

Criminogenic Approach to the Dimension and Dynamics of Gender-Based Violence: A Particular View on Violence against Women

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ABSTRACT: Gender-based violence is a challenge of the current society. The discrimination against women in considering the dominant role of men, regarding the position of power, and, at the same time, the emphasis of gender inequalities are factors generating gender-based violence—a phenomenon faced by the whole world-wide society. The right to life, gender equality, prohibition of discrimination on the grounds of sex, protection of physical integrity, and the right to health are fundamental human rights impacted by gender-based violence, safeguarded by many instruments acting at the international level. The Convention of the Council of Europe on preventing and combating violence against women and domestic violence (the Istanbul Convention) is the reference instrument in matters of combating gender-based violence, campaigning for equality between men and women and for protection of women against all forms of violence. Therefore, we now have a comprehensive legal framework where violence against women is considered a serious violation of human rights and, at the same time, a form of discrimination of women in society. The accelerated increase of gender-based violence made the European Union intensify its efforts against such phenomenon, and therefore, on June 1, 2023, there was the adhesion of the EU to the Istanbul Convention, Decision (EU) 2023/1075 and Decision (EU) 2023/1076, published in the Official Journal of the European Union, L 1431 of June 2, 2023.

KEYWORDS: gender-based violence, discrimination, protection, Istanbul Convention, Proposal of an EU Directive

Introduction

The development of society and enablement of the role of women by participating with men in the social and economic life to the same extent, determines serious imbalances with regards to the role distribution at the family and society level. Discrimination against women in considering the dominant role of the man, regarding the position of power, and, at the same time, the emphasis of gender inequalities, are factors generating gender-based violence, a phenomenon faced by the current society, at the level of all its structures and levels. The amplitude of the phenomenon falls within the dynamics of the society, in the light of cultural and social regulations, affecting mainly women. The concept of gender violence includes a variety of physical, sexual, psychological and economic manifestations, on the grounds of inequality related to age, social class, race, ethnicity, religion, sexual orientation or gender identity that can take place in both the physical and virtual environment. The diversity of such manifestations and the severity of the consequences caused, requires a focus mostly on prevention.

Conceptual clarifications regarding gender violence in the light of the legislative instruments from international level

The concept of gender violence is relatively new, but includes those abusive behaviors manifested on the grounds of gender, the women being mostly affected. That is why the term of gender violence designates most of the time the violence against women, exerted on the background of power inequality between men and women in a society where patriarchal values continue to be acknowledged, even if not at a declarative level. The concept should be regarded as an ascending

trend, in the context of evolution of the society, the problem being situated at the crossing of the cultural, legal, economic and political factors. Thus, the political imbalances, the situations of economic and social crises increase the level of weaknesses, determining a high risk of violence. The most affected categories target disabled women, young women and female teenagers, older women, especially the persons belonging to the LGBTIQ community or to ethnical minorities. Also, family environment, personal and professional status, geographic mobility, nomadism, migration or refugee status, determine the social characteristics conferring vulnerability (Damian, Şchiopu and Hegheş 2023, 70).

Gender violence, especially violence against women and girls, is recognized as being an extremely serious violation of human fundamental rights and liberties. The primary importance of such values for the society and the concern for their express dedication, by national and international regulations, plays a primary role in the exercise of the government (Popescu 2023, 62). In matters of human rights, the stereotypical sexual roles of men and women represents a fundamental aspect of women inequality and should be eliminated. *The Convention on the Elimination of All Forms of Discrimination against Women*, adopted by the General Assembly of the United Nations of December 18, 1979 (CEDAW) that requires the signatory countries to take all appropriate measures, including legislative ones, in order to ensure and guarantee the exercise and usage of human rights and liberties to the same extent as men (CEDAW, art. 3). Therefore, the decision makers at the level of each State should act based on democratic principles, adopting efficient instruments to ensure the equal treatment. By consensus, it is imposed to take appropriate measures to amend the social and cultural behavior patterns of men and women, in order to obtain the elimination of common law practices and damages or of any other type which is based on the idea of inferiority or superiority of any of the genders or on stereotypical roles for men and women (CEDAW, art. 5).

A comprehensive definition of violence against women is included in the UN Declaration *on the Elimination of Violence against Women*, being any act of violence based on gender having as a result or likely to have a result physical injuries or sufferance, sexual or psychological ones for women, including threats to commit such acts, constraint or arbitrary lack of freedom, no matter if they take place in the public or private life (article 1, United Nations Declaration on the Elimination of Violence against Women, Proclaimed by General Assembly resolution 48/104 of 20 December 1993). Within the meaning of this international document, pursuant to article 2, violence against women includes largely manifestations referring to:

- physical, sexual or psychological violence taking place within the family, including sexual violence, abuse against female children within the household, violence related to dowry, marital rape, female genital organ mutilation and other traditional practices detrimental to women, non-marital violence associated to exploitation;
- physical, sexual or psychological violence taking place within the general community, including rape, sexual abuse, sexual harassment at the work place, in the education institutions and other places, women trafficking and forced prostitution;
- physical, sexual or psychological violence committed or tolerated by the State, anywhere it may occur.

The benchmark, at international level, in matter of combatting violence against women is *The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence* (Istanbul Convention, which was adopted in 2011 and entered into force in 2014), which admits the structural nature of violence against women as being gender violence and advocates to ensure equality between men and women. With regards to combatting such dramatic phenomenon, the Istanbul Convention is the most comprehensive instrument in matter of protection of all types of violence against women, promoting the culture of equality and stigmatization of any gender discrimination (Marzullo 2021, 10). Its contents refer to all actions of gender violence resulting or likely to result in physical, sexual

psychological or economic injury or sufferance caused to women, including threats to commit such actions, coercion or arbitrary lack of freedom, no matter if it occurs in the public or private life (article 3(a), Istanbul Convention). Also, gender violence against women is considered the violence which is directed against a woman because she is a woman or which affects women disproportionately. Regarding the clarification of the notion of gender, it should be understood as the social and behavioral role, the activities and characteristics that the society considers as appropriate for men and women (article 3(c), Istanbul Convention). Thus, not the sex of a person, but his/her gender is the criterion based on which the violence is exerted. The issue of gender targets effectively and specifically the situation of the persons belonging to the LGBTIQ community, with regards to the violence manifested because of their sexual orientation, issue intensively debated and criticized by the advocates of conservatism (Gümüş 2021, 43-52).

Despite all the efforts made by the international organizations to eradicate gender violence, it is in constant manifestation and has new forms, too, such as cyber violence, cyber harassment, cyber stalking and non-consensual distribution of the intimate materials by means of social media. Pursuant to the latest data and records, at global level, there is a prevalence of online violence against women and girls, who are victims of the different forms of online abuse, such as sharing of images, videos or intimate messages without their consent, humiliating and sleazy messages, abusive and threatening language, sexual harassment and false content (Ahlenback, Clugston and Vlahakis 2022, 7-10).

The rapid growth of gender violence and, at the same time, its underreporting, determined the European Union to enhance its actions against this phenomenon (Jurviste and Shreeves 2018). Obtaining the approval of EUCJ on October 6, 2021, as a result of the request of the European Parliament, allowing the Council to ratify the Istanbul Convention without a previous common agreement, represented a favorable process, finalized with the accession of the European Union to the text of the Convention on June 1, 2023 (Decision (EU) 2023/1075 and Decision (EU) 2023/1076, published in Official Journal of the European Union, L 143I, June 2, 2023).

Gender equality – priority axe of the European Council in combatting gender violence. Policies and measures of combating gender violence (VBG)

The problem of gender equality is experienced at all levels of the economic, cultural, social and political life of any society, and eradication of gender violence, and especially of violence against women and girls, represent an essential requirement to effectively ensure gender equality, as a human fundamental right (Franguloiu and Hegheş 2023).

The essential objective of any constitutional state is gender equality, as a guarantee of ensuring human rights, an issue intimately linked to the individual. That is why the concepts regarding the definition of the problems generated by gender inequalities can target psychological, sociological, cultural, medical, educational and political aspects, and so on.

At the European Union level, promoting equality between men and women is a fundamental value (Charter of Fundamental Rights of the European Union, article 21 and article 23), violence against women and domestic violence are considered violations of human rights and forms of discrimination. The alarming increase in gender violence and of harassment imposed a new approach to gender equality, through a better integration of the gender perspective at the level of all EU policies. The strategy of the European Commission regarding gender equality for the 2020-2025 period had in mind to establish the key-actions to eliminate gender violence, sex discrimination and structural inequality between men and women, having as main objectives (EU Gender Equality Strategy 2020-2025, 3-4):

- *to eliminate violence and stereotypes* – they have in view the extension of the fields of criminality, by including some specific forms of gender violence – named EU offences and

the proposal of additional measures of preventing and combatting specific forms of gender violence, including sexual harassment, abuses against women and women genital mutilation. Gender stereotypes generate inequality, often combined with other stereotypes, such as the ones based on race or ethnic origin, religion or beliefs, disability, age or sexual orientation, requiring thus an intersectoral approach in all fields (social, economic and cultural). Also, they emphasize the role of artificial intelligence in the economic progress, women being encouraged in this regard to take part in its development as researchers, programmers and users. For this purpose, the New White Paper of the Commission regarding AI lays out a European approach based on the fundamental rights and values of EU, including non-discrimination and gender equality.

- *to eliminate gender disparities in the labor market* – they have in view the increase of participation of women in the labor market; thus, women and men should have equal chances of professional and personal development, which means the assignment of rights and responsibilities for both parents, to the same extent, regarding the care of the family. Also, they have in view: to ensure equal participation of men and women in different sectors of the economy – by eliminating social discriminatory stereotypes regarding the competences of men and women and the undervaluation of the women's work; to address the difference in payment between men and women and the gender disparities regarding pensions – by transposing into the EU law the principle of equal pay for equal work or work of equal value.

- *to ensure a gender balance in the decision-making process and in the political environment* – by enforcing some more efficient strategies to increase the number of women in decision-making positions, at the levels of all Member States. An important endeavour in this regard is the adoption of *Directive (EU) 2022/2381 of the European Parliament and of the Council of 23 November 2022 on improving the gender balance among directors of listed companies and related measures* (published in Official Journal of the European Union, L 315, 7.12.2022), having as objective that women should represent at least 40% of the non-executive members in the boards of administration of the companies. Also, ensuring gender parity in management positions represents an important objective at the level of EU agencies.

- *to approach the intersectional character of gender with other reasons for discrimination within EU policies* – women can face intersectional discriminations based on several personal features – race, colour, ethnic or social origin, genetical traits, language, religion or faith, political opinions or of any other nature, affiliation to a national minority, assets, birth, disability, age or sexual orientation. In this regard, the Member States have the obligation to pay appropriate attention to the victims affected by such intersectional discrimination, by taking specific measures. The members of one or more groups of persons protected against discrimination on grounds of sexual orientation, disability, racial or ethnical origin, are exposed to a high risk of intersectional discrimination and to a high risk of being victims of gender violence. In this context, the EU legislation and policies should meet the specific needs and circumstances of women and girls from different vulnerable groups, taking into consideration this high level of risk (Proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence, Strasbourg, 2022 COM(2022) 105 final).

Proposal for a directive on combating violence against women and domestic violence – a new approach to the phenomenon

The absence of a specific legislative instrument at the EU level, regarding the regulation of violence against women and of domestic violence, was a benchmark for the European Commission in the fight to stop gender violence, to protect victims and to punish offenders. As a consequence, in 2022, the European Commission adopted the Proposal for a Directive of the European Parliament and of the Council on combating violence against women and

domestic violence (COM/2022/105 final), establishing the minimum standards regarding: indictment of relevant offences and establishment of sanctions with regards to them; protection of victims and access to justice; granting support to victims; prevention; coordination and cooperation (Franguloiu and Hegheş 2023).

The necessity of this legislative instrument was grounded on the Istanbul Convention on preventing and combating violence against women and domestic violence, in order to ensure the full exercise of the fundamental rights within the European Union, including the right or equal treatment and right to non-discrimination between men and women.

The proposal aims at ensuring a comprehensive framework for efficiently combating violence against women and domestic violence at the European Union, also having in view additional indictments that the Istanbul Convention did not address in its contents.

The proposal for directive, as a first act to address comprehensively the violence against women and domestic violence, contains specific measures regarding offences and rights of victims (COM(2022) 105 final, 4-5):

- Indictment of some forms of violence affecting women disproportionately and that are not addressed satisfactorily at national level, such as: indictment of rape in considering exclusively the lack of consent, female genital mutilation or certain forms of cyber violence – exchange of intimate images without consent, cyber stalking, cyber harassment and cyber incitement to violence and hatred;
- Reinforcement of the access of victims to justice and of the rights to an appropriate protection that should directly meet the specific needs of the victims of violence against women and of domestic violence. The term of “victim” should refer to all persons, regardless of sex and, except otherwise specified in such a provision, all victims should benefit from the rights related to protection of victims and access to justice, to victim support and prevention.
- Granting support adjusted to the specific needs of the victims of violence against women and of domestic violence – focus is made on vulnerable groups, including also women refugees from armed conflict areas.
- Prevention of violence against women and of domestic violence, including by actions of awareness, of training of professionals who may get in contact with victims, and of working with the authors of the offences;
- Reinforcement of coordination and cooperation at national and EU level by setting up a multi-institutional approach and by improving data collection regarding violence against women and domestic violence.

Adopting a EU legislative act on combating violence against women and domestic violence, is likely to ensure a minimum level of protection in the entire EU, through a harmonisation of concepts and indictments at the level of all States, respectively by fair and targeted measures of prevention and protection against such manifestations. The proposal for directive of the Council of the European Union of 17 May 2023, revised for of the proposal of the Commission of 8th April 2022, falls within this respect.

Cyber violence – an ascending trend in the field of criminality generated by gender violence

Cyber violence – is a relatively new phenomenon, generated by the development of computer technology and of internet, the increased usage of social media having many society implications (De Vido, Sosa, 2021, 8). Undoubtedly, this type of violence is a global problem, in full expansion, safety in the digital environment being difficult to be ensured, as access to internet has become a necessity and a human fundamental right.

At present, the phenomenon is not defined or regulated completely, the terminology used in this space being varied: TIC-facilitated technology, online violence, technology-

facilitated violence or similar, digital or cyber violence. Consequently, there is a wide range of forms of violence against women and girls in digital contexts, that can be grouped as follows (UN Women, 2022, 3):

- *online violence taking place in the digital world* – for example, social media platforms, virtual-reality platforms, the platforms used at the work place, gaming, dating, chat-rooms etc.

- *technology facilitating violence with the aid of digital instruments* – GPS, IA, transport applications, communication tools, such as mobile phones etc.

Both women and men can be victims of cyber violence, but studies show that women and girls are the most exposed (EIGE 2022, 8). Although this type of violence is many times regarded as an insignificant virtual phenomenon, as it is less made aware, still the consequences caused are very serious, resulting in physical, sexual, psychological and economic injuries. In the current society, the physical and online spaces are more and more integrated, and cyber violence can occur as precursor or as online extension of physical violence, under the form of cyber harassment and stalking, thus enhancing the consequences caused in the physical space. The current reality shows the need to conceptualisation of the cyber violence against women, starting from the idea of unitary phenomenon including the offline violence, too.

In the absence of a standardized definition regarding cyber violence against women and girls, it generically designates the gender violence committed by electronic communication and internet: „*online gender-based violence*” (OGBV), „*cyber violence against women and girls*” (Cyber VAWG), „*technology-facilitated gender-based violence*” (TFGBV). Special attention should be given to artificial intelligence (AI), that, beyond its benefits, can have a serious impact not only on the right to private life and to data protection, facilitating different criminal actions and generating new forms of violence, such as creation of video and audio materials and extremely realistic false images, the so-called ”deepfakes” (Europol 2022, 7).

The fact that more and more women and girls become victims of gender violence on internet and on social media, is a ruthless fact which imposes the adoption of specific legislative measures in matter of gender cyber violence, with clear conceptual boundaries. The lack of conceptual clarity is the main obstacle in matter of an effective prevention and combating of the phenomenon.

Manifestations of online violence against women and girls often refer to threats with physical and sexual violence, sexual harassment or stalking, but it can include body shaming, cyber harassment and insulting language. Also, on the other hand, the phenomenon also includes the non-consensual sharing of private videos or images, named *video and image-based abuse*”. The inconsistency of the terminology makes that the scaling of the phenomenon be reported to different benchmarks, which causes significant gaps regarding the nature, prevalence and impact of online violence against women and girls (Ahlenback, Clugston and Vlahakis 2022, 2-4). Cyber violence against women and girls should be addressed as an intersectional form of violence, with different patterns and levels of vulnerabilities. Studies show that the women who suffer from multiple discriminations due to the nature of overlapping their identity have more opportunities to experience online violence – for example, coloured women and ethnical minorities, LGBTIQ women and disabled women, are exposed to a high risk of online violence (Jacqueline 2021, 8).

Therefore, the need of an express regulation culminated in new rules of the European Union that come to indict, inter alia, the acts of gender violence committed in the online space (Ahlenback, Clugston and Vlahakis 2022, 2-4). On the background of cyber violence, in the context of the trends of digital transformation, they shape a unitary and harmonized legislative framework for certain types of computer criminality, such as: non-consensual sharing of intimate or manipulated materials, cyber stalking, and cyber harassment and cyber incitement to violence or hatred. The proposal for directive of the Council considers harmonised

definitions of offences and punishments regarding some forms of cyber violence when the violence is intrinsically linked to the usage of technologies of information and communication, thus modifying the characteristics of the offence (Council of the European Union, Proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence, Brussels, May 17, 2023, 12).

Conclusions

Worldwide, gender violence is a worrying phenomenon that any society faces, no matter the level of culture or of development, being a blatant violation of human rights and a serious form of discrimination. Although great progress has been made to ensure equality between men and women, the core of the problem can be found in gender inequalities, on the grounds of the abuse of power and of common law practices, characteristic of a conservatory and traditional society. The consequences are extremely negative, being felt at individual, familial and societal level imposing a resolute position with regard to prevention and to victim treatment.

The dynamics of society and the expansion of the digital environment precipitate the phenomenon of gender violence, generating new forms and dimensions, and the absence of a conceptualized framework with common rules allows the perpetuation of this flagellum. The Proposal of the European Commission regarding a new directive on combating violence against women and domestic violence has in view the establishment of a unitary and harmonized framework to ensure a minimum level of protection in the entire European Union against such violence. The proposal for directive and the recent adhesion of the European Union to the Istanbul Convention is an important step in combating violence against women as a form of manifestation of gender violence.

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