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MARITAL RAPE: COMPARATIVE ANALYSIS OF CRIMINAL LEGISLATION IN UKRAINE AND AUSTRALIA

ЗГВАЛТУВАННЯ У ШЛЮБІ: ПОРІВНЯЛЬНИЙ АНАЛІЗ КРИМІНАЛЬНОГО ЗАКОНОДАВСТВА УКРАЇНИ ТА АВСТРАЛІЇ

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In the article, the author highlights the importance of the comparative analysis of criminal liability for rape of a woman in marriage under the legislation of Ukraine and Australia. Ukraine and Australia are subjects of international legal relations and act within the framework of international standards. Therefore, geographical remoteness in the modern conditions of globalization not only does not reduce the relevance of this study, but also gives it special value due to the uniqueness of the experience of adapting various levels of international legal acts to the domestic legislation of countries – representatives of different legal families. As is known, the Ukrainian national legal system can be attributed to the civil law tradition, which is based on Roman law and is widespread in many European countries. Whereas the Australian domestic legal system is precedent and can be attributed to the common law system. The author notes that Australia is obliged to comply with a number of international treaties and conventions, in particular the UN Convention on the Elimination of All Forms of Discrimination against Women. Ukraine, in turn, signed and subsequently ratified the Council of Europe Convention on the Elimination of Domestic Violence. The comparison of different legal systems will allow to apply the most effective practices that can be adapted to improve the legal mechanisms for combating the problem of domestic sexual violence, and to suggest possible ways to improve the criminal legislation of Ukraine in this regard. The growing attention to gender issues and the protection of women's rights at the international and national levels makes this study especially important for further improvement of the Ukrainian criminal legislation. The main differences between Ukraine and Australia regarding criminal liability for sexual violence in the family are the level of development of legislation and the practical application of human rights mechanisms. Ukraine is still in the process of adaptation and implementation of new standards, while the legal system of Australia is more structured. At the federal level, Australia has the Family Law Act 1975, which contains provisions for the protection of victims of domestic violence, but does not criminalize offenses, in particular sexual violence. For this purpose, the criminal codes of the states are used. Criminal liability for domestic sexual violence is thus the responsibility of the states and territories, and the relevant articles vary from state to state.

Key words: criminal code, rape, crime, spouse, Istanbul Convention, comparative analyze, domestic violence, sexual violence.

У статті автор доводить актуальність дослідження кримінальної відповідальності за зґвалтування жінки у шлюбі за законодавством України та Австралії. Україна та Австралія є суб'єктами міжнародних правовідносин і діють у рамках міжнародних стандартів. Тому географічна віддаленість в сучасних умовах глобалізації не тільки не знижує актуальності даного дослідження, а й надає йому особливої цінності через унікальність досвіду адаптації різнорівневих міжнародно-правових актів до внутрішнього законодавства країн – представників різних правових сімей. Як відомо, українську національну правову систему можна віднести до континентальної яка базується на римському праві та поширена в багатьох країнах Європи. Тоді як внутрішня правова система Австралії є прецедентною і може бути віднесена до системи загального права. Автор зазначає, що Австралія зобов'язана дотримуватися низки міжнародних договорів і конвенцій, зокрема Конвенції ООН про ліквідацію всіх форм дискримінації щодо жінок. Україна, у свою чергу, підписала, а згодом ратифікувала Конвенцію Ради Європи про викорінення домашнього насильства. Порівняння різних правових систем дозволить застосувати найбільш ефективні практики, які можна адаптувати для вдосконалення правових механізмів протидії проблемі домашнього сексуального насильства, та запропонувати можливі шляхи удосконалення кримінального законодавства України в цьому відношенні. Зростання уваги до гендерних питань та захисту прав жінок на міжнародному та національному рівнях робить це дослідження особливо важливим для подальшого вдосконалення українського кримінального законодавства. Основні відмінності між Україною та Австралією щодо кримінальної відповідальності за сексуальне насильство в сім'ї полягають у рівні розвитку законодавства та практичному застосуванні правозахисних механізмів. Україна все ще перебуває в процесі адаптації та впровадження нових стандартів, тоді як правова система Австралії є більш структурованою. На федеральному рівні в Австралії діє Закон про сімейне право 1975 року, який містить положення щодо захисту жертв домашнього насильства, але не передбачає кримінальної відповідальності за злочини, зокрема сексуальне насильство. Для цього використовуються кримінальні кодекси держав. Таким чином, кримінальна відповідальність за сексуальне насильство в сім'ї є обов'язком штатів і територій, а відповідні статті відрізняються від штату до штату.

Ключові слова: кримінальний кодекс, зґвалтування, злочин, подружжя, Стамбульська конвенція, порівняльний аналіз, домашнє насильство, сексуальне насильство.

"A husband has his lawful rights,
Can take his wife when'er he likes
And courts uphold time after time
That rape in marriage is no crime
The choice is hers and hers alone
Submit or lose your kids and home
When love becomes a legal claim
Call it duty but rape's the name." [1]
"Man is the hunter; woman is his game:
The sleek and shining creatures of the chase,
We hunt them for the beauty of their skins;
They love us for it, and we ride them down.
…
Man for the field and woman for the hearth:
Man for the sword and for the needle she:
Man with the head and woman with the heart:
Man to command and woman to obey;
All else confusion".
– Alfred, Lord Tennyson, "The Princess" [2]

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Ukraine and Australia are subjects of international legal relations and act within the framework of international standards. Therefore, geographical remoteness in modern conditions of globalization not only does not reduce the relevance of this research, but also gives it special value due to the uniqueness of the experience of adaptation of various levels of international legal acts to the domestic legislation of countries – representatives of different legal families. As it is commonly acknowledged, the Ukrainian national legal system can be attributed to the civil law tradition that is based on Roman law and prevalent in many European countries. Whereas the Australian domestic legal system is precedential and can be classified as a common law system.

Given the fact that Australia is obliged to adhere to a number of international treaties and conventions, in particular the UN Convention on the Elimination of All Forms of Discrimination against Women [3], and Ukraine has signed and ratified the Council of Europe Convention "On the Prevention of Violence against Women and Domestic Violence" [4], a comparison of legal systems of these countries will allow the use of the most effective practices that can be adapted to improve legal mechanisms for combating the problem of sexual domestic violence. It will also help to suggest possible ways to improve the criminal law legislation of Ukraine in this area.

Rape is the mechanism for the social control of women. Rape is not about sex; rape is about power and violence. The rape of one woman is the rape of all women [5, p. 199]. Rape is a dangerous crime, rooted in sexism and often seen as an extreme assertion of masculinity, with rising attention due to the growth of women's rights groups. To many of these groups, the concept of rape, and the treatment of rape victims epitomises the way our society tends to relegate women to the position of chattels. Other organisations take a less extreme view, but nevertheless express concern at the extent to which the victim of rape becomes in practice the victim of the society which has professed to set its face against rape, and which in fact imposes very heavy penalties on those convicted of the crime.

The reform of the laws relating to rape, and the education of the community in its attitudes towards the crime, has become one of the main aims of many womens organisations and other concerned groups [6, p. 1–2]. The growing attention at the international and national levels to gender issues, the protection of women's rights, especially from sexual violence by an intimate partner, makes this study particularly important for the further improvement of Ukrainian criminal law legislation. Sexual violence is one of the most underreported forms of violence in Australia. In Australia Approximately 2 million adults have experienced at least one sexual assault since the age of 15 years. This includes 1.7 million women and 428,000 men [7]. The main problem arises from the confusion between consent and commitment in marriage. For example, historically, a woman was considered to have given her automatic and ongoing consent to have sex with her husband when she married.

Marriage is an institution which casts upon a husband an obligation to respect a wife’s personal integrity and dignity; it does not give the husband a power to violate her personal integrity and destroy her dignity. It would be impossible to preserve, much less to foster, the institution of marriage as an exclusive union of man and wife for life if it were otherwise [8].

The Criminal Code of Ukraine provides for criminal liability for sexual violence in articles 152 "Rape" and 153 "Sexual violence". It should be noted that the perpetrator of rape initially could only be a man. A woman could only be an accomplice of this crime (instigator or organizer).

Notably, these two articles contain gender-neutral concepts of the crimes. Since 2001, according to the criminal law of Ukraine, both a man and a woman can be the perpetrator of rape. However, despite the desire of the Ukrainian legislature to improve the criminal law on rape, the current legislative definition of the signs of rape raises a number of practical problems, among which are both the qualification of a factual error regarding the voluntary consent of the victim, and the very concept of consent. Thus, in fact, the Ukrainian legislature mechanically reproduced the definition of voluntary consent formulated in the Istanbul Convention, leaving the decision on the presence or absence of such consent to the discretion of the law enforcement officer [9].

Part 2 of Article 152 of the Criminal Code of Ukraine stipulates that "rape committed repeatedly or by a person who previously committed any of the criminal offenses provided for in Articles 153–155 of this Code, or the commission of such acts against a spouse or former spouse or another person , with whom the offender is (was) in a family or close relationship, or in relation to a person in connection with the performance of an official, professional or public duty by this person, or in relation to a woman who was known to the offender to be pregnant, – shall be punished by deprivation of liberty freedom for a period of five to ten years."

Similarly, Part 2 of Article 153 of the Criminal Code of Ukraine specifies that "sexual violence committed repeatedly or by a person who previously committed any of the criminal offenses provided for in Articles 152, 154, 155 of this Code, or committing such acts against a spouse or former spouse or another person with whom the offender is (was) in a family or close relationship, or in relation to a person in connection with the performance of an official, professional or public duty by this person, or in relation to a woman who was known to the offender to be pregnant, shall be punished by deprivation of liberty for a term of three to seven years."

On December 7, 2017, the Law of Ukraine "On Prevention and Combating Domestic Violence" was adopted. The Law "On Prevention and Combating Domestic Violence" covers domestic violence, including sexual, and defines it as intentional physical, sexual, psychological or economic violence in the family. " Separately, the Criminal Code of Ukraine contains a provision on responsibility for domestic violence. Thus, in accordance with Article 126-1 "Domestic violence", domestic violence is a deliberate systematic commission of physical, psychological or economic violence against a spouse or ex-spouse or another person with whom the perpetrator is (was) in a family or close relationship, which leads to physical or psychological suffering, health disorders, loss of working capacity, emotional dependence or deterioration of the quality of life of the victim. Committing domestic violence is punishable by community service for a period of one hundred and fifty to two hundred and forty hours, or probation supervision for a period of up to five years, or restriction of liberty for the same period, or deprivation of liberty for a period of up to two years.

According to the Law of Ukraine “On Prevention and Combating Domestic Violence”, domestic violence is an act (action or omission) of physical, sexual, psychological or economic violence committed within the family or within the limits of the place of residence or between relatives, or between a former or current spouses, or between other persons who live (lived) together as a family, but are not (were not) in a family relationship or married to each other, regardless of whether the person who committed domestic violence lives (lived), in the same place as the injured person, as well as threats to commit such acts [10].

Thus, the content of the concept of domestic violence according to this legal act suggests the concept of sexual violence was included by the Ukrainian legislator in the logical content of the concept of "domestic violence".

This concept corresponds to the understanding of domestic violence according to the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention). Paragraph b of Article 3 of the Istanbul Convention stipulates that domestic violence means all acts of physical, sexual, psychological or economic violence that occur within a single family or within a place of residence or between former or current partnerships or partners, regardless of whether, whether the offender lives in the same place as the victim or not or does not depend on whether the offender

lived in the same place as the victim or not [11]. Moreover, paragraph 194 of the Explanatory Report to the Istanbul Convention emphasizes the extreme importance of ensuring that no exceptions are made in the criminalization and prosecution of acts such as sexual violence and rape committed against former or current former partners or spouses. According to Art. 43 of the Istanbul Convention, responsibility for the offenses stipulated by it should arise regardless of the nature of the relationship between the victim and the offender.

If Australia already changed the conceptual understanding of marital rape in 1993, including the understanding of consent, Ukraine signed the Council of Europe Convention on the Prevention of Violence against Women and Domestic Violence and Combating These Phenomena (Istanbul Convention) only on May 11, 2011 Ukraine [11]. After that, on January 1, 2019, the Law of Ukraine "On Amendments to the Criminal and Criminal Procedure Code of Ukraine came into force 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." And despite the fact that the process of ratifying the Istanbul Convention took a long time, on June 20, 2022, the Verkhovna Rada of Ukraine ratified the Istanbul Convention, which became an important step in protecting women's rights and preventing violence at the national level. According to the disposition of Art. 126-1 of the Criminal Code of Ukraine: domestic violence – intentional systematic perpetration of physical, psychological or economic violence against a spouse or former spouse or another person with whom the perpetrator is (was) in a family or close relationship, which leads to physical or psychological suffering, health disorders, loss of working capacity, emotional dependence or deterioration of the victim's quality of life.

The legislation of Ukraine in the field of combating domestic violence enshrines four forms of such violence: physical, sexual, psychological and economic.

Summarizing the existing norms on sexual violence in accordance with the Criminal Code of Ukraine, there are four distinct offences: rape (Article 152 of the Criminal Code), sexual violence (Article 153 of the Criminal Code), coercion into sexual intercourse (Article 154 of the Criminal Code); committing acts of a sexual nature with a person who has not reached the age of sixteen (Article 155), depraving minors (Article 156), molesting a child for sexual purposes (Article 156-1).

Both in Ukraine and in Australia, society did not immediately accept the innovation. In Australia, for instance, the so-called "spousal immunity" persisted for many years. This immunity of a man from prosecution for rape is consistently traced to Sir Matthew Hale's statement in his History of the Pleas of the Crown (1736): A man cannot be guilty of rape committed by him upon his lawful wife, because by their mutual consent and contract of marriage the wife gave herself in this form to her husband, whom she cannot refuse [12, p. 629; 13, p. 785].

From 1976 until 1994, Australian states and territories introduced a raft of reforms to sexual assault laws. Most of these were welcomed, and were seen to reflect women's changing status within a modernising society. One reform, however, was especially contentious. The British law had proclaimed that a woman could not be raped within marriage: the marital bond included a husband's right to sexual access to his wife [14]. In R v Miller, a husband was charged with rape and assault occasioning actual bodily harm to his wife. The wife in this case had applied for divorce, which was adjourned and thus remained undecided. In dealing with a plea of no cause to answer at the end of the Crown case, Justice Lynskey made a submission for the defence and held that there was no evidence on which the jury could convict the husband of rape. He directed the jury accordingly and the husband was found guilty of assault only. Justice Lynskey's reasons were detailed because at that time a valid marriage could not be dissolved except by death and the only way in which a marriage could be avoided was by a private Act of Parliament. This was not an Act of the judiciary but of the legislature. As a matter of law, there was no power to avoid a marriage. There have been many departures from this view of marriage since. But the position laid down by Hale has, so far as I can see, never been reversed in terms: it has been criticised by some judges and approved by others, but the curious fact is that for many years after Hale wrote the Crown's Request there was not a single case on record of a man being prosecuted for the rape of his wife during marriage, until the case of Rex v Clarke before Mr Justice Byrne in 1949 [15, p. 805].

However, in 1991, the position of the judiciary in Australia underwent a significant shift. In the case of R v L,[2] the High Court held that the husband's immunity if ever part of the common law, no longer applied. This position was further reinforced in 2009 when the Director of Public Prosecutions of South Australia charged PGA with a number of sexual and assault offences for conduct allegedly committed against his wife dating back to the 1960s. Two of these offences were rape committed in 1963. In 2012, a majority of the High Court held in PGA v The Queen[3] that there was no presumption of consent by a wife to sexual intercourse in marriage, and consequently, PGA could be found guilty of the rape of his wife committed in 1963 [15]. Peter A. Sallmann in his analysis about marital rape and the South Australian Law reflects that the criminal law should not be seen as any kind of 'solution' to the problem of severe instances of unacceptable behaviour in the community. He further argued that the criminal law should only be used as a last resort in dealing with human behaviour. In our sort of society, the kinds of behaviour which fall into this 'last resort' category have traditionally been defined by the criminal law [16, p. 81].

Australia's legal framework consists of six federated states: 1) New South Wales (including Lord Howe Island), 2) Queensland, 3) South Australia, 4) Tasmania (including Macquarie Island), 5) Victoria, and 6) Western Australia and two territories – The Australian Capital Territory and the Northern territory. Australia consists of six states and two main territories: the Australian Capital Territory and the Northern Territory. Although each Australian state has its own definition of domestic violence, that generally encompasses sexual violence within these definitions.

South Australia pioneered marital rape legislation in Australia. The origins of marital rape law reform in South Australia can be located in Attorney-General Peter Duncan's brief to the Penal Methods Reform Committee in December 1975, instructing them to examine the State's sexual assault laws. This move was predominantly motivated by two factors. First, the Labor Government, led by Premier Don Dunstan, was socially progressive, even radical, for its time (Hodge 2011). Heavily influenced by feminist advisers, there was a strong desire within the Dunstan Cabinet to reform and modernise the existing legislative scheme governing rape and sexual assault, which was perceived as an antiquarian product of the turn of the century context in which it was forged. Second, the move was a response to increasing anxiety within the South Australian electorate about the perceived prevalence of rape in the community and the method of its prosecution (Sallman and Chappell 1982, 53) [17].

Following South Australia's lead, all Australian jurisdictions introduced changes to this law, making it a crime to rape a woman within marriage, either before or after separation. It was a fundamental challenge to the way familial authority was conceptualised, established and policed [14].

The South Australian situation highlights a number of central and continuing issues with the legislating, policing and prosecuting of violence against women [17, p. 78].

Thus, for instance, according to Domestic Violence Protection Act of New South Wales [18] domestic violence means behaviour, or a pattern of behaviour, by a person (the first person) towards another person (the second person) with whom the first person is in a relevant relationship that – (a) is physically or sexually abusive; or (b) is emotionally or psychologically abusive; or (c) is economically abusive; or (d) is threatening; or (e) is coercive; or (f) in any other way controls or dominates the second person and causes the second person to fear for the second person's safety or wellbeing or that of someone else. Behaviour, or a pattern of behaviour, mentioned in subsection (1) – (a) may occur over a period of time; and (b) may be more than 1 act, or a series of acts, that when considered cumulatively is abusive, threatening, coercive or causes fear in a way mentioned in that subsection; and (c) is to be considered in the context of the relationship between

the first person and the second person as a whole. Without limiting subsection (1) or (2), domestic violence includes the following behaviour – (a) causing personal injury to a person or threatening to do so; ***(b) coercing a person to engage in sexual activity or attempting to do so;*** (c) damaging a person's property or threatening to do so; (d) depriving a person of the person's liberty or threatening to do so; (e) threatening a person with the death or injury of the person, a child of the person, or someone else; (f) threatening to commit suicide or self-harm so as to torment, intimidate or frighten the person to whom the behaviour is directed; (g) causing or threatening to cause the death of, or injury to, an animal, whether or not the animal belongs to the person to whom the behaviour is directed, so as to control, dominate or coerce the person; (h) unauthorised surveillance of a person; (i) unlawfully stalking, intimidating, harassing or abusing a person.

This Act defines domestic violence as a complex concept that includes various types of unlawful conduct with elements of physical or psychological violence. Sexual violence is treated as a separate type of domestic violence. This means that sexual violence is treated as a separate type of domestic violence and is treated like other types of violence in the legal context.

The Domestic Violence Protection Act of New South Wales (NSW) is not unique; similar regulations exist in other Australian states and territories. Each Australian state or territory has its own domestic violence legislation, but these laws are similar in their content and purpose – to protect victims of domestic violence and provide them with legal protection: Domestic and Family Violence Protection Act 2012 (Queensland) [18], Intervention Orders (Prevention of Abuse) Act 2009 (South Australia) [19], Family Violence Act 2004 (Tasmania (including Macquarie Island)) [20], Family Violence Protection Act 2008 (Victoria) [21], and Restraining Orders Act 1997 (Western Australia) [22] etc.

There are some areas in which there are differences between the various legislative regimes to which we think it is worth drawing particular attention. First, there are significant differences across jurisdictions in relation to the maximum penalties that may be imposed for a contravention of a domestic violence protection order. Another point of difference relates to whether the legislation imposes on police any obligation to take particular action in cases of suspected domestic violence. Legislation in only two jurisdictions – Queensland and Western Australia – requires a police officer to investigate, on reasonable suspicion, whether acts of domestic violence have occurred or are likely to occur. In only one jurisdiction – Western Australia – are police required to take particular action (such as making an application for a protection order) following investigation of suspected domestic violence. There is significant variation across jurisdictions in relation to the approach taken to the issue of counselling and rehabilitation programs for perpetrators of domestic violence. The domestic violence-specific legislation in some jurisdictions makes no express provision for such counselling (although, in some cases, sentencing-related or other legislation may do so). In other jurisdictions, relatively specific and comprehensive provision is made, including provision empowering a court to direct a person against whom a domestic violence protection order has been made to attend counselling, and attaching criminal penalties to a failure to comply [23].

Australia is actively working to prevent violence against women and domestic violence through its own national initiatives and international commitments. In particular, Australia has ratified several international treaties relating to the protection of human and women's rights, such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). In addition, Australia has a number of national programs and policies, such as the "National Plan to Reduce Violence Against Women and Children," which works to address domestic violence domestically. In Australia, criminal law is regulated primarily at the state and territory level, rather than at the federal level. This means that the laws that deal with domestic sexual violence are determined by each state, and federal law does not directly criminalize such crimes. However, there are general federal laws that may address violence, but without a specific focus on domestic sexual violence. In Australia, at the state level, there are specific provisions that criminalize sexual violence in marriage. According to the part 1 of the Article 48 "Rape" of the Criminal Law Consolidation Act 1935 (SA) a person (the offender) is guilty of the offence of rape if he or she engages, or continues to engage, in sexual intercourse with another person who – (a) does not consent to engaging in the sexual intercourse; or (b) has withdrawn consent to the sexual intercourse, and the offender knows, or is recklessly indifferent to, the fact that the other person does not so consent or has so withdrawn consent (as the case may be). Maximum penalty: Imprisonment for life.

A person (the offender) is guilty of the offence of rape if he or she compels a person to engage, or to continue to engage, in – (a) sexual intercourse with a person other than the offender; or (b) an act of sexual self-penetration; or (c) an act of bestiality, when the person so compelled does not consent to engaging in the sexual intercourse or act, or has withdrawn consent to the sexual intercourse or act, and the offender knows, or is recklessly indifferent to, the fact that the person does not so consent or has so withdrawn consent (as the case may be). Maximum penalty: Imprisonment for life. In this section – compels – a person compels another person if he or she controls or influences the other person's conduct by means that effectively prevent the other person from exercising freedom of choice; sexual self-penetration means the penetration by a person of the person's vagina, labia majora or anus by any part of the body of the person or by any object [24].

Marital rape was criminalized in 1993. Yet, legal loopholes in many states fail to hold the rapist responsible. The legal loopholes downgrade the sexual assault to a lesser crime or none at all if the victim is married to their attacker.

State legislators must be pressured to update rape laws to include marital rape rather than considering marital rape a different crime [25].

According to the article 49, which includes criminal liability against unlawful sexual intercourse, a person who has sexual intercourse with any person under the age of 14 years shall be guilty of an offence and liable to be imprisoned for life. A person who has sexual intercourse with a person under the age of seventeen years is guilty of an offence. Maximum penalty: Imprisonment for 15 years. It shall be a defence to a charge under subsection (3) to prove that – (a) the person with whom the accused is alleged to have had sexual intercourse was, on the date on which the offence is alleged to have been committed, of or above the age of sixteen years; and (b) the accused – (i) was, on the date on which the offence is alleged to have been committed, under the age of seventeen years; or (ii) believed on reasonable grounds that the person with whom he is alleged to have had sexual intercourse was of or above the age of seventeen years (5) (5a). A person who, being in a position of authority in relation to a person under the age of 18 years, has sexual intercourse with that person is guilty of an offence.

Maximum penalty: Imprisonment for 10 years.

It is a defence to a charge under subsection (5) if the accused was a person of a class described in subsection (9) (c) and proves that – (a) the person with whom the accused is alleged to have had sexual intercourse was, on the date on which the offence is alleged to have been committed, of or above the age of 17 years; and (b) the accused – (i) was, on the date on which the offence is alleged to have been committed, under the age of 18 years; or (ii) believed on reasonable grounds that the person with whom the accused is alleged to have had sexual intercourse was of or above the age of 18 years. A person who, knowing that another is by reason of intellectual disability unable to understand the nature or consequences of sexual intercourse, has sexual intercourse with that other person is guilty of an offence.

As stated in the article 61I Sexual assault of the Crimes Act 1900 of New South Wales (NSW) any person who has sexual intercourse with another person without the consent of the other person and who knows that the other person does not consent to the sexual intercourse is liable to imprisonment for 14 years.

Article 61KA of the Crimes Act 1900 of NSW is titled as "Accused person married to complainant". The article claims that The fact that a person is married to a person – (a) upon whom an offence under section 61I, 61J, 61JA or 61K is alleged to have been committed is no bar to the firstmentioned

person being convicted of the offence, or (b) upon whom an offence under any of those sections is alleged to have been attempted is no bar to the firstmentioned person being convicted of the attempt.

Conclusion. The main differences between Ukraine and Australia regarding criminal responsibility for domestic sexual violence lie in the level of development of legislation and the practical application of human rights mechanisms. Ukraine is still in the process of adapting and implementing new standards, while in Australia the legal system is more structured and focused on victim protection. At the federal level, Australia has the Family Law Act 1975, which contains provisions aimed at protecting victims domestic violence, but it does not provide for criminal liability for crimes, in particular for sexual violence. State criminal codes are used to do this. Thus, the criminal liability for domestic sexual violence is the responsibility of the states and territories, and the relevant articles vary from state to state. Australia is proactively addressing violence against women and domestic violence through national initiatives and international commitments. It has ratified key international treaties on human and women's rights, such as the Convention on the Elimination of All Forms of Discrimination Against Women. Domestically, initiatives like the "National Plan to Reduce Violence Against Women and Children" aim to tackle domestic violence within the country. Criminal law in Australia is primarily governed at the state and territory level, meaning domestic sexual violence laws vary across jurisdictions and are not directly regulated by federal law. While federal laws cover violence in general, they do not specifically address domestic sexual violence. The criminal legislation of Ukraine and Australia has criminalized cases of marital rape. In Ukraine, this is addressed through aggravating circumstances within specific articles (152, 153), while in Australian legislation, each state has its own code, resulting in various approaches to criminalizing marital rape. However, for both legal systems, challenges remain in prosecuting marital rape cases, particularly due to the hidden nature of such incidents.

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