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## COUNCIL OF EUROPE CONVENTION ON PREVENTING AND COMBATING VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE (ISTANBUL CONVENTION)

### THE CONTEXT

#### **The Intersection Between Violence and Migration Status**

The majority of undocumented women arrive in Europe with regular, but often highly dependent, migration status and become undocumented for a variety of reasons. Lack of an independent residence status, or any status, presents a significant challenge for these women, and increases the likelihood that they will face violence or exploitation by intimate partners or employers or in other areas of their lives. Abusive partners often intentionally misinform women who depend on them for their status or who are undocumented, and threaten them with deportation or losing custody of their children or tell them they will be entitled to no state help for housing or subsistence. This leads women to be fearful of any state intervention and reluctant to report violence, and also means that when state agencies and other providers do intervene they must be aware and well informed themselves to gain their confidence, and undo the myths the abusive partner may have perpetuated.

#### **Access to services for undocumented women victims of violence**

Undocumented migrant women who are victims of violence experience particular difficulty reporting or accessing services due to their immigration status and other barriers. Fear of deportation or destitution may lead undocumented women or women with precarious status to stay in abusive relationships they would otherwise leave.

Going to the authorities for help in many cases does not yield greater protection or result in a proper investigation, and could lead to the loss of their immigration status, to deportation or the loss of financial support, which leads to destitution. Too often undocumented women are left with few choices.

A number of practical obstacles also limit undocumented women's access to protection and legal remedy through the justice system, including language barriers, poverty, social isolation, lack of awareness of their rights, difficulties in navigating the system and lack of legal counsel or presentation.

## Legal Framework

At the international level, the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) defines discrimination against women as "...any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field." The CEDAW Committee has noted in its General Recommendation no. 33 (para. 10) that intersecting forms of discrimination limit access to justice, such that women "often do not report violations of their rights to the authorities for fear that they will be humiliated, stigmatised, arrested, deported, tortured or have other forms of violence inflicted upon them, including by law enforcement officials." The Committee calls on states to ensure women's "unhindered access to justice systems" without discrimination, as a condition of achieving *de jure* and *de facto* equality.

## WHAT IS THE ISTANBUL CONVENTION?

The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), which entered into force on 1 August 2014, is the first comprehensive legal instrument on violence against women. States that are party to the Convention must bring their national laws into conformity with its provisions, and make sure that it is applied in their countries to the benefit of all women in a non-discriminatory way. The Istanbul Convention contains enforceable standards on preventing violence against women, protecting survivors and punishing perpetrators. It requires states to guarantee the availability of services like emergency hotlines, shelters, medical assistance, counselling, and legal aid.

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The Convention is a milestone for undocumented women and for women with precarious residence status because it expressly forbids discrimination based on migration status and requires states to make it possible for women whose status is dependent on a violent partner or spouse to obtain an independent residence status.

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## KEY PROVISIONS:

- ▶ It is a **fundamental right** for everyone to live a life free from violence in the public and private spheres (Article 4)
- ▶ The Convention must be implemented **without discrimination** on any ground, including migrant or refugee status (Article 4)
- ▶ Provision of services is **not dependent on the victim's willingness to press charges or testify** against the perpetrator (Article 18)
- ▶ States must ensure that women are aware, and can avail themselves, of regional and international **mechanisms to complain, individually and collectively, about violence they have experienced** (Article 21)
- ▶ Women have the right to civil **remedies** (Article 29) and to **compensation** (Article 30) from perpetrators, including state compensation when necessary
- ▶ Women whose residence status depends on that of a spouse or partner should have access to an **autonomous residence permit** and suspension of deportation proceedings initiated in relation to the loss of spouse-dependent visa status (Article 59)
- ▶ States have a broad obligation to **prevent violence** with measures that eradicate prejudices, stereotypes and customs linked to violence against women through public awareness campaigns, education and training of professionals who are in contact with victims or perpetrators (Article 12-17).
- ▶ States are obliged to regularly **collect comparable, disaggregated data** on the nature and extent of violence against women to guide policy and monitor implementation of measures to address violence against women (Article 11)
- ▶ Recognising the critical role of non-governmental organisations (NGOs) and civil society organisations (CSOs) in providing support and services for victims, states must implement **policies for effective multi-agency cooperation** to ensure an integrated, holistic approach (Article 7 & 9) and to engage and support the work of NGOs (Article 9); and allocate **appropriate financial and human resources** for activities carried out by public authorities and relevant NGOs and CSOs (Article 8)
- ▶ States must provide women with **information about available support services** and measures in a language they understand (Article 9)
- ▶ Women have a **right to general support**, including free & confidential legal and psychological counselling, financial assistance, housing, education, training, health care and social services (Article 20)
- ▶ Women have a **right to specialist services**, as well as access to shelters, 24/7 hotlines to provide confidential advice (Article 22, 23, 24, 26)
- ▶ States must ensure that **shelters are accessible in sufficient numbers** and adequately distributed across the country (Article 23)
- ▶ States must ensure **effective investigation and prosecution without** delay and the availability of restraining or protection orders for victims (Articles 50 & 53)

## WHICH STATES ARE PARTIES TO THE CONVENTION?

As of 12 February 2018, 28 states have ratified – and so are legally bound by – the Istanbul Convention:

- Albania
- Andorra
- Austria
- Belgium
- Bosnia and Herzegovina
- Cyprus
- Denmark
- Estonia
- Finland
- France
- Georgia
- Germany
- Italy
- Malta
- Monaco
- Montenegro
- Netherlands
- Norway
- Poland
- Portugal
- Romania
- San Marino
- Serbia
- Slovenia
- Spain
- Sweden
- Switzerland
- Turkey

Additional countries have signed, but not yet ratified, the Convention.

Several countries have submitted [reservations](#), essentially opting out of certain provisions of the Convention. In particular, **Armenia**,<sup>1</sup> **Cyprus**, **Monaco**, **Romania**, and **Slovenia** have reserved the right not to apply Article 59, and **Germany** has reserved the right not to apply Article 59 paragraphs 2 (suspension of expulsion proceedings) and 3 (renewable residence permits owing to a victim’s personal situation or where necessary for cooperation in an investigation). **Malta** has reserved the right not to apply Article 59, and to continue to apply its own law regarding victims of violence with dependent status. **Switzerland** has reserved the right not to apply Article 59 or to apply it only in specific cases or conditions. **Poland**, **Latvia**<sup>2</sup> and **Lithuania** have indicated that they will apply the Convention in conformity with their own national constitutions.

On 4 March 2016, the [European Commission](#) proposed that the European Union accede to the Istanbul Convention, to provide a mandate for better data collection at the EU level on the extent and nature of violence against women, and to bring greater accountability for the EU at the international level. The EU published a [roadmap](#) setting out the argument for accession. On 13 June 2017, the European Union [signed](#) the Istanbul Convention, based on decisions by the Council of the EU adopted on 11 May 2017 on articles related to asylum, refugees and refoulement, and cooperation in criminal matters.

## HOW ARE STATES HELD ACCOUNTABLE UNDER THE CONVENTION?

In May 2015, the **Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO)** was established, an independent expert body responsible for monitoring implementation of the Istanbul Convention by the parties to the Convention.

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<sup>1</sup> Armenia signed the Istanbul Convention on 18 January 2018 and submitted their reservations but has not ratified the Convention.

<sup>2</sup> Latvia signed the Istanbul Convention on 18 May 2016 and submitted their reservations but has not ratified the Convention.

GREVIO draws up and publishes reports evaluating legislative and other measures taken by the parties to give effect to the provisions of the Convention. In cases where action is required to prevent a serious, massive or persistent pattern of any acts of violence covered by the Convention, GREVIO has the power to initiate a special inquiry procedure. GREVIO may also adopt, where appropriate, general recommendations on themes and concepts of the Convention.

[Ten members](#) currently sit on GREVIO. They were nominated by States Parties to the Convention and elected by the Committee of Parties on 4 May 2015. GREVIO's composition takes into account a gender and geographical balance, as well as multidisciplinary expertise in human rights, gender equality, violence against women and domestic violence, and in the assistance to and protection of victims (Art 66).

The twenty-fifth ratification of the Convention having occurred in October 2017, five additional members [will be elected](#) to GREVIO in May 2018, from eligible countries (Andorra, Belgium, Bosnia & Herzegovina, Cyprus, Denmark, Estonia, Finland, Georgia, Germany, Monaco, the Netherlands, Norway, Poland, Romania, San Marino, Slovenia, Sweden, and Switzerland).

**Civil society can actively contribute to the monitoring process** through, for example, submitting reports and evidence to GREVIO to complement a state's reporting. Civil society can also encourage meaningful application of the new mechanism through the involvement of national parliaments in evaluation and monitoring (as described in Article 70 of the Convention).

Parties use a [questionnaire](#) as a basis for preparing their report on legislative and other measures giving effect to the provisions of the Istanbul Convention.

### [Timetable for Review:](#)

Country	Deadline for Questionnaires	Deadline for Report
▪ Denmark and Albania	September 2016	January 2017
▪ Montenegro and Turkey	January 2017	May 2017
▪ Sweden and Portugal	May 2017	September 2017
▪ Finland, France and Italy	November 2017	March 2018
▪ Netherlands, Serbia and Spain	February 2018	June 2018
▪ Andorra, Belgium and Slovenia	July 2018	December 2018
▪ Malta, Poland and Romania	February 2019	June 2019

## WHAT YOU CAN DO:

- ▶ Urge your government to ratify the Istanbul Convention, if it hasn't done so already.
- ▶ Urge your government to meaningfully implement the guarantees of the Convention as regards the rights of undocumented women.
- ▶ Press your government to withdraw its reservation to Article 59, which would grant autonomous status to victims of violence with spouse-dependent visas.
- ▶ For those governments that have committed to granting autonomous residence status to victims of violence on spouse-dependent visas, make sure they do so meaningfully.

### Additional resources:

- Council of Europe, [Explanatory Report to the Council of Europe on prevention and combating violence against women and domestic violence](#).
- Council of Europe, [The Convention in brief](#).
- European Commission (March 2016), [Fact sheet: Istanbul Convention: combatting violence against women](#)