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## Fighting gender based violence–

The Istanbul Convention, the case law of the ECHR and the EU Directive on combating violence against women and domestic violence

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### The aim of the lecture is to....

- .... give an idea of the drivers for DV/VAW, the resulting problems and the consequences
- .... provide an overview of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention = IC)
- ... to present important judgments of the European Court of Human Rights (ECHR) with regard to violence against women
- ... provide an overview on the proposed EU Directive on combating violence against women and domestic violence

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a low level of gender equality frameworks		a weak legal system concerning the punishment of domestic/sexual violence	
social norms	<b>Drivers of VAW/DV</b>		a low level of women with access to paid work
gender stereotypes			self-experienced and/or witnessed violence
a low level of gender equality in both the social and legal frameworks		beliefs about male superiority, family honor and sexual purity	

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<b>problems</b>				
Existing efforts to prevent VAW/DV are fragmented, perpetuating social norms and attitudes that normalize VAW	Protection of victims, especially the most vulnerable ones, is ineffectiv, increasing the risk of repeat victimization	Victims face significant obstacles in their efforts to access justice	Quality and availability of support services	Lack of sufficient high-quality data regarding VAW/DV

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## Consequences

Victims of DV continue to be victims and pay significant social, economic and psychological costs

State incurs significant costs and companies incur costs through lower staff engagement and/or absenteeism

All citizens experience a society that is unequal and where fundamental rights regarding discrimination, equality and justice are not met

**For further information see:**

[https://commission.europa.eu/document/download/13adc468-7765-42a7-8135-5fccff4b4a71\\_en?filename=Study%20to%20support%20the%20impact%20assessment%20on%20preventing%20and%20combatting%20violence%20against%20women%20and%20domestic%20violence.pdf](https://commission.europa.eu/document/download/13adc468-7765-42a7-8135-5fccff4b4a71_en?filename=Study%20to%20support%20the%20impact%20assessment%20on%20preventing%20and%20combatting%20violence%20against%20women%20and%20domestic%20violence.pdf)

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## The Istanbul-Convention

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## Structure of the IC

Chapter I	Chapter II-VI	Chapter VII-XII
<ul style="list-style-type: none"> <li>➤ Purpose of the IC</li> <li>➤ Scope of application</li> <li>➤ Definitions</li> </ul>	<p>Four pillars for the protection of women</p> <ul style="list-style-type: none"> <li>➤ Integrative approach and data collection, Art. 7-11</li> <li>➤ Prevention, Art. 12-17</li> <li>➤ Protection and support, Art. 18-28</li> <li>➤ Effective legal protection in civil and criminal law, Art. 29-58</li> </ul>	<p>answer questions on</p> <ul style="list-style-type: none"> <li>➤ migration and asylum,</li> <li>➤ international cooperation,</li> <li>➤ monitoring mechanisms (GREVIO),</li> <li>➤ the relationship to other international agreements, and</li> </ul>

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## Chapter I

### Purpose und definitions

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## Purpose of the Convention, Art. 1

- Protect women from all forms of violence
- prevent, prosecute and eliminate violence against women and domestic violence
- Contribute to the elimination of all forms of discrimination against women
- promote genuine equality between women and men, including through the empowerment of women
- promotion of international cooperation for the elimination of violence against women and domestic violence
- Supporting organizations and law enforcement agencies

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All forms of violence against women	Women with risk of gender based violence	Female/child victims of domestic violence
<b>in terms of content</b>		
<b>scope, Art. 2</b>		
<b>in terms of time</b>		
In peacetime	In situations of armed conflicts	

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## definitions, Art. 3

- **Violence against women** constitutes a **violation of human rights** and a form of **discrimination**,
- It **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

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Domestic violence	Sexual violence including rape	Stalking and Sexual harassment	Forced marriage
Forced abortion and sterilization	<b>Forms of violence</b>		Female genital mutilation
Human trafficking	Slavery	Any other violence resulting in physical, sexual, psychological or economic harm or suffering to women	Threats of violence and arbitrary deprivation of liberty

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## chapter II-VI

### The four pillars of the Convention

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Integrative approach and data  
collection  
Art 7-11

Protection and support  
Art 18-28

**four pillars of the  
Convention**

Prevention  
Art 1 -17

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

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## Summary of the four pillars: What does the Convention requires States to do?

- **Prevention**
  - Change attitudes, gender roles and stereotypes
  - Train professionals
  - Raise awareness of different forms of violence
- **Protection**
  - Ensure that the needs and safety of victims is center stage
  - Set up specialised support services and shelters
- **Prosecution**
  - Ensure that violence against women is criminalised and appropriately punished
  - Ensure that excuses ground on honour, culture and religion are unacceptable
- **Integrated policies**
  - ensure that all of the above measures form part of a comprehensive and co-ordinated set of policies

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## the integrative approach Art. 7-11: States are obliged to....

- Take the necessary legislative and other measures to adopt and implement State-wide effective, comprehensive and co-ordinated policies encompassing all relevant measures to prevent and combat all forms of violence (Art. 7)
- Allocate appropriate financial and human resources for the adequate implementation of integrated policies (Art. 8)
- Recognise, encourage and support the work of relevant NGO's (Art. 9)
- Establish a co-ordinating body, Art. 10
- conduct research and data collection, Art.11

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## Prevention means that States are obliged to

- Influence attitudes, gender roles and stereotypes that make violence against women socially acceptable (Art. 12)
- Take the necessary legislative and other measures to prevent all forms of violence
- Ensure that culture, custom, religion, tradition or so-called “honour” shall not be considered as justification for any acts of violence
- Raise public awareness of the various forms of violence and their traumatic nature (Art. 13)
- Ensure education and training in these matters, Art.14, 15
- Set up support, intervention and treatment programmes, Art.16
- Encourage cooperation with non-governmental organisations, the media and the private sector to raise public awareness (Art.17)

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## Protection and support, Art. 18-28: States are obliged to....

- take the necessary legislative or other measures to ensure that victims receive adequate and timely information on available support services and legal measures in a language they understand (Art. 19)
- Establish adequate shelters and free telephone consultation (Art. 20-22)
- provide for the setting-up of appropriate, easily accessible rape crisis or sexual violence referral centers (Art. 25)
- protect the rights of minor witnesses
- Give medical and psychological assistance for victims and child witnesses
- Establish a reporting system and protect reporters
- Ensure effective cooperation between government agencies, various authorities and NGOs

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

- To provide effective civil-law remedies (Art.19)
- To ensure effective criminalization (Arts. 33-36, 38)
- To ensure effective and immediate police investigation and prosecution (Art.45,46,49),
- To 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;
- To pay regard to incidents after IC in childcare-cases, Art.31

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## Relevant case law of the ECHR regarding domestic violence/violence against women

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## M.C. v. Bulgaria, no. 39272/98, 4.12.2003

### The Court found a violation of Art. 3 and 8 because the authorities failed to

- make a context-sensitive assessment of the credibility of the statements as the two versions were irreconcilable
- verify all the surrounding circumstances
- test the credibility of the version of events put forward by the perpetrators
- test the credibility of the witnesses called by the accused or the precise timing of the events.
- ensure that the applicant was able to question witnesses

### The Court demurred that

- The prosecutor concluded that in the absence of proof of resistance, that it could not be concluded that the perpetrators had understood that the applicant had not consented

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## Opuz v. Turkey, no 33401/02 landmark case

### The Court found a violation....

- of Art. 2 by murder of the applicant's mother
- of Art. 3 by failure to protect the applicant from violence by her husband
- **(for the first time!)** 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.

### The Court concluded that

- the violence endured by the applicant and her mother was gender-based and thus discriminatory.

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## E.S. and Others v. Slovakia, no. 8227/04, 15.09.2009

The Court found a violation of Art. 3 and 8 because

- Despite sexual abuse and maltreatment of the applicant, under national law the allocation of the matrimonial home to her was not possible since according to national law the husband could not be denied access to it as long as the couple was still married

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## Halime Kılıç v. Turkey, no. 63034/11, 28.06.2016

The Court found a violation of Art.2 and Art.14 in conjunction with Art.2, because

- the three protection orders issued by the authorities turned out to be ineffective because they had taken weeks to be issued
- The lack of a risk assessment resulted in the ineffectiveness of the issued protection measures, because the husband was, as a result, not taken into pre-trial detention
- National authorities failed to fulfil their duty to take account of the particularly precarious and vulnerable psychological, physical and material situation in which the applicant's daughter had found herself and to assess it accordingly
- The authorities failed to help find the applicant's daughter and her seven children a shelter and thus failed to offer her appropriate support
- in regularly turning a blind eye to the repeated acts of violence against applicant's daughter, the **domestic authorities had created a climate that was conducive to domestic violence**
- The Court found it unacceptable that the victim had been left without resources or protection when faced with her husband's violence.

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## Talpis v. Italy, no. 41237/14, 02.03.2017

The Court found a violation of Art. 2, 3 and 14 in conjunction with Art. 2 and 3 because

- After the applicant had lodged her complaint and mentioned her concern for her daughter's and her own lives, the domestic authorities had failed to issue any kind of protection order
- No interrogation of the applicant took place for 7 months and the criminal proceedings lasted more than 3 years, which deprived the applicant of immediate protection
- The authorities failed to conduct an assessment of the (further) risks facing the applicant
- As a consequence the authorities created a situation of impunity conducive to the recurrence of acts of violence
- The Court accordingly held that the violence inflicted on the applicant should be **considered as being grounded on sex** and that it consequently amounted to **a form of discrimination** against women.

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

The Court found a violation of Art. 8 because

- Despite the existing legal framework for prosecuting Internet violence, the authorities were for 2 years unwilling to initiate criminal investigations and then carried them out so slowly that the crimes were eventually time-barred
- By failing to conduct the proceedings with the requisite diligence, the authorities bore responsibility for their failure to ensure that the perpetrator of acts of cyber violence be brought to justice.
- The resulting impunity had been enough to shed doubt on the ability of the State machinery to produce a sufficiently deterrent effect to protect women from cyber violence.
- Insofar as criminal measures are possible, these depend on the authorities initiating proceedings. If the authorities refuse to initiate a criminal investigation, nothing can be done about it

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## X. v. Greece – 38588/21, 13.02.2024

...**The Court found under Art 3 and 8 that the authorities**

- had not taken measures to prevent the applicant from being traumatized further and had not taken her needs sufficiently into account
- had not informed her of her rights as a victim, such as her right to legal assistance, her right to receive information and to object to the interpretation
- had not taken adequate measures to mitigate what was clearly a distressing experience
- And that neither the prosecution nor the court had analysed the circumstances of the case from the perspective of gender-based violence,
- but failed to establish all the circumstances and
- to take account of the particular psychological factors in alleged rape cases, and to make a context sensitive assessment of the credibility of the various statements.

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## Kurt v. Austria, no. 62903/15 (GC) – facts of the case

- **June 2010:** barring and protection order against husband (E.) due to violence towards the applicant
  - **January 2011:** Conviction of E. for bodily injury
  - **22.05.2012:** applicant 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 his son at school and commits suicide
- **PROBLEM:** Was there a positive obligation under Art. 2 and 8 of the state authorities to take E. into preventive custody?

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## 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 standardized 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

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## Kurt v. Austria – application to the instant case

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

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## summary: the member states have the positive obligation

- To enact and apply appropriate laws
- To grant equal and effective access to the legal system
- Fulfill several substantive requirements as
  - Immediate response to allegations of domestic violence/VAW
  - Carrying out a risk assessment
  - Independent and proactive investigations, which must not be limited to the information provided by the victim alone
  - Regular training of all professionals involved
  - Special consideration of the spiral of violence typical of domestic violence
  - If there is a risk: immediate adoption of protective measures
- To fulfill various procedural requirements

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## The EU Directive on combating violence against women and domestic violence (2022/0066(COD))

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## background

- **Problem:**
  - Until now, no specific EU legal act existed to protect women
  - The increasing cyber violence against woman is not mentioned in IC and needed addressing
- **Objectives of the directive:**
  - To prevent violence against women/domestic violence.
  - To create a space of freedom, security and justice
- **Measures:**
  - More effective design of existing EU legal instruments relevant to addressing violence against women and domestic violence,
  - Upward convergence and closing the gaps in the areas of protection, access to justice, support, prevention, and coordination and cooperation;
  - Aligning EU law with relevant international standards.

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## aims

- **Criminalization** of certain forms of violence, female genital mutilation, and cyber violence.
- **Strengthening** victims' access to justice and their right to adequate protection, including
  - special protection of children
  - Guarantee of urgent legal protection
  - Right to compensation
  - Deletion of online content related to cyber violence
  - Creation of counseling centers
- **Installation** of preventive measures
- **Strengthening** cooperation at national and Union level

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## Content of the Directive

<b>Chapter 1</b>	Definitions, scope of application
<b>Chapter 2</b>	Ensuring criminal liability for rape, female genital mutilation, non-consensual disclosure of intimate/manipulated material, cyberstalking/bullying, incitement to violence
<b>Chapter 3</b>	Victim protection and access to justice, referral to support services, identification of victim's need for assistance, urgent protection measures, protection of victim's private life, removal of online content
<b>Chapter 4</b>	(Specialized) victim assistance.
<b>Chapter 5</b>	Prevention measures, training of professionals, intervention programs,
<b>Chapter 6</b>	Establishment of a coordinating body, inter-agency coordination and cooperation, cooperation with non-governmental organizations, cooperation at the Union level, data collection and research
<b>Chapter 7</b>	Final Provisions

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**Thank you for your attention !**

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