

CRIMINALISATION OF FORCED MARRIAGE IN UKRAINE (IN BRIEF COMPARISON WITH OTHER EUROPEAN COUNTRIES)

Yaroslav Lyzohub*

Abstract: *The paper is devoted to the issues of criminalisation of forcing to marriage. The author considered a lot of criminal-legal sources, which provide a responsibility for the mentioned socially dangerous phenomenon, all over Europe. A significant part of the manuscript covers a juridical analysis of a crime provided by Article 151-2 of the Criminal code of Ukraine in force. The author, according to his opinion, takes under consideration some burning questions which make incorrect qualification and use of the aforesaid norm.*

A certain place in the paper is allocated for the analysis of foreign criminal legislation for combating coercion to marriage. So, the author has made EU criminal legislation review concerning the anti-forced marriage campaign and separately displayed criminal-legal approaches to resist forced marriage within other European territories which are not EU members. There was briefly revealed the reaction of EU countries for signing and ratification of appropriate EC Convention.

Keywords: *coercion to marriage, forced marriage, forcing to marriage, exploitation of human being, human trafficking*

INTRODUCTION

Europeanization of the current criminal law of Ukraine is the cornerstone of its current legal policy. Such a vector, undeniably, determines the proper internal course. At the same time, practical implementation of the results of Ukrainian parliament work in the form of certain articles of the Criminal Code of Ukraine, which arose as a result of the implementation of the prescriptions of some international acts, shows that such developments, sometimes, rather, mechanically overcharge norms than serve for modernizing the provisions of the Code.

One of these examples is the norm of an offense, specified by Article 151-2, which appeared in the national legislation a few years ago because of the implementation of Ukraine's commitments (taken in accordance with the Council of Europe Convention on preventing and combating violence against women and domestic violence, that was signed on May 11, 2011) to counteract forced marriages (Article 37 of the Convention).¹

1. UKRAINIAN LAW

1.1. Criminal-legal aspects

In accordance with a paragraph 1 of the mentioned norm of criminal law, a crime is recognized as “forcing a person to marry or to prolong the forced marriage, or to enter

* Associate Professor, Dr. Yaroslav Lyzohub, PhD., Department at Criminal Law and Criminology, Kharkiv National University of Internal Affairs, Kharkiv City, Ukraine

¹ COUNCIL OF EUROPE. Convention on preventing and combating violence against women and domestic violence. In: *Council of Europe* [online]. 11. 5. 2011 [2020-04-08]. Available at: <<https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210/signatures>>.

into a cohabitation without a marriage, or to the continuation of such cohabitation, or to induce the person to move to the territory of the state other than that in which the person resides.”² As we can see, defining the content of the crime, the legislator has criminalized a number of independent acts. At the same time, according to the name of the article and other circumstances, such a logic raises some doubts.

Firstly, if the norm (according to its name) criminalises the coercion, we are emphasizing, to a marriage, then it is, obviously, incorrect to include here such acts as: *acts of coercion to enter into cohabitation without marriage*, as well as *coercion to the continuation of such cohabitation*, because they legally dissonant with what is formulated in the title of the article. *Marriage* and *cohabitation without marriage* are, from a legal point of view, completely different things. *Marriage* is a “family union of a woman and a man, registered in the state registration body of civil status acts” (paragraph 1 of Article 21 of the Family Code of Ukraine).³ Unlike *cohabitation*, which, by the way, according to paragraph 2 of the Article mentioned above, is not the basis for the emergence of the rights and responsibilities of the spouses,⁴ the *marriage* has a legally defined status and unites precisely the people of the opposite sex. It has clearly defined criteria by the law for the marriage and its dissolution. In accordance with paragraph 1 of Article 40 of the FCU “Marriage is declared invalid by a court decision, if it was registered without the free consent of a woman or a man.”⁵

All this does not apply to family coexistence without proper legal registration. Thus, even on formal grounds, the disposition of the norm unreasonably extends the range of socially dangerous infringements identified in accordance with its name.

Secondly, it is not clear why did the legislator, criminalising the coercion to continue the forced marriage, ignore the criminalisation of coercion to continue legal marriage? According to paragraph 1 of the Article 24 of the Family Code, “coercion of a woman or a man to a marriage is not permitted”.⁶ At the same time, as paragraph 4 of the Article 56 of the Family Code stipulates, coercion to preserve marital relations (there is no doubt that this is stated precisely about the legal marriage) is a violation of the rights of the wife or husband to freedom and personal integrity and may have consequences established by law.⁷

Considering Articles 24 and 56 of the Family Code, it is obvious that coercion to marriage consists not only in forcing a person to marry. It also covers coercion for the continuation of marriage relations. And from these grounds, the absence of criminalisation of

² Кримінальний кодекс України [The Criminal Code of Ukraine]. In: *Законодавство України* [online]. 2. 4. 2020 [2020-04-08]. Available at: <<https://zakon.rada.gov.ua/laws/show/2341-14>>.

³ Сімейний кодекс України [The Family Code of Ukraine]. In: *Законодавство України* [online]. 2. 4. 2020 [2020-04-08]. Available at: <<https://zakon.rada.gov.ua/laws/show/2947-14>>.

⁴ Сімейний кодекс України [The Family Code of Ukraine]. In: *Законодавство України* [online]. 2. 4. 2020 [2020-04-08]. Available at: <<https://zakon.rada.gov.ua/laws/show/2947-14>>.

⁵ Сімейний кодекс України [The Family Code of Ukraine]. In: *Законодавство України* [online]. 2. 4. 2020 [2020-04-08]. Available at: <<https://zakon.rada.gov.ua/laws/show/2947-14>>.

⁶ Сімейний кодекс України [The Family Code of Ukraine]. In: *Законодавство України* [online]. 2. 4. 2020 [2020-04-08]. Available at: <<https://zakon.rada.gov.ua/laws/show/2947-14>>.

⁷ Сімейний кодекс України [The Family Code of Ukraine]. In: *Законодавство України* [online]. 2. 4. 2020 [2020-04-08]. Available at: <<https://zakon.rada.gov.ua/laws/show/2947-14>>.

such actions by the legislator appears to be, at least, inconsistently. From the point of view of the legal protection of a human, there is no fundamental difference in the continuation of legal or illegal relations a guilty person is the one who forces the victim, if he, thus, affects the will of a human. In such both cases, the victim does not want to be married, and in both cases such an unwillingness is maliciously ignored by the guilty one. It seems the legislator should again consider the matter and make appropriate adjustments to Article 151-2 of the Criminal Code of Ukraine.

Thirdly, because of the lack of an authentic interpretation of the content of the meaning of *cohabitation* in such forms of an act as *coercion to cohabitation without marriage* and *coercion to continue such cohabitation*, there is a question in relation to the grounds of application of some positions of criminal-legal norm that is examined. Actually, such a concept is an evaluation. And, therefore, in each case the law enforcers have to decide at their own discretion when such a cohabitation took place, and when – not. This can hardly be correct, because such a situation will hypothetically create the possibility of self-willed application of the norm of the law. In our opinion, normative elucidation of signs of cohabitation would be very appropriate, in particular by supplementing the Article 151-2 with a corresponding note or by other method. To their number, it seems appropriate to include a set of actions (all or some) concerning the coercion of the victim to a joint long stay in one territory with a guilty one, common management, common life and common intimate relationships. In addition to detailing the features, it would obviously be correct to take into account in such a note the fact of filing a complaint of the victim or other person acting on his behalf about the fact of coercion.

Fourthly, the ambiguous understanding is acquired by such a form of act, as *inducing a person to move to the territory of the state other than that in which the person resides*. In relation to the term *induce*, everything is generally clear. *To induce* is to cause desire, to incline, to stimulate to some action or a certain act.⁸ At the same time, it is not entirely clear what is the purpose of such an induction that is mentioned by the legislator. Legally it is not defined. However, taking into account the stylistics of the sentence, the purpose should be understood as one or more of the mentioned above acts, such as: a) *coercion to marriage*, b) *continuation of involuntary marriage*, c) *start of the cohabitation without marriage*, d) *continuation of such cohabitation*. Still, would not that look like the distortion of the legal function of the criminal law in such a case?

At first glance, everything seems to be clear: either the repetition of crimes (when one who induces, plans to coerce and, in fact, coerces), or complicity (when one who induces does not plan to coerce, but is aware of it and acts in favor of this). At the same time, such actions, being in fact a crime envisaged in paragraph 1 of Article 151-2 of the Criminal Code of Ukraine (an induction to move for the purpose of coercion), will fall under the features of a crime, the responsibility for which is established by paragraph 1 of Article

⁸ БУСЕЛ, В. *Великий тлумачний словник української мови* [The Great Explanatory Dictionary of Ukrainian Language]. Київ: Ірпінь: ВТФ Перун, 2007, р. 124; МОВЧАН П.П., НІМЧУК В.В., КЛІЧАК В.Й. *Великий тлумачний словник сучасної української мови* [The Great Explanatory Dictionary of Modern Ukrainian Language]. Київ: Дніпро, 2009, р. 890.

149 of the Criminal Code of Ukraine *Trafficking in Human Beings*.⁹ According to the disposition of the main legal structure of a mentioned crime, it is recognized, in particular, that a person is being recruited for the purpose of exploitation, in which, in accordance with the note in Article 149, it should be understood, including compulsory marriage. Simply speaking, the Criminal Code of Ukraine understands recruitment of the person for forced marriage as human trafficking.

Given that recruitment ultimately comes down to invitation/engagement,¹⁰ it will, in this sense, reflect one of the parties' motives. Consequently, the incentive to move in order to forcibly enter into marriage (an act provided for in Article 151-2) is, in fact, recruitment for the purpose of forced marriage (an act provided for in Article 149) and vice versa. It turns out that for the same actions the legislator provides for liability within the framework of two separate articles. In fact, this is a collision of criminal law. At the same time, the collision, when the perpetrator will be liable twice for the same actions, would be contrary to the well-known principle *non bis in idem*, embodied in Article 61 of the Basic Law, according to which "no one can be brought twice to legal liability of one kind for the same offense".¹¹

Fifthly, according to all mentioned above, the following question remains open. A qualified composition of coercion for marriage as a qualifying sign involves the commission of such a crime by a group of persons under a previous convocation. The question arises if one can one about such a group in the case when one person induces, and another one – coerces, while both criminals act together? On the one hand, each of them is the executor of individually determined acts of criminal law. On the other hand, they act together, striving for one result. At the same time, the actions of the first one (the one who induces) are a guarantee of the commission of the actions of the other one (the one who will coerce). According to the logic of paragraph 5 of Article 27 of the Criminal Code of Ukraine, they will look like aiding and abetting.

According to paragraph 2 of Article 28 of the Criminal Code of Ukraine, a crime is recognized as committed by a group of persons at a preliminary conspiracy if it was jointly committed by several persons (two or more) who, in advance, that is, before the beginning of the crime, agreed to jointly commit it. Having an executor and accomplice, we can probably talk about the existence of such a group. But, does this look consistent in view of the existence of a qualifying attribute? It doesn't seem so, since the joint character of actions (in fact, actions committed by a group of persons), envisaged by paragraph 1, will deter-

⁹ According to Article 149 (1) of the Criminal Code of Ukraine *Trafficking of Human Beings* means trade of person as well as recruitment, movement, concealment, transfer or gaining of a person, committed with the purpose of exploitation, use of coercion, by kidnapping, deceit, blackmail, material or other dependance of a victim, his vulnerable condition or tampering of a third person who controls a victim to get a consent for his exploitation.

¹⁰ ЛИЗОГУБ, Я. Злочини проти волі, честі та гідності особи [Crimes against personal liberty, honor and dignity]. In: О. О. Dudorov, Е. О. Pysmenskiy (eds.). *Кримінальне право України. Особлива частина. Підручник* [The Criminal Law of Ukraine. Special Part. Textbook]. Луганськ: Елтон-2, 2012, р. 148; МЕЛЬНИК М., ХАВРОНИЮК М. (eds.). *Науково-практичний коментар Кримінального кодексу України* [Scientific and Practical Commentary of the Criminal Code of Ukraine]. Київ: Дакор, 2019, р. 451; АЗАРОВ Д.С., ГРИЦУК В.К., САВЧЕНКО А.В. та інші. *Науково-практичний коментар Кримінального кодексу України* [Scientific and Practical Commentary of the Criminal Code of Ukraine]. Київ: Юрінком Інтер, 2018, р. 347.

¹¹ The Constitution of Ukraine.

mine the legal insignificance of a qualifying attribute – the commission of a crime by a group of persons under a previous conspiracy – in this case, because of the absurdity of its application.

Criminalizing coercion to marriage, the legislator, unfortunately, did not consider that “... creating a specific criminal offense of forced marriage could cause duplication with the criminal offenses that already exist and cover the criminal aspects of forced marriage [...]”.¹² The search for the reason of such activities today would hardly look legitimate. Instead, it is important to carefully review the relevant features of Article 151-2 of the Criminal Code of Ukraine and to ensure a proper legal restart of such a norm.

1.2. Validity of criminalisation

But not only the criminal-law sight of a norm itself has importance to ensure its proper functioning. Equally important is the social precondition for the criminalization of the phenomenon, which is described by such a norm. “The criminalisation of an act, – as Pavlo Fris notes, – is appropriate only when there is no and can not be a legal mechanism for effectively regulating the relevant relations with a help of methods of other branches of law”.¹³ In general, by supporting the author, we will add that criminalisation should take place only when there is no any other reasonable alternative in legislation, and when it is a fair answer to one or another phenomenon, thus implementing an effective mechanism for combating it.

The article 151-2 that was introduced in December 2017, during the entire period of its existence has not been *distinguished* by any registration in the Unified Register of Pre-trial Investigations until now. It indicates the absence of appeals about coercion to marriage, as well as by other means of identifying such facts. Consequently, either this phenomenon is characterized by too high degree of latency, or it really is not inherent in our society. This is what some of Ukrainian scientist writes about this fact: “Is this problem relevant (this is about forced marriage)¹⁴ for modern Ukraine?”¹⁵ And he immediately answers: “It seems like not”.¹⁶

At the same time, the current absence of officially registered cases of forced marriage in Ukraine does not mean the absence of Ukrainian victims of such actions abroad, as well as the absence of facts of coercion to marriage in future. Ukraine occupies the first positions in rating of supplying women to other countries of the world. Between 1991 and 2018 more than 230,000 people became victims of trafficking.¹⁷ At the same time, the ul-

¹² PROUDMAN, C. R. The criminalisation of forced marriage. In: *Charlotte Proudman* [online]. [2020-04-08]. Available at: <<http://www.charlotteproudman.com/wp-content/uploads/2014/08/crim-of-FM.Famlaw.pdf>>.

¹³ ФРІС, П. Криміналізація та декриміналізація в кримінально-правовій політиці [Criminalisation and decriminalisation in criminal-legal policy]. *Вісник Асоціації кримінального права України*. 2014, No 1 (2), p. 25.

¹⁴ Words insertion in brackets is made by the author of the paper. – from the Author.

¹⁵ АНДРУШКО, Андрій. Щодо доцільності криміналізації примушування до шлюбу [On rationale for criminalization of forced marriage]. *Jurnalul juridic national: teorie și practică*. 2018, No 6 (34). p. 172.

¹⁶ *Ibid.*, p. 172.

¹⁷ ПАВЛУСИК, р. 1000 доларів за завербовану дівчину, яку відправляли в сексуальне рабство до ОАЕ – прес-конференція щодо протидії торгівлі людьми [1000 US dollars for recruited girl, which was transferred to sexual slavery in the UAE – press conference regarding trafficking of people]. In: *terminovo* [online]. 18. 10. 2018 [2020-04-08]. Available at: <<https://terminovo.te.ua/news/6327/>>.

ultimate goal of the export and transfer of each victim is not known. Probably, such a *donation* was not always aimed at sexual exploitation or involvement in porno-business. It is possible that Ukrainian women are taken out for forced marriage, given the high demand for Ukrainian girls abroad.¹⁸

In our opinion, confronting such facts with the help of civil-law deterrents would not be enough, because they are known to be incapable of implementing neither the preventive nor the punitive possibilities of the law. And ensuring persecution of offenders by the rules on other crimes (kidnapping, bodily harm, etc.) is irrational, since the actual facts of coercion to marriage would thus artificially disguise themselves to other socially dangerous acts.

And, in the end, the struggle with one harmful phenomenon would turn into counteraction others. That is why it is quite right to conclude that “a specific criminal offense of forced marriage will be more effective than making use of a patchwork of laws that are not specifically designed to tackle forced marriage”.¹⁹ Forcing to marriage is an independent offense. It has the features inherent only to it and is revealed through appropriate acts, where coercion is only a way to commit a criminal intent. At the same time, it is not simply an unacceptable phenomenon for a democratic society because of its influence on family or moral foundations. Similar cases “[...] constitute a major human rights violation: it attacks a victim’s freedom of choice, self-worth and dignity”.²⁰

Hence, criminalisation seems to be justified, for at least three reasons. First, due to the inability of civil law to provide a worthy counteraction to the facts of coercion to marriage. Second, for the sake of strengthening national legal protection of rights, as it is traditional to put under the protection of the criminal law the most important social values to which, for sure, the fundamental human rights of a person that is suffering when forced to marriage, can be included. Third, considering the existing international obligations in Ukraine that are connected with the signing of the Istanbul Convention, which was mentioned at the beginning of this work. Simultaneously, it should not be forgotten that: “while criminal law measures are essential in the fight against forced marriage, they do not provide all the necessary legal solutions to effectively combat this harmful practice. Even when criminal legislation is comprehensive, civil law provisions such as protection orders [...] will also be necessary”.²¹

¹⁸ КАРПИТСКАЯ, Д., КАРПИЦКАЯ С. Россия женится на Украине: количество браков выросло в 2 раза [Russia is getting married to Ukraine: a number of marriages has increased by 2 times]. In: *MKRU* [online]. 10. 5. 2014 [2020-04-08]. Available at: <<https://www.mk.ru/social/2014/05/10/rossiya-zhenitsya-na-ukraine-kolichestvo-brakov-vyroslo-v-2-raza.html>>; ЛАВРОВА, А. Почему украинки начали выходить замуж за китайцев [Why did Ukrainian ladies start to get married to Chinese men]. In: *Ридус* [online]. 11. 10. 2017 [2020-04-08]. Available at: <<https://www.ridus.ru/news/263172>>; Украинки все чаще выходят замуж за иностранцев [Ukrainian ladies get married to foreigners in increasing frequency]. In: *EAD* [online]. 8. 2. 2018 [2020-04-08]. Available at: <<https://eadaily.com/ru/news/2018/02/08/smi-ukrainki-vse-chashche-vyhodyat-zamuzha-inostrancev>>.

¹⁹ PROUDMAN, C. R. *The criminalisation of forced marriage*.

²⁰ IDRIS, M. M. Forced Marriages – The Need for Criminalisation? *Criminal Law Review*. 2015, Vol. 9, [2020-04-08]. Available at: <<http://e-space.mmu.ac.uk/617352/>>.

²¹ FRESKO-ROLFO, B. Forced Marriage in Europe. In: *Council of Europe* [online]. 11. 6. 2018 [2020-04-08]. Available at: <<https://pace.coe.int/en/files/24806>>.

2. EUROPEAN LAW MATERIALS

Let's see what's happening on this matter abroad. Having examined the opinion of 21 victims of forced marriage, having conducted 18 interviews with experts from various fields, and having conducted 60 informal interviews of people of South Asian origin from England and New York (US), American researcher Popy Begum noted that “[...] amongst all three groups of interviewees, the most favored non-criminal approach to addressing forced marriages”.²² The author continues: “Individuals who are at-risk of forced marriage, in such marriages, or want to leave marriage, may want family members and others to be held accountable, but the punishment does not seem to be a favored response among most victims, survivors, individuals who have been at-risk, professionals, and members of the South Asian community”.²³

Almost similar logic is also demonstrated by British scientists Geetanjali Gangoli and Melanie McCarry, who point out that “some of the negative consequences discussed were that the legislation could prevent victims from asking for help and may lead to parents taking children in foreign countries for forced marriages to escape prosecution in the UK”.²⁴

The authors emphasize that not only the victims but police officers as well believe that “criminalisation could be counter-productive, because it would be a disincentive to people reporting forced marriages, as it would involve their family members in criminal proceedings”.²⁵

Certain support of the mentioned logic can be found and in a work of another British analyst Charlotte Rachael Proudman who also mentioned this counter-production. So, the author notes that “[...] a particular criminal offense of forced marriage may prevent victims from coming forward and asking for help because of fear that their parents or extended family members could be prosecuted”.²⁶

At the same time, should not be obviously any doubts, that if the beneficial effect of the criminalisation of the phenomenon exceeds its harmful properties, the act must be subjected to criminalisation.²⁷ And no one would likely argue with this statement. Given the extent of coercion for marriage in Europe and its ability to influence fundamental human rights, criminalisation looks much more attractive than its absence. In fact, “forced marriage is not simply a question of being forced to accept a spouse but involves a series of human rights violations, including violations of children's rights and violent acts against women. It violates a whole range of other rights, including their rights to physical integrity,

²² BEGUM, P. Should ‘forced marriage’ be criminalised? In: *The Howard League for Penal Reform* [online]. 2016 [2020-04-08]. Available at: <<https://howardleague.org/wp-content/uploads/2016/09/Should-forced-marriage-be-criminalised.pdf>>, p. 5.

²³ *Ibid.*, p. 5.

²⁴ GANGOLI, G., MCCARRY, M. Criminalising forced marriage. *Criminal Justice Matters*. 2008, Vol. 74, No. 1, pp. 44–46 [online]. Available at: <<https://www.tandfonline.com/doi/abs/10.1080/09627250802476874>>.

²⁵ *Ibid.*, p. 44.

²⁶ PROUDMAN, C. R. *The criminalisation of forced marriage*.

²⁷ Cited by: JACOBSEN, J., SANDVIK, V. H. An Outline of the New Norwegian Criminal Code. *Bergen Journal of Criminal Law & Criminal Justice*. 2015, Vol. 3, No 2, p. 169 [online]. Available at: <<https://boap.uib.no/index.php/BJCLCJ/article/view/910>>.

physical and mental health, sexual and reproductive health, education, private life, freedom and autonomy”²⁸

So, keeping in mind noted, proper protection of the rights of the victim seems to be more important than his fears about the possible prosecution of the perpetrators, even if he is one of his relatives or close people. It is only necessary to correctly formulate the features of an act in the relevant criminal law and, possibly, to provide appropriate incentive mechanisms for the guilty person involved in committing such an offense.

Let's see how European countries pertained to the issue of counteracting forced marriage. Unfortunately, despite the concern of PACE about similar facts set in Resolution 1468 (2005) *Forced marriages and child marriages*, and deep appeal to sign the Council of Europe Convention on the prevention and combating the violence against women and domestic violence, 6 states-members of EU, including the Czech Republic, Hungary, Slovak Republic, Lithuania, Latvia and Bulgaria, have not ratified its position today. Even in spite of the European Parliament's harsh appeals in the spring of 2018,²⁹ only Croatia, Ireland, Greece and Luxembourg joined the ratifications (the talk is about a period later of the time mentioned).³⁰

The lack of unity of European countries is also observed in the approaches to the actual criminalisation of forced marriage within the framework of the relevant national legislation. Thus, out of the existing 27 EU Member States, only 14 countries have criminalised such actions: Austria (§106a),³¹ Belgium (§391six),³² Bulgaria (Article 177),³³ Croatia (Article 169),³⁴ Cyprus (Article 150),³⁵ Denmark (note 2 to §260),³⁶ France (Article 222-14-4),³⁷

²⁸ PACE, RESOLUTION 2233. “Forced marriage in Europe”. In: *Official website of PACE* [online]. 28. 6. 2018 [2020-04-08]. Available at: <<http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=25016&lang=en>>

²⁹ EUROPEAN PARLIAMENT (Press Release. Plenary section), “*Combating violence against women: all EU countries must ratify the Istanbul Convention*”. In: NEWS. *European Parliament* [online]. 13. 3. 2018 [2020-04-08]. Available at: <<http://www.europarl.europa.eu/news/en/press-room/20180309IPR99425/violence-against-women-all-eu-countries-must-ratify-the-istanbul-convention>>.

³⁰ Chart of signatures and ratifications of Treaty 210. Council of Europe Convention on preventing and combating violence against women and domestic violence. In: *Council of Europe* [online]. 8. 4. 2020 [2020-04-08]. Available at: <<https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210/signatures>>.

³¹ Strafgesetzbuch [The Penal Code of Austria]. In: *RIS* [online]. 1. 7. 2019 [2020-04-08]. Available at: <<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10002296>>.

³² Code penal [The Penal Code of Belgium]. In: *Belgisch Staatsblad: Moniteur Belge* [online]. 21. 6. 2019 [2020-04-08]. Available at:

<http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&table_name=loi&cn=1867060801>.

³³ Criminal code of Bulgaria. In: *LEGISLATIONLINE* [online]. 19. 12. 2017 [2020-04-08]. Available at: <<https://www.legislationline.org/documents/section/criminal-codes>>.

³⁴ Kazneni Zakon [Criminal Code of Croatia]. In: *Wipo IP portal* [online]. 12. 9. 2016 [2020-04-08]. Available at: <<https://wipolex.wipo.int/en/text/421367>>.

³⁵ Ο περί Ποινικού Κώδικα Νόμος [Criminal Code of Cyprus]. In: *CyLaw* [online]. 2018 [2020-04-08]. Available at: <http://www.cylaw.org/nomoi/enop/non-ind/0_154/full.html>.

³⁶ Straffeloven [Criminal Code of Denmark]. In: *EuroPam* [online]. 27. 2. 2017 [2020-04-08]. Available at: <http://europam.eu/data/mechanisms/FOI/FOI%20Laws/Denmark/Denmark_Criminal%20Code%202005_a_mended%202016.pdf>.

³⁷ Code penal [Penal code of France]. In: *LEGISLATIONLINE* [online]. 1. 1. 2020 [2020-04-20]. Available at: <https://www.legislationline.org/download/id/8546/file/France_CC_am012020_fr.pdf>.

Germany (Section 237),³⁸ Luxembourg (Article 389),³⁹ Malta (Article 251G),⁴⁰ Portugal (Article 154B),⁴¹ Slovenia (Article 132a),⁴² Spain (Article 172bis)⁴³ and Sweden (Section 4c into Chapter 4 – On offences against liberty and peace)⁴⁴. Simultaneously, unity is seen in the sense of criminal-law assessment of coercion to marriage, since all these countries in the above-mentioned norms of law, with this or that minor lexical difference, criminalised the very actions concerning the coercion of one person to marry another one.

It should also be said here about Belgium, in the Criminal Code of which, there is not just a rule of responsibility for forced marriage, but even the whole chapter XI *Forced marriages*, which regulates both criminal and procedural issues of liability for such a crime.⁴⁵

To the countries outside the European Union, however with penalties for coercion into marriage, we can refer Albania (Article 130),⁴⁶ Liechtenstein (Article 106),⁴⁷ Monaco (Article 274-1),⁴⁸ Norway (Section 253),⁴⁹ Republika Srpska (Article 183),⁵⁰ Serbia (Article 187a),⁵¹ Switzerland (Article 181a)⁵² and the United Kingdom of Great Britain which has left European Union recently.

³⁸ Strafgesetzbuch [Penal Code of FRG]. In: *LEGISLATIONLINE* [online]. 2019 [2020-04-08]. Available at: <<https://www.legislationline.org/documents/section/criminal-codes/country/28/Georgia/show>>.

³⁹ Code pénal [Criminal code of the Grand-Duchy of Luxembourg]. In: *LEGISLATIONLINE* [online]. 2018 [2020-04-08]. Available at: <<https://www.legislationline.org/documents/section/criminal-codes/country/16/Luxembourg/show>>.

⁴⁰ Criminal code of Malta. In: *LEGISLATIONLINE* [online]. 2019 [2020-04-08]. Available at: <<https://www.legislationline.org/documents/section/criminal-codes>>.

⁴¹ Código Penal [Penal Code of Portugal]. In: *DRE* [online]. 6. 9. 2019 [2020-04-08]. Available at: <<https://dre.pt/web/guest/legislacao-consolidada/-/lc/34437675/indice>>.

⁴² Criminal Code of Slovenia. In: *PIS* [online]. 14. 3. 2020 [2020-04-08]. Available at: <<http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO5050#>>.

⁴³ Código Penal [Penal Code of Spain]. In: *Wipo IP portal* [online]. 28. 4. 2015 [2020-04-08]. Available at: <<https://wipolex.wipo.int/en/text/507613>>.

⁴⁴ The Swedish Criminal Code. In: *Government Offices of Sweden* [online]. 2019 [2020-04-20]. Available at: <<https://www.government.se/490f81/contentassets/7a2dcae0787e465e9a2431554b5eab03/the-swedish-criminal-code.pdf>>.

⁴⁵ Code penal [The Penal Code of Belgium]. In: *Belgisch Staatsblad: Moniteur Belge* [online]. 21. 6. 2019 [2020-04-08]. Available at:

<http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&table_name=loi&cn=1867060801>.

⁴⁶ Criminal code of the Republic of Albania. In: *LEGISLATIONLINE* [online]. 11. 6. 2015 [2020-04-08]. Available at: <<https://www.legislationline.org/documents/section/criminal-codes>>.

⁴⁷ Strafgesetzbuch (StGB) [The Penal Code of Liechtenstein]. In: *Gazette.li* [online]. 1. 3. 2019 [2020-04-08]. Available at: <https://www.gesetze.li/konso/html/1988037000?version=19&search_text=&search_loc=#par:99>.

⁴⁸ Code Penal [The Penal Code of Monaco]. In: *Gouvernement Princier* [online]. 7. 6. 2019 [2020-04-08]. Available at: <<https://www.legimonaco.mc/305/legismclois.nsf/ViewCode/F25D4444ACD8186FC125790B00275F0F!OpenDocument>>.

⁴⁹ The Penal Code of Norway. In: *LOVDATA* [online]. 27. 12. 2018 [2020-04-08]. Available at: <https://lovdata.no/dokument/NLE/lov/2005-05-20-28/KAPITTEL_3>.

⁵⁰ Krivični zakonik Republike Srpske [Criminal Code of the Republika Srpska]. In: *PARAGRAF* [online]. 2018 [2020-04-08]. Available at:

<<https://www.paragraf.ba/propisi/republika-srpska/krivicni-zakon-republike-srpske.html>>.

⁵¹ Krivični zakonik [Criminal Code of Serbia]. In: *PARAGRAF* [online]. 2019 [2020-04-08]. Available at: <https://www.paragraf.rs/propisi/krivicni_zakonik.html>.

⁵² Swiss Criminal Code. In: *LEGISLATIONLINE* [online]. 1. 1. 2017 [2020-04-08]. Available at: <<https://www.legislationline.org/documents/section/criminal-codes/country/48/Switzerland/show>>.

It is interesting to mention that Northern Ireland, which is a part of Great Britain, just like England, Wales and Scotland, does not apply the special Law about responsibility for forcing to marriage. However, this country passed not long ago a regulation – the Human Trafficking and Exploitation Act (Northern Ireland) 2015 – that has set the punishment for such a crime. Of course, one can not say that the specified normative act is devoted precisely to the fight against coercion to marriage. However, it contains a specific provision – Section 16 *Offense of forced marriage*,⁵³ dedicated to counteracting such a crime. There is also no special Law devoted just to combating forced marriage in the first three countries-members of The United Kingdom such as England, Wales and Scotland. Simultaneously, like Northern Ireland, they use in this direction another legal regulation – the Anti-Social Behavior, Crime and Policing Act 2014. But its norms are not the same for all these countries. Thus, Section 121 of the Act concerns just to England and Wales⁵⁴, and Section 122 – to Scotland⁵⁵).

In regard to other European countries, which were not previously observed, namely Finland (Chapter 25, Section 8),⁵⁶ Italy (Chapter 3, Article 610),⁵⁷ the Netherlands (Section 284),⁵⁸ North Macedonia (Article 139),⁵⁹ Montenegro (Article 165)⁶⁰ and Poland (§191),⁶¹ their criminal legislation has no concrete norms concerning the responsibility for forcing to marriage, but they include the provisions for coercion as the crime of a certain type. Under certain circumstances, such norms, according to their legal features, may obviously be useful for prosecution, including those who are engaged in forcing to marriage (unless there is a specific norm of liability for such actions). However, from the legal point of view, it is not really correct to say that they are devoted precisely to the criminalisation of the phenomenon under consideration, since such rules criminalise only separate forms of coercion, and only under certain circumstances, some of them are possible to implement the prosecution for coercion to marriage.

Liability for coercion, as the crime of a particular type, can also be found in the Codes of the countries which have already the legal norms for forcing to marriage. The talk is

⁵³ Human Trafficking and Exploitation Act (Northern Ireland 2015). In: *Legislation.gov.uk* [online]. [2020-04-08]. Available at: <<http://www.legislation.gov.uk/niu/2015/2/contents/enacted>>.

⁵⁴ Anti-social Behaviour, Crime and Policing Act 2014. In: *Legislation.gov.uk* [online]. [2020-04-08]. Available at: <<http://www.legislation.gov.uk/ukpga/2014/12/section/121/enacted>>.

⁵⁵ *Ibid.*

⁵⁶ The Criminal Code of the Republic of Finland. In: *LEGISLATIONLINE* [online]. 2015 [2020-04-08]. Available at: <<https://www.legislationline.org/documents/section/criminal-codes/country/32/Finland/show>>.

⁵⁷ Codice penale 2019. [The Penal Code of Italy]. In: *Altalex* [online]. 21. 5. 2019 [2020-04-08]. Available at: <<https://www.altalex.com/documents/codici-altalex/2014/10/30/codice-penale>>.

⁵⁸ Wetboek van Strafrecht [The Criminal Code of Netherlands]. In: *EuroPam* [online]. 2017 [2020-04-08]. Available at: <http://europam.eu/data/mechanisms/FD/FD%20Laws/Netherlands/Netherlands_Criminal%20code_1881_amended%202016_NL.pdf>.

⁵⁹ The Criminal Code of the Republic of North Macedonia. Consolidated text. In: *LEGISLATIONLINE* [online]. 2018 [2020-04-08]. Available at: <<https://www.legislationline.org/countries/country/31/North%20Macedonia/show>>.

⁶⁰ Krivični zakonik Crne Gore [The Criminal Code of Montenegro]. In: *LEGISLATIONLINE* [online]. 2018 [2020-04-08]. Available at: <<https://www.legislationline.org/documents/section/criminal-codes/country/57/Montenegro/show>>.

⁶¹ Kodeks karny [The Penal Code of Poland]. In: *Prawo karne. Portal informacyjny* [online]. 2020 [2020-04-08]. Available at: <<http://kodeks-karny.org/czesc-szczegolna/przestepstwa-przeciwno-wolnosci>>.

about Austria (Section 106 (1)), Bulgaria (Article 143), Hungary (Section 195),⁶² Liechtenstein (Article 105), Norway (Sections 251 and 252), Serbia (Article 135), Slovenia (Article 132) and Switzerland (Article 181). Moreover, in the Criminal Code of Bulgaria, even the whole chapter (Section IV), which contains article 143, is called *Coercion*. At the same time, for countries where responsibility is directly imposed for forced marriage, the presence of a norm for coercion as a crime of a certain kind in the context of counteracting the phenomenon under consideration obviously will not solve anything. Being in a logical relationship as a species and genus, coercion to marriage specifies coercion as a kind of crime of a particular kind. It is not simply smaller than the legal scope, forcing to marriage is a special form, a kind of coercion as a crime of a certain type. In the criminal-law theory, the norms describing the acts, which are in the logical connection as species and genus, are called special and general. Responsibility in this case only by a special norm that most clearly describes the act will not only be pertinent and legally sound, it will implement the non bis in idem statement, which was already mentioned at the beginning of this work.

The possibility of criminal prosecution of a person engaged in forced marriage can obviously be said in the light of the provisions of Lithuanian law. The Criminal Code of this country does not consist a prescription, which by its name would look like coercion to marriage or coercion in general, but still has article 148, which provides the responsibility for limiting the freedom of human behavior. Despite this name of the norm, its disposition provides punishment, in particular, for the actions of the person “[...] who demands that another person [...] otherwise behave according to the instructions of the offender by using mental coercion in respect of the victim or persons close to him”.⁶³ In fact, in this way, coercion is a subject to criminalisation, although there is no exact legal understanding of the presence of combating forced marriage.

There are interesting situations in the acting Penal Code of Czech Republic. This legal act contains two norms which are not concretely devoted to a criminal-legal acts counteracting forced marriage and even their titles do not traditionally include the term “Coercion”. Simultaneously, in our opinion, in some circumstances, they could be both possibly used in combating the aforesaid crime, because these norms actually provide the provisions, describing elements of forcing a person to some behavior.

The first, from the mentioned above norms, is Art. 175, which is called in Czech “Vy-dírání” (in proper English translation means “Extortion”). And, the second one, is Art. 177, that is named in Czech “Útisk” (in proper English translation means “Oppression”).

Making an analysis of dispositions of the aforesaid norms, we can see that in the first case (the talk is about Art. 175) the sentencing is provided for anyone who “[...] forces another person by violence or by a threat of violence or another serious detriment to act,

⁶² Criminal Code (Hungary), Act C of 2012. In: *Refworld.org* [online]. 2012 [2020-04-08]. Available at: <<https://www.refworld.org/docid/4c358dd22.html>>.

⁶³ Lietuvos respublikos baudžiamasis kodeksas [Criminal Code of Lithuania]. In: *TEISES AKTU REGISTRAS* [online]. Consolidated version to 30. 4. 2020 [2020-04-08]. Available at: <<https://www.e-tar.lt/portal/lt/legalAct/TAR.2B866DF7D43/asr>>.

omit or to suffer something [...]”.⁶⁴ Regarding the second one (it concerns Art. 177), the penalty of imprisonment is provided for up to one year, or the prohibition of activity, is specified for anyone who “[...] forces another person, by abusing their distress or addiction, to act, omit or suffer something [...]”.⁶⁵ Having this as a fact, both these norms, in some conditions (for instance, when the force or distress are performed for forcing to marriage) appear to be also used by law-enforcement bodies as the means in combating forcing to marriage.

No less interesting provision, which definitely may also be called as the legal instrument to counteract forced marriage, albeit implicitly, has the new Penal code of Turkey as well. So, this Act includes Art. 108, named “Force”, according to which, “any person who uses force against an individual in order to compel such individual to carry out, or fail to carry out, an act, or to enable himself to carry out a particular act”, is going to be sentenced.⁶⁶ As we can see, the aforesaid provision actually determines a liability for activities that are traditionally considered as Coercion. So, if the use of such a force will be directed to getting a woman as a wife, it can fairly be considered as forcing to marriage.

Simultaneously, speaking about such European countries as Andorra, Estonia, Greece, Latvia, Romania and San-Marino, we can say that their Codes do not contain neither norms of coercion (as a certain type of crime) in general, nor norms of coercion to marriage (as a specific type of crime), which, to a certain extent, contradicts the democratic principles of criminal-legal protection of a human being from the social-dangerous acts of coercion.

On the pages of the Internet and somewhere in the literature, there are also thoughts that some norms on the prohibition to get married under the circumstances of being already married are also tools to counter coercion to marriage. However, in our opinion, such conclusions appear to be legally false, since the nature of the offense is completely incompatible with the content of forced marriage. Though, at that, there is a formal violation of the existing order of marriage relations.

By the way, there is a norm in the United Kingdom that exists for a long time (§14 (3)), according to which “no marriage is treated as valid by virtue of subsection (1) if, at the time when it purports to have been celebrated, either party was already a civil partner”.⁶⁷ At the same time, this did not mean (until 2014) that there is the responsibility for coercion to marriage in the country, since such actions do not compel either the legal nature of coercion or the textual definition of the features of the act itself in the norm of the law. Of course, the British society has condemned the coerce to marriage, it was defined as an offense and media sources wrote about it.⁶⁸ However, just after making changes to the Anti-

⁶⁴ Trestní zákoník. Zákon č. 40/2009 Sb [Criminal code of The Czech Republic]. In: *Zákony pro lidi* [online]. Actual edition until 31. 5. 2020 [2020-04-08]. Available at: <<https://www.zakonyprolidi.cz/cs/2009-40>>.

⁶⁵ Ibid.

⁶⁶ Penal code of Turkey. In: *LEGISLATIONLINE* [online]. 15. 1. 2016 [2020-04-08]. Available at: <https://www.legislationline.org/download/id/6453/file/Turkey_CC_2004_am2016_en.pdf>.

⁶⁷ Matrimonial Causes Act 1973. In: *Legislation.gov.uk* [online]. [2020-04-08]. Available at: <<https://www.legislation.gov.uk/ukpga/1973/18>>.

⁶⁸ The UK Law on Forced Marriage. In: *HALO Project* [online]. [2020-04-08]. Available at: <<https://www.haloproject.org.uk/the-uk-law-W21page-71>>.

Social Behavior, Crime and Policing Act, 2014 such actions were recognized as a crime, and immediately announced by officials.⁶⁹

Monogyny, by the way, is provided by the Family Code of Ukraine (Article 25).⁷⁰ At the same time before the introduction of Article 151² to the current Criminal code, getting married again while being already married, was considered neither coercion to marriage nor another crime, although such actions were found to be illegitimate and legally void.

CONCLUSIONS

Summing up, it would be important to emphasize five key problems in the issue of countering forced marriage in Ukraine and other European countries. **First**, is an absence of European unity in their intent to counteract forcing to marriage. So, not all the countries joined the ratification of the Council of Europe Convention on the prevention and combating the violence against women and domestic violence (the Czech Republic, Hungary, Slovak Republic, Lithuania, Latvia and Bulgaria are still not the members of the ratification procedure).

Second, is the fact that not all the countries, which had joined the ratification of the Convention, criminalised coercion to marriage as the crime of a certain type (for instance, there are no such norms in criminal legislation of Finland, Italy and Poland).

Third, in some cases, the clutter of legal features of an act, and, as a result, the lack of certainty of the law (for instance, it concerns Lithuania, Hungary and Ukraine, which have a dubious or uncertain legal interpretation of the phenomenon “forced marriage” in their criminal legislation).

Regarding Ukraine, the Constitutional Court in its Decision no. 1-p / 2019 of February 26, 2019 (par. 3) noted that “one of the main elements of the rule of law principle enshrined in paragraph 1 of Article 8 of the Fundamental Law of Ukraine, is a legal certainty”.⁷¹ In the opinion of the CCU, this is absolutely necessary “[...] since other can not provide its (the norm)⁷² same application, it does not exclude unlimited interpretation in law practice and inevitably leads to arbitrariness” (par. 5.4).⁷³

The European Court of Human Rights also follows this logic. Thus, in the judgment (paragraph 49) of the case of *The Sunday Times v. the United Kingdom no. 1* dated April 26, 1979, the ECHR noted that “the norm can not be regarded as a *law* unless it is formulated sufficiently clearly, which enables the citizen to regulate his behavior”.⁷⁴ In another

⁶⁹ UK GOVERNMENT NEWS, “Forced marriage now a crime”. In: *GOV.UK* [online]. 16. 6. 2014 [2020-04-08]. Available at: <<https://www.gov.uk/government/news/forced-marriage-now-a-crime>>.

⁷⁰ Сімейний кодекс України [The Family Code of Ukraine]. In: *Законодавство України* [online]. 2. 4. 2020 [2020-04-08]. Available at: <<https://zakon.rada.gov.ua/laws/show/2947-14>>.

⁷¹ Judgement of the Constitutional Court of Ukraine. no.1- /2019 of 26 July 2019. In: *Законодавство України* [online]. 26. 7. 2019 [2021-03-23]. Available at: <<https://zakon.rada.gov.ua/laws/show/v001p710-19>>.

⁷² Clarification in brackets is made by the author of the paper.

⁷³ Judgement of the Constitutional Court of Ukraine. no. 5-рп/2005 of 22 September 2005. In: *Законодавство України* [online]. 22. 9. 2005 [2021-03-23]. Available at: <<https://zakon.rada.gov.ua/laws/show/v005p710-05>>.

⁷⁴ SUNDAY TIMES V. THE UNITED KINGDOM, Judgement of the European Court of Human Rights (Application no. 6538/74). In: *HUDOC. European Court of Human rights*. [online]. 26. 4. 1979 [2021-02-11]. Available at: <<http://hudoc.echr.coe.int/rus/?i=001-57584>>.

judgment of the case *S.W. v. The United Kingdom* of November 22, 1995, the European Court of Human Rights has stated that any offense should be clearly defined in the law (paragraph 35).⁷⁵

Fourth, is an obvious concealment of facts about forced marriages, low efficiency of using a norm which the phenomenon under consideration is criminalised by, as well as an existence of social opinions about a dubious criminalisation of coercion to marriage (France, Sweden,⁷⁶ Ukraine, Great Britain and few other countries). So, it is mentioned that “no police or judicial statistics on forced marriages in France, the Netherlands and Sweden exist”.⁷⁷ Although, indications on the prevalence of marriages, concluded without free and full consent, are provided by surveys in France and Sweden.⁷⁸ Regarding the challenges of social attitude to forced marriage in Ukraine and Great Britain, they have been briefly mentioned earlier in this text.

The statistical presence of the norm in the criminal law, by itself, does not provide its law-enforcement potential, and also reduces the declared effectiveness. Probably, such a norm should somehow be *revived*. But in no case should this be due to the artificial creation of relevant criminal cases, but by improving the content of its features and of more closely monitoring the facts of domestic violence, with a clear demarcation of the typical facts of such violence. It concerns, for instance, the coercion to marriage or forced continuation to marriage, for example, as elements of such violence.

Fifth, is the lack of criminal prosecution for forced marriage in such countries as Andorra, Estonia, Greece, Latvia, Romania and San-Marino. The absence of criminal responsibility for coercion to a marriage, in our opinion, means not only an absence the sole (with other states) strategy to prevent aforesaid social-dangerous phenomenon at these countries by criminal-legal means, but it also says about the impossibility to take part in global measures in regard to a countering for forced marriage.

Hopefully, this work will attract necessary attention to the identified issues, highlighted flaws and ways of their legal neutralisation, and at the same time, will help to implement the appropriate legal corrections of the current criminal legislation in Ukraine and other European countries which have mentioned challenges.

Definitely, taking into account the wide comparative legal review of the relevant materials on combating forced marriages, made by the author of the work, its content will be useful during a possible revision of the relevant legislation of European countries. At the very least, legislators in some of these countries also have something to think about when deciding the existence or non-existence of the criminalisation of forced marriage, a state-

⁷⁵ S.W. V. THE UNITED KINGDOM, Judgement of the European Court of Human Rights (Application no. 20166/92). In: *HUDOC. European Court of Human rights*. [online]. 22. 11. 1995 [2021-02-11]. Available at: <<http://hudoc.echr.coe.int/rus?i=001-57965>>.

⁷⁶ ELIN HOFVERBERG. Sweden: First Sentence for “Forced Marriage” Upheld by Appellate Court. In: *The Law Library of Congress* [online]. 09. 11. 2016 [2020-04-20]. Available at: <<https://www.loc.gov/law/foreign-news/author/elin-hofverberg/>>.

⁷⁷ Addressing forced marriage in the EU: legal provisions and promising practices. *Luxembourg: Publications Office of the European Union*, 2014. p. 12. [online]. [2020-04-20]. Available at: <<https://op.europa.eu/en/publication-detail/-/publication/cd4cfb8e-c322-41d0-b4f5-dac1c7306351/language-en>>

⁷⁸ *Ibid.*

ment of the content of signs of a socially dangerous act. After all, sometimes their legal norms are also not perfect, and have been introduced in haste or prematurely.

We are confident that the work will be of interest to all researchers who deal with criminal law in general and criminal law connected with combating forced marriages in particular.