



Φωτογραφία: αρχείο ΓΤΚ

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# European legal framework applicable to cases of violence against women



## *Istanbul Convention and European directives*

Training of Lawyers on the Law regarding Violence Against Women (TRAVAW)  
Athens, 23 June 2017



THE BAR OF  
NORTHERN  
IRELAND



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## Background - Violence against women

Violence against women takes **many forms**, including:

- ✓ **Intimate partner violence**, incl. physical, sexual and emotional abuse
- ✓ **Sexual violence**, incl. conflict-related sexual violence
- ✓ **Forced and early marriages**
- ✓ **Trafficking**
- ✓ **Female genital mutilation**
- ✓ **Honour killings**

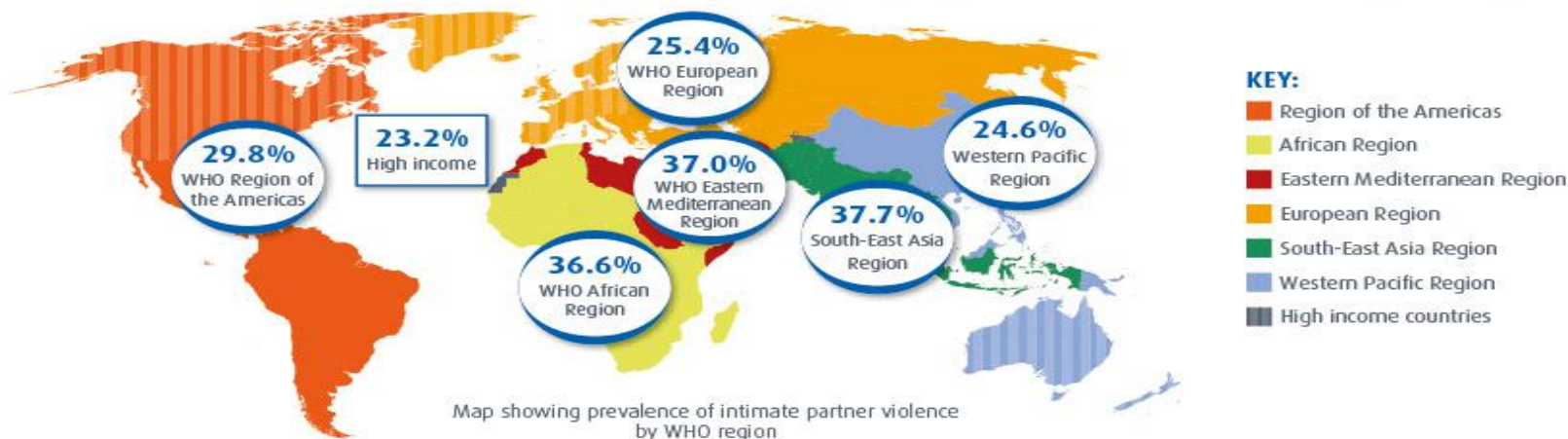
The most common type of violence experienced by women is **intimate partner violence**





# VIOLENCE AGAINST WOMEN: PREVALENCE

**1 in 3 women** throughout the world will experience physical and/or sexual violence by a partner or sexual violence by a non-partner





## Violence against women in the EU – State of play

**1 in 3** women in the EU has been a **victim of physical and/or sexual violence** since the age of 15

**Over half (55%)** of women have experienced **sexual harassment**

**1 in 20** women have been **raped**

**1 in 3** women has experienced psychological **abusive behaviour** by a **partner**

**1 in 3** women has experienced physical or sexual **violence by an adult during childhood**





## Violence against women in the EU – State of play

**Serious underreporting** - The vast majority of incidents do not come to the attention of the police

**Only** around **30%** of victims of violence **report incidents**

**1 in 4** women who do not report sexual violence to the police **chooses not to do so** because **of shame**

**1 in 5** does not want **anyone to know**

**1 in 10** believes the **police** could or would **not do anything**

**Of those who do report** to the police, only about **half are satisfied** with the assistance received

Police Report Template

### POLICE REPORT

Case No: \_\_\_\_\_ Date: \_\_\_\_\_

Reporting Officer: \_\_\_\_\_ Prepared By: \_\_\_\_\_

Incident: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

# VIOLENCE AGAINST WOMEN: HEALTH IMPACT

Women exposed to intimate partner violence are →

## Mental Health



**TWICE**  
as likely to experience depression



**ALMOST  
TWICE**  
as likely to have alcohol use disorders

## Sexual and Reproductive Health



**16%**  
more likely to have a low  
birth-weight baby



**1.5 TIMES**  
more likely to acquire HIV and 1.5 times  
more likely to contract syphilis infection,  
chlamydia or gonorrhoea

## Death and Injury



**42%**  
of women who have experienced  
physical or sexual violence at the  
hands of a partner have  
experienced injuries as a result



**38%**  
of all murders of women globally  
were reported as being committed  
by their intimate partners





## The International Legal Background

Whilst it is now generally accepted that VAW may amount to a violation of human rights, there is **no UN treaty specifically addressing the issue**

**1979: UN Convention on Elimination of All Forms of Discrimination Against Women (CEDAW)** does not contain **any reference to VAW or Domestic Violence**

**1992:** General Recommendation 19 of the CEDAW **defined VAW as “a form of discrimination”**

**1993:** The **UN** General Assembly adopted the **Declaration on the Elimination of VAW**

**1994: UN** Commission on Human Rights appointed a **Special Rapporteur on VAW**

**1994:** Organisation of American States paved the way to the recognition of VAW as a human rights violation in the **Belém do Pará Convention**, the **first treaty in history that specifically covers** the issue of **VAW**

**2011:** Council of Europe adopted the so called **“Istanbul Convention”** - international community’s **most comprehensive** and detailed **response to VAW**



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European legal framework on VAW |  
Istanbul Convention - EU directives

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**Council of Europe (COE) Convention on Preventing and Combating  
Violence against Women and Domestic Violence, (CETS No. 210)**  
opened for signature in May 2011, in Istanbul



## “Istanbul Convention” - Key facts and figures

Entered into force: **1st of August 2014**

Currently **ratified by 23 Member States** of the COE, including **14 EU members**

**All EU Member States** have **signed** the Convention

**Universal aspiration**

Open to International Organizations  
& non-MS of COE

**EU signed** the Istanbul Convention  
on **June 13<sup>th</sup> 2017**





## “Istanbul Convention” – An Overview

The international community’s **most comprehensive and detailed response** to violence against women

**Incorporates global norms**, such as: 1992 General Recommendation 19 of the CEDAW and 1993 UN Declaration on the Elimination of VAW

Best on based practice and state of the art knowledge

**A treaty of dual nature:** Contains human rights and criminal law provisions

Represents a **victim-centered approach** to preventing & combating VAW

Contains the **most inclusive non-discrimination clause** in International law (IL)

The **second treaty in IL to define “gender”** & with the most comprehensive understanding of the term



## Definition of Violence against women in the Istanbul Convention

**VAW** is defined as “ a **violation of human rights** and a **form of discrimination** against women”

**VAW** is **viewed as a gender-based form of violence** in that it is “violence ... directed against woman because she is a woman or that affects women disproportionately”

It includes:

*“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”*

The formulation of the definition **codifies soft-law developments** at international level





## Violence against women and Domestic Violence in the Istanbul Convention

The convention clearly **differentiates between VAW and Domestic Violence** which might affect women but also children, men and elderly persons

It acknowledges that **domestic violence** is one of the forms of **VAW**

It includes:

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'*

States have **legal obligations** with regard to **women** (Article 2, para 1), whereas they are **'encouraged'** to apply the **Convention to 'all victims of domestic violence'** (Article 2, para 2).



## States' Obligations under the Convention

**Due diligence duty:** Obligation of states to “prevent, investigate, punish and provide reparation for acts of violence perpetrated by non-state actors” (Article 5)

State parties are **required to criminalise several conducts of VAW**, punishable by **effective, proportionate and dissuasive sanctions** (Article 45), **taking into account their seriousness and aggravating circumstances** (Article 46):

- **sexual violence** (Art 36)
- **forced marriage** (Art 37)
- **psychological violence** (Art 33)
- **stalking** (Art 34)
- **Female Genital Mutilation - FGM** (Art 38)
- **forced abortion and forced sterilisation** (Art 39)





## States' Obligations under the Convention

### Preventive and protective measures such as:

- Provision of support services to victims from violence
- Step up education and awareness-raising on VAW and its consequences
- Improve skills of professionals working in the field, allowing better support and advice for women experiencing violence
- Support the role of NGOs, civil society and the media

In order to implement the obligations set out the Convention, **States must allocate 'appropriate measures and human resources'**, thus creating a precise legal obligation in terms of public expenditure



## Violence against Women and socio-cultural factors

### State Parties are obliged to:

“take the necessary measures to **promote changes** in the **social and cultural** patterns of behaviour of women and men **with a view to eradicating prejudices, 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 para 1)

and to

“**ensure that culture, custom, religion, tradition or so-called “honour” shall not be considered as justification for any acts of violence** covered by the scope of this Convention” (article 12 para 5)

Art. 78: **generally prohibits parties from entering reservations** on forms of VAW underpinned by socio-cultural factors





## Jurisdiction for acts of VAW

**Jurisdiction, or the lack thereof**, over such acts has **proven to be a passport to impunity** for the perpetrators

Furthermore, acts of VAW often take place on the territory of a state which does not prohibit or criminalise certain type of offences

The **Istanbul Convention** contributes to the strengthening of the pan-European system of accountability for acts of VAW by introducing **substantial legislative provisions in relation to jurisdiction** over such acts

- Art 44(1) places an **obligation** on parties **to establish jurisdiction** over offences listed in the convention **on the basis of territoriality** and **nationality**
- Art 44(3) requires parties to **ignore the principle of dual criminality**, thereby enabling prosecution of acts of VAW even if such acts are not criminalised in the territory where they were committed



## VAW in the context of asylum and migration

The convention **extends the scope of states' obligations** in relation to acts of VAW committed in **the context of asylum and migration**

It requires parties to:

- **implement gender-sensitive procedures in the asylum process**
- to recognize that **gender-based violence** may be a **form of “persecution”** or **‘serious harm’** giving rise to an entitlement to international protection

As such, it **codifies the key soft law** developments in this area, namely:

- ✓ 2002 UNHCR Guidelines on International Protection (Gender-Related Persecution)
- ✓ 2008 UNHCR Handbook for the Protection of Women and Girls



## VAW in the context of armed conflicts

The treaty “**shall apply in times of peace and in situations of armed conflict**” (art. 2 para 3)

**Dual protection** of women from **gender-based violence** in armed conflicts

- International human rights law (present in the Convention)
- International humanitarian law (Geneva Conventions and their protocols)

**Continuity of state obligations** with regard to VAW from **peacetime to the times of internal disturbances**, armed conflict and **post-conflict situations**

**Potential to be binding extra-territorially** i.e. when acts of VAW are committed by armed forces of a party to the Convention or on territory which is under the effective control of that party



# Compliance Mechanism under the Convention

For the assessment of compliance with treaty obligations, the Convention has established

- The **Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO)**
- **Committee of the parties**

In addition, **Parties must create a government body with a mandate to coordinate, implement, monitor and evaluate national policies** on VAW in accordance with the obligations under the treaty (Art. 10)



Istanbul Convention  
Action against violence against women and domestic violence



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## The EU Legal Framework on VAW

The **protection of women from gender-based violence is neither enshrined** in the EU treaties nor in the Charter of Fundamental Rights

The action of the EU has been **mainly devoted to the achievement of gender equality**, which also encompasses initiatives with regard to the eradication of violence against women

The only reference to VAW can be found in Declaration 19 to the Final Act of the 2007, referring to Article 8 TFEU, which provides that among the efforts to **'eliminate inequalities** between women and men', **the Union will aim to combat all kinds of domestic violence** in its different policies

Moreover, the **EU Charter of Fundamental Rights contains specific provisions related to VAW** such as

- ✓ the right to **physical and mental integrity**,
- ✓ the **rights of children**,
- ✓ the prohibition of **inhuman and degrading treatment**,
- ✓ **slavery**,
- ✓ **forced labour**
- ✓ **human trafficking**





## The EU Legal Framework on VAW

The focus on gender equality has not prevented the EU from taking action to counteract offences related to violence against women:

- ❑ **Directive 2011/36/EU** on trafficking in human beings
- ❑ **Directive 2004/81/EC** on the residence permit issued to TCN who are victims of human trafficking
- ❑ **Directive 2012/29/EU** (The Victims' Directive)
- ❑ **Directive 2011/99/EU** on the European Protection Order (EPO)
- ❑ **Regulation (EU) No 606/2013** on mutual recognition of protection measures in civil matters
- ❑ **Directive 2006/54/EC** on equal opportunities and equal treatment of men and women in matters of employment and occupation (recast)
- ❑ **Directive 2004/113/EC** on equal treatment between men and women in the access to and supply of goods and services



## The Ratification of the Istanbul Convention by the EU

**EU policy** concerning VAW is **predominantly based on soft law acts**, such as Council conclusions, resolutions of the Parliament, and Commission strategies

**Most of the relevant directives 'have a broader scope** than just violence against women and therefore **only make reference to this topic'**

Thus, **ratifying Istanbul Convention will provide a more coherent legal framework** with regard to the actions to counter VAW at EU level

This **process** that has **already started!**

**EU signed the Istanbul Convention on June 13<sup>th</sup> 2017**





## The Ratification of the Istanbul Convention by the EU

The reasons why the EU should ratify the Istanbul Convention:

- ✓ **Encourage MS as well as non-MS to ratify the Convention**
- ✓ It will **address the argument** that EU has “**double standards**” as regards human rights
- ✓ Ratification would **enhance the Convention’s role in EU law**
- ✓ **CJEU will have jurisdiction** - **More uniform interpretation** of provisions of the Convention within the scope of EU law
- ✓ Convention will be **more enforceable** (“**indirect effect**” ie the obligation to interpret EU law consistently with it)
- ✓ Would **subject EU to outside monitoring** (MS are already monitored as regards issues within EU competence)







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**Thank you for your attention!!**