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## **TENTH ANNIVERSARY OF THE ISTANBUL CONVENTION OF THE COUNCIL OF EUROPE – RELEVANT ASPECTS**

*"The violence is intriguing. Universally doomed, and yet it is everywhere. Most of us are both fascinated and horrified by it. It is a fundamental ingredient of our entertainment (children's stories, world literature, film industry) and an essential addition to many of our social institutions. "In most parts of the world, it is extremely common in family life, religious affairs and political history." **Litke Robert***

### **Abstract**

*Ten years passed since signing of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence in Istanbul. It is the first legally binding instrument recognizing violence against women as a violation of human rights and a form of discrimination against women. The aim of the Convention is to ensure zero tolerance in all states towards violence against women and domestic violence. Transformative power of the Convention and its monitoring expert body GREVIO is visible. Over the past ten years, the Convention influenced numerous states in modernization of their legislation and policies of preventing and combating violence against women effectively.*

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*Implementation of the Convention especially gains on relevance during pandemic of COVID 19.*

*Challenges in efficient implementation of the Convention indicate the need to ensure the Convention's aims reach all women and girls. The emerging trend is the lack of intersectional approach to women protection. GREVIO's general recommendation is furthermore directed to the need for interinstitutional cooperation between governments and NGOs. Sufficient financial resources are needed for state duties' implementation in effective fight against gender based and domestic violence. Although none of seventeen analyzed countries, parties of the Convention, have not yet applied completely gender equality principles, GREVIO notes promising practices in many countries. Declaration of the of the Committee of the Parties to the Council of Europe Istanbul Convention acknowledges the major contribution of the Istanbul Convention monitoring mechanism in preventing and combating violence against women and domestic violence by providing tailored-made guidance as well as opportunities for states parties to learn from each other and exchange on best practices. Special value of the Convention legal standards in the area of fight against gender-based violence and domestic violence, is in its contribution to dismantling globally widespread negative gender stereotypes, which are one of main causes of violence against women.*

**Keywords:** *domestic violence, violence against women, human rights, discrimination, COVID 19*

## INTRODUCTION

Ten years passed since signing of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence in Istanbul. It is the first legally binding instrument recognizing violence against women as a violation of human rights and a form of discrimination against women. The aim of the Convention is to ensure zero tolerance in all states towards violence against women and domestic violence. Consequently, the protection of the victims of such violence is in the center of the Convention principles and norms. Since

significant majority of victims are women and girls, the Convention makes essential link with wider goal of achieving equality between women and men, because the root of violence against women lies in inferior position of women.

In May 2011 Istanbul conference of the Council of Europe (CoE) Committee of Ministers opened the signing of the new Convention and the beginning of the ratification process. Turkey was the first CoE member state that ratified the Convention. Thirty-four member states of the Council of Europe have ratified it, twelve have signed it – along with the European Union.<sup>1</sup> Convention is titled as “Istanbul Convention” as a sign of gratitude for the support of Turkey in its ratification. Convention is open to accession also to other countries, non-members of the Council of Europe. However, it is historical paradox that we are witnessing the withdrawal of the Turkey from the Istanbul Convention notified in March 2021, which will take effect on 1st July 2021. This is a huge setback for Turkey.

Istanbul Convention entered into force on 1 August 2014, after ten states signatories had deposited instruments of ratification, in line with Art. 75 para 3 of the Convention. It is the first international treaty that establishes a comprehensive set of legally binding obligations to ensure a holistic response to all forms of violence against women, including domestic violence. The Council of Europe Istanbul Convention consists of the Preamble and 12 chapters (81 Art.s and an annex on the privileges and immunities of the members of the GREVIO - Monitoring Expert Body for the implementation of the Convention). Legal standards embodied in the Convention have been the subject of almost two years of negotiations among member states of the Council of Europe at the expert level within the Ad Hoc Committee for the Prevention and Fight against Violence against Women and Domestic Violence.<sup>2</sup>

<sup>2</sup> Prof. Dr. Gordana Gasmi, the author of this paper, represented Serbia at the expert level when formulating the text of the Istanbul Convention during the two-years negotiations in CAHVIO from 2009 till 2011 and in 2011 she became the Council of Europe expert in the field of human rights and

Over the past ten years, the Convention influenced numerous states in modernisation of their legislation and policies of preventing and combating violence against women effectively. Celebrating its ten-years anniversary represents marking the transformative power of this landmark treaty. Implementation of the Convention especially gains on relevance during pandemic of COVID 19, since the increase of violence against women and domestic violence is evident, while access to specialized support services for victims is extremely hampered due to anti-pandemic measures.<sup>3</sup>

### LEGAL MILESTONE

Before the adoption of the Council of Europe (CoE) Convention on the Prevention and Combating Violence against Women and Domestic Violence (Istanbul Convention), there was no international legal instrument on this subject implemented in Europe, except the UN Convention on elimination of all forms of discrimination against women (CEDAW), with its Optional Protocol and Recommendation no. 19, brought by CEDAW Committee. Until the 1960s it was believed that domestic violence was very rare and unusual behavior.<sup>4</sup> Furthermore, it was treated as a private issue by most European states even till 80-ties, but women's movements managed to bring this dangerous phenomenon under the umbrella of criminal law and prosecution. The term "gender-based violence against women" is used throughout the Istanbul Convention of the CoE, and refers to violence that is directed against a woman because she is a woman or that affects women disproportionately. The term "gender-based violence against women" is used throughout the Istanbul Convention of the CoE, and refers to violence

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<sup>2</sup> (cont) gender equality. The CAHVIO Committee, formed by a decision of the Committee of Ministers of the CoE in December 2008, started its work in April 2009 on the basis of the mandate entrusted by the CoE Committee of Ministers.

<sup>3</sup> Council of Europe, CoE (2021). Second General Report on GREVIO's activities covering period from June 2019 to December 2020, CoE, April 2021, p. 29.

<sup>4</sup> Draškić M. (2016). „Do we need another law on protection against domestic violence?“ in: S. Lilic (ed.) Perspectives of implementation of European standards in Serbian Legal system, Law Faculty, University of Belgrade, Vol. 6, Collected articles, Belgrade, 2016, p. 41.

that is directed against a woman because she is a woman or that affects women disproportionately. In this way the Istanbul Convention follows the definition set by UN CEDAW Committee. Gender-based violence against women differs from other types of violence in that the fact that these are perpetrated against a woman is both the cause and the result of unequal power relations between women and men.

The Istanbul Convention is open for the accession of non-member states of the CoE and for international organizations, such as the EU.<sup>5</sup> In March 2016, the Commission presented the proposal for the EU Council Decision on the signing of the Convention<sup>6</sup> and the EU signed the Convention on 13<sup>th</sup> June 2017. Among non-member states Tunis and Kazakhstan expressed their willingness to join the Convention.

The Istanbul Convention aims at zero tolerance for gender-based violence against women and domestic violence in each society. The aim of the Istanbul Convention is to ensure protection for victims of domestic violence, particularly women and girls, since they are prevalent majority of victims, but also for other victims of domestic violence, children, elderly people and men.

Therefore, the Convention is based on the principles of prevention, protection, punishment (concept of three “P”) plus comprehensive and coordinated policies, which all represent four pillars of the Convention.

Starting from empirical facts, the focus is primarily on violence against women, since nine of ten victims of domestic violence are women and

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<sup>5</sup> The European Commission published in October 2015 a 'roadmap' on the (possible) EU accession to the Council of Europe Istanbul Convention, EU Commission, Roadmap A (possible) EU accession to the CoE Convention on preventing and combating violence against women and domestic violence, October 2015, 2015/JUST/010 and EU Commission, Factsheet Q&A International Day for the Elimination of Violence against Women (24 November 2015) [http://europa.eu/rapid/press-release\\_MEMO-15-6150\\_en.htm](http://europa.eu/rapid/press-release_MEMO-15-6150_en.htm).

<sup>6</sup> European Commission (2016) Council Decision on the signing, on behalf of the European Union, of the Council of Europe Convention on preventing and combating violence against women and domestic violence, *COM (2016) 111 final 2016/0063 (NLE)*.

girls. The emphasis is on the prevention and the fight against violence towards women, which is defined as a severe discrimination and a violation of women's human rights.

This means that states are held responsible if they do not respond adequately to such violence! 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.

In the Council of Europe's (CoE) Istanbul Convention (Art. 3), violence against women, i.e., gender-based violence has been recognized as a form of discrimination and a violation of women's human rights. The Istanbul Convention clearly differentiates between violence against women and domestic violence which might affect women, but also children, men, and elderly people. However, the focus of the Convention is on all forms of violence against women which includes domestic violence committed against women, since the majority of victims of domestic violence are women.<sup>7</sup>

Violence against women is defined as 'a violation of human rights and a form of discrimination against women', which include '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 definition of domestic violence does not solely refer to acts committed against women, rather to any kind 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" (Art. 3.b). In this way, Convention

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<sup>7</sup> Gasmi G. (2012). "New European Legal Standards in the area of women human rights", 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.

contains two definitions, which is obviously result of political compromise. However, the interpretation of the scope of the Convention is laid down in the Art. 2, specifying that “This Convention shall apply to all forms of violence against women, including domestic violence, which affects women disproportionately”. In the para 2. of the Art. 2 it is said that: “Parties are encouraged to apply this Convention to all victims of domestic violence. Parties shall pay particular attention to women victims of gender-based violence in implementing the provisions of this Convention”. Consequently, in the Explanatory report of the Convention it is stated that States, Parties of the Convention are to decide whether to extend the applicability of the Convention to men and children, being domestic violence victims. In doing so, states should take account of the specific national situation and of the developments in their society. Nevertheless, the drafters of the Convention point out that gender-based violence against women, in its various manifestations, one of which is domestic violence, must lie at the heart of all measures taken in implementation of the Convention.<sup>8</sup>

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 milestone born, *inter alia*, from the jurisprudence of the European Court for Human Rights in Strasbourg, more precisely one of the most known cases: *Opuz v Turkey* (2009) as well as other cases. Countries ratifying the Convention have to establish services such as hotlines, shelters, medical services, counselling, and legal aid. Art. 5 of the Convention, para. 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 Parties’ obligation to exercise due diligence in relation to acts covered by the scope of this Convention perpetrated by non-state actors.

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<sup>8</sup> Council of Europe (2011). Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, Council of Europe Treaty Series – No. 210, Istanbul, 11.V.2011, p. 7).

In both cases, failure to do so will incur state responsibility. This principle is called: due diligence.

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), Art. 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<sup>9</sup> 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 Art. 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.<sup>10</sup>

It has established that the positive obligation to protect the right to life (Art. 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.<sup>11</sup>

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.<sup>12</sup> In the framework of international law tendencies of defining the issue of gender-based violence were evident since 90-ties. The United Nations (UN) defines violence against women as “any act of

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<sup>9</sup> Organization of American States (1994). Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará, 1994), <https://www.oas.org/en/mesecvi/docs/BelemDoPara-ENGLISH.pdf>.

<sup>10</sup> See the judgment of *Opuz v. Turkey*, 2009.

<sup>11</sup> Council of Europe (2011). Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, *Council of Europe Treaty Series* – No. 210, Istanbul, 11.V.2011, <https://rm.coe.int/16800d383a>, p. 11.

<sup>12</sup> [https://www.who.int/health-topics/violence-against-women#tab=tab\\_1](https://www.who.int/health-topics/violence-against-women#tab=tab_1) (20 May 2021).

gender-based violence that results in, or is likely to result in, physical, sexual, or mental harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.”<sup>13</sup> 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 discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men.” UN Beijing Declaration and the Platform for Action defines as following: “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.”<sup>14</sup>

In Europe, according to recently conducted surveys,<sup>15</sup> 33% of women have experienced physical and/or sexual violence since the age of 15, which corresponds to 62 million women. Figures for all forms of violence, including stalking, are as high as 45%.<sup>16</sup> Nevertheless, most cases committed behind domestic walls, remain unreported.<sup>17</sup> With regard to States' obligations deriving from its provisions, the Convention requires State Parties to criminalise several conducts which amount to violence

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<sup>13</sup> Declaration on the Elimination of Violence against Women, Proclaimed by General Assembly resolution 48/104 of 20 December 1993.

<sup>14</sup> UN, The Beijing Declaration and the Platform for Action, Fourth World Conference on Women Beijing, China 4–15 September 1995.

<sup>15</sup> EU Fundamental Rights Agency (FRA), Violence against Women: an EU-wide survey, [http://fra.europa.eu/sites/default/files/fra-2014-vaw-survey-main-results-apr14\\_en.pdf](http://fra.europa.eu/sites/default/files/fra-2014-vaw-survey-main-results-apr14_en.pdf) (22 May 2021).

<sup>16</sup> Gasmı G., Prlja A., Jerotić V. (2017). “European leading legal principles of combating gender-based violence – Istanbul Convention”, in: S. Lilic (ed.) *Perspectives of implementation of European standards in Serbian Legal system*, Law Faculty, University of Belgrade, Vol. 7, Collected Art.s, Belgrade, 2017, p. 336.

<sup>17</sup> Gracia E. (2004), 'Unreported Cases of Domestic Violence against Women: Towards an Epidemiology of Social Silence, Tolerance, and Inhibition' (2004) 58, *J Epidemiol Community Health*, p. 536.

against women and domestic violence, whether these conducts have not yet been included in their respective criminal codes. The conducts encompass forced marriage, female genital mutilation, forced abortion, forced sterilization, stalking, sexual harassment, physical and psychological violence and sexual violence. The Convention also requires State parties to ensure that in criminal proceedings regarding the acts of violence covered by the Convention, culture, custom, religion, tradition or so-called “honour” are not regarded as justifications of such acts (Art. 42, para 1).

The Convention then obliges State parties to take the necessary legislative or other measures to ensure that the offences established in the Convention are punishable by effective, proportionate and dissuasive sanctions (Art. 45), taking into account their seriousness and aggravating circumstances, such as the fact that the acts are committed in the presence of a child (Art. 46).

As for preventive and protective measures, States must promote “changes in the social and cultural patterns of behaviour of women and men with a view to eradicating 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”, Art. 12,<sup>18</sup> and provide support services for violence victims, including legal and psychological counselling, financial assistance, housing, education, training and assistance in finding employment (Art. 20), specialist support services (Art. 22), shelters (Art. 23), and telephone helplines (Art. 24).

All those provisions put the emphasis on the state obligations in implementation of the Convention, which represent legal milestone and a significant turn from treatment of domestic and gender-based violence against women as a private matter to recognize it as a very dangerous social phenomenon with serious economic consequences and notably for human rights.

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<sup>18</sup> Hester M., Lilley S. J. (2014). „Preventing Violence against Women: Art. 12 of the Istanbul Convention“, <https://rm.coe.int/CoER-MpublicCommonSearchServices/DisplayDCTMContent?documentId=090000168046e1f0>, p. 8.

## EFFECTIVENESS OF THE CONVENTION – PRINCIPLES AND RESULTS

Transformative power of the Convention is visible. In many countries (Denmark, Finland, France, Italy, Sweden and Serbia) the Criminal codes were amended and the introduction of new criminal offences, adapting their criminal law to the requirements of the convention has been implemented. These efforts cover in particular the criminalisation of stalking, forced marriage and female genital mutilation. Moreover, some have amended their legal definition of rape to be based on the lack of consent freely given by the victim, in accordance with the Istanbul Convention. Furthermore, in many state parties of the Convention the range of support services available to women victims were expanded by creating national telephone helplines, through increasing the number of safe houses or introducing specialised centers for rape victims. Raising awareness of the different forms of violence against women and relevant good practices have been identified at national levels, as to how to reach women with disabilities or women and girls at risk of female genital mutilation.

Protection and support provided under the Istanbul Convention must be available to any woman without discrimination, including with respect to her age, disability, marital status, association with a national minority, migrant or refugee status, gender identity or sexual orientation. In this way the non-discrimination principle is very important in implementation of the Convention norms, since some women face multiple discrimination and even higher level of gender based violence (women with disabilities, women from national minorities, LGBTI /Lesbian, Bisexual, Transgender, Intersex/women, women women and women in prostitution).

The Chapter VI of the Convention contains a variety of provisions that cover from rural areas, migrant women, asylum-seeking and refugee women, women without a residence permit, girl children, older women, homeless a broad range of issues related to investigation, prosecution,

procedural law and protection against all forms of violence covered by the scope of the Convention, which all-together confirm the effectiveness of established standards<sup>19</sup>.

Effective investigation and prosecution mean, 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 meant to be prejudicial to the rights of the defence and the requirements of a fair and impartial trial, in conformity with Art. 6 ECHR. Especially important is the notion of gendered understanding of violence, bearing in mind the fact that women are prevalent victims.

Prosecution includes the following: violence against women is criminalized and appropriately punished; excuses on the grounds of culture, custom, religion or so-called “honor” are unacceptable for any act of violence; victims have access to special protection measures during investigation and judicial proceedings; law enforcement agencies respond immediately to calls for assistance and manage dangerous situations adequately. However, according to the findings of GREVIO monitoring, most problems were found in prosecution procedures against perpetrators.

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<sup>19</sup> Art. 49 – “General obligations

1. Parties shall take the necessary legislative or other measures to ensure that investigations and judicial proceedings in relation to all forms of violence covered by the scope of this Convention are carried out without undue delay while taking into consideration the rights of the victim during all stages of the criminal proceedings.

Parties shall take the necessary legislative or other measures, in conformity with the fundamental principles of human rights and having regard to the gendered understanding of violence, to ensure the effective investigation and prosecution of offences established in accordance with this Convention,” (underlined by the author).

Offences against women included into the Convention are the following:

- Domestic violence (physical, sexual, psychological and/or economic violence);
- Stalking;
- Sexual violence, including rape;
- Sexual harassment;
- Forced marriage;
- Female genital mutilation;
- Forced abortion and forced sterilization.

Violence against women and domestic violence are not private matters. To emphasize the particularly traumatizing effect of crimes within the family, a heavier sentence can be imposed on the perpetrator when the victim is a spouse, partner or a member of the family.

Concept of the law enforcement and judicial proceedings is based on the following:

- Effective police investigation - to respond immediately to calls for assistance and manage dangerous situations appropriately;
- Effective public prosecution - will not be dependent upon a report or complaint by the victim and may even continue if the victim withdraws their statement or complaint;
- Consideration of aggravating circumstances - victim being an intimate or close relation, crimes against a vulnerable person or in the presence of a child, extreme levels of violence, threat of weapons, or previous convictions for crimes of a similar nature;
- Legislation criminalizing violence against women - States parties will ensure that culture, tradition or so-called 'honour' are not regarded as a justification for violence;
- Dissuasive Sanctions for perpetrators - imprisonment, extradition, monitoring and supervision, and withdrawal of parental rights;
- Coordinated risk assessments - in cooperation with relevant agencies and institutions, taking repeat offences and access to firearms into account;

- Protection of child victims and witnesses - special protection measures; children victims of sexual violence, forced marriage, female genital mutilation and forced abortion or sterilization will be able to initiate legal action for a sufficient amount of time after they have reached adulthood;
- No victim-blaming investigations and judicial proceedings;
- Victims' protection during investigation and judicial proceedings - from intimidation, retaliation and repeat victimization; Alternative options to resolve disputes such as mediation between victim and perpetrator will not be mandatory; The victim will be informed of any escape or release of a perpetrator.

Istanbul Convention is not a “tiger made of paper”, therefore it has established two pillars of monitoring of its implementation: the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), an independent expert body, on the one side and the Committee of the Parties, a political body composed of official representatives of the States Parties to the Convention, on the other side. GREVIO draws up and publishes reports evaluating legislative and other measures taken by these countries to give effect to the provisions of the Convention (evaluation procedure). In specific circumstances, it initiates inquiries (inquiry procedure). GREVIO may also adopt general recommendations on themes and concepts of the Convention.

When starting the monitoring of a particular country, GREVIO often invite national NGOs to give relevant information on their country. Those shadow reports are considered as valuable contribution to GREVIO evaluation.

In a new report based on seventeen countries in Europe, covering its work from June 2019 to December 2020, GREVIO highlights trends in the provision of services for victims and discusses these against the background of the pandemic which has greatly increased the need for support. The report shows how much the pandemic has brought to light pre-existing gaps concerning specialist services, impacting significantly

on women's and girls' ability to access specialist support services for the different forms of violence.<sup>20</sup>

The Mid-term Horizontal Review of GREVIO of all seventeen baseline evaluation reports dated on 10 May 2021 illustrates the findings of GREVIO article per article of the Convention. Challenges in efficient implementation of the Convention indicate the need to ensure the Convention's aims reach all women and girls. The emerging trend is the lack of intersectional approach to women protection. Therefore, more comprehensive documents on gender based violence against women are necessary. GREVIO's general on gender based violence against women are necessary. GREVIO's general recommendation is furthermore directed to the need for interinstitutional cooperation between governments and NGOs. In addition, sufficient financial resources are needed for state duties' implementation in effective fight against gender based and domestic violence. Without sufficient relevant state funding, GREVIO notes limited degree of commitments of state parties of the Convention. GREVIO welcomed law in Portugal, which obliged on line ministries to inform on transparent gender sensitive budget lines<sup>21</sup>. It is a state obligation to respond to all forms of violence against women and for women and girls in all their diversity. Although none of seventeen analyzed countries, parties of the Convention, have not yet applied completely gender equality principles, GREVIO notes promising practices (Spain, Sweden, etc).

“By breaking this silence, by reducing the social tolerance and inhibition, and by increasing identification and reporting of domestic violence against women we will also be taking steps to progressively melt the iceberg of domestic violence. This is an important challenge for western societies (even after more than 25 years of activism in the field of intimate

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<sup>20</sup> Council of Europe, CoE (2021), Second General Report on GREVIO'S Activities covering period from June 2019 to December 2020, pp. 64 – 65.

<sup>21</sup> Johanna Nelles, Executive Secretary to the Istanbul Convention at the Belgrade CoE Conference “The Istanbul Convention: 10 Years On!” held on 7th May 2021.

partner violence), but this challenge is even greater in other cultures where violence against women is seen as a natural phenomenon based in deep rooted beliefs and attitudes....”<sup>22</sup>

## CONCLUSIONS – LESSONS LEARNED

Declaration of the of the Committee of the Parties to the Council of Europe Istanbul Convention (Convention on Preventing and Combating Violence against Women and Domestic Violence, on the 10th anniversary of the opening for signature of the Istanbul Convention of 6 May 2021 reiterates “the essential role of the Istanbul Convention in preventing and combating violence against women and domestic violence, as the most far-reaching and comprehensive set of standards to tackle this issue”. Furthermore, the Declaration“ acknowledges the major contribution of the Istanbul Convention monitoring mechanism in preventing and combating violence against women and domestic violence by providing tailored-made guidance as well as opportunities for states parties to learn from each other and exchange on best practices”.

On the other (dark) side, there are some obstacles to the prevention and elimination of all forms of violence covered by the Istanbul Convention, including challenges arising from the COVID-19 pandemic. Especially harmful is the spreading of false narratives about the Istanbul Convention and the attempt to weaken the multilateral and legally binding international system protecting women against violence. Consequently, the Declaration urges states parties to intensify their efforts to promote and fully implement the Istanbul Convention in order to realize its potential and holistic approach, and to protect and promote the right of women and girls to live a life free and to protect and promote the right of women and girls to live a life free from violence, including for women and girls facing multiple and intersecting forms of

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<sup>22</sup> Gracia E. (2004), *op. cit.* (fn. 17), pp. 536, 537.

discrimination.

However, equally important are the Convention standards and principles, on the one side and relevant national norms, on the other. At complex road in achieving gender equality and an effective protection of women and girls from gender-based violence, the Istanbul Convention plays emancipatory role. Strategic legal significance of the Istanbul Convention is represented in the fact that it defines the violence against women as a severe discrimination and a violation of women's human rights. Although the Convention was born under the auspices of the Council of Europe, it bears global importance through setting modern legal standards and by its openness for the accession to non-members of the Council of Europe. The Istanbul Convention aims at zero tolerance for gender based and domestic violence in each society and therefore it foresees implementation of national prevention measures in this domain. Special value of the Convention legal standards in the area of fight against gender-based violence and domestic violence, is in its contribution to dismantling globally widespread negative gender stereotypes, which are one of main causes of violence against women.<sup>23</sup>

Convention represents a renewed aspiration towards establishing essential equality between women and men, aimed at removing deeply rooted unequal power relations between them. Its monitoring mechanism proves to be *spritus movens* in guiding governments to apply efficient measures and policies to respond to violence against women. Fulfilling the commitments taken under this convention is crucial for it to reach its comprehensive potential. However, it is a long road, since more has to be achieved, such as in implementation of the Art. 36 related to definition of sexual violence based on the lack of consent<sup>24</sup>.

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<sup>23</sup> Gasmı G. (2019), Global Significance of European Standards of Women Human Rights Protection in Domain of Gender Based and Domestic Violence, *Fiat Iustitia* No 1/2019, pp. 125-140; <https://fiatjustitia.ro/ojs/index.php/fi/issue/view/27>, p. 131.

<sup>24</sup> At the moment of writing this essay, only three countries parties of the Convention have complied with this standard in their legislation.

Besides, in many countries domestic violence shelters should be more present, as well as services of support to victims.

- For tackling violence against women and girls it is necessary to constantly improve legislative framework;
- For effective fight against sexual violence, it is needed to sharpen prosecution rates;
- For reporting of gender based violence and domestic violence cases, it is highly recommendable to improve trust in the criminal justice system;
- For comprehensive approach to dismantling violence against women and girls, it is necessary to address intersectionalities and understand how to support most vulnerable groups;
- For prevention purposes and achieving zero tolerance, it is unavoidable to permanently undertake campaigns raising awareness and preventing gender-based violence through education. It is vital to improve identification skills and appropriate responses to the disclosure of intimate partner violence in health sector;
- For raising general human security in a public, and especially safety of women and girls, it is recommendable to strengthen police mandate and multi-sector cooperation of responsible stakeholders.

In the forthcoming period, effective public awareness campaigns should also focus on the invisible part of the iceberg of domestic violence against women, pointing out that it is the result not only of the victim's silence but also of the explicit tolerance of the victims' social milieu. Therefore, it can be included that social response and responsibility in issues of gender based and domestic violence, together with effective implementation of the Convention and national legislation, would have a deterrent effect for perpetrators.

In near future, national policy measures against gender based and domestic violence are to be based on a greater research results on societal values towards intimate partner violence expressed through threats, intimidation and coercion<sup>25</sup> in view of reporting, victim blaming,

tolerance and complete silence. Finally, more resources are to be directed to permanent fight against gender based and domestic violence, in law enforcement, health settings, support programmes for the victims and prevention measures, in line with the Convention standards.

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## ДЕСЕТА ГОДИШЊИЦА ИСТАНБУЛСКЕ КОНВЕНЦИЈЕ САВЕТА ЕВРОПЕ - РЕЛЕВАНТНИ АСПЕКТИ

### Апстракт

*Десет година је прошло од потписивања Конвенције Савета Европе о спречавању и борби против насиља над женама и насиља у породици у Истанбулу. То је први правно обавезујући инструмент којим се насиље над женама препознаје као кршење људских права и облик дискриминације жена. Циљ Конвенције је осигурати нулту толеранцију у свим државама према насиљу над женама и насиљу у породици. Трансформативна моћ Конвенције и њеног експертског тела за праћење GREVIO је видљива. Током протеклих десет година, Конвенција је утицала на бројне државе у модернизацији законодавства и политике ефикасног спречавања и борбе против насиља над женама. Примена Конвенције посебно добија на значају током пандемије COVID-19. Изазови у ефикасној имплементацији Конвенције указују на потребу да се осигура да циљеви Конвенције досегну све жене и девојке. Текући тренд је недостатак међународног приступа заштити жена. Општа препорука GREVIO је осим тога усмерена на потребу за међуинституционалном сарадњом између влада и невладиних организација. Потребна су довољна финансијска средства за спровођење обавеза државе у ефикасној борби против родно заснованог насиља и насиља у породици. Иако ни једна од седамнаест анализираних земаља, потписница Конвенције, још није у потпуности применила принципе родне равноправности, GREVIO бележи обећавајуће праксе у многим земљама. Декларација Комитета страна потписница Истанбулске Конвенције Савета Европе признаје велики допринос механизма праћења Истанбулске конвенције у спречавању и борби против насиља над женама и насиља у породици кроз пружање прилагођених смерница, као и могућности за државе потписнице да уче једне од других и размењују најбоље праксе. Посебна вредност правних стандарда Конвенције у области борбе против*

*родно заснованог насиља и насиља у породици јесте у њеном доприносу рушењу глобално распрострањених негативних родних стереотипа, који су један од главних узрока насиља над женама.*

**Кључне речи:** *породично насиље, насиље над женама, људска права, дискриминација, COVID 19*