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TECHNOLOGY AND IDEOLOGY: MASS COMMUNICATION AND INFORMATION REVOLUTION IN THE SOVIET SOCIETY

Abstract

The paper is dealing with the European legal principles of combating gender based violence, more specifically, the Council of Europe (CoE) Convention on preventing and combating violence against women and domestic violence (Istanbul Convention set up by the CoE CAHVIO Committee and obtained the title according to the place of its signing), which entered into force on the 1st of August 2014. In this context, concept of gender based violence is analyzed through wider prism of relevant international law. In this Convention, focus is on the violence against women, i.e. gender based violence has been recognized as a form of discrimination and a violation of women's human rights. The Istanbul Convention is the most comprehensive, legally binding and far-reaching international treaty to address domestic and violence against women laying out state obligations to prevent violence, protect victims and prosecute the perpetrators. The Convention promotes zero tolerance to all forms of domestic violence globally and through requiring states to criminalize a broad range of violence against women, including physical, sexual and psychological violence, stalking, sexual harassment, female genital mutilation, forced abortion, forced sterilization and forced marriage. Although of regional character, this Convention seeks to achieve universal application, since it is open to accession to non-member countries of the Council of Europe.

Keywords: *Council of Europe, Istanbul Convention, domestic and violence against women.*

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INTRODUCTORY NOTES

Gender inequality and social norms legitimating violence against women are underlying forces that feed into gender-based violence. At the same time social protests at global level are growing, with contemporary international campaigns such as #Not Okay, #Me Too and #I Have. Until the 1960s it was believed that domestic violence was very rare and unusual behavior². However, in most European legal systems, in contemporary situation, the violence against women (gender based violence) and family (domestic) violence are criminalized and considered to be serious social danger with parallel economic negative consequences for the whole society.

Until the adoption of the Council of Europe (CoE) Convention on the Prevention and Combating Violence against Women and Domestic Violence (Istanbul Convention), there was no international legal instrument on this subject implemented in Europe, except for the UN CEDAW Convention on elimination of all forms of discrimination against women, with its Optional Protocol and Recommendation no. 19. brought by CEDAW Committee under this UN Convention. The CoE Convention on Preventing and Combating Violence against Women and Domestic Violence is named Istanbul Convention, since it was signed by members of the Committee of Ministers of the Council of Europe at the session in Istanbul, Turkey, in May 2011 after two years of drafting negotiations in the expert CAHVIO Committee of the Council of Europe in Strasbourg, France (2009-2011). In further text the title Istanbul Convention will be used as the synonym with the CoE Convention on Preventing and Combating Violence against Women and Domestic Violence.

The issue of regulating domestic violence and gender-based violence in the international law has been largely neglected till recent period. The Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women was adopted in Belém do Pará, Brazil, in 1994. It proclaims that violence against women constitutes a violation of human rights and fundamental freedoms. The Belém do Pará Convention established for the first time the development of mechanisms for the protection and defense of women's rights in the battle to eliminate violence against their physical, sexual and psychological integrity, in both the public and private spheres.

² Draškić M., „Do we need another law on protection against domestic violence?“, in *Perspectives of implementation of European standards in Serbian Legal system* (Lilic S. Editor), Law Faculty, University of Belgrade, Vol. 6, Collected articles, Belgrade, 2016, p. 41.

Violence against women is one of the most common violations of women's human rights. The term "gender-based violence against women" is used throughout the Istanbul Convention of the Council of Europe (CoE, 2014) and refers to violence that is directed against a woman because she is a woman or that affects women disproportionately. It differs from other types of violence in that the victim's gender is the primary motive for the acts of violence. According to the World Health Organization at least one in three women worldwide experience one or more serious physical and/or sexual violent incidents during their lifetime, often from an intimate partner or ex-partner. In Europe, according to recently conducted surveys, 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%.

LEGAL BREAKTHROUGH OF THE EUROPEAN STANDARDS

It can be assessed that there is a time "after the Istanbul Convention", in contrast with the time "before the Istanbul Convention", seen from a global and regional perspective. Istanbul Convention is the first European treaty specifically targeting violence against women and domestic violence in a legally binding manner. What is more important is that it is comprehensive legal instrument, since it sets out commonly agreed legal standards on prevention, protection, prosecution, and integrated policies in the area of fight against gender-based violence and domestic violence.

The Convention launched several ground-breaking features and has been ratified by majority of member states of the CoE and signed also by the European Union. Countries ratifying the Convention have to establish services such as hotlines, shelters, medical services, counselling, and legal aid. Istanbul Convention entered into force on 1st of August 2014. The Istanbul Convention is open also for the accession of non-member states of the Council of Europe.

Ad Hoc CoE Committee on Preventing and Combating Violence against Women and Domestic Violence (CAHVIO) that was established by the CoE Committee of Ministers on behalf of 47-member states and their 800 million citizens, started its work on the Convention on Preventing and Combating Violence against Women and Domestic Violence in April 2009. Before the Convention, in 2002, the adoption

of Council of Europe Recommendation Rec No (2002)5 of the Committee of Ministers to member states on the protection of women against violence represented a milestone in that it proposes, for the first time in Europe, a comprehensive strategy for the prevention of violence against women and the protection of victims in all Council of Europe member states. The Istanbul Convention represents setting new European legal standards, but with global importance. Text of the CoE Convention was adopted at the CAHVIO session in December 2010. In May 2011 at the CoE Istanbul conference of the Committee of Ministers started the signing of the new Convention. It was at the same time the start of its ratification process.

The Istanbul Convention aims at zero tolerance for gender based violence in each society. The aim of the Istanbul Convention is to ensure protection for victims of domestic violence, particularly women and girls, since they are prevalent majority of victims, but also for other victims of domestic violence, children, elderly people and men. European standards on combating domestic violence and violence against women are based on the so-called “Concept three P”: prevention, protection, punishment, plus integrated Policies of countries, parties of the CoE Convention. It recognizes violence against women as a violation of human rights and a form of discrimination. This means that states are held responsible if they do not respond adequately to such violence.

On a global level, in most countries, people are increasingly aware that gender based and domestic violence is a negative and dangerous social phenomenon, and not just an isolated, individual private problem. This is a fact especially if we take into account the accompanying devastating effects of domestic and gender based violence³. Therefore, in most of the countries, gender based and domestic violence is legally classified in a category of criminal offenses.

Domestic violence is deeply rooted in society. Among the victims of domestic violence women are predominant, as evidenced by the empirical results of relevant research at the global level. Since it is taking place in the private sphere, very often is difficult to recognize and punish it in relation to other forms of public violence. Hence, the agencies and services responsible for providing assistance to victims face different forms of hiding the truth in the four walls. Punishment occurs only in cases of prolonged manifestation of gender based violence in a cruel way, with sometimes fatal consequences. Violence against women in the family context is

³ The World's Women 2010, Trends and Statistics, United Nations, New York, 2010, Department of Economic and Social Affairs, ST/ESA/STAT/SER.K/19, ISBN 978-92-1-161539-5, p. 131.

a form of continuing violence and abuse, the situation of repeated victimization, where the victim (woman, girl) is vulnerable precisely because she shares a home with her abuser, and has a sense of loyalty, or even love, towards him⁴.

The reason why the CoE Istanbul Convention is chosen for this analysis is that it is the first regional international legal instrument, which is legally binding for countries signatories, contrary to other relevant international recommendations and declarations. The legally binding character is also assured through its monitoring mechanism, which has been established (GREVIO)⁵, as well as through precise content of state duties in this area of women human rights protection, such as protection against all forms of violence. Furthermore, this CoE Convention is based on several fundamental legal standards, which derive from international law. In this way, the Istanbul Convention is mirroring global legal principles, aiming at the same time to gain global implementation for itself.

DEFINITION OF GENDER BASED AND DOMESTIC VIOLENCE

How does the Istanbul Convention define violence against women and domestic violence? The phenomenon of «violence against women» represents the violation of women human rights and form of discrimination against women and represents all forms of gender-based violence that lead to, or can lead to, physical, sexual, psychological or economic injuries or suffering for women, including threats to such acts, coercion or arbitrary deprivation of liberty, whether in public or in private life.

Forms and manifestations of violence against women vary depending on the specific social, economic, cultural and political context. Violence in intimate partner relationships with physical violence implies a system of continuously present violent tactics - threats, intimidation and coercion⁶, the aim of which is to maintain power and control over another person (woman), by creating a real and constantly present fear for life and well-being, or very rough behavior in long time period

⁴ Kelly, 2003. In Ignjatovic Tanja, „Violence against women in intimate partnership: Model of coordinated community response“, AZC, Belgrade, 2011, p. 21.

⁵ GREVIO – monitoring mechanism of the Istanbul Convention in the form of the independent expert body (15 members).

⁶ Ignjatovic T., „Violence against women in intimate partnership relations: Model of Coordinated Community Response“, ISBN 978-86-910101-2-6, Belgrade, 2011, p. 231.

(battering). CoE Istanbul Convention reaffirms gendered understanding of violence against women (VAW) and defines it as a form of discrimination against women and as a violation of human rights (Article 3.a, 3.d). Under Article 3. d, it adopts a crucial part of definition provided in the General Recommendation 19 of the UN Committee on the Elimination of Discrimination against Women (CEDAW) in 1992: gender-based violence against women is “violence that is directed against a woman because she is a woman or that affects women disproportionately”⁷.

The Council of Europe Istanbul Convention consists of the Preamble and 12 chapters (81 articles and an annex on the privileges and immunities of the members of the GREVIO Monitoring Expert Body for the implementation of the Convention). The text of the Convention has been the subject of almost two years of negotiations between member states of the Council of Europe at expert level within the 9th Ad Hoc Committee for the Prevention and Fight against Violence against Women and Domestic Violence⁸.

In order to enter into force the CoE Convention on the Prevention and Combating Violence against Women and Domestic Violence, it was necessary that ten States pass ratification instruments on the acceptance of the Convention, of which at least eight out of ten initial states must be members of the Council of Europe. The Convention enters into force on the first day of the month following the expiration of a period of three months after the deposit of the instruments of ratification by the ten States Parties ratifying, accepting or approving the Convention. This happened on August 1, 2014. and thus, the Convention has acquired a mandatory legal character for its States Parties.

Furthermore, the Preamble of the Convention is strongly linked with the UN CEDAW Convention on the Elimination of Discrimination against Women and other relevant international instruments.

⁷ Committee’s General Recommendation No. 19 on “Violence Against Women,” (1992) UN doc. CEDAW/C/1992/L.1/Add.15

⁸ Prof. Dr. Gordana Gasmi, the author of this paper, represented Serbia at the expert level when formulating the text of the Istanbul Convention during the two-years negotiations in CAHVIO, after that she became the Council of Europe expert in the field of human rights and gender equality. The CAHVIO Committee, formed by a decision of the Committee of Ministers of the CoE in December 2008, started its work in April 2009 on the basis of the mandate entrusted by the CoE Committee of Ministers.

“Violence against women is a manifestation of the historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of women’s full advancement.” (UN - United Nations: The Beijing Declaration and the Platform for Action, Fourth World Conference on Women Beijing, China 4-15 September 1995). The Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (the Palermo Protocol) requires, inter alia, States parties to⁹:

- Adopt necessary legislative and other measures to establish trafficking in persons as a criminal offence when committed intentionally (Article 5);
- Secure that their domestic legal or administrative system contains measures that provide to victims information on court and administrative proceedings and assistance to enable their views and concerns to be presented and considered during criminal proceedings against offenders (article 6).

As famous lawyer V. Bogisic wrote: “Who knows only the legal wording, he does not know yet real law, until he understands its reason and meaning.” It is therefore particularly important to point out the essence, formulations and reasons for the adoption of common legal standards in the domain of definition and criminal processing of perpetrators of domestic and gender-based violence, i.e. violence against women. This is even more important, given the comprehensiveness of the standards and norms of the Istanbul Convention and the future global scope of its provisions, since it is open for accession to non-member countries of the Council of Europe. The overall objective of this Convention is to protect the rights of victims of violence, primarily violence against women and other victims of domestic violence, and to provide them with the highest level of protection.

The Convention regulates the fight against violence against women, but also includes the protection of children, elderly and men against domestic violence. The specific focus of the Convention is to prevent violence against women, bearing in mind the real state of the problem: violence against women = severe form of discrimination against women.

⁹ UN Handbook for legislation on violence against women, 2010, <http://www.un.org/womenwatch/daw/vaw/handbook/Handbook%20for%20legislation%20on%20violence%20against%20women.pdf>, 25. 06. 2016.

Furthermore, empirical global research¹⁰ points to the fact that most of the perpetrators of domestic violence are men, and hence the emphasis of the Convention is directed towards the prevention and fight against violence against women, i.e. gender based violence. However, the scope of the Convention applies explicitly to all victims of domestic violence, but the States Parties of the Convention undertook obligation to pay special attention to women who are victims of gender-based violence (Article 2 of the Convention).

On a global scale, the percentage of women affected by physical violence, even once in their lives, varies from a few percent to a total of 59% depending on where they live. Current statistical indicators of violence against women give very limited data. Therefore, statistical definitions and classification of the problem of violence against women require further enrichment at the international level.

Genital mutilation of women, the most harmful and most serious form of human rights violations of women and girls, is very widespread and according to the current UN report on women (2010)¹¹ shows a slight decline in practice. Nevertheless, in many regions of the world, long-standing customs and negative gender stereotypes have exerted heavy pressures on women to accept different forms of violence.

In paragraph 1 of Art. 2. it is stated that the Convention refers to all areas of violence against women that include domestic violence committed against women. The Convention therefore signifies that women represent the majority of victims of domestic violence.

It is explicitly stated that the Convention covers all forms of violence against women, including domestic violence, which affects women disproportionately in relation to men. Under all forms of violence, economic and psychological violence against women should be taken into account, which were particularly emphasized by some countries (Norway, Spain, etc.). This is significant because the economic control of a man over a woman in the family is a very common phenomenon.

For these reasons, the Istanbul Convention (paragraph 2, Article 2) directly requires member states to pay special attention to women who are victims of gender-based violence in the application of the Convention. This means that

¹⁰ UNDP, WHO, UNODC, „Global Status Report on Violence Prevention 2014“, 2014, p.10.

¹¹ The World's Women 2010, Trends and Statistics, United Nations, New York, 2010, Department of Economic and Social Affairs, ST/ESA/STAT/SER.K/19, ISBN 978-92-1-161539-5, p. 132.

gender-based violence against women, in its various manifestations, of which one is domestic violence, must be at the core of all measures of policy and the adoption of relevant national regulations, which are being undertaken in the application of this Convention.

The implementation of the Convention covers the time of peace as well as the situation of armed conflict. Provisions of paragraph 3. Art. 2 of the Convention should be interpreted as mirror of the basic principles of international humanitarian law and the Rome Statute of the International Criminal Court, as set out in the Preamble to the Convention. These principles confirm individual criminal responsibility under international law for violence that comes primarily (but not exclusively) during an armed conflict¹². The CoE Convention is recalling in its Preamble the basic principles of international humanitarian law, and especially the Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War (1949) and the Additional Protocols I and II (1977)¹³.

COMBATING GENDER BASED VIOLENCE IN LEGAL SENSE – ISTANBUL CONVENTION

The Istanbul Convention is a comprehensive and complex treaty - it is at the same time a human rights treaty, covering both civil and criminal laws, and a normative instrument for greater gender equality. Putting an end to *de jure* discrimination against women is a fundamental prerequisite for the achievement of true equality between women and men. Article 1 of the Istanbul Convention therefore lists the contribution “to the elimination of all forms of discrimination against women” and the promotion of “substantive equality between women and men, including by empowering women” as among the purposes of the Convention.

The Preamble of the Istanbul Convention contains references to these and other international legal standards such as those contained in the United Nations Convention on the Elimination of All Forms of Discrimination Against Women

¹² Article 7 of the Rome Statute (crimes against humanity committed in the framework of a widespread and systematic attack directed against each civilian population) and Article 8 (war crimes) involving acts of violence committed mainly against women such as rape and sexual violence.

¹³ Convention on the Prevention and Combating Violence against Women and Domestic Violence (Istanbul Convention), CM (2011) 49 final.

(CEDAW Convention). The Preamble contains the drafters' recognition that the "realization of *de jure* and *de facto* equality between women and men is a key element in the prevention of violence against women" and that "violence against women is a manifestation of historically unequal power relations between women and men, which have led to domination over, and discrimination against, women by men and to the prevention of the full advancement of women". The Preamble thus firmly establishes the link between achieving gender equality and the eradication of violence against women. On the one hand, the drafters affirmed that violence against women, including domestic violence, is a distinctly gendered phenomenon because it is violence targeted at women to control them or their sexuality.

In line with this stated purpose of the Convention, Article 4 paragraph 2 requires States Parties to condemn all forms of discrimination against women and to take, without delay, measures to prevent any such discrimination. These measures include: (a) enshrining the principle of equality between women and men in law and ensuring its practical realization; (b) prohibiting discrimination against women by law; and (c) abolishing any discriminatory legislation or practices.

European principles in the Convention frame the eradication of violence against women within the wider context of combating discrimination against women and achieving gender equality in law and in fact. It should also be noted that the term "discrimination against women" should be interpreted as constituting "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field" as provided in Article 1 of CEDAW. This is clearly stated in the Explanatory Report of the Convention¹⁴.

The Istanbul Convention contains a definition of "gender" (Article 3.c); defines contribution to the elimination of all forms of discrimination against women as one of its purposes (Article 1), and contains provisions pursuing this aim as well as empowering women (Articles 4, 6). Most importantly, it establishes structural connections between violence against women (VAW) and gender inequality.

¹⁴ Council of Europe Convention on preventing and combating violence against women and domestic violence - Explanatory report, CM (2011) 49 add final, p. 8, 7th April 2011.

Resulting from the established link between achieving gender equality and the eradication of violence against women, the Convention contains a number of provisions that aim at advancing the status of women in society in law and in fact. As legally-binding obligations, they are expected to give new impetus to the pursuit of equality between women and men at national level. Last but not least, these provisions will further the overall aim of non-discrimination against women as required by the CEDAW Convention¹⁵ because they can be grouped under the following three central obligations identified by the CEDAW Committee in its General Recommendation No. 25. CEDAW Committee General Recommendation 25, paragraphs 6 and 7, lists the elimination of any direct or indirect discrimination against women by law, the improvement of the *de facto* position of women through concrete and effective policies and programmes, and the need to address gender relations and gender-based stereotypes that affect women through individual acts and through law and societal structures, as the three central obligations of States Parties to the CEDAW Convention.

The violence against women is seriously and deeply engrained in the social and cultural structures, norms and values that govern society, and often survives due to the culture of denial and silence. The use of the term “gender-based violence against women” in this Convention means the same as the term “gender-based violence” as used in General Recommendation no. 19 of the UN CEDAW Committee on Violence against Women (1992), the United Nations General Assembly Declaration on the Elimination of Violence against Women (1993) in the Art. 1 and in the CoE Recommendation Rec (2002) 5 of the Committee of Ministers of the Council of Europe to member states on the protection of women against violence (2002).

The CoE Convention is the first international legal instrument containing the definition of gender and gender-based violence in Art. 3, which read:

“gender” shall mean the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men“.

The question arises why it is so important to define those categories. The answers to these questions should be primarily addressed by the fact that the Convention sets out the obligation to prevent and combat violence within the wider framework of achieving equality between women and men, and it is important to define the

¹⁵ All Council of Europe member states are States Parties to the UN CEDAW Convention.

term “gender”. In the context of this Convention, the term gender, based on the two sexes, male and female, explains that there are also socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men. Relevant research has shown that certain roles or stereotypes reproduce unwanted and harmful practices and contribute to make violence against women acceptable.

In order to overcome such harmful gender roles, Art. 12 (1) provides a framework for the suppression of prejudices, customs, traditions and other practices that are based on the inferiority of women and stereotypical gender roles, and becomes a general obligation of States Parties to prevent violence. In addition, the Convention calls for consideration of violence against women and domestic violence from a gender perspective, which should be at the heart of all measures for the protection and support of victims. This means that these forms of violence should be dealt with in the context of the prevailing inequality between women and men, existing stereotypes, gender roles and discrimination against women in order to respond to the complexity of this phenomenon. Hence, the term “gender” according to this definition is not a substitute for the terms “women” and “men” in the Convention.

‘Violence against women’ is a manifestation of the historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of women’s full advancement¹⁶.

European standards contained in the CoE Conventions are inspired by global principles defined in the UN the Beijing Declaration and Platform for Action adopted at the Fourth World Conference of Women in 1995, the report of the Ad Hoc Committee of the whole of the 23rd special session of the United Nations General Assembly (Beijing + 5 – political declaration and outcome document) as well as the political declaration from the 49th session of the United Nations Commission on the Status of Women in 2005 (Beijing + 10) and 54th session of the United Nations Commission on the Status of Women in 2010 (Beijing + 15) and Women 2000: Gender Equality, Development and Peace for the 21st Century. All those international declarations are listed in the Explanatory report of the Convention¹⁷, which proves global legal foundation of European principles that are contained in the CoE Convention.

¹⁶ United Nations: The Beijing Declaration and the Platform for Action, Fourth World Conference on Women Beijing, China 4-15 September 1995.

¹⁷ Ibid, p. 7, 2011.

PRINCIPLE OF DUE DILIGENCE

Violence against women represents a violation of human rights and a form of unlawful and severe discrimination. This means that states are held responsible if they do not respond adequately to such violence. State obligations and due diligence principle mean that, under international public law, a state is responsible for the commission of an internationally wrongful act which is attributable to it, through the conduct of their agents such as the police, immigration officials and prison officers.

This principle is set out in the International Law Commission's Articles on the Responsibility of States for Internationally Wrongful Acts (2001), which are widely accepted as customary international law.

Under international human rights law, the state has both negative duties and positive duties: state officials must both respect the law and refrain from the commission of internationally wrongful acts and must protect individuals from their commission by other non-state actors. Article 5 of the Convention, paragraph 1, addresses the state obligation to ensure that their authorities, officials, agents, institutions and other actors acting on behalf of the state refrain from acts of violence against women, whereas paragraph 2 sets out States Parties' obligation to exercise due diligence in relation to acts covered by the scope of this Convention perpetrated by non-state actors. In both cases, failure to do so will incur state responsibility.

“Article 5:

1. Parties shall refrain from engaging in any act of violence against women and ensure that state authorities, officials, agents, institutions and other actors acting on behalf of the state act in conformity with this obligation.
2. Parties shall take the necessary legislative and other measures to exercise due diligence to prevent, investigate, punish and provide reparation for acts of violence covered by the scope of this Convention that are perpetrated by non-state actors“.

This regulation is inspired also by European Court of Human Rights (ECHR) case law. In ECHR Case *Opuz v. Turkey* (2009), ECHR brought the judgment that Turkey has violated art. 2, 3, and 14 of the European Convention on Human

Rights and Fundamental Freedoms: right to live, interdiction of torture and ban of discrimination.

The case originated in an application (no. 33401/02) against the Republic of Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Turkish national, Mrs Nahide Opuz (“the applicant”), on 15 July 2002. The applicant alleged, in particular, that the State authorities had failed to protect her and her mother from domestic violence, which had resulted in the death of her mother and her own ill-treatment. In the period of 1995-2002 H.O. attacked seriously six times his wife and her mother, with severe health consequences that were life-dangerous. Investigation was stopped three times due to giving up of the victim to file the suit and two times because of the lack of evidence. Case resulted in shooting the applicant’s mother by H.O. firearm and her instant death. It was the final consequence of the long-term repeated domestic violence. ECHR brought the judgment that Turkey has violated art. 2, 3, and 14 of the European Convention on Human Rights: right to live, interdiction of torture and ban of discrimination The legal basis for the ultimate attribution of responsibility to a State for private acts relies on State failure to comply with the duty to ensure human rights protection, as set out in Article 1(1) of the American Convention on Human Rights (1969).

The legal basis for the ultimate attribution of responsibility to a State for private acts relies on State failure to comply with the duty to ensure human rights protection, as set out in Article 1(1) of the American Convention on Human Rights (1969). Court concludes that the national authorities of Turkey cannot be considered to have displayed due diligence. They therefore failed in their positive obligation to protect the right to life of the applicant’s mother within the meaning of Article 2 of the European Convention.

A requirement of due diligence has been adopted in a number of international human rights instruments, interpretations, and judgments with respect to violence against women. These include CEDAW Committee General Recommendation No. 19 on violence against women (1992), Article 4 of the United Nations General Assembly Declaration on the Elimination of Violence against Women (1993), the Convention on the Prevention of Violence against Women (Convention of Belém do Pará, 1994) adopted by the Organisation of American States as well as the Council of Europe Recommendation Rec No (2002)5 of the Committee of Ministers to member states on the protection of women against violence (2002).

In relation to such development of the international law and judicial jurisprudence, it is very important to include the principle of due diligence of the state in this CoE Convention. It does not represent an obligation that relates to a result, but an obligation that relates to a means. The term “non-state actor” refers to natural persons, as previously explained in the CoE Recommendation (2002)5 on protection of women against violence.

Violence against women perpetrated by non-state actors crosses the threshold of constituting a violation of human rights as referred to in Article 2 insofar as Parties have the obligation to take the legislative and other measures necessary to exercise due diligence to prevent, investigate, punish and provide reparation for acts of violence covered by the scope of this Convention, as well as to provide protection to the victims, and that failure to do so violates and impairs or nullifies the enjoyment of their human rights and fundamental freedoms¹⁸.

CONCLUSIONS

The UN estimates that 70% of domestic violence fatalities are women. The Preamble of the CoE Istanbul Convention reaffirms the commitment of the countries signatories to protect universal human rights and fundamental freedoms, and especially women human rights, since they are prevalent victims of domestic and gender-based violence. The Convention contains legal standards that recall the most important international legal instruments, which directly deal with the scope of this Convention in the framework of the United Nations (UN).

In the coming period, the implementation of the provisions of the Convention at the national level of States Parties, as well as international cooperation in the exchange of relevant data and cooperation on criminal and civil legal issues, are to be monitored. Thus, the obligations of international cooperation do not end, but they also relate to cooperation in terms of preventing all forms of violence covered by this Convention and providing assistance to victims of violence.

The adoption of the Convention after two years of intensive negotiations and ratification procedures in the required number of countries marks a great legal and civilization achievement at the beginning of the 21st century. The Council of Europe Convention is a renewed aspiration towards establishing essential equality be-

¹⁸ Explanatory report, CM (2011) 49 add final, p. 18, 7th April 2011

tween women and men, aimed at removing deeply rooted unequal power relations between the sexes. Hence, violence against women is legally perceived through the prism of severe discrimination and the violation of the human rights of women with experience of violence. In addition to gender-based approach, the Convention also contains a wide scope of application, as it instructs the signatory states that its provisions also regulate the protection of other victims of domestic violence.

The universal legal contribution of the Convention is the fact that it obliges the signatory states to introduce into their domestic legislation regulations on the prosecution of certain crimes, such as: genital mutilation of women and girls, forced marriage, stalking, sexual harassment, psychological violence, forced abortion and forced sterilization. In this context, important message is proclaimed: that violence against women and domestic violence are not private matters.

Fundamental value of the Convention is reflected in the establishment of a special monitoring mechanism (GREVIO) to monitor its application in the form of an independent expert body, with a view to the long-term effectiveness of the provisions of the Convention in the member states of the Convention.

It is important to point out the far-reaching provisions of the Convention, of global importance, especially with regard to prevention, the protection of victims of violence and, in particular, the processing of perpetrators, which in total constitutes the basis of the concept: “three P” plus integrated gender-based approach to all public policy measures. The Council of Europe’s Convention on Preventing and Combating Violence against Women and Domestic Violence is precisely such an unavoidable international legal document, which is primarily aimed at protecting the human rights of women and other victims of domestic violence.

The basic objective of the European standards embodied in the Council of Europe Istanbul Convention is to establish zero tolerance in relation to violence against women and domestic violence, not only in Europe, but also globally.

Furthermore, the global value of the legal solutions contained in the Istanbul Convention make it a predominantly international legal instrument for the protection of human rights, since its essence is not in prosecution of perpetrators nor in a crime control. Therefore, the Convention relies on the most important legal documents of

the Council of Europe¹⁹ and the United Nations (UN). These are the following international instruments concerning human rights on a global level:

- The International Covenant on Civil and Political Rights (1966),
- The International Covenant on Economic, Social and Cultural Rights (1966),
- The UN Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”, 1979) and its Optional Protocol (1999), as well as
- UN General Recommendation No. 19 of the CEDAW Committee on violence against women,
- The United Nations Convention on the Rights of the Child (1989) and its Optional Protocols (2000) and
- The United Nations Convention on the Rights of Persons with Disabilities (2006).

The Council of Europe Convention on preventing and combating violence against women and domestic violence is open for ratification and accession to non-member states. It complements and expands the standards set by other regional human rights organisations, such as the Inter-American Convention on the prevention, punishment and eradication of violence against women, adopted in 1994 by the Organisation of American States, and the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, adopted in 2003 by the African Union, both address the issue of violence against women. However, the CoE Convention is more comprehensive and it significantly reinforces action to prevent and combat violence against women and domestic violence at world level.

The importance of the European legal standards in the area of fight against gender-based violence and domestic violence that are set up by the CoE Istanbul Convention, is in its contribution to dismantling globally widespread negative gender stereotypes²⁰, which are one of main causes of violence against women.

¹⁹ Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5, 1950) and its Protocols, the European Social Charter (ETS No. 35, 1961, revised in 1996, ETS No. 163), the Council of Europe Convention on Action against Trafficking in Human Beings (ETS No. 197, 2005) and the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (ETS No. 201, 2007).

²⁰ Gasmi Gordana, *New CoE Convention on Preventing and Combating Violence against Women and Domestic Violence “Istanbul Convention” – Importance of Setting European Legal*

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ПРАВНИ СТАНДАРДИ ЕУ У БОРБИ ПРОТИВ НАСИЉА НАД ЖЕНАМА И РОДНО ЗАСНОВАНОГ НАСИЉА

Апстракт

Рад се бави европским правним принципима за борбу против родно заснованог насиља, тачније Конвенцијом Савета Европе (СЕ) о спречавању и борби против насиља над женама и породичног насиља (Истанбулска конвенција коју је формулисао Комитет Савета Европе и која је добила назив према месту потписивања), а ступила је на снагу 1. августа 2014. У том контексту концепт родно заснованог насиља анализира се кроз ширу призму релевантног међународног права. У овој Конвенцији акценат је стављен на насиље над женама, тј. родно засновано насиље, дефинисано као облик дискриминације и кршење женских људских права. Истанбулска конвенција је најобухватнији, правно обавезујући и далекосежни међународни уговор, који се бави породичним и насиљем над женама, а којим се утврђују државне обавезе за спречавање насиља, заштиту жртава и процесуирање починитеља. Конвенција промовише нулту толеранцију према свим облицима породичног насиља широм света и путем тражења од држава да криминализују широк спектар насиља над женама, укључујући физичко, сексуално и психичко насиље, прогањање, сексуално узнемиравање, осакаћивање женских гениталија, принудни абортус, принудну стерилизацију и присилни брак. Иако је регионалног карактера, ова Конвенција тежи да постигне универзалну примену, јер је отворена за приступање и за земље које нису чланице Савета Европе.

Кључне речи: *Савет Европе, Истанбулска конвенција, породично и насиље над женама.*