



## INSIGHT

### THE RUSSIAN WAR AGAINST UKRAINE AND THE LAW OF THE EUROPEAN UNION

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#### BATTLES ON DIFFERENT FRONTS: THE ROLE OF THE EU IN STRENGTHENING THE RESPONSE OF UKRAINE TO GENDER-BASED VIOLENCE, INCLUDING CONFLICT-RELATED SEXUAL VIOLENCE, SINCE RUSSIA'S INVASION

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**ABSTRACT:** The *Insight* investigates the role of the EU in promoting gender equality and freedom from gender-based violence in Ukraine in the context of Russia's war against Ukraine. By drawing on concrete examples of developments which took place at legal, justice-related and values-based dimensions through the framework of discursive institutionalism, the Author identifies a significant shift in the EU's role since the Russian invasion of Ukraine in February 2022. Concretely, the shift from a supportive presence in the initial stages of war in 2014 to the EU more actively exercising its normative power.

**KEYWORDS:** European Union – Ukraine – gender-based violence – war – discursive institutionalism – normative power.

#### I. INTRODUCTION

The war in Ukraine takes place not only on the physical front line. The ongoing war is crucially also a war of norms, values, social orders and social attitudes. Concretely, Russian neo-traditionalist discourse with its focus on hegemonic masculinity, patriarchal ideals and

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the silencing and subordination of women finds itself competing with European standards of democracy, gender equality and the rule of law.<sup>1</sup> Unlike other armed conflicts, which are implicitly gendered to a different degree, in this war, gendered narratives are a driving force. Russia explicitly considers the protection of so called “traditional values” justification for its aggression.<sup>2</sup> While Russian gendered discourse positions itself vis-à-vis Europe (and the West), Russian logic has seen Ukraine become part of this greater European/Western whole due to Ukraine’s European aspirations and the acceptance of corresponding European values, including distinct gender equality standards.<sup>3</sup>

So, if the ideological dimension of the war is so closely connected to the core European values of gender equality and the greater European aspirations of Ukraine, it seems reasonable to ask what the EU has done so far? What is the EU’s role in promoting gender equality and combatting gender-based violence (GBV) in Ukraine? And, how beneficial is the support of Ukraine for the EU itself?

The respective questions will be addressed from the perspective of the discursive institutionalism framework. This approach is useful for exploring not only the content of ideas, e.g. gender equality, but also the interactive processes by which these ideas are conveyed.<sup>4</sup> When it comes to the policy sphere, there are two basic forms of discourse: coordinative discourse, which takes place among policy actors, and communicative discourse, which is a way to communicate the outcomes of coordinative discourse to the public.<sup>5</sup> The suggested *Insight* reflects the observations of the Author, who has been working in the field of women’s rights in Ukraine as a legal practitioner for the last five years both as a national NGO expert and participant of inter-agency groups and coalitions on the issues related to gender-equality policy. There will thus be an attempt to touch upon both coordinative and communicative aspects of this discourse. Due to confines of the *Insight*, a limited time period from the Revolution of Dignity in Ukraine in 2013 up until 2023 is analysed. Looking through the categorical lens, the Author identifies three dimensions in which the presence of the EU in the field of gender equality and combatting GBV in Ukraine is most noticeable: legal, justice-related and values-based.

<sup>1</sup> S D Phillips and T Martsenyuk, ‘Women’s Agency and Resistance in Russia’s War on Ukraine: From Victim of the War to Prominent Force’ (2023) *Women’s Studies International Forum* 1.

<sup>2</sup> In more detail how gender turned into central battlefield of the current war, see P Kratochvil and M O’Sullivan, ‘A War Like no Other: Russia’s Invasion of Ukraine as a War on Gender Order’ (2023) 350; SD Phillips and T Martsenyuk, ‘Women’s Agency and Resistance in Russia’s War on Ukraine: From Victim of the War to Prominent Force’ cit.

<sup>3</sup> The active development of “emancipatory gender norms” in Ukraine can be traced to the Revolution of Dignity and the Europeanisation via Association Agreement with the EU, see P Kratochvil and M O’Sullivan, ‘A War Like no Other: Russia’s Invasion of Ukraine as a War on Gender Order’ cit. 355-356.

<sup>4</sup> V A Schmidt, ‘Discursive Institutionalism: The Explanatory Power of Ideas and Discourse’ (2008) *Annual Review of Political Science* 305.

<sup>5</sup> *Ibid.* 309.

The Author considers both GBV and conflict-related sexual violence (CRSV) as sub-themes of her analysis. Even though these types of violence are often treated distinctively, in a context of persistent war, which has taken place in Ukraine since early 2014, these notions often overlap as social phenomena and as a focus point of the national gender equality policy. The measures of prevention, combatting and supporting survivors and witnesses of both types of violence coincide as well. Thus, addressing one without mentioning the other type would render an incomplete picture.

## II. EU'S STANCE ON GENDER EQUALITY AND THE OPERATIONALIZATION OF ITS SUPPORTIVE ROLE IN UKRAINE

Gender equality is one of the EU's core values.<sup>6</sup> As a result, it can be considered a constitutive element of a broader European identity and can be promoted through the invocation of its normative power.<sup>7</sup> However, until recently, the EU has been extensively criticized for lacking a comprehensive understanding of the principle as well as giving it a secondary importance within its internal and external policies. This includes the following policies: "Women, Peace and Security",<sup>8</sup> transitional justice<sup>9</sup> and the European Neighbourhood Policy.<sup>10</sup> When it comes to "Women, Peace and Security", the main critique concerns protectionist views on the role of women in armed conflicts and an overrepresentation of them as victims.<sup>11</sup> The EU's transitional justice policy is not considered truly gender sensitive either. Instead of foreseeing a transformative approach to structural causes of armed conflicts and gender inequality it simply adds "gender issues" to the existing state of affairs and seeks to prepare more women to fill governance and peacebuilding functions.<sup>12</sup>

While invoking its normative power in relation to the principle of gender equality within the European Neighbourhood Policy, in order not to be implicated in postcolonial development practices, the EU preferred "joint ownership" to "imposing conditions on partners", which resulted in an almost complete avoidance of the gender equality issue in said policy area.<sup>13</sup> Ukraine felt the impact of this approach following the Orange

<sup>6</sup> Art. 2 TEU.

<sup>7</sup> I Manners, 'Normative Power Europe: A Contradiction in Terms?' (2002) JComMarSt 238.

<sup>8</sup> G Yavas, 'The European Union's Approach to "Women, Peace and Security": Discourses, Representations and Constructions' (2020) Marmara University Journal of Political Science e87.

<sup>9</sup> MM de Almagro, 'Mainstreaming Gender in European Union Transitional Justice Policy: Towards a Transformative Approach?' in M Scheuermann and A Zürn (eds), *Gender Roles in Peace and Security: Prevent, Protect, Participate* (Springer 2020) 150.

<sup>10</sup> M David and R Guerrina, 'Gender and European external relations: Dominant discourses and unintended consequences of gender mainstreaming' (2013) Women's Studies International Forum 59-60.

<sup>11</sup> G Yavas, 'The European Union's Approach to "Women, Peace and Security": Discourses, Representations and Constructions' cit. e87.

<sup>12</sup> MM de Almagro, 'Mainstreaming Gender in European Union Transitional Justice Policy: Towards a Transformative Approach?' cit. 150, 154.

<sup>13</sup> *Ibid.* 58-60.

Revolution in 2005,<sup>14</sup> as well as after the Revolution of Dignity. Notably, the EU-Ukraine Association Agreement, drafted in 2011-2012 and signed in early 2014, only mentions gender equality in the context of employment, without any reference to this principle in other areas and without stressing the need to combat GBV.<sup>15</sup>

At the time of signing of the Association Agreement, the situation concerning GBV in Ukraine was complicated. GBV was not criminalized, the legislation on family violence was outdated and had not changed significantly since 2001 and the comprehensive system of remedies, protective orders or support services for survivors did not exist. With the ongoing conflict in Eastern Ukraine, related social disturbances and mass displacement of the population within the country by 2016, the numbers of officially registered domestic violence cases increased by 10 per cent each year.<sup>16</sup> Notwithstanding the auspicious political climate and readiness for reforms in the field, Ukraine urgently needed resources and capacities to handle this problem.

It was about that time that the EU's discourse on its support for gender equality in Ukraine, at least on the ground, became more proactive. Back in mid-2014, at the request of Ukrainian authorities, the EU Council established the European Union Advisory Mission for Civilian Security Sector Reform Ukraine (EUAM Ukraine).<sup>17</sup> Initially, its main task was to provide advice and practical support for the reform of the civilian security sector to re-establish trust between law enforcement and civilians in the aftermath of the Revolution of Dignity.<sup>18</sup> Since 2015-2016, the mission started to provide strategic advice to Ukrainian authorities on preventing and combatting GBV, organizing trainings for Ukrainian law enforcement, as well as funding relevant projects implemented by national civil society organizations.<sup>19</sup> These activities soon contributed to the adoption by the Ukrainian parliament of the Law "On prevention and combatting domestic violence" in late 2017.<sup>20</sup>

With the full-scale Russian invasion in February 2022 the EU's role in promoting gender equality transformed from a merely supportive presence on the ground to a more top-down and normative one. At the operational level, the mandate of the EUAM Ukraine was officially amended to accommodate the new needs of the country.<sup>21</sup> As a result, it currently

<sup>14</sup> *Ibid.* 59.

<sup>15</sup> Association Agreement of 29 May 2014 between the European Union and the European Atomic Energy Community and their Member States, on the one part, and Ukraine, on the other part, arts 419 and 420(1)(l).

<sup>16</sup> The Advocates for Human Rights, 'Ukraine: Domestic Violence', *Joint Stakeholder Report for the United Nations Universal Periodic Review* [www.theadvocatesforhumanrights.org](http://www.theadvocatesforhumanrights.org) 2.

<sup>17</sup> EUAM Ukraine, *About us* [www.euam-ukraine.eu](http://www.euam-ukraine.eu).

<sup>18</sup> Council Decision 2014/486/CFSP of 22 July 2014 on the European Union Advisory Mission for Civilian Security Sector Reform Ukraine (EUAM Ukraine) art. 2.

<sup>19</sup> EUAM Ukraine, *Progress in Reform* [www.euam-ukraine.eu](http://www.euam-ukraine.eu).

<sup>20</sup> Verkhovna Rada of Ukraine, *Law of Ukraine "On preventing and combatting domestic violence"*, N 2229-VIII (07 December 2017) [zakon.rada.gov.ua](http://zakon.rada.gov.ua).

<sup>21</sup> Council Decision (CFSP) 2022/638 of 13 April 2022 amending Decision 2014/486/CFSP on the European Union Advisory Mission for Civilian Security Sector Reform Ukraine (EUAM Ukraine).

also includes the provision of support to Ukrainian authorities in investigation and prosecution of international crimes committed in the context of the war, including gender-based war crimes. When the Military Assistance Mission in support of Ukraine (EUMAM Ukraine) was set up in October 2022 with the aim of enhancing the military capability of Ukraine's Armed Forces, the task of the protection of civilians against GBV as well as the promotion of the "Women, Peace and Security" agenda was directly incorporated into its mandate.<sup>22</sup>

### III. THE EU'S MULTIFACETED ENGAGEMENT

Before the Russian full-scale invasion of February 2022, the EU's discourse on gender equality in Ukraine took place predominantly at the communicative level with the EU's support being provided through legal expertise, states authorities capacity building, humanitarian assistance and the empowering of civil society and women's rights organizations. Since the invasion, the role of the EU as a normative actor has increased, with discourse taking place more actively at the coordinative level. The focus shifted to ensuring development, negotiation and adoption of the new programs, policies and legislation, both by Ukraine and the EU. Next, follows an analysis of the respective changes along the aforementioned three dimensions: legal, justice-related and values-based.

#### III.1. LEGAL DIMENSION

The changes taking place within this dimension are crucial since formally adopted legal norms and standards provide uniformity in the understandings of state authorities and other actors as well as allowing for the public recognition of the importance of certain gender values and the legitimacy of subsequent reform processes. Even though Ukraine has been committed to gender equality and countering GBV since its independence in 1991,<sup>23</sup> it was not until 2017 when the comprehensive system of legislation on domestic violence was adopted.<sup>24</sup> This included the Law on domestic violence,<sup>25</sup> and amendments<sup>26</sup> to the Criminal and Criminal Procedure Codes of Ukraine in line with provisions of the Council of Europe Convention on preventing and combatting violence against women and domestic violence (Istanbul Convention), which introduced new legal notions

<sup>22</sup> Council Decision (CFSP) 2022/1968 of 17 October 2022 on a European Union Military Assistance Mission in support of Ukraine (EUMAM Ukraine) art. 1(4).

<sup>23</sup> SD Phillips and T Martsenyuk, 'Women's Agency and Resistance in Russia's War on Ukraine: From Victim of the War to Prominent Force' cit. 2.

<sup>24</sup> For a detailed account of the adopted legislation, see DCAF, La Strada-Ukraine, *Monitoring of the Situation of the Justice System's Response to Domestic Violence and Violence against Women* www.dcaf.ch.

<sup>25</sup> Verkhovna Rada of Ukraine, *Law of Ukraine "On preventing and combatting domestic violence"* cit.

<sup>26</sup> Verkhovna Rada of Ukraine, *Law of Ukraine "On changes to the Criminal and Criminal Procedure Codes of Ukraine with the aim of realization of provisions of the Council of Europe Convention on preventing and combatting violence against women and domestic violence"*, N 2227-VIII (06 December 2017) zakon.rada.gov.ua.

of “rape”, “sexual violence”, “domestic violence” and some other types of GBV.<sup>27</sup> The authorities responsible for registering cases and providing support to survivors were determined and specialized services were launched. The EU actively supported these legal developments through the EUAM Ukraine with its legal expertise in the process of drafting and subsequent implementation. This included trainings and the funding of respective national NGO initiatives.

Since the full-scale Russian invasion in February 2022, one of the most notable achievements at the legal level was the ratification by Ukraine of the Istanbul Convention. Despite Ukraine having signed the Convention back in 2011, its ratification had been deferred indefinitely. Notwithstanding the continuing efforts of national women’s and human rights NGOs and appeals of international actors, the opposition to ratification, mainly from radical anti-gender movements and conservative religious actors, was too strong.<sup>28</sup> The situation took an unexpected turn in mid-June 2022, this time with more explicit political support from the EU. In less than a week, the President of Ukraine submitted the draft law on ratification to Verkhovna Rada of Ukraine, the parliament gathered the necessary majority, and the law was passed. Just three days before the ratification, on 17 June 2022, the European Commission issued an opinion on the compliance of Ukraine with EU membership criteria.<sup>29</sup> The Commission expressed the view that non-ratification of the Istanbul Convention was one of the major concerns in the field of human rights for the country.<sup>30</sup> The state rushed to fix this problem. This quickly yielded results as three days after the ratification, on 23 June 2022, the European Council decided to grant the status of a candidate country to Ukraine.<sup>31</sup> Notwithstanding the openly political considerations of the Ukrainian government behind this process, the incorporation of the norms and standards underlying the Convention into national legislation was already significantly advanced and broader society had been prepared for its introduction. Thus, the legitimacy of the ratification was not contested. Currently the state is in the process of developing the legislation to further implement the provisions of the Convention. At the same time, there are concerns about the possibility of the incorporation of gender sensitive terminology from the Convention, since it is still a point of opposition, including among some conservative circles in Verkhovna Rada.

<sup>27</sup> Although almost all types of gender-based violence listed in the Istanbul Convention were incorporated into the Criminal Code of Ukraine, sexual harassment and stalking were not.

<sup>28</sup> For more information on the position of the religious actors with respect to the Istanbul Convention, see Center for East European and International Studies, *Report ‘Orthodoxy, gender, and the Istanbul Convention: Mapping the Discourse in Ukraine’* [www.zois-berlin.de](http://www.zois-berlin.de).

<sup>29</sup> Communication COM(2022) 407 final from the Commission to the European Parliament, the European Council and the Council of 17 June 2022, Opinion on Ukraine’s application for membership of the European Union.

<sup>30</sup> *Ibid.*

<sup>31</sup> European Council Conclusions of 24 June 2022, para. 11.

In addition to utilizing negotiation tools, the EU continues to develop its own standards. In recent years the EU's legal framework on equality between women and men has been expanded substantially to include the prevention and combatting of GBV in addition to labour-related standards.<sup>32</sup> In parallel with accession to the Istanbul Convention in June 2023,<sup>33</sup> the EU strives to go beyond the standards set in the Convention. For example, in March 2022 the European Commission adopted a proposal for the EU Directive on combating violence against women and domestic violence.<sup>34</sup> This document expands the list of offences which may be qualified as GBV envisaged in the Istanbul Convention to include "cyber violence" offences. It also suggests some provisions on survivors' protection, which are not covered by the Convention either. For Ukraine, as an aspiring EU member, any normative development at the EU level also means the subsequent incorporation of the respective standards into the national legal system.

In terms of further national legislative reforms, currently the EU supports the reforms of Ukrainian legislation in the fields of criminal justice, survivors' rights and survivor-centred approaches, effective investigation and reparations to survivors of international crimes, including survivors of gender-related crimes and conflict-related sexual violence, and legislation implementing the Istanbul Convention. Many of these initiatives are in the final stages and being prepared for the adoption by the parliament of Ukraine. We can expect to see the impact of these developments in the coming years.

### III.2. JUSTICE-RELATED DIMENSION

The response of the international community in pursuing justice for international crimes, including gender-related crimes, committed during the war in Ukraine is unprecedented. The EU has taken one of the leading roles in framing, promoting and facilitating these processes. This section focuses mostly on CRSV as an area where the most significant justice-related transformations currently take place, since both coordinative and communicative discourses were virtually absent on the issue before 2022.

During the first months of the invasion, the EU began identifying and addressing deficiencies in the existing system of international criminal justice with respect to sexual and gender-based crimes. In its resolution of 5 May 2022 on the impact of the war against Ukraine on women, the European Parliament mentioned "the low track record in delivering justice at the ICC for victims of sexual violence" with many "cases of convictions in that

<sup>32</sup> Opinion 1/19. *Istanbul Convention* ECLI:EU:C:2021:832 para. 291; Fact Sheets on the European Union, *Equality between men and women* [www.europarl.europa.eu](http://www.europarl.europa.eu).

<sup>33</sup> Council of Europe, *The European Union deposited the instrument of approval of the "Istanbul Convention"* [www.coe.int](http://www.coe.int).

<sup>34</sup> Commission Proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence, COM/2022/105 final, 08 March 2022.

area that have been overturned".<sup>35</sup> In its subsequent resolution of 19 May 2022 on the fight against impunity for war crimes in Ukraine, the European Parliament expressed regret for "the limited progress on the effective prosecution of sexual and gender-based crimes within the ICC" and also stated that "the cases of the victims of the illegal invasion of Ukraine could set a precedent in this respect".<sup>36</sup>

Going beyond the mere declarations, the EU took some practical steps to address the identified deficiencies. In particular, in March 2022 the Joint Investigation Team (JIT) into alleged core international crimes committed in Ukraine was set up, supported by the European Union Agency for Criminal Justice Cooperation (Eurojust).<sup>37</sup> As of December 2023, Ukraine and six EU Member States (Lithuania, Poland, Estonia, Latvia, Slovakia and Romania) as well as the Office of the Prosecutor of the International Criminal Court (OTP), participate in the JIT.<sup>38</sup> For Eurojust, supporting the set-up of JIT is nothing new, with this practice being around since 2018.<sup>39</sup> What is new, however, is a first-ever participation of the OTP in a JIT, and in particular a JIT coordinated by Eurojust.<sup>40</sup>

The mentioned fact may be regarded as a source of opportunities for the ICC to take the cooperation arrangements with the States Parties to the Rome Statute to a new level. Such cooperation is a necessary precondition to implement the policy of positive, or proactive, complementarity.<sup>41</sup> Due to cooperative format of the work of a JIT, with all participants being equal parties, the OTP may become more willing to grant its assistance to the states concerned. Such a form of the ICC's interaction with the states, *i.e.* "reverse cooperation",<sup>42</sup> was not very commonly used in the past. If implemented right, the positive complementarity and reverse cooperation exercised by the ICC and facilitated by support of the Eurojust, will relieve the ICC's caseload and improve the quality of the national prosecutions undertaken by the Members States of the JIT.<sup>43</sup>

<sup>35</sup> Resolution 2022/2633(RSP) of the European Parliament of 5 May 2022 on the impact of the war against Ukraine on women, para. P.

<sup>36</sup> Resolution 2022/2655(RSP) of the European Parliament of 19 May 2022 on the fight against impunity for war crimes in Ukraine, para. 3.

<sup>37</sup> Eurojust, *Eurojust supports joint investigation team into alleged core international crimes in Ukraine* [www.eurojust.europa.eu](http://www.eurojust.europa.eu).

<sup>38</sup> Eurojust, *Joint investigation team into alleged core international crimes committed in Ukraine – Milestones* [www.eurojust.europa.eu](http://www.eurojust.europa.eu).

<sup>39</sup> Y Tan and S Yang, 'The Joint Investigation Team in Ukraine: An Opportunity for the International Criminal Court?' (2023) *Chinese Journal of International Law* 105-106.

<sup>40</sup> Eurojust, *ICC participates in joint investigation team supported by Eurojust on alleged core international crimes in Ukraine* (25 April 2022) [www.eurojust.europa.eu](http://www.eurojust.europa.eu).

<sup>41</sup> Y Tan and S Yang, 'The Joint Investigation Team in Ukraine: An Opportunity for the International Criminal Court?' cit. 111-112; The Office of the Prosecutor of the International Criminal Court, *Prosecutorial Strategy 2009-2012* (1 February 2010) [www.icc-cpi.int](http://www.icc-cpi.int) paras. 16-17.

<sup>42</sup> Y Tan and S Yang, 'The Joint Investigation Team in Ukraine: An Opportunity for the International Criminal Court?' cit. 114.

<sup>43</sup> *Ibid.* 115.



Another practical step of the EU in terms of enhancing the potential of the international and national criminal justice systems to address international crimes, and gender-related war crimes committed in Ukraine has been the introduction of a new system of storing, analysing and exchanging evidence of crimes. In May 2022, the European Parliament amended the Eurojust mandate.<sup>44</sup> As a result, this EU agency is now a coordinator of a newly created Core International Crimes Evidence Database (CICED).<sup>45</sup> This database will help to collect and systematize the evidence of international crimes, which had previously been scattered between different jurisdictions, national and international actors, often duplicated or inaccessible for different reasons. The clear mechanisms of access and exchange of such evidence will undoubtedly increase the efficiency of any investigations, national or international. When it comes to the prosecution of CRSV, employing a centralized database might be relevant for decreasing the overdocumentation, re-traumatization of survivors and witnesses, as well as increasing the visibility of this category of crimes among other international crimes. As the CIDECE was launched with the international crimes committed in the war against Ukraine in mind, it will be the first country, which will benefit from its operation. If the efficiency of this database is as expected, it will introduce a revolutionary change in the current approaches to the collection and use of evidence by national and international investigatory and judicial bodies.

Among the justice-related efforts of the EU, the Global Human Rights Sanctions regime should be mentioned. It was established by the EU in 2020 as a tool to address international crimes and serious human rights violations worldwide. In March of 2023, several high-ranking members of the Russian armed forces, whose units were implicated in the commission of CRSV in Ukraine in March and April 2022, alongside individual offenders committing gender-based crimes in three other states, were subjected to an asset freeze and travel ban within the EU.<sup>46</sup>

When it comes to the national level, the Office of the Prosecutor General (OPG) is the forerunner of the national authorities' response to CRSV. Among the most significant developments in 2022-2023 have been the establishment of the specialized CRSV unit and Coordination center of support for victims and witnesses within the OPG, the adoption of the Victim and witness-oriented strategy for the prosecution of CRSV crimes,<sup>47</sup> the engagement of the expertise of an Advisory Group and Mobile Justice Teams for

<sup>44</sup> Regulation (EU) 2022/838 of the European Parliament and of the Council of 30 May 2022 amending Regulation (EU) 2018/1727 as regards the preservation, analysis and storage at Eurojust of evidence relating to genocide, crimes against humanity, war crimes and related criminal offences.

<sup>45</sup> Eurojust, *Core International Crimes Evidence Database* [www.eurojust.europa.eu](http://www.eurojust.europa.eu).

<sup>46</sup> Council of the European Union, *Violence against women and girls: EU sanctions nine individuals and three entities under its Global Human Rights Sanctions Regime* [www.consilium.europa.eu](http://www.consilium.europa.eu).

<sup>47</sup> PILPG, *ASP21 Side Event: A Sustainable Model for Responding to Conflict-Related Sexual Violence in Ukraine* [www.publicinternationallawandpolicygroup.org](http://www.publicinternationallawandpolicygroup.org); EUAM Ukraine, *Focus on the Victims' Rights* [www.euam-ukraine.eu](http://www.euam-ukraine.eu).

investigation and prosecution of international crimes, including CRSV,<sup>48</sup> and trainings on CRSV witness protection and survivors support organized by the ICC.<sup>49</sup> All these changes were implemented with active support by the EU.

### III.3. VALUES-BASED DIMENSION

As was already shown, up until the full-scale Russian invasion of Ukraine in February 2022, and even more so – in early 2014, the EU did not fully exploit its potential as a normative actor.<sup>50</sup> One of the reasons might be that at the time Russia was not perceived as a credible threat, and thus the reinforcement of the EU's identity in such a way was not considered an issue.<sup>51</sup>

In the meantime, in Russia a chain of political and social transformations undermining gender equality took place. All the while it has cemented its own identity as an “anti-Western” power. National masculinity, militarized patriotism, sexism and homophobic discourse became strategies legitimizing Putin's regime.<sup>52</sup> The Russian Orthodox Church, allied with the state, further propagated sexist and homophobic views, as well as so called “traditional values”.<sup>53</sup> Degrading policy towards GBV is an expected component of this trend. Since 2012, the NGOs supporting survivors of domestic violence and defending women's rights were declared “foreign agents”. In 2017 domestic violence was decriminalized and the access to justice for survivors became virtually impossible.<sup>54</sup> In the case *Volodina v Russia*, the ECtHR, by concluding its assessment of the violation of art. 14 of the Convention, clearly summarized the state of affairs: “by tolerating for many years a climate which was conducive to domestic violence, the Russian authorities failed to create conditions for substantive gender equality that would enable women to live free from fear of ill-treatment or attacks on their physical integrity and to benefit from the equal protection of the law”.<sup>55</sup>

After the Russian invasion of 2022, the EU started to engage more actively in coordinative discourse with Ukrainian authorities, while prioritizing the gender-related values for Ukraine's association and subsequent membership status in the EU. As was already mentioned, the EU-Ukraine association agreement, signed in early 2014, despite

<sup>48</sup> EU External Action, *Questions and Answers: Atrocity Crimes Advisory Group (ACA) for Ukraine* [www.eeas.europa.eu](http://www.eeas.europa.eu).

<sup>49</sup> International Criminal Court, *Conflict-Related Sexual Violence in Ukraine: ICC Holds Training on Victim and Witness Support* [www.icc-cpi.int](http://www.icc-cpi.int).

<sup>50</sup> M David and R Guerrina, ‘Gender and European external relations: Dominant discourses and unintended consequences of gender mainstreaming’ cit. 60.

<sup>51</sup> *Ibid.* 61.

<sup>52</sup> V Sperling, *Sex, Politics, and Putin: Political Legitimacy in Russia* (Oxford University Press 2014) 32-33, 48, 64.

<sup>53</sup> V Sperling, *Sex, Politics, and Putin: Political Legitimacy in Russia* cit. 71-72.

<sup>54</sup> O Usanova, ‘Russia's “Traditional Values” and Domestic Violence’ (June 2020) Wilson Center [www.wilsoncenter.org](http://www.wilsoncenter.org).

<sup>55</sup> ECtHR *Volodina v Russia* App n. 41261/17 [9 July 2019] para. 132.

containing some provisions on gender equality, referred to it only in the context of labour-related equality and freedom from discrimination.<sup>56</sup> The central undertaking of Ukraine in terms of international commitments as a democratic state was to ratify the Rome Statute of the ICC. This provision was set in the very beginning of the Association agreement, highlighting its importance.<sup>57</sup>

Eight years later, in its Opinion on Ukraine's application for EU membership, the European Commission prioritized the ratification of the Istanbul Convention by Ukraine by placing this requirement in the very first paragraph of the criterion "Fundamental rights".<sup>58</sup> At the same time, a brief reference to Ukraine's commitment to ratify the Rome statute is mentioned in the very last sentence before the section with conclusions.<sup>59</sup>

The EU continues to be active in communicative discourse with Ukrainian society. In particular, in the form of the implementation of different initiatives, including the funding of the national NGOs. Such initiatives include advocacy and informational campaigns, awareness raising, building capacities of law enforcement on investigating gender-based crimes, conducting trainings for social services and local administrations and funding the establishment of specialized services for survivors. A specific example is the EU-funded project "Resilient Together: Improving Response to War-Related Sexual Violence", which is currently realized by a group of Ukrainian NGOs.<sup>60</sup> Among other things, this project foresees the development of special trainings for judges on CRSV, building capacities of the local authorities to respond to CRSV and developing the legislation which will improve the assistance to survivors of these crimes, including providing them with interim reparations.

Overall, the importance of gender-related values as a core component of the ideological dimension of the ongoing war is well understood by Ukrainian authorities and society. With them, as a result, being quite receptive to the respective ideas, notwithstanding the conditions of the ongoing war. Some of the contributing factors might be an active engagement of Ukrainian women in the army and territorial defence, humanitarian and volunteering work, representation at key governmental roles, effective participation in international advocacy and civil society.<sup>61</sup> In such an auspicious context, there are currently many opportunities opened to the EU for diffusing its norms on gender equality and combatting GBV, while reinforcing resilience of the Ukrainian society to the devastating effects of the Russian war against Ukraine.

<sup>56</sup> Association Agreement of 29 May 2014 between the European Union and the European Atomic Energy Community and their Member States, on the one part, and Ukraine, on the other part, arts 419 and 420(1)(l).

<sup>57</sup> Association Agreement between the EU and Ukraine cit. art. 8

<sup>58</sup> Communication COM(2022) 407 final cit. 2.

<sup>59</sup> *Ibid.*

<sup>60</sup> Delegation of the European Union to Ukraine, *Regional kick-off meeting of the EU-funded project "Resilient together"* [www.eeas.europa.eu](http://www.eeas.europa.eu).

<sup>61</sup> P Kratochvil and M O'Sullivan, 'A War Like no Other: Russia's Invasion of Ukraine as a War on Gender Order' cit. 357-360.

#### IV. CONCLUSION

Until recently the EU had not been excessively involved in the promotion of gender equality in its external actions. Ukraine was not an exception. However, at some point, not least due to the negative repercussions of the Russian invasion of 2014, the EU has realized the importance of this “dormant value” in its relations with Ukraine. When the full-scale aggression of Russia started in February 2022 and CRSV was employed as a weapon of war,<sup>62</sup> it became clear that the attack on gender equality was one of the core components of the ideological dimension of the war. As far as the practical side is concerned, the EU’s promotion of gender equality and combatting GBV in Ukraine is necessary, since the Russian war against Ukraine is a threat to the security and wellbeing of the EU and its Member States. Moreover, the EU has the resources and capacities to provide support. The EU does this by contributing to international criminal justice prosecutions for war-related, including gender-based, crimes committed in Ukraine, by providing its expertise and funding for legal initiatives, and through institutional developments and support for civil society projects. On the ontological side, promoting gender equality through the engagement of the EU’s normative power contributes to strengthening the EU’s own identity as well as preparing Ukraine for an easier integration once it becomes an EU Member State.

<sup>62</sup> Resolution 2023/2558(RSP) of the European Parliament of 16 February 2023 on one year of Russia’s invasion and war of aggression against Ukraine, para. 13.