

# The Council of Europe Convention on Preventing and Combatting Violence Against Women and Domestic violence and the ECtHR's case-law on gender-based violence

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## I. Istanbul Convention

- ❖ The state of play and ratifications
- ❖ The monitoring mechanism: A two-pillar system
- ❖ The content : An approach based on '4 Ps'
  - Integrated Policies
  - Prevention
  - Protection
  - Prosecution



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## The state of play and ratifications

The Istanbul Convention (IC) was opened for signature on 11 May 2011  
In 2022, all the CoE members except Azerbaijan and Russia have signed the IC  
On 1<sup>st</sup> August 2014 the IC entered into force following 10 ratifications  
**34 CoE members have ratified** the IC.  
EU signed the IC



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## The Istanbul Convention monitoring mechanism: a two-pillar system

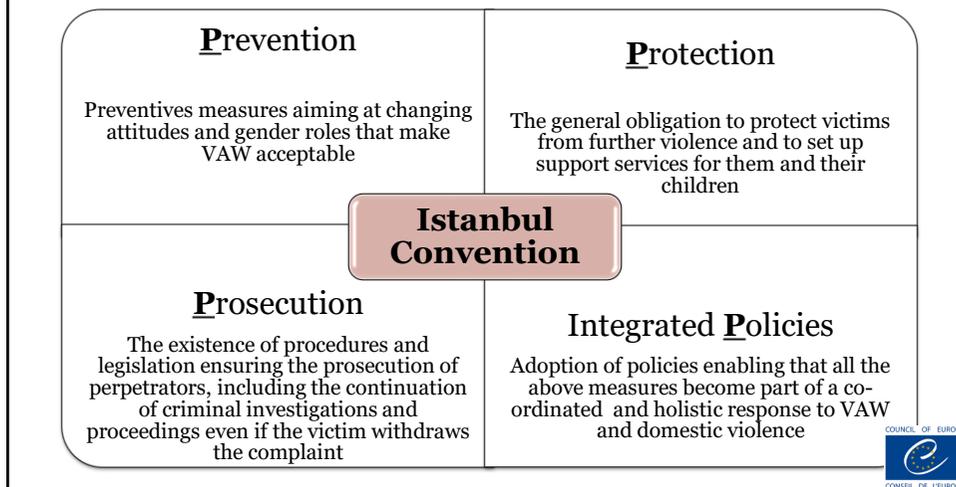
The monitoring mechanism seeks to assess and improve the implementation of the Convention by Parties

A **two-pillar system** → it consists of two distinct but interacting bodies



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## The Content of the Convention: An approach based on “4 Ps”



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## Gender-based violence – a form of discrimination against women

***Gender-based violence:*** violence directed against women because they are women and that affects them disproportionately

***Forms of violence covered by the IC***

**Article 1 of the IC-** the elimination of all forms of discrimination against women and promote substantive equality between women and men, including by empowering women;



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## II. The ECtHR's case law and the Istanbul Convention

The ECtHR's case law has set important standards in the field of violence against women; they are reflected in many articles of the Istanbul Convention, in particular in Chapters V and VI, such as for eg.:

**Article 5 – State obligations and due diligence**

**Article 29 – Civil lawsuits and remedies**

**Article 50 – Immediate response, prevention and protection**

**Article 55 – *Ex parte* and *ex officio* proceedings**

**Article 56 – Protective measures**

**Article 57 – Legal aid**



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## III. Violence against women and the ECtHR's case law

- Violence against women had been examined by the Court under different articles, mostly:

**Article 2** (substantial and/or procedural head) – Kurt v. Austria, GC, 2021

**Article 3** (substantial and/or procedural head)

**Article 4** – Rantsev v. Cyprus and Russia, S.M v Croatia, GC, 2020

**Article 8** – Bevacqua and S v Bulgaria (2008), Y v Slovenia (2015), J.L. v Italy, 2021;

**Article 3 and 8** – M.C. v Bulgaria; E.B. v Romania

**Article 14** – always in conjunction with another article of the ECHR

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## Relevant case-law

**Opuz v. Turkey** - case of domestic violence – violation of Article Articles 2 and 3 in conjunction with Article 14; the first time the ECtHR has held that gender-based violence is a form of discrimination under the ECHR

“200. Bearing in mind its finding above that the general and discriminatory judicial passivity in Turkey, albeit unintentional, mainly affected women, the Court considers that the violence suffered by the applicant and her mother may be regarded as gender- based violence which is a form of discrimination against women. Despite the reforms carried out by the Government in recent years, the overall unresponsiveness of the judicial system and impunity enjoyed by the aggressors, as found in the instant case, indicated that there was insufficient commitment to take appropriate action to address domestic violence ... .

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## More relevant case law

**Talpis v Italy, 2017:** the provisions of the Istanbul Convention are used in the interpretation of the ECHR to identify the obligations of the national authorities in preventing domestic violence (§ 58).

**Balsan v. Romania, 2017**

**Volodina v. Russia, 2019:** an absence of legislation defining domestic violence and dealing with it at a systemic level indicated the authorities’ reluctance to acknowledge the seriousness and extent of the problem of domestic violence in Russia and its discriminatory effect on women. See para 60

**Tunikova and Others v. Russia, 2021** – reinforces the States’ positive obligations to protect victims of domestic violence – considered as torture

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## **Tkheldze v. Georgia, 2021:**

### **Violation of Article 2 in conjunction with Article 14**

The Court held that police inaction could be considered a systemic failure and that there was a pressing need to conduct a meaningful inquiry into the possibility that gender- based discrimination and bias had been behind the lack of action taken by the police