

EU Gender Equality Law
Seminar for Members of the Judiciary

Fighting gender-based violence in the EU

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Tallinn, 4-5 May 2026



1

The Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention)

- adopted by the Committee of Ministers and opened for signature in Istanbul on 11 May 2011. entered into force on 1 August 2014,
- recognizes gender-based violence against women as a violation of human rights and a form of discrimination

It focuses on several areas, obliging States Parties to the Convention to take a number of measures to act against violence against women and domestic violence

- **Prevention**
- **Protection**
- **Prosecution**
- **Development of integrated policies**

2

Prevention

States should regularly :

- run awareness-raising campaigns,
- train professionals in close contact with victims,
- include within teaching materials issues such as gender equality and non-violent conflict resolution in interpersonal relationships,
- set up treatment programmes for perpetrators of domestic violence and for sex offenders,
- work closely with NGOs,
- involve the media and the private sector in eradicating gender stereotypes
- promoting mutual respect.

Many member States have increasingly conducted surveys to measure the extent of violence against women nationally. Although methodologies vary, an overview of these surveys suggests that across countries, **one-fifth to one-quarter of all women** have experienced physical violence at least once during their adult lives and more than one-tenth have suffered sexual violence involving the use of force. Figures for all forms of violence, including stalking, are as high as 45%. The majority of such violent acts are carried out by men in their immediate social environment, most often by partners and ex-partners.

3

Protection

Protection includes:

- granting the police the power to remove a perpetrator of domestic violence from their home,
- ensuring people's access to adequate information on available services in a language they understand,
- setting up easily accessible shelters in sufficient numbers and in an adequate geographical distribution,
- making available state-wide 24/7 telephone helplines free-of-charge,
- setting up easily accessible rape crisis or sexual violence referral centres.

Domestic violence against children is widespread and studies have revealed the link between domestic violence against women and child physical abuse, as well as the trauma that witnessing violence in the home causes in children. For other forms of domestic violence, such as elderly abuse and domestic violence against men, reliable data is relatively scarce

4

Prosecution

The Istanbul Convention:

- defines and criminalises the various forms of violence against women, including domestic violence,
- obliges states that have signed and ratified the treaty to introduce a number of new offences where these do not already exist, (for example, psychological and physical violence, sexual violence and rape, stalking, female genital mutilation, forced marriage, forced abortion and forced sterilization).

States Parties will need to ensure that culture, tradition or so-called “honour” are not regarded as a justification for any of the above-listed courses of conduct.

States parties will have to take a range of measures to ensure the effective investigation of any allegation of violence against women, including cases of domestic violence.

Law enforcement agencies will have to respond to calls for help, collect evidence, and assess the risk of further violence to adequately protect those at risk.

Judicial proceedings should be run in a manner that respects the rights of victims at all stages of the proceedings and that avoids secondary victimisation.

5

Development of integrated policies

Development of integrated policies

- The Convention asks States Parties to implement comprehensive and co-ordinated policies involving government agencies, NGOs, and national, regional and local parliaments and authorities
- The aim is for policies to prevent and combat violence against women, including domestic violence, to be carried out at all levels of government and by all relevant agencies and institutions.
- The Convention is on all forms of violence against women, including domestic violence, it also recognises that there are other victims of domestic violence, such as boys and men (may include gay men, transgender men or men that do not conform to what society considers to be appropriate behaviour)
- The Convention devotes an entire chapter to women migrants and asylum-seekers facing gender-based violence
- . It also recognises the work of NGOs and seeks to ensure greater political and financial support for their work.

6

The Convention establishes a monitoring mechanism

- **GREVIO (Group of Experts on Action Against Violence Against Women and Domestic Violence)**, which is a body of independent and impartial experts known for their expertise in the fields of human rights, gender equality, violence against women, or assistance to and protection of victims; or having demonstrated relevant professional experience in any of these fields. GREVIO draws up and publishes reports on legislative and other measures taken by countries that have ratified the Convention, designed to give effect to its provisions (evaluation procedure). In specific circumstances, the group may initiate inquiries (inquiry procedure).
- **The Committee of Parties** is composed of representatives of the Parties to the Convention. The Committee may adopt recommendations on measures to be taken to implement conclusions contained in GREVIO's reports. The Committee also supervises the implementation of its own recommendations, examines the findings of any inquiry conducted by GREVIO members, and considers any necessary measures pursuant to these findings.

7

The Istanbul Convention is in many ways an innovative document

- It is the first international document that contains a definition of gender.
- It calls for the involvement of all relevant state agencies and services, so that violence against women and domestic violence are tackled in a co-ordinated way. This means that agencies and NGOs are encouraged not to act alone, but to work out protocols for co-operation.
- It criminalises offences, such as female genital mutilation, forced marriage, stalking, forced abortion and forced sterilisation. This means that states will be obliged, for the first time, to legislate against these serious offences.
- It recognises violence against women as a violation of human rights and a form of discrimination. States are held responsible if they do not respond adequately to such violence.
- It obliges states which have signed and ratified the Convention to invite their parliaments to participate in the monitoring process.

8

Purpose and scope of the Convention

Purpose of the Convention

- to protect women against all forms of violence;
- to prevent,
- prosecute and eliminate violence against women and domestic violence;
- to promote real equality between women and men;
- to provide assistance to organisations and law enforcement agencies to cooperate effectively, in order to adopt an integrated approach.

Scope of the Convention

The Convention is applicable in times of peace and conflict. It applies to all forms of violence against women, including domestic violence, but particular attention should be paid to women.

9

Positive obligation, equality and non-discrimination

Fundamental rights, equality and non-discrimination

Everyone is entitled to live free from violence in both the public and private sphere, and states must implement the necessary measures, including legislative to ensure this. States must condemn all forms of discrimination against women. This Convention should be applied without discrimination on any grounds. Special measures taken by states to prevent and protect women from gender-based violence do not constitute discrimination.

State obligations and due diligence

States and their authorities, officials, agents and other actors must refrain from engaging in gender-based violence against women and must take measures necessary to prevent, investigate, punish and provide reparation for acts of violence perpetrated by non-state actors.

10

Integrated policies and data collection

- States must take measures at State-wide level to adopt and implement policies to prevent and combat all forms of violence against women. The rights of the victim must be placed at the centre of these measures. All relevant actors, including civil society, must be involved in design and implementation.
- States must allocate appropriate financial and human resources to effectively implement policies and programmes to prevent and combat all forms of violence covered by the scope of the Convention.
- Resources should be available as well for NGOs and civil society.
- The work of NGOs and civil society should be recognised, encouraged and supported by the State. States must establish one or more official bodies to ensure coordination, implementation, monitoring and evaluation of policies and measures.
- Disaggregated statistical data on all forms of violence, and should be collected at regular intervals. States should support research in the field of gender-based violence. Data collected should be made public.

11

Criminalisation of gender-based violence

The following types of violence should be criminalised:

- **psychological violence**, stalking; physical violence;
- **sexual violence**, including rape and causing another person to engage in non-consensual acts of a sexual nature with a third person, forced marriage of an adult or child, including luring an adult or child to enter the territory of another state with the aim of forcing them into marriage, female genital mutilation;
- **forced abortion and forced sterilisation**, when lacking the informed consent of the women and her understanding of the procedure;
- **sexual harassment**, whether it be verbal, nonverbal, or physical.

Aggravating circumstances:

offence against current or former spouse or partner as recognised by internal law, by a member of the family or a person cohabitating with the victim;

- when the offence was committed repeatedly;
- the offence was committed in a presence of a child;
- when extreme violence was involved;
- when the offence resulted in severe physical or psychological harm for the victim.

12

Investigation, prosecution, procedural law and protective measures

Investigations and judicial proceeding in relation to all forms of violence covered by the Convention should proceed without delay and should take into account the rights of the victim. (art. 49)

In cases where there is an immediate danger, competent authorities can order a perpetrator to leave a residence and prohibit contact with the victim for a period of time. (art. 52)

In criminal or civil trials, evidence relating to a victim's sexual history and conduct is permitted only when relevant and necessary. (art. 54)

States can continue investigating and prosecuting a crime under the Convention, even if the victim withdraws her or his statement/complaint. (art. 55)

Victims have the right to free legal aid.

- Volodina v. Russia (no. 2), This case concerned the applicant's allegation that the Russian authorities had failed to protect her against repeated acts of cyberharassment. She submitted, in particular, that her former partner had used her name, personal details and intimate photographs to create fake social media profiles, that he had planted a GPS tracker in her handbag, that he had sent her death threats via social media; and that the authorities had failed to effectively investigate these allegations.

13

Migration and asylum

Residence status

In cases of asylum and migration, victims of domestic or gender-based violence whose residence status is dependent on that of a spouse or partner can be granted an autonomous residence permit, irrespective of the duration of the marriage or partnership. States should take measures to support victims of forced marriages to regain residence status in the original state, where this has been lost as a result of the forced marriage.

Gender-based asylum claims

Gender-based violence against women should be recognised as a form of persecution and ground for granting asylum. Additionally, states must ensure a gender sensitive interpretation of the Convention relating to the Status of Refugees.

Non-refoulement

The principle of non-refoulement should be respected in the case of victims of violence against women. Victims of gender-based violence shall not be returned to any country where their life might be at risk or where they may be subjected to torture or inhuman or degrading treatment.

14

Positive obligation to prevent and protect ECHR

- The obligation under Article 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention,
- Article 3, requires for States: (a) the obligation to take reasonable measures designed to prevent ill-treatment of which the authorities knew or ought to have known; and (b) the (procedural) obligation to conduct effective official investigation where an individual raises an arguable claim of ill-treatment. (see *Bälşan*, cited above, § 57).
- For a positive obligation to arise, it must be established that the authorities knew or ought to have known at the relevant time of the existence of a real and immediate risk of ill-treatment of an identified individual from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk (see *Đorđević v. Croatia*, no. [41526/10](#), § 139, ECHR 2012).
- The Court has held that States have a positive obligation to establish and apply effectively a system punishing all forms of domestic violence and to provide sufficient safeguards for the victims (see *Opuz*, cited above, § 145, and *Bälşan*, cited above, § 57 in fine).

15

Opuz v. Turkey, 9 June 2009

The Court held that there had been a violation of Article 2 (right to life) of the Convention concerning the murder of the applicant's mother and a violation of Article 3 (prohibition of inhuman or degrading treatment) of the Convention concerning the State's failure to protect the applicant.

It found that Turkey had failed to set up and implement a system for punishing domestic violence and protecting victims. The authorities had not even used the protective measures available and had discontinued proceedings as a "family matter" ignoring why the complaints had been.

There should have been a legal framework allowing criminal proceedings to be brought irrespective of whether the complaints had been withdrawn.

The Court also held – for the first time in a domestic violence case – that there had been a violation of Article 14 (prohibition of discrimination) of the Convention, in conjunction with Articles 2 and 3: it observed that domestic violence affected mainly women, while the general and discriminatory judicial passivity in Turkey created a climate that was conducive to it.

The violence suffered by the applicant and her mother could therefore be regarded as having been gender-based and discriminatory against women. Despite the reforms carried out by the Turkish Government in recent years, the overall unresponsiveness of the judicial system and the impunity enjoyed by aggressors, as in the applicant's case, indicated an insufficient commitment on the part of the authorities to take appropriate action to address domestic violence

16

CaseLaw of the ECHR on GBV and non-discrimination

Buturugă v. Romania - 56867/15 Judgment 11.2.2020 [Section IV] The Court found violation on Article 3 due to the failure of the authorities to address a criminal investigation from the angle of domestic violence and violation on Article 8 as a result of the failure of the courts to examine the merits of a complaint of **cyberbullying** closely linked to a complaint about domestic violence.

Y and Others v. Bulgaria (no. 9077/18) 22 March 2022, the Court found that the authorities had failed to respond promptly to the risk to her life in view of the specific context and dynamics of domestic violence. However, the Court held that there had been no violation of Article 14 (prohibition of discrimination) of the Convention read in conjunction with Article 2, finding no evidence of complacency towards violence against women either generally in Bulgaria or in the police's handling of the applicants' close relative's case.

Landi v. Italy 7 April 2022 the Court noted, in particular, that the national authorities had failed in their duty to conduct an immediate and proactive assessment of the risk of a repetition of the violent acts committed against the applicant and her children, and to adopt operational and preventive measures to mitigate the risk and to protect those concerned. The Court did not, however, consider that the impugned shortcomings could be considered, per se, as pointing to any discriminatory attitude on the authorities' part. It therefore declared inadmissible, as being manifestly ill-founded, the applicant's complaint concerning Article 14 (prohibition of discrimination) of the Convention read in conjunction with Article 2.

17

Victims of GBV and systemic problems

- **Tunikova and Others v. Russia, 2021.** The Court held that there had been a violation of Article 3 (prohibition of inhuman or degrading treatment) of the Convention. It also held that there had been a violation of Article 14 (prohibition of discrimination) of the Convention in conjunction with Article 3, finding it established that as regards protection against the risk of domestic violence, in a situation of de facto discrimination. In this regard, it noted in particular that the failure of the Government to pass legislation to address the domestic violence against women and the systematic problems in securing prosecutions and convictions, had led to a continuing climate that was conducive to domestic violence. As a structural bias had been shown to exist, under Article 46 (binding force and execution of judgments) of the Convention, the Court recommended that urgent changes to domestic law and practice.
- **A.E. v. Bulgaria (no. 53891/20) 2023,** The Court held that there had been a violation of Article 3 (prohibition of inhuman or degrading treatment) of the Convention, finding that Bulgaria had not put in place an effective system to punish all forms of domestic violence and provide sufficient safeguards for victims. It noted in particular that, in the present case, the State had failed to protect the applicant adequately either in law – domestic-violence legislation had been deficient – or in fact – prosecutors had not opened criminal proceedings despite the applicant's vulnerable situation and the report that she had been subjected to repeated domestic violence. As it was not necessary for the applicant to show she had been individually a victim of prejudice on the part of the authorities, the Court concluded that there held also been a violation of Article 14 (prohibition of discrimination) of the Convention in conjunction with Article 3 in the applicant's case.

18