the Republic of Ukraine. Chapter IV. Crimes against sexual freedom and sexual inviolability of a person. Art. 152.2

<sup>592</sup> Criminal Code of the Republic of Ukraine. Chapter IV. Crimes against sexual freedom and sexual inviolability of a person. Art. 153.2.

<sup>593</sup> Criminal Code of the Republic of Ukraine. Chapter IV. Crimes against sexual freedom and sexual inviolability of a person. Art. 154.2.

dependent”.<sup>594</sup> This article criminalises also acts of coercion of a person without his or her consent to commit an act of sexual violence character with another person.<sup>595</sup> The above-mentioned art. 155 and 156 of the Ukrainian Criminal Code, after the amendments introduced in 2021, address respectively sexual acts that involves vaginal, anal, or oral penetration of a person under the age of sixteen perpetrated by an adult using any bodily organ or part of the body or any object<sup>596</sup> and debauchery against a person under the age of sixteen.<sup>597</sup>

Despite of these norms, the patriarchal way of thinking embedded in the Ukrainian society brings men questioning some cases of rape, for instance half of the men surveyed by the UNFPA answered that they would question rape if the women was affected by alcohol or drugs, 43% of them would question it if the woman had a bad reputation and 33% would question rape if the woman did not fight back.<sup>598</sup>

As underlined in this Sub-chapter, Ukraine made some steps in order to have its legislation on sexual violence comply with international standard and it was already mentioned that the ratification of the IC depends on the internal influence of the Church and of the opposers of the IC who support so-called “traditional family values”.<sup>599</sup>

The ratification by Ukraine, however, could improve the social perception of sexual violence and raise awareness on the concept of consent that has already been included by Ukraine in its legislation. Ukraine shall therefore raise awareness on the notion of consent in order to avoid men, but also women, to question whether some acts of violence in some circumstances, for example the victim being affected by alcohol or drugs, or not fighting back, constitute violence or not. In order to prevent sexual violence, Ukraine shall in addition eliminate patriarchal ideas and gender-based stereotypes that can nourish the idea that sexual violence in some circumstances is legitimate.

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<sup>594</sup> Mogilevkina, Odlind, “Some reproductive and sexual health indicators in rape victims in Ukraine.”, op. cit., pag. 402.

<sup>595</sup> Criminal Code of the Republic of Ukraine. Chapter IV. Crimes against sexual freedom and sexual inviolability of a person. Art. 154.

<sup>596</sup> Criminal Code of the Republic of Ukraine. Chapter IV. Crimes against sexual freedom and sexual inviolability of a person. Art. 155.

<sup>597</sup> Criminal Code of the Republic of Ukraine. Chapter IV. Crimes against sexual freedom and sexual inviolability of a person. Art. 156.

<sup>598</sup> UNFPA Ukraine. “Masculinity Today: Men’s Attitudes to Gender Stereotypes and Violence Against Women.” Kyiv. 2018. Pag. 75. Accessed Jan 23, 2022. [http://promundoglobal.org/wp-content/uploads/2018/06/Masculinity-Today-Mens\\_Report.pdf](http://promundoglobal.org/wp-content/uploads/2018/06/Masculinity-Today-Mens_Report.pdf)

<sup>599</sup> As analysed in Chapter 1.

### 3.6.1. A Further Problem in Ukraine: Conflict Related Sexual Violence

This Sub-Chapter will focus on the peculiar issue that affects Ukraine: conflict related sexual violence (CRSV) against women perpetrated in the regions of Donetsk and Luhansk in Eastern Ukraine. This topic should be particularly relevant considering the current<sup>600</sup> crisis between Ukraine and Russia, and the possibility of the invasion of the Ukraine by the Russian Army.<sup>601</sup>

The UN delineates CRSV as follows:

“rape, sexual slavery, forced prostitution, forced pregnancy, forced abortion, enforced sterilization, forced marriage, and any other form of sexual violence of comparable gravity perpetrated against women, men, girls or boys that is directly or indirectly linked to a conflict.”<sup>602</sup>

In Ukraine, CRSV can be prosecuted under art. 433<sup>603</sup> and 438<sup>604</sup> of the Criminal Code as they address respectively violence, which can include sexual violence, under the pretext of military necessity and violation of rules of warfare which includes “cruel treatment of prisoners of war or civilians” therefore it may include also sexual violence.<sup>605</sup>

According to what was reported by UNFPA, in Ukraine women living in the conflict-affected areas are more likely to be victims of violence outside their families (15.2% against 5.3% of women who do not live in those areas) and are more vulnerable to gender-based violence.<sup>606</sup> Furthermore, according to the survey led by OSCE, the percentage of women victim of violence can be higher if their partner took part in the armed conflict, although they do not live in the conflict-affected areas.<sup>607</sup>

CRSV may be used for strategic or tactical ends by Government forces or by armed groups, however, according to the cases studied by the Office of the United Nations

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<sup>600</sup> February 2022.

<sup>601</sup> ISPI – Istituto per gli Studi di Politica Internazionale. “Speciale Ucraina: in the mood for war? #14” Feb 14, 2022. Accessed Feb 14, 2022. <https://www.ispionline.it/it/pubblicazione/speciale-ucraina-mood-war-14-33235>

<sup>602</sup> United Nations Secretary-General. “Conflict Related Sexual Violence, Report of the United Nations Secretary-General.” 2019. Accessed Oct 26, 2021. <https://www.un.org/sexualviolenceinconflict/wp-content/uploads/2019/04/report/s-2019-280/Annual-report-2018.pdf>

<sup>603</sup> Criminal Code of the Republic of Ukraine. Chapter XIX. Criminal offenses against the established procedure of military service. Art. 433: *Violence, unlawful destruction or taking of property under the pretext of military necessity, which were committed in respect of population in an operational zone [...].*

<sup>604</sup> Criminal Code of the Republic of Ukraine. Chapter XX. Criminal offenses against peace, security of mankind and international legal order. Art. 438: *Cruel treatment of prisoners of war or civilians, deportation of civilian population for forced labor, pillage of national treasures on occupied territories, use of methods of the warfare prohibited by international instruments, or any other violations of rules of the warfare recognized by international instruments consented to by binding by the Verkhovna Rada (Parliament) of Ukraine, and also giving an order to commit any such actions [...].*

<sup>605</sup> Office of the United Nations High Commissioner for Human Rights. “Conflict-Related Sexual Violence in Ukraine 14 March 2014 to 31 January 2017.” Pag. 13-14.

<sup>606</sup> United Nations Population Fund. “Gender-Based Violence in the Conflict-Affected Regions of Ukraine: Analytical Report” Nov 2015. Para. 6. Accessed Feb 14, 2022 [https://ukraine.unfpa.org/sites/default/files/pub-pdf/gbv%20in%20the%20conflict-affected%20regions%20of%20ukraine\\_eng.pdf](https://ukraine.unfpa.org/sites/default/files/pub-pdf/gbv%20in%20the%20conflict-affected%20regions%20of%20ukraine_eng.pdf)

<sup>607</sup> Organisation for Security and Cooperation in Europe. “Well-being and Safety of Women: OSCE-led survey on violence against Women: Ukraine results report.” 2019. Pag. 43. [https://www.osce.org/files/f/documents/1/3/440312\\_0.pdf](https://www.osce.org/files/f/documents/1/3/440312_0.pdf)

High Commissioner for Human Rights (OHCHR) there are no premises to assume that this happened in the Eastern regions of Ukraine or that the RF enacted these practices in the Autonomous Republic of Crimea, in fact, according to the OHCHR findings, CRSV in Ukraine has been perpetrated as a form of torture and ill-treatment in the context of detention.<sup>608</sup> The same has been reported in other findings: most of the cases documented were committed in the context of detention and the types of sexual violence included were rapes, beatings, electric shocks in the genital area, threats of rape and castration, and forced nudity.<sup>609</sup>

Amnesty International reported the existence of cases of sexual violence perpetrated by military personnel in the regions of Donetsk and Luhansk, they have also recorded credible reports regarding conflict related rape, attempted rape and sexual harassment.<sup>610</sup>

In the territories controlled by the Ukrainian Government, the main reasons for the perpetration of CRSV in the context of detention reported by the OHCHR were the punishment and humiliation of the prisoners or the extraction of a confession, despite the victims were mostly men, threats were directed at female members of their families, the latter were also detained for a certain period of time.<sup>611</sup> In the testimonies reported by the OHCHR, women declared that during detention they were threatened of rape and gang rape and of having their daughters raped by the soldiers, they also declared that they have been interrogated while standing naked and blindfolded.<sup>612</sup>

Notwithstanding the fact that, as above-mentioned, CRSV in the territories controlled by the Government of Ukraine has been perpetrated in the context of detention, there are also other circumstances in which CRSV has been perpetrated also in other circumstances. In 2015 the OHCHR received allegations of sexual violence and harassment of women, both civilians and humanitarian workers, at Government checkpoints and the next year the OHCHR was able to document some cases of sexual violence at checkpoints.<sup>613</sup> In addition to this, cases of CRSV resulting from the military presence were reported also in residential areas.<sup>614</sup>

Concerning CRSV in the areas controlled by the armed groups, the OHCHR reported that women deprived of their liberty were more often subject to sexual violence than

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<sup>608</sup> OHCHR, "Conflict-Related Sexual Violence in Ukraine 14 March 2014 to 31 January 2017.", op. cit., pag. 14.

<sup>609</sup> International Criminal Court - The Office of the Prosecutor. "Report on Preliminary Examination Activities." Dec 5, 2018. Para. 92.

<sup>610</sup> Amnesty International, "Not a Private Matter. Domestic and Sexual Violence against Women in Eastern Ukraine.", op. cit., pag. 12.

<sup>611</sup> OHCHR, "Conflict-Related Sexual Violence in Ukraine 14 March 2014 to 31 January 2017.", op. cit., pag. 15-16.

<sup>612</sup> OHCHR, "Conflict-Related Sexual Violence in Ukraine 14 March 2014 to 31 January 2017.", op. cit., pag. 16-17.

<sup>613</sup> OHCHR, "Conflict-Related Sexual Violence in Ukraine 14 March 2014 to 31 January 2017.", op. cit., pag. 18.

<sup>614</sup> OHCHR, "Conflict-Related Sexual Violence in Ukraine 14 March 2014 to 31 January 2017.", op. cit., pag. 19.



men, victims testified of having been raped by more than one man while they were being interrogated and also electroshocked with wires attached to the breast, of having suffered of attempted gang rape, of having been forced to perform oral sex and one victim, pregnant at the time of detention, reported of having been kicked on the stomach.<sup>615</sup> Women reported of having been subjected to sexual violence also at the checkpoints controlled by the armed groups, one declared that in order to pass the checkpoint with her children she was forced to perform oral sex and was subjected to gang rape.<sup>616</sup> According to the reports, cases of rape perpetrated by the members of the armed groups have happened also in residential areas in the territories controlled by the aforementioned armed groups.<sup>617</sup>

It was not possible for the OHCHR to draw conclusions about sexual violence in the Autonomous Republic of Crimea due to the impossibility of physically accessing the Republic and due to the lack of direct contact with the victims.<sup>618</sup>

The problem of CRSV is exacerbated by the lack of proper infrastructures for support, protection, rehabilitation, and compensation for the victims; between 2016 and 2018 a dozen of emergency healthcare facilities, available for the victims of sexual violence, were opened, however in the conflict-affected areas they are not enough<sup>619</sup> and the services provided are uneven and irregular throughout the country.<sup>620</sup>

In addition to this, the OHCHR reported the incapacity to effectively investigate cases of sexual violence in Ukraine as National police is understaffed, they do not have the specific skills required to handle hearings with victims of sexual violence and they are unwilling to open criminal procedures against armed groups if they do not have access to the location of the crime.<sup>621</sup>

Another problem faced by victims of rape in cases of CRSV in Ukraine is the fact that investigators and prosecutors rely only on specific types of forensic evidence, the tests for these types of evidence must be conducted within 72 hours following the assault.<sup>622</sup> The majority of the victims do not have access to medical facilities or law

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<sup>615</sup> OHCHR, "Conflict-Related Sexual Violence in Ukraine 14 March 2014 to 31 January 2017.", op. cit., pag 20-21; 23.

<sup>616</sup> OHCHR, "Conflict-Related Sexual Violence in Ukraine 14 March 2014 to 31 January 2017.", op. cit., pag 24.

<sup>617</sup> OHCHR, "Conflict-Related Sexual Violence in Ukraine 14 March 2014 to 31 January 2017.", op. cit., pag 24.

<sup>618</sup> OHCHR, "Conflict-Related Sexual Violence in Ukraine 14 March 2014 to 31 January 2017.", op. cit., pag 26.

<sup>619</sup> Anosova Iuliia. "Will the Rubber Hit the Road: Dealing with Conflict-Related Sexual Violence in Ukraine." Oct 3, 2020. Pag. 4. Accessed May 4, 2021. <https://ssrn.com/abstract=3719860> or <http://dx.doi.org/10.2139/ssrn.3719860>

<sup>620</sup> OHCHR, "Conflict-Related Sexual Violence in Ukraine 14 March 2014 to 31 January 2017.", op. cit., pag 31.

<sup>621</sup> OHCHR, "Conflict-Related Sexual Violence in Ukraine 14 March 2014 to 31 January 2017.", op. cit., pag 29.

<sup>622</sup> OHCHR, "Conflict-Related Sexual Violence in Ukraine 14 March 2014 to 31 January 2017.", op. cit., pag 28.

enforcement within 72 hours following the rape, in fact, since the start of the conflict, Donetsk and Luhansk regions have lacked of accessible and functioning forensic laboratories; it should also be noticed that these tests can provide with significant results only if the biological material was not contaminated or destroyed.<sup>623</sup>

As reported in its text, the IC applies not only in times of peace, but also in situations of armed conflict.<sup>624</sup> By ratifying the IC, therefore, Ukraine would commit to attempting to prevent and combat VAW also in its conflict-affected areas. In the case of the ratification by Ukraine, although the major difficulties caused by the armed conflict, the country shall take all the relevant measures in order to protect women from gender-based violence. The first step should be the training of the police officers, they should have the necessary knowledge and skills in order to be able to handle cases of CRSV and should be urged to open criminal procedures when required. Information on the methods, infrastructures and timing for the collection of samples and the performing of relevant analysis and tests should be available to police officers as well. In order to improve women's protection, more shelters and health care facilities should be available and operative. Women should in fact be provided with infrastructures that are able to protect and support them, but also where they can be assisted and rehabilitated.

### *3.7. Start by Acknowledging: The #янебоюсьсказати Campaign in Ukraine and the #янебоюсьсказать Campaign in Russia (#Iamnotafraidtospeak)*

In 2016 in Ukraine the online campaign #янебоюсьсказати (#Iamnotafraidtospeak) started and then spread in Russia, where it became #янебоюсьсказать, and also in Belarus, Kazakhstan, United States, Germany and Israel.<sup>625</sup> The campaign, that sometimes has been defined as a flashmob, was started by Anastasia (Nastya on Facebook) Melnychenko, a Ukrainian feminist activist and journalist.<sup>626</sup> Nastya Melnychenko published on her Facebook page a post with the hashtag

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<sup>623</sup> OHCHR, "Conflict-Related Sexual Violence in Ukraine 14 March 2014 to 31 January 2017.", op. cit., pag 28.

<sup>624</sup> 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence. Istanbul. 2011. CETS No. 210. Art. 2.3.

<sup>625</sup> Martsenyuk Tamara, Phillips Sarah D. "Talking About Sexual Violence in Post-Maidan Ukraine: Analysis of the Online Campaign #IAmNotAfraidToSayIt." *Sexuality & Culture*. (2020) 24:408–427. Jan 2, 2020. Pag. 410-411. Accessed May 8, 2021. <https://doi.org/10.1007/s12119-019-09694-4>

<sup>626</sup> Martsenyuk, Phillips, "Talking About Sexual Violence in Post-Maidan Ukraine: Analysis of the Online Campaign #IAmNotAfraidToSayIt.", op. cit., pag. 410; 414.

*#янебоюсьсказать*, in her post she did three different things: she shared her own experiences of sexual violence, she encouraged women to share their experiences as well and not to blame themselves, claiming that the guilt is always on the perpetrator and that it is important for women to talk about their experiences, and she also addressed men asking whether they know how it feels to be treated like meat, but also stating that she knows that also good and adequate men exist.<sup>627</sup> With her post Melnychenko criticised victim blaming and encouraged women not to be silent anymore, she wanted to transmit the idea that women should not fear or feel ashamed for the things that happen to them.<sup>628</sup>

The response to the her post was certainly fast and gained also the attention of the mass media; victims started sharing their stories, in addition there were posts about the start of the campaign, comments by psychologists and information about what to do in case of violence, also some Ukrainian public figures joined the campaign, they expressed their opinion on the issue of sexual violence and supported both the campaign and survivors.<sup>629</sup> However, there were also some negative feedbacks, some men, not all of them, in fact actively participated in the campaign with scepticism, reinforcing victim blaming and stating that sexual violence is a private matter that should not be discussed in public, not even in social networks.<sup>630</sup>

The campaign continued in the RF less than twenty-four hours after the first post was published and had the same pattern as in Ukraine, including both posts that supported the campaign with women sharing their stories and posts by people irritated by the campaign that questioned the real existence of the issue of sexual violence.<sup>631</sup>

Russian women saw the campaign as a tool to acknowledge the existence of rape culture in their country, but also overcome the fear it generates.<sup>632</sup> Victims who shared their stories manifested their feelings of shame and guilt, they wrote that when the

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<sup>627</sup> Melnychenko Nastya post on Facebook. Jul 5, 2016. Accessed Jan 23, 2022. <https://www.facebook.com/nastya.melnychenko/posts/10209108320800151>

<sup>628</sup> Martsenyuk, Phillips, "Talking About Sexual Violence in Post-Maidan Ukraine: Analysis of the Online Campaign #IAmNotAfraidToSayIt.", op. cit., pag. 415.

<sup>629</sup> Martsenyuk, Phillips, "Talking About Sexual Violence in Post-Maidan Ukraine: Analysis of the Online Campaign #IAmNotAfraidToSayIt.", op. cit., pag. 419; 424.

<sup>630</sup> Martsenyuk, Phillips, "Talking About Sexual Violence in Post-Maidan Ukraine: Analysis of the Online Campaign #IAmNotAfraidToSayIt.", op. cit., pag. 420.

<sup>631</sup> Sedysheva, "The *#янебоюсьсказать* (*#IAmnotscaredtospeak*) Campaign of July 2016 in Facebook's Russian Speaking Community: a Discourse Analysis.", op. cit., pag. 181; 187.

<sup>632</sup> Sedysheva, "The *#янебоюсьсказать* (*#IAmnotscaredtospeak*) Campaign of July 2016 in Facebook's Russian Speaking Community: a Discourse Analysis.", op. cit., pag. 188.

violence happened, they felt like, even not sharing what they suffered, they could perceive the indignation of the society onto themselves.<sup>633</sup>

In Russia, the campaign helped combating stereotypes on rape,<sup>634</sup> in the common belief rape is in fact perpetrated by a stranger, however it was noted that commonly there is some degree of acquaintanceship between the victim and the perpetrator.<sup>635</sup> As reported in Ukraine, also in the RF a part of the reaction was negative and blamed victims for fabricating and/or exaggerating their stories, even attacking them and accusing them of exhibitionism.<sup>636</sup>

This campaign can be considered a first step towards acknowledging and awareness, which are included in the aim of the IC. The campaign in fact was a way to publicly discuss sexual violence and concepts such as gender and sexuality, it was also useful to dispel myths related to rape and to the so-called rape culture.<sup>637</sup> Women were, in fact, able to express their wish to change public feel about victims of sexual assault.<sup>638</sup> The usefulness of the campaign and, in general, in this type of campaigns, can be noted in some posts published by men who stated that they should take into account their own behaviour and who actively apologised to women.<sup>639</sup>

By ratifying the IC, Ukraine and Russia shall promote initiatives like the *#янебоюсьсказать* campaign in order to fight gender-based stereotypes and rape culture. As demonstrated by the effects of *#янебоюсьсказать* campaign, this type of initiatives can be helpful both to victims, who can take courage and talk about their experiences, but also to perpetrators, who could not be aware of the violence they committed as it could not be included in the traditional patriarchal concept of violence.

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<sup>633</sup> Sedysheva, "The *#янебоюсьсказать* (*#Iamnotscaredtospeak*) Campaign of July 2016 in Facebook's Russian Speaking Community: a Discourse Analysis.", op. cit., pag. 188.

<sup>634</sup> Sedysheva, "The *#янебоюсьсказать* (*#Iamnotscaredtospeak*) Campaign of July 2016 in Facebook's Russian Speaking Community: a Discourse Analysis.", op. cit., pag. 190.

<sup>635</sup> Temkin Jennifer and Krahé Barbara. "Sexual Assault and the Justice Gap: a Question of Attitude." Hart. Oxford. 2008. Pag. 31-32.

<sup>636</sup> Sedysheva, "The *#янебоюсьсказать* (*#Iamnotscaredtospeak*) Campaign of July 2016 in Facebook's Russian Speaking Community: a Discourse Analysis.", op. cit., pag. 192-193.

<sup>637</sup> Martsenyuk, Phillips, "Talking About Sexual Violence in Post-Maidan Ukraine: Analysis of the Online Campaign *#IAmNotAfraidToSayIt*.", op. cit., pag. 424.

<sup>638</sup> Sedysheva, "The *#янебоюсьсказать* (*#Iamnotscaredtospeak*) Campaign of July 2016 in Facebook's Russian Speaking Community: a Discourse Analysis.", op. cit., pag. 191.

<sup>639</sup> Sedysheva, "The *#янебоюсьсказать* (*#Iamnotscaredtospeak*) Campaign of July 2016 in Facebook's Russian Speaking Community: a Discourse Analysis.", op. cit., pag. 191-192.

## Chapter 4

### FEMALE GENITAL MUTILATION

#### *4.1. Introduction and Main Concepts*

The Director of the EIGE, Virginija Langbakk, described female genital mutilation (FGM) as “one of the most brutal human rights violations of our time”, claiming that it is a sign of deliberate physical and psychological dominance over girls and women.<sup>640</sup> FGM, also addressed as female circumcision,<sup>641</sup> can be defined as any procedure that implies the partial or total removal of the external female genitalia or other injury to female genital organs without medical reasons, there are therefore different types of FGM and the WHO classifies them in four different major types: the first type includes “the partial or total removal of the clitoral glans [...] and/or the prepuce/clitoral hood”; the second type includes “the partial or total removal of the clitoral glans and the labia minora [...] with or without removal of the labia majora”; infibulation, which is “the narrowing of the vaginal opening through the creation of a covering seal. [...] with or without removal of the clitoral prepuce/clitoral hood and glans”, is the third type of FGM; the fourth type is composed by “all other harmful procedures to the female genitalia for non-medical purposes”.<sup>642</sup>

FGM violates human rights of women and girls and, in addition to this, it violates a series of rights, namely the right to health, security and physical integrity, to be free from torture and cruel, inhuman or degrading treatments, and also to life, as death can be a consequence of the complications caused by female circumcision.<sup>643</sup>

It was proved that FGM does not bring health benefits to girls and women who undergo it, rather it causes harm to them as it removes and damages genital tissue and interferes with the natural functions of their bodies.<sup>644</sup> FGM can, in point of fact, cause both immediate complications and long-term complications including pain, bleeding, infections, urinary, vaginal, menstrual, and sexual problems, childbirth complications, need for other surgeries later in time, such as the re-opening of vagina in order for the woman to be able to perform sexual intercourse and to give birth, as well as psychological problems.<sup>645</sup> Another significant factor that increases the risks

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<sup>640</sup> EIGE, “Female genital mutilation in the European Union and Croatia.”, op. cit., pag. 3.

<sup>641</sup> FGM and female circumcision will be used as synonyms in this work.

<sup>642</sup> WHO, “Female genital mutilation.”, op. cit.

<sup>643</sup> WHO, “Female genital mutilation.”, op. cit.

<sup>644</sup> WHO, “Female genital mutilation.”, op. cit.

<sup>645</sup> WHO, “Female genital mutilation.”, op. cit.

related to female circumcision is the fact that it is rarely performed in hospitals, rather it is usually performed at home, therefore not in antiseptic conditions, by people who have no medical education.<sup>646</sup>

There are attempts to medicalise the practice of FGM in order to avoid complications that incur because of its performance at home by non-qualified women, the performance of female circumcision in the antiseptic conditions of a hospital and by qualified healthcare professional might prevent the most severe consequences, however, the International Federation of Gynaecology and Obstetrics (FIGO) strongly condemns the medicalisation of female circumcision – as well as FGM in general – and invites health professionals not to perform it, as they would imply the approval of the practice by performing it,<sup>647</sup> notwithstanding that they would violate medical ethics<sup>648</sup> as FGM has neither medical purposes nor benefits.

Usually, the victims of FGM are young girls, aged between infancy and adolescence, however, sometimes also adult women risk to suffer it.<sup>649</sup>

The reasons why FGM is performed are different, however, they are cultural and social factors: there can be social conventions that put pressure to have girls undergo the practice, it can be perceived as a step to prepare a girl for adulthood and marriage, a rite of passage, it can be linked to the idea that after the practice girls will be beautiful and clean without the body parts reputed unclean, unfeminine or male, there could be religious beliefs to perform FGM, or it could be a cultural tradition that people are maintaining.<sup>650</sup> In the EU it was noticed that the reasons could include a way of ethnic identification of the individuals of the African communities that moved and now live in the EU.<sup>651</sup>

However, it is not possible to link FGM to any particular culture, religion or socio-economic group in particular and its origins remain unknown, what the communities that practice FGM have in common is a highly patriarchal structure.<sup>652</sup>

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<sup>646</sup> Антонова, Сиражудинова, “Производство калечащих операций на половых органах у девочек. Отчет по результатам качественного исследования в Республике Дагестан.”, указ. соч., с. 40. [Antonova, Siradzhudinova, Female Genital Mutilation of Girls in Dagestan (Russian Federation). Report based on the results of a qualitative study on female genital mutilation performed on girls.”, op. cit.]

<sup>647</sup> International Federation of Gynaecology and Obstetrics. “Zero Tolerance for Female Genital Mutilation”. Feb 9, 2011. Accessed Feb 6, 2022. <https://www.figo.org/news/zero-tolerance-female-genital-mutilation>

<sup>648</sup> International Federation of Gynaecology and Obstetrics. “International Day of Zero Tolerance to FGM, 2014”. Feb 5, 2014. Accessed Feb 6, 2022. <https://www.figo.org/news/international-day-zero-tolerance-fgm-2014>

<sup>649</sup> WHO, “Female genital mutilation.”, op. cit.

<sup>650</sup> WHO, “Female genital mutilation.”, op. cit.

<sup>651</sup> Barret Hazel, Brown Katherine, Alhassan Yussif, Beecham David. “The REPLACE Approach: Supporting Communities to end FGM in the EU.” The REPLACE Project, Centre for Communities and Social Justice. Coventry University. 2015. Pag. 96.

<sup>652</sup> Barret, Brown, Alhassan, Beecham, “The REPLACE Approach: Supporting Communities to end FGM in the EU.”, op. cit., pag. 39.

Despite the uncertainty of the origins of FGM, the practice is so deeply embedded in some communities that trying to end it, not undergoing it or not making the daughters undergo it can cause repercussions on both the individual and her family including social exclusion and violence.<sup>653</sup> Social pressure plays a huge role in the continuation of the practice of FGM, women who are not subjected to the practice can be labelled as “rude”, “ignorant”, “immature”, “uncivilised”, “stupid”, “promiscuous”, and even “prostitutes” in certain communities, they can, in addition, be deprived of some privileges, for example the participation in important family and community events and decisions.<sup>654</sup> Last but not least, in some cases older women influence one another to subject their daughters and granddaughters to FGM, there was evidence even of young girls who underwent female circumcision persuading their fellows to submit to FGM.<sup>655</sup> Although the trauma caused by female circumcision, it is, in fact, women who continue the practice of it, being usually the girl’s mother or other maternal relatives, such as the grandmothers or aunts, who take the decision to have this custom performed.<sup>656</sup> Women, notwithstanding that they are the victims, take the decision and allow this tradition to survive in time and they do not ask or talk with men about FGM.<sup>657</sup>

Thus, the perpetrators of this form of violence are women themselves as they are the ones who physically perform the circumcision.<sup>658</sup> It was exactly this example that was presented during the writing of the IC when some delegates proposed, more than once, to explicitly state that the Convention deals with “male VAW”, in response other delegates highlighted that also women can perpetrate VAW and that also these cases of violence should have been covered by the Convention supporting their thesis with the instance of FGM.<sup>659</sup>

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<sup>653</sup> Barret, Brown, Alhassan, Beecham, “The REPLACE Approach: Supporting Communities to end FGM in the EU.”, op. cit., pag. 42-43.

<sup>654</sup> Barret, Brown, Alhassan, Beecham, “The REPLACE Approach: Supporting Communities to end FGM in the EU.”, op. cit., pag. 91.

<sup>655</sup> Barret, Brown, Alhassan, Beecham, “The REPLACE Approach: Supporting Communities to end FGM in the EU.”, op. cit., pag. 92.

<sup>656</sup> Антонова, Сиражудинова, “Производство калечащих операций на половых органах у девочек. Отчет по результатам качественного исследования в Республике Дагестан.”, указ. соч., с. 40. [Antonova, Siradzhudinova, Female Genital Mutilation of Girls in Dagestan (Russian Federation). Report based on the results of a qualitative study on female genital mutilation performed on girls.”, op. cit.]

<sup>657</sup> Antonova Yu.A., Siradzhudinova S.V. Report of “The practice of female genital mutilation in Dagestan: strategies for its elimination”, report based on the results of a qualitative sociological study in the Republic of Dagestan, the Republic of Ingushetia and the Republic of Chechnya (Russian Federation). 2018. Accessed on Apr 25, 2021. Pag. 30-31. <https://www.srii.org/en/about/annual/the-second-fgm-report-based-on-the-results-of-a-study-in-russian-federation>

<sup>658</sup> Antonova, Siradzhudinova, Report of “The practice of female genital mutilation in Dagestan: strategies for its elimination”, report based on the results of a qualitative sociological study in the Republic of Dagestan, the Republic of Ingushetia and the Republic of Chechnya (Russian Federation), op. cit., pag. 34.

<sup>659</sup> Grans, “The Istanbul Convention and the Positive Obligation to Prevent Violence.”, op. cit., pag. 137.

Although there are no reliable national data on this topic,<sup>660</sup> the CoE is seriously concerned about FGM,<sup>661</sup> consequently the IC addresses this issue with art. 38 and, according to it, State Parties shall criminalise the act of FGM, but also the incitation or coercion to perform female circumcision, as well as procuring a woman or a girl to undergo FGM.<sup>662</sup>

In the following parts of this Chapter, I will analyse the situation concerning FGM in Bulgaria, Poland, and Ukraine, underlining the fact that the absence of data on the issue could be caused by the ignorance on the latter. Ignorance could, in fact, cause some cases of female circumcision to be unnoticed as the unfamiliarity with the topic of FGM can affect also specialists.

After that I will present the situation in Russia separately as the issue of FGM is known to be present in the country, more precisely in the Republic of Dagestan. Although the presence of disagreements concerning the origins and reasons why female circumcision is performed by Muslims in the region, FGM continues to be performed in some regions of the above-mentioned Republic and the Russian authorities do not address the problem providing the impression that they tacitly allow the tradition to be continued. In regards to Russia, a small digression will be included addressing medicalised clitorrectomy in the city of Moscow.

#### *4.2. Female Genital Mutilation in Bulgaria, Poland and Ukraine: Absence or Ignorance?*

FGM is usually considered as an issue present in Africa, Asia and in the Middle East, however, it is practised also in Europe by certain communities originating from countries where FGM is prevalent and the IC is, in fact, the first treaty that recognises the presence of this issue in Europe.<sup>663</sup> According to the scope of the Convention, State Parties shall improve preventive measures addressing, in this case, most of all, communities affected by female circumcision, but at the same time, they shall address

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<sup>660</sup> Leye Els, Sabbe Alexia (coord.). "Responding to Female Genital Mutilation in Europe. Striking the right balance between prosecution and prevention A review of legislation." International Centre for Reproductive Health. ISBN: 978-90-78128-00-7. June 2009. Pag. 6.

<sup>661</sup> CoE, "The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence. A tool to end female genital mutilation.", op. cit., pag. 4.

<sup>662</sup> 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence. Istanbul. 2011. CETS No. 210. Art. 38.

<sup>663</sup> CoE, "The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence. A tool to end female genital mutilation.", op. cit., pag. 4; 6.



also the general public and relevant professionals in order to increase awareness on the topic.<sup>664</sup>

In Bulgaria FGM seems not to be practiced<sup>665</sup> and the same has been detected in Ukraine,<sup>666</sup> in addition to this, neither of them is provided with any specific provision regarding the matter in their national legislation.<sup>667</sup> In Bulgaria FGM can be addressed by general criminal law as the offence of bodily injury. The second Section of Chapter Two of the Bulgarian Criminal Code is dedicated to bodily injury and female circumcision could be addressed by art. 128, 129, and 130, which respectively criminalise severe bodily injury, medium bodily injury, and other impairments of health different from the ones covered by art. 128 and 129.<sup>668</sup> Concerning FGM, art. 128 includes the cases when there is a permanent general health impairment or when life is in danger,<sup>669</sup> art. 129 addresses the cases when the functions of sexual organs are disturbed without causing reproductive incapacity (which is addressed by art. 128), and permanent impairment of health not dangerous to life or impairment of health temporarily dangerous to life.<sup>670</sup>

The Ukrainian Criminal Code is not so detailed as the Bulgarian one, FGM could be addressed by articles related to bodily injury, namely art. 121 and 122, which respectively cover grievous and medium bodily injury.<sup>671</sup> The first one covers grievous bodily injury, which includes acts dangerous to life at the time of infliction,<sup>672</sup> which female circumcision can be, and the second one covers bodily injury of “medium gravity”, which are acts that are not dangerous to life, but that cause a lasting health disorder.<sup>673</sup> The Ukrainian criminal code addresses also minor bodily injury with art. 125, and it could cover FGM, if the procedure had only short-term health disorders.<sup>674</sup> The situation appears very similar in Poland, where, as of February 2012, only one case of FGM has been registered in the case of a dismissed asylum claim.<sup>675</sup>

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<sup>664</sup> CoE, “The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence. A tool to end female genital mutilation.”, op. cit., pag. 4.

<sup>665</sup> Social Institutions & Gender Index, “Bulgaria.”, op. cit.

<sup>666</sup> Social Institutions & Gender Index, “Ukraine.”, op. cit.

<sup>667</sup> European Institute for Gender Equality. “Current situation of female genital mutilation in Poland.” May 29, 2013. Accessed Jan 30, 2022. <https://eige.europa.eu/publications/current-situation-and-trends-female-genital-mutilation-poland>. And Social Institutions & Gender Index, “Ukraine.”, op. cit.

<sup>668</sup> Criminal Code of the Republic of Bulgaria. Special part. Chapter Two. Crimes against the person. Section II. Bodily injury. Art. 128-130.

<sup>669</sup> Criminal Code of the Republic of Bulgaria. Special part. Chapter Two. Crimes against the person. Section II. Bodily injury. Art. 128.

<sup>670</sup> Criminal Code of the Republic of Bulgaria. Special part. Chapter Two. Crimes against the person. Section II. Bodily injury. Art. 129.

<sup>671</sup> Criminal Code of the Republic of Ukraine. Chapter II. Criminal offenses against the life and health of a person. Art. 121-122.

<sup>672</sup> Criminal Code of the Republic of Ukraine. Chapter II. Criminal offenses against the life and health of a person. Art. 121.

<sup>673</sup> Criminal Code of the Republic of Ukraine. Chapter II. Criminal offenses against the life and health of a person. Art. 122.

<sup>674</sup> Criminal Code of the Republic of Ukraine. Chapter II. Criminal offenses against the life and health of a person. Art. 125.

<sup>675</sup> EIGE, “Current situation of female genital mutilation in Poland.”, op. cit.

Furthermore, as Ukraine and Bulgaria, Poland does not specifically criminalise FGM,<sup>676</sup> although Poland has ratified the IC. Nevertheless, FGM could be prosecuted under other related general offences:<sup>677</sup> female circumcision could, in reality, be addressed by art. 156 and 157 of the Polish Penal Code, these articles criminalise respectively grievous bodily harm and bodily injuries.<sup>678</sup> The first one includes, among others, forms of bodily harm that deprive the victim of the ability to procreate, that inflicts an incurable or prolonged illness, an illness dangerous to life, and a permanent serious bodily deformation.<sup>679</sup> FGM does not deprive the victim of the ability to procreate, but it can cause a major risk of complications during childbirth, such as difficulties during delivery, excessive bleeding, need for caesarean section, the need to resuscitate the baby, and the death of the new-born; along with various long-term issues, including pain during urination, menstruation, and intercourse because of the deformation caused by the practice.<sup>680</sup> Art. 156 covers also the case when the criminalised acts cause the death of the victim,<sup>681</sup> which can be a consequence of FGM.<sup>682</sup> Art. 157 criminalises all other acts that causes bodily injury or impairment to health that are not specified in art. 156.<sup>683</sup>

In addition to this, GREVIO underlined the importance not only to explicitly criminalise the practice of female circumcision, but also the conduct of coercing, procuring, or inciting a woman or a girl to undergo female circumcision,<sup>684</sup> in accordance with art. 38b and 38c of the IC.<sup>685</sup> GREVIO argues that, although FGM could be considered criminalised referring to the general provisions on bodily injury, the aforementioned three acts are not included in the general provision in regards to bodily injury.<sup>686</sup> As a consequence, in order to comply with the IC, State Parties shall criminalise those

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<sup>676</sup> Krizsan Andrea, Pap Eniko. "Implementing a comprehensive and co-ordinated approach. An assessment of Poland's response to prevent and combat gender-based violence." Council of Europe. April 2016. Pag. 41.

<sup>677</sup> Krizsan, Pap, "Implementing a comprehensive and co-ordinated approach. An assessment of Poland's response to prevent and combat gender-based violence.", op. cit., pag. 52.

<sup>678</sup> The Penal Code, act of 6 June 1997. Chapter XIX. Offences against life and health. Art. 156-157.

<sup>679</sup> The Penal Code, act of 6 June 1997. Chapter XIX. Offences against life and health. Art. 156.1.1 and 156.1.2.

<sup>680</sup> WHO, "Female genital mutilation.", op. cit.

<sup>681</sup> The Penal Code, act of 6 June 1997. Chapter XIX. Offences against life and health. Art. 156.3.

<sup>682</sup> WHO, "Female genital mutilation.", op. cit.

<sup>683</sup> The Penal Code, act of 6 June 1997. Chapter XIX. Offences against life and health. Art. 157.

<sup>684</sup> Group of Experts on Action against Violence against Women and Domestic Violence. "GREVIO's (Baseline) Evaluation Report on legislative and other measures giving effect to the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention). POLAND." Sep 16, 2021. Para. 228.

<sup>685</sup> 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence. Istanbul. 2011. CETS No. 210. Art. 38b, 38c.

<sup>686</sup> GREVIO, "GREVIO's (Baseline) Evaluation Report on legislative and other measures giving effect to the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention). POLAND.", op. cit., para. 228.

behaviours that can force, pressure, persuade, or procure a girl or a women to undergo FGM.<sup>687</sup>

As previously stated, in Europe FGM is generally practiced by communities of immigrants originating from countries where the practice of female circumcision is common. Large immigrant groups from these countries are reported not to be present in Central and Eastern Europe, this could therefore explain the absence of reported cases of female circumcision in these regions of the European continent.<sup>688</sup> This information is in line with the data reported by the UN High Commissioner for Refugees (UNHCR) in its statistical overview on FGM and asylum in the EU,<sup>689</sup> not including therefore Ukraine of the three countries analysed in this Sub-chapter. These data show that from 2008 to 2011 the number of females from FGM-risk countries of origin, namely Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Congo, Cote d'Ivoire, Djibouti, Egypt, Eritrea, Ethiopia, Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Liberia, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone, Somalia, Sudan, Tanzania, Togo, Uganda, and Yemen, who asked for asylum in Bulgaria and Poland was one of the lowest in the EU.<sup>690</sup> In Bulgaria the number remained unchanged and each year five women from countries where FGM is practised were reported to have applied for asylum, on the contrary in Poland the number remained unchanged in 2008 and 2009 with ten women being in this category, in 2011 it increased to 25 women.<sup>691</sup> The percentage of the women from FGM-risk countries of origin applying for asylum in respect of the total number of women applying for asylum in Bulgaria and Poland in 2011 was, respectively, 3.23% and 0.77%.<sup>692</sup> In order to have a comparison, in 2011 the highest percentage was registered in Malta and Italy, where respectively the 90.54% and the 74.49% of women who applied for asylum came from one of the above-listed countries.<sup>693</sup> In the same year, the countries with the highest number of women from FGM-risk countries applying for asylum were France and Italy, where respectively 3,460 and 3,095

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<sup>687</sup> GREVIO, "GREVIO's (Baseline) Evaluation Report on legislative and other measures giving effect to the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention). POLAND.", op. cit., para. 229.

<sup>688</sup> Leye, Sabbe, "Responding to Female Genital Mutilation in Europe. Striking the right balance between prosecution and prevention A review of legislation.", op. cit., pag. 43.

<sup>689</sup> United Nations High Commissioner for Refugees. "Female Genital Mutilation & Asylum in the European Union. A Statistical Overview." Feb 2013.

<sup>690</sup> UNHCR, "Female Genital Mutilation & Asylum in the European Union. A Statistical Overview.", op. cit., pag. 5.

<sup>691</sup> UNHCR, "Female Genital Mutilation & Asylum in the European Union. A Statistical Overview.", op. cit., pag. 5.

<sup>692</sup> UNHCR, "Female Genital Mutilation & Asylum in the European Union. A Statistical Overview.", op. cit., pag. 5.

<sup>693</sup> UNHCR, "Female Genital Mutilation & Asylum in the European Union. A Statistical Overview.", op. cit., pag. 5.

women of the aforesaid category applied for asylum.<sup>694</sup> It is important to underline that these numbers assess only whether the asylum seeker is from a FGM-risk country of origin or not and it does not detect whether she has already undergone or if she will undergo the practice once back in the home-country or not.<sup>695</sup>

Nevertheless, in Central and Eastern Europe, FGM is largely unknown and this lack of knowledge on the practice affects a range of professional, namely health professionals, social services, and teachers, causing potential cases of FGM to remain unnoticed.<sup>696</sup> Also GREVIO suggested in its report on the measures adopted by Poland in order to implement the IC that authorities should strive to collect more information on the subject in order to have a better knowledge and understanding of the situation of the foreign communities present in Poland.<sup>697</sup>

The ratification of the IC in Bulgaria and Ukraine and not withdrawing from it in the case of Poland would request these countries to address FGM. They shall rise awareness on the topic, first of all on immigrant populations that are more affected by FGM, but also on the rest of their population and on professionals who must be able to recognise it and be able to handle the situation, they shall know how to talk with the victim and how to protect her. The increase of knowledge on female circumcision, including both the actual practice, but also its consequences, is therefore fundamental in order to combat it and assure that it is not perpetrated. As already stated, ignorance on the topic can cause the violence to remain unnoticed. In order to help solving this problem, in 2016 the WHO published its guidelines on the management of health complications deriving from the practice of FGM.<sup>698</sup>

The sensibilisation on the topic of FGM and its acknowledgment as violation of human rights is related also to the requests of asylum: FGM is usually not performed in the EU,<sup>699</sup> but before the victim moves there or while travelling outside the EU.<sup>700</sup> Countries shall therefore grant protection to the girls and women who risk to undergo the practice of female circumcision while travelling outside their territory, they shall in

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<sup>694</sup> UNHCR, "Female Genital Mutilation & Asylum in the European Union. A Statistical Overview.", op. cit., pag. 5.

<sup>695</sup> UNHCR, "Female Genital Mutilation & Asylum in the European Union. A Statistical Overview.", op. cit., pag. 4.

<sup>696</sup> Leye, Sabbe, "Responding to Female Genital Mutilation in Europe. Striking the right balance between prosecution and prevention A review of legislation.", op. cit., pag. 43.

<sup>697</sup> GREVIO, "GREVIO's (Baseline) Evaluation Report on legislative and other measures giving effect to the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention). POLAND.", op. cit., para. 229.

<sup>698</sup> World Health Organization. "WHO guidelines on the management of health complications from female genital mutilation". 2016. Accessed Feb 6. 2022. <https://www.who.int/reproductivehealth/topics/fgm/management-health-complications-fgm/en/>

<sup>699</sup> In this case this statement applies only to Bulgaria and Poland.

<sup>700</sup> EIGE, "Female genital mutilation in the European Union and Croatia.", op. cit., pag. 25.

fact grant asylum on the grounds of female circumcision and ensure that the persons at risk, “regardless of their status or residence”, are not “returned under any circumstances to any country”<sup>701</sup> where they can be subjected to female circumcision. Furthermore, another method for the three States, to ensure the punishment of perpetrators and to remove any uncertainty on the level of injury inflicted, shall be the explicit and separated criminalisation of FGM regardless the type and grievousness of the circumcision performed.

#### *4.3. Female Genital Mutilation in Russia: Focus on the Republic of Dagestan*

In the RF the situation in regards to FGM is different from the previous analysed cases of Bulgaria, Poland, and Ukraine. In Russia, in fact, FGM is known to be practised in the Republic of Dagestan, although a large part of the population of the Republic cannot admit the existence of this issue in their territory.<sup>702</sup>

FGM is mostly practiced in the Eastern part of Dagestan in the mountain areas, but also in villages in the plains where a considerable part of the population is composed by settlers who moved from the mountains.<sup>703</sup> In the areas where FGM is practiced, it is completely supported by the local population as it is regarded as tradition and as a mandatory ritual for every girl: one of the respondent of the study, in fact, stated that “all Muslims have to do it; you cannot be a Muslim woman otherwise”.<sup>704</sup> Even the girls and women, who remember the practice as a violence they suffered, claimed that they will continue to perpetuate this tradition; only according to a very restricted part of the respondents, female circumcision can be avoided, they stated that now there is the possibility to express the unwillingness to undergo it, while before this choice was not allowed.<sup>705</sup> In the study, this finding was classified as “situational shift”

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<sup>701</sup> 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence. Istanbul. 2011. CETS No. 210. Art. 61.

<sup>702</sup> Антонова, Сиражудинова, “Производство калечащих операций на половых органах у девочек. Отчет по результатам качественного исследования в Республике Дагестан.”, указ. соч., с. 26. [Antonova, Siradzhudinova, Female Genital Mutilation of Girls in Dagestan (Russian Federation). Report based on the results of a qualitative study on female genital mutilation performed on girls.”, op. cit.]

<sup>703</sup> Антонова, Сиражудинова, “Производство калечащих операций на половых органах у девочек. Отчет по результатам качественного исследования в Республике Дагестан.”, указ. соч., с. 30. [Antonova, Siradzhudinova, Female Genital Mutilation of Girls in Dagestan (Russian Federation). Report based on the results of a qualitative study on female genital mutilation performed on girls.”, op. cit.]

<sup>704</sup> Антонова, Сиражудинова, “Производство калечащих операций на половых органах у девочек. Отчет по результатам качественного исследования в Республике Дагестан.”, указ. соч., с. 31. [Antonova, Siradzhudinova, Female Genital Mutilation of Girls in Dagestan (Russian Federation). Report based on the results of a qualitative study on female genital mutilation performed on girls.”, op. cit.]

<sup>705</sup> Антонова, Сиражудинова, “Производство калечащих операций на половых органах у девочек. Отчет по результатам качественного исследования в Республике Дагестан.”, указ. соч., с. 31-32. [Antonova, Siradzhudinova, Female Genital Mutilation of Girls in Dagestan (Russian Federation). Report based on the results of a qualitative study on female genital mutilation performed on girls.”, op. cit.]

of behaviour from the social norm, and concerned the rare cases where respondents had resettled to the plains or were in a mixed marriage, which means that these girls and women were not part of the community anymore.<sup>706</sup>

The study included also interviews to experts, some of whom were very surprised hearing about the practice of FGM and expressed their ignorance on the topic, others were outraged and defined female circumcision as barbaric and against nature.<sup>707</sup> Moreover, the fact that FGM is unnecessary was highlighted under a medical point of view, as well as its dangerousness, including the full or partial loss of bodily function.<sup>708</sup>

The survey underlined also that the respondents did not take into consideration the medical aspects linked to the practice, what they most considered was its ritual point of view.<sup>709</sup> Both respondents and experts argued that the reason why FGM is practiced in Dagestan is the fact that the Islamic religion prescribes it, however religious experts are not unanimous in their views concerning female circumcision.<sup>710</sup> Some imams said that the practice of FGM has no grounds in the Koran and that it is not necessary, even not desirable because of the harm to health and the bodily injury, but others consider it as compulsory, a duty, they believe that it would be a sin not to perform it and that it has to be carried out in order to “kill” the girl’s desire and sexual arousal.<sup>711</sup>

Nevertheless, FGM is a taboo in Dagestan and it is perceived as something private that cannot be shared, and this explains why some experts were not aware of the existence of FGM in Dagestan where different types of female circumcision are

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<sup>706</sup> Антонова, Сиражудинова, “Производство калечащих операций на половых органах у девочек. Отчет по результатам качественного исследования в Республике Дагестан.”, указ. соч., с. 32-33. [Antonova, Siradzhudinova, Female Genital Mutilation of Girls in Dagestan (Russian Federation). Report based on the results of a qualitative study on female genital mutilation performed on girls.”, op. cit.]

<sup>707</sup> Антонова, Сиражудинова, “Производство калечащих операций на половых органах у девочек. Отчет по результатам качественного исследования в Республике Дагестан.”, указ. соч., с. 33. [Antonova, Siradzhudinova, Female Genital Mutilation of Girls in Dagestan (Russian Federation). Report based on the results of a qualitative study on female genital mutilation performed on girls.”, op. cit.]

<sup>708</sup> Антонова, Сиражудинова, “Производство калечащих операций на половых органах у девочек. Отчет по результатам качественного исследования в Республике Дагестан.”, указ. соч., с. 33. [Antonova, Siradzhudinova, Female Genital Mutilation of Girls in Dagestan (Russian Federation). Report based on the results of a qualitative study on female genital mutilation performed on girls.”, op. cit.]

<sup>709</sup> Антонова, Сиражудинова, “Производство калечащих операций на половых органах у девочек. Отчет по результатам качественного исследования в Республике Дагестан.”, указ. соч., с. 32. [Antonova, Siradzhudinova, Female Genital Mutilation of Girls in Dagestan (Russian Federation). Report based on the results of a qualitative study on female genital mutilation performed on girls.”, op. cit.]

<sup>710</sup> Антонова, Сиражудинова, “Производство калечащих операций на половых органах у девочек. Отчет по результатам качественного исследования в Республике Дагестан.”, указ. соч., с. 34. [Antonova, Siradzhudinova, Female Genital Mutilation of Girls in Dagestan (Russian Federation). Report based on the results of a qualitative study on female genital mutilation performed on girls.”, op. cit.]

<sup>711</sup> Антонова, Сиражудинова, “Производство калечащих операций на половых органах у девочек. Отчет по результатам качественного исследования в Республике Дагестан.”, указ. соч., с. 34; 36. [Antonova, Siradzhudinova, Female Genital Mutilation of Girls in Dagestan (Russian Federation). Report based on the results of a qualitative study on female genital mutilation performed on girls.”, op. cit.]

present.<sup>712</sup> In the Republic, there is the presence, in fact, of procedures that can fall into type I, namely the partial removal of the clitoris; type II, specifically the practice of the removal of the clitoris and the labia minor; and type IV, which can consist in incision and bloodletting.<sup>713</sup> It was also noted that in many cases the procedure has evolved in just an imitation of the initiation ritual and it is performed only with the scope of observing the rite, this imitation can consist in scratching or cutting in order to have some bleeding.<sup>714</sup>

However, from the study it emerged that at the root of FGM there are some beliefs related to women sexuality and to the need to suppress it: the practice of female circumcision protects women from sin, helps avoiding divorce, as women do not “wander” looking for men, neither during marriage nor before, help preserving their virginity, their decency and the family honour.<sup>715</sup> These reasons why FGM is practiced are moral and ethical and give the burden and responsibility of preserving the family to women.<sup>716</sup>

In relation to the above-mentioned “imitation ritual”, there were as well some declarations in support to the practice of the so-called “mild” FGM, which consists on the perforation or on a small cut on the clitoris with a really small bloodletting, only a few drops of blood, it was moreover stated that this type of procedure increases women’s sensitivity and aims to provide them with greater pleasure during intercourse; according to this point of view, “mild” FGM would in addition help women preserving intimate health and hygiene, as the anatomic structure of the clitoris requires particular attention during its cleaning.<sup>717</sup> There are, although, some statements by men, who declared that “mild” FGM has no effects on women’s

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<sup>712</sup> Антонова, Сиражудинова, “Производство калечащих операций на половых органах у девочек. Отчет по результатам качественного исследования в Республике Дагестан.”, указ. соч., с. 34-35. [Antonova, Siradzhudinova, Female Genital Mutilation of Girls in Dagestan (Russian Federation). Report based on the results of a qualitative study on female genital mutilation performed on girls.”, op. cit.]

<sup>713</sup> Антонова, Сиражудинова, “Производство калечащих операций на половых органах у девочек. Отчет по результатам качественного исследования в Республике Дагестан.”, указ. соч., с. 35-36. [Antonova, Siradzhudinova, Female Genital Mutilation of Girls in Dagestan (Russian Federation). Report based on the results of a qualitative study on female genital mutilation performed on girls.”, op. cit.]

<sup>714</sup> Антонова, Сиражудинова, “Производство калечащих операций на половых органах у девочек. Отчет по результатам качественного исследования в Республике Дагестан.”, указ. соч., с. 36. [Antonova, Siradzhudinova, Female Genital Mutilation of Girls in Dagestan (Russian Federation). Report based on the results of a qualitative study on female genital mutilation performed on girls.”, op. cit.]

<sup>715</sup> Антонова, Сиражудинова, “Производство калечащих операций на половых органах у девочек. Отчет по результатам качественного исследования в Республике Дагестан.”, указ. соч., с. 38-39. [Antonova, Siradzhudinova, Female Genital Mutilation of Girls in Dagestan (Russian Federation). Report based on the results of a qualitative study on female genital mutilation performed on girls.”, op. cit.]

<sup>716</sup> Антонова, Сиражудинова, “Производство калечащих операций на половых органах у девочек. Отчет по результатам качественного исследования в Республике Дагестан.”, указ. соч., с. 39. [Antonova, Siradzhudinova, Female Genital Mutilation of Girls in Dagestan (Russian Federation). Report based on the results of a qualitative study on female genital mutilation performed on girls.”, op. cit.]

<sup>717</sup> UMMAH project. “Женское обрезание: исламский взгляд и мнения современных врачей.” UMMAH publishing house. Янв 5, 2010. Доступ Фев 6, 2022. <https://www.ummahweb.net/?p=929> [UMMAH project. “Female circumcision: Islamic view and opinions of modern doctors.” UMMAH publishing house. Jan 5, 2010. Feb 6, 2022. <https://www.ummahweb.net/?p=929> – my translation]

sensitivity during sexual relations, another part of the surveyed men, in relation to female circumcision in general and its consequences, claimed that the sensitivity of women is diminished; men have, however, accepted and adapted to the situation, they consider it as minor inconvenience that the majority of them is ready to ignore.<sup>718</sup>

The issue of FGM in the Russian territory has surely not improved, according to the opinions and declarations of some public figures who support it. On August 15, 2016, Ismail Berdiev, the chairman of the coordinating centre of North Caucasus Muslims, made a declaration to Interfax stating that, although FGM is not prescribed by the Islamic religion, he considers this practice necessary because it eliminates “depravity” and it decreases sexuality.<sup>719</sup> The statement continued with the announcement that all women should be subjected to female circumcision, it is, in reality, women’s sexuality that “must” be decreased as, according to God’s plans, women have been created with the scope of bearing and raising children and FGM does not prevent women from having children.<sup>720</sup> Berdiev, however, did not mention the fact that female circumcision can cause more complications during the childbirth, including the death of the new-born.

Similar statements do not come from only the Muslim community, the Archpriest of the Russian Orthodox Church, Vsevolod Chaplin, supported Berdiev’s declaration on a public post on Facebook that has lately been deleted or hidden.<sup>721</sup> The Orthodox Archpriest considered FGM as a tradition well rooted in the centuries in the Muslim women who live in the Eastern part of the Republic of Dagestan, Chaplin also encouraged Berdiev “not to back down from his position”, although the Orthodox man shared the idea that in all probability not all women need to undergo female circumcision, he used as example Orthodox women claiming – and generalising – that they do not need female circumcision as they do not commit debauchery. In the

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<sup>718</sup> Antonova, Siradzхудinova, Report of “The practice of female genital mutilation in Dagestan: strategies for its elimination”, report based on the results of a qualitative sociological study in the Republic of Dagestan, the Republic of Ingushetia and the Republic of Chechnya (Russian Federation), op. cit., pag. 28-29.

<sup>719</sup> Интерфакс. “Муфтий Северного Кавказа призвал обрезать всех женщин России.” Авг 17, 2016. Доступ Фев 6, 2022. <https://www.interfax.ru/russia/524002> [Interfax. “The Mufti of the North Caucasus called for circumcision of all women in Russia.” Aug 17, 2016. Accessed Feb 6, 2022. <https://www.interfax.ru/russia/524002> – my translation]

<sup>720</sup> Интерфакс, “Муфтий Северного Кавказа призвал обрезать всех женщин России”, указ. соч. [Interfax, “The Mufti of the North Caucasus called for circumcision of all women in Russia.”, op. cit.]

<sup>721</sup> As of Feb 6, 2022 the post is not available, the screenshot of it is available at the following source: Antonova Yu.A., Siradzхудinova S.V. Report of “The practice of female genital mutilation in Dagestan: strategies for its elimination”, report based on the results of a qualitative sociological study in the Republic of Dagestan, the Republic of Ingushetia and the Republic of Chechnya (Russian Federation). 2018. Accessed on Apr 25, 2021. <https://www.srji.org/en/about/annual/the-second-fgm-report-based-on-the-results-of-a-study-in-russian-federation>



end, he underlined the fact that women have been created with the purpose of bearing and raising children and stated that feminisms is a lie.<sup>722</sup>

Reports on the issue of FGM showed, in fact, that this patriarchal culture, based on the dominance of men, is at the roots of the necessity to perform FGM.<sup>723</sup> Despite of this, men do not talk with women about the practice and, as previously mentioned, women are the ones who continue the tradition of female circumcision.<sup>724</sup> Men underlined that, being this issue a taboo, they are not informed about the performance of FGM on their daughters and might not be notified that it has taken place, therefore, even if some of them would like to stop the practice and prohibit it, not knowing about its schedule makes them almost powerless on the issue.<sup>725</sup>

It is worth underlining that, from the survey carried out, it emerged that men do not have a clear idea on the reasons why girls and women are subjected to FGM and explained the origin of the practice in a confusing manner.<sup>726</sup> It was possible, however, to identify three different answers given by men on the question: the first one is that FGM should be practiced because it is prescribed by the Islamic religion; the second justification for the practice is that female circumcision is perceived as a customary law, an imperative conduct; the third explanation given in order to clarify why FGM is performed is the need of control over women's behaviour and morality, men pointed out that female circumcision prevent women to be "prostitutes" and to "wander" before marriage.<sup>727</sup> Men, in fact, want to control women's sexuality and fear the violation of order in their society which could be caused by women's "sexual activity" and by women's "uncontainable sexual energy".<sup>728</sup>

In addition to this, some men gave uncertain answers, they stated that it "is the way it is done here, everyone does it, that is the way it should be" or that they have not

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<sup>722</sup> As of Feb 6, 2022 the post is not available, the screenshot of it is available at the following source: Antonova, Siradzhudinova, Report of "The practice of female genital mutilation in Dagestan: strategies for its elimination", report based on the results of a qualitative sociological study in the Republic of Dagestan, the Republic of Ingushetia and the Republic of Chechnya (Russian Federation), op. cit.

<sup>723</sup> Antonova, Siradzhudinova, Report of "The practice of female genital mutilation in Dagestan: strategies for its elimination", report based on the results of a qualitative sociological study in the Republic of Dagestan, the Republic of Ingushetia and the Republic of Chechnya (Russian Federation), op. cit., pag. 23.

<sup>724</sup> Antonova, Siradzhudinova, Report of "The practice of female genital mutilation in Dagestan: strategies for its elimination", report based on the results of a qualitative sociological study in the Republic of Dagestan, the Republic of Ingushetia and the Republic of Chechnya (Russian Federation), op. cit., pag. 25-26.

<sup>725</sup> Antonova, Siradzhudinova, Report of "The practice of female genital mutilation in Dagestan: strategies for its elimination", report based on the results of a qualitative sociological study in the Republic of Dagestan, the Republic of Ingushetia and the Republic of Chechnya (Russian Federation), op. cit., pag. 29-30.

<sup>726</sup> Antonova, Siradzhudinova, Report of "The practice of female genital mutilation in Dagestan: strategies for its elimination", report based on the results of a qualitative sociological study in the Republic of Dagestan, the Republic of Ingushetia and the Republic of Chechnya (Russian Federation), op. cit., pag. 27.

<sup>727</sup> Antonova, Siradzhudinova, Report of "The practice of female genital mutilation in Dagestan: strategies for its elimination", report based on the results of a qualitative sociological study in the Republic of Dagestan, the Republic of Ingushetia and the Republic of Chechnya (Russian Federation), op. cit., pag. 26.

<sup>728</sup> Antonova, Siradzhudinova, Report of "The practice of female genital mutilation in Dagestan: strategies for its elimination", report based on the results of a qualitative sociological study in the Republic of Dagestan, the Republic of Ingushetia and the Republic of Chechnya (Russian Federation), op. cit., pag. 27.

thought about the matter.<sup>729</sup> The younger respondents, who became of age during the so-called re-Islamisation, were more strict about the need of female circumcision because of the growing of the significance of religion, although they could not cite precise quotations from the Koran that prescribe FGM, they, in fact, learned about the practice by talking with other men and did not read about the topic themselves.<sup>730</sup>

According to the Russian legislation, FGM should be considered banned as art. 21 of the Constitution of the RF protects a person's dignity without derogation, and states that "no one shall be subjected to torture, violence, or other cruel or degrading treatment or punishment".<sup>731</sup> FGM can, moreover, fall under art. 111 of the Russian Criminal Code in the cases when it causes grievous damages to health.<sup>732</sup> However, the article is very specific on which cases it covers and FGM could be prosecuted under this article only if the practice causes the loss of an organ or of its function or if it causes one of the following issues that must be proved by clinical and morphological data:

"damage (disintegration, tearing, rupture) of the pelvic organs; open and (or) closed injury to the bladder, the membranous part of the urinary tract, the ovaries, the fallopian tubes, the uterus, or other pelvic organs [...] or, alternatively, «injury to the vaginal wall or the large intestine or injury to the surrounding space, penetrating the pelvic cavity and (or) cellular tissue» [...], or, alternatively, «blunt injury to the reflexogenic zones: [...] the area around the external genital organs»".<sup>733</sup>

If no one of the above-mentioned issues subsists, FGM could be prosecuted under art. 112 of the Criminal Code of the RF as medium harm to health in case it causes a long-term health disorder,<sup>734</sup> or under art. 115 as minor harm to health causing therefore a short-term health disorder.<sup>735</sup> In addition to this, as FGM is considered sexual violence,<sup>736</sup> it could be hypothetically<sup>737</sup> prosecuted also under art. 132 of the

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<sup>729</sup> Antonova, Siradzhudinova, Report of "The practice of female genital mutilation in Dagestan: strategies for its elimination", report based on the results of a qualitative sociological study in the Republic of Dagestan, the Republic of Ingushetia and the Republic of Chechnya (Russian Federation), op. cit., pag. 26.

<sup>730</sup> Antonova, Siradzhudinova, Report of "The practice of female genital mutilation in Dagestan: strategies for its elimination", report based on the results of a qualitative sociological study in the Republic of Dagestan, the Republic of Ingushetia and the Republic of Chechnya (Russian Federation), op. cit., pag. 27.

<sup>731</sup> Constitution of the Russian Federation. Chapter 2. Human and civil rights and freedoms. Art. 21.

<sup>732</sup> Criminal Code of the Russian Federation. Chapter 16. Crimes against human life and health. Art. 111.

<sup>733</sup> Антонова, Сиражудинова, "Производство калечащих операций на половых органах у девочек. Отчет по результатам качественного исследования в Республике Дагестан.", указ. соч., с. 48. [Antonova, Siradzhudinova, Female Genital Mutilation of Girls in Dagestan (Russian Federation). Report based on the results of a qualitative study on female genital mutilation performed on girls.", op. cit.]

<sup>734</sup> Criminal Code of the Russian Federation. Chapter 16. Crimes against human life and health. Art. 112.

<sup>735</sup> Criminal Code of the Russian Federation. Chapter 16. Crimes against human life and health. Art. 115.

<sup>736</sup> WHO, "World report on violence and health.", op. cit., pag. 149-150.

<sup>737</sup> Антонова, Сиражудинова, "Производство калечащих операций на половых органах у девочек. Отчет по результатам качественного исследования в Республике Дагестан.", указ. соч., с. 51. [Antonova, Siradzhudinova, Female Genital

Russian Criminal Code which criminalises, among other things, “acts of sexual nature involving the use of force or the threat of violence against the victim or against others, or taking advantage of the victim’s state of helplessness”.<sup>738</sup>

Despite of this, there could also be grounds for the practice of FGM not to be prosecuted in the RF, such as the victim not being underage and giving conscious and voluntary consent to the practice as the Russian law does not contain provisions that state the irrelevancy of consent in cases of violence, this is however a controversial concept<sup>739</sup> and it will not be discussed in this work. There is also a non-codified circumstance that can create the ground for not prosecuting FGM: the performance of FGM as a religious rite; it should however meet specific criteria such as the religion must be recognised by the Russian law, the rite must be established and regularly practiced, therefore it cannot be only a local custom not supported by the majority, the participants must give conscious and voluntary consent, or the parents in case of children, there must not be violations on the life and health, or at least, the effects on health must not have long-term effects.<sup>740</sup> It is possible to notice that the second and the fourth criteria make questionable the possibility to use these grounds in order not to prosecute FGM,<sup>741</sup> in fact, as above-mentioned, the practice can cause long-term health issues<sup>742</sup> and it is not well established among all the Muslims, some imams are even against the practice of FGM,<sup>743</sup> the Council of Muftis of the Russian Federation does not consider this tradition part of Islam and it is not practiced in other republics of Northern Caucasus.<sup>744</sup> In Dagestan, as well, the percentage of women and girls who have to undergo female circumcision is different from region to region: in the Botlikhsky and Tsuntinsky regions the percentage is high

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Mutilation of Girls in Dagestan (Russian Federation). Report based on the results of a qualitative study on female genital mutilation performed on girls.”, op. cit.]

<sup>738</sup> Criminal Code of the Russian Federation. Chapter 18. Crimes against sexual integrity and sexual freedom of the individual. Art. 132.

<sup>739</sup> Антонова, Сиражудинова, “Производство калечащих операций на половых органах у девочек. Отчет по результатам качественного исследования в Республике Дагестан.”, указ. соч., с. 51. [Antonova, Siradzhudinova, Female Genital Mutilation of Girls in Dagestan (Russian Federation). Report based on the results of a qualitative study on female genital mutilation performed on girls.”, op. cit.]

<sup>740</sup> Антонова, Сиражудинова, “Производство калечащих операций на половых органах у девочек. Отчет по результатам качественного исследования в Республике Дагестан.”, указ. соч., с. 52. [Antonova, Siradzhudinova, Female Genital Mutilation of Girls in Dagestan (Russian Federation). Report based on the results of a qualitative study on female genital mutilation performed on girls.”, op. cit.]

<sup>741</sup> Антонова, Сиражудинова, “Производство калечащих операций на половых органах у девочек. Отчет по результатам качественного исследования в Республике Дагестан.”, указ. соч., с. 52. [Antonova, Siradzhudinova, Female Genital Mutilation of Girls in Dagestan (Russian Federation). Report based on the results of a qualitative study on female genital mutilation performed on girls.”, op. cit.]

<sup>742</sup> WHO, “Female genital mutilation.”, op. cit.

<sup>743</sup> Антонова, Сиражудинова, “Производство калечащих операций на половых органах у девочек. Отчет по результатам качественного исследования в Республике Дагестан.”, указ. соч., с. 34. [Antonova, Siradzhudinova, Female Genital Mutilation of Girls in Dagestan (Russian Federation). Report based on the results of a qualitative study on female genital mutilation performed on girls.”, op. cit.]

<sup>744</sup> Antonova, Siradzhudinova, Report of “The practice of female genital mutilation in Dagestan: strategies for its elimination”, report based on the results of a qualitative sociological study in the Republic of Dagestan, the Republic of Ingushetia and the Republic of Chechnya (Russian Federation), op. cit., pag. 11-12.

and almost all women undergo FGM (from 90% to 100% of women and girls are affected by the practice), in the Tlyaratinsky region the percentage decrease and “only” half of the women in the villages of this region are affected by female circumcision, in the Tsyumadinsky and Kizlyarsky regions the percentage is lower and 25% of the women and girls of these regions have undergone the practice or are at risk of being subjected to it, in the Kizilyurt and Tarumovsky regions female circumcision has become rarer and rarer and it can be encountered in individual villages, FGM has essentially vanished in the Gunibsky region, it has been rejected in the Untsukul'sky region, and in the Gumbetovsky region young girls are now not subjected to female circumcision.<sup>745</sup> This is the situation in regard to FGM in ten of the forty-one regions Dagestan is divided into, it was reported that female circumcision has never been performed or, if it was performed once, it was later rejected, in the majority of the regions of the Republic.<sup>746</sup>

Signing and ratifying the IC would oblige the RF to address the issue of FGM in its territory. The first step in order to combat FGM shall be its explicit criminalisation and the set of penalties regardless the type of mutilation performed, less invasive performances, for example “only” piercing the clitoris, should not be considered as extenuating circumstances. It is worth mentioning that in 2016 a draft law in order to criminalise the performance of FGM for religious purposes was initiated by the State Duma deputy Maria Maksakova-Igenbergs,<sup>747</sup> but the status of this draft continues to be unknown.<sup>748</sup> The proposal included an amendment to art. 136 of the Russian Criminal Code which is titled “Violation of equality of human and civil rights and freedoms”, the article defines discrimination and criminalises it.<sup>749</sup> The amendment would have added two parts to this article: the first one would have criminalised discrimination against women manifested in FGM, in this case described as “partial or complete removal of the external genitalia”, for religious reasons; the second part

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<sup>745</sup> Antonova, Siradzhudinova, Report of “The practice of female genital mutilation in Dagestan: strategies for its elimination”, report based on the results of a qualitative sociological study in the Republic of Dagestan, the Republic of Ingushetia and the Republic of Chechnya (Russian Federation), op. cit., pag. 17.

<sup>746</sup> Antonova, Siradzhudinova, Report of “The practice of female genital mutilation in Dagestan: strategies for its elimination”, report based on the results of a qualitative sociological study in the Republic of Dagestan, the Republic of Ingushetia and the Republic of Chechnya (Russian Federation), op. cit., pag. 32.

<sup>747</sup> On amendments to article 136 of the RF Criminal Code. Submitted by State Duma deputy M.P. Maksakova-Igenbergs, Project No1153660–6.

<sup>748</sup> Litvinova Daria. “Female circumcision in Moscow clinic sparks ‘complete shock’.” Thomson Reuters Foundation. Nov 27, 2018. Accessed May 26, 2021. <https://www.reuters.com/article/us-russia-women-fgm/female-circumcision-in-moscow-clinic-sparks-complete-shock-idUSKCN1NW265>

<sup>749</sup> Criminal Code of the Russian Federation. Chapter 19. Crimes against constitutional rights and freedoms of the individual and the citizen. Art. 136.

would have added aggravating circumstance for the same acts when performed on underage girls.<sup>750</sup>

However, this would not be enough, information and awareness shall be raised, citizens shall be educated on the issue, in the first step the communities that practice FGM, especially the persons who perform it. Information, awareness, and education could be achieved through various means: information can be spread through NGOs, universities, medical institutions, schools, and other organisations, the message of the need of the elimination of FGM shall be passed also by politicians, specialists, religious, community leaders, the media, and the arts world.<sup>751</sup> On August 17, 2016, Oleg Salagai, the official representative of the Health Ministry of the Russian Federation, already informed the press that the medical community concurs that FGM is a mutilating practice that does not have health benefits.<sup>752</sup> Despite of this, even after Antonova and Siradzhudinov's first study on female circumcision in the Republic of Dagestan was published, the Russian State did not take any action in order to address FGM, although the report was one of the most discussed topics on the internet on the days following its publication and it was followed by several publications and statements by public persons and lawmakers.<sup>753</sup> It is important that the Russian State starts addressing FGM as the lack of action and attention by the Russian authorities in regards to FGM can be interpreted as a silent approval of female circumcision and can lead to the preservation and implementation of the practice.<sup>754</sup> For that matter, it was reported that the total elimination of FGM depends on the willingness of politicians at the highest level, it was, in fact, the public political discussion on the issue that had the crucial role in diminishing the endorsement to the practice of female circumcision in many countries.<sup>755</sup>

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<sup>750</sup> On amendments to article 136 of the RF Criminal Code. Submitted by State Duma deputy M.P. Maksakova-Igenbergs, Project No1153660–6.

<sup>751</sup> Антонова, Сираждинова, "Производство калечащих операций на половых органах у девочек. Отчет по результатам качественного исследования в Республике Дагестан.", указ. соч., с. 56-57. [Antonova, Siradzhudinova, Female Genital Mutilation of Girls in Dagestan (Russian Federation). Report based on the results of a qualitative study on female genital mutilation performed on girls.", op. cit.]

<sup>752</sup> Интерфакс. "Минздрав РФ выступил с критикой женского обрезания". Авг 17, 2016. Доступ Фев 6, 2022. <https://www.interfax.ru/russia/524106> [Interfax. "The Ministry of Health of the Russian Federation criticized female circumcision." Aug 17, 2016. Accessed Feb 6, 2022. <https://www.interfax.ru/russia/524106> – my translation]

<sup>753</sup> Antonova, Siradzhudinova, Report of "The practice of female genital mutilation in Dagestan: strategies for its elimination", report based on the results of a qualitative sociological study in the Republic of Dagestan, the Republic of Ingushetia and the Republic of Chechnya (Russian Federation), op. cit., pag. 16.

<sup>754</sup> Antonova, Siradzhudinova, Report of "The practice of female genital mutilation in Dagestan: strategies for its elimination", report based on the results of a qualitative sociological study in the Republic of Dagestan, the Republic of Ingushetia and the Republic of Chechnya (Russian Federation), op. cit., pag. 16.

<sup>755</sup> Antonova, Siradzhudinova, Report of "The practice of female genital mutilation in Dagestan: strategies for its elimination", report based on the results of a qualitative sociological study in the Republic of Dagestan, the Republic of Ingushetia and the Republic of Chechnya (Russian Federation), op. cit., pag. 43.

Also, school programmes and campaigns can be good means for the purpose of educating in order to prevent and eliminate female circumcision.<sup>756</sup> These programmes and campaigns should be addressed to both men and women because women are the ones who actively perpetuate the tradition of female circumcision, and men, even when they do not openly support the practice and only passively accept it, simplify its preservation during time.<sup>757</sup> At the same time, as it took place in a certain number of African countries where female circumcision is an issue, specific educational programmes should be addressed to women who perform FGM in order to convince them to stop carrying out the procedure.<sup>758</sup> These peculiar programmes should include, in addition to information about women's physiology and gynaecology, the teaching of new professions including financial support to move to another profession not linked to female circumcision, in order for these women to really have an alternative option to the profession of "cutter" – as it has been named in Africa.<sup>759</sup> Furthermore, educational programmes and campaigns should, undoubtedly, include the reasons why FGM should be banned, starting from the direct short-term and long-term health and psychological consequences, the risk of death, as well as the promotion of equality between men and women and of fundamental human rights. Communities who continue to perform female circumcision lack, in fact, of the understanding of the motives why the tradition of FGM should be combated and eliminated.<sup>760</sup>

In addition to this, Russia shall organise special training for teachers and professionals: first and foremost, they should be aware of the issue and be able to recognise it, moreover they should pass on their knowledge in order to help women increase awareness on their rights, which are violated by the practice of FGM, and on the violence they are subjected to, they should help create the environment for women to be able to defend their rights and to condemn VAW.<sup>761</sup>

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<sup>756</sup> Антонова, Сиражудинова, "Производство калечащих операций на половых органах у девочек. Отчет по результатам качественного исследования в Республике Дагестан.", указ. соч., с. 57. [Antonova, Siradzhudinova, Female Genital Mutilation of Girls in Dagestan (Russian Federation). Report based on the results of a qualitative study on female genital mutilation performed on girls.", op. cit.]

<sup>757</sup> Antonova, Siradzhudinova, Report of "The practice of female genital mutilation in Dagestan: strategies for its elimination", report based on the results of a qualitative sociological study in the Republic of Dagestan, the Republic of Ingushetia and the Republic of Chechnya (Russian Federation), op. cit., pag. 26; 29.

<sup>758</sup> Antonova, Siradzhudinova, Report of "The practice of female genital mutilation in Dagestan: strategies for its elimination", report based on the results of a qualitative sociological study in the Republic of Dagestan, the Republic of Ingushetia and the Republic of Chechnya (Russian Federation), op. cit., pag. 40.

<sup>759</sup> Antonova, Siradzhudinova, Report of "The practice of female genital mutilation in Dagestan: strategies for its elimination", report based on the results of a qualitative sociological study in the Republic of Dagestan, the Republic of Ingushetia and the Republic of Chechnya (Russian Federation), op. cit., pag. 40.

<sup>760</sup> Antonova, Siradzhudinova, Report of "The practice of female genital mutilation in Dagestan: strategies for its elimination", report based on the results of a qualitative sociological study in the Republic of Dagestan, the Republic of Ingushetia and the Republic of Chechnya (Russian Federation), op. cit., pag. 32.

<sup>761</sup> Антонова, Сиражудинова, "Производство калечащих операций на половых органах у девочек. Отчет по результатам качественного исследования в Республике Дагестан.", указ. соч., с. 56-57. [Antonova, Siradzhudinova, Female Genital

In order to combat and prevent FGM, it is necessary also to eradicate all the popular beliefs related to it and that have their roots in the patriarchal society and in the idea that women are inferior to men. The presence of these ideas is clear in the statements of the two religious men, Ismail Berdiev and Vsevolod Chaplin, who confined women to their role of mothers. However, also studies reported that female circumcision is grounded by concepts which have the intention to limit and control women's freedoms, primarily their sexual identity and their sexual activity.<sup>762</sup> It is exactly this kind of views that the IC aims to eliminate.

Similarly, an explanatory note to the draft law that aimed to criminalise FGM in Russia stated that female circumcision is based on gender discrimination, the opinions that support FGM are based on the fact that the procedure should protect women from "an immoral lifestyle", which was considered anachronistic in the note.<sup>763</sup> In support to the need of criminalising female circumcision, the note cited the fact that equal rights and freedoms for men and women are explicitly guaranteed by the Russian Constitution with art. 19<sup>764</sup> and that female and male circumcision cannot be compared because of the different medical consequences they expose the individual who undergoes the procedure to.<sup>765</sup> Despite of this statement of equality between men and women, in reality in the territory of the RF the protection of universal human rights of girls and women seems to be less effective than the one of men as universal human rights standards stop to function when the rights to be preserved are the ones of women and girls.<sup>766</sup> Traditional customs and beliefs are embedded in the communities that practice female circumcision and are used as an excuse to allow the practice of FGM although its nature of inhumane and discriminatory treatment.<sup>767</sup> The signature and the ratification of the IC would imply Russia to try to suppress harmful traditions to which women are subjected only because of the fact that they are women. Despite the difficulties in eliminating so deeply embedded beliefs, customs and traditions, it is not impossible, and the proof of this is the fact that in

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Mutilation of Girls in Dagestan (Russian Federation). Report based on the results of a qualitative study on female genital mutilation performed on girls.", op. cit.]

<sup>762</sup> Antonova, Siradzhudinova, Report of "The practice of female genital mutilation in Dagestan: strategies for its elimination", report based on the results of a qualitative sociological study in the Republic of Dagestan, the Republic of Ingushetia and the Republic of Chechnya (Russian Federation), op. cit., pag. 28.

<sup>763</sup> On amendments to article 136 of the RF Criminal Code. Submitted by State Duma deputy M.P. Maksakova-Igenbergs, Project No1153660-6.

<sup>764</sup> Constitution of the Russian Federation. Chapter 2. Human and civil rights and freedoms. Art. 19.

<sup>765</sup> On amendments to article 136 of the RF Criminal Code. Submitted by State Duma deputy M.P. Maksakova-Igenbergs, Project No1153660-6.

<sup>766</sup> Antonova, Siradzhudinova, Report of "The practice of female genital mutilation in Dagestan: strategies for its elimination", report based on the results of a qualitative sociological study in the Republic of Dagestan, the Republic of Ingushetia and the Republic of Chechnya (Russian Federation), op. cit., pag. 19.

<sup>767</sup> Antonova, Siradzhudinova, Report of "The practice of female genital mutilation in Dagestan: strategies for its elimination", report based on the results of a qualitative sociological study in the Republic of Dagestan, the Republic of Ingushetia and the Republic of Chechnya (Russian Federation), op. cit., pag. 19.

some regions of the Republic of Dagestan the practice of female circumcision has been rejected and overcome.<sup>768</sup>

Another method to combat and eliminate the practice of female circumcision can be the introduction of alternative rituals, as it was introduced in Kenya, Guinea-Bissau, and Gambia.<sup>769</sup> As previously mentioned, FGM can be perceived as a rite of passage for girls, it could therefore be replaced with other non-violent practices in order for girls to receive the social status they would receive being subject to FGM, but without having to undergo it.<sup>770</sup>

In the end, even though it does not concern specifically the case of Dagestan, but it refers to all the Russian territory, according to art. 60 of the IC,<sup>771</sup> the RF shall guarantee asylum to women that fear to be subjected to the practice of FGM in their home country. Within this framework, Russian authorities, which shall be sensitised on the issue of female circumcision, seem not to pay attention and not to assess the risk of women to be subjected to the inhumane treatment of FGM in their home country.<sup>772</sup> As an example, the Nigerian citizen, Jessica Jacklin, was denied temporary asylum although she openly stated that she risked to undergo FGM in Nigeria and although her claims were justified, Jessica had, in fact, escaped from home because her parents promised her to an older man in exchange for a small sum of money and one of the wedding agreements was that the girl had to undergo FGM.<sup>773</sup>

In this Sub-chapter I have taken into consideration only the traditional practice of non-medicalised FGM, however, it is worthy of note that in Russia there are instances also of medicalised FGM.<sup>774</sup> Meduza, an international publication, wrote that, according to

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<sup>768</sup> Antonova, Siradzhudinova, Report of "The practice of female genital mutilation in Dagestan: strategies for its elimination", report based on the results of a qualitative sociological study in the Republic of Dagestan, the Republic of Ingushetia and the Republic of Chechnya (Russian Federation), op. cit., pag. 32-33.

<sup>769</sup> Antonova, Siradzhudinova, Report of "The practice of female genital mutilation in Dagestan: strategies for its elimination", report based on the results of a qualitative sociological study in the Republic of Dagestan, the Republic of Ingushetia and the Republic of Chechnya (Russian Federation), op. cit., pag. 41.

<sup>770</sup> Antonova, Siradzhudinova, Report of "The practice of female genital mutilation in Dagestan: strategies for its elimination", report based on the results of a qualitative sociological study in the Republic of Dagestan, the Republic of Ingushetia and the Republic of Chechnya (Russian Federation), op. cit., pag. 41.

<sup>771</sup> 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence. Istanbul. 2011. CETS No. 210. Art. 60.

<sup>772</sup> Antonova, Siradzhudinova, Report of "The practice of female genital mutilation in Dagestan: strategies for its elimination", report based on the results of a qualitative sociological study in the Republic of Dagestan, the Republic of Ingushetia and the Republic of Chechnya (Russian Federation), op. cit., pag. 16.

<sup>773</sup> Комитет «Гражданское содействие». "Режут по живому." Апр 9, 2018. Доступ Фев 6, 2022. <https://refugee.ru/news/rezhut-po-zhivomu/> [Civil Assistance. "Painful Decision." Apr 9, 2018. Accessed Feb 6, 2022. <https://refugee.ru/news/rezhut-po-zhivomu/>]

<sup>774</sup> Meduza. "Until earlier this month, a health clinic in Moscow was offering clitorectomies on religious grounds to girls as young a five." Nov 27, 2018. Accessed Feb 7, 2022. <https://meduza.io/en/feature/2018/11/27/until-earlier-this-month-a-health-clinic-in-moscow-was-offering-clitorectomies-on-religious-grounds-to-girls-as-young-a-five>



its website, “Best Clinic” in Moscow was offering three different types of FGM in one of its premises.<sup>775</sup> The clinic confirmed to Meduza that they performed clitorectomies, however, after that they deleted some information from their website, they eliminated the phrase “circumcision is carried out on girls before the onset of puberty, usually between the ages of five and twelve”, and changed some descriptions of the practices performed, where they replaced the words “girl” and “child” with the word “patient”.<sup>776</sup> After the visit of the correspondent of Meduza at the centre, Best Clinic totally removed the description of the service of clitorrectomy.<sup>777</sup> As of today, the only information given by the website states that they do not perform FGM to underage girls, that the service is included in their list because of the request of patients who have “appropriate referral from a doctor for its provision”, and that they perform FGM only for medical reasons.<sup>778</sup>

In relation to the signature and ratification of the IC, Russia shall address also medicalised FGM and ensure that this type of violence performed without any medical grounds is not performed. Healthcare providers shall be sensitised on the issue and requested not to perform this unethical practice that causes harm to the victim and does not provide with any medical benefits.

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<sup>775</sup> Meduza, “Until earlier this month, a health clinic in Moscow was offering clitorrectomies on religious grounds to girls as young a five.”, op. cit.

<sup>776</sup> Meduza, “Until earlier this month, a health clinic in Moscow was offering clitorrectomies on religious grounds to girls as young a five”, op. cit.

<sup>777</sup> Meduza, “Until earlier this month, a health clinic in Moscow was offering clitorrectomies on religious grounds to girls as young a five”, op. cit.

<sup>778</sup> Information available at Best Clinic’s website. Accessed Feb 7, 2022. <https://bestclinic.ru/press/news/v-smi-opublikovana-nedostovernaya-informatsiya/>

## CONCLUSIONS

The aim of this work was to analyse and assess whether the ratification of the Istanbul Convention by Bulgaria, Ukraine, and the RF, which should also sign the IC, and not withdrawing from the Convention in the case of Poland, could improve the situation in these countries in regards to domestic violence, sexual violence including rape, and FGM, influencing also their national legislations.

Having analysed the three issues in the four countries, I think that I can state that the implementation of the IC in Bulgaria, Poland, Russia, and Ukraine would have a positive impact on the prevention and elimination of VAW and domestic violence. This positive effect would derive first of all from the amendments to national legislations, but particularly from the different initiatives and actions in which States should actively engage, in order to comply with the provisions in the IC.

I have identified five main spheres on which the implementation of the IC in Bulgaria, Poland, Russia, and Ukraine would bring a positive effect and improvements: criminalisation of the three relevant issues (domestic violence, sexual violence including rape, and FGM), raise of awareness, eradication of traditional and patriarchal values, and education, sensibilisation and training of police officers, authorities in general, and professionals, underreporting, and protection and asylum. I will comment on each of these topics separately, however, I want to underline also that they are strictly connected among each other, some more than others.

### *Criminalisation of the three relevant issues*

By issuing provisions that comply with the IC, Bulgaria, Poland, the RF, and Ukraine would improve their position on VAW and domestic violence because they would officially and without any doubt stand against the acts of violence that the Convention aims to eradicate. It is important, in fact, that States send to their citizens the clear message that they stand against VAM and domestic violence in order to influence the public opinion accordingly. As previously underlined in more than one case, an unclear position of the State on some forms of violence or their partial criminalisation can pass the idea that certain acts of violence can be tolerated or even accepted. This is, at the moment, the case of domestic violence in Bulgaria and of FGM in Russia. The fact that Bulgaria, as of now, defines domestic violence as a “systematic” act of

violence<sup>779</sup> can make the Bulgarian population perceive non-systematic forms of domestic violence as acceptable because the latter are not criminalised by the State.<sup>780</sup> By eliminating the word “systematic” from the definition of domestic violence and, subsequently, by criminalising also single acts of domestic violence, the legislation of Bulgaria would be more in line with the one set by the IC and this would improve the situation in the country in regards to domestic violence. This improvement would derive from the fact that victims would not need to wait for the act of violence to be committed at least three times before having the possibility to report it and to take any action on the matter. At the same time, the development would derive by the message that would transpire, that is the complete condemnation of domestic violence. Similarly, the criminalisation of FGM in the Russian legislation, that would derive from the signature and ratification of the IC, would make the RF in the clear position of being against female circumcision eliminating the doubts that are nowadays present on the matter.<sup>781</sup> The unequivocal position that the State would cover would also help contrasting the statements given by religious figures, Muslims, for example the Mufti Ismail Berdiev,<sup>782</sup> but also Orthodox like the Archpriest Vsevolod Chaplin,<sup>783</sup> who support the practice of female circumcision although it is not prescribed by their religion.

However, more in general, the amendments that the four States would introduce in their national legislation would bring an improvement in the protection of women’s rights because they would criminalise more acts of violence to which women are subjected only because of the fact that they are women. For instance, in order to comply with the notion of domestic violence set by the IC,<sup>784</sup> Bulgaria and Poland should include in their definition also economic violence providing women with protection against being blackmailed or threatened to be refused the economic resources of the household. Meanwhile Ukraine should include sexual violence in its interpretation of domestic violence, giving therefore support also to the battle against marital rape admitting its existence. Another positive income deriving from these

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<sup>779</sup> Criminal Code of the Republic of Bulgaria. Section V. Determination of the type of exemption from criminal liability. Art. 93.31.

<sup>780</sup> Mijatović, “Report following her visit to Bulgaria from 25 to 29 November 2019.”, op. cit., pag. 20.

<sup>781</sup> Antonova, Siradzhudinova, Report of “The practice of female genital mutilation in Dagestan: strategies for its elimination”, report based on the results of a qualitative sociological study in the Republic of Dagestan, the Republic of Ingushetia and the Republic of Chechnya (Russian Federation), op. cit., pag. 16.

<sup>782</sup> Интерфакс, “Муфтий Северного Кавказа призвал обрезать всех женщин России”, указ. соч. [Interfax, “The Mufti of the North Caucasus called for circumcision of all women in Russia.”, op. cit.]

<sup>783</sup> Antonova, Siradzhudinova, Report of “The practice of female genital mutilation in Dagestan: strategies for its elimination”, report based on the results of a qualitative sociological study in the Republic of Dagestan, the Republic of Ingushetia and the Republic of Chechnya (Russian Federation), op. cit., pag. 210.

<sup>784</sup> 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence. Istanbul. 2011. CETS No. 210. Art. 3b.

amendments would be the possibility to define as domestic violence more cases because they would have to amend also the notion of the perpetrator of domestic violence, which shall include, according to the IC, individuals in the family or in the domestic unit, as well as previous and current spouses and partners regardless the fact whether they have co-habited or not.<sup>785</sup> In the case of Russia, the improvement would derive from the criminalisation of domestic violence in general, including all the four forms listed by the Convention, physical, psychological, sexual, and economic violence and also all the possible perpetrators, including former partners and non-cohabitant partners.<sup>786</sup> In fact, as previously analysed, domestic violence is not addressed by the Russian legislation, it has explicitly criminalised domestic battery for a limited period of time, but it was later decriminalised and this led to an increase of reported complaints.<sup>787</sup> At the same time, it was noticed that this raise could have been caused both by a real increase in numbers of domestic violence acts because of the fewer penalties, and by a raise in awareness by women of their rights in relation to domestic violence.<sup>788</sup>

Similarly, also in regards of sexual violence the amendments that the four States would apply to their legislation in order to comply with the Convention<sup>789</sup> would improve the situation linked to the relevant form of violence in their territories by covering more acts. First of all, and this is what I consider very important in regards to sexual violence including rape, they would have to base their definition of rape on the notion of consent; absence of consent would play, therefore, a key role in the assessment on whether the violence has occurred or not. Ukraine and Poland have their legislations in line with this notion, but in reality, sometimes judges do not always rely on this requirement.<sup>790</sup> On the contrary, as of now, Bulgaria and Russia require the use of force in order to determine whether the act was a form of sexual violence or not. Moreover, the implementation of the IC in Bulgaria and in the RF would require a wider range of acts in the definition of rape, as a consequence, this would act as a deterrent and would help preventing sexual violence. Another concept linked to sexual

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<sup>785</sup> 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence. Istanbul. 2011. CETS No. 210. Art. 3b.

<sup>786</sup> 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence. Istanbul. 2011. CETS No. 210. Art. 3b.

<sup>787</sup> Human Rights Watch, "I Could Kill You and No One Would Stop Me. Weak State Response to Domestic Violence in Russia.", op. cit., pag. 35.

<sup>788</sup> Human Rights Watch, "I Could Kill You and No One Would Stop Me. Weak State Response to Domestic Violence in Russia.", op. cit., pag. 35.

<sup>789</sup> 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence. Istanbul. 2011. CETS No. 210. Art. 38.

<sup>790</sup> Kościańska, "Gender on Trial. Changes in Legal and Discursive Practices Concerning Sexual Violence in Poland from the 1970s to the Present.", op. cit., pag. 112.

violence, namely sexual intimate partner violence or marital rape, shall be explicitly criminalised, as requested also by Mijatović in the case of Bulgaria.<sup>791</sup> According to the IC, sexual violence (and violence in general) perpetrated by the spouse or the partner, current or former, should not be a mitigating factor, rather an aggravating circumstance<sup>792</sup> as in Ukraine, where marital rape is considered an aggravating circumstance in art. 152 para. 2 of the Criminal Code.<sup>793</sup> State Parties shall in addition remove any provision that explicitly decriminalise marital rape, if present, this provision is in fact connected to the patriarchal idea that women are obliged to have sex with their husband.

With regard to FGM, all the four States, although, among them, FGM is known to be practiced only in Russia, shall criminalise female circumcision in order to be in line with the provisions of the Convention. Logically, the RF would be the one to have the bigger outcome from this amendment because women would be granted the possibility to prosecute the perpetrator without the uncertainty that is present at moment being FGM covered only by the articles about bodily injury, which are very specific in the Russian Criminal Code.<sup>794</sup> Because of the fact that FGM seems not to be present in Bulgaria, Poland, and Ukraine, having already regulated the matter could bring benefits in case of the future relocation of people from communities who practice female mutilation. Furthermore, as explained in the previous Chapter, the absence of FGM in these countries could be only a consequence of the ignorance on the issue and, therefore, on the impossibility to recognise it,<sup>795</sup> which implies the need to provide population with information on the issue.

*Raise of awareness and eradication of traditional and patriarchal values, and education*

In my opinion, the implementation of the IC in these four countries would have the biggest and most radical impact on their traditional and patriarchal values. As emerged from each of the previous Chapters, traditional and patriarchal values are at the roots of VAW and gender-based discrimination and the criminalisation of domestic

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<sup>791</sup> Mijatović, "Report following her visit to Bulgaria from 25 to 29 November 2019.", op. cit., pag. 19.

<sup>792</sup> 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence. Istanbul. 2011. CETS No. 210. Art. 46.a.

<sup>793</sup> Criminal Code of the Republic of Ukraine. Chapter IV. Crimes against sexual freedom and sexual inviolability of a person. Art. 152.2

<sup>794</sup> Criminal Code of the Russian Federation. Chapter 16. Crimes against human life and health. Art. 111-112; 115.

<sup>795</sup> Leye, Sabbe, "Responding to Female Genital Mutilation in Europe. Striking the right balance between prosecution and prevention A review of legislation.", op. cit., pag. 43.

violence, sexual violence including rape, and FGM alone would not be enough in order to prevent and combat these forms of violence.

VAW and gender-based violence are, in fact, commonly accepted and tolerated by populations because of their patriarchal culture, the acceptance of domestic violence in Eastern Europe is a consequence of the social norms present in the region and this has been confirmed also in the report issued by UNPFA.<sup>796</sup>

Complying with the IC concerning the raise of awareness and the eradication of traditional and patriarchal values means that Bulgaria, Poland, Russia, and Ukraine shall promote social changes in the cultural background of their populations.<sup>797</sup> At the moment, in fact, domestic violence can be perceived by the population as a “private and family matter” that does not concern neither State nor the violation of human rights,<sup>798</sup> but they sometimes are also not aware of what really constitutes both domestic<sup>799</sup> and sexual violence, which is usually conceived as a more extreme case than what is required by the legislation.<sup>800</sup> Furthermore, because of the patriarchal values, women are expected to preserve the integrity of the family and to look for reconciliation, being sometimes also blamed of having provoked the violence and deserving it.<sup>801</sup>

With regard to sexual violence and more specifically to rape, the implementation of the provisions of the IC would imply the elimination of the idea that women’s sexuality is a men’s property<sup>802</sup> and of the possibility of repairing the damage with marriage,<sup>803</sup> the latter would, in reality, only expose the victim to a higher risk of being subjected to violence.<sup>804</sup> This violence could, however, not be perceived because, according to two patriarchal values, women should be obliged to have sex in marriage when the husband requires it – which is linked to the concept of women’s sexuality as men’s property – and they must obey to their husband’s will.<sup>805</sup> In relation to this, the idea that rape is perpetrated only by strangers with the use of force shall be eradicated, this would help women be aware of the fact that they can refuse to have sex with their

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<sup>796</sup> UNPFA, “Combatting violence against women and girls in Eastern Europe and Central Asia”, op. cit., pag. 6.

<sup>797</sup> 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence. Istanbul. 2011. CETS No. 210. Art. 12.

<sup>798</sup> Muižnieks, “Report following his visit to Poland from 9 to 12 February 2016.”, op. cit., pag. 32.

<sup>799</sup> Muižnieks, “Report following his visit to Poland from 9 to 12 February 2016.”, op. cit., pag. 32.

<sup>800</sup> Walby, Olive, Towers, Francis, Strid, Krizsán, Lombardo, May-Chahal, Franzway, Sugarman, Bina, Armstrong, “Stopping Rape: Towards a Comprehensive Policy.”, op. cit., pag. 12.

<sup>801</sup> Human Rights Watch, “I Could Kill You and No One Would Stop Me. Weak State Response to Domestic Violence in Russia.”, op. cit., pag. 42.

<sup>802</sup> De Vido, “Violence against women’s health in international law.”, op. cit., pag. 37.

<sup>803</sup> Randall and Venkatesh, “The Right to No: State Obligations to Criminalize Marital Rape and International Human Rights Law.”, op. cit., pag. 50.

<sup>804</sup> Swegman, “The Intersectionality of Forced Marriage with Other Forms of Abuse in the United States.”, op. cit., pag. 5.

<sup>805</sup> Htun, Jensenius, “Fighting Violence Against Women: Laws, Norms & Challenges Ahead.”, op. cit., pag. 148.

partner and recognise their experience of intimate partner violence as a form of violence.<sup>806</sup> There is a real huge amount of stereotypes related to sexual violence and rape that States Parties of the IC shall eradicate, in addition to the aforementioned idea that rape is perpetrated only by strangers with the use of force, there is the perception that the victim must use active resistance. However, some victims can only say “no” and the prevalence of the “frozen-fright” pattern was underlined also in the case *M.C. v. Bulgaria*.<sup>807</sup> This type of reaction is characterised by the feeling of being paralysed during the assault and by the inability to think, to act, or to respond, in this scenario the victim can also experience a sensation of panic, helplessness, and powerlessness, although she wants to stop the violence and the abuser.<sup>808</sup> In this scenario, the victim is unable to defend herself and, according to this, State should bring attention and raise awareness on the notion of consent, on the fact that a simple “no” should be enough to stop the abuser, and this should be the pillar of the definition of rape: absence of consent. In my opinion, this can be difficult when the woman is objectified and even dehumanized, and this underlines the importance of the elimination of sexist stereotypes, for example the one that suggests that women are not entitled to enjoy sexual intercourse and that the pain is the method to atone for the pleasure they felt, according to this logic, women can expire their “sins” through the pain of childbirth or of abortion performed without anaesthetic.<sup>809</sup>

The above-mentioned stereotypes on women, according to which women should not be allowed to enjoy sexual intercourse and therefore not be promiscuous and preserve for their husband, are strongly linked also to FGM, they are in fact listed as the main reasons why women are obliged to undergo female circumcision which has the purpose of protect women from sins by supressing their sexuality.<sup>810</sup> The implementation of the IC in Russia would require the RF to take action on the matter of FGM in the Republic of Dagestan, where female circumcision is known to be practised.<sup>811</sup> This would imply the sensibilisation of those populations that, mainly in

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<sup>806</sup> Randall and Venkatesh, “Criminalizing Sexual Violence Against Women in Intimate Relationships: State. Obligations Under Human Rights Law.”, op. cit., pag. 195. And Kennedy, Meier, Saba, “Sexual Violence within Intimate Relationships”, op. cit., pag. 13.

<sup>807</sup> *M.C. v. Bulgaria*, para. 71.

<sup>808</sup> Lonsway Kimberly A., Archambault Joanne. “Victim Impact: How Victims Are Affected by Sexual Assault. And How Law Enforcement Can Respond.” End Violence Against Women International. Apr 2006. Updated Nov 2020. Pag. 11.

<sup>809</sup> Nowicka, “The Struggle for Abortion Rights in Poland.”, op. cit., pag. 179-180.

<sup>810</sup> Антонова, Сиражудинова, “Производство калечащих операций на половых органах у девочек. Отчет по результатам качественного исследования в Республике Дагестан.”, указ. соч., с. 38-39. [Antonova, Siradzhudinova, Female Genital Mutilation of Girls in Dagestan (Russian Federation). Report based on the results of a qualitative study on female genital mutilation performed on girls.”, op. cit.]

<sup>811</sup> Антонова, Сиражудинова, “Производство калечащих операций на половых органах у девочек. Отчет по результатам качественного исследования в Республике Дагестан.”, указ. соч., с. 26. [Antonova, Siradzhudinova, Female Genital Mutilation of Girls in Dagestan (Russian Federation). Report based on the results of a qualitative study on female genital mutilation performed on girls.”, op. cit.]

the mountain areas of Dagestan, still practice female circumcision because of their cultural heritage. This would for sure take time, but it is not impossible, in this regard, Julia Lalla-Maharajh, the founder of the Orchid Project, an NGO with the aim to end FGM,<sup>812</sup> in one of her speeches brought as an example of hope for the end of female circumcision the fact that in China the traditional practise of foot-binding, which was carried out on girls and caused the impediment of the normal growth of their feet,<sup>813</sup> has been eradicated in less than ten years.<sup>814</sup>

Education and information are also very important in relation to FGM, State Parties shall provide with information concerning the consequences on health that female circumcision causes as they could be both short-term and long-term issues, but also because it can cause the death of the victim.<sup>815</sup> States shall however educate their population on the fact that there are chirurgical operations that can help women on the matter and can reconstruct the external part of their genitals. Plastic surgery in order to improve both function and aesthetics of women's genitals is in fact available today and it can help the woman both psychologically, as it would help restore her identity and it could give her the perception of symbolically taking back what was cut from her, and also physically, as it could help reducing the pain and improving sexual function.<sup>816</sup> However, these outcomes cannot be confirmed for all women as the research should deepen more on the matter and the data available at moment come from a small number of patients and have a short follow-up time.<sup>817</sup>

Cycling back to the raise of awareness on domestic violence, sexual violence including rape, and FGM, it should be addressed to both men and women as they are both affected by the traditional and patriarchal values. Men can perceive women as their property, dehumanise them and feel like they can dispose of them as they wish.<sup>818</sup> According to this statement, men should be the target of campaigns in order to raise awareness, however, also women blame other women for the violence they suffered and accuse them of being the problem at the roots of the violence they are

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<sup>812</sup> The Orchid Project. Working together to end female genital cutting. "About Us." Accessed Feb 16, 2022. <https://www.orchidproject.org/about-us/>

<sup>813</sup> Cartwright Mark. "Foot-Binding." *World History Encyclopedia*. Sep 26, 2017. Accessed Feb 16, 2022. <https://www.worldhistory.org/Foot-Binding/>

<sup>814</sup> TEDx Talks. "How to end female genital cutting in our lifetime | Julia Lalla-Maharajh | TEDxLondonBusinessSchool." YouTube. May 31, 2016. Accessed Feb 16, 2022. <https://www.youtube.com/watch?v=gnYYffMhlcA>

<sup>815</sup> WHO, "Female genital mutilation.", op. cit.

<sup>816</sup> Sigurjonsson Hannes, Jordal Malin. "Addressing Female Genital Mutilation/Cutting (FGM/C) in the Era of Clitoral Reconstruction: Plastic Surgery." *Current Sexual Health Reports*. 10:50-56. Apr 27, 2018. Pag. 50-51. Accessed Feb 16, 2022. <https://doi.org/10.1007/s11930-018-0147-4>

<sup>817</sup> Sigurjonsson, Jordal, "Addressing Female Genital Mutilation/Cutting (FGM/C) in the Era of Clitoral Reconstruction: Plastic Surgery.", op. cit., pag. 50

<sup>818</sup> Hybrid Warfare Analytical Group, "How Russian Pop-Culture Reflects Misogynistic Policies.", op. cit.



subjected to.<sup>819</sup> Moreover, in the case of female circumcision, it is women who perform the practice and make it last during time,<sup>820</sup> for this reason, it is important to address awareness-campaigns also to women.

These campaigns could be also online campaigns supported by the States. The effectiveness of online campaigns has been proven by the #Iamnotafraidtospeak campaign (#янебоюсьсказать in Ukrainian and #янебоюсьсказать in Russian) which allowed women to express themselves and share their experiences,<sup>821</sup> but also to overcome the fear that rape can generate.<sup>822</sup> It cannot be denied that there were negative feedbacks from some people who were against the share of these experiences and who even questioned the real existence of the issue,<sup>823</sup> nevertheless the campaign had a positive outcome also on some men, who stated that they understood that they should reflect on their actions and also felt the need to apologise to some of their female acquaintances.<sup>824</sup>

It is important to take into consideration that also statements and actions by public figures and Governments have a great impact on the population perception of what is allowed and what is not, on what is right and on what is wrong. State Parties shall take the relevant measures in order to pass the message that domestic violence, sexual violence including rape, and FGM are a violation of women's human rights and not the opposite. The decriminalisation of domestic violence in Russia, in fact, passed the idea that domestic violence was allowed<sup>825</sup> and, after that, an increase in family violence offences was reported.<sup>826</sup> A similar situation can be found in Bulgaria where the requirement of systematicity for the acts of domestic violence convey the concept that a certain amount of violence is permitted and not a crime. Moreover, also religious figures have a great impact on the population values. The Orthodox Patriarch Kirill stated that he is against the re-criminalization of domestic violence in Russia,<sup>827</sup> the

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<sup>819</sup> Human Rights Watch interview with Anna Kokorina. St Petersburg. Dec 7, 2017.

<sup>820</sup> Antonova, Siradzhudinova, Report of "The practice of female genital mutilation in Dagestan: strategies for its elimination", report based on the results of a qualitative sociological study in the Republic of Dagestan, the Republic of Ingushetia and the Republic of Chechnya (Russian Federation), op. cit., pag. 30-31.

<sup>821</sup> Sedysheva, "The #янебоюсьсказать (#Iamnotscaredtospeak) Campaign of July 2016 in Facebook's Russian Speaking Community: a Discourse Analysis.", op. cit., pag. 181; 187.

<sup>822</sup> Sedysheva, "The #янебоюсьсказать (#Iamnotscaredtospeak) Campaign of July 2016 in Facebook's Russian Speaking Community: a Discourse Analysis.", op. cit., pag. 188.

<sup>823</sup> Sedysheva, "The #янебоюсьсказать (#Iamnotscaredtospeak) Campaign of July 2016 in Facebook's Russian Speaking Community: a Discourse Analysis.", op. cit., pag. 181; 187.

<sup>824</sup> Sedysheva, "The #янебоюсьсказать (#Iamnotscaredtospeak) Campaign of July 2016 in Facebook's Russian Speaking Community: a Discourse Analysis.", op. cit., pag. 191-192.

<sup>825</sup> Human Rights Watch, "I Could Kill You and No One Would Stop Me. Weak State Response to Domestic Violence in Russia.", op. cit., pag. 34.

<sup>826</sup> Лента.Ру, "В России зафиксирован всплеск домашнего насилия.", указ. соч. [Lenta.ru, "A peak in domestic violence has been recorded in Russia.", op. cit.]

<sup>827</sup> Россия 24. "Патриарх Кирилл: Церковь оказалась в условиях беспрецедентного давления - Россия 24." Youtube. Янв 7, 2020. Доступ Фев 16, 2022. <https://www.youtube.com/watch?v=S3QU5aYIhU&t=403s> [Russia 24. "Patriarch Kirill: The

Muslim mufti Ismail Berdiev defined FGM as necessary for women,<sup>828</sup> and the Orthodox Archpriest Vsevolod Chaplin supported the Muslim mufti in regards to female circumcision.<sup>829</sup> all these declarations contribute to the perpetration of gender-based violence and to the violation of women's rights. State parties shall counter these statements by taking a clear position against gender-based violence both with the criminalisation of these acts and with statements on the matter.

It is possible to conclude that this process that includes awareness, elimination of patriarchal values, and education will take time to achieve its aim in a vast scale. This is because stereotypes and values at the roots of gender-based violence are deeply embedded in the population and also supported by religion, mainly the Church, both Catholic and Orthodox, in these four countries. The process could take time, years, however it is not impossible to eradicate these patterns of violence. In addition to the previously mentioned example of foot-binding, another proof that change on the matter is possible can be the development of the concept of monogamy as explained by the psychotherapist Esther Perel. This concept, that could be considered patriarchal because at the beginning monogamy was meant to be respected by women so there would have not been disputes on the legacy – if a woman sleeps only with one man, there are no doubts on who the father is – has evolved during time.<sup>830</sup> Monogamy was in fact perceived as “one person for life”, now it is perceived as “one person at the time”,<sup>831</sup> having more than one partner (but only one at the time) in life has in fact become normal and no one would be stigmatised because of this or because of the end of their marriage. In my opinion, if a notion such as the one of monogamy, which can be considered crucial in the life of a person and also supported by religion, can evolve in this way, also the concepts that objectify women and consider them as men's property who cannot have sexual freedom can be overcome.

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Church found itself under unprecedented pressure.” Youtube. Jan 7, 2020. Accessed Feb 16, 2022. <https://www.youtube.com/watch?v=S3QU5aYlxhU&t=403s>

<sup>828</sup> Интерфакс, “Муфтий Северного Кавказа призвал обрезать всех женщин России”, указ. соч. [Interfax, “The Mufti of the North Caucasus called for circumcision of all women in Russia.”, op. cit.]

<sup>829</sup> As of Feb 6, 2022 the post is not available, the screenshot of it is available at the following source: Antonova Yu.A., Siradzudinova S.V. Report of “The practice of female genital mutilation in Dagestan: strategies for its elimination”, report based on the results of a qualitative sociological study in the Republic of Dagestan, the Republic of Ingushetia and the Republic of Chechnya (Russian Federation). 2018. Accessed on Apr 25, 2021. <https://www.srii.org/en/about/annual/the-second-fgm-report-based-on-the-results-of-a-study-in-russian-federation>

<sup>830</sup> TED. “Rethinking infidelity ... a talk for anyone who has ever loved | Esther Perel.” Youtube. May 21, 2015. Accessed Feb 17, 2022. <https://www.youtube.com/watch?v=P2AUat93a8Q>

<sup>831</sup> TED, “Rethinking infidelity ... a talk for anyone who has ever loved | Esther Perel.”, op. cit.

*Sensibilisation and training of police officers, authorities in general, and professionals*

Another issue related to the three forms of VAW analysed in this work is the lack of action, the prejudices, and, in some cases, the lack of knowledge that police officers, authorities in general, and also professionals, have on the domestic violence and sexual violence.

First of all, the previously mentioned measures concerning raising awareness, eradication of patriarchal values, and education shall be address also to police officers, authorities in general, and professionals, as sometimes their actions are guided by gender-based stereotypes. It has been reported, in fact, that police officers consider these acts violence as a private matter, as not serious,<sup>832</sup> and sometimes do not even arrive after being called and refuse to file complaints.<sup>833</sup>

In order to avoid non-performance by the police, State Parties shall train them and improve their sensitivity on the matter. Police officers should be able to understand the seriousness of these violations of women's rights and should not treat the victims with indifference, stigmatisation, and incredulity.<sup>834</sup> Police officers sometimes even taunt victims and blame them through the way they ask questions.<sup>835</sup> They should be trained in order to know how to talk with victims of these types of violence and to know how to make them feel safe. They should be aware of the importance of providing victims with immediate protection and of separating the victim from her abuser, in order for her not to risk an escalation of violence. For example, protective orders, as requested by art. 53 of the Convention,<sup>836</sup> could be an effective method to protect victims. Sensibilisation and training of police officers is fundamental because they are the first persons on whom victims can rely after having been subjected to violence. Prosecutors and judges should be trained and sensitised as well. They are not immune to stereotypes, they can consider domestic and sexual violence as a private issue, and they as well can stigmatise victims and treat them as they were the one to blame for the violence they suffered.<sup>837</sup> In Poland, but also in Ukraine as it has amended its definition of rape, judges should be aware of the fact that the definition of rape is based on consent and they should not deliver a judgment following

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<sup>832</sup> Randall and Venkatesh, "Criminalizing Sexual Violence Against Women in Intimate Relationships: State. Obligations Under Human Rights Law.", op. cit., pag. 195.

<sup>833</sup> Human Rights Watch, "I Could Kill You and No One Would Stop Me. Weak State Response to Domestic Violence in Russia.", op. cit., pag. 46-48.

<sup>834</sup> Muiżnieks, "Report following his visit to Poland from 9 to 12 February 2016.", op. cit., pag. 31.

<sup>835</sup> ANNA, "Violence against women in the Russian Federation.", op. cit., pag. 26.

<sup>836</sup> 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence. Istanbul. 2011. CETS No. 210. Art. 53.

<sup>837</sup> Muiżnieks, "Report following his visit to Poland from 9 to 12 February 2016.", op. cit., pag. 31.

patriarchal values and traditions. State Parties shall also ensure that judges are acquainted with the provisions included in art. 46a of the IC, which consider violence committed by a partner, a member of the family, or by a person cohabiting with the victim an aggravating circumstance.<sup>838</sup> Regrettably, it has been noted that the above-mentioned cases are sometimes treated as a mitigating factor by some judges, who, in Ukraine, tend to suspend sentences or to serve a sentence that does not include detention.<sup>839</sup>

All professionals that have to work in contact with victims of gender based VAW should be provided with adequate professional training in order to deal with victims and perpetrators, and to avoid the worsening of the situation. It has in fact been noted that by reporting the violence and by looking for help, victims are at risk of being subjected to retaliation. State Parties should take active action on the matter, as one of the provisions of the IC, namely art. 56a, explicitly includes the requirement of protection from retaliation.<sup>840</sup>

In regards to FGM, the previously mentioned needs of training and sensibilisation of police officers, authorities in general, and professionals apply as well because they have to be aware of the seriousness of female circumcision and of its danger to women's health and life. They need to know how to address victims of FGM and have knowledge of the steps they have to make in order to protect them and to protect girls at risk of undergoing it. However, in this case, further attention should be brought to the training of professionals who have to be able to recognise female circumcision, they should know how to approach the victim on the matter and how to act in this situation.

### *Underreporting*

In this work underreporting has been more specifically analysed in the case of rape, therefore these conclusions mainly refer to this specific case.

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<sup>838</sup> 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence. Istanbul. 2011. CETS No. 210. Art. 46.a.

<sup>839</sup> DCAF and La Strada-Ukraine, "Criminal Justice Practice and Violence Against Women.", op. cit., pag. 38.

<sup>840</sup> 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence. Istanbul. 2011. CETS No. 210. Art. 56.a.

Underreporting is strictly related to the topics analysed in the previous two parts of these conclusions. Underreporting is in fact the result of traditional values and stereotypes, of the stigmatisation of the victim<sup>841</sup> and of the behaviour of police officers.

In the first instance, the perception of rape as a private matter does not characterise only police officers, but it affects also victims who, for this reason, are prevented from reporting<sup>842</sup> as they feel that they are not entitled to do so. Women victims of rape can feel furthermore the fear of the stigmatisation that would occur if they admitted that they have been raped<sup>843</sup> as being a victim of rape is perceived as very shameful in many societies.<sup>844</sup> Victims of rape can sometimes feel too ashamed to share their experience even with their closer relatives<sup>845</sup> or friends, and sharing it with a stranger, although an officer, would be difficult as well. In addition to this, there are other reasons both internal and external that discourage victims from reporting rape: victims sometimes perceive the social pressure not to press charge against the abuser<sup>846</sup> and, sometimes, a victim might not want to press charge against her abuser because he is her partner, which should imply that she has feelings for him and therefore cannot proceed against him.

In order to solve these issues, by ratifying the IC, signing and ratifying it, and by not withdrawing from it, the four States shall implement the measures mentioned in the Sub-chapter dedicated to awareness-raise and to the elimination of traditional values. They shall, in fact, try to eliminate all the notions that make the society judge and blame the victim, and that, as a consequence, attributes the guilt and the responsibility of the act of violence to the victim and not to the perpetrator.<sup>847</sup> This would remove a burden from the victims and encourage them to report, however this would not be enough. In fact, another reason why victims of rape do not report is the behaviour that police officers, but also other professionals related to the reporting and the court hearings, can have. Some victims have stated that they do not want to report in order not to undergo the humiliation that could come from the all process of reporting a case of rape.<sup>848</sup> As previously stated, officers are victims of prejudices as well, and they

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<sup>841</sup> Kościńska, „The ordinary recklessness of girls...”: Expert witnesses and the problem of rape in Poland.”, op. cit., pag. 102.

<sup>842</sup> Gerasymenko, “Gender-Based Violence in Ukraine: Issues of Assessment and Policy Response.”, op. cit., pag. 146.

<sup>843</sup> Gerasymenko, “Gender-Based Violence in Ukraine: Issues of Assessment and Policy Response.”, op. cit., pag. 146.

<sup>844</sup> Mogilevkina, Odlind, “Some reproductive and sexual health indicators in rape victims in Ukraine.”, op. cit., pag. 410.

<sup>845</sup> M.C. v. Bulgaria, para. 37. And Aripova, Johnson, “The Ukrainian-Russia virtual flashmob against sexual assault.”, op. cit., pag. 493.

<sup>846</sup> Hybrid Warfare Analytical Group, “How Russian Pop-Culture Reflects Misogynistic Policies.”, op. cit.

<sup>847</sup> DCAF and La Strada-Ukraine, “Criminal Justice Practice and Violence Against Women.”, op. cit., pag. 44-46

<sup>848</sup> Todorova, Mechkarsa Taneva, “Violence over Women in Bulgaria.”, op. cit., pag. 255.

can mock the victim, blame her, not take her case seriously,<sup>849</sup> and even fail to answer the call and refuse to report the case. In addition to this, the distrust that victims have towards officers is increased by the fact that officers can be perpetrators as well, therefore victims do not feel protected when they address them. The distrust that victims have towards the police in regards to cases of rape can be fought with the previously mentioned measures about the sensibilisation and the training of police officers. They should learn how to address victims of rape and be aware of the seriousness of this act of violence. The police should be able to support victims and have the knowledge about the medical and forensic examination that should take place. Knowing that the officers are well trained should make the victims have a greater sense of security if they report.

Moreover, in order to comply with the IC, as also police officers can be abusers, State Parties shall consider as an aggravating circumstance<sup>850</sup> the violence perpetrated by the officers abusing of their authorities.

Last but not least, in Russia there is also a provision that prevents victims of rape from reporting the violence they were subjected to. The RF passed a libel law<sup>851</sup> that punishes false accusers of sexual assault which make women more unwilling to report and even share their stories fearing legal action.<sup>852</sup> This provision has entered into force although research on VAW showed that over-reporting is not considered a problem in this field, as being identified as a victim of abuse can be very shameful for women.<sup>853</sup> In regards to this, Russia shall grant women the possibility to report the violence they suffered without the fear of repercussions.

In Russia another barrier that prevents victims, in this case victims of domestic violence, to report is the burden of private prosecution, this means that victims are required to file the complaint with a magistrate judge, to gather all the relevant evidences and witnesses and attend every court hearing. In addition to this, victims have to sustain all the costs related to the procedure, including the cost of the lawyer.<sup>854</sup> If she cannot afford a lawyer, she has two options: she can find a pro bono

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<sup>849</sup> ANNA, "Violence against women in the Russian Federation.", op. cit., pag. 26.

<sup>850</sup> 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence. Istanbul. 2011. CETS No. 210. Art. 46.a.

<sup>851</sup> Федеральный закон от 30.12.2020. № 538-ФЗ "О внесении изменения в статью 128-1 Уголовного кодекса Российской Федерации" [Federal Law of 30.12.2020. № 538-ФЗ "On the amendments to Article 128-1 of the Criminal Code of the Russian Federation" – my translation]

<sup>852</sup> Rodina, "Women 'have finally started talking': Three female journalists on covering sexual violence in Russia.", op. cit.

<sup>853</sup> Mogilevkina, Odlind, "Some reproductive and sexual health indicators in rape victims in Ukraine.", op. cit., pag. 410.

<sup>854</sup> Human Rights Watch, "I Could Kill You and No One Would Stop Me. Weak State Response to Domestic Violence in Russia.", op. cit., pag. 59.

one or she can represent herself.<sup>855</sup> It is understandable, that this prevent victims from reporting because of the costs and because of the difficulties that representing yourself can create, as usually victims are ordinary citizens who do not have the knowledge to properly present their cases causing it to be ceased because of lack of compliance with court requirements.<sup>856</sup> The lack of compliance can also be caused by the fact that victims may suffer of post-traumatic stress disorders and, because of this, they are not able to fulfil all the requirements.<sup>857</sup> Access to court is therefore difficult for victims in this scenario. By signing and ratifying the IC, the RF would be obliged to provide victims with the right to legal assistance and to free legal assistance.<sup>858</sup> It will be necessary for Russia to remove all the burdens that victims have to face at the present moment and remove the disadvantages they have in respect to their perpetrators, to whom free legal aid is granted.<sup>859</sup>

Similarly, also Bulgaria shall remove the burdens that prevent victims of domestic violence to access justice, as, in some cases, they are requested to collect evidence and prove the accusation.<sup>860</sup>

### *Protection and asylum*

In order to comply with the IC, States shall also provide victims with immediate protection and, as the Human Rights Committee underlined, this is not always the case.<sup>861</sup> The States should therefore take measures in order to ensure protection to victims, this could include the introduction of protective orders,<sup>862</sup> but also the access to shelters, which is limited because of their small number or total absence,<sup>863</sup> especially in the rural areas, in the four countries. The access to shelters would provide women with a safe place where they can live without risking of undergoing

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<sup>855</sup> Human Rights Watch, "I Could Kill You and No One Would Stop Me. Weak State Response to Domestic Violence in Russia.", op. cit., pag. 59.

<sup>856</sup> ANNA, "Violence against women in the Russian Federation." Alternative Report to the United Nations Committee on the Elimination of Discrimination Against Women, op. cit., pag. 11.

<sup>857</sup> ANNA, "Violence against women in the Russian Federation." Alternative Report to the United Nations Committee on the Elimination of Discrimination Against Women, op. cit., pag. 11.

<sup>858</sup> 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence. Istanbul. 2011. CETS No. 210. Art. 57.

<sup>859</sup> Human Rights Watch, "I Could Kill You and No One Would Stop Me. Weak State Response to Domestic Violence in Russia.", op. cit., pag. 59.

<sup>860</sup> Mijatović, "Report following her visit to Bulgaria from 25 to 29 November 2019.", op. cit., pag. 20.

<sup>861</sup> United Nations Human Rights Committee, "Concluding observations on the seventh periodic report of Poland.", op. cit. pag. 4.

<sup>862</sup> 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence. Istanbul. 2011. CETS No. 210. Art. 53.

<sup>863</sup> Human Rights Watch, "I Could Kill You and No One Would Stop Me. Weak State Response to Domestic Violence in Russia.", op. cit., pag. 64. And United Nations Human Rights Committee, "Concluding observations on the seventh periodic report of Poland.", op. cit. pag. 4. And OSCE, "Well-being and safety of women: OSCE-led survey on violence against women: main report.", op. cit., pag. V.

further violence, but also with general and specialistic support, as well as with medical support when needed.

The right of asylum has been analysed in relation to FGM. As explained, in Europe, with the exception of the Republic of Dagestan, female circumcision affects usually only communities of immigrants who come from countries where female circumcision is common. They usually do not perform FGM in the European country where they live,<sup>864</sup> most commonly victims undergo female circumcision before moving to Europe or while travelling outside Europe.<sup>865</sup> According to the IC, State Parties shall grant asylum on the grounds of female circumcision to the women who risk undergoing the practice outside their territory and shall ensure that the persons at risk, “regardless of their status or residence”, are not “returned under any circumstances to any country”<sup>866</sup> where they can be subjected to female circumcision.

In regards to the countries analysed, although the presence of communities originating from countries where FGM is commonly practised is scarce,<sup>867</sup> they should anyway take all the necessary measures, including amendments in their legislation and training and sensibilisation of officers and professionals, in order to be prepared if a request of asylum on the grounds of female circumcision will be presented. This is not, in fact, a remote possibility as reports on the country of origin of women who sought asylum in Bulgaria and in Poland from 2008 to 2011, regardless of the grounds for asylum that were submitted, showed that a very small part of these women was from countries where female circumcision is practised.<sup>868</sup>

In addition to this, EIGE reported that, as of February 2012, therefore after the range of years included in the above-mentioned data, in Poland a case of dismissed asylum claim, a case of FGM was registered.<sup>869</sup> This confirms the fact that these countries, in order to comply with the IC after the ratification, shall be obliged to address the issue of FGM and monitor the situation in order to prevent this type of violence and to protect girls and women who are at risk. Russia should particularly consider taking actions in this regard after the signature and the ratification of the IC as it has denied

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<sup>864</sup> In this case this statement applies only to Bulgaria and Poland.

<sup>865</sup> EIGE, “Female genital mutilation in the European Union and Croatia.”, op. cit., pag. 25.

<sup>866</sup> 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence. Istanbul. 2011. CETS No. 210. Art. 61.

<sup>867</sup> Leye, Sabbe, “Responding to Female Genital Mutilation in Europe. Striking the right balance between prosecution and prevention A review of legislation.”, op. cit., pag. 43.

<sup>868</sup> UNHCR, “Female Genital Mutilation & Asylum in the European Union. A Statistical Overview.”, op. cit., pag. 5.

<sup>869</sup> EIGE, “Current situation of female genital mutilation in Poland.”, op. cit.



asylum to a Nigerian woman who presented justified claims about her risk to undergo female circumcision if she was returned to her home country.<sup>870</sup>

### *Final considerations*

In conclusion, I can state that the implementation of the Istanbul Convention in Bulgaria, Poland, Russia, and Ukraine would bring a positive impact to women's human rights in regard to domestic violence, sexual violence including rape, and FGM. The four countries shall take different measures and actions in order to address these issues, from amendments to their legislation to the sensibilisation of their population. The amendments would bring an immediate effect in regards to the protection of women's human rights. The sensibilisation of their citizens, including officers and professionals, would be a longer, but necessary process that would, over time, eradicate all the grounds that make gender-based VAW survive at the present moment.

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<sup>870</sup> Комитет «Гражданское содействие», «Резут по живому.», указ. соч. [Civil Assistance, «Painful Decision.», op. cit.]

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