

The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention): Questions and answers



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Violence against women is a structural and global phenomenon that knows no social, economic or national boundaries. It is a serious violation of human rights and remains widely unsanctioned. Every day in Europe, women are psychologically and physically abused in the “safety” of their own homes, stalked, harassed, raped, mutilated, forced by their family to enter into marriage, or sterilised against their will. The examples of violence against women are endless, its victims countless. National and European surveys and awareness-raising campaigns have shown how widespread domestic and sexual violence are. The revelations of the #MeToo movement across Europe cast a light on the extent of sexual abuse of women and the difficulty for women to speak out against it. Many women are too afraid or ashamed to seek help, at times paying for their silence with their lives. Those that do speak out are not always heard. Domestic violence is another far too common form of violence that affects mostly women, but also men, children and the elderly. Few perpetrators are tried, fewer are sentenced.

Assuming its leading role in human rights protection, the Council of Europe adopted the Convention on Preventing and Combating Violence against Women and Domestic Violence (known as the Istanbul Convention). The Istanbul Convention is widely recognised as the most far-reaching legal instrument to prevent and combat violence against women and domestic violence as a violation of human rights. Since its opening for signature in 2011, it has garnered significant support at all levels: national, regional and local governments, the public, parliaments, other national, regional and international human rights organisations, civil society organisations, media and academia. It has been awarded national and international prizes for its vision to keep women and girls safe from violence.

It entered into force in 2014 – only three years after its adoption, thus showing both member states’ need for a legally binding treaty to guide them in their efforts to end gender-based violence, and their political commitment to the principles and values enshrined in the convention.

Despite the clearly stated aims of the convention, the seriousness of the phenomenon and its impact on victims and on society, a number of religious and ultra-conservative groups have, in recent years, been spreading false narratives about the convention, especially around the concept of “gender” included in the text. These misrepresentations must be exposed and addressed by highlighting the aims of the Istanbul Convention: eradicating violence against women and protecting women’s human rights.

WHAT ARE THE AIMS OF THE ISTANBUL CONVENTION?

Putting an end to violence against women and domestic violence must be an important policy objective for any government that is committed to protecting human rights for all. Over the past 30 years many important steps have been taken in a number of Council of Europe member states, but existing legislation is often insufficiently enforced, services for victims remain scarce or inadequately funded and sexist attitudes prevail. Moreover, the legislation and support that are available vary greatly from one country to the next, creating huge disparities in protection.

■ The Istanbul Convention asks governments who have ratified it to take a comprehensive set of measures to tackle all forms of violence against women and domestic violence. Every provision of the convention is meant to prevent violence from occurring, to help victims, and to ensure that perpetrators are brought to justice. It requires criminalising and legally sanctioning different forms of violence against women, for example domestic violence, stalking, sexual harassment and psychological violence. Putting a name to violence against women and knowing it is a crime will help put an end to it.

■ Developing a convention that contains a set of legally binding standards for greater protection and support is an important step towards a comprehensive and harmonised response to ensure a life free of violence for all women.

WHAT IS THE ADDED VALUE OF THE ISTANBUL CONVENTION?

■ The convention makes it clear that violence against women and domestic violence can no longer be considered a private matter, but that states have an obligation, through comprehensive and integrated policies, to prevent violence, protect victims and punish the perpetrators. By accepting the convention, governments are obliged to change their laws, introduce practical measures and allocate resources to adopt a zero-tolerance approach to violence against women and domestic violence. Preventing and combating such violence is no longer a matter of goodwill; it is a legal obligation. This will help victims throughout Europe and elsewhere.

■ Beyond legal obligations, the convention also gives an important political signal to society as a whole that violence against women and domestic violence are unacceptable. Its vision is to shed light on the realities of the many women and girls who experience violence, to raise awareness and to change mentalities in the long term.

DOES THE ISTANBUL CONVENTION APPLY ONLY TO WOMEN?

— No. The convention applies mostly to women because it covers forms of violence that only women experience because they are women (forced abortion, female genital mutilation), or that women experience much more often than men (sexual violence and rape, stalking, sexual harassment, domestic violence, forced marriage, forced sterilisation). These forms of violence are a result of unequal power relations between men and women and a consequence of discrimination against women.

— However, men also experience some forms of violence covered by the convention, such as domestic violence and forced marriage, although less often and frequently in less severe forms. The convention recognises this and encourages its parties to apply its provisions to all victims of domestic violence, including men, children and the elderly. States can choose whether or not to apply the convention to these victims of domestic violence.

WHY DOES THE ISTANBUL CONVENTION SPEAK OF THE “GENDERED NATURE” OF VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE?

— The convention speaks about the “gendered” nature of violence against women or of “gender-based violence” because it addresses forms of violence that are directed against women because they are women and/or affect women disproportionately (see above). This is also why violence against women and domestic violence cannot be addressed without looking at gender equality issues.

— Consequently, the convention frames the eradication of violence against women and domestic violence in the context of achieving *de jure* and *de facto* gender equality. Its preamble recognises the structural nature of such violence, which is both a cause and a consequence of unequal power relations between women and men and which limits the full advancement of women.

■ The Istanbul Convention does not seek to “abolish differences” between women and men; it does not imply that women and men are or should be “the same”. However, the convention does require action to counter the idea that women are inferior to men. Indeed, prejudices, stereotypes, customs, and traditions still favour men in many settings, for example in the private and public sphere, political life, at work, in education systems, in reporting crimes to the police, or when in court. This makes it all the more difficult for women to disclose experiences of violence and have their rights respected.

WHY DOES THE ISTANBUL CONVENTION CONTAIN A DEFINITION OF “GENDER”?

■ The convention places the obligation to prevent and combat violence against women within the wider framework of achieving equality between women and men. The drafters thus refer to the relations between women and men, their roles and attributes in society, and thus considered it important to offer a definition of the term “gender”. The purpose of this term is not to replace the biological definition of “sex”, nor the terms “women” and “men”, but to emphasise how much inequalities, stereotypes and – consequently – violence do not originate from biological differences, but rather from a social construct, namely from attitudes and perceptions of how women and men are and should be in society.

■ Article 3.c explains thus that for the purposes of the convention, “gender” is the “socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men”. Research has shown that certain roles or stereotypes reproduce unwanted and harmful practices and contribute to making violence against women acceptable. Therefore, Article 12.1 frames 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. In turn, understanding the influence of such prejudice, customs and traditions enables governments to adopt a “gendered understanding” of violence as required by the convention.

■ Defining the term “gender” also helps in understanding the definition of “gender-based violence against women” which means “violence that is directed against a woman because she is a woman or that affects women disproportionately” as defined in Article 3.d.

■ It is not the first time the term “gender” appears in international legal instruments. However, difficulties around the translation of the term “gender” and its distinction from the term “sex” in languages which do not have an exact equivalent have sometimes been used to fuel controversies about the convention and its implications. Such difficulties cannot become a pretext for rejecting the convention, or an obstacle to its implementation: the convention does not require an adaptation of the national legal systems to incorporate the use of the term “gender”, but uses it to explain the purpose of the measures that it asks states to adopt and implement. The convention has already been ratified and implemented in countries using languages which do not have an exact equivalent of the term “gender” (belonging to different linguistic groups, such as the Germanic, Roman and Slavic families), without this leading to controversies.

WILL ENSURING MORE RIGHTS FOR WOMEN REPRESENT A THREAT TO FAMILIES?

■ The objective of the convention is not to regulate family life and/or family structures; likewise, it does not contain a definition of “family”, nor does it promote a particular type of family setting. The convention requires governments to ensure the safety of victims who find themselves at risk at home or are threatened by family members, spouses or intimate partners, which unfortunately is the most common form of violence.

■ Since its aim is to address violence against women and domestic violence wherever it occurs, it does not limit its application to legally married partners but extends it to all partners, married or not, whether these are of the same or different sex. No groups of victims are excluded from protection on the basis of their marital status or any of the other grounds of discrimination covered by the convention.

■ For anyone living in an abusive relationship, the convention aims to make safety, protection and support available, and to offer the prospect of rebuilding a life without violence. This is particularly important where children are involved, because witnessing abuse in the home is also very damaging. It has life-long consequences on children, which is why the convention prioritises safety over custody rights in families marred by violence. The Istanbul Convention does not call into question the benefits of shared custody but aims to ensure that child contact does not jeopardise the rights and safety of victims and children. The real threat to families is the violence itself, not measures that intend to protect and support its victims.

WHAT DOES THE ISTANBUL CONVENTION SAY ABOUT GENDER STEREOTYPES AND EDUCATION?

■ Reproducing gender stereotypes in education means limiting the development of the natural talents and abilities of girls and boys, their educational and professional choices as well as their life opportunities. The education children receive influences significantly how they think about themselves, their peers and how they interact with the other sex. None of what is taught in educational institutions should lead the young generation to believe that gender-based discrimination and violence against women are acceptable.

■ This is why the Istanbul Convention seeks to promote, through the educational sector, values of gender equality, mutual respect and non-violence in interpersonal relationships, non-stereotyped gender roles, the right to personal integrity and awareness about gender-based violence and the need to counter it (Article 14). Teaching children about such values helps them become respectful and democratic citizens. It does not affect them in their sexual orientation or gender identity.

■ The drafters of the convention considered this an important aspect of the prevention of violence against women, because attitudes, convictions and behavioural patterns are shaped very early on in life. Teaching the above values in formal and non-formal educational settings

can greatly help in making violence against women unacceptable. Article 14 offers a maximum of flexibility to states parties because the decision as to when and how to offer such teachings lies within their own discretion.

■ Eliminating gender stereotypes does not mean overturning all tradition and customs. Transmitting customs or beliefs from generation to generation is important in shaping our identity. Some customs and traditional practices are, however, harmful to women and girls and may put them at risk of violence. The aim must therefore be to deconstruct the stereotypes affecting women and men that are invoked to justify such harmful traditions. This is about ensuring women and girls are safe within their own families and everywhere, not about “asking boys to dress or play like a girl” and vice versa.

HOW DOES THE ISTANBUL CONVENTION RELATE TO ISSUES OF SEXUAL ORIENTATION AND GENDER IDENTITY?

■ The Istanbul Convention does not set new standards in relation to gender identity and sexual orientation, including in relation to the legal recognition of same-sex couples.

■ The principle of non-discrimination on grounds of gender identity or sexual orientation builds on legal obligations that originate in other legal instruments, first and foremost the European Convention on Human Rights (Article 14: prohibition of discrimination; Protocol No. 12) and the case law of the European Court of Human Rights (see for example *Oliari v. Italy*, 2015, *Ratzenböck and Seydl v. Austria*, 2017), as well as Council of Europe Recommendation CM/Rec(2010)5 on measures to combat discrimination on grounds of sexual orientation or gender identity.

■ The Istanbul Convention prohibits discrimination on many grounds, including gender identity and sexual orientation (Article 4, paragraph 3). This is to ensure protection and support for all victims of violence, irrespective of any characteristics they might have. Applying the provisions of the convention without any discrimination on the basis of gender identity would mean, for example, ensuring that the gender identity of transgender persons should

not bar them from the support and protection guaranteed in relation to domestic violence, sexual assault, rape or forced marriage. The same goes for women in same-sex relationships, so that all women, including lesbian, bisexual and transgender women have access to domestic violence shelters, for example, and the right to live a life free from violence. This may also include gay men who are confronted with domestic violence.

TIME TO END SPECULATION AND MISINFORMATION ABOUT THE ISTANBUL CONVENTION

■ There is no undertone or “hidden agenda” to the Istanbul Convention. It is the result of long negotiations, leading to its adoption by consensus by all Council of Europe member states. It is based on tried and tested policies and legislation which have produced positive results at the level of the member states.

■ Its aims are clearly stated in Article 1: the prevention of, protection from and prosecution of violence against women and domestic violence. Doing so means addressing its main root cause: inequalities between women and men in our societies. This is why the convention contains several provisions which challenge persistent ideas about the inferiority of women compared to men and about the roles and behaviours that women and men should have in the private and public spheres.

■ From this point of view, the Istanbul Convention is not pushing an agenda which would “jeopardise” the social fabric and values of societies. Nor does it impose any life choices on women or men. Whether they want to be carers, parents or opt for a brilliant career, the convention does not oblige anyone to adopt a certain lifestyle. The convention does, however, oppose attempts aiming at:

- ▶ confining women and men to traditional roles, thereby limiting their personal, educational and professional development and life opportunities in general;
- ▶ justifying and maintaining patriarchy, the historical power relations of men over women, as well as sexist attitudes which are holding back the advancement of gender equality;
- ▶ opposing the notion of women’s right to live free from violence.

BEING A PARTY TO THE ISTANBUL CONVENTION: UNITED TO END VIOLENCE AGAINST WOMEN

■ The Istanbul Convention is already having a positive impact on the lives of women across Europe. Asking governments to prevent violence against women, to protect and support victims, and to punish perpetrators in an all-encompassing effort to put an end to such violence means giving women victims back their dignity, a value which is paramount according to the European Convention on Human Rights (*Y.Y. v. Turkey*, 2015), removing action to ensure women's basic human rights from the realm of charity and placing it at the centre of state policy.

■ The Istanbul Convention has initiated and led to important changes in legislation, the setting up of new and better services for victims, the allocation of resources and the intensification of training efforts. Concrete examples from countries which are implementing the convention include: adopting legislation introducing new definitions of stalking and sexual harassment; changing the definition of rape to be based on lack of consent rather than proof of the use of force; setting up "co-ordinated community responses" whereby professionals who are approached by victims will refer the case to a multidisciplinary team to ensure support; creating 24/7 national helplines guiding women to counselling services nearest to them; setting up shelters with public funding in areas where they were not previously available; introducing violence against women in the curricula of different university degrees (law, medicine, nursing, psychology, social studies, etc.); providing specific training for judges, prosecutors and lawyers to improve women's access to protection and remedies.

■ More generally, the Istanbul Convention has created a push for better policies, services and discourses around the violence women and girls experience and how they can be supported and empowered. Professionals at all levels (law-enforcement services, social services, counselling and support services, etc.) have benefited from this new impetus and are witnessing a heightened sense of awareness of the issue. The need to act is real. Eradicating violence against women should be a goal that unites us all.

The Council of Europe Istanbul Convention on preventing and combating violence against women and domestic violence: preventing violence, protecting victims and prosecuting perpetrators to tackle this serious violation of human rights.

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The Council of Europe is the continent's leading human rights organisation. It comprises 47 member states, including all members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.

