

## **PECULIARITIES OF CRIMINAL REGULATION OF COERCION TO MARRIAGE PROVIDED BY ARTICLE 151-2 OF THE CRIMINAL CODE OF UKRAINE**

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### **INTRODUCTION**

Article 12 of the Convention for the Protection of Human Rights and Fundamental Freedoms proclaims that men and women who have reached the age of marriage have the right to marry and form a family in accordance with national legislation, which regulate realization of this right. Article 5 of Protocol 7 of the “Convention on the Protection of Human Rights and Fundamental Freedoms” is essential addition that provide the equality of each spouse, since each spouse has equal civil rights and duties in relations with each other and with their children, as well as in relation to marriage, marriage status and divorcement.

The legal prescription of the Convention on “the equality of each spouse on marriage, marriage status and divorcement” is realized in the wording of article 151-2 of the Criminal Code, which defines the criminal prohibition of coercion of a person to marriage or to continue a forcibly contracted marriage, or to enter cohabitation without marriage, or to continue such cohabitation. Criminalization of socially dangerous acts in art. 151-2 of the Criminal Code was made in order to implement the provisions of the Council of Europe Convention on the Prevention of Violence against Women and Domestic Violence and the fight against these phenomena”<sup>1</sup>.

The need for Ukraine to sign and ratify the Istanbul Convention is determined by many different reasons. These are the obligations of Ukraine to the Council of Europe, the need to approximate the legislation of Ukraine to the legislation of the European Union in the context of

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<sup>1</sup> Про внесення змін до Кримінального та Кримінального процесуального кодексів України з метою реалізації положень Конвенції Ради Європи про запобігання насильству стосовно жінок і домашньому насильству та боротьбу з цими явищами: Закон України 6 грудня 2017 року № 2227-VIII  
URL : [zakon.rada.gov.ua/laws/show/2227-19#n57](http://zakon.rada.gov.ua/laws/show/2227-19#n57)

Ukraine's full membership in the EU, and the need to change the cultural perception of the problem by our people<sup>2</sup>.

The question about rationality of criminalizing coercion has caused a lot of discussion among scientists, experts, practitioners. In the conclusion of the scientific and expert administration was noted that the approval of a new version of article 151-2 proposed by the draft law may lead to excessive criminalization of relations, which are currently regulated by the current legislation of Ukraine, and also make it impossible to comply with the provisions of the Istanbul Convention 2011<sup>3</sup>.

Among the comments of the General Law Department pointed that coercion of a person to marriage without socially dangerous consequences does not reach that level of public danger when the act in accordance with article 11 of the Criminal Code should be considered as a crime. At the same time, "enforced holding of a person, coercion to cohabit, "luring" for this purpose onto the territory of another state" with sufficient grounds must be qualified as articles 146 "Unlawful deprivation of freedom or abduction of a person", 154 "Coercion to have sexual intercourse", 149 "Human traffic or other unlawful agreement toward person", etc<sup>4</sup>. There is an opinion that the criminalization of coercion of a person to marriage will lead to excessive competition of criminal law norms, and it is likely that another "dead norm" will appear in the Criminal Code of Ukraine. Considering this, it is necessary to raise the question of the decriminalization.

At the same time, it is worth supplementing current criminal law with the general norm of the "Coercion" crime, which will make it possible to reduce the level of causality of the law on criminal liability<sup>5</sup>. Also attempts of the draft law authors on amending the Criminal Code of Ukraine to the section "Crimes against freedom, honor and dignity" are positively evaluated. It's supposed addition of the new article "Coercion

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<sup>2</sup> Дудоров О.О., Хавронюк М.І. Відповідальність за домашнє насильство і насильство за ознакою статі (науково-практичний коментар новел Кримінального кодексу України) / за ред. М. І. Хавронюка. К.: Ваіте, 2019. С. 19.

<sup>3</sup> Висновок Головного науково-експертного управління на проект Закону України «Про внесення змін до деяких законів України у зв'язку з ратифікацією Конвенції Ради Європи про запобігання насильству стосовно жінок і домашньому насильству та боротьбу з цими явищами» від 14.11.2016 р. № 4952. URL: [w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=59648](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=59648)

<sup>4</sup> Зауваження до проекту Закону України «Про внесення змін до Кримінального та Кримінального процесуального кодексів України з метою реалізації положень Конвенції Ради Європи про запобігання насильству стосовно жінок і домашньому насильству та боротьбу з цими явищами» (реєстр. № 4952) URL: [w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=59648](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=59648)

<sup>5</sup> Андрушко А. Щодо доцільності криміналізації примушування до шлюбу. *Jurnalul juridic national: teorie și practică*. 2018. № 6 (34). С. 173

to Marriage”<sup>6</sup>. Criminal liability for coercion to marriage (Article 151-2 of the Criminal Code of Ukraine) is considered as an example of excessive criminalization, which is pointless and has no necessary grounds<sup>7</sup>.

It should be noted that the analysis of the criminal legislation of fifteen states shows that thirteen of them have a special norm “Coercion to Marriage” (Great Britain, Norway, Germany, France, Austria, Switzerland, Sweden, Denmark, Belgium, Spain, Bulgaria, Serbia, Montenegro) and two states (Finland, Hungary) have the general norm “Coercion”. Adequate changes in the criminal legislations of European states were made in connection with the signing and ratification of the Istanbul Convention. Therefore, in this context, the national criminal legislation on coercion to marriage is assessed as fully complying with the current trends that exist regarding the criminal law protection of the rights of personal freedom and marriage and family relations in the criminal legislation of European states and in accordance with international agreements.

The regulation of coercion to marriage hadn’t comprehensive criminal law analysis. On the pages of juridical publications there is a lively discussion on the implementation by Ukraine provisions of the Council of Europe Convention on the prevention of violence against women and domestic violence and the fight against these phenomena. Important changes were made to the norms of criminal liability for crimes against human life and health, crimes against freedom, the honor and dignity of the person, and crimes against sexual freedom and inviolability. The above said arguments we considered as actual and appropriate for the study of this subject. The scientific research on the issues of criminalization of coercion to marriage we regard perspective.

## **1. Basic research material with full basis of received results**

On its preventive meaning, the criminal law prohibition of coercion to marriage is aimed at changing the social and cultural patterns of behavior of men and women for achieving the elimination of prejudices,

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<sup>6</sup> Литвинов О.М., Данильченко Ю.Б. Пропозиції та зауваження до проекту Закону України «Про внесення змін до деяких законів України у зв’язку з ратифікацією Конвенції Ради Європи про запобігання насильству стосовно жінок і домашньому насильству та боротьбу з цими явищами (реєстр. № 4952 від 12.07.2016 р.)» Законодавче забезпечення правоохоронної діяльності: навчальний посібник / За заг. ред. д-ра юрид. наук, доц. В.В. Сокурєнка. Х.: Стильна топографія, 2017. С. 892-896.

<sup>7</sup> Васильєв А.А., Юртаєва К.В. Реалізація положень Стамбульської конвенції в законодавстві України про кримінальну відповідальність: системно -правовий аналіз внесених змін і доповнень. *Порівняльно-аналітичне право*. 2019. С. 279-284.

customs and all other occurrences based on the idea of inferiority or superiority of one of the sexes or stereotyped roles of men and women.

According to Article 37 of the Istanbul Convention, “the parties shall take the necessary legislative or other measures to ensure that intentional behavior is criminalized, which consists of: 1) coercion an adult or a child to marriage; 2) luring an adult or child into the territory of a party or state other than the one in which he or she resides, for coercion this adult or child to marriage”<sup>8</sup>.

Therefore, the wording of Article 151-2 of the Criminal Code of Ukraine on establishing responsibility for coercion “to continue forcibly marriage, or enter the cohabitation without marriage, or to continue such cohabitation” is much broader than provided in the Istanbul Convention, which requires only criminalization of “coercion an adult or a child to marriage”<sup>9</sup>.

A necessary condition for the registration of marriage is the free and independent expressed mutual will of the persons getting marriage, confirming their intention to start a family on the basis of signing marriage. The social danger of coercion to marriage is that during state registration of marriage, there is a demonstration of the free consent of a woman and a man to state registration of civil status acts authority and as a result of endowing the spouses with mutual rights and duties and their further protection by the state. But in reality, there can be an illegal influence on the free expression of a woman and a man will to marry, which is not permissible (Art. 24 Family Code) and silencing information that is juridical important to authority of state registration of acts of civil status.

Failure to comply with the condition of free and independent mutual expression of the will of persons results in invalidation of the marriage. The invalidity of marriage is a special type of family law sanction applied in cases of violation of marriage conditions provided for by the

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<sup>8</sup> Про запобігання насильству стосовно жінок і домашньому насильству та боротьбу з цими явищами: Конвенція Ради Європи Конвенція Ради Європи та Пояснювальна доповідь Стамбул (Туреччина) 11.05.2011 р. URL: [rm.coe.int/1680093d9e](http://rm.coe.int/1680093d9e).

<sup>9</sup> Висновок Головного науково-експертного управління на проект Закону України «Про внесення змін до деяких законів України у зв'язку з ратифікацією Конвенції Ради Європи про запобігання насильству стосовно жінок і домашньому насильству та боротьбу з цими явищами» від 14.11.2016 р. № 4952.) URL: [w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=59648](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=59648)

legislation, and means the annulment of law consequences that occur with a valid marriage<sup>10</sup>.

The list of grounds for the invalidity of marriage defined in the Family Code of Ukraine is exhaustive and is grouped into three categories:

- The first category – is the so-called absolutely invalid marriages that break the three foundations of marriage: monogamy, the legal capacity of persons wishing to marry and the absence of close kinship between them. Such a marriage does not need to be declared invalid by a court with indication of any evidence; therefore, the civil status registration authority is obliged to annul the act of such marriage only at the request of the concerned person.

- The second category – is marriages that are recognized as invalid by the court on the grounds that the marriage is fictitious or the marriage was registered without the free mutual consent of the woman or man (the consent of the person is not considered free, in particular, when at the time of registration of the marriage the person suffered from severe mental illness disorder, was in a state of alcoholic, narcotic, toxic intoxication, as a result of which it did not fully realize the significance of its actions and (or) could not control them, or if the marriage was registered as a result of physical or mental violence). For recognition marriage as invalid in such cases it is necessary to give related evidence, such as documentary evidence of permanent separate residence, the testimony of witnesses, certificates of medical institutions about mental health of one of the spouses, the conclusions of experts and so on.

- The third category – marriages that may be declared invalid by the court if there are violations defined by legislation in the following cases: if it is registered with a person who has not reached the age of marriage and who was not given the right to marry; registered between the adopter and the child adopted by him without the provision of a preliminary court decision; between the cousins ; between aunt, uncle, nephew and niece; registered with a person who keep secret his serious illness or illness that is dangerous to the spouse and (or) their descendants. In such cases, an

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<sup>10</sup> Щодо визнання шлюбу недійсним <https://zakon.rada.gov.ua/rada/show/na005697-98>

essential role belongs exactly to the court, since it is entitled to declare the marriage invalid or refuse to satisfy the claims<sup>11</sup>.

Marriage can be declared as invalid when coercion to marriage happened, when registration of marriage was as a result of physical or mental violence, if the marriage is registered with a person who has not reached the marriageable age and who was not given the right to marry, only if evidence is presented in court.

The will, honor and dignity of the person, particularly in family relations, are main direct object of coercion to marriage<sup>12</sup>. In our opinion, will, honor and dignity should be considered as a subsumer object of coercion to marriage. Regarding the definition of the main direct object of coercion to marriage, it should be used the category “freedom”. Freedom is the basis of the theory of natural law. Freedom in juridical aspect is versatile: freedom can be personal, social, political, economic, cultural, and so on. Personal freedoms include freedom of movement, freedom to choose an occupation, the ability to act according to one’s discretion and one’s will, freedom of thought and speech, freedom of worldview and religion, the right and freedom to dispose oneself<sup>13</sup>. Thus, the personal freedom of a person should be declared as the main direct object of coercion to marriage. Guided by a definite structure of personal freedom, we see that coercion to marriage is an interference on the ability to act according to one’s discretion and one’s will and freedom to dispose oneself.

Taking into account that there is an interference not only on family relations, but also on actual family relations, as indicated in the wording of the article “to enter into cohabitation without marriage, or to continue such cohabitation”. At the same time, there is an interference on personal freedom (as to make a personal decision) in marriage, family relations (including actual marriage relations). The dignity of the person, sexual freedom and sometimes sexual inviolability, physical and mental inviolability should be declared as an additional obligatory object. In case

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<sup>11</sup> Петрожець О.В Визнання шлюбу недійсним: підстави, порядок та правові наслідки ) URL: [www.desn.gov.ua/index.php?option=com\\_content&view=article&id=7032%3A2014-02-06-10-19-08&catid=353%3A2012-03-22-14-34-14&Itemid=3172&lang=ua](http://www.desn.gov.ua/index.php?option=com_content&view=article&id=7032%3A2014-02-06-10-19-08&catid=353%3A2012-03-22-14-34-14&Itemid=3172&lang=ua)

<sup>12</sup> Дудоров О.О., Хавронюк М.І. Відповідальність за домашнє насильство і насильство за ознакою статі (науково-практичний коментар новел Кримінального кодексу України) / за ред. М. І. Хавронюка. К.: Ваіте, 2019. С.101

<sup>13</sup> Щадило О.І. Філософсько-правове розуміння свободи людини URL:[http://ena.lp.edu.ua:8080/bitstream/ntb/34772/1/71\\_454-459.pdf](http://ena.lp.edu.ua:8080/bitstream/ntb/34772/1/71_454-459.pdf)

of violation of any human right or freedom, the dignity of this person always suffers. Therefore, human dignity is declared as an additional obligatory object. Dignity is an objective attribute of a person, which reflects its unique and unrivalled value. From the moment of birth, dignity of each person is the similar, “equal” with the dignity of all other people. The understanding of this by all individuals leads to the formation of each person’s dignity, the expectation of respect by other people, the attitude to defend his rights, as well as the recognition equal rights of all people<sup>14</sup>.

According to the legislation, person’s dignity is an additional obligatory object, but besides dignity physical and mental development, sexual inviolability, is also an object of crime if the person has not reached 16 years. And this is reflected in the qualified crime of coercion to marriage in the case of committing this crime against a person who has not reached the age of marriage.

In determining the victim of coercion to marriage, gender equality is ensured, it can be both a man and a woman.

The objective features of this crime is characterized by actions in the such forms: 1) coercion of a person to marriage; 2) coercion of a person to continue a forcibly contracted marriage; 3) coercion a person to enter into cohabitation without marriage; 4) coercion a person to continue such cohabitation; 5) the inducement of a person to move to the another territory than it lives, with the purpose of marriage or cohabitation.

A.A. Dudorov and M.I. Hovronyuk, in its doctrinal interpretation defines “coercion” as the use of physical violence or the threat of its use against the victim or his/her close person, or blackmail – the threat to destroy or damage the property of the victim, or kidnap the victim or deprive of his/her freedom, or disclose information about the victim that wishes to keep secret or otherwise restrict the rights, freedoms or legitimate interests of the victim (or his/her close person). Particular forms of coercion are qualified additionally on other articles of the Criminal Code<sup>15</sup>. Considering this definition, we should examine it in the context of Art. 151-2 of the Criminal Code of Ukraine, what has been covered by the concept of “coercion”, and what requires additional qualifications.

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<sup>14</sup> Конституція України. Науково-практичний коментар. Петришин О. В., Погорілко В. Ф., Притика Д. М., Рабінович П. М., Савенко М. Д. та ін. К. : Видавничий Дім «Ін Юре», 2003 70 с.

<sup>15</sup> Дудоров О.О., Хавронюк М.І. Відповідальність за домашнє насильство і насильство за ознакою статі (науково-практичний коментар новел Кримінального кодексу України) / за ред. М. І. Хавронюка. К.: Ваіте, 2019. С.102.

Coercion in criminal law is usually defined as an illegal mental influence on the consciousness of the victim, aimed to bring it to a state in which the person is internally ready to submit to the requirements of the subject of coercion. As a result, the victim is limited in the ability to act on his own will (the will in this case is not totally suppressed), being forced to choose the behavior that conflicts to his desire<sup>16</sup>. The term “coercion” is often used in the provisions of the Criminal Code of Ukraine (Articles 134, 142, 143, 154, 157, 174, 180, 258-1, 280, 300, 301, 303, 355, 369-3, 373, 386 404 of the Criminal Code of Ukraine).

Thus, in Part 2 of Art. 180 of the Criminal Code an authentic interpretation of “coercion” is given. For example, forcing a cleric through physical or mental violence to conduct a religious ceremony. So as we see, coercion is committing by using methods of physical or mental violence to some actions (in our studying aspect to marriage, to enter into cohabitation, etc.). However, the legislator does not always use a unified way in the authentic interpretation of terms. Article 258-1 of the Criminal Code contains a regulation “coercion to commit a terrorist act by using deception, blackmail, a vulnerable state of person, or by using violence or threat of it”. Consequently, the five ways of socially dangerous actions are presented in the corresponding norm “coercion”.

For this position it should be noted that coercion is: 1) firstly, always against the will of the victim; 2) secondly, it is the influence on the human consciousness regarding his behavior, his doing or not doing of particular actions; 3) thirdly, coercion (in means of physical and mental violence) is used by the guilty person for manipulating victim and his choice, to act on his own will. Therefore, coercion can be committed by using violence or threatening to use it, or using blackmail. Using deception – is an effect on the mind of person by reporting false information or keeping in secret juridical important information. Thus, with deception or with using a vulnerable state of person – there is no overt influence (but there is covert influence) on the will and consciousness of the victim for dominating his/her behavior. Therefore, the public danger of coercion is in the overt influence of the victim’s decision and position by using physical or mental violence (including blackmail), imposing one’s desire. Blackmail – is unlawful coercion, consisting of threats to disclose particular information

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<sup>16</sup> Дудоров О.О., Хавронюк М.І. Відповідальність за домашнє насильство і насильство за ознакою статі (науково-практичний коментар новел Кримінального кодексу України) / за ред. М. І. Хавронюка. К.: Ваіте, 2019. С. 158.

and circumstances. This information and circumstances is necessary or desirable to keep in secret for the honor and reputation of the threatened person<sup>17</sup>. So the main thing with using mental violence, useful for this particular case, is not about the characteristics of the threats and not even in fact of the threats, but the incentive possibilities of any negative impact on the person<sup>18</sup>.

According to the Explanatory Note to the Council of Europe Convention on the Prevention of Violence against Women and Domestic Violence and the fight against these phenomena, the term “coercion” refers to the use of physical or psychological force<sup>19</sup>. In our opinion, it should be used instead of the wording “psychological force”, “mental violence”, the difference is essential.

The crime is completed at the time of marriage procedure, in which at least one of the parties did not give voluntary consent. So, the crime is considered to be consummated from the moment of the committing of actions that are covered by the concept of “coercion of a person”. That is, from the moment of the corresponding impact by the use of physical or mental violence on the victim regardless of its effectiveness (that is, regardless of whether the marriage was entered into or not, whether the person entered into cohabitation or this did not happen).

Marriage – is a family union of a woman and a man, registered with the state registration of civil status acts authority (Art. 21 of the Family Code of Ukraine). In turn, the state registration of marriage is established to ensure the stability of relations between a woman and a man, to protect the rights and interests of spouses, their children, and in the interests of the state and society.

In the theory of family law on various grounds distinguish the following types of cohabitation<sup>20</sup>:

– de facto marital relations (concubinate) – unregistered in state bodies marriage, free cohabitation and common housekeeping by a man and a woman without any legally established mutual obligations;

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<sup>17</sup> Баженов И. Шантаж как уголовное преступление. Москва: Из. «Юридического вестника», 1878. С. 18.

<sup>18</sup> Гуня І.І. Види насильства в Кримінальному праві. *Форум права*. 2014. № 2. С. 102.

<sup>19</sup> Про запобігання насильству стосовно жінок і домашньому насильству та боротьбу з цими явищами: Конвенція Ради Європи Конвенція Ради Європи та Пояснювальна доповідь Стамбул (Туреччина) 11.05.2011 р. URL: [rm.coe.int/1680093d9e](http://rm.coe.int/1680093d9e).

<sup>20</sup> Войнаровська О. Фактичні шлюбні відносини як одна із форм співжиття жінки та чоловіка. *Юридична Україна*. 2015. № 3. С. 44-54.

– guest marriage – is a family that spends time together, but everyone lives separately, from time to time they can live in each other place, the rest of the time they consider themselves free from family responsibilities;

– open marriage – similar to traditional marriage, but it allows sexual relationships with other men and women;

– communal marriage – is a family in which several men and several women live together. The family lives on the principle of "commune", when everything is common – men, women, children;

– seasonal marriage – is a family limited in time, when the couple agrees in advance about the length of their stay together, with the termination they decide either be separate or continue they relationship for the same period;

– rational marriage – is a family that is created with a predetermined purpose of achieving a definite economic, domestic household, professional, sexual level;

– homosexual marriage (same-sex) – is a family union created between partners of the same sex<sup>21</sup>.

Given these types of cohabitation, it should be noted that forcing a person to cohabit without marriage is not only coercion into de facto marriage relation. Guided by the strict sense of wording interpretation of the of Article 151-2 of the Criminal Code we suppose that criminal and law prohibition have the effect on coercion to all types of cohabitation.

In accordance with Art. 16 of the UN Convention on the Elimination of All Forms of Discrimination against Women<sup>22</sup>, measures should be provided to eliminate discrimination against women in all matters relating to marriage and family, and in particular, to provide equality of men and women: a) an equal rights to enter marriage; b) an equal rights to free choose of a spouse and to enter into marriage only with their free and full consent; c) an equal rights and obligations during the marriage and after its dissolution, and others.

So, the principle of voluntary marriage acts not only at the stage of its registration, but also during the time of being married, which makes it possible to voluntarily dissolve the marriage. According to part 4 of article 56 of the Family Code of Ukraine, each spouse has the right to stop

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<sup>21</sup> Войнаровська О. Фактичні шлюбні відносини як одна із форм співжиття жінки та чоловіка. *Юридична Україна*. 2015. № 3. С. 44-54.

<sup>22</sup> Про ліквідацію всіх форм дискримінації щодо жінок: Конвенція Організації Об'єднаних Націй. URL: [zakon.rada.gov.ua/laws/show/995\\_207](http://zakon.rada.gov.ua/laws/show/995_207)

the marriage relationship; coercion to stop marriage relations, coercion to preserve it, including coercion to have sexual intercourse through physical or mental violence, is a violation of the right of the wife/husband on liberty and security of person and may have legal consequences<sup>23</sup>.

Part 4 of Article 56, as amended on 22.12.2006, should reflect a legislative prescription in the form of a requirement: therefore “a violation of the wife’s/ husband’s right to liberty and personal inviolability may have consequences established by law” must be changed into “must have consequences defined by law”. That will indicate the application of the criminal liability in case of use of physical or mental violence against the victim. Thus, the legislative provision in part 4 of Art. 56 of the Family Code of Ukraine needs changes and should be in the following wording: “Coercion to stop the marriage relationship, coercion to preserve it, including coercion to have sexual intercourse through physical or mental violence, is a violation of wife’s/husband’s the right on liberty and security of person and must have consequences defined by law”. So the corresponding legislative prescription will display the consequences in the form of responsibility for marriage coercion, including criminal liability.

Based on the actual cases of coercion to marriage, there are two types of actions: coercion a person to marriage and luring a person abroad with purpose to coercion her/his to marriage. This is due to the fact that some victims of coercion to marriage are forced to marry in the country of residence, and many others are first taken to another country (often to the country of the ancestors, where they are forced to marry with the citizens of this country)<sup>24</sup>.

According to Part 2 of Art. 37 of the Istanbul Convention, it is determined that intentional behavior, which consists in luring an adult or child into a state other than he or she resides, for coercion that adult or child to marriage, should be criminalized. In the explanatory paper to part 2 the act of luring a person abroad with purpose to coercion to marriage against the will is criminalized. Marriage does not have to be necessarily registered. The term “luring” refers to any behavior in which the criminal lures the victim to another country with the help of excuses or fictional reasons, such as visiting a sick relative. The intent should point to the fact

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<sup>23</sup> Сімейний кодекс України від 10.01.2002 р. URL: zakon.rada.gov.ua/laws/show/2947-14

<sup>24</sup> Про запобігання насильству стосовно жінок і домашньому насильству та боротьбу з цими явищами: Конвенція Ради Європи Конвенція Ради Європи та Пояснювальна доповідь Стамбул (Туреччина) 11.05.2011 р. URL: rm.coe.int/1680093d9e

of luring or to the purpose of coercion a person to marriage abroad<sup>25</sup>. The term “luring into another state” is used in the text of the Istanbul Convention, Ukrainian legislator while implementing the provisions of this convention use another term – “inducement” for the purpose of transferring to the territory of another state than she/he lives. (Part 2 of Article 151-2 of the Criminal Code of Ukraine).

The term “inducement” means making someone want to do something; to force, incite, encourage to some action or a certain act<sup>26</sup>. The inducement of a person to move to the territory of another state than she/he lives for the purpose of coercion a person to marriage or coercion a person to continue forcibly entered marriage, as well as coercion a person to enter into cohabitation without marriage or coercion a person to continue such cohabitation, can actually be achieved through the use of violence, the threat of violence, and using deception. The provisions of Part 2 of Art. 37 of the Istanbul Convention “if by deception or in any other way affect on a person for making him/her leave the country of residence for the purpose of coercion to marriage” is transformed into legislative prescriptions of such foreign countries: Norway, Germany, Austria, Sweden, Switzerland, France, Spain, Montenegro, Serbia.

There is an opinion in juridical literature there that the inducement for the purpose of marriage or cohabitation to move to the territory of another state than the person lives, if such an act is committed in the form of transfer, with the purpose of exploitation, then it should be qualified according to art. 149 of the Criminal Code of Ukraine (in accordance with the comment to Article 149 of the Criminal Code of Ukraine, forced marriage is a form of exploitation)<sup>27</sup>.

Pay attention to fact that recruiting, moving, hiding, transferring or receiving a person in accordance with Art. 149 of the Criminal Code of Ukraine must be committed for the purpose of exploitation by one of the following alternative methods: 1) using coercion, 2) abduction, 3) deception, 4) blackmail, 5) material or other dependence of the victim, 6) his/her vulnerable state or 7) bribing the third person controlling the

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<sup>25</sup> Про запобігання насильству стосовно жінок і домашньому насильству та боротьбу з цими явищами: Конвенція Ради Європи Конвенція Ради Європи та Пояснювальна доповідь Стамбул (Туреччина) 11.05.2011 р. URL: [rm.coe.int/1680093d9e](http://rm.coe.int/1680093d9e)

<sup>26</sup> Великий тлумачний словник сучасної української мови. Київ – Ірпінь : ВТФ «Перун», 2005. 1728 с.

<sup>27</sup> Васильєв А.А., Юртаєва К.В. Реалізація положень Стамбульської конвенції в законодавстві України про кримінальну відповідальність: системно -правовий аналіз внесених змін і доповнень. *Порівняльно-аналітичне право*. 2019. С. 283

victim to obtain consent for his exploitation. Regardless of the methods of recruitment, transfer, concealment, transfer or receipt, criminal liability is always occurs if such actions were towards a minor or under age child.

Forced marriage is already provided in the list of person exploitation types and covered by the concept “customs similar to slavery”. Its definition is provided in accordance with Article 1 of the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Customs Similar to Slavery dated 07.09.1956. Forced marriage takes place if: 1) a woman is promised to marry or is being married, without her right to refuse, by her parents, guardian, family or any person or group of persons for a money reward or exchange for a product; 2) the woman’s husband, his family or his clan transfer woman to another person for a fee or otherwise; or 3) a woman after the death of her husband is inherited by another person<sup>28</sup>. Therefore, in our opinion, it is unacceptable to put an equal sign between “exploitation” and “marriage” even forced. Person exploitation is primarily the use of a human resource. Forced marriage means the absence of mutual consent between persons, but not the possible further exploitation of human. As a result, it is extremely difficult to prove that person was moving abroad for forced marriage for the purpose of exploitation. Slavery-like customs associated with transfer of a woman without her consent to marriage, are indicated in the say above convention, it reflects the use of a person as a commodity, and that is the essence of the crime «Human traffic».

The delimitation from coercion person to marriage is in Article 151-2 of the Criminal Code on the grounds of an objective and subjective features: if the guilty person only consciously enforces the victim to enter into the marriage, then this act is qualified in accordance to art. 151-2 of the Criminal Code; if the victim is recruited by the guilty person for the purpose of forced marriage or in pursuance of customs similar to slavery, or transfers with the same purpose to another person (s), or received with the same purpose from another person (s), the act should be qualified in accordance to Article 149 of the Criminal Code. The simultaneous qualification of the act on both of these articles is excluded because of the principle *non bis in idem* (the principle of the inadmissibility of double incrimination), article 61 of the Constitution of Ukraine is also provided

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<sup>28</sup> Про скасування рабства, раборторгівлі та інститутів і звичаїв, подібних з рабством: Додаткова Конвенція від 07.09.1956. URL: [https://zakon.rada.gov.ua/laws/show/995\\_160](https://zakon.rada.gov.ua/laws/show/995_160).

it<sup>29</sup>. Thus, the mentioned delimitations of the crimes provided in Articles 151-2 and 149 of the Criminal Code of Ukraine demonstrate that the main difference is that the actions are aimed at buying and selling the victim or as a “transfer-receipt” of the recruited person to others for forced marriage. We consider it’s necessary to exclude from note 1 to Art. 149 of the Criminal Code, such a form of exploitation as “forced marriage”, considering the existence of such a form of exploitation as pursuance “customs like slavery”.

Coercion crime is considered complete from the moment of physical or mental violence is used, and in the fifth form – from the moment of the committing actions that characterize the inducement (the marriage does not have to be obligatory entered into)<sup>30</sup>.

The subject of coercion to marriage is a physical, sane person who has reached the age of 16.

The subjective feature is characterized by direct intention. Considering that coercion and inducement by design are the formal components of a crime, thereafter the guilty person realized social dangerous of his actions (coercion, inducement), and wanted to commit it.

Every country established the age of marriage in law. The person who has not reached the age of marriage is a person who has not reached that age in accordance with the legislation of the country of her/his citizenship<sup>31</sup>. Such interpretation causes some contradictions. First, the state registration of marriage at the territory of Ukraine is carried out between a man and a woman who have reached the age of marriage – 18 years (Article 22 of the Family Code). There is an exception to the rule: at the request of a person who has reached the age of sixteen, by a court decision, she/he may be granted the right to marry if it is determined that this is in his/her interests. Secondly, a person under the age of 18 is considered a child. This provision is a postulate and correspond with the provisions of international treaties and is generally recognized in the world. So, to determine the age of marriage in accordance with the law of

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<sup>29</sup> Дудоров О.О., Хавронюк М.І. Відповідальність за домашнє насильство і насильство за ознакою статі (науково-практичний коментар новел Кримінального кодексу України) / за ред. М. І. Хавронюка. К.: Ваіте, 2019. С.103.

<sup>30</sup> Дудоров О.О., Хавронюк М.І. Відповідальність за домашнє насильство і насильство за ознакою статі (науково-практичний коментар новел Кримінального кодексу України) / за ред. М. І. Хавронюка. К.: Ваіте, 2019. С.102.

<sup>31</sup> Дудоров О.О., Хавронюк М.І. Відповідальність за домашнє насильство і насильство за ознакою статі (науково-практичний коментар новел Кримінального кодексу України) / за ред. М. І. Хавронюка. К.: Ваіте, 2019. С.102.

the country of citizenship is not advisable, as far as marriage with a child (a person under 18 years old), regardless of citizenship, on the territory of Ukraine is unacceptable, except a special court decision for a single individual as an indication that marriage meets his/her interests.

Other qualifying features are given in part 2 of Article 151-2 of the Criminal Code of Ukraine: repeated crime or committing it with preliminary agreement of group, or committing it towards two or more persons. These features should be determined by using a systemic interpretation, guided by the provisions of Article 28, 32 of the Criminal Code of Ukraine.

## CONCLUSIONS

Thus, taking into account conducting research, the following main conclusions were determined. On its preventive meaning, the criminal prohibition of coercion to marriage is aimed at changing the social and cultural patterns of behavior of men and women for eliminating prejudices, customs and all other occurrences, based on the idea of inferiority or superiority of one of the sexes or stereotyped roles of men and women.

The wording of Article 151-2 of the Criminal Code of Ukraine which establishing liability for coercion “to continue forced marriage, or enter the cohabitation without marriage, or to continue such cohabitation” is much broader than provided in the Istanbul Convention, which requires only criminalization of “coercion an adult or a child to marriage”<sup>32</sup>.

The personal freedom of a individual should be declared as the main direct object of coercion to marriage. Guided by a definite structure of personal freedom, we see that coercion to marriage is an interference on the ability to act according to one’s discretion and one’s will and freedom to dispose oneself. The person’s dignity, sexual freedom and sometimes sexual inviolability (if the person has not reached the age of 16), bodily and mental inviolability should be considered as a subsumer object of coercion to marriage.

The objective features of this crime is characterized by actions in the such forms: 1) coercion of a person to marriage; 2) coercion of a person to

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<sup>32</sup> Висновок Головного науково-експертного управління на проект Закону України «Про внесення змін до деяких законів України у зв’язку з ратифікацією Конвенції Ради Європи про запобігання насильству стосовно жінок і домашньому насильству та боротьбу з цими явищами» від 14.11.2016 р. № 4952.[http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=59648](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=59648)

continue a forcibly contracted marriage; 3) coercion a person to enter into cohabitation without marriage; 4) coercion a person to continue such cohabitation; 5) the inducement of a person to move to the another territory than it lives, with the purpose of marriage or cohabitation.

Coercion can be characterized as follows: 1) firstly, it is always against the will of the victim; 2) secondly, it is the influence on the human consciousness regarding his/her behavior, his/her doing or not doing of particular actions; 3) thirdly, coercion (in means of physical and mental violence) is used by the guilty person for manipulating victim and his choice, to act on his own will. Therefore, coercion can be committed by using violence or threatening to use it, or using blackmail.

The inducement of a person to move to the territory of another state than she/he lives, for the purpose of coercion a person to marriage or coercion a person to continue forcibly entered marriage, as well as coercion a person to enter into cohabitation without marriage or coercion a person to continue such cohabitation, can actually be achieved through the use of violence, the threat of violence, and using deception.

The crime is considered to have been completed from the moment of committing actions, that is covered by the concept of “coercion of a person” or “inducement of a person”. That is, coercion is considered to be completed from the moment of the using physical or mental violence (including blackmail) on the victim, regardless of its effectiveness (regardless of whether the marriage registered or not, the person entered into a relationship of cohabitation or not). Inducement is considered to be completed from the moment of using violence, the threat of violence, and using deception.

We consider it’s necessary to exclude from note 1 to Art. 149 of the Criminal Code, such a form of exploitation as “forced marriage”, considering the existence of such a form of exploitation as pursuance “customs like slavery”.

The subject of coercion to marriage is a physical, sane person who has reached the age of 16.

The subjective feature is characterized by direct intention. Considering that coercion and inducement by design are the formal components of a crime, thereafter the guilty person must have realized social dangerous of his actions (coercion, inducement), and wanted to commit it.

The person who has not reached the age of marriage according to the current legislation (qualifying feature), is a person who has not reached that age 18 years and if the person lives on the territory of Ukraine (in accordance with the legislation of Ukraine).

The legislative provision in part 4 of Art. 56 of the Family Code of Ukraine needs changes and should be in the following wording: “Coercion to stop the marriage relationship, coercion to preserve it, including coercion to have sexual intercourse through physical or mental violence, is a violation of wife’s/husband’s the right on liberty and security of person and must have consequences defined by law”.

### **SUMMARY**

The reasoned conclusions of scholars and practitioners on the criminalization of “Coercion to marriage” (Article 151-2 of the Criminal Code of Ukraine) are analyzed in the paper. The interpretation of objective and subjective features of the crime “Coercion to marry” has been carried out, attention has been focused on the delimitation of the crime with the correlated crimes. The controversial provisions of the criminal law characteristics of this crime’s formal components in the juridical literature are determined. On the basis of a systematic interpretation of the legislation, it was proposed perfection of the provisions of Ukrainian criminal legislation.

### **REFERENCES**

1. Про внесення змін до Кримінального та Кримінального процесуального кодексів України з метою реалізації положень Конвенції Ради Європи про запобігання насильству стосовно жінок і домашньому насильству та боротьбу з цими явищами: Закон України 6 грудня 2017 року № 2227-VIII URL: [zakon.rada.gov.ua/laws/show/2227-19#n57](http://zakon.rada.gov.ua/laws/show/2227-19#n57)

2. Дудоров О.О., Хавронюк М.І. Відповідальність за домашнє насильство і насильство за ознакою статі (науково-практичний коментар новел Кримінального кодексу України) / за ред. М. І. Хавронюка. К.: Ваіте, 2019. 288 с.

3. Висновок Головного науково-експертного управління на проект Закону України «Про внесення змін до деяких законів України у зв’язку з ратифікацією Конвенції Ради Європи про

запобігання насильству стосовно жінок і домашньому насильству та боротьбу з цими явищами» від 14.11.2016 р. № 4952. URL:[http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=59648](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=59648)

4. Зауваження до проекту Закону України «Про внесення змін до Кримінального та Кримінального процесуального кодексів України з метою реалізації положень Конвенції Ради Європи про запобігання насильству стосовно жінок і домашньому насильству та боротьбу з цими явищами» (реєстр. № 4952) URL: [w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=59648](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=59648)

5. Андрушко А. Щодо доцільності криміналізації примушування до шлюбу. *Jurnalul juridic national: teorie și practică*. 2018. № 6 (34). С. 170–173.

6. Литвинов О.М., Данильченко Ю.Б. Пропозиції та зауваження до проекту Закону України «Про внесення змін до деяких законів України у зв'язку з ратифікацією Конвенції Ради Європи про запобігання насильству стосовно жінок і домашньому насильству та боротьбу з цими явищами (реєстр. №4952 від 12.07.2016 р.)». Законодавче забезпечення правоохоронної діяльності: навчальний посібник / За заг. ред. д-ра юрид. наук, доц. В.В. Сокурєнка. Х.: Стильна топографія, 2017. С. 892-896.

7. Васильєв А.А., Юртаєва К.В. Реалізація положень Стамбульської конвенції в законодавстві України про кримінальну відповідальність: системно -правовий аналіз внесених змін і доповнень. *Порівняльно-аналітичне право*. 2019. С. 283 С. 279-284.

8. Про запобігання насильству стосовно жінок і домашньому насильству та боротьбу з цими явищами: Конвенція Ради Європи Конвенція Ради Європи та Пояснювальна доповідь Стамбул (Туреччина) 11.05.2011 р. URL: [rm.coe.int/1680093d9e](http://rm.coe.int/1680093d9e).

9. Щодо визнання шлюбу недійсним URL: [zakon.rada.gov.ua/rada/show/na005697-98](http://zakon.rada.gov.ua/rada/show/na005697-98)

10. Петрожець О.В. Визнання шлюбу недійсним: підстави, порядок та правові наслідки). URL: [www.desn.gov.ua/index.php?option=com\\_content&view=article&id=7032%3A2014-02-06-10-19-08&catid=353%3A2012-03-22-14-34-14&Itemid=3172&lang=ua](http://www.desn.gov.ua/index.php?option=com_content&view=article&id=7032%3A2014-02-06-10-19-08&catid=353%3A2012-03-22-14-34-14&Itemid=3172&lang=ua)

11. Щадило О.І. Філософсько-правове розуміння свободи людини URL: [ena.lp.edu.ua:8080/bitstream/ntb/34772/1/71\\_454-459.pdf](http://ena.lp.edu.ua:8080/bitstream/ntb/34772/1/71_454-459.pdf)

12. Конституція України. Науково-практичний коментар. Петришин О. В., Погорілко В. Ф., Притика Д. М., Рабінович П. М., Савенко М. Д. та ін. К. : Видавничий Дім «Ін Юре», 2003. 70 с.
13. Баженов И. Шантажъ как уголовное преступление. Москва: Из. «Юридического вестника», 1878. 30 с.
14. Гуня І.І. Види насильства в Кримінальному праві. *Форум права*. 2014. № 2. С. 99-103.
15. Войнаровська О. Фактичні шлюбні відносини як одна із форм співжиття жінки та чоловіка. *Юридична Україна*. 2015. № 3. С. 44-54.
16. Про ліквідацію всіх форм дискримінації щодо жінок: Конвенція Організації Об'єднаних Націй. URL: [zakon.rada.gov.ua/laws/show/995\\_207](http://zakon.rada.gov.ua/laws/show/995_207)
17. Сімейний кодекс України від 10.01.2002 р. URL: [zakon.rada.gov.ua/laws/show/2947-14](http://zakon.rada.gov.ua/laws/show/2947-14).
18. Великий тлумачний словник сучасної української мови. Київ – Ірпінь : ВТФ «Перун», 2005. 1728 с.
19. Про скасування рабства, работоргівлі та інститутів і звичаїв, подібних з рабством: Додаткова Конвенція від 07.09.1956. URL: [https://zakon.rada.gov.ua/laws/show/995\\_160](https://zakon.rada.gov.ua/laws/show/995_160).

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