Violence against Women and Domestic Violence: General Framework and Overview of the Convention (Articles 1 and 2)

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This paper analyses the International and European context which forms the base of the Convention on preventing and combating violence against women and domestic violence presented in 2011 and which entered into force on 1st of August, 2014. 2017 is the year of focused actions aimed at connecting all efforts across the European Union to stop violence against women; the 25 November will be the International Day for the Elimination of Violence against Women (with a unifying slogan, 'Say no! Stop violence against women') and with this in mind there are many activities organised by Member States, the EIGE, the European Parliament, civil societies and other institutions, under the umbrella of the campaign. The paper analyses the Convention that represents a milestone and the first legally binding instrument creating a comprehensive legal framework not only to protect women against all forms of violence, but also to prevent, prosecute and eliminate violence against women and domestic violence. Articles 1 and 2 describe the aims of the Convention dedicated to the purposes and scope of an international act. This act analyses the prevention of violence, in order to achieve full gender equality in order to eliminate discrimination against women, existing stereotypes and traditional practices regarding their health.

Keywords: Violence; Women; Gender Equality; Preventing; Convention

Introduction

Position of Problem

The Convention on preventing and combating violence against women and domestic violence (hereinafter “the Convention”) was presented in 2011 and entered into force on 1st of August 2014.

This important act is aimed at preventing violence, protecting victims, and prosecuting the perpetrators and, in fact, recognises violence against women as a human rights¹ violation - threatening women's health and their social and economic well-being - and it is significative because the phenomenon of violence

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¹ McQuigg (2010). The article seeks to shed light on the question of how human rights law may be used in the area of domestic violence through the medium of a litigation strategy.

against women is, unfortunately, very common in Europe and it is still a problem of society².

Violence towards women and girls today is an extensive and serious violation of human rights, universally present in every country and area of the globe, in industrialised countries as in developing countries, albeit with variable characteristics and determined by specifics associated to the social and cultural environment of reference. Victims and their aggressors belong to all social, cultural and economic classes and abuse and violence is perpetrated in the majority of cases within the family³.

2017 is the year of focused actions aimed at connecting all efforts across the European Union to stop violence against women; the 25 November⁴ will be the *International Day for the elimination of Violence against Women* (with a unifying slogan, 'Say no! Stop violence against women') and with this aim many activities have been organised by Member States, the EIGE, the European Parliament, civil societies and other institutions, under the umbrella of the campaign.

Věra Jourová, the Commissioner, said,

"I want 2017 to be a game-changer in ending violence against women. By the end of the year, I hope that any woman experiencing violence will feel comfortable reporting it to the police and will get the support she deserves. And I want everyone in Europe to agree that sexual intercourse without consent cannot be justifiable under any circumstances".

According to a recent Eurobarometer report, *Special Eurobarometer 452, Media pluralism and democracy*, although 96% of Europeans realise that domestic violence is unacceptable, 27% still believe that non-consensual sexual relations can be justified in certain circumstances.

In the report we see the changes in opinion that have come about since the last survey in 2010 "Across the EU there has been a four percentage point decrease in the proportion who say domestic violence against women is common in their country, but much larger decreases in this view are observed amongst respondents in Slovakia (-16 pp), Latvia (-15 pp), Denmark and Finland (both -13 pp)".

The map below (Figure no. 1) illustrates the situation in Europe.

² The European Commission published in October 2015 a 'roadmap' on the (possible) EU accession to the Council of Europe Istanbul Convention, and, on the occasion of the International Day for the Elimination of Violence against Women named *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 accessed 20 June 2016.

³ Del Vecchio (2011) at p. 2; Degani (2000) at pp. 8-12.

⁴ For *Joint Statement on the International Day for the Elimination of Violence against Women, 25 November 2016* is possible to consult this link http://europa.eu/rapid/press-release_STATEMENT-16-3945_en.htm

Figure 1. Map of Europe showing Violence against Women and the change in Opinion since the Last Survey in 2010

Base: All respondents (n=27.818).

*Croatia was not covered in 2010.

Source: Special Eurobarometer 449: Gender-based violence 2016

Figure 2. Points of View and Perceptions of the Type of Violence against Women

QB6 In your view, is violence against women more likely to occur...
(MAX. 2 ANSWERS)
(% - EU)

Base: Total respondents (N=27.818).

Source: Special Eurobarometer 449: Gender-based violence 2016

The survey shows that a large majority of people think violence against women is more likely to occur at home and thus is the most mentioned option in each Member State. In figure no. 2 (above) different points of view and perceptions of the different types of violence against women (at home, in public places, on line, in the workplace, in public transport, in schools and universities, in other places) are illustrated.

In 2013 the EIGE (*European Institute for Gender Equality*) launched its gender equality index⁵, which measures gender equality between men and women⁶ in different fields.

The Index studies and compares gender gaps within a range of areas relevant to the EU policy framework (work, money, knowledge, time, power, health, violence and intersecting inequalities) including a ‘satellite domain’ on violence against women that “remains empty due to the lack of data”.

Gender-based violence against women is both a cause and consequence of gender inequality and it also has important economic costs⁷ for the European Union estimated at €226 billion euro by the EIGE, in terms of lost economic outputs⁸ from women missing work, health service costs, welfare costs and legal costs.

In the Report, *Estimating the costs of gender-based violence in the European Union*⁹, EIGE analyses the costs of gender-based violence, compares different studies and literature and finally provides recommendations for member States and decision-making for a concrete and incisive process of policy development.

One of conclusions of the Report is

“whether the focus is on intimate partner violence against women or gender-based violence against men and women, over half of the cost is a result of the public estimation of the value placed on the physical and emotional impact that the violence causes. Around 13% of the cost is found in lost economic output. The cost of services makes up the remaining. Of these services, most resources are spent on criminal justice, followed by health services and social welfare. Less than 3% is spent on specialised services to victims/survivors in order to help mitigate the damage of the violence and to prevent its recurrence. The proportion of the expenditure that is linked to prevention is currently small”¹⁰.

⁵ EIGE (2013).

⁶ For Glenn, Melis & Withers (2009) at p. 42

⁷ On indirect costs and in particular on cost of “non- intervention” see Walby & Olive (2013). They extrapolated the 2001 costs of violence against women in England and Wales to the EU-28, adjusting for inflation to estimate that, for the reference year of 2011, the cost of inaction across the EU-28 was EUR 228 million» (Report EIGE 2014). In general on costs of inaction read also Patel & Taylor (2011). For a study of economic costs in States extra UE see Laing & Bobic (2002); Zhang, Hoddenbagh, McDonald & Scrim (2012).

⁸ For costs of lost economic output see Walby (2004); Day, McKenna & Bowlus (2005); Skaperdas, Soares, Willman & Miller (2009); Waters, Hyder, Rajkotia, Basu, Rehwinkel & Butchart (2004); Chan & Cho (2010); Duvvury, Callan, Carney & Raghavendra (2013).

⁹ EIGE (2014).

¹⁰ EIGE (2014) at p. 145.

Table 1. *Cost of Gender-based and intimate Partner Violence against Men and Women in EU Member States, by Extrapolation from UK case to Member States*

MS	Member State	Population ¹	Cost of IPVAV EUR	Cost of IPV EUR	Cost of GBVAW EUR	Cost of GBV EUR
AT	Austria	8 408 121	1 818 416 256	2 035 912 304	3 763 246 487	4 311 333 326
BE	Belgium	11 094 850	2 399 472 557	2 686 467 242	4 965 753 382	5 688 975 760
BG	Bulgaria	7 327 224	1 584 651 699	1 774 187 776	3 279 466 361	3 757 094 483
HR	Croatia	4 275 984	924 762 954	1 035 371 451	1 913 814 248	2 192 546 030
CY	Cyprus	862 011	186 426 291	208 724 256	385 812 700	442 003 243
CZ	Czech Republic	10 505 445	2 272 002 503	2 543 750 826	4 701 951 720	5 386 753 489
DK	Denmark	5 580 516	1 206 892 837	1 351 246 157	2 497 687 323	2 861 455 563
EE	Estonia	1 325 217	286 603 408	320 883 298	593 131 119	679 515 937
FI	Finland	5 401 267	1 168 126 828	1 307 843 446	2 417 460 342	2 769 544 161
FR	France	65 287 861	14 119 743 012	15 808 568 827	29 221 072 530	33 476 888 704
DE	Germany	80 327 900	17 372 437 805	19 450 310 003	35 952 585 307	41 188 792 633
EL	Greece	11 123 034	2 405 567 883	2 693 291 614	4 978 367 774	5 703 427 338
HU	Hungary	9 931 925	2 147 967 883	2 404 880 747	4 445 259 752	5 092 676 384
IE	Ireland	4 582 707	991 097 643	1 109 640 260	2 051 095 128	2 349 820 776
IT	Italy	59 394 207	12 845 128 120	14 381 500 556	26 583 233 147	30 454 869 052
LV	Latvia	2 044 813	442 229 744	495 123 696	915 202 736	1 048 494 715
LT	Lithuania	3 003 641	649 594 555	727 290 874	1 344 348 094	1 540 141 673
LU	Luxembourg	524 853	113 509 454	127 086 026	234 909 941	269 122 701
MT	Malta	417 546	90 302 273	101 103 093	186 882 244	214 100 152
NL	Netherlands	16 730 348	3 618 256 298	4 051 026 543	7 488 049 154	8 578 623 796
PL	Poland	38 538 447	8 334 672 930	9 331 561 527	17 248 761 680	19 760 906 259
PT	Portugal	10 542 398	2 279 994 293	2 552 698 493	4 718 490 878	5 405 701 445
RO	Romania	20 095 996	4 346 141 759	4 865 972 495	8 994 421 745	10 304 387 541
SK	Slovakia	5 404 322	1 168 787 530	1 308 583 173	2 418 827 677	2 771 110 637
SI	Slovenia	2 055 496	444 540 146	497 710 439	919 984 156	1 053 972 511
ES	Spain	46 818 219	10 125 331 270	11 336 395 864	20 954 562 643	24 006 427 578
SE	Sweden	9 482 855	2 050 847 946	2 296 144 546	4 244 268 222	4 862 412 041
UK	United Kingdom	63 495 303	13 732 068 214	15 374 525 253	28 418 772 278	32 557 739 819
	EU-28		109 125 574 091	122 177 800 785	225 837 418 768	258 728 837 747

¹ Population estimates 2012 (Source Eurostat (2014), op cit [footnote 2]). Population adjustment multipliers: **AT** 0.1324211493250139; **BE** 0.1747349721285683; **BG** 0.1153978901399998; **HR** 0.0673433119926997; **CY** 0.0135759805729252; **CZ** 0.1654523170005189; **DK** 0.0878886427236988; **EE** 0.0208711028593721; **FI** 0.0850656150109245; **FR** 1.028231348073101; **DE** 1.265099876757813; **EL** 0.1751788474810491; **HU** 0.1564198378579279; **IE** 0.0721739527725382; **IT** 0.9354110334743973; **LV** 0.0322041616212147; **LT** 0.0473049321459258; **LU** 0.0082660129994182; **MT** 0.0065760139769709; **NL** 0.2634895371709621; **PL** 0.6069495723171838; **PT** 0.166034297056587; **RO** 0.3164957886727464; **SK** 0.0851137288060504; **SI** 0.0323724102867892; **ES** 0.737349328028248; **SE** 0.1493473462123647; **UK** 1.

Source: *Special Eurobarometer 449: Gender-based violence 2016*

According to the World Health Organisation (WHO)¹¹, violence has huge human and economic costs, including the direct costs of health, legal, policing and other services. In the study of European Parliament, *The Issue of Violence Against Women in the European Union*, it is stated that

“The broader social costs are profound but difficult to quantify. Violence against women is likely to constrain poverty reduction efforts by reducing women’s participation in productive employment. Violence also undermines efforts to improve women’s access to education, with violence and the fear of violence contributing to (lower) school enrolment for girls. Domestic

¹¹ See Garcia-Moreno & Watts (2011).

violence has also been shown to affect the welfare and education of children in the family”¹²,

but also

“social security (benefit payments/rent rebate). Direct costs are: health including medical visits, hospital care and medication; shelters, crisis services, social work, therapy; police, trials, prison. Indirect costs are: deaths, the loss of productivity caused by illness and premature mortality due to violence: production losses due to deaths, work stoppages, absenteeism and incarceration, and finally, the cost of rape and serious injuries”¹³.

Findings/Results

The Convention: The European and International Context

The Convention on preventing and combating violence against women and domestic violence - that is open to non-European countries and to the European Union - is very important because it represents a milestone and the first legally binding instrument creating a comprehensive legal framework not only to protect women against all forms of violence, but also to prevent, prosecute and eliminate violence against women and domestic violence.

Prevention is one of the four core pillars of the comprehensive approach to violence against women and so measures of prevention are strategic in a global vision for the development of a culture of respect and to ensure far-reaching changes in behaviour.

In the draft of the Resolution of the Parliamentary Assembly which was adopted unanimously by the Committee on 29 September 2015, *Committee on Equality and Non-Discrimination Promoting best practices in tackling violence against women*¹⁴, we read:

“5. In the light of these considerations, the Assembly calls on Council of Europe member States:

5.1 to sign and/or ratify, if they have not yet done so, the Council of Europe Convention on preventing and combating violence against women and domestic violence (CETS No. 210);

5.2 to implement the provisions of the Convention effectively, in light of the future findings of the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) and any recommendations made by the Committee of the Parties;

¹² European Parliament, Directorate general for internal policies (2016) at p. 12.

¹³ EIGE (2014) at p. 21.

¹⁴ Parliamentary Assembly (2015) at p. 2.

- 5.3 to draw on the experiences already gathered by other states to develop laws and strategies to effectively fight all forms of violence against women;
- 5.4 to call upon the expertise of women's support organisations working in the field and national human rights institutions while examining ratifications or the implementation of the Convention in national parliaments;
- 5.5 to undertake research and data collection in several fields pertaining to the fight against violence against women, including reporting by professionals, compensation procedures and delivery of residence permits;
- 5.6 to continue to ensure adequate funding for prevention measures and assistance and protection services for victims of all forms of violence against women, including domestic violence”.

The Convention is a fundamental international treaty that can be defined as a legally binding instrument creating a comprehensive legal framework in one document but also underlines the attention of European and also International institutions towards this phenomenon, which as a form of human rights abuse, remains a very important issue.

We remember that in 1992 the General Recommendation of the United Nations (UN) Committee on the Elimination of Discrimination against Women (CEDAW Committee) at Articles 6 and 1 contained a definition of gender-based violence: it is «violence that is directed against a woman because she is a woman or that affects women disproportionately» (Article 6) and so it “is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men” (Article 1).

In the Declaration on the Elimination of Violence against Women of 1993¹⁵ we read in Article 1

“the term ‘violence against women’ means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life”

and in Article 2 we read

“Violence against women shall be understood to encompass, but not be limited to, the following: (a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation; (b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution; (c) Physical, sexual and psychological violence perpetrated or condoned by the

¹⁵ United Nations, General Assembly, A/RES/48/104, 48/104, *Declaration on the Elimination of Violence against Women*, at this link <http://www.un.org/documents/ga/res/48/a48r104.htm>

State, wherever it occurs”.

Also in the Fourth World Conference on Women in Beijing organised by the UN Commission on the Status of Women, on 4-15 September 1995, the attention given to the phenomenon was considerable and, in fact, in the *Declaration and Platform for Action*, adopted at the 16th plenary session, 15 September 1995, Article 113 defines violence in a variety of settings:

“(a) physical, sexual and psychological violence occurring in the family, including battery, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation; (b) physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution; (c) physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs» the definition is similar to Article 2 of Declaration on the Elimination of Violence against Women of 1993”.

There are also other European acts and declarations which combat various aspects of gender-based violence as the *Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA*¹⁶ - which supports the protection of women and development measures¹⁷ - and *Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order*¹⁸ in which European institutions indicate to EU-28 Member States the development of civil law initiatives that work effectively across measures to violence against women.

A previous act was the Resolution of 5 April 2011 in which the European Parliament proposed a strategy to combat violence against women, domestic violence and female genital mutilation as a basis for future legislation of the Member States and defined priorities and the outline for a new EU policy framework to fight violence against women. In this sense the European Parliament included also a framework to fight violence against women (policy, prevention, protection, prosecution, provision and partnership) to be followed up by a Union Action Plan.

¹⁶ The EU Directive 2012/29/EU can be consult at this link <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32012L0029&from=EN>

¹⁷ Point 5 of the EU Directive 2012/29/EU establishes “The resolution of the European Parliament of 26 November 2009 on the elimination of violence against women called on the Member States to improve their national laws and policies to combat all forms of violence against women and to act in order to tackle the causes of violence against women, not least by employing preventive measures, and called on the Union to guarantee the right to assistance and support for all victims of violence”.

¹⁸ The Directive 2011/99/EU *On the European protection order*.

ILO also promoted important messages opposing violence against women, including from the 2009 ILC Conclusions¹⁹, and development of studies and research at an international level to share knowledge of good practices on eliminating gender-based violence in the general context to promote violence-free working environments.

Figure 3. ILO Policy Framework on Gender-based Violence

<p style="text-align: center;">ILO policy framework on gender-based violence</p> <p>The ILO policy framework on gender-based violence is guided by the 1998 Declaration on Fundamental Rights and Principles at Work, as well as the 2008 Declaration on Social Justice for a Fair Globalization. The latter states that gender equality and non-discrimination must be cross-cutting issues in the four strategic objectives of fundamental principles and rights at work, employment, social protection, and social dialogue and tripartism.</p> <p>International labour standards are laid out in Conventions that are legally-binding once ratified by member States. The main relevant ones, which include the key gender equality Conventions, are the following:</p> <p>Forced Labour Convention, 1930 (No. 29)</p> <p>Migration for Employment (Revised) Convention, 1949 (No. 97)</p> <p>Equal Remuneration Convention, 1951 (No. 100)</p> <p>Discrimination (Employment and Occupation) Convention, 1958 (No. 111)</p> <p>Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)</p> <p>Workers with Family Responsibilities Convention, 1981 (No. 156)</p> <p>Indigenous and Tribal Peoples Convention, 1989 (No. 169)</p> <p>Worst Forms of Child Labour Convention, 1999 (No. 182)</p> <p>Maternity Protection Convention, 2000 (No. 183)</p> <p>Measures called for in ILO Recommendation 200 concerning HIV and AIDS and the world of work include taking action to prevent and stop violence and harassment in the workplace. And a possible instrument on domestic workers' rights was discussed in 2010 by the International Labour Conference, which will conduct its second and final discussion in 2011. The background report providing the basis for this discussion contains reference to member States' obligations to protect domestic workers against abuse, harassment and violence.</p>
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Source: ILO Working Paper 3/2011, *Gender-based violence in the world of work: Overview and selected annotated bibliography*.

¹⁹ ILC (2009) at pp. 13/65 to 13/78.

Discussion

The Convention on Preventing and Combating Violence against Women and Domestic Violence: Purposes and Scope

The aim of the Convention in the Articles 1 and 2 is dedicated to the purposes and scope of the international act. This act analyses the prevention of violence, in order to achieve full gender equality to eliminate discrimination against women, existing stereotypes and traditional practices regarding their health.

In order to define the term *gender*²⁰ the Convention refers to roles, behaviour, activities, and socially constructed attributes that a certain society considers appropriate for men and women.

The preamble states “Recognising, with grave concern, that women and girls are often exposed to serious forms of violence such as domestic violence, sexual harassment, rape, forced marriage, crimes committed in the name of so-called ‘honour’ and genital mutilation, which constitute a serious violation of the human rights of women and girls and a major obstacle to the achievement of equality between men and women”.

The preamble also emphasises that violence against women is a manifestation of «historically unequal power relations between women and men», which have led to «domination over, and discrimination against, women by men», and that it acknowledges the 'structural' nature of violence which means that it is rooted in society and as such must be eradicated²¹.

*Domestic violence*²² is defined at the Convention to include all acts of physical, sexual, psychological or economic violence that occur inside a family or between family members or between current or former spouses or partners, irrespective of whether or not the initiator of such acts shares the same residence with the victim. The expression “*violence against women*” based on gender “refers to any direct violence against a woman” affecting them in that they were disproportionately involved.

It is important to recognise that the term women include girls under the age of 18. There is, therefore a precise goal aimed at ensuring the promotion and protection of the rights of each human being to live free from violence in the context of public and private life.

In an international context the member states concluded that it was necessary to ensure that levels of support and protection were standardised across Europe and therefore the Council of Europe organised a task force therefore recommending that a Convention to combat violence against women be developed.

The final activity report of the Council of Europe Task Force concluded that,

²⁰ For a historical profiles and dogmatic framework see Goisis (2014).

²¹ See De Vido (2017).

²² Gracia (2004).

“States have an obligation to exercise due diligence to prevent, investigate and punish acts of violence, whether those acts are perpetrated by the state or private persons, and provide protection to victims. In order to be able to fulfil this obligation, member states need to have evidence-based, comprehensive and coordinated policies in place, including adequate resources for effective implementation, monitoring and evaluation”.

Article 1 of the Convention: The Purposes

The purposes of the Convention are stated in Article 1 (the text of the article is in the box below)” to contribute to the elimination of all forms of discrimination against women and promote substantive equality between women and men, including by empowering women”.

Article 1 –Purposes of the Convention

1. The purposes of this Convention are to:
 - a protect women against all forms of violence, and prevent, prosecute and eliminate violence against women and domestic violence;
 - b contribute to the elimination of all forms of discrimination against women and promote substantive equality between women and men, including by empowering women;
 - c design a comprehensive framework, policies and measures for the protection of and assistance to all victims of violence against women and domestic violence;
 - d promote international co-operation with a view to eliminating violence against women and domestic violence;
 - e provide support and assistance to organisations and law enforcement agencies to effectively co-operate in order to adopt an integrated approach to eliminating violence against women and domestic violence.
- 2 . In order to ensure effective implementation of its provisions by the Parties, this Convention establishes a specific monitoring mechanism.

The adoption of this instrument (the Convention) was welcomed favourably in the international context²³ for the holistic approach it offers²⁴ and which makes it a reference point internationally for the fight against violence against women, according to the words of Vice Executive Director of UN Women John Hendra during an event on the opening day of the CSW’s 56th session in 2012²⁵. It is therefore very important the emphasis put forward by the Convention on two priority areas of intervention: prevention and access to services by women

²³ For a comment see McQuigg (2014b). In the article the author seeks to place the Convention in the context of other developments as regards the analysis of domestic violence as a human rights issue.

²⁴ See <http://www.unwomen.org/en/news/stories/2011/5/un-women-executive-director-michelle-bachelet-welcomes-the-council-of-europe-convention-on-prevention>

²⁵ Read <http://www.unwomen.org/en/news/stories/2012/2/un-women-supports-the-council-of-europe-s-convention-against-domestic-violence>

who have suffered violence. In general in Article 1 of the Convention importance is given to creating a global framework and integrated approach to women's protection and international cooperation and support for the authorities and organizations in order to carry out said objective.

For this reason the prevision of Article 1 is also present in Article 7 where the commitment of the Contracting Parties to implement policies involving a multitude of actions conducted by the different actors and agencies is specified. These institutions in fact, together have the ability to offer a complete and integrated response to the phenomenon of gender violence.

Most academic commentators remark that the definitions of the Convention are very important:

“the terminology used in the Convention, domestic violence is repeatedly separated out from violence against women more generally. Examples of this can be seen in both the title of the Convention and in the purposes set out in article 1. It appears that such an approach serves two purposes. Firstly, it emphasises the importance which the Convention accords to combating the specific problem of domestic violence, an objective which is certainly to be applauded given the particular prevalence of this form of violence. Secondly, it is recognised in the Convention that men may also be victims of domestic violence”²⁶.

On the issue of domestic violence Mullender and Morley comment “Although we normally think of domestic violence as physical, commonly the physical is but one aspect of a pattern of abuse which also includes sexual, emotional, and material abuses”²⁷ while as Schneider illustrates “practical experience blurs the distinction between physical abuse and other aspects of a violent relationship”²⁸.

Article 1 of the Convention, in the contents, refers to the need to design a comprehensive framework and the need to effectively co-operate in order to adopt an integrated approach and these activities are defined in Articles 10 and 11. In fact parties shall designate or establish one or more official bodies responsible for the co-ordination, implementation, monitoring and evaluation of policies and measures to prevent and combat all forms of violence covered by this Convention. For this reason organising bodies shall co-ordinate the collection of data as referred to in Article 11, analyse and disseminate its results.

Article 2 of the Convention: Scope

The Convention must be applicable both in peace time and in armed conflicts (when the violence on the women is ruthless): the circumstance in which there has always been violence against women reaches particular gravity and ferocity. It is recognised that gender discrimination is easy to find within the tolerance of

²⁶ McQuigg (2014a).

²⁷ Mullender & Morley (1998) at p. 6.

²⁸ Schneider E. (2000) at p.65.

violence against women. The Convention calls on states to adopt comprehensive rules to ensure the effective application of the principle of gender equality²⁹.

Article 2 – Scope of the Convention

1. This Convention shall apply to all forms of violence against women, including domestic violence, which affects women disproportionately.
2. Parties are encouraged to apply this Convention to all victims of domestic violence. Parties shall pay particular attention to female victims of gender-based violence in implementing the provisions of this Convention.
3. This Convention shall apply in times of peace and in situations of armed conflict.

The Convention is very innovative because it acknowledges that domestic violence is one of the forms of violence against women. In this sense we can observe that domestic violence is not a proper subset of violence against women. In fact, in a lot of cases the victim of domestic violence is not a woman. However the violence against women is predominant and so legally speaking, the Convention does not overlook the fact that women are the majority but not the sole victims of violence within domestic walls.

The States have a specific legal obligations with regard to women (Art. 2, para.1), whereas they are *encouraged* to apply the Convention to “all victims of domestic violence” (Art. 2, para. 2).

So if paragraph 2 of Article 2 encourages the application of the Convention in all case of domestic violence, even if or when it is committed against children and men, it is, however, the prerogative of the contracting parties to define whether to extend the application of the law even to these categories of victims. In this sense all parties recognised the centrality of the size of the gender that characterises the instrument.

The Convention uses a specific language and so member states are ‘encouraged’ to apply the Convention to male victims of domestic violence. However, there is no actual obligation on States to do so.

With reference to the scope of the Convention in the report, *Legal implications of EU accession to the Istanbul Convention*, “The scope of EU action covers that area but, as noted above, harmonisation of legislation is a measure to be used only in limited areas of the Convention while other measures that do not require harmonisation of legislation may be used on a broad basis”³⁰.

²⁹ For a comment see De Vido (2014).

³⁰ European Commission (2015) at p. 57.

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