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Violence against women -

The Istanbul Convention and the case law of the ECtHR



This training session is funded under the 'Rights, Equality and Citizenship Programme 2014-2020' of the European Commission.

The aim of the lecture

- To give an idea of the extent of violence against women and the factors that influence it.
- To provide an overview of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention = IC).
- Presentation of important judgments of the European Court of Human Rights (ECtHR) with regard to violence against women

The problem

The European Fundamental Rights Agency's (FRA) study Violence against Women, published in **2014**, and a WHO study released in 2018, conclude that around **30% of** women are exposed to violence (sexual, physical or psychological) in their lifetime

Over **81%** of the victims of intimate partner violence are women. Half of them have lived in the same household as the suspect.

In Germany, a total of 141,792 victims of intimate partner violence were reported in 2019; **115,000** of the victims were female

Risk factors for intimate partner violence

- Self-experienced and/or witnessed violence
- A low level of women with access to paid work
- A low level of gender equality in both the social and legal frameworks
- Beliefs about male superiority, family honour and sexual purity
- A weak legal system concerning the punishment of sexual violence

The genesis of the Istanbul Convention

- Recommendation of the Committee of Ministers to Council of Europe member states on the **protection of women against violence** (CoE Recommendation Rec(2002)5), Recommendation CM/Rec (2007)17 on standards and mechanisms for gender **equality**, Recommendation CM/Rec (2010)10 on the **role of women and men** in conflict prevention and resolution.
- **Europe-wide campaign from 2006 to 2008** to combat violence against women.
- **December 2008**: formation of a group of experts to prepare a draft
- **11.05.2011**: Adoption by the first 13 member states of the Council of Europe in Istanbul

Parallel action by the EU

- Equality Directive(s) (e.g.: 2004/113/EC)
- Directive relating to compensation to crime victims (2004/80/EC)
- Trafficking in Human Beings Directive (2011/36/EU)
- Directive on the European protection order (2011/99/EU)
- Victim Protection Directive (2012/29/EU)
- EU Guidelines on violence against women and girls and combating all forms of discrimination against them (2008)
- Daphne Program(s)
- EU Action Plans on Gender Equality and Women's Empowerment in Development (External Action) (CAP I-III)

Current status of ratification

- **Signature of the IC by 45 states of the Council of Europe**
- **Ratification by 35 Member States**
- The **EU Member States** Latvia, Lithuania, Czech Republic, Slovakia, Hungary and Bulgaria have not ratified the IC.
- **Russia** and **Azerbaijan** have neither signed nor ratified the IC
- **Turkey** has denounced the Convention with effect from 1 July 2021.
- The United Kingdom, Ukraine, Moldova and Armenia have not ratified the IC.
- Most recently, Liechtenstein (17.06.2021) and Moldova (14.10.2021) have ratified the IC.

The EU's accession to the IC

- In **2017**, **the** IC was signed by the EU. All EU member states have now signed the IC, and 21 have also ratified it.
- On **09.07.2019**, the EU Parliament requested an advisory opinion from the Court of Justice of the EU on the EU's accession to the IC under Article 218(11) TFEU In **2020**, the **EU Parliament** declared ratification a priority
- On **11.03.2021 the opinion of** the Advocate General Gerad Hogan on the opinion procedure was issued (ECLI:EU:C:2021:198). Accordingly, an accession of the EU to the IC is possible even without ratification of the IC by all EU member states.
- **ECJ of 06.10.2021**: the Council of the EU can decide the two sub-areas of the IC in which the EU has competences (law enforcement cooperation, asylum and non-refoulement) also by qualified majority and does not have to wait for a "common accord" of all Member States.

Concerns expressed by some Member States

- Indirect introduction of a **third gender**
- **Modification of** the constitutional definition of **marriage**
- **The IC represents an "extreme liberalism", which "corrodes national values".**
- The choice of the word "**gender**" in the text of the Convention **serves hidden ideological goals**, including the abolition of biological sexes.
- **national laws** provide sufficient protection for women against domestic violence

Structure

- The IC comprises a total of twelve chapters
- Ch. I includes the definitions of purpose and terms
- Chapters II-VI contain the four pillars for the protection of women
- Chapters VII-XII answer questions on migration and asylum, international cooperation, monitoring mechanisms (GREVIO), relationship with other international instruments and final provisions.

Chapter I

Purpose and definitions

The IC is based on the following findings

- Condemnation of all forms of violence against women
- Gender equality as an essential element in the prevention of violence against women
- Violence against women as an expression of historically grown unequal power relations between women and men, which has led to the domination of women by men.
- the structural nature of violence against women as gender-based violence and means in armed conflicts
- Violence against women as a serious violation of human rights, which constitutes a major obstacle to the achievement of equality

Purpose of the Convention, Art. 1

- Protect women from all forms of violence and prevent, prosecute and eliminate violence against women and domestic violence;
- contribute to the elimination of all forms of discrimination against women and promote genuine equality between women and men, including through the empowerment of women;
- comprehensive policies and other measures to protect and support all victims of violence against women and domestic violence;
- the promotion of international cooperation for the elimination of violence against women and domestic violence;
- Supporting organizations and law enforcement agencies.

Scope of the IC, Art. 2

The IC applies to

- all forms of violence against women
- Female victims of domestic violence
- Women who have been or are at risk of being victims of gender-based violence

It shall be applied

- In peacetime
- In situations of armed conflict

Definitions, Art. 3

- **Violence against women** constitutes a **violation of human rights** and a form of **discrimination**, and
- **Refers to all acts of gender-based violence** that cause or are likely to cause physical, sexual, psychological or economic harm or suffering to women.
- "**domestic violence**" = any act of physical, sexual, psychological or economic violence occurring within the family or household or between former or current spouses or partners

Consequence of content

as a result, the following forms of violence are distinguished:

- Violence by a partner or former partner including domestic violence
- Any sexual contact without consent, without the need for penetration.
- Sexual Harassment
- Forced marriage (leading to rape situations)
- Forced Abortion
- Forced sterilization
- female genital mutilation
- Human Trafficking

Chapter II

The four pillars of the Convention

The four pillars of the Convention

- Integrative approach and data collection, Art. 7-11
- Prevention, Art. 12-17
- Protection and **support**, Art. 18-28
- effective legal protection in both civil and criminal matters, Art. 29-58

The integrative approach, Art. 7-11

Member States are obliged

- ensure effective inter-governmental action, Art. 7(2)
- involve and support all relevant actors (government agencies, national, regional and local parliaments/authorities, national human rights institutions and civil society organisations), Art. 7 para. 3, Art. 9
- To provide financial support for assistance, Art. 8
- to conduct research and data collection, Art. 11

Prevention

Member States are required to take the following measures:

- **Influencing** attitudes, gender roles and stereotypes that make violence against women socially acceptable (Art. 12)
- **Awareness raising:** to raise public awareness of the various forms of violence and their traumatic nature (Art. 13);
- **Education** (Art. 14): include teaching material on gender equality in the curricula of all educational sectors;
- **Continuing education and training**, Art. 15
- **Preventive** intervention and treatment programmes, Art. 16
- **Cooperation** with non-governmental organisations, the media and the private sector to raise public awareness (Art. 17)

Protection and support, Art. 18-28

- Effective cooperation between government agencies and various authorities
- Cooperation between government agencies and NGOs
- Information about and access to general and specialised support services
- Establishment of adequate shelters
- Medical and psychological assistance for victims and child witnesses
- Free telephone consultation
- Protection of the rights of minor witnesses
- Establishment of a reporting system and protection of reporters

Effective legal protection in civil and criminal matters, Art. 29-58

- victims with appropriate **civil law remedies** against the perpetrator. with appropriate civil remedies against the perpetrator, Art. 19 para. 1.
- **Criminalize and provide appropriate punishment** for physical as well as psychological violence, stalking, forced abortions or sterilizations, and sexual harassment (Arts. 33-36, 38)
- **Ensure** effective police investigation and prosecution of offences under the IC (Art. 45, 46, 49),
- **Ensure** that cultural, traditional and religious beliefs or alleged notions of honour of perpetrators are not accepted as justification for acts of violence of any kind;

- **Provide special safeguards** for victims of violence and witnesses during police investigations and criminal proceedings, not to accuse them and grant them the right to privacy (Art. 54-58);
- Introduction of an **immediate duty to act for** police and prosecution authorities in case of calls for help in cases of violence against women and **proper handling of** corresponding dangerous situations (Art. 50);
- Ensure that incidents after IC are taken into account in the decision in questions of **custody or rights of access**, Art. 31(1)
- Rules on custody and access rights must not jeopardise the rights and safety of victims

Chapter III

The IC and the case law of the ECtHR

To be distinguished are:

1. the influence of the case-law of the ECtHR on the wording and content of the IC

2 The influence of the IC on the case law of the ECtHR

Important judgements of the ECtHR before the signing of the IC

- **M.C. v. Bulgaria, no. 39272/98**

- Violation of Art. 3 and 8 ECHR because the state has not fulfilled its positive obligation to punish and effectively prosecute non-consensual sexual intercourse. Here: insufficient determination of whether or not there was consensual sexual intercourse.

- **Kontrová v. Slovakia, no. 7510/04**

- Violation of Art. 2 ECHR, because the police authorities did not protect the children of the complainant from violence by the father of the children and the latter was able to kill the children.

- **Opuz v. Turkey, no 33401/02**

- Violation of Article 2 by murder of the complainant's mother and violation of Article 3 by failure to protect the complainant from violence by her husband. For the first time, the Court found a violation of Art. 14 in conjunction with Art. 2, 3 because domestic violence in Turkey mainly affected women and the general and discriminatory indifference of the judicial system created a climate conducive to domestic violence. Accordingly, the violence endured by the complainant and her mother was gender-specific and thus discriminatory.

- **Osman v. UK, 23452/94, 28.10.1998**

- Violation of Art. 6, as no sufficient preventive protective measures against violence were installed.

Influence of the IC on the case law of the ECtHR

- **Halime Kılıç v. Turkey, no. 63043/11, 28.06.2016**

- Violation of Art. 2 and Art. 14 in conjunction with Art. 2, because the State failed to fulfil its positive obligation to punish the violations by the complainant's husband of the measures adopted against him, so that he was able to murder his daughter. In particular, the CJ held that the lack of protection of the child was unacceptable and that the authorities, by ignoring the husband's repeated violence, had created a climate conducive to domestic violence

- **Talpis v. Italy, no. 41237/14, 02.03.2017**

- Violation of Art. 2, 3 and Art. 14 in conjunction with Art. Article 2, because the authorities have not fulfilled their positive obligation to protect the complainant from domestic violence and there is discrimination because the violence used has its basis in the complainant's gender.

Kurt v. Austria, no. 62903/15 (GC), 15.06.2021 - I

Facts

- June 2010: Expulsion and order for protection against violence against husband (E.) due to violence towards the complainant.
- January 2011: Conviction of E. for bodily injury
- 22.05.2012: Bf'in reports rape, choking and threatening as well as beating the 2 children; they confirm beatings in a hearing
- On the same day: Violence protection order, confiscation of the apartment key, questioning of E. At the same time, a criminal investigation was initiated.
- 25.05.2012: E. shoots son at school and commits suicide

Kurt v. Austria - General principles

The state's obligation to take preventive measures to protect life is about the **choice of means**, not the outcome. In the case of **domestic violence**, this means:

- immediate response to allegations of domestic violence
- Careful and comprehensive fact-finding and contextual investigation
- Independent and pro-active risk identification, if necessary using standardised checklists
- appropriate (additional) training and awareness raising
- communication between the various bodies concerned, including schools in the case of children
- Application of protective measures if there is an increased risk of violence

Kurt v. Austria - Subsumption

In the present case, the authorities have acted autonomously, proactively and comprehensively because

- Extensive questioning of interested parties
- Extensive knowledge of the history of violence
- Weapons possession controlled by E.
- The main risk factors have been identified
- Specially trained police officers have made the danger forecast
- A separate risk analysis for the children would not have led to a different result

Volodina v. Russia II, no. 40419/19, 14.09.2021

- Infringement of Article 8 because, despite the existing legal framework for the prosecution of Internet violence, the authorities were initially unwilling to initiate criminal investigations and then carried them out so slowly that the offences were eventually time-barred
- Russian legislation is inadequate to protect victims of domestic violence, as they cannot obtain removal orders and protection orders against violence.
- Where criminal action is possible, it depends on the initiation of proceedings and is ineffective if the authorities refuse to investigate criminally
- Attention: Judgment is not yet final (possibility of request for referral to the Grand Chamber within 3 months after delivery of the judgment).

Source link

1. for the numbers indicated:

- <https://www.bmfsfj.de/bmfsfj/themen/gleichstellung/frauen-vor-gewalt-schuetzen/haeusliche-gewalt>
- https://fra.europa.eu/sites/default/files/fra_uploads/fra-2014-vaw-survey-main-results-apr14_en.pdf.
- <https://www.who.int/news-room/fact-sheets/detail/violence-against-women>.

2. for the IC and its relationship with the EU

- <https://www.auswaertiges-amt.de/de/aussenpolitik/internationale-organisationen/europarat/istanbul-konvention/2458630>.
- https://en.wikipedia.org/wiki/Istanbul_Convention#Criticism
- <https://www.treffpunkteuropa.de/die-bekampfung-von-gewalt-gegen-frauen-wird-zum-politischen-streitpunkt?lang=fr>

3. case law of the ECtHR

- www.hudoc.echr.coe.int
- ECtHR "factsheets" on domestic violence and violence against women: <https://www.coe.int/en/web/istanbul-convention/echr-case-law>.

Thank you for your attention !

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