

The European Legal Framework Applicable to Cases of Violence Against Women

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WHAT IS VIOLENCE AGAINST WOMEN?

FORM OF GENDER BASED VIOLENCE DIRECTLY CONNECTED WITH THE UNEQUAL DISTRIBUTION OF POWER BETWEEN MEN & WOMEN

LEADS TO DEVALUATION AND SUBORDINATION OF WOMEN

MOST PERSISTENT HUMAN RIGHTS VIOLATIONS OF MODERN TIMES

REPRESENTS MAJOR OBSTACLE TO OVERCOMING INEQUALITY.

DEFINED AS ...

VIOLATION OF HUMAN RIGHTS

FORM OF DISCRIMINATION AGAINST WOMEN

INCLUDES:

ALL ACTS OF GENDER-BASED VIOLENCE including PHYSICAL, SEXUAL, PSYCHOLOGICAL, ECONOMIC HARM OR SUFFERING TO WOMEN AND/OR THREATS THEREOF

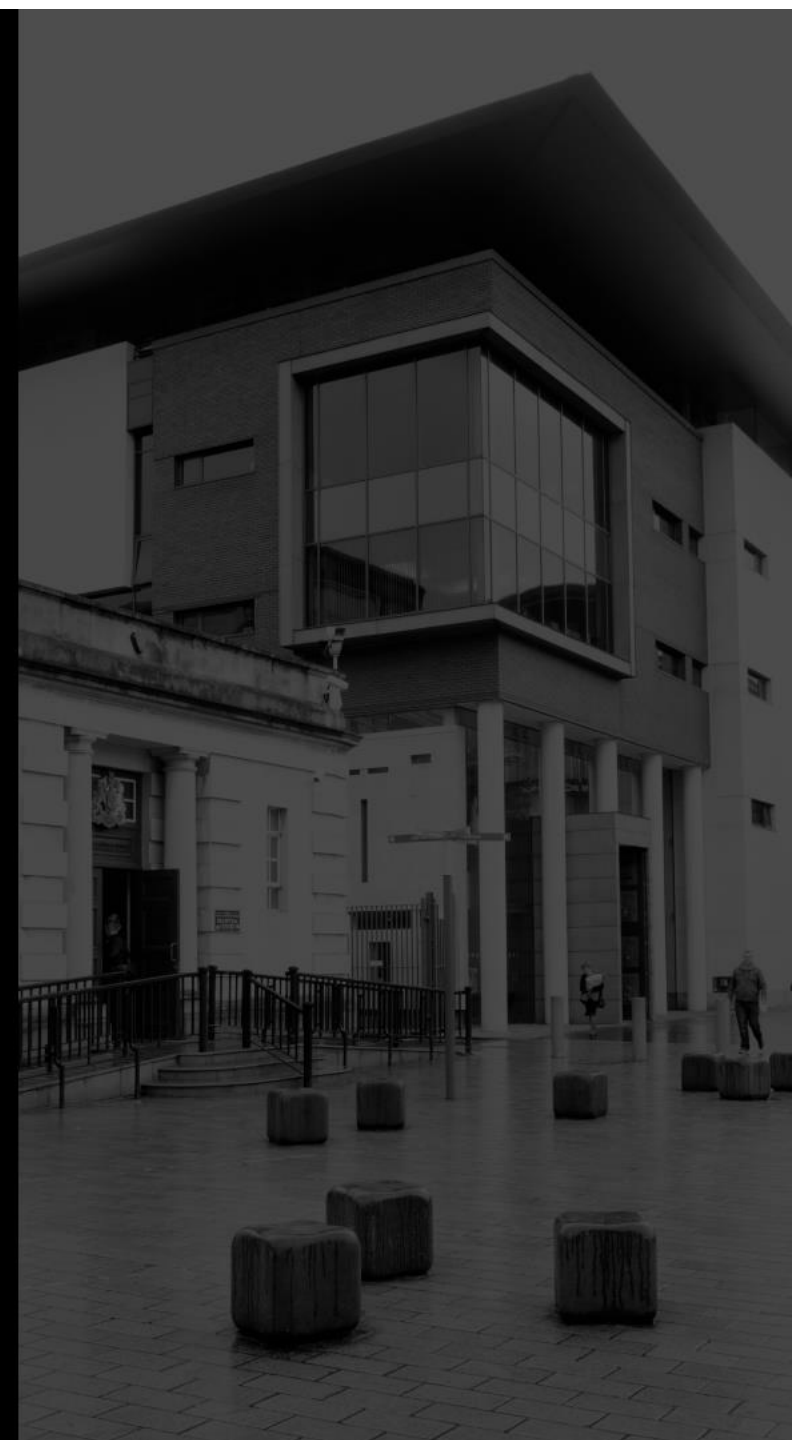


FORMS OF VAW

VIOLENCE AGAINST WOMEN TAKES MANY FORMS:

- INTIMATE PARTNER VIOLENCE – PHYSICAL, SEXUAL & EMOTIONAL
- SEXUAL VIOLENCE
- FORCED & EARLY MARRIAGES
- TRAFFICKING
- FEMALE GENITAL MUTILATION
- HONOUR KILLINGS

MOST COMMON TYPE OF VIOLENCE EXPERIENCED BY WOMEN IS INTIMATE PARTNER VIOLENCE.



VIOLENCE AGAINST WOMEN IN THE EUROPEAN UNION

- EUROPEAN AGENCY FOR FUNDAMENTAL RIGHTS – ‘VIOLENCE AGAINST WOMEN: AN EU WIDE STUDY’ (2014)
- 42,000 WOMEN ACROSS 28 MEMBER STATES
- MOST COMPREHENSIVE SURVEY AT EUROPEAN LEVEL & WORLDWIDE

WHY SO IMPORTANT?

MANY WOMEN DO NOT REPORT THEIR EXPERIENCES OF ABUSE TO AUTHORITIES
MAJORITY OF VIOLENCE CONTINUES TO BE HIDDEN – PERPETRATORS NOT CONFRONTED.

FINDINGS:

1 IN 3 WOMEN (33%) HAVE EXPERIENCED PHYSICAL/SEXUAL VIOLENCE SINCE AGED 15
REFLECTS WORLD HEALTH ORGANISATION FINDINGS

1 IN 3 WOMEN HAVE EXPERIENCED PSYCHOLOGICAL ABUSIVE BEHAVIOUR BY A PARTNER

OVER HALF (55%) OF WOMEN HAVE EXPERIENCED SEXUAL HARRASSMENT

1 IN 20 WOMEN HAVE BEEN RAPED

1 IN 3 WOMEN HAVE EXPERIENCED PHYSICAL OR SEXUAL VIOLENCE BY AN ADULT AS A CHILD



INTERNATIONAL LEGAL BACKGROUND: VAW AS A HUMAN RIGHTS ISSUE

CHANGING ATTITUDES

PREVIOUSLY, IN MOST EU STATES AND WORLDWID, VIOLENCE AGAINST WOMEN WAS CONSIDERED A PRIVATE MATTER: THE STATE ONLY PLAYED A LIMITED ROLE.

ONLY SINCE 1990'S HAS VIOLENCE AGAINST WOMEN EMERGED AS A FUNDAMENTAL RIGHTS CONCERN THAT WARRANTS LEGAL AND POLITICAL RECOGNITION AT THE HIGHEST INTERNATIONAL LEVEL



INTERNATIONAL LEGAL FRAMEWORK DEVELOPMENT 1979 - 1994

THERE IS NO UN TREATY SPECIFICALLY DEALING WITH THIS ISSUE

1979 CEDAW (CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN):
DOES NOT CONTAIN ANY REFERENCE TO VAW OR DOMESTIC VIOLENCE

NOT UNTIL **1992** GENERAL RECOMMENDATION 19 OF CEDAW DEFINED VAW AS A FORM OF DISCRIMINATION

VARIOUS UN INSTRUMENTS

1993 UN GENERAL ASSEMBLY ADOPTED THE DECLARATION ON THE ELIMINATION OF VAW

1994 UN COMMISSION ON HUMAN RIGHTS APPOINTED A SPECIAL RAPPORTEUR ON VAW

1994 THE ORGANISATION OF AMERICAN STATES FIRST TREATY RECOGNITION OF VAW AS A HUMAN RIGHTS VIOLATION (*BELÉM DO PARÁ CONVENTION*)



EUROPEAN LEGAL FRAMEWORK APPLICABLE TO CASES OF VIOLENCE AGAINST WOMEN

TWO KEY BODIES:

- EUROPEAN UNION
- COUNCIL OF EUROPE

EUROPEAN UNION

NO MENTION OF PROTECTION FROM VAW IN TREATIES OR IN THE CHARTER OF FUNAMENTAL RIGHTS.

MAINLY CONCENTRATED ON GENDER EQUALITY

INCLUDED INITIATIVES ERADICATE VAW

ONLY REFERENCE TO VAW FOUND IN **DECLARATION 19 OF THE FINAL ACT OF 2007 (2007/C 306/02)**

19. Declaration on Article 3 of the Treaty on the Functioning of the European Union:

“in its general efforts to eliminate inequalities between women and men, the Union will aim in its different policies to all kinds of domestic violence. The Member States should take all necessary measures to prevent and punish these criminal acts and to support and protect the victims.”



EUROPEAN LEGAL FRAMEWORK APPLICABLE TO CASES OF VIOLENCE AGAINST WOMEN

EUROPEAN CHARTER OF FUNDAMENTAL RIGHTS:

NO SPECIFIC MENTION OF VIOLENCE AGAINST WOMEN

HOWEVER MANY PROVISIONS THAT RELATE TO VIOLENCE AGAINST WOMEN:

- RIGHT TO LIFE
- RIGHT TO PHYSICAL AND BODILY INTEGRITY
- PROHIBITION ON
 - TORTURE AND DEGRADING TREATMENT
 - FORCED LABOUR
 - HUMAN TRAFFICKING



EUROPEAN DIRECTIVES & REGULATIONS

NUMBER OF DIRECTIVES AND REGULATIONS THAT ASSIST IN THE PREVENTION OF VIOLENCE AGAINST WOMEN FOCUS SPECIFICALLY ON THE FOLLOWING:

2012/29/EU THE VICTIMS DIRECTIVE

2011/99/EU DIRECTIVE ON THE EUROPEAN PROTECTION ORDER

REGULATION 606/2013 MUTUAL RECOGNITION OF PROTECTION MEASURES IN CIVIL MATTERS



2012/29/EU THE VICTIMS DIRECTIVE

MINIMUM STANDARDS ON THE RIGHTS, SUPPORT AND PROTECTION OF VICTIMS OF CRIME:

Strengthening victims' rights in the EU by -

- Establishing minimum standards on the rights, support and protection of victims of crime.
- Ensuring that persons who have fallen victim of crime are recognised, treated with respect and receive proper protection, support and access to justice.
- Strengthens the rights of victims and their family members to information, support and protection
- Ensuring victims' procedural rights in criminal proceedings.

**LOCAL IMPLEMENTATION: VICTIMS CHARTER IN NORTHERN IRELAND
[ESTABLISHED UNDER THE JUSTICE ACT (NORTHERN IRELAND) 2015]**



2011/99/EU EUROPEAN PROTECTION ORDER – SUPPORTING CRIME VICTIMS EU WIDE

Allows victims of violence protection from offenders when they move to another EU country.

Requires **existing national protection measure** (for example a Restraining Order).

Criminal penalties can be imposed for breach.

**Local implementation: The Criminal Justice (European Protection Order)
(Northern Ireland) Regulations 2014**



REGULATION 606/2013 MUTUAL RECOGNITION OF PROTECTION MEASURES IN CIVIL MATTERS

Establishes a mechanism allowing for a direct recognition between Member States of protection orders issued as a civil law measure.

Those who benefit from a civil law protection order issued in the Member State of residence may invoke it directly in other Member States by obtaining a certificate and presenting it to the relevant authorities.

Local implementation: The Civil Jurisdiction and Judgments (Protection Measures) Regulations 2014



THE COUNCIL OF EUROPE

MEMBERSHIP OF THE COE IS A PRE-REQUISITE OF EU MEMBERSHIP

EUROPEAN CONVENTION ON HUMAN RIGHTS 1953

SIMILAR EUROPEAN CHARTER OF FUNDAMENTAL RIGHTS

VAW CASES NOT SPECIFICALLY DEALT WITH IN THE CONVENTION

ECtHR HAS DEALT WITH CASES CONCERNING VAW UNDER THE FOLLOWING RIGHTS:

- RIGHT TO LIFE
- PROHIBITION ON TORTURE
- RIGHT TO A FAIR TRIAL
- RIGHT TO PRIVATE AND FAMILY LIFE
- PROHIBITION ON DISCRIMINATION



COUNCIL OF EUROPE AND THE ISTANBUL CONVENTION

CONVENTION ON PREVENTING AND COMBATTING VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE 2011:

MOST COMPREHENSIVE AND DETAILED RESPONSE TO VAW

RATIFIED BY 23 MEMBER STATES OF THE COUNCIL OF EUROPE
(ALL EU MEMBERS HAVE **SIGNED**)

DUAL NATURE – BOTH HUMAN RIGHTS **AND** CRIMINAL LAW PROVISIONS

REFERRED TO BY THE UNITED NATIONS AS THE 'GOLD STANDARD OF LEGISLATION
ON GENDER-BASED VIOLENCE'.



ISTANBUL CONVENTION KEY FACTS AND FIGURES

ENTERED INTO FORCE **AUGUST 2014**

ARMENIA BECAME 45TH MEMBER STATE OF THE COE TO RATIFY **YESTERDAY**

BOTH IRELAND AND THE UNITED KINGSDOM ARE SIGNATORIES – BUT HAVE NOT RATIFIED AS YET.

UNIVERSAL ASPIRATION – OPEN TO INTERNATIONAL ORGANISATIONS AND NON-MEMBER STATES OF THE COE

EUROPEAN UNION SIGNED ISTANBUL CONVENTION ON **13TH JUNE 2017** – A MAJOR DEVELOPMENT IN COMBATting VAW



ISTANBUL CONVENTION – KEY PROVISIONS

A VICTIM-CENTERED APPROACH TO PREVENTING AND COMBATTING VAW

IMPOSES OBLIGATIONS ON STATES TO:

- PREVENT, INVESTIGATE, PUNISH, AND PROVIDE REPARATION FOR ACTS OF VIOLENCE PERPETRATED BY NON-STATE ACTORS (ARTICLE 5).
- STATES ARE REQUIRED TO CRIMINALISE SEVERAL TYPES OF VAW, PUNISHABLE BY EFFECTIVE, PROPORTIONATE AND DISSUASIVE SANCTIONS (ARTICLE 45), TAKING INTO ACCOUNT THEIR SERIOUSNESS AND AGGRAVATING CIRCUMSTANCES (ARTICLE 46).
- DIFFERENTIATES BETWEEN VAW AND DOMESTIC VIOLENCE – RECOGNISED DOMESTIC VIOLENCE CAN AFFECT ANYONE.



ISTANBUL CONVENTION 2011

ESTABLISHES DIRECT OR INDIRECT STATE RESPONSIBILITY FOR

FAILING TO **PREVENT** VIOLENCE AGAINST WOMEN

FAILING TO **PROTECT** ITS VICTIMS

FAILING TO EFFECTIVELY **PROSECUTE** THE PERPETRATORS

TO IMPLEMENT OBLIGATIONS UNDER THE CONVENTION – STATES MUST
ALLOCATE ‘APPROPRIATE MEASURES AND HUMAN RESOURCES’

CREATES A PRECISE LEGAL OBLIGATION IN TERMS OF PUBLIC EXPENDITURE



PREVENTION, PROTECTION, PROSECUTION

Prevention - obligation to:

- train professionals who are in contact with survivors
- run awareness campaigns
- develop education materials
- create treatment programmes for perpetrators

Protection - obligation to:

- remove obstacles that could prevent reporting
- grant police power to remove perpetrators from the home
- ensure access to information for victims
- Provide services to survivors (eg., shelters, telephone hotlines, specialist support services, crisis centres, and legal assistance)

Prosecution -

The convention

- defines and criminalizes various forms of violence against women
- creates substantive law on aggravating factors, compensation, jurisdiction issues, custody issues, and civil remedies
- addresses immediate response guidelines, protective orders, evidence standards, statutes of limitations, and other aspects of judicial proceedings.



REMOVING GENDER STEROTYPING AND CULTURAL FACTORS

STATES MUST TAKE MEASURES TO PROMOTE CHANGE IN THE SOCIAL AND CULTURAL PATTERN OF BEHAVIOUR OF WOMEN AND MEN WITH A VIEW TO ERADICATING PREJUDICE, CUSTOMS, TRADITIONS AND ALL OTHER PRACTICES WHICH ARE BASED ON THE IDEA OF THE INFERIORITY OF WOMEN OR ON STEREOTYPED ROLES FOR WOMEN AND MEN.
(ARTICLE 12)

AND

ENSURE THAT ANY CULTURE, CUSTOM, RELIGION, TRADITION OR SO-CALLED HONOUR, SHALL NOT BE CONSIDERED AS JUSTIFICATION FOR ANY ACTS OF VIOLENCE COVERED BY THE SCOPE OF THE CONVENTION.
(ARTICLE 12 PARA 5)

NO RESERVATIONS ARE ALLOWED ON FORMS OF VAW

PARTIES REQUIRED TO CREATE A BODY TO CO-ORDINATE, IMPLEMENT, MONITOR AND EVALUATE NATIONAL POLICIES ON VAW.
(ARTICLE 10)



COMPLIANCE MECHANISMS

ISTANBUL CONVENTION ESTABLISHES TWO ORGANISATIONS:

THE GROUP OF EXPERTS ON ACTION AGAINST VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE (GREVIO):

An independent expert body, tasked to monitor the implementation of the Convention by the Parties.

COMMITTEE OF THE PARTIES:

Political body made up of representatives of the parties to the convention.



IMPORTANCE OF EU RATIFYING THE ISTANBUL CONVENTION

**IF THE EU RATIFIES THE CONVENTION, THIS WILL:
PROVIDE A COHERENT LEGAL FRAMEWORK SPECIFICALLY TO ADDRESS
VIOLENCE AGAINST WOMEN WITHIN THE EUROPEAN UNION**

ALLOW FOR BETTER DATA COLLECTION

PROVIDE GREATER ACCOUNTABILITY

**REQUIRE THE EU TO TAKE AN ACTIVE ROLE IN MONITORING THE
PROPER AND EFFECTIVE APPLICATION OF THE CONVENTION**

**STRENGTHEN THE EU'S INTERNATIONAL ROLE IN THE FIGHT AGAINST
VAW**

