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## EUROPEAN LEADING LEGAL PRINCIPLES OF COMBATING GENDER BASED VIOLENCE – “ISTANBUL CONVENTION”

### *Abstract*

*The paper is dealing with the new European leading legal principles of combating gender based violence, more specifically, the new 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 the Council of Europe’s (CoE) Istanbul Convention, 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 term “gender-based violence against women” is used throughout the Istanbul Convention 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. Gender-based violence refers to any harm that is perpetrated against a woman and that is both the cause and the result of unequal power relations based on perceived differences between women and men that lead to women’s subordinate status in both the private and public spheres. The Istanbul Convention of the CoE is open for the accession of non-member states of the Council of Europe, which builds its legal principles into global level.*

*CoE Istanbul Convention has set legally binding principles in the field of prevention, protection of victims of domestic and gender-based violence and prosecution of perpetrators. Reflection on direct regulations on investigation, prosecution and protection of victims in the area of fighting gender-based and domestic violence explains concrete obligations for countries signatories of the Istanbul Convention. According to the Convention, through legally established due diligence principle, it is the duty of governments to protect women and girls as their citizens against this sort of violence and, above all, to prevent it. A historic milestone in the 21<sup>st</sup> century. Besides their direct obligations for states signatories of the CoE Istanbul Convention, those principles contain specific deterrent effect, through setting legal standards that are comprehensive legal framework in Europe for achieving zero tolerance towards gender-based and domestic violence.*

**Key words:** Council of Europe, Istanbul Convention (2014), combating gender based violence

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# 1. INTRODUCTION

Violence against women is one of the most common violations of women's human rights. 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%.

Gender inequality and social norms legitimating violence against women are underlying forces that feed into gender based violence. At the same time social protests are growing, with contemporary international campaigns such as #NotOkay, #MeToo and #IHave. Until the 1960s it was believed that domestic violence was very rare and unusual behavior<sup>4</sup>. However, in most European legal systems, in contemporary situation, family violence is criminalized and considered to be serious social danger with parallel economic negative consequences for the whole society.

The international treaty, the "Council of Europe (CoE) Convention on Preventing and Combating Violence Against Women and Domestic Violence" – known informally as the "Istanbul Convention" according to the place of its signing (May, 2011) – is the first European treaty specifically targeting violence against women and domestic (family) violence. 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 focus of the Convention is oriented to a gender-based violence in the context of human rights of women, because gender-based violence is treated as a serious violation of human rights and a form of illegal discrimination against women. The vast majority of victims of domestic violence are women, ie. nine out of ten victims are women<sup>5</sup>.

In the Council of Europe's (CoE) Istanbul Convention, violence against women, i.e. gender based violence has been recognized as a form of discrimination and a violation of women's human rights. According to the Convention, it is the duty of governments to protect women as citizens against this violence and, above all, to prevent it. A historic milestone. Countries ratifying the Convention have to establish services such as hotlines, shelters, medical services, counselling, and legal aid. Istanbul Convention entered into force on the 1st of August 2014. The Istanbul Convention of the CoE is open for the accession of non-member states, which builds its legal principles into global level.

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<sup>4</sup> Draškić M., „Do we need another law on protection against domestic violence?“, in Lilic S. Editor, „PERSPECTIVES OF IMPLEMENTATION OF EUROPEAN STANDARDS IN THE SERBIAN LEGAL SYSTEM“, Vol. 6, Collected articles, Belgrade, 2016, p. 41.

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Gasmi G., "New European Legal Standards in the area of women human rights", (English), Collection of papers presented at the international conference: Efficiency of Legal Norms I, ISBN 978-606-522-873-3, pp. 141-153, Editors: Fodor E.M., Popovici P., Buzdugan C., Law Faculty, Cluj – Napoca, Romania, 2012., p. 145

The Istanbul Convention aims at zero tolerance in each society for gender based violence. The notion of gender is for the first time officially included into an international document with legally binding nature, such as the CoE Istanbul Convention (Art. 3, Definitions). Notion of gender in this context assumes socially constructed roles, behaviors, activities and attributes that the society considers appropriate behavior for women and men. Research results have shown that gender roles and stereotypes result in harmful practices and contribute to making violence against women socially acceptable. Globally seen, reaching equality among all population groups and the absence of discrimination in contemporary society represent moral imperatives<sup>6</sup>.

Violence against women in partnership, although it represents a relationship of "formally equal", occurs in the context of total discrimination against women, unequal opportunities, the inaccessibility of personal, social, political, economic and other resources, as well as gender stereotypes and marginalization of this type of violence. Consequently, it is of vital importance that prevention and fight against gender based violence is put within wider context of gender equality in the CoE Istanbul Convention, through notion of gender and by focus of the Convention on women and girls as prevalent victims of family violence.

## **2. CONCEPT OF GENDER BASED VIOLENCE IN RELEVANT INTERNATIONAL LAW**

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 coercion<sup>7</sup>, 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 (battering).

UN Convention on Elimination of all forms of Discrimination Against Women (CEDAW) proclaimed gender equality *de iure* and *de facto*, but only after the Recommendation No 19 of the CEDAW Committee (1992, contained in Document A/47/38) gender based violence had been introduced under the auspices of the UN CEDAW Convention. It was realized through recognition in the Recommendation No 19, that: "Gender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men."

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Radović – Marković M. Et al. „,The Impact of Education on Entrepreneurs Activity and Employment Among Marginalized Groups: an Evidence of Serbia“ in: INSIGHTS AND POTENTIAL SOURCES OF NEW ENTREPRENEURIAL GROWTH, Editors: Radovic Markovic Mirjana; Nikitovic Zorana; Zanadu Linjie Chou, Italy, ISBN 978-88-95922-84-3, 2017, p. 360

### **7**

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

“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 to<sup>8</sup>:

- 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).

The Rome Statute of the International Criminal Court provides the broadest statutory recognition of gender-based violence as a crime under international criminal law to date. In article 7(1)(g), the Rome Statute classifies “rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity” committed “as part of a widespread or systematic attack directed against any civilian population” as crimes against humanity. These same offences are classified in article 8(2) (b)(xxii) as serious violations of the laws and customs applicable to international armed conflict and thereby classifiable as war crimes. Under the principle of complementarity established by the Rome Statute, States Parties have primary responsibility for bringing those responsible for genocide, crimes against humanity and war crimes to justice.

CoE Istanbul Convention (Art. 3) defines violence against women as a violation of human rights and a form of discrimination. This is in line with the purpose of the Convention set out in Article 1 (b) and needs to be borne in mind when implementing the Convention. The drafters have, however, expanded the definition to include the notion of “economic harm” which can be related to psychological violence:

“Violence against women” is understood as a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life”. (Istanbul Convention)

The term “gender-based violence against women” is used throughout the Istanbul Convention 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. Gender-based violence refers to any harm that is perpetrated against a woman and that is both the cause and the result of unequal power

relations based on perceived differences between women and men that lead to women's subordinate status in both the private and public spheres. This type of violence is deeply rooted in the social and cultural structures, norms and values that govern society, and is often perpetuated by a culture of denial and silence.

The use of the expression "gender-based violence against women" in this Convention is understood as equivalent to the expression "gender-based violence" used in the CEDAW Committee General Recommendation No. 19 on violence against women (1992), the United Nations General Assembly Declaration on the Elimination of Violence against Women (1993) and 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). This expression is to be understood as aimed at protecting women from violence resulting from gender stereotypes, and specifically encompasses women. Gender-based violence refers to any harm that is perpetrated against a woman and that is both the cause and the result of unequal power relations based on perceived differences between women and men that lead to women's subordinate status in both the private and public spheres. This type of violence is deeply rooted in the social and cultural structures, norms and values that govern society, and is often perpetuated by a culture of denial and silence.

Research has shown that certain roles or stereotypes reproduce unwanted and harmful practices and contribute to make violence against women acceptable. To overcome such gender roles, Article 12 (1) of the CoE Istanbul Convention formulates the eradication of prejudices, customs, traditions and other practices which are based on the idea of the inferiority of women or on stereotyped gender roles as a general obligation to prevent violence. Elsewhere, the Convention calls for a gendered understanding of violence against women and domestic violence as a basis for all measures to protect and support victims. This means that these forms of violence need to be addressed in the context of the prevailing inequality between women and men, existing stereotypes, gender roles and discrimination against women in order to adequately respond to the complexity of the phenomenon. The term "gender" under this definition is not intended as a replacement for the terms "women" and "men" used in the Istanbul Convention.

Violence against women seriously violates and impairs or nullifies the enjoyment by women of their human rights, in particular their fundamental rights to life, security, freedom, dignity and physical and emotional integrity, and that it therefore cannot be ignored by governments. Moreover, the gender based violence against women affects not only women adversely, but society as a whole and that urgent action is therefore required. Some groups of women, such as women and girls with disabilities, are often at greater risk of experiencing violence, injury, abuse, neglect or negligent treatment, maltreatment or exploitation, both within and outside the home.

Since many of the forms of violence covered by the CoE Istanbul Convention are perpetrated against both women and girls, the drafters did not intend to limit the applicability of the Convention to adult victims only. Consequently, this Convention clearly states that the term "women" includes girls under the age of eighteen years.

Men and boys may also be victims of domestic violence and this kind of violence should also be addressed. Where children are concerned, they do not need to be directly affected by the violence to be considered victims, but witnessing domestic violence is also traumatising and therefore sufficient to victimise them. Consequently, the CoE Convention provides for another definition, such as (Art.3):

“Domestic violence” means all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim.” (Istanbul Convention)

Domestic violence includes mainly two types of violence: intimate-partner violence between current or former spouses or partners and inter-generational violence which typically occurs between parents and children. It is a gender neutral definition that encompasses victims and perpetrators of both sexes. Violence often continues after a relationship has ended and therefore a joint residence of the victim and perpetrator is not required.

Under international 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. Istanbul Convention in its Article 5 (Due Diligence), 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.

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(2002)5 of the Committee of Ministers to member states on the protection of women against violence (2002).

Furthermore, the content of Article 5 reflects the case-law of the European Court of Human Rights. In its recent case law on domestic violence, the Court has adopted the obligation of due diligence (the judgment of *Opuz v. Turkey*, 2009). The European Court has established that the positive obligation to protect the right to life (Article 2 ECHR) requires state authorities to display due diligence, for example by taking preventive operational measures, in protecting an individual whose life is at risk.

### **3. EUROPEAN LEGAL PRINCIPLES ON INVESTIGATION, PROSECUTION AND PROTECTION IN THE AREA OF COMBATING GENDER BASED VIOLENCE**

Europe has changed its views on domestic violence and people are increasingly aware that it is a negative social factor. Family violence is classified as a criminal offence in most legal systems. The Istanbul Convention is comprehensive international legally binding document with twelve chapters consisted of 81 articles. However, special legal importance is to be given to a separate chapter (Ch. VI) in the CoE Istanbul Convention, which contains a variety of provisions that cover a broad range of issues related to investigation, prosecution, procedural law and protection against all forms of violence covered by the scope of the Istanbul Convention.

What is even more important, the general obligations for states signatories of the Convention are established in this context (Article 49 – General obligations) of combating gender based and domestic violence. States signatories of the Convention are obliged to take all needed legislative or other measures to make certain that investigations and judicial proceedings regarding all forms of violence covered by the scope of the Convention, are performed without undue delay with parallel taking into consideration the rights of the victim during all stages of the criminal proceedings. State parties of the Convention have the duty to take the necessary legislative or other measures, in line with the essential principles of human rights, while having regard to the gendered understanding of violence in order to ensure the effective investigation and prosecution of offences established and defined in the Convention.

The objective of those rules is to prevent that incidents of violence against women and domestic violence are usually assigned low priority in investigations and judicial proceedings, which contributes significantly to a sense of impunity among perpetrators. This aim helps to secure vital evidence, enhance conviction rates and put an end to impunity. It is important to note that while it is essential to ensure swift investigations and proceedings, it is equally important to respect the rights of victims during these stages.

Effective investigation and prosecution of offences established in accordance with this Convention means, for example, establishing the relevant facts, interviewing all available witnesses, and conducting forensic examinations, based on a multi-disciplinary approach and using state-of-the-art criminal investigative methodology to ensure a comprehensive analysis of the case.

All investigations and procedures are to be carried out in conformity with fundamental principles of human rights and with regard to a gendered understanding of violence - measures taken in implementation of this provision are not prejudicial to the rights of the defence and the requirements of a fair and impartial trial, in conformity with Article 6 European Convention on Human Rights (ECHR). Especially important is the notion of gendered understanding of violence, bearing in mind the fact that women are prevalent victims.

“Article 50 – Immediate response, prevention and protection

1. Parties shall take the necessary legislative or other measures to ensure that the responsible law enforcement agencies respond to all forms of violence covered by the scope of this Convention promptly and appropriately by offering adequate and immediate protection to victims.

2. Parties shall take the necessary legislative or other measures to ensure that the responsible law enforcement agencies engage promptly and appropriately in the prevention

and protection against all forms of violence covered by the scope of this Convention, including the employment of preventive operational measures and the collection of evidence.” (CoE Istanbul Convention<sup>9</sup>)

Law enforcement agencies in states signatories and parties of the Convention, are to react promptly and appropriately by offering adequate and immediate protection to victims, while paragraph 2 calls for their prompt and appropriate engagement in the prevention of and protection against all forms of violence covered by the scope of this Convention, including the employment of preventive operational measures and the collection of evidence.

Compliance with this provision includes, for example, the following:

- the right of the responsible law enforcement agencies to enter the place where a person at risk is present;
- the treatment and giving advice to victims by the responsible law enforcement agencies in an appropriate manner;
- hearing victims without delay by specially-trained, where appropriate female, staff in premises that are designed to establish a relationship of trust between the victim and the law enforcement personnel; and
- provide for an adequate number of female law enforcement officers, including at high levels of responsibility.

Effective measures should be taken to prevent the most blatant forms of violence which are murder or attempted murder. Each such case should be carefully analysed in order to identify any possible failure of protection in view of improving and developing further preventive measures.

“Article 51 – Risk assessment and risk management

1. Parties shall take the necessary legislative or other measures to ensure that an assessment of the lethality risk, the seriousness of the situation and the risk of repeated violence is carried out by all relevant authorities in order to manage the risk and if necessary to provide co-ordinated safety and support.

2. Parties shall take the necessary legislative or other measures to ensure that the assessment referred to in paragraph 1 duly takes into account, at all stages of the investigation and application of protective measures, the fact that perpetrators of acts of violence covered by the scope of this Convention possess or have access to firearms.” (CoE Istanbul Convention<sup>10</sup>)

Parties of the Convention have the obligation to ensure that any assessment of the risks faced by a victim should systematically take into consideration, at all stages of the investigation and application of protective measures, whether the perpetrator legally or illegally possesses or has access to firearms in order to guarantee the safety of victims (Par 2).

This article therefore establishes the obligation to ensure that all relevant authorities, not limited to the police, effectively assess and devise a plan to manage the safety risks a particular victim faces on a case-by-case basis, according to standardised procedure and in co-operation and co-ordination with each other.

Essential is that any risk assessment and risk management is to consider the probability of repeated violence, notably deadly violence, and to adequately assess the seriousness of the situation. Essential is that such measures shall not aggravate any damage

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<sup>9</sup> <https://www.coe.int/en/web/istanbul-convention>, pristupljeno 22. 11. 2017.

<sup>10</sup> <https://www.coe.int/en/web/istanbul-convention>, pristupljeno 22. 11. 2017.

experienced by victims. Very important is that investigations and judicial proceedings should not lead to secondary victimisation.

The possession of firearms by perpetrators not only constitutes a powerful means to exert control over victims, but also increases the risk of homicide – therefore, risk assessment duly takes it into account. Multi-agencies risk assessment of the violence is much needed, since current situation shows that police does not deal with the risk assessment of the violence (as well as other agencies, such as public prosecutor office, judges, etc.). The purpose of this rule is to ensure that an effective multi-agency network of professionals is set up to protect high-risk victims.

In case of immediate danger, it has been foreseen that competent authorities *ex officio* will order to perpetrator to vacate the residence for a sufficient period of time. The goal is to achieve more protection for victim by taking away a perpetrator for a certain period of time and granting to the victim to stay safe at home<sup>11</sup>.

„Article 52 – Emergency barring orders

Parties shall take the necessary legislative or other measures to ensure that the competent authorities are granted the power to order, in situations of immediate danger, a perpetrator of domestic violence to vacate the residence of the victim or person at risk for a sufficient period of time and to prohibit the perpetrator from entering the residence of or contacting the victim or person at risk. Measures taken pursuant to this article shall give priority to the safety of victims or persons at risk.” (CoE Istanbul Convention<sup>12</sup>)

This provision establishes the duty of equipping the competent authorities, with the power to order a perpetrator of domestic violence to leave the residence of the victim and to forbid him or her from returning or contacting the victim.

The immediate danger must be assessed by the relevant authorities. It refers to any situations of domestic violence in which harm is imminent or has already materialised and is likely to happen again. Existing examples of such orders in CoE member states range between ten days and four weeks, with or without the possibility of renewal.

There are also provisions on protection orders, which set out the obligation to make certain that national legislation provides for restraining and/or protection orders for victims of all forms of violence covered by the scope of this Convention. Furthermore, it is established a number of criteria for such orders to ensure that they serve their highly protective nature.

“Article 53 – Restraining or protection orders

1. Parties shall take the necessary legislative or other measures to ensure that appropriate restraining or protection orders are available to victims of all forms of violence covered by the scope of this Convention.

2. Parties shall take the necessary legislative or other measures to ensure that the restraining or protection orders referred to in paragraph 1 are:

- available for immediate protection and without undue financial or administrative burdens placed on the victim;
- issued for a specified period or until modified or discharged;
- where necessary, issued on an *ex parte* basis which has immediate effect;
- available irrespective of, or in addition to, other legal proceedings;
- allowed to be introduced in subsequent legal proceedings.

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<sup>11</sup> Varvaro, FF. Treatment of the battered woman: effective response of the emergency department. *Am Coll Emerg Physicians*.1989, 11:8-13.

<sup>12</sup> <https://www.coe.int/en/web/istanbul-convention>), pristupljeno 24. 11. 2017.

3. Parties shall take the necessary legislative or other measures to ensure that breaches of restraining or protection orders issued pursuant to paragraph 1 shall be subject to effective, proportionate and dissuasive criminal or other legal sanctions.” (CoE Istanbul Convention<sup>13</sup>)

National legislation of certain countries Parties of the Istanbul Convention may provide for the combined use of restraining and protection orders. A restraining or protection order may be considered complementary to a short-term emergency barring order.

Its purpose is to offer a fast legal remedy to protect persons at risk of any of the forms of violence covered by the scope of this Convention by prohibiting, restraining or prescribing certain behaviour by the perpetrator<sup>14</sup>. Whether restraining or protection orders are based in civil law, criminal procedure law or administrative law or in all of them, will depend on the national legal system and above all on the necessity for effective protection of victims. This wide range of measures covered by such orders means that they exist under various names such as restraining order, barring order, eviction order, protection order or injunction. Despite these differences, they serve the same purpose: preventing the commission of violence and protect the victim.

Any order should take effect immediately after it has been issued and shall be available without lengthy court proceedings at national level. Order is to be issued for a specified or a determined period or until modified or discharged. It follows from the principle of legal certainty that requires the duration of a legal measure to be spelt out clearly. In certain cases these orders may be issued, where necessary, on an *ex parte* basis with immediate effect. This means a judge or other competent official would have the authority to issue a temporary restraining or protection order based on the request of one party only.

Istanbul Convention includes comprehensive set of protection measures for victims of gender based and domestic violence:

“Article 56 – Measures of protection

1. Parties shall take the necessary legislative or other measures to protect the rights and interests of victims, including their special needs as witnesses, at all stages of investigations and judicial proceedings, in particular by:

- a. providing for their protection, as well as that of their families and witnesses, from intimidation, retaliation and repeat victimisation;
- b. ensuring that victims are informed, at least in cases where the victims and the family might be in danger, when the perpetrator escapes or is released temporarily or definitively ;
- c. informing them, under the conditions provided for by internal law, of their rights and the services at their disposal and the follow-up given to their complaint, the charges, the general progress of the investigation or proceedings, and their role therein, as well as the outcome of their case;
- d. enabling victims, in a manner consistent with the procedural rules of internal law, to be heard, to supply evidence and have their views, needs and concerns presented, directly or through an intermediary, and considered;

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<sup>13</sup> <https://www.coe.int/en/web/istanbul-convention>), pristupljeno 24. 11. 2017.

- e. providing victims with appropriate support services so that their rights and interests are duly presented and taken into account;
  - f. ensuring that measures may be adopted to protect the privacy and the image of the victim
  - g. ensuring that contact between victims and perpetrators within court and law enforcement agency premises is avoided where possible;
  - h. providing victims with independent and competent interpreters when victims are parties to proceedings or when they are supplying evidence;
  - i. enabling victims to testify, according to the rules provided by their internal law, in the courtroom without being present or at least without the presence of the alleged perpetrator, notably through the use of appropriate communication technologies, where available.
2. A child victim and child witness of violence against women and domestic violence shall be afforded, where appropriate, special protection measures taking into account the best interests of the child.” (CoE Istanbul Convention)

This rule (Art. 56) is inspired by Article 31, paragraph 1 of the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (ETS No. 201). Paragraph 1 contains a non-exhaustive list of procedures constructed to protect victims of all forms of violence covered by the scope of this Convention, during proceedings. These measures of protection apply at all stages of the proceedings. State Parties of the Convention must secure that victims are safe from intimidation, retaliation and repeat victimisation.

By virtue of this rule, the Convention establishes the obligation to inform victims when the perpetrator is released temporarily or definitely or escapes, at least in cases where the victims and the family might be in danger. This does not prevent States Parties to inform victims in other circumstances where this seems necessary (for instance, in cases where there is a risk of retaliation or intimidation).

In the case of child victims and child witnesses, paragraph 2 of the Art. 56 states that States Parties of the Convention must take special care of their needs and ensure their rights to special protection measures as a child will usually be more vulnerable than an adult and likelier to be intimidated. Consequently, special protection measures must give due regard to the best interests of the child, which may include measures such as not obliging a child to testify in the presence of the perpetrator.

#### 4. CONCLUSIONS

Despite the magnitude of deaths resulting from violence and the massive scale on which the non-fatal consequences of violence affect women, as well as children and elderly people, there are important gaps in data that undermine violence prevention efforts. According to recent analysis<sup>15</sup>, fully 60% of countries do not have usable data, globally seen.

Globally, one in three women has been a victim of violence by an intimate partner<sup>16</sup>. Consequently, the complexity and extent of this problem overcomes its European context very far.

Current research results indicate that many victims who want to apply for a restraining or protection order are not ready to press criminal charges, which would lead to a

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<sup>15</sup> WHO, UNDP, UNODC, Global status report on violence prevention, 2014., p. 20.

<sup>16</sup> *Ibidem*, p. 74.

criminal investigation and possibly criminal proceedings against the perpetrator<sup>17</sup>. Standing to apply for a restraining or protection order shall therefore not be made dependent on the institution of criminal proceedings against the same perpetrator. Similarly, they should not be made dependent on the institution of divorce proceedings.

Intimate partner violence refers to behaviour by an intimate partner or ex-partner that causes physical, sexual or psychological harm, including physical aggression, sexual coercion, psychological abuse and controlling behaviours. It can occur among heterosexual or same-sex couples, and does not require sexual intimacy. Intimate partner violence is often hidden and only a small percentage of victims seek help from responsible victim assistance providers.

Intimate partner violence against women is an important risk factor for HIV, other sexually transmitted diseases, unwanted pregnancies and other reproductive health problems<sup>18</sup>. Women exposed to intimate partner violence are almost twice as likely to have an alcohol use disorder, two times more likely to experience depression and have an increased risk for suicide attempts compared to women who have not been exposed to partner violence. Intimate partner violence can negatively affect children in households where it occurs<sup>19</sup>. Promoting gender equity, creating a climate of non-tolerance for violence and starting prevention efforts at a young age are some of the key strategies for preventing intimate partner violence.

The above-analyzed provisions on investigation, prosecution and protection in the domain of fighting violence against women, as well as family violence, besides their direct obligations for states signatories of the CoE Istanbul Convention, contain specific deterrent effect, through setting legal standards that are general legal framework in Europe for achieving zero tolerance towards gender-based and domestic violence.

Member states of the Council of Europe are required to organise their reaction to all forms of violence covered by the scope of the CoE Istanbul Convention<sup>20</sup>, in a manner which enables responsible authorities to diligently prevent, investigate, punish and provide indemnification for such acts of violence. Indemnification may encompass different forms of reparation under international human rights law such as: restitution, compensation, rehabilitation, satisfaction, and guarantee of non-repetition.

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Appel A.E, & Holden G.W, „The co-occurrence of spouse and physical child abuse – A review and appraisal“, *Journal of Family Psychology*, no 12, pp. 579-599, 1998

<sup>20</sup> Gasmi G., “New CoE Convention on Preventing and Combating Violence against women and Domestic violence - „Istanbul Convention“ – Importance of setting European legal standards, (English), *Foreign Legal Life*, Belgrade, ISSN 0039 2138, pp. 37-57, No 2/2014, p. 54.

Non-performance to do so incurs state responsibility for an act otherwise solely attributed to a non-state actor, in line with the principle of due diligence (Art.5 of the Istanbul Convention). As such, violence against women perpetrated by non-state actors crosses the threshold of constituting a violation of human rights. Term “non-state actor” refers to private persons, a concept which is already expressed in point II of the CoE Recommendation Rec No (2002)5 on the protection of women against violence.

States signatories of the Istanbul Convention 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 the new Convention, as well as to provide protection to the victims. Consequently, gender-based violence triggers duties in States. This is even more important, taking into consideration the fact that the Istanbul Convention entered into force in August 2014, thus setting the international legal standard in line with the principle: *Pacta sunt servanda*, even for states that are not its signatories.

Furthermore, there are additional strategies to combat gender based violence. Social and cultural norm-change strategies aim to modify social expectations, such as the norm that men have the right to control women, which make women vulnerable to physical, emotional and sexual violence by men<sup>21</sup>. Rigorous assessments of social and cultural norm-change strategies are still necessary to value their impact. Those strategies remain an important tool to inform and create cultural shifts in what is acceptable and unacceptable behaviour and in promoting norms supportive of healthy, nonviolent, and gender equitable relationships.

Microfinance combined with gender equity training is targeted to women living in poor communities and is designed to economically empower them and address gender norms, cultural beliefs and communication. It is one of the few strategies with documented evidence showing reductions in partner violence<sup>22</sup>.

In the comprehensive framework of combating gender based violence, if we ask ourselves what would be the final goal of the effective international legal principles, set up by the CoE Istanbul Convention, the answer is for sure: zero tolerance towards gender-based violence and towards domestic violence in each society.

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MA Jerotić Aleksandar<sup>25</sup>

## **EVROPSKI VODEĆI PRAVNI PRINCIPI BORBE PROTIV RODNO ZASNOVANOG NASILJA – “ISTANBUL KONVENCIJA”**

### **Rezime**

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<sup>21</sup> WHO, UNDP, UNODC, Global status report on violence prevention, 2014, p. 75.

<sup>22</sup> *Ibidem*, p. 76.

<sup>23</sup> Ekspert Saveta Evrope (CoE) Strazbur, Francuska, članica CoE CAHVIO Komiteta u ime Republike Srbije; viši naučni saradnik Instituta za uporedno pravo, [www.iup.rs](http://www.iup.rs), [www.comparativelaw.info](http://www.comparativelaw.info), redovni profesor fakulteta „Dositej“, Beograd. Ovaj rad je rezultat istraživanja u okviru projekta „Perspektive implementacije evropskih standarda u pravni sistem Srbije (179059)“, koji podržava Ministarstvo prosvete, nauke i tehnološkog razvoja Republike Srbije.

<sup>24</sup> Naučni saradnik Instituta za uporedno pravo, [www.iup.rs](http://www.iup.rs), [www.comparativelaw.info](http://www.comparativelaw.info)

<sup>25</sup> Predsednik NVO Pandora, Crna Gora, [www.nvopandora.com](http://www.nvopandora.com)

*Rad se bavi novim evropskim vodećim pravnim principima borbe protiv rodno zasnovanog nasilja, konkretnije novom Konvencijom Saveta Evrope o prevenciji i borbi protiv nasilja nad ženama i nasilja u porodici (Konvencija iz Istanbula koju je uspostavio CAHVIO Komitet Saveta Evrope, dobila naziv prema mestu potpisivanja), a koja je stupila na snagu 1. avgusta 2014. godine. U tom kontekstu, koncept rodno zasnovanog nasilja analiziran je kroz širu prizmu relevantnog međunarodnog prava.*

*U Istanbul Konvenciji Saveta Evrope (SE), nasilje nad ženama, tj. rodno zasnovano nasilje prepoznato je kao oblik diskriminacije i kršenja ljudskih prava žena. Termin "rodno zasnovano nasilje nad ženama" koristi se u Istanbulskoj konvenciji i odnosi se na nasilje koje je usmereno protiv žene, jer je ona žena ili koja pogađa žene nesrazmerno. To se razlikuje od drugih vrsta nasilja, jer je pol žrtve primarni motiv za nasilje. Rodno zasnovano nasilje se odnosi na bilo kakvu štetu koju trpi žena i što je uzrok i rezultat neravnopravnih odnosa moći zasnovanih na percepiranim razlikama između žena i muškaraca koji dovode do podređenog statusa žena u privatnoj i javnoj sferi. Istanbulska konvencija Saveta Evrope otvorena je za pristupanje i nečlanicama Saveta Evrope, te time svoje pravne principe podiže na globalni nivo.*

*Konvencija Saveta Evrope, koja je potpisana u Turskoj, postavila je pravno obavezujuće principe u oblasti prevencije, zaštite žrtava porodičnog nasilja i nasilja na rodno zasnovanoj osnovi, kao i principe krivičnog gonjenja počinitelaca. Analiza propisa o istrazi, krivičnom gonjenju i zaštiti žrtava u borbi protiv nasilja u porodici i rodno zasnovanog nasilja objašnjava konkretne obaveze za zemlje potpisnice Istanbulske konvencije. Prema Konvenciji, putem uspostavljenog pravnog načela obaveze dužne pažnje, dužnost države je da zaštiti žene i devojke kao svoje građane protiv ovakvog nasilja i, pre svega, da ga spreče. To je istorijska prekretnica u 21. veku. Pored direktnih obaveza za države potpisnice Istanbul Konvencije, pravni principi sadrže i specifičan odvraćajući efekat, postavljanjem pravnih standarda koji su sveobuhvatni pravni okvir u Evropi za postizanje nulte tolerancije prema rodno zasnovanom nasilju i nasilju u porodici.*

***Ključne reči:*** *Savet Evrope, Istanbulska Konvencija (2014), borba protiv rodno zasnovanog nasilja*