

FIGHTING AGAINST DOMESTIC VIOLENCE: HOW THE STANDARDS OF
PROTECTION OF CEDAW AND INSTANBUL CONVENTION WORK IN VIOLENCE
INTERVENTION POLICES IN AUSTRIA
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Executive Summary

This thesis provides an analysis of how international and regional standards of protection of women against violence work at the national level. The paper will particularly analyze the protection standards set by CEDAW and Istanbul Convention with regard to violence against women and domestic violence and will show how these standards are met in Austria and what are the existing gaps. The analysis is based on the texts of CEDAW and Istanbul Convention, and on the recommendations and concluding observations issued to Austria by the monitoring bodies of the treaties. The thesis aims to show that Austria has demonstrated a good practice in its response to domestic violence by applying the underlying principle of the standards set by CEDAW and Istanbul Convention in the national context, which is, ultimately, implementing a well-balanced protection, prevention and prosecution measures.

The analysis illustrates that overall Austria's protection mechanism against violence meets the requirements set out by CEDAW and Istanbul Convention, and is based on a well-balanced protection, prevention and prosecution measures. These measures are interdependent and work effectively only when combined together. The reports discussed in the paper draw attention to the existing gaps in the established protection mechanism in Austria, and recommend future research look at how those gaps can be filled in.

Introduction

Gender-based violence is not a new phenomenon. Mistreatment of women has been and still continues to be a major problem in our society. Violence against women in all its forms occurs on a massive scale in all parts of the world. No matter how hard laws try to protect women, physical abuse, harassment, battering and sexual assault are the threats that women face regardless of location, social status, race and religion. Perhaps it is the ancient traditions in different religions, beliefs and conceptions of male authority that served as a basis and contributed to the mistreatment and violence against women reaching all the way to our times. Recent political and social developments, such as wars, armed conflicts, ethnic attacks, military occupations, refugee movements have also significantly affected many forms of gender violence, giving rise to rape and violence against women and children.

Despite its universal nature, local manifestations of gender violence vary, depending on different kinship, gender inequalities, and levels of violence in the wider society.¹ Those manifestations may also vary based on how gender is defined in the society and what resources are available to the victims. While men can also be victims of violence in many situations, the numbers of women as victims of gender violence are overly high and disproportionate. Both women and men suffer from cultural practices of genital surgeries and circumcision, however, practices performed on women and girls are generally more severe.²

Gender based violence has been recognized as a human rights violation relatively recently. The human rights approach to the problem was first introduced in late 1980s, when the global feminist social movements introduced the problem to the human rights community. Later the problem

¹ Sally Engle Merry, *Gender Violence: A Cultural Perspective*, 1 edition (Malden, Mass.: Wiley-Blackwell, 2008).

² Russell P. Dobash and R. Emerson Dobash, *Women, Violence and Social Change*, 1 edition (London: Routledge, 1992).

defined by social movements gradually gained support from legal institutions and states, and with the work of the activists around the word has made its way to the domain of the international human rights law.³

Domestic violence is well known to be widespread around the world, with women being its usual targets, and men being its usual perpetrators.⁴ Violence against women occurring in the home can be influenced by different factors, including the role of the women in the society, prevailing patterns of marriage, availability of the divorce, social status, and the family's vulnerability to marginalization and racism.⁵ Violence in home or within the family can occur in different sets of relationships, such as between spouses, children, parents and children, and intimate partners. Forms of violence and oppression within the family include physical, sexual as well as emotional abuse, and can target everyone irrespective of age. Violence between intimate partners involves men's attacking women, as well as women's attacks on men. Domestic violence occurs in same-sex relationships as well, and at the same rate as it occurs in the opposite sex relationships.⁶

Historically, domestic violence or violence taking place at home has been treated less serious than the violent acts occurring in public. It was not up until recently that domestic violence came to be recognized as human rights violation under the international law.⁷ For many decades violence happening in homes and other private settings, was considered a merely private matter, excluded from the scope of the practices of state intervention. The distinction drawn between the private and public aspects of everyday life was one of the critiques of the international law system by early feminist theories. Feminists were arguing that international law was primarily concerned with

³ Merry, *Gender Violence*.

⁴ Dobash and Dobash, *Women, Violence and Social Change*.

⁵ Merry, *Gender Violence*.

⁶ Merry, Sally Engle, *Gender Violence: A Cultural Perspective*, 1 edition (Malden, Mass.: Wiley-Blackwell, 2008)

⁷ Alice Edwards, *Violence against Women under International Human Rights Law* (Cambridge University Press, 2010).

public sphere of life, refusing to address the specific female life issues women face in the private sphere.⁸

Although a widespread phenomenon around the world, there are still quite a few international and regional instruments that directly address the issue of domestic violence and provide protection and safety to the victims. This thesis aims to illustrate how international and regional standards on the protection of women from violence work on the national level. The issue will primarily be explored by analyzing the current standards imposed on member States by CEDAW and Istanbul Convention, and by illustrating how the standards are met in Austria and implemented in its intervention responses to domestic violence cases. The thesis argues that Austria has demonstrated a good practice in its response to domestic violence by applying the underlying principle of the standards set by CEDAW and Istanbul Convention in the national context, which is, ultimately, developing a comprehensive and coordinated approach to the issue.

The Scope and Structure

The aim of the paper is to illustrate how the implementation of international and regional standards of protection against violence works in the case of Austria, a country with a good record of combating and preventing domestic violence. The paper will primarily focus on the analysis of the standards CEDAW and Istanbul Convention impose on State Parties with regard to violence against women and domestic violence and will go through the Austrian national policies and strategies to illustrate the measures which proved to be effective in protecting women from violence. CEDAW and Istanbul Convention are among the few instruments that address the issue of violence against women. While CEDAW does not directly address the issue of violence against

⁸ Edwards.

women, the Committee's General Recommendations came to interpret violence against women as an issue covered under the Convention. Istanbul Convention, on the other hand, explicitly addresses the issue of domestic violence, placing detailed obligations on States with that regard. Since Austria is party to CEDAW and was among the first countries to ratify the Istanbul Convention, the paper aims at showing how these standards and obligations are carried out in Austria and how they form an effective intervention system in domestic violence cases.

To illustrate and compare the standards of protection under these instruments the paper will examine the relevant provisions of the CEDAW and Istanbul Convention. Mainly the standards set by the conventions related to the prevention of domestic violence and the protection of victims will be contrasted. To further support the argument mentioned above, country reports submitted to CEDAW Committee and GREVIO by Austria will be summarized, along with the concluding observations and remarks from the committees. Later in the paper Austrian model of intervention policies will be analyzed to illustrate the key elements of the legislation and to show how those elements align with the international and regional standards of protection of women against violence.

1. Violence as a Social Problem and a Human Rights Issue

This chapter of the paper aims to give a background information on violence in general, its roots, forms, causes and impact. It will have a closer look on gender-based violence and domestic violence. Additionally, it will give a historical overview of the recognition of the violence against women as a human rights violation and how domestic violence moved from being a private problem to a human rights issue. It will discuss the state's role and responsibilities in addressing and preventing domestic violence, including the strategies and policies of state intervention. Further in the chapter you'll find a background information about the bodies issuing international and regional instruments for combating violence against women, and the logic behind the choices of the instruments and the country used in the paper.

1.1 Defining Violence: Factors, Forms and Scope

There is no single and simple explanation for the occurrences of violence.⁹ According to The World Report on Violence and Health the ecological model that includes different factors influencing violence has four levels: individual, relationship, community and societal. The individual level includes one's biological and personal factors that can later serve as a basis for becoming an abuser or perpetrator. The relationship level examines how relationships with friends, colleagues and family members influence violent behavior. The next level examines the community context, which includes social relationships in the workplace, school, and neighborhood trying to identify the factors that lead to violence in these settings. The last societal level looks at social norms that create the environment in which violence is born. Within all these

⁹ Krug EG et al., eds. World report on violence and health. Geneva, World Health Organization, 2002 accessed November 21, 2018, http://www.who.int/violence_injury_prevention/violence/world_report/en/full_en.pdf.

levels different forms of violence can be identified. Perhaps, the most widely spread form of violence is interpersonal violence, which involves acts of violence by an individual or small group of individuals. This form mostly includes youth violence; violence in institutional settings or the workplace; abuse, rape, or sexual assault by strangers; violence between intimate partners, family members; and other forms of family violence such as abuse of children and the elderly.¹⁰

From the human rights perspective any violent conduct against an individual that results in physical or psychological pain, suffering or violates human dignity is recognized to be a violation of human rights.¹¹ Violence against women can take various forms, ranging from threats, deprivation of liberty, abuse both physical and economic, bodily injuries, to more serious harms that might as well result in death. It affects women and girls of all ages, socio-economic status, religion, and educational background. The nature and complexity of the problem served as a major obstacle in defining the problem, since it encompasses a range of different practices and affects women in diverse locations. The United Nations Declaration on the Elimination of Violence against Women defined violence against women as “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.”¹² The UN’s definition is broad enough, including dowry related acts, female genital mutilation, exploitation, non-spousal violence, and other practices that can be harmful to women. The Organization of American States (OAS) was among the earliest organizations to give an official definition to the term which, in many ways, is similar to the definition of the UN’s

¹⁰ Krug EG et al.,

¹¹ Margaret E. Keck and Kathryn Sikkink, *Activists beyond Borders: Advocacy Networks in International Politics* (Cornell University Press, 2014).

¹² “UN General Assembly, Declaration on the Elimination of Violence against Women,” December 20, 1993, <https://www.refworld.org/pdfid/3b00f25d2c.pdf>.

Declaration on the Elimination of Violence against Women. The Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, also known as the Convention of Belém do Pará adopted in 1994, defined violence against women as “any act or conduct, based on gender, which causes death or physical, sexual, or psychological harm or suffering to women, whether in the public or private sphere.”¹³ The preceding draft proposed in 1991, however, was more inclusive, addressing indirect acts of violence, such as those that were intimidating and humiliating women, denied them dignity or maintained them in stereotypical sex roles, regardless of whether those acts caused physical injury or mental suffering. The OAS’s definition includes violence imposed or otherwise condoned by the state, battering, rape, trafficking, torture, forced prostitution, sexual abuse and sexual harassment.¹⁴

The concept eventually came to unify many practices that were not understood to be connected in the early 1970’s. First, there was no such a category as “violence against women.” Activist campaigns in different parts of the world were focused on specific practices, such as campaigns against rape and domestic battery in the US and Europe, dowry deaths in India, female genital mutilation in Africa, torture and rape of prisoners in Latin America, and female sexual slavery in Europe and Asia. These practices were hard to categorize under one term. Eventually, the activists brought all those practices under “violence against women” category, because the term seemed to be “very evocative” for all the victims. ¹⁵ The term played a major role in helping the activists to attract supporters and in bridging cultural differences between the campaigns. Also, it played a

¹³ Organization of American States (OAS), “The Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, “Convention of Belém Do Pará,” June 9, 1994.

¹⁴ Keck and Sikkink, *Activists beyond Borders*.

¹⁵ Keck and Sikkink.

key strategic purpose in building a transnational campaign, since the protection of bodily integrity of women and girls was central to the understanding of human dignity in many cultures.¹⁶

1.2. The Emergence of Violence Against Women as an International Human Rights Issue

Recognizing gender-based violence as a human rights violation is a new approach in the international human rights law. The process of the acceptance and recognition of the problem as a human rights violation was gradual, marked by some important events, social movements and landmark developments in the human rights system.¹⁷

Before the battered women movement in 1970s, violence against women was considered a natural phenomenon largely depending on social class and lifestyle. Feminists of 1970's argued that violence was supported by patriarchy, thus focusing on the gendered aspect of violence.¹⁸ During 1970s and 1980's feminist movements opposing gender violence emerged in many parts of the world, and by 1990s turned into an international human rights movement. It was in the early 1990s when social movements emerged in different parts of the world around the idea that violence against women constitutes a human rights violation. Activists all over the world started to engage in anti-violence campaigns, work on setting up shelters and counseling centers, designing batterer treatment programs. At about the same time feminist movements in Europe, USA, Australia, India and elsewhere in the world were actively working towards developing protection strategies for victims of violence, where the need for state intervention was widely recognized.¹⁹

¹⁶ Keck and Sikkink.

¹⁷ Sally Engle Merry, *Human Rights and Gender Violence: Translating International Law into Local Justice* (University of Chicago Press, 2009).

¹⁸ Merry, *Gender Violence*.

¹⁹ Merry.

The global feminist social movement succeeded in defining the problem of gender-based violence and drew the attention of legal institutions and states, thus establishing the right to protection from gender-based violence.²⁰ In fact, the successful transnational movement on opposing violence against women led to the series of global conferences on women supported by UN, with the first one held in Mexico City in 1975. Eventually, the focus of the conferences shifted to the protection of women's human rights, and in the subsequent conferences in Copenhagen in 1980 and Nairobi in 1985, violence against women was framed as a human rights offence. In 1979, the UN adopted the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which, was a major step forward for the protection of women from discrimination and unfair treatment. Although violence against women was not included in the Convention itself, in its 1992 recommendation the CEDAW Committee defined gender-based violence as a form of discrimination.

The issue of violence against women became the focus of the 1993 UN Conference on Human Rights in Vienna, which was concluded by the adoption of the Vienna Declaration and Programme of Action recognizing that gender-based violence is incompatible with the "worth and dignity of the human person"²¹. In addition, the Vienna Declaration called for the drafting of a declaration on the elimination of violence against women and for an appointment of the special rapporteur on violence against women, who was appointed later in 1994 by the UN Commission on Human Rights. The Declaration on the Elimination of Violence against Women was unanimously adopted in 1994 by the UN General Assembly, which redefined violence against women to include many forms of violence that women experience, and recognized gender-based violence as a violation of

²⁰ Merry.

²¹ UN General Assembly, "Vienna Declaration and Programme of Action," July 12, 1993, <https://www.refworld.org/docid/3ae6b39ec.html>.

human rights. The 1995 Fourth World Conference in Beijing was another major step in the recognition of gender-based violence as a violation of human rights and fundamental freedoms.²² The recognition of violence against women as a human rights violation was not an easy task. Since human rights violations mainly arise from state actions, domestic violence and other forms of violence against women perpetrated by private actors were not considered human rights violations. It was in the beginning of 1990s, that activists for women's rights claimed that the failure of the state to protect women from violence is a violation of human rights. With the adoption of 1992 CEDAW General Recommendation No. 19 it was made clear that states are responsible for the acts of violence committed by public and private actors, thus asserting that states should exercise due diligence in the protecting women from violence.²³

1.3. Domestic Violence

One of the most widespread forms of violence that women experience is the violence perpetrated by intimate partners or husbands. Domestic violence, also called intimate partner violence, occurs in every corner of the world and affects women regardless of social status, or economic, religious and cultural groups.²⁴ It has a complex nature, and it's a pattern of abusive, controlling and violent behavior of one partner over another, rather than a single act of aggression. Domestic violence contradicts all the principles of human rights, as it violates the victim's rights to inherent dignity,

²² Merry, *Gender Violence*.

²³ Merry.

²⁴ L Heise, M Ellsberg, and M Gottemoeller, "Issues in World Health," *Johns Hopkins University School of Public Health*, L, 11, no. Ending Violence Against Women. Population Reports (December 1999), <https://www.k4health.org/sites/default/files/L%2011.pdf>.

the right to live free from fear and violence and the right to equality. Yet, until recently, domestic violence was not viewed as a violation of human rights under international law.²⁵

The concept of marital privacy has been the key ideological rationale behind the reluctance of the states to intervene to protect women in family or intimate relationships.²⁶ The law has been blind to male battering of women as it was supposed to be protected as part of private sphere and family life. The distinction between the “public” and “private” has been a major obstacle for the right of the state to intervene in certain areas of social life and in the enforcement of public policies against “private issues.” Women and their issues used to belong to the private arena of the family, which was usually controlled by patriarchal norms and traditions. The state or the police had, accordingly, no right to interfere with the family affairs, giving more power and control to the men, which leads to a male dominated hierarchies and society.²⁷

States are bound by internationally recognized norms to protect individuals from harms imposed by both public and private actors and are obliged to conduct investigations and provide effective remedies when violations nonetheless occur. In this sense, governmental actions and sometimes inaction can lead to the violations of human rights. These norms also call for governments to provide living conditions, where basic needs and adequate standards of housing and healthcare are met. Safe, affordable and adequate housing is especially important in the context of domestic violence, which enable the victims to leave the violent relationship.²⁸

²⁵ Dorothy Q. Thomas and Michele E. Beasley, “Domestic Violence as a Human Rights Issue,” *Human Rights Quarterly* 15, no. 1 (February 1993): 36, <https://doi.org/10.2307/762650>.

²⁶ Dobash and Dobash, *Women, Violence and Social Change*.

²⁷ Dobash and Dobash.

²⁸ Caroline Bettinger-López, Lenora Lapidus, and JoAnn Kamuf Ward, “Domestic Violence & Sexual Assault in the United States: A Human Rights Based Approach & Practice Guide” (Columbia Law Human Rights Institute, August 2014), https://www.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/dv_sa_hr_guide_reduce.pdf.

Feminist theories have viewed the concept of privacy as a source of oppression of women and male dominance in the family. They widely rejected the sharp distinction between public and private spheres, arguing that “private and public exist on a continuum”²⁹ and there are no aspects of personal and family life that can exist autonomously, totally separated from the reach of the state.³⁰

The prevailing patriarchal control and the exclusion of the state interference from the family affairs obviously presented serious problems for the abused women. Those who were battered or abused in the private world of the family couldn’t seek protection from the state and arrest the abuser, since that was out of the scope of state intervention. However, the battered women’s movements in US and other parts of the world have succeed to make the issue of male battering of women visible and the problem of domestic violence and battered women have gradually come to be seen under the “public” domain.³¹ The aim of the battered women’s movement was to obtain forms of state intervention into the sphere of private family issues, to create and enforce legislation against domestic violence and sexual abuse, and to come up with a public housing policy for the women and children victims escaping from perpetrators.³²

1.3.1. Domestic Violence and Children

Children are oftentimes direct and indirect victims of violence too, especially in the cases of violence taking place at home.³³ Millions of children every year are exposed to domestic violence

²⁹ Elizabeth M. Schneider, “The Violence of Privacy Symposium: The Twenty-Fifth Anniversary of Griswold v. Connecticut,” *Connecticut Law Review* 23 (1991-1990): 973–1000.

³⁰ Dobash and Dobash, *Women, Violence and Social Change*.

³¹ Schneider, “The Violence of Privacy Symposium.”

³² Dobash and Dobash, *Women, Violence and Social Change*.

³³ Rosa Logar, “Good Practices and Challenges in Legislation on Violence against Women” (Vienna, Austria: United Nations, May 2008),

either as witnesses or direct victims, yet in many cases they remain as invisible victims, and yet sometimes Violent partners or husbands that are violent against female partners or wives, are unfortunately violent towards children too. It's very important for the protective measures to be applied to women and their children as well, especially during the separation period. This is the period when violent acts and behavior of the perpetrators tend to escalate leading to cases of homicide, and children are very often severely affected or even murdered too.³⁴

Although research on the effects on children witnessing domestic violence is in its early stages, the reported research results suggest that exposure to and witnessing of domestic violence can have negative psychological effects of children. Moreover, witnessing domestic violence can have the same negative effects on children as being directly physically harmed. Children react to family violence in a number of ways, including experiencing fear, trying to avoid the harm, showing aggression, and trying to protect their mother. The effects domestic violence can have on children vary from one child to another, and widely depend on the child's developmental age and gender, intensity and severity of the violence,³⁵ child's personality, family situation, and the community environment the family lives in.³⁶

The negative effects of domestic violence on children may include behavioral problems, poor academic performance, and low levels of empathy. In the cases of more intensive and extreme domestic violence, children may experience posttraumatic stress disorder, which usually includes emotional numbing, easy arousal, avoidance or obsessive focus on the events of the violence. The

http://www.un.org/womenwatch/daw/egm/vaw_legislation_2008/expertpapers/EGMGPLVAW%20Paper%20_Rosa%20Logar_.pdf.

³⁴ Rosa Logar, 'Good Practices and Challenges in Legislation on Violence against Women'. United Nations Nations Unies, 2008.

³⁵ R. R. Socolar, "Domestic Violence and Children," *NC Med J* 61 (2000): 279–283.

³⁶ Lucy Salcido Carter, Lois A. Weithorn, and Richard E. Behrman, "Domestic Violence and Children: Analysis and Recommendations," *The Future of Children* 9, no. 3 (1999): 4–20, <https://doi.org/10.2307/1602778>.

effects of the exposure to domestic violence in childhood, can result in problematic behavior in adulthood as well, leading to violent practices and criminal convictions.³⁷

Understanding the effects of experiencing or witnessing domestic violence on children is crucial for governments, policymakers and healthcare professionals for designing intervention programs and establishing protection measures.

1.3.2 State Response and Intervention Measures

Historically the notions of marriage and family have been part of the sphere of privacy and were immune from state interference. The preservation of the marriage was prioritized and there were no efforts to make the batterers control their violence and change their attitudes towards patriarchy and masculine privilege.³⁸ However, over the past decades the understanding of domestic violence has significantly advanced, and it's no more considered as a private matter. In fact, domestic violence is recognized as a human rights violation under international human rights instruments, and States have specific responsibilities in this regard to prevent and protect people under their jurisdictions.³⁹

The social movements focused on gender violence and women battering have made a huge contribution to the issue and have developed various approaches that can be implemented when dealing with violence against women. At the core of these approaches are punishment, safety and reform.⁴⁰ These three approaches follow completely different logics. Punishment seeks to detect the perpetrator and punish the latter through the power of law. Safety focuses on the victim itself

³⁷ Carter, Weithorn, and Behrman.

³⁸ Merry, *Human Rights and Gender Violence*.

³⁹ United Nations : Department of Economic and Social Affairs : Division for the Advancement of Women, *Handbook for Legislation on Violence against Women* (New York: United Nations, 2010).

⁴⁰ Merry, *Human Rights and Gender Violence*.

and seeks to protect her by separating her from the violator. This approach promotes victim safety by providing her with temporary shelter or making the perpetrator stay away from her by means of a legal restraining order issued by courts. The strategy of issuing a restraining order or as it is often referred to as temporary restraining orders (TROs) is a widely used strategy nowadays, that orders the violator to avoid contact with the victim under the penalty of criminal prosecution. These orders can be issued for a fixed period or time and on different basis, where the presence of the actual victim is not required. Many advocates consider this approach as the most effective way of the criminal justice system to deal with the issue of domestic violence.⁴¹

Reform programs work both with the violator and the victim, with the aims to reform the perpetrator and encourage the victim and the society to recognize the violence as abuse. This is mainly done through therapy and education. The approach to teach abusers to control their violence and treat their partners with respect and equality came into practice relatively later. These types of therapeutic intervention programs are closely connected with the criminal justice system and attempt to reform the batterer through self-understanding rather than just penalizing or punishing. One of the most widely known batterer intervention programs is the “Duluth model, a batterer training program, focused on undermining the societal support for male privilege and encouraging the batterers to analyze their own feelings and actions in violent situations. The approach was developed by battered women in Duluth, Minnesota in 1980s, and was considered a dominating batterer reform program in US in the 1990s.⁴² It advocates reforming the criminal justice system response by developing a coordinated community response to the issue of domestic violence. The coordinated community response includes a wide variety of activities such as aggressive and prompt prosecution, follow-up support and advocacy for victims, active monitoring of offender

⁴¹ Merry.

⁴² Merry.

compliance with probation conditions, mandatory participation in batterer intervention programs, strengthening of civil remedies, and monitoring of the systemwide response to domestic violence cases. This approach has been adopted and further developed in many countries of the world.⁴³

In modern strategies of fighting against domestic violence punishment doesn't stand alone as a separate way of tackling the problem. Instead, modern intervention policies to violence against women and domestic violence include a variety of mechanisms, social services and reform programs that aim not only to punish perpetrators, but also diminish the patriarchy and the stereotypes about marital privacy, male authority and women subordination.

Domestic violence is a complex problem and isolated forms of intervention and protection measures are not bound to bring effective results. Research and good practices show that comprehensive approach to the problem of violence against women is crucial for effectively addressing the issue.⁴⁴ In developing a comprehensive and coordinated policies for dealing with specific forms of violence, such as domestic violence, a well-balanced prevention, protection and prosecution measures should be at the core of the approach. Prevention measures aim to transform the stereotypes and deeply rooted perceptions about power relations which reinforce different forms of violence against women. Protection measures aim at providing safety and support to the victims, while prioritizing their needs and rights. It's essential for the protection measures to provide necessary means and conditions for victims to escape violent situations, such as protection measures and support services. Prosecution aims at deterring violence, by criminalizing all forms of violence against women and punishing the perpetrators. It should be noted that while protection

⁴³ Melanie Shepard, "Twenty Years of Progress in Addressing Domestic Violence: An Agenda for the Next 10," *Journal of Interpersonal Violence* 20, no. 4 (April 2005): 436–41, <https://doi.org/10.1177/0886260504267879>.

⁴⁴ Krizsan Andrea and Pap Eniko, "Implementing a Comprehensive and Co-Ordinated Approach. An Assessment of Poland's Response to Prevent and Combat Gender-Based Violence" (Council of Europe, April 2016), <https://rm.coe.int/168064ecd8>.

and prosecution measures are carried out once the violence has occurred, preventive measures focus on the roots and causes of the problem and try to prevent its future occurrences. Although each of these measures is important in itself, they complement each other, and combined together form a holistic response to the issue of domestic violence.⁴⁵

Effective coordination of the measures is another important aspect for domestic violence intervention policies. Addressing an issue as complex as domestic violence is, requires the involvement of all relevant actors, including law enforcement professionals, healthcare staff, social welfare workers, education specialists and specialized service providers. The importance of the involvement of NGOs and women's rights advocates should not be underestimated. They greatly contribute to the improvement of information sharing, finding resources and establishment of systematic co-operation between all the stakeholders.

Another relatively new approach in the criminal justice system to better address domestic violence cases is the establishment of specialized domestic violence courts. The problem with the traditional court system dealing with domestic violence cases is that the fragmentation of this system oftentimes serves as a barrier for the battered women who seek justice and protection from the State. Cases of domestic violence usually trigger multiple procedures both criminal and civil, that occur in different parts of the court and might as well be heard by different judges. Most of the victims of domestic violence can find themselves confused with all these complicated procedures and fail to file for all forms of the complementary relief they need. Specialized domestic courts, on the other hand, are dedicated exclusively to domestic violence cases and aim to provide comprehensive and coordinated response to family violence. These courts include integration of criminal and civil dockets, have a unified intake center that assists the victims with filing for

⁴⁵ Krizsan Andrea and Pap Eniko.

criminal and civil cases, and more importantly, they provide a specialized judge to deal with all issues related to a single-family violence case.⁴⁶

The following sections will shortly address international and regional organizations that developed instruments to address the issue of violence against women. The UN Convention on Elimination of all Forms of Discrimination against Women (CEDAW) and Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence will be discussed in more details later in the paper.

1.4 The United Nations

The United Nations (UN), currently made up of 193 Member States,⁴⁷ is an international organization founded in 1945 in the aftermath of the Second World War. As mentioned in the Charter protecting and promoting human rights is the key purpose and a guiding principle of the United Nations. The prohibition of discrimination as stated in the Charter is considered a legal obligation for the member states who, by joining the UN, are obliged to commit to promoting *“universal respect for, and observance of, human rights and fundamental freedoms.”*⁴⁸

Perhaps, the adoption of the Universal Declaration of Human Rights (UDHR) in 1948 was a milestone in the foundation for current human rights developments. Not only it set standards for the respect and protection of a number of fundamental rights, but it also laid foundation for the adoption of series of international treaties protecting human rights and creating human rights

⁴⁶ Deborah Epstein, “Effective Intervention in Domestic Violence Cases: Rethinking the Roles of Prosecutors, Judges, and the Court System,” *Yale JL & Feminism* 11 (1999): 3.

⁴⁷ “Overview,” United Nations, October 2, 2014, <http://www.un.org/en/sections/about-un/overview/index.html>.

⁴⁸ “Charter of the United Nations and Statute of the International Court of Justice” (United Nations, 1945), <https://treaties.un.org/doc/publication/ctc/uncharter.pdf>.

obligations for the states.⁴⁹ Today the UN has nine core international treaties, and subsequently established relevant treaty bodies which have a mandate to monitor state compliance with each treaty and have been entrusted with the task to supervise the way member states enforce the implementation and protection of the rights set forth in the treaties.⁵⁰

The most important UN treaty concerned with the protection and promotion of women's rights is the Convention on Elimination of all Forms of Discrimination against Women (CEDAW), also known as International bill of rights for women. It played an important role at the international level for the recognition of women's rights to equality in all areas of life, including political and public life, education and employment.⁵¹ Although the Convention doesn't explicitly mention violence against women in any of its provisions, CEDAW Committee has, nonetheless, tried to include the issue within its ambit by interpreting different provisions of the Convention in a manner to cover the issue as well. By adopting General Recommendation No. 19, the CEDAW Committee acknowledged that gender-based violence constitutes a form of discrimination, and is, therefore, covered by the Convention. General Recommendation No. 35 came to update General Recommendation No. 19, by extending its scope and addressing contemporary forms of violence that women experience. Moreover, other UN bodies have also tried to address the problem of violence against women such as the UN General Assembly, by adopting different resolutions on the subject matter. One of the most important documents on this issue is the Declaration on the Elimination of Violence Against Women (DEVAW), which provides a comprehensive framework

⁴⁹ Tamás Lattmann and Balázs Vizi, *International Protection of Human Rights* (Budapest: National University of Public Service. Institute of International Studies, 2014).

⁵⁰ E Steinerte and R M M Wallace, "Mechanisms for Human Rights Protection by United Nations Bodies," in *United Nations Protection of Human Rights, Study Guides* (University of London Press, 2009), <https://london.ac.uk/sites/default/files/uploads/study-guide-postgraduate-laws-un-protection-human-rights.pdf>.

⁵¹ Ronagh J.A. McQuigg, "Is It Time for a UN Treaty on Violence against Women?," *The International Journal of Human Rights* 22, no. 3 (March 16, 2018): 305–24, <https://doi.org/10.1080/13642987.2017.1359552>.

on violence against women, covering its definitions, scope, State obligations and the role of the United Nations.⁵² Another notable step to combat violence against women by UN was the establishment of the office of the Special Rapporteur on Violence against Women, its Causes and Consequences. According to the mandate the special rapporteur is requested to seek and obtain information on violence against women, its causes and consequences from various stakeholders and to respond effectively to such information, to recommend measures and ways on the national, regional, and international levels on how to effectively eliminate violence against women and to remedy the consequences, work closely and cooperate with special procedures and other human rights mechanisms of the Human Rights Council and make sure a gender perspective and women's human rights are integrated into their work, and continue working on adopting a comprehensive universal approach to the issue of elimination of violence against women in various spheres of their lives.⁵³

1.5 Council of Europe

Council of Europe (CoE) is an organization for intergovernmental co-operation established in 1949. Since its foundation the Council of Europe has been a major source of standard-setting texts, concluding numerous conventions and agreements under its aegis. Perhaps a major step towards the achievement of its aims and responsibilities was the adoption of the European Convention on Human Rights (ECHR) on November 4, 1950. Its supervisory mechanism is the European Court of Human Rights (ECtHR) which was set up in 1959. In the decades following its entry into force

⁵² "15 Years of the United Nations Special Rapporteur on Violence Against Women, Its Causes and Consequences (1994–2009): A Critical Review" (United Nations, Office of the High Commissioner for Human Rights, 2009), <https://www2.ohchr.org/english/issues/women/rapporteur/docs/15YearReviewofVAWMandate.pdf>.

⁵³ "Special Rapporteur on Violence against Women, Its Causes and Consequences," United Nations Office of the High Commissioner for Human Rights, n.d., <https://www.ohchr.org/en/issues/women/srwomen/pages/srwomenindex.aspx>.

the Convention has turned from an international human rights treaty into a quasi-constitutional reference standard and is considered the most important cornerstone of the rule of law in Europe.

It's binding for all the Member States of the Council of Europe.⁵⁴

The Council of Europe has always been sensitive to the issue of gender-based violence. In its 2002 Recommendation Rec (2002)5 on the protection of women against violence, the Council of Europe called upon the member states to make sure women's human rights are ensured and respected. In 2006 a pan-European campaign to combat violence against women and domestic violence was launched, and a Task Force to Combat Violence against Women including domestic violence was set up, with a mandate to assess the measures taken to prevent violence against women at the national level in member states, and to make proposals for revising those measures or adopting new ones. However, the recommendations of the Committee of Ministers and evaluation reports are not legally binding on states. In response to the need of a legally binding instrument to combat violence against women and domestic violence, Convention on Preventing and Combating Violence Against Women and Domestic Violence was drafted and adopted in April 2011.⁵⁵ The convention will be discussed in more details in the following chapter of the thesis.

The due diligence standard was recognized by the European Court of Human Rights and was applied in many rulings, setting minimum standards of state compliance. The Court acknowledged the applicability of the due diligence standard to the cases involving domestic violence, recognizing state's responsibility for non-state actors under the Convention. In its two landmark decisions of *Bevacqua and S. v. Bulgaria* and *Opuz v. Turkey*, the Court has set minimum

⁵⁴ Stefanie Schmahl and Marten Breuer, *The Council of Europe: Its Law and Policies* (Oxford University Press, 2017).

⁵⁵ Anne Bonnewit, "The Issue of Violence Against Women in the European Union," study (Brussels: European Parliament, 2016), [http://www.europarl.europa.eu/RegData/etudes/STUD/2016/556931/IPOL_STU\(2016\)556931_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/556931/IPOL_STU(2016)556931_EN.pdf).

identifiable standards based on which state compliance with its obligations for protection, investigation and prosecution could be decided. Moreover, in *Opuz v. Turkey*, the Court stated that the failure of the state to exercise due diligence is considered a gender-based discrimination.⁵⁶

In addition to the international human rights treaties, there also exist three region-specific treaties for the protection of human rights. These regional systems were each established under the auspices of a larger intergovernmental organization for regional cooperation: the Council of Europe, the Organization of American States, and the African Union.

1.6 The Organization of American States

The Organization of American States (OAS) is considered the world's oldest regional organization. According to the Article 1 of its Charter, American States developed OAS “*to achieve an order of peace and justice, to promote their solidarity, to strengthen their collaboration, to defend their sovereignty, their territorial integrity, and their independence.*”⁵⁷

OAS is based on the principles of democracy, human rights, security and development, and today it is comprised of 35 independent member states.⁵⁸ Within the bodies of the Organization the Inter-American Commission on Human Rights is mandated to promote the observance and protection of human rights.⁵⁹ The American Convention on Human Rights entered into force in 1978. In addition to creating obligations for member states to respect and protect human rights within their territories, the Convention also established the Inter-American Court of Human Rights.⁶⁰ The

⁵⁶ Bonnewit.

⁵⁷ OEA and OAS, “OAS - Organization of American States: Democracy for Peace, Security, and Development,” Text, August 1, 2009, http://www.oas.org/en/sla/dil/inter_american_treaties_A-41_charter_OAS.asp#Chapter_I.

⁵⁸ Ronagh McQuigg, *The Istanbul Convention, Domestic Violence and Human Rights* (Routledge, 2017).

⁵⁹ Ordoñez Buitrago, “Organization of American States: Moving the Americas Forward? Analysis of Successes and Failures of the OAS in Human Rights, Democracy and Conflict Resolution” 4 (2013): 15.

⁶⁰ McQuigg, *The Istanbul Convention, Domestic Violence and Human Rights*.

Commission together with the Inter-American Court of Human Rights comprise the Inter-American human rights system.⁶¹

It's worth mentioning that the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, also known as the Convention of Belém do Pará, was the first regional instrument to address the issue of violence against women. It was adopted by the OAS General Assembly on 9 June 1994. It entered into force on 5 March 1995. The adoption of the Convention was not only an innovative development within the OAS, but was also an important step to move toward eradicating violence against women in the international arena.⁶²

1.7 Chapter Conclusion

Violence against women is a complex problem deeply rooted in patriarchal mindset, cultural practices, gender stereotypes, and social influences. It takes various forms and affects women of all backgrounds in every part of the world. The complex nature of the problem served as an obstacle for centuries to provide protection to women and punish the wrongdoers. However, due to the hard work of women's rights activists, NGO's and social movements, the issue of violence against women was eventually brought to the international agenda in early 1990s. Once justified by different factors, it's now considered a violation of human rights under international and regional human rights treaties, which no longer can be justified and tolerated.

Due to its perceived private nature, domestic violence has long been considered immune from state interference. Over the last couple of decades considerable advances were made regarding the problem of domestic violence as well. From being a merely private matter outside of the scope of

⁶¹ Buitrago, "Organization of American States: Moving the Americas Forward? Analysis of Successes and Failures of the OAS in Human Rights, Democracy and Conflict Resolution."

⁶² McQuigg, *The Istanbul Convention, Domestic Violence and Human Rights*.

the State concern, the protection of women from domestic violence is now a recognized state obligation under specific international and regional treaties. States are required to have appropriate legislative and other measures in place to protect women from violence perpetrated by public as well as private actors. The measures set by the UN Convention on the Elimination of all forms of Discrimination Against Women and Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence will be discussed in the next chapters of the thesis, as one of the most important standard setting instruments at the international and regional levels.

2. CEDAW and Violence Against Women

This chapter of the thesis focuses on the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW). It will demonstrate how CEDAW came to address the issue of violence against women and domestic violence by discussing the General Recommendations No. 19 and General Recommendation no. 35 issued by the CEDAW Committee. It will more specifically look at relevant provisions of the Convention, the principles behind it, and the standards it creates for the member States for the prevention and elimination of violence against women. The chapter will also provide an overview of the monitoring mechanism of the Convention and the Optional Protocol. Later in the chapter key cases and decisions of the CEDAW Committee will be discussed to illustrate the standards CEDAW sets for the protection of domestic violence.

2.1 Background to the Adoption of CEDAW

Although UN General Assembly and other UN specialized agencies have addressed aspects of women's human rights in various conventions, it became apparent by 1972 that the existing treaties alone could not sufficiently address the deeply rooted discrimination against women. In the same year, the UN Commission on the Status of Women (CSW) recommended the Economic and Social Council (ECOSOC) and the UN General Assembly to make the year of 1975 an "International Women's Year" with the purpose of reminding UN member States that new and increased efforts were needed to address the legal and practical aspects of the widespread phenomenon. Thus, after the recommendation was approved, the First UN World Conference took place in 1975 in Mexico City, where the World Plan of Action formulated by CSW, was endorsed by the majority of government delegations, calling for Member states to give a high priority to the drafting and

preparation of a legally binding instrument specifically targeting the elimination of discrimination against women, and to come up with effective procedures for its implementation.⁶³

After long negotiations the Convention on the Elimination of all Forms of Discrimination Against Women was adopted by the UN General Assembly on December 18, 1979, and entered into force two years later, in 1981. The Convention takes an important place among the international human rights treaties in focusing mainly on the concerns of women and spelling out the meaning and importance of the equality between men and women, and how it can be achieved. The Convention covers a wide range of issues that affect different aspects of women's lives, including civil rights and the legal status of women, reproductive rights, as well as the influence of the culture and traditions on restricting the full enjoyment of their fundamental rights by women. CEDAW is also referred as an "International Bill of Rights for Women" and is considered the most central and comprehensive document for the advancement of women.⁶⁴

CEDAW is an innovative human rights treaty in many aspects. It's the first and, so far, the only human rights convention that calls upon State Parties to modify and abolish cultural practices and social attitudes that are based on inferiority of either sexes or on the stereotyped roles of men and women. It obliges State Parties to take appropriate measures for eliminating discrimination against women by any person, including state agents, private individuals, organizations and enterprises. The Convention incorporates women's civil and political rights, and economic, social and cultural rights into the normative framework of non-discrimination and equality, guaranteeing the protection, respect and fulfillment of women's human rights in the private sphere of the family.

⁶³ Hanna-Beate Schöpp-Schilling and C. Flinterman, *The Circle of Empowerment: Twenty-Five Years of the UN Committee on the Elimination of Discrimination Against Women* (Feminist Press at the City University of New York, 2007).

⁶⁴ UN General Assembly, "Convention on the Elimination of All Forms of Discrimination Against Women" (United Nations, December 18, 1979), <https://www.ohchr.org/Documents/ProfessionalInterest/cedaw.pdf>.

Finally, other than the non-discrimination and protective approach CEDAW calls for the correction of former discriminatory practices through implementation of temporary special measures for women, also known as affirmative action.⁶⁵

2.2 CEDAW Provisions and Violence Against Women

CEDAW consists of a preamble and thirty articles and its mandate is extraordinarily broad. The Preamble explicitly acknowledges that discrimination against women is against the principles of equality and respect for human dignity, it's an obstacle for equal participation of women in social, political, economic and cultural life of their countries, and hinders the involvement of women in the service of their countries, thus hampering the growth and prosperity of the society. It recognizes that women's participation in all fields is required to achieve peace and welfare in the world, and a change in the traditional role of men and women in the society and in the family is needed to enjoy of full equality with men.⁶⁶

The rights to non-discrimination and equality are at the very core of the CEDAW and are central to the object and purpose of the treaty.⁶⁷ Articles 1 to 5, together with the Article 24 of the Convention set out the obligations of the State Parties related to the implementation of policies for the elimination of violence against women and spell out the definition of discrimination against women for the purposes of the Convention. Article 1 of the Convention 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,

⁶⁵ Schöpp-Schilling and Flinterman, *The Circle of Empowerment*.

⁶⁶ UN General Assembly, “Convention on the Elimination of All Forms of Discrimination Against Women.”

⁶⁷ Simone Cusack and Lisa Pusey, “CEDAW and the Rights to Non-Discrimination and Equality,” *Melbourne Journal of International Law* 14, no. 54 (June 2013), <https://search.informit.com.au/documentSummary;dn=523700846197845;res=IELHSS>.

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.”⁶⁸ This definition is concerned with differences in treatment based on sex and/or gender, exclusion of women, and restrictions on women's rights that may constitute discrimination under CEDAW, if they aim to impair or nullify the enjoyment of their rights on the equal basis with men. Under this definition identical treatment may still constitute discrimination towards women if it appears to be neutral yet in practice it has a discriminatory effect on them. Moreover, the definition extends to the enjoyment of not only the rights protected under the CEDAW but to women's “human rights and fundamental freedoms”,⁶⁹ meaning all the rights recognized under other treaties. Sex-based practices that enhance the enjoyment of women's rights and freedoms are not considered discriminatory under Article 1 of the Convention.⁷⁰

Articles 2 to 6 set out the measures States are obliged to undertake to eliminate discrimination against women, including measures such as incorporation of the principle of equality in their national legislation and ensuring the practical realizations of the equality principle between men and women, adopting appropriate legislative and other required measures to eliminate and prohibit discrimination against women, as well as protect their rights on an equal basis, ensuring the advancement of women in all fields, adopting temporary special measures to accelerate de facto equality between men and women, modifying social and cultural patterns of conduct to eliminate prejudices and all customary practices that emphasize the inferiority or superiority of either men or women, to ensure proper family education and suppress trafficking and exploitation of women.⁷¹

Articles 7 to 9 oblige State Parties to eliminate discrimination against women in political and

⁶⁸ UN General Assembly, “Convention on the Elimination of All Forms of Discrimination Against Women.”

⁶⁹ UN General Assembly.

⁷⁰ Cusack and Pusey, “CEDAW and the Rights to Non-Discrimination and Equality.”

⁷¹ UN General Assembly, “Convention on the Elimination of All Forms of Discrimination Against Women.”

public life by guaranteeing equal voting rights with men, participation in government affairs in all its levels, giving them equal opportunities to represent their Governments at the international level, and guarantee women, on equal basis with men, all the rights to acquire, change or retain their nationality. Articles 10 to 14 guarantee women equal rights with men in education, field of employment, field of health care, including family planning, in all areas of economic and social life. Article 14 is concerned with the particular problems that rural women face, thus acknowledging perhaps the more patriarchal character of rural areas.⁷² It guarantees rural women equal rights with men in the participation of rural development at all levels and the right to benefit from it, right to organize self-help groups, obtain equal access to economic opportunities, access to agricultural credit and loans, and to adequate living conditions. Article 15 gives women equality with men before the law, including the right to conclude contracts and to administer property, freedom of movement and choice of residence and domicile. Article 16 of the Convention is concerned with the equality of women in all matters related to marriage and family life. It's the only provision among many human rights instruments that spells out in detail what the norm of equality of rights and responsibilities of spouses means during the entry, duration and termination of marriage. In addition to prohibiting child betrothal and obliging States to specify a minimum age for marriage, it grants women equal rights with men to freely choose a spouse and enter into marriage, choose family name and occupation, the right guardianship of their children. Article 16(1) (e) of the Convention is of distinguishing importance, which grants women the same rights as men to decide on the number and spacing of their children, and to have access to all the required information and means to be able to exercise these rights.⁷³ Another important highlight of the

⁷² Lisa R. Pruitt, "Deconstructing CEDAW's Article 14: Naming and Explaining Rural Difference," SSRN Scholarly Paper (Rochester, NY: Social Science Research Network, February 25, 2011), <https://papers.ssrn.com/abstract=1770054>.

⁷³ Schöpp-Schilling and Flinterman, *The Circle of Empowerment*.

Article 16 is that it grants equal rights for both spouses to own, acquire, manage, administer, enjoy and dispose property, thus requiring the States to acknowledge *de facto* equality between men and women in matters related to marriage and family unions.

The issue of violence against women is not explicitly mentioned in the provisions of the Convention. However, after the adoption of General Recommendation No. 19 the CEDAW Committee brought the issue of violence against women under the scope of the Convention. General Recommendation No. 19 thus called upon member states not only to refrain from committing violent acts, but also protect women from violence committed by private actors.⁷⁴

2.3 CEDAW Optional Protocol

The Optional Protocol (OP) to CEDAW is a separate treaty adopted by the UN General Assembly in 1990 and opened for ratification in 2000 to the States already party to the Convention. At the time of the writing the Optional Protocol has been ratified by 109 State Parties, and another 80 States are signatories to it.⁷⁵

The Optional Protocol to CEDAW didn't introduce new rights but rather extended the Committee's mandate to consider cases of violations of rights of individual women or groups of individuals. To do this the Committee must interpret the rights set forth in the Convention and apply them to the specific facts of the individual cases to determine whether the violation of any of the rights has occurred.⁷⁶ It established two procedures that aim to protect women's human rights: the communications procedure and the inquiry procedure. The communications procedure offers individuals or groups of individuals the possibility to submit complaints to the CEDAW

⁷⁴ Neil Englehart, "CEDAW and Gender Violence: An Empirical Assessment," *Michigan State Law Review* 2014, no. 2 (January 1, 2014): 265, <https://digitalcommons.law.msu.edu/lr/vol2014/iss2/3>.

⁷⁵ "United Nations Treaty Collection," United Nations, n.d., https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtds_g_no=IV-8-b&chapter=4&lang=en.

⁷⁶ Cusack and Pusey, "CEDAW and the Rights to Non-Discrimination and Equality."

Committee claiming a violation of their rights protected by the Convention. It thus, allows the applicants to seek redress for specific violations that result from State acts or the omission thereof.⁷⁷ It also enables the Committee to address cases of systemic discrimination, where an individual serves as a catalyst for addressing violations that affect wider group of women or individuals. To file a complaint to the Committee applicants must meet certain admissibility conditions enumerated in the Articles 2 to 4 of the OP, including the condition of the claim being non-anonymous, exhaustion of domestic remedies, compatibility of the claim with the provisions of the Convention, and the condition that requires the communication facts to have occurred after the entry into the force of the OP. Exceptions are the cases, where the violations have occurred before the entry into force of the OP, but have continued after the OP came into effect.⁷⁸ The inquiry procedure enables the Committee to conduct inquiries into institutions of grave or systematic violations of women's rights protected under the Convention. However, the availability of the "opt-out" clause for the provision, which allows State Parties to declare that they do not accept the procedure upon the ratification of the OP, limits its effectiveness. It's worth mentioning that these two procedures are not mutually exclusive, meaning that it's possible to file an individual communication based on the human rights violation which is already under the inquiry procedure.⁷⁹

With the Optional Protocol, CEDAW opened an opportunity for women who experience discrimination, violence, or violation of their rights protected under the Convention, to submit a

⁷⁷ World Organization Against Torture, "A Handbook on the Individual Complaints Procedures of the UN Treaty Bodies" (Koninklijke Brill NV, 2014), https://doi.org/10.1163/2210-7975_HRD-9935-2014008.

⁷⁸ Cusack and Pusey, "CEDAW and the Rights to Non-Discrimination and Equality."

⁷⁹ World Organization Against Torture, "A Handbook on the Individual Complaints Procedures of the UN Treaty Bodies."

complaint to the Committee and have their voices heard. It thus opened an access to justice at the international level to the women who were denied justice at the national level.⁸⁰

2.4 General Recommendations of the CEDAW Committee

Surprisingly, the most widely ratified UN human rights treaty, which is often referred to as the International Bill of Rights for Women or “Women’s Convention”, contains no explicit mention of domestic violence within its provisions, and indeed, doesn’t address violence against women more generally. This absence of provisions addressing gender-based violence from a treaty that focuses on the rights of women has brought a major wave of criticism to the Convention. One possible explanation for the omission of the issue from the Convention, is that back in times of the adoption of CEDAW in 1979, the issue of domestic violence was not part of international human rights law.⁸¹ Over time, however, CEDAW Committee tried to fill in the gap of addressing the issue of violence against women by adopting general recommendations on the issue. In fact, General Recommendation No. 12 issued by the CEDAW Committee in 1989, was the first document to address the issue of violence against women. The Recommendation, however, was not addressing the issue thoroughly enough and was very brief. It simply asked State Parties to include information on violence against women in their period reports to the Committee, mentioning what legislative and other measures were undertaken to eradicate and protect women against all kinds of incidents of violence in everyday life. Shortly after the General Recommendation No. 12, in 1992 CEDAW Committee issued a ground-breaking General Recommendation No. 19, which came to officially interpret CEDAW as a document prohibiting

⁸⁰ World Organization Against Torture.

⁸¹ McQuigg, *The Istanbul Convention, Domestic Violence and Human Rights*.

violence against women both in private and public spheres.⁸² Indeed, the adoption of the General Recommendation No. 19 has been crucial for the recognition of the violence against women in family and other relationships as a violation of human rights and as a discrimination at the international level.⁸³ It asserted that gender-based violence is included in the definition of discrimination in the Article 1 of the CEDAW, and as such, is a violation of human rights and fundamental freedoms of women under the international law, which includes violation of “the right to life”, “the right to be free from torture, inhuman or degrading treatment”, “the right to liberty and security of the person”, “the right to equal protection under the law, the right to equality in the family”, “the right to the highest standard attainable for mental and physical health”, and “the right to just and favorable conditions for work.”⁸⁴ It clearly stated that “the full implementation of the Convention required States to take positive measures to eliminate all forms of violence against women.”⁸⁵ It specifically mentioned that the Convention applies but is not limited to the actions committed by the Government officials, emphasizing that “States may be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.”⁸⁶ As for the family violence, the Recommendation No. 19 asserted that family violence is one of the most widespread and insidious forms of violence against women, that affects women of all ages and in all its forms.⁸⁷

⁸² McQuigg.

⁸³ Dorothea Gaudart, Hanna Beate Schöpp-Schilling, and Karin Tertinegg, “What Is CEDAW? The UN Convention on the Elimination of All Forms of Discrimination against Women. The Human Rights of Women and What They Mean,” ed. Sylvia Kölbl, Vienna 2007, https://www.bmgf.gv.at/cms/home/attachments/6/9/0/CH1585/CMS1471428936710/what-is-cedaw_en_2009_26052.pdf.

⁸⁴ UN General Assembly, “Convention on the Elimination of All Forms of Discrimination Against Women.”

⁸⁵ UN Committee on the Elimination of Discrimination Against Women (CEDAW), “CEDAW General Recommendation No. 19: Violence against Women,” 1992.

⁸⁶ General Recommendation No. 19, para 9

⁸⁷ McQuigg, *The Istanbul Convention, Domestic Violence and Human Rights*.

Considering all these comments, the Committee on the Elimination of Discrimination against Women issued a number of recommendations to State Parties. The Committee advised that all States should undertake appropriate measures to address private and public acts of all forms of gender-based violence. State Parties were recommended to adopt laws against family violence and provide adequate protection to women insuring respect for their integrity and dignity. Effective measures should be taken to gather statistics on the extent, causes and effects of violence against women, to promote respect for women through media, to overcome attitudes, practices and customs that perpetuate violence against women through education and public information programmes, and to overcome trafficking and sexual exploitation of women. State Parties should describe in their periodic reports all the preventive, punitive and rehabilitation measures taken to protect women from all forms of sexual exploitation and include information on the measures undertaken to protect women from sexual harassment. The Recommendation also advised State Parties to provide effective remedies and compensation to the victims and establish refuges or support services for victims of family violence and other forms of gender-based violence.⁸⁸ In addition, State Parties were recommended to provide rehabilitation programmes for perpetrators and were encouraged to report on the effectiveness of the measures taken to deal and prevent violence.⁸⁹ General Recommendation No. 19 was, undoubtedly, a historic development in the area of women's rights and violence against women, as it recognized violence against women as a form of gender-based discrimination and brought violence against women to the public sphere and into the scope of human rights.⁹⁰

Since its adoption, the *opinio juris* and State parties have endorsed the Committee's interpretation

⁸⁸ General Recommendation No. 19, para 24

⁸⁹ McQuigg, *The Istanbul Convention, Domestic Violence and Human Rights*.

⁹⁰ "OHCHR | Launch of CEDAW General Recommendation No. 35," accessed November 3, 2018, <https://www.ohchr.org/en/hrbodies/cedaw/pages/gr35.aspx>.

of the Article 1 of the Convention, thus making the prohibition of gender-based violence against women evolve into a customary international law. However, 25 years later, on 14th of July 2017, the CEDAW Committee updated General Recommendation No. 19, by adopting General Recommendation No. 35, which provides further guidance to the State Parties in accelerating the elimination of gender-based against women.⁹¹ In General Recommendation No. 35 the Committee once again, condemns gender-based violence against women in all its forms, both in the public and private spheres. It acknowledges the developments in this area, and the contribution of civil society groups and women's NGO's to the recognition of the gender-based violence against women as a human rights issue, and in the advancement of laws and policies to address it. However, the Committee also acknowledges that despite these advances and developments, gender-based violence against women remains pervasive all around the world and affects women throughout their life cycle in all its forms and in the range of settings. The recommendation explicitly states that references to women also include girls, and stated that violence against women can take multiple forms, and sometimes can be "exacerbated by cultural, economic, ideological, technological, political, religious, social and environmental factors, as evidenced, among others, in the contexts of displacement, migration, increased globalization of economic activities including global supply chains, extractive and offshoring industry, militarization, foreign occupation, armed conflict, violent extremism and terrorism."⁹² The Committee noted that in many States, legislation addressing gender-based violence is either non-existent, inadequate or poorly implemented resulting in high rates of impunity, and that financial and economic crisis sometimes further

⁹¹ "General Recommendation No. 35 on Gender-Based Violence against Women, Updating General Recommendation No. 19: Committee on the Elimination of Discrimination against Women," *International Human Rights Law Review* 6, no. 2 (December 7, 2017): 279–305, <https://doi.org/10.1163/22131035-00602003>.

⁹² Committee on the Elimination of Discrimination against Women, "General Recommendation No. 35 on Gender-Based Violence against Women, Updating General Recommendation No. 19," July 14, 2017.

weaken State responses.⁹³ General Recommendation No. 35 significantly expands the scope and substance of General Recommendation No. 19, stating that in the document the term gender-based violence against women is used in a way that emphasizes the gendered causes and effects of the violence, pointing out that gender-based violence is a social rather than an individual problem. It further states that gender-based violence against women is one of the fundamental social, political and economic means for the oppression and subordination of women, and that the violence against women has been a critical obstacle in achieving substantive equality between men and women.⁹⁴ The Committee further recognized that women face intersecting forms of discrimination, and that gender-based violence may affect some women in different degrees and in different ways. The Committee also states, that gender-based violence against women may qualify as a torture or cruel, inhuman or a degrading treatment in certain cases, including but not limited to cases of rape, domestic violence, or harmful practices. Moreover, some forms of gender-based violence against women, in some circumstances, may also constitute international crimes.⁹⁵ An important highlight of the Recommendation is that it acknowledges that gender-based violence against women occurs in all spheres of human interaction, including family, public spaces, workplace, politics, educational settings, and extends the forms of gender-based violence against women to the contemporary forms of violence occurring in the internet and digital spaces. While General Recommendation No. 19 briefly mentions that the Convention applies to the acts by or on behalf of the Government and private acts of individuals, General Recommendation No. 35 comes with detailed provisions on general obligations of State Parties related to gender-based violence against women. It states that gender-based violence against women can result both from the acts of the

⁹³ General Recommendation No. 35, para 6

⁹⁴ General Recommendation No.35, para 10

⁹⁵ General Recommendation No. 35, para 16

State or non-State actors, as well as the omission there of.⁹⁶ These acts related to legislative, executive and judicial measures.

Based on these statements and building on the General Recommendation No. 19, the Committee calls on State Parties to strengthen their implementation of their obligation related to gender-based violence whether in their territory or extraterritorially, and take specific measures in the areas of prevention, protection, prosecution, punishment, redress, data collection and monitoring to improve the efforts of elimination of gender-based violence against women. It's worth mentioning that the Committee recommends States to implement these measures with a victim/survivor centered approach, designed with the participation of women and acknowledging women as rights holders.⁹⁷

For the legislative measures the Committee, building on the general Recommendation No 19, takes a step further and recommends State Parties to ensure that gender-based violence is criminalized in their national legislations, to strengthen without delay legal sanctions against the perpetrators, to provide access to justice and effective remedy for the victims, repeal all the discriminatory rules, procedures and legal provisions that encourage, tolerate or justify any form of gender-based violence against women, ensure in their national legislations that definitions of sexual crimes are based on the lack of freely given consent considering also coercive circumstances.⁹⁸

As for the preventive measures, General Recommendation No. 35 is again more detailed, specific and extensive in scope. State Parties are recommended to have effective legislation and other appropriate preventive measures in place to address the underlying causes of gender-based violence against women, to develop and implement effective measures to address and eradicate

⁹⁶ General Recommendation No. 35, para 20

⁹⁷ General Recommendation No. 35, para 26 (a)

⁹⁸ General Recommendation No. 35, paras 29-31 (a)

stereotypes, prejudices, customs and practices that justify or condone gender-based violence against women by awareness raising programs and introducing gender equality content with human rights approach to the curricula at all levels of both public and public education, to take effective measures to make public spaces safe and accessible to all women and girls, to take effective measures to encourage all media and communication technologies to eradicate any activity that is discriminatory to women or activities that portray women in a harmful and stereotyped manner. The Committee also recommends to provide mandatory and effective training to the judiciary and other law enforcement officers aimed to equip them with the knowledge and skills to adequately address gender-based violence against women, and to engage the private corporate sector in the efforts for eradication of all forms gender-based violence against women and to enhance its awareness and responsibility within the scope its activities.⁹⁹

As for protective measures, the Committee recommends State Parties to undertake effective measures to protect and assist victims and witnesses of gender-based violence while ensuring their privacy and safety and preventing future or potential violence by providing effective protection mechanisms, ensuring access to financial aid, as well as high quality legal, medical and psychological services, together with women's support services with free of charge helplines and well-equipped centers and shelters. The States should make sure that all legal proceedings, and other protective measures are accessible to all women in the whole territory of the State and that those proceedings and services respect and strengthen women's autonomy.¹⁰⁰

⁹⁹ General Recommendation No. 35, para 39

¹⁰⁰ General Recommendation No. 35, paras 40-41

The Committee further extends its recommendations on the prosecution and punishment of gender-based violence, to make sure no impunity towards gender-based violence against women is tolerated, and that States provide effective reparations to victims and punish perpetrators.¹⁰¹

General Recommendation No. 35 is in fact, another ground-breaking document that furthers the understanding of gender-based violence against women, and which determines the appropriate measures of preventing and punishing all forms of violence that women experience nowadays whether in their homes, outside of it or in digital spaces. The obligations it puts on state members are grouped into preventive, protective and prosecution measures, reaffirming that the protection of women against violence requires a holistic approach. It's a reminder how far we've come in addressing gender-based violence against women, and a reminder that a lot has still to be done to insure safety, autonomy, security, mental and physical integrity, and dignity of all women is respected and protected in every State.

2.5 CEDAW Monitoring Mechanism

CEDAW is one of the nine core international UN human rights treaties that sets international standards for the protection of women against discrimination and promotion of their human rights. Upon its ratification State Parties, take an obligation to fully comply with the standards set out in the Convention, and to ensure the realization of their obligations at the national level. Pursuant to the Article 18 of the Convention, State parties are obliged to submit periodic state reports to the Committee on the legislative, judicial, administrative and other measures taken in the national level to give effect to the Convention. CEDAW Committee, a treaty body comprised of 23 independent experts, is mandated to monitor, by various means, the implementation of the

¹⁰¹ General Recommendation No. 35, paras 44-45

Convention, as well as encourage and assist State Parties in meeting their treaty obligations. Prior to the entry into force of the Optional Protocol, the enforcement of CEDAW was monitored through the reporting procedure and through the inter-state procedure. The latter arises under Article 29 of the Convention and allows two or more States Parties to refer any disputes over the interpretation or application of the Convention to arbitration. The disputes which are not settled, may be referred to the International Court of Justice upon the request of any of those parties. This provision, however, has never been provoked, and has been subject to numerous reservations.¹⁰² The primary mandate of the Committee is, however, the periodical reviews submitted by State Parties, which helps the Committee determine to which extent States have complied with their obligations under the Convention. The reporting mechanism obliges State Parties to submit an initial report to the Committee within one year after the ratification of the Convention, and mandatory periodic reports once every four year after that. These reports must contain information about the steps State Parties have taken to integrate Convention into their national laws and policies, and about the obstacles and difficulties States have faced while meeting their treaty obligations.¹⁰³ State reports consist of two documents: the a common core document, which is a general information about the political, social, and cultural climate in which human rights are implemented in the State, and the convention-specific report, where States should provide a record of their performance assessed against the standards of the Convention.¹⁰⁴ The Committee has the power to review the submitted reports, examine States' implementation of the Convention, provide

¹⁰² B. Sokhi-Bulley, "The Optional Protocol to CEDAW: First Steps," *Human Rights Law Review* 6, no. 1 (February 16, 2006): 143–59, <https://doi.org/10.1093/hrlr/ngi029>.

¹⁰³ "Fact Sheet No. 30/Rev.1, The United Nations Human Rights Treaty System: An Introduction to the Core Human Rights Treaties and the Treaty Bodies" (UN Office of the High Commissioner for Human Rights (OHCHR), August 2012), <https://www.ohchr.org/Documents/Publications/FactSheet30Rev1.pdf>.

¹⁰⁴ International Women's Rights Action Watch Asia Pacific, "Shadow Report Guidelines on CEDAW and Rights of Sex Workers," April 2018.

suggestions or general recommendations to State Parties. The Committee, however, may not impose sanctions on States, or arbitrate cases between governments or governments and individuals.¹⁰⁵ It's worth mentioning, that NGO's play an important role in the monitoring and implementation of the Convention by their member States. NGO's are encouraged to engage in the review process through submitting alternative reports to it, also known as shadow reports, that provide country specific information on issues related to the Convention, as well as the gaps in their government's implementation of the treaty. Moreover, NGO's also have an opportunity to submit an alternative report on the compliance of States with the Committee's follow-up recommendations.¹⁰⁶

2.6 CEDAW Key Cases

In this part of the thesis, key communications submitted to the CEDAW Committee will be discussed. Based on the scope of the paper only cases related to domestic abuse and violence will be considered. Since the issue of violence against women is not explicitly mentioned in the Convention, the picked cases will try to illustrate how the Committee tried to address the issue by extending the articles of the Convention to cover violence experienced by women at home and at the hands of their partners.

At v Hungary was the first communication submitted to the CEDAW Committee. In the communication the complainant alleged that she has been experiencing domestic abuse and threats by her partner for four years, and claimed that the State of Hungary has violated her rights under Article 2, 5 (a) and 16 of the Convention, because the State failed to fulfil its obligations to protect

¹⁰⁵ Afra Afsharipour, "Empowering Ourselves: The Role of Women's NGOs in the Enforcement of the Women's Convention," *Columbia Law Review* 99, no. 1 (1999): 129–72, <https://doi.org/10.2307/1123598>.

¹⁰⁶ International Women's Rights Action Watch Asia Pacific, "Shadow Report Guidelines on CEDAW and Rights of Sex Workers."

her safety by providing protection or restraining orders, and to provide shelters where she could temporarily move in with her disabled child. She also claimed that the State failed to take appropriate measures to eliminate discrimination against women in marriage and family matters.¹⁰⁷ In the examination of the communication, the Committee referred to the General Recommendation No. 19, and stated that the obligations of the States under the Article 2 (a), (b) and (e) of the Convention extend to cover the prevention and protection of women against violence by private actors, and the failure of the State to fulfil its obligations constituted to a violation of the complainant's human rights and fundamental freedoms, particularly her right to the security of person.¹⁰⁸ The Committee also stated that "traditional attitudes by which women are regarded as subordinate to men contribute to violence against women"¹⁰⁹ thus, finding a violation of the article 5 (a). In relation to the Article 16 of the Convention, the Committee noted that the State failed to meet its obligations by not having civil or criminal proceedings in place to provide protection to the victim and her children from the continuous abuse and threats from her former husband. The significance of this decision cannot be overstated. With this decision the Committee adopted a flexible approach to the issue and held that obligations of State Parties under the Convention extend to cover acts of violence against women by private actors. Although violence against women is not explicitly mentioned in the Convention, the failure of States to protect women from violence can result in the violation of specific rights contained in the Convention. This decision redefined State obligations under CEDAW and set a precedent establishing that violence against women calls for State action and requires immediate response.

¹⁰⁷ At v. Hungary, Communication No. 2/2003, views adopted 26 January 2005, CEDAW/C/32/D/2/2003

¹⁰⁸ At v. Hungary, at para 9.3

¹⁰⁹ At v. Hungary, at para 9.4

In the case of *Yildirim v Austria* the victim was subject to abuse and continuous death threats by her husband, although an interim injunction was issued prohibiting him to contact the victim and returning to the victim's apartment and its surroundings. Despite the numerous requests of the police to the Public Prosecutor's office to arrest and detain the perpetrator, the requests were denied, and the victim was eventually killed by her husband. In its decision the CEDAW Committee stated that the denial of the requests by the Public Prosecutor and failure to protect the victim from the perpetrator, constituted a breach of due diligence obligation of the State under the Convention.¹¹⁰ Moreover, the Committee mentioned that "the perpetrator's rights cannot supersede women's human rights to life and physical integrity."¹¹¹ Thus, the Committee held that there was a violation of Articles 2 (a), 2 (c), 2(f) and 3 of the Convention, read in conjunction with Article 1 and General Recommendation No. 19.

Examined in 2007, *Goekce v Austria* is another domestic violence communication submitted to the Committee. The victim has eventually been killed after the authorities failed to provide adequate protection to her. In fact, the requests to the Public Prosecutor for the arrest and detention of the perpetrator were denied twice, and the police failed to go to the victim's place after she called the emergency service center hours before she was killed. The Committee stated that Austria failed to act with due diligence and provide protection to the victim, despite the established comprehensive model of intervention measures to domestic violence cases. It further noted that for the practical realization of the equality principle between men and women Austrian authorities should demonstrate political will to act with due diligence.¹¹² It, thus, found Austria accountable

¹¹⁰ *Yildirim v. Austria*, Communication No. 6/2005, views adopted 6 August 2007, CEDAW/C/39/D/6/2005

¹¹¹ *Yildirim v. Austria*, at para 12.1.5

¹¹² *Goekce v. Austria*, Communication No. 5/2005, views adopted 6 August 2007, CEDAW/C/39/D/5/2005

for the violations of Article 2 (a), (c),(d), (e), (f), Article 3 in conjunction of Article 1 and with General Recommendation No.19.

VK v Bulgaria is another CEDAW Committee communication related to domestic violence. The complainant claimed that despite the existence of legislation against domestic violence, the judicial system failed to adequately protect her from violence inflicted on her by her husband and failed to punish him. She claimed that she has been subject to emotional, psychological, and economic abuse. In its decision the Committee reiterated that gender-based violence is considered a form of discrimination as mentioned in General Recommendation No. 19, and held that the lack of gender sensitivity to the cases of violence taking place at home, and the failure of the State to provide effective protection to the complainant constituted a breach of Article 2 (c), (d), (e) and (f) in conjunction with Article 1, Article 5(a) in conjunction with Article 16 of the Convention.¹¹³

2.7 Chapter Conclusion

CEDAW was adopted as a tool for the elimination of the discrimination against women. However, with the lack of instruments addressing the issue of violence against women within the UN and with the pressing need to take measures against it, CEDAW Committee adopted General Recommendation No. 19, thus officially interpreting the Convention to cover the issue of violence against women. It was a major effort to bring the issue of violence against women to the international level. In the cases discussed above, as well as many other communications, the Committee referred to the General Recommendation No. 19 to extend state obligations to the protection of women from violence perpetrated by private actors. With the adoption of the General Recommendation No. 35 CEDAW Committee acknowledged gender-based violence as a social

¹¹³ *Vk v. Bulgaria*, Communication No. 20/2008, Views adopted 27 September 2011, CEDAW/C/49/D/20/2008

problem requiring a comprehensive response from States to the issue. It recognized contemporary forms of violence against women and provided detailed recommendations to state parties for the protection, prevention and prosecution measures. It was an important step within the UN to fill in the gap of the responses to the gender-based violence and a step forward to a violence free society.

3. The Istanbul Convention

The Convention on Preventing and Combating Violence against Women and Domestic Violence, also referred to as Istanbul Convention, was adopted by the Committee of Ministers of the Council of Europe on 7th of April 2011. It entered into force following the 10 ratifications on 1 August 2014, and at the time of writing has been ratified by 33 states.¹¹⁴ The entry into force of the Convention was, indeed, a crucial development in the fight against gender-based violence in the area. The Convention provides a holistic approach to the problem of violence against women and sets new legally binding standards for the member states.¹¹⁵

Chapter three focuses on the Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention) as the first legally binding instrument to tackle domestic violence in Europe. This chapter will particularly look at the text of the Convention, its focus and message it conveys to the society, and the standards set under the convention for domestic violence. It will discuss the obligations it imposes on State members addressed to prevent and protect women against domestic violence. It will also look at the monitoring mechanisms established by the Committee and see how it evaluates the legislative and procedural measures taken by the States to enforce the provisions of the Convention. The series of reviews will be discussed later in the chapter.

3.1 Background to the Istanbul Convention

Although the issue of domestic violence has come into the international arena at the early 1970s,

¹¹⁴ “Council of Europe. Chart of Signatures and Ratifications of Treaty 210,” Treaty Office, n.d., <https://www.coe.int/en/web/conventions/full-list>.

¹¹⁵ McQuigg, *The Istanbul Convention, Domestic Violence and Human Rights*.

and has been addressed by UN and OAS, it was not until 1990's that domestic violence has come to be recognized as an issue of legal concern in the Council of Europe. Since 2007, the European Court of Human Rights has developed a substantial jurisprudence on domestic violence, and this jurisprudence played a major role in the recognition of this issue as a concern that needs to be addressed by the Council of Europe.¹¹⁶

The issue of the violence in the family was first addressed in 1985, when the Committee of Ministers of the Council of Europe first issued a Recommendation on Violence in the Family.¹¹⁷

The recommendation advised the governments to take measures to raise public awareness of the seriousness and specific characteristics of the family violence, and disseminate among families knowledge and information concerning social and family relations and the settlement of interpersonal and intra-family conflicts. It also recommends that member states provide training for the professionals intervening in cases of violence in the family, setting up support agencies, associations and foundations to help and assist victims, also the setting up of the administrative departments and multidisciplinary boards to take appropriate measures following the acts of violence in the family with the aim to protect the victims and prevent the future occurrence of the incidents. However, some elements of the Recommendation were found to be problematic. Criminal measures were not encouraged, stating that following acts of violence in the family "criminal measures should be taken only as a last resort."¹¹⁸ Measures other than criminal ones were recommended to take when the suspect or the accused agreed to submit "to the supervision

¹¹⁶ McQuigg.

¹¹⁷ Council of Europe Committee of Ministers. Recommendation No. R (85) 4 of the Council of Europe Committee of Ministers to Member States on violence in the family. (Adopted by the Committee of Ministers on 26 March 1985 at the 382nd meeting of the Ministers' Deputies)

¹¹⁸ Council of Europe Committee of Ministers. Recommendation No. R(85) 4)

of the competent social, medico-social or probation authorities.”¹¹⁹ These statements seemed to indicate that there was a reluctance to impose criminal sanctions against the perpetrators in cases of family violence.¹²⁰

Following the 1985 Recommendation, the Committee of Ministers of the Council of Europe adopted another Recommendation on violence within the family in 1990, with focus on social measures following family violence cases. It particularly stated that women who are victims of violence in the family “should be given coordinated and comprehensive assistance, including, if necessary, financial assistance in accordance with the national legislation.”¹²¹ Moreover, this Recommendation also stated that women subjected to violence in the family should receive adequate social, psychological, and legal assistance from qualified personnel in the shelters, if they so wished.¹²²

A major step up in bringing equality between men and women and eliminating violence against women was the Third European Ministerial Conference on Equality Between men and women, held in Rome in 1993. It resulted in adopting the “Declaration on Policies for Combating Violence against Women in a Democratic Society”, which affirmed that “violence against women constitutes an infringement of the right to life, security, liberty, dignity and integrity if the victim, and, consequently, a hindrance for the functioning of a democratic society, based on the rule of law.”¹²³ The Declaration also stated that states might held responsible for the private acts of violence against women if the state failed to take actions with sufficient diligence to prevent the

¹¹⁹ Council of Europe Committee of Ministers. Recommendation No. R(85) 4)

¹²⁰ McQuigg, *The Istanbul Convention, Domestic Violence and Human Rights*.

¹²¹ Council of Europe Committee of Ministers, “Recommendation No. R (93)2 of the Committee of Ministers To Member States on the Medico-Social Aspects of Child Abuse,” March 22, 1993, <https://rm.coe.int/16804eebb5>.

¹²² McQuigg, *The Istanbul Convention, Domestic Violence and Human Rights*.

¹²³ Council of Europe, Declaration on Policies for Combating Violence against Women in a Democratic Society, Strasbourg, MEG-3 (93) 22, 1993

violent acts, investigate the case, to sanction the perpetrators, and provide support for the victims. After the conference an Action Plan to Combat Violence against Women was developed, a policy framework for governments to combat violence against women using political, judicial, administrative, cultural, educational and other means.¹²⁴

In 2002, the Committee of Ministers adopted a milestone Recommendation Rec (2002)5 to the member states on the protection of women against violence, which for the first time in Europe, presented a comprehensive strategy for the prevention of violence against women and the protection of victims. As for domestic violence specifically, it recommended that member states “classify all forms of violence within the family as criminal offense”, “revise and/or increase the penalties, where necessary, for deliberate assault and battery committed within the family, whichever member of the family is concerned”, “preclude adultery as an excuse for violence within the family.”¹²⁵ Additionally, the document recommended member states to ensure that all the remedies and legal support are also available to immigrant women upon their request, and consider granting immigrant women who have been victims of domestic violence the right to residence in the hosting state, to allow them to leave their violent husbands without the need to leave the state. To monitor the implementation of this Recommendation a monitoring framework was established.¹²⁶

From 2002 to 2006 Council of Europe had significantly stepped up its activities addressed at combating violence against women including domestic violence, and a number of resolutions have been adopted by the Parliamentary Assembly of the Council of Europe. In 2002, the Parliamentary

¹²⁴ McQuigg, *The Istanbul Convention, Domestic Violence and Human Rights*.

¹²⁵ Council of Europe, Committee of Ministers. Recommendation Rec (2002)5 on the Protection of Women against Violence, (Adopted by the Committee of Ministers on 30 April 2002 at the 794th meeting of the Ministers’ Deputies)

¹²⁶ McQuigg, *The Istanbul Convention, Domestic Violence and Human Rights*.

Assembly of the Council of Europe adopted another significant document on domestic violence, Parliamentary Resolution 1582 on Domestic Violence Against Women, which called upon member states to develop partnership between local and regional authorities responsible for the protection of women's rights and increase the number of the shelters and rehabilitation centers for victims. Cooperation and understanding between the police, government and non-governmental organization was encouraged, together with the implementation of awareness raising campaigns, educational programs, trainings for the professionals, police and social workers, to create a climate where domestic violence is not tolerated. Legal measures that state members were encouraged to take included the prohibition of all forms of domestic violence, the immediate removal of the violent partner from the household, defining and incorporating the concept of domestic violence in national legislation in the manner that it is treated as a serious offence.¹²⁷

In 2006 the Stocktaking study report on the measures and actions taken in the Council of member states was published highlighting the progress and positive developments made in response to the issue of domestic violence in the member states of the Council of Europe. The report stated that the issue of domestic violence is recognized a grave problem by the majority of member states. However, the study also noted that "violence in all its various forms is still widespread in all European countries",¹²⁸ recognizing the need to deal with the problem on a solid legal foundation. Major problems were found in the implementation and enforcement of criminal laws with regard to domestic violence cases, and with the coordination of criminal sanctions with the protective measures found in the civil, administrative, police or family law.¹²⁹

¹²⁷ McQuigg.

¹²⁸ Carol Hagemann-White, "Combating Violence against Women. Stocktaking Study on the Measures and Actions Taken in Council of Europe Member States" (Council of Europe, 2006), [http://lastradainternational.org/lsidocs/251%20Combating%20violence%20\(CoE%202006\).pdf](http://lastradainternational.org/lsidocs/251%20Combating%20violence%20(CoE%202006).pdf).

¹²⁹ McQuigg, *The Istanbul Convention, Domestic Violence and Human Rights*.

Following the decision taken at the Third Summit of Heads of State and Government of the member states of the Council of Europe held in May 2005 in Warsaw, Task Force to Combat Violence against Women, including Domestic Violence was established in early 2006.¹³⁰ This body was mandated to monitor and evaluate the effectiveness of the measures taken at the national and international level to prevent and combat violence against women, to make proposals for the revision of the measures and for adopting new ones, to assist member states in developing and adopting policies for fighting violence against women. Other than that, the body prepared a blueprint for the campaign of the Council of Europe identifying the main measures and activities to be taken in preventing and combating violence against women. The blueprint developed by the Task Force was approved by the Committee of Ministers in June 2006, and based on it the Council of Europe Campaign to Combat Violence against women, including Domestic Violence was launched in Madrid later in November 2006. The two-year campaign aimed to spread awareness that domestic violence is a human rights violation affecting women and seriously damaging the society and future generations. Member states were initially asked to assess their national approaches to combating and preventing domestic violence, and to identify the existing gaps to be filled by appropriate measures. After the assessment, member states were asked to focus and make significant progress in four main areas: data collection, awareness-raising, legal and policy measures, support and protection to victims.¹³¹

3.2 Provisions of the Istanbul Convention

As discussed earlier in the paper, the Istanbul Convention was not the first regional legal document to address the issue of violence against women. However, it's the first comprehensive and legally

¹³⁰ McQuigg.

¹³¹ McQuigg.

binding instrument in Europe to explicitly address domestic violence in a wider scope and to place detailed legally binding duties on States in relation to fighting against violence against women, including domestic violence.¹³² The Convention is innovative in many aspects and its adoption is a clear indication of the recognition of the extent of the problem of violence against women in Europe and of the urgent need to take action to address it.

To begin with, it's worth mentioning that the Convention adopts a rather extensive and unusual approach for defining domestic violence.¹³³ Throughout the Convention, including its purposes, as well as in the title of the Convention itself- *The Council of Europe Convention on Prevention and Combating Violence against Women and Domestic Violence*, domestic violence is separated from the violence against women in general. This, however, is done for two main purposes: first to highlight the importance the Convention puts on fighting against domestic abuse, and second, to give it a wider scope by recognizing that domestic abuse can affect not only women, but men as well.¹³⁴ Article 3 (b) of the Convention describes domestic violence in rather a gender-neutral way, defining it as “all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim.”¹³⁵ This definition of domestic violence stands out in many ways. It extends the scope of the Convention by encompassing economic violence, a type of a violence not mentioned neither in the Convention of Belém do Pará, nor in the CEDAW General Recommendation No. 19. Moreover, the definition doesn't necessarily require the perpetrator and the victim to share the same residence or live together for the act to

¹³² McQuigg.

¹³³ McQuigg.

¹³⁴ McQuigg.

¹³⁵ Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence . (Council of Europe, May 11, 2011).

constitute domestic violence, and it includes violence between any of the family members and not only current or former spouses or partners. Additionally, the UN documents address the issue of domestic violence from a gendered perspective, by placing the problem in the framework of discrimination or violence against women, whereas in Istanbul Convention the definition of domestic violence is phrased with a more gender-neutral approach, to include male victims of domestic violence within its ambit as well.¹³⁶

Article 4 of the Convention refers to the fundamental rights, equality and the right to non-discrimination. Article (3) points out that the implementation of the provisions of the Convention shall be carried out without discrimination on any ground. However, Article 4 (4) of the Convention emphasizes that “special measures that are necessary to prevent and protect women from gender-based violence shall not be considered discrimination under the terms of this Convention”¹³⁷, meaning that special measures taken to protect only victims of domestic violence who are women, will not constitute a discrimination under the Convention, as women experience this form of the violence far more than men. It should be noted that, a similar “special measures” approach is indicated in the Article 4 (1) of CEDAW.

As mentioned above, Istanbul Convention comes with an extensive and detailed State obligation provisions, which place responsibilities on States to prevent the possible instances of domestic violence, protect the victims, prosecute the perpetrators, adopt integrated policies for combating domestic violence, as well as support data collection and awareness raising about the issue. A notable distinction in the Convention with this regard is the reference to the concept of “due diligence” laid down in Article 5 (2), which calls State Parties to “take the necessary legislative

¹³⁶ McQuigg, *The Istanbul Convention, Domestic Violence and Human Rights*.

¹³⁷ Istanbul Convention, Article 4(4)

and other measures to exercise due diligence to prevent, investigate, punish and provide reparation for acts of violence covered by the scope of this Convention that are perpetrated by non-State actors”¹³⁸. It should be noted that CEDAW General Recommendation No. 19 also makes a reference to the “due diligence” concept and it came to officially interpret the Convention as prohibiting violence against women in the public and private spheres, by holding States responsible “if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation”.¹³⁹

Istanbul Convention obliges State Parties to take measures for integration of policies and data collection related to domestic violence and all other forms of violence encompassed by the Convention, thus recognizing that domestic violence is a complex issue that requires input from a variety of actors and services.¹⁴⁰ Article 7 (1) of the Convention calls upon States to “adopt and implement State-wide effective, comprehensive and coordinated policies and relevant measures to prevent and combat all forms violence covered by the scope of Convention and offer a holistic response to violence against women.”¹⁴¹ Subsequent paragraphs of Article 7, as well as Articles 8 and 9, specify policies and measures required to be taken, such as victim-centered approach to the problem, co-operation between all relevant agencies, organizations, institutions, actors, civil society organizations, including allocation of financial resources for the implementation of programmes and policies, support for NGO’s and civil society that work and fight against violence against women.¹⁴² It should be noted, however, that according to the Explanatory Work to the Convention, Article 9 doesn’t oblige State Parties to support organizations that fight against

¹³⁸ Istanbul Convention, Article 5 (2)

¹³⁹ CEDAW General Recommendation No. 19, para 9

¹⁴⁰ McQuigg, *The Istanbul Convention, Domestic Violence and Human Rights*.

¹⁴¹ Istanbul Convention, Article 7 (1)

¹⁴² McQuigg, *The Istanbul Convention, Domestic Violence and Human Rights*.

domestic violence against men, thus reflecting and highlighting the primary focus of the Convention.¹⁴³

Istanbul Convention recognizes the importance of raising awareness about the issue of domestic violence within society and the need for data collection and research on the roots and causes of the problem for the improvement of the responses against it. It places an obligation on States to collect regular relevant data on all forms of violence against women and support research in this field to study the causes and effects of all forms of violence encompassed by the Convention. It also obliges State parties to take measures to eradicate prejudices, customs, traditions and practices that promote violence against women, encourage all members of the society to contribute in the prevention of all forms of violence against women. States are also obliged to conduct awareness raising programs about different manifestations of violence covered under the scope of the Convention among general public, including dissemination of information on the prevention of violence against women in educational facilities, media, private sector, etc. Provisions relating to the adoption of awareness raising measures are also present in the CEDAW General Recommendation No. 19 and no. 35.¹⁴⁴

Significant attention has been drawn to the educational interventions and trainings for professionals and service staff that directly work with the victims or perpetrators of acts of all forms of violence covered by the Convention. According to the Explanatory Report to the Convention, trainings should be provided to professionals in the judiciary, those in legal practice, law enforcement agencies, as well as to those working in health care, education and social work.¹⁴⁵

¹⁴³ Council of Europe, Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, 2011 available at <https://rm.coe.int/16800d383a>

¹⁴⁴ McQuigg, *The Istanbul Convention, Domestic Violence and Human Rights*.

¹⁴⁵ Council of Europe, Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, 2011 available at <https://rm.coe.int/16800d383a>

The importance of training relevant professionals was also previously recognized by CEDAW Committee and was mentioned in General Recommendation No. 19 and was referred to in more details in the General Recommendation No. 35.

State Parties to the Convention are required to take appropriate measures to provide treatment programs for the perpetrators of domestic violence and specific support services and protections to the victims. Under Article 16 (1) States are required to set up programs aimed at teaching perpetrators to adopt non-violent behavior in their relationships, while Article 16 (2) goes further, emphasizing that these programs should be carried out with close co-operation with victim support services and with the safety and human rights of victims in mind. CEDAW General Recommendation No. 19 also addresses the issue of the need to educate and rehabilitate perpetrators of violence against women.¹⁴⁶

The Convention places significant attention on the support services to women, recognizing that legal interventions alone are not sufficient to fully address the complex problem of domestic violence. Provisions that focus on the victim support services are very specific, detailed and are supported by the research related to the needs of victims of domestic violence carried out in Europe in the past years.¹⁴⁷ The Convention therefore sets out requirements of the measures to be taken with regards to the provision of support services to victims, including protection of all victims from further acts of violence, adoption of measures based on the safety of the victims and understanding of the gendered nature of violence against women and domestic violence, measures that avoid secondary victimization and promote empowerment and economic independence of women. Moreover, Article 18(4) of the Convention states that the support services should be available and provided to victims regardless of the fact whether or not the victim wants to press

¹⁴⁶ McQuigg, *The Istanbul Convention, Domestic Violence and Human Rights*.

¹⁴⁷ McQuigg.

charges against the perpetrator.¹⁴⁸ Under the support measures, States are required to provide services to all the victims of domestic violence and their children, provide, in sufficient numbers, for appropriate, safe and easily accessible shelters, set up free of charge helplines for victims around their territory, and ensure that the provision of all the services is carried out with due consideration to the rights and best interests of child witnesses of all forms of violence that fell under the ambit of the Convention. The importance for victim support services and protective measures, such as refuges, counseling, and rehabilitation services, is also recognized by the CEDAW General Recommendation No. 19 and General Recommendation No. 35.

The Convention also obliges State parties to make sure victims get adequate and timely information about the available support services and legal measures and provide victims access to services which will facilitate their recovery from the violence, including health care, social services, psychological counseling, legal aid, financial support, accommodation, assistance with finding employment.¹⁴⁹ States are required, under the Convention, to make sure information on and access to relevant regional and international complaint mechanisms are available to the victims.

Istanbul Conventions recognizes the importance of adequate civil and criminal measures for the prevention of all forms of violence against women and their protection. The Convention requires State Parties to have adequate civil measures in place in their national legislations to provide victims with civil remedies against their perpetrators and state agents who failed to undertake preventive and protective measures. Considerable emphasize is placed on the provision of restricting or protection orders, obliging State Parties to ensure protection orders are available to all victims without any delay and without imposing any financial or administrative burden on them.

¹⁴⁸ Istanbul Convention, Article 18 (4)

¹⁴⁹ McQuigg, *The Istanbul Convention, Domestic Violence and Human Rights*.

Restrictive or protection orders should be available to the victims irrespective of other legal proceedings going on and should be allowed to be used in legal proceedings. General Recommendation No. 19 of the CEDAW Committee also mentions the importance of the availability of civil remedies for the victims to protect them from the violence taking place in the private sphere. It's worth mentioning that Istanbul Convention is the first international legally binding instrument that obliges State Parties to prevent violence against women through protection orders.¹⁵⁰

As for the criminal measures, State obligations under the Convention come with an impressive amount of detail. It should be noted, however, that the States are not required to enact a specific offence of domestic violence, yet they have an obligation to ensure that acts constituting domestic violence under the Convention are criminalized. States are obliged to criminalize physical and sexual violence and the intentional impairment of the victim's psychological integrity through threats and coercion.¹⁵¹ States also have an obligation to make sure investigations and other judicial proceedings related to the cases of all forms of violence covered by the Convention are carried out without delay and with the rights of the victims in the center of criminal proceedings. As for the measures, States must "ensure the effective investigation and prosecution of offences",¹⁵² "ensure that law enforcement agencies respond promptly and appropriately to instances of violence against women by offering adequate and immediate protection to victims",¹⁵³ ensure that competent authorities are granted the power to order, in situation of immediate danger, a perpetrator of

¹⁵⁰ Rosa Logar and Johanna Niemi, "Emergency Barring Orders in Situation of Domestic Violence: Article 52 of the Istanbul Convention," A collection of papers on the Council of Europe Convention on preventing and combating violence against women and domestic violence, June 2017, 50, <https://rm.coe.int/article-52-convention-istanbul-english-version/168073cae6>.

¹⁵¹ Istanbul Convention, Article 33

¹⁵² Istanbul Convention, Article 49(2)

¹⁵³ Istanbul Convention, Article 50(1)

domestic violence to vacate the residence of the victim at risk for a sufficient period of time, and prohibit the perpetrator from contacting the victim”,¹⁵⁴ “ensure that prosecutions of offences are not wholly dependent upon the complaints filled by victims, and that the proceedings may continue even if the victim withdraws her complaint”¹⁵⁵, “ensure the possibility of governmental and non-governmental organizations and domestic violence counsellors to assist and/or support victims, at their request, during investigations and judicial proceedings concerning the offences.”¹⁵⁶ States are also obliged to inform the victims if the perpetrator has been released or has escaped from detention in cases where their safety is threatened, about their rights and the services available at their disposal and about the progress of investigations and legal proceedings.¹⁵⁷ Measures must be taken to avoid contact between the victims and perpetrators at court, allow the victims to provide evidence and have their views and concerns heard during the proceedings, and enable them to testify in court using appropriate communication methods that doesn’t require them confront the perpetrator.¹⁵⁸ Article 46 of the Conventions points out the list of aggravating situations that should be taken into consideration while determining the severity of the criminal sanctions related to the offences of domestic violence. These factors include, among others, factors such as the perpetrator’s past criminal record, if the offence was committed repeatedly, if the perpetrator was cohabiting with the victim, if the offence was extremely violent or was committed in front of the child, if the perpetrator used weapons, etc.¹⁵⁹ As mentioned above, CEDAW General Recommendation No. 35 also put a substantial amount of attention to the criminal measures States should have in place to tackle the cases of domestic violence.

¹⁵⁴ Istanbul Convention, Article 52

¹⁵⁵ Istanbul Convention, Article 55(1)

¹⁵⁶ Istanbul Convention, Article 55(2)

¹⁵⁷ Istanbul Convention, Articles 56 (1), (1c)

¹⁵⁸ Istanbul Convention, Article 56 (1) (1d),(1g), (1i)

¹⁵⁹ Istanbul Convention, Article 46 (a), (b),(d),(f),(i)

Istanbul Convention is also sensitive to the problems of migrant women and addresses the protection of migrant women and asylum seekers. Article 59 of the Convention relates to the residence status of victims of domestic violence whose status is dependent on that of the spouse or partner, placing a duty on States to ensure that in cases of dissolution of the marriage or the relationship the victims are granted an autonomous residence permit upon application, to enable the victims to obtain suspension of the proceedings leading to the expulsion and apply for an autonomous residence permit, issue a reusable residence permits for the victims where necessary, based on the personal situation or for the purposes of investigation and criminal proceedings.¹⁶⁰ Articles 60 and 61 of the Convention spell out the importance of the past developments in international refugee law and provide legal basis for the interpretation of the key concepts of the 1951 Convention Related to the Status of Refugees.¹⁶¹ Article 60 (1) requires a gender sensitive interpretation of the 1951 Convention, requiring States to prosecute gender-based violence against women within the meaning of Article 1 of the Convention. Article 61(2) requires State Parties to make sure women victims of violence who need protection and whose lives are threatened upon the return to any country, are not subject to return to those countries.¹⁶²

3.3 Monitoring Mechanism: GREVIO

Articles 66 to 70 set out the principles of the monitoring mechanisms of Istanbul Convention.¹⁶³ As established under Article 66 (1), the Group of Experts on Action against Violence Against Women and Domestic Violence, also known as GREVIO, is responsible for monitoring the

¹⁶⁰ Istanbul Convention

¹⁶¹ “Refugee Women and Istanbul Convention. Preventing and Combating Sexual and Gender-Based Violence” (Council of Europe, January 23, 2013).

¹⁶² Istanbul Convention

¹⁶³ McQuigg, *The Istanbul Convention, Domestic Violence and Human Rights*.

implementation of the Convention by parties. GREVIO is an independent monitoring body, composed by 10-15 members, depending on the current number of the ratifications of the treaty, and considering gender and geographical balance. GREVIO members are elected by the Committee of Parties for the period of four years and should be nationals of the state parties.

Istanbul Convention comes with two monitoring procedures: the country reporting procedure and the special inquiry procedure.¹⁶⁴ The main monitoring mechanism is the reporting procedure, which require state parties to submit a report on the legislative and other measures taken for the implementation of the provisions of the Convention. The report should be submitted to the Secretary General of the Council of Europe, and should be based on the questionnaire prepared by GREVIO. Civil society groups and non-governmental organizations can also submit an alternative report with the information on the implementation of the Convention by the state concerned. This aspect of the monitoring is in line with the practice of the CEDAW Committee, where NGOs can submit shadow reports to the Committee in addition to the State report. It should be noted, however, that there is a specific timeline adopted by the GREVIO for the monitoring of state parties, based on the order in which states ratified the Convention, and taking into account legal system and geographical location of the states. According to the timeline only two states are required to submit their reports at one time. This approach was taken to avoid the problems of backlogs and delay related to the evaluation of the reports submitted by State parties. The first two states to submit their questionnaires to the Committee were Austria and Monaco in 2016.¹⁶⁵

The assessment of the reports is divided into two rounds. It's worth mentioning, that the evaluation of the reports is based on the specific provisions of the Convention, initially chosen by the

¹⁶⁴ Council of Europe, "About GREVIO Monitoring," Istanbul Convention. Action against violence against women and domestic violence, n.d., <https://www.coe.int/en/web/istanbul-convention/about-monitoring1>.

¹⁶⁵ McQuigg, *The Istanbul Convention, Domestic Violence and Human Rights*.

GREVIO.¹⁶⁶ Therefore, the States are assessed for the compliance not with the whole Convention, but only some specific provisions of it. The approach adopted by GREVIO is believed to come with some advantages. First, it will allow for a more detailed examination of the information on the selected aspects of state compliance and will enable GREVIO to work in a more efficient manner and avoid the possible backlogs, that have become a problem for the UN human rights treaty bodies. Moreover, States will be required to be more detailed and specific in their reports related to the issue of violence against women, than they are in their CEDAW reports. After examining the report submitted by a State party, GREVIO prepares a draft report on the analysis of the implementation of the selected provisions, as well as issues its recommendations related to any difficulties the State encountered while meeting its obligations.¹⁶⁷

Under Article 68(1) of the Istanbul Convention, GREVIO may request an urgent special report from any State party, related to the measures taken to prevent serious and massive occurrences of violence against women, if it receives a reliable information about such situation. Moreover, depending on the reliability of the information received, GREVIO may appoint one its members to conduct an inquiry and report back to it, and even make a visit to the State after obtaining the consent of the latter. After the examination of the information collected about the situation, GREVIO will transmit the findings to the State concerned together with comments and recommendations.

While the inquiry procedure under Istanbul Convention is very similar to the one under CEDAW, it should be noted that provisions of CEDAW do not include an inquiry procedure. It's the Optional Protocol to CEDAW that established such a procedure for the State parties. However, the Optional

¹⁶⁶ McQuigg.

¹⁶⁷ McQuigg.

Protocol is optional, and States are under no obligation to ratify it.¹⁶⁸ In contrast, the inquiry procedure is incorporated into the Istanbul Convention and no reservations are allowed to be made with regard to this aspect. State parties to the Convention are, therefore, subject to the inquiry procedure. Interestingly enough, Istanbul Convention lacks the individual complaints mechanism, which is available under CEDAW after the Optional Protocol came into force.

3.4 Chapter Conclusion

Istanbul Convention is another ground-breaking regional treaty that aims at protecting women from gender-based violence and domestic violence. It's a far-reaching international instrument which is distinguished among other regional treaties with its very detailed provisions and holistic approach to the problem of gender-based violence against women and domestic violence.¹⁶⁹ The mere adoption of the Convention clearly shows the recognition of the problem of gender-based violence against women within the Council of Europe member States and the urgent need to take action over it. The Convention was adopted based on the recent developments in understanding of the problem of domestic violence and moved the international legal framework a step forward to effectively address all forms of violence against women covered by the Convention. Although the provisions and measures contained in the Convention are not new in general, and were mentioned by the Convention of Belém do Pará and Maputo Protocol, and recommended by the CEDAW Committee in its General Recommendation No. 19. However the legally binding nature of the treaty and the degree of precision in which the States obligations are spelled out in the Istanbul

¹⁶⁸ McQuigg.

¹⁶⁹ "Refugee Women and Istanbul Convention. Preventing and Combating Sexual and Gender-Based Violence."

Convention make it stand out.¹⁷⁰ It's the first legally binding regional instrument to define gender-based violence against women, and to require States to criminalize its various forms, including physical and sexual violence, sexual harassment, forced marriage, forced abortion, female genital mutilation, etc. It's the first international treaty to refer to the due diligence standard and to require States to "prevent, investigate, punish and provide reparation for acts of violence perpetrated by non-state actors."¹⁷¹ The Convention is also innovative with its gender-neutral approach to the problem of domestic violence, asserting that it provides protection not only for female victims of domestic violence but also for male victims who suffer harm within inter family relationships. It explicitly mentions that the Convention includes women and girls and applies in the context of peace and armed conflict. Istanbul Convention recognizes the complex nature of the problem of gender-based violence against women by requiring states to take coordinated measures against it that include involvement and input from multiple stakeholders that work closely together.

¹⁷⁰ McQuigg, *The Istanbul Convention, Domestic Violence and Human Rights*.

¹⁷¹ Istanbul Convention, Article 5(2)

4. Austria's National Legislation on Violence against Women

In May 1997, after two years of preparatory work, the Federal Act on Protection Against Domestic Violence entered into force in Austria.¹⁷² The Act protects people who have suffered violence in their homes, and is based on the protection of women and children, requiring that victims of domestic violence stay in their homes, while the perpetrators of violence should leave the house and social surroundings. Austria's Act has served as an example for many European countries for its effective intervention policies and the extensive support services provided to the victims.

The aim of this chapter is to provide an analysis of the Austrian national legislation, while highlighting its key elements and good practice indicators. It also aims to illustrate how CEDAW Committee and GREVIO Committee observations and recommendations helped to improve the State's response to violence against women over time by giving an overview of the relevant reports. Since the scope of the thesis is limited to the violence against women and domestic violence, only the relevant parts of the reports will be discussed.

4.1 Federal Act on Protection Against Domestic Violence

Austria, officially called the Republic of Austria, is a small country in the Central Europe, with a population of over 8.5 million people. It's a parliamentary democracy consisting of nine federal states, which joined the European Union in 1995.

In the early 1990's new strategies for fighting against violence against women emerged in many European countries.¹⁷³ Women's movement activists were dissatisfied with the lack of effective

¹⁷² Andreas Hösch et al., "Ten Years of Austrian Anti-Violence Legislation" (International Conference: Sop Domestic Violence Against Women, Vienna, Austria: Federal Chancellery – Federal Minister for Women and Civil Service, 2008).

¹⁷³ Rosa Logar, "The Austrian Model of Intervention in Domestic Violence Cases. Paper Presented at the Expert Group Meeting 'Violence against Women: Good Practices in Combating and Eliminating Violence against Women',

protection for women suffering from violence and with the police and courts being negligent to the situation. In Austria, women's organizations were not satisfied with the police responses to the cases of violence against women, and with the approach that violence against women was considered a private matter. This wave of criticism led to the police asking the local women's organizations to carry out training for the police officers. Later, in 1990's, women's shelters raised concerns about the situation finding it unjust that women and children had to move into shelters to protect themselves from the violent perpetrator, while the latter could stay home. These concerns and criticism laid foundation for a research for practices in the international level, that could serve as a model for the protection of those who suffered violence at home.¹⁷⁴ Triggers for change in Austria came from the international arena.¹⁷⁵ The feminist "Women's Rights are Human Rights" campaign and the 1993 UN Human Rights Conference in Vienna played an important role in advancing anti-violence activities, and led to the establishment of the inter-ministerial working group which was mandated to develop measures for the protection of women and children experiencing violence at home. The working group was composed of experts from women's NGO's, police officers, feminist lawyers and judges. The Domestic Abuse Intervention Program in Duluth/Minnesota served as a model for the development of intervention activities and as a result of the efforts of the working group the "Protection Against Violence Act" was adopted which entered into force in May 1997.¹⁷⁶ Since its adoption the Act has been amended several times, each time extending the protection measures for the victims as well as their children. First improvements

Division for the Advancement of Women.,” 2005, <http://www.un.org/womenwatch/daw/egm/vaw-gp-2005/docs/experts/logar.dv.pdf>.

¹⁷⁴ Hösch et al., “Ten Years of Austrian Anti-Violence Legislation.”

¹⁷⁵ Logar, “The Austrian Model of Intervention in Domestic Violence Cases. Paper Presented at the Expert Group Meeting ‘Violence against Women: Good Practices in Combating and Eliminating Violence against Women’, Division for the Advancement of Women.”

¹⁷⁶ Hösch et al., “Ten Years of Austrian Anti-Violence Legislation.”

of the Act took place after the amendment of the Security Police Act in 2000, and the Enforcement Code in 2004. A comprehensive revision of the measures was carried out with the second Protection Against Violence Act in 2009, and was further improved with the Security Police Act amendments of 2013.¹⁷⁷

The Act created statutory prerequisites to provide fast and comprehensive protection to the victims of domestic violence by imposing barring orders against the perpetrator and allowing the endangered person to stay in the dwelling.¹⁷⁸ It aims to assert victims' rights to support and comprehensive protection from domestic violence by police and grant victims and their children the possibility to stay in their homes.¹⁷⁹

The Act is based on the three underlying elements: eviction and barring orders issued by the police, protection with temporary injunction under civil law, and comprehensive support to the victims. It also introduced other protective measures for the victims, such as the establishment of intervention centers in each of the nine provinces in the state, where victims can get immediate and proactive support.¹⁸⁰ Under the Act the police have an obligation to intervene in the cases of domestic violence and remove the perpetrator from the house immediately, thus protecting the safety of the woman who suffered from violence through eviction or barring orders.¹⁸¹ Barring order is used as a measure to prevent the violence to occur and to free the victim from the influence of abuser.

Initially, when the Act was first adopted in 1997, the duration of the barring orders was only 7

¹⁷⁷ "Domestic Violence : Topics : Federal Chancellery of Austria," accessed November 24, 2018, http://www.oesta.gv.at/site/cob__37000/6845/default.aspx.

¹⁷⁸ "Domestic Violence : Topics : Federal Chancellery of Austria."

¹⁷⁹ "Victims' Rights to Support and Protection from Violence. Legislation for the Protection From Violence in Austria," September 2013.

¹⁸⁰ Logar and Niemi, "Emergency Barring Orders in Situation of Domestic Violence: Article 52 of the Istanbul Convention."

¹⁸¹ "Victims' Rights to Support and Protection from Violence. Legislation for the Protection From Violence in Austria."

days, but it was subsequently prolonged to 14 days following the amendment of the Act in 2009. Before the 2013 amendment, the emergency barring orders only applied to the home and its immediate surroundings. After the amendment the perpetrators can be banned from schools and kindergartens if the safety of the children is at risk, and in cases of threats and stalking, barring orders can be used to protect women and children in shelters. Police is authorized to issue the barring orders in cases of imminent danger to life, health or freedom of a person, which should be issued free of cost both for the victim and for the perpetrator.¹⁸² Once the barring order is issued, and for its whole validity period, the perpetrator is prohibited to enter the defined protection area and its surroundings, even with the permission of the victim. In cases of the violation of the barring order, the perpetrator is fined and can be arrested and criminally prosecuted if non-compliance continues and the endangered person is injured or threatened.¹⁸³ Barring order applies to every person in danger of violence at home and its surroundings irrespective of the kinship and without discrimination on any ground. It, thus provides protection to same-sex partners, old people, children, young people, as well as migrant women who have experienced violence at home.¹⁸⁴ As pointed out above, barring orders are valid for two weeks. If, after two weeks, the victim still needs protection from the State, there is a possibility to obtain longer term protection by applying for temporary injunction from a Civil Law Court. The civil law injunction is issued promptly to make sure the protection of the victim is not interrupted.¹⁸⁵ Pursuant to the Enforcement Code endangered persons can apply for prolonged protection against violence in apartments for a

¹⁸² Logar and Niemi, "Emergency Barring Orders in Situation of Domestic Violence: Article 52 of the Istanbul Convention."

¹⁸³ "Domestic Violence : Topics : Federal Chancellery of Austria."

¹⁸⁴ "Victims' Rights to Support and Protection from Violence. Legislation for the Protection From Violence in Austria."

¹⁸⁵ Logar, "The Austrian Model of Intervention in Domestic Violence Cases. Paper Presented at the Expert Group Meeting 'Violence against Women: Good Practices in Combating and Eliminating Violence against Women', Division for the Advancement of Women."

maximum of six months, for general protection against violence issued for a maximum of one-year period, and, under certain conditions, for protection against invasion of privacy, the so-called stalking injunction. In cases of concurrent applications for injunctions and initiation of related legal proceedings, the interim injunctions can be extended up to the termination of the proceedings.¹⁸⁶ The temporary injunctions aim to prohibit the endangering person from entering the precisely defined places, and to refrain the perpetrator from meeting or contacting the victim.

As shown above police has an important function in the intervention measures in domestic violence cases, and it's crucial that people trust the police and the overall criminal justice system. Victim-centered approach and professional attitude to the problem are crucial for building confidence with the police authority. The Austrian Protection Against Violence bill involves a number of good practice indicators, which proved to be effective in the violence intervention cases, including prompt response to calls, careful assessment of the situation and evidence, informing the victims about their rights and available support services, the implementation of barring orders, monitoring the compliance with the barring order, cooperation of the police with other institution, etc.¹⁸⁷

The support of victims constitutes an integral part of the Act.¹⁸⁸ The obligation of the State to prevent violence and to protect victims was met by establishing Intervention Centers in each of nine provinces in Austria, which are fully funded by the government. The police inform the endangered persons about their right to judicial protection, provides information about where they can get help and assistance, and should inform the regional intervention center about all the cases

¹⁸⁶ "Domestic Violence : Topics : Federal Chancellery of Austria."

¹⁸⁷ Logar, "The Austrian Model of Intervention in Domestic Violence Cases. Paper Presented at the Expert Group Meeting 'Violence against Women: Good Practices in Combating and Eliminating Violence against Women', Division for the Advancement of Women."

¹⁸⁸ Logar.

of domestic violence within 24 hours. The staff at the intervention centers is properly trained to work with victims of violence, and to assist them in dealing with different aspects of their situation.¹⁸⁹ The intervention centers function proactively, that is, instead of waiting for the victims to contact them, they get in contact with the victims by calling or writing emails. The safety of the victims lies at the core of the support services provided by intervention centers. A careful thought is given to the assessment of the current state of the situation to determine the safety measures, that is whether the eviction of the perpetrator will ensure the protection of the endangered person, or the latter should rather move into a safer place or a shelter.¹⁹⁰

Women who have experienced domestic violence and have little or no financial means are provided financial aid and are assisted in finding housing in the intervention centers. During the last decades considerable investments were made in social housing in Vienna, allowing women who have suffered from violence to find affordable housing. Social Welfare Offices are in close contact with the intervention centers that help women fleeing their houses obtain social aid without lengthy administrative procedures. Immigrants are also eligible for social housing.

To be able to enforce their rights and claims victims of violence are entitled to free of charge legal and psychological assistance during court proceedings under the Code of Criminal Procedure and Code of Civil Procedure. Court assistance is provided promptly, and includes accompanying the person when making a report to the police, preparing the person for criminal proceedings, accompanying them to the questioning at the court and to the trial, and legal representation in

¹⁸⁹ Logar and Niemi, “Emergency Barring Orders in Situation of Domestic Violence: Article 52 of the Istanbul Convention.”

¹⁹⁰ Logar, “The Austrian Model of Intervention in Domestic Violence Cases. Paper Presented at the Expert Group Meeting ‘Violence against Women: Good Practices in Combating and Eliminating Violence against Women’, Division for the Advancement of Women.”

criminal proceedings by a lawyer.¹⁹¹ Since 2009, psychological assistance is available to the victims in civil proceedings, if they are factually related to criminal proceedings. Court assistance in all provinces is organized by victim's protection organizations, and victims can get court assistance in intervention centers and violence prevention shelters.

Work with perpetrators of violence is an integral part of the intervention approach implemented in Austria.¹⁹² The intervention center in Vienna together with the Men's Center in Vienna provide anti-violence trainings to perpetrators, with the goal to make the life of victims and their children safer. The perpetrators are obliged to participate in the training upon the order of the court or the Youth office. The trainings are held weekly in group sessions under the supervision of two trainers and last for 32 weeks.

Counseling and other follow-up measures are carried out by the intervention centers even months after the victims have experienced violence. The Intervention Center in Vienna gets back to the victims three months later again to maintain contact with them and offer support. These follow-up measures proved to be effective, since it makes it easier for the victim to ask for help in cases of emergency, and are important for the perpetrators as well, because they get to know that their family is still under state attention, and they cannot go back to the violent behavior.¹⁹³

At the core of the intervention policies in domestic violence cases is the multi-agency cooperation and the focus on the safety and protection of the victim. The intervention centers make sure to coordinate the measures and make the intervention policies more effective by cooperating with all the institutions and stakeholders involved.¹⁹⁴ The strong cooperation with the police, social

¹⁹¹ "Victims' Rights to Support and Protection from Violence. Legislation for the Protection From Violence in Austria."

¹⁹² Logar, "The Austrian Model of Intervention in Domestic Violence Cases."

¹⁹³ Logar.

¹⁹⁴ Logar.

services, women's services, child protection, health system, courts and criminal justice system, is what makes the interventions measures prompt and effective.

4.2 Austria's Reports to CEDAW Committee

Bellow the reports of the Austria's government to the CEDAW Committee will be discussed. Since the scope of the thesis is limited the paper will discuss the recent country reports, mainly the Seventh/Eighth Austrian Country Report and the most recent one, the Ninth Austrian Country Report. With the scope of the thesis in mind, only the parts that related to violence against women and domestic violence will be summarized.

The first part of the Seventh/Eight Austrian country report focuses on the implementation of the recommendations made in the concluding observations by the CEDAW Committee. The Government points out to a number of improvements they made from 2004 to 2010 regarding the observations on preventing and combating violence against women.

The report states that preventing and eliminating all forms of violence against women is a priority for the Government, and a comprehensive approach to the problem is implemented to provide protection from domestic violence, prosecution of perpetrators, enforcement of victims rights and protection of their safety.¹⁹⁵ The report points out to the important measures that the Second Act on Protection against Violence of 2009 introduced, including criminalization of serial perpetration, more severe punitive sanctions for some sexual offences, extension of the fact constituting the crime of slavery, surveillance of the sexual offenders released from prisons on parole, etc. The anti-stalking section was added to the criminal code, making it possible for the victims of domestic violence, threats or sexual crimes, and their children obtain legal and psycho-social assistance,

¹⁹⁵ "Seventh/Eighth Austrian CEDAW Report to the United Nations" (Federal Chancellery – Federal Minister for Women and the Civil Service, Vienna 2011).

which was later extended to civil proceedings. With the amendment of the Civil Code the victims were granted far-reaching rights to information, and the right to be informed of the release of the perpetrator from the pre-trial custody or imprisonment. In 2009, the group of persons protected with the interim injunctions under the Act was extended, together with the validity period of the injunctions.¹⁹⁶

According to the report, the assistance provided to the victims of violence significantly extended since 2004. A number of regional protection centers were established, the budgeting for the centers was doubled, new women's shelters were built, and nationwide free of charge helpline has been widely publicized. The report emphasized the efforts made to strengthen the cooperation and coordination between all the agencies and institutions involved in protecting women against violence and pointed out that basic and advanced seminars were carried out for the staff of the women's protection services, including candidate judges. As a result of improved cooperation and coordination between all ministries, the platform against domestic violence was set up and a number of violence prevention projects were drafted and made available to parties involved. Considerable progress was made in systematic data collection and a central database for protection against violence was established. The report also emphasized the efforts made in the federal provinces in Austria, including awareness-raising projects, set up of round-the-clock helpline for women, establishment of special victim protection units in hospitals for early identification of cases of violence directed at women.¹⁹⁷

The second part of the report provides information on the advances made in the country related to the realization of the articles of the Convention. Regarding the Article 2 of the Convention, Austria made considerable improvements in the budgeting of the gender-mainstreaming strategy around

¹⁹⁶ Seventh/Eighth Austrian CEDAW Report to the United Nations, p 19

¹⁹⁷ Seventh/Eighth Austrian CEDAW Report to the United Nations, p 22

the country, which aims at achieving de facto equality between men and women. In 2009, a new national objective for budget policy was introduced in the Federal Constitution, requiring the Government, provinces and municipalities to ensure de facto equality in their budget management. As for the Article 3, Austria has taken considerable efforts to guarantee women human rights and fundamental freedoms. Financial support to gender-sensitive projects rose by 65 percent¹⁹⁸, political education and human rights education with a focus on gender issues were introduced as subjects in the curricula of schools, telephone line was established offering free counseling to girls, gender equality became one of the main criteria for funding art projects, and a project for supporting Roma women was established, with a focus on women-specific needs.

Specific measures were taken for the advancement of de-facto equality of women. Federation of Austrian Social Insurance Institutions was obligated to eliminate the existing under-representation of women in self-governing bodies and appoint women to higher-level jobs, to elaborate plans for the advancement of women and admission of women to trainings that will help them qualify for higher level jobs. Gender-mainstreaming in Austrian universities has resulted in a better participation of women in academic life.

As for Article 16, a hotline was set in the city of Vienna, providing counseling for women, with a focus on family and marriage law. Also, a working group on forced marriages was set up. In Vorarlberg, centers were established to provide counseling for family-related matters, protection of children and advise related to divorce proceedings.¹⁹⁹

4.2.1 Concluding Observations on the Seventh/Eighth Periodic Reports of Austria

¹⁹⁸ Seventh/Eighth Austrian CEDAW Report to the United Nations, p 31

¹⁹⁹ Seventh/Eighth Austrian CEDAW Report to the United Nations, p 45

For the purposes of the current paper, only the remarks and observations related to violence against women will be discussed. The general comments on the report will be shortly summarized.

The Committee welcomed the establishment of equality objectives for federal Ministries and other supreme administrative bodies under the Federal Constitution and positively commented on the efforts of the Equal Treatment Commission and other bodies on the protection and promotion of women's equality.²⁰⁰ However, the Committee expressed concerns on the lack of measures to address multiple forms of discrimination that women experience, and urged the State to conduct a study to assess to which extent these women are compensated under the current legislation, and what are the benefits or barriers of including this form of discrimination into the available measures. The Committee pointed out the existing structure of the State, and stated that although there is an institutional link between the State and provinces, that might not be sufficient for the implementation of the Convention throughout the country. It urged the Federal State to provide for efficient coordination between the Federal State and the provinces, and to make sure equality legislation and national action plans are effectively implemented across the country. The Committee was also concerned with the absence of a comprehensive national gender equality action plan and suggested that the State develop a comprehensive national human rights action plan with a focus on gender equality and with the involvement of all governmental and non-governmental stakeholders.²⁰¹

With regard to violence against women, the Committee was concerned with the absence of the national action plan on the violence against women, the lack of solution for the residency permits for migrant women living with abusive partners, lack of data on the number of murders of women

²⁰⁰ Committee on the Elimination of Discrimination and against Women, "Concluding Observations on the Seventh and Eighth Periodic Reports of Austria, Adopted by the Committee at Its Fifty Fourth Session" (United Nations, March 2013).

²⁰¹ Concluding Observations on the Seventh and Eighth Periodic Reports of Austria, paras 12-13

committed by their partner or ex-partner, and the insufficient training of the judiciary.²⁰² The Committee also commented on the insufficient number of places available at the shelters for victims and was concerned with the fact that the asylum-seeking or undocumented women do not have access to the shelters. Therefore, the Committee recommended that the State adopt a comprehensive national action plan on violence against women, ratify the Istanbul Convention, address the issue of the residence permit of migrant women, and provide efficient training to the judiciary including training on the protection of victims of gender-based violence. It was also recommended that the State increase financial support for shelters and provide national coverage that will not be restricted to asylum-seekers and undocumented women.

4.2.2 Ninth Austrian Country Report

Austria submitted its latest country report to CEDAW Committee in 2017. The report, again, focuses on the implementation of the concluding observations of the Committee given based on the previous seventh/eight report, and the advancements made in the implementation of the Convention in general.

As for the observations of the Committee related to the violence against women, the report emphasizes that an inter-ministerial working group on the Protection of Women Against Violence has been institutionalized and extended, and two sub-working groups were established to focus on the work with perpetrators for the victim protection and trainings in the health care sector.²⁰³

Austria has ratified Istanbul Convention in 2013, and in accordance with its Article 10, a national coordinating body was established in the Ministry of Women dealing with violence against

²⁰² Concluding Observations on the Seventh and Eighth Periodic Reports of Austria, para 24

²⁰³ “Ninth Austrian CEDAW Report to the United Nations” (Federal Minister of Health and Women’s Affairs (BMGF), Vienna 2017), https://www.frauen-familien-jugend.bka.gv.at/dam/jcr:e6d2d5f4-8721-4cb3-8f70-71cd221c7417/9th_austrian_cedaw_report.pdf.

women. Seminars focused on violence against women were made mandatory as part of the trainings provided to candidate judges, which include information about Protection against Violence Act, victim protection, legal and psychological assistance to the victims, etc. Trainings on sexualized violence, stalking, domestic violence, the rights of victims and danger assessment models were made available for judicial staff.²⁰⁴

Considerable efforts were made to continue and extend awareness-raising campaigns and projects on all forms of violence against women throughout the country. A campaign called “Life Free of Violence” was carried out in 2014/2015²⁰⁵ aiming to spread awareness about the issue, encourage and support parties in implementing projects against violence, and provide information to different groups of professionals. It’s worth mentioning that a free of charge smartphone app called *Help* has been launched for girls and women in 2013, which helps them quickly and easily get in touch with support centers and includes emergency phone numbers of police and helplines. The app is available in German, English, Turkish, Bosnian, Croatian, Serbian.

Gender aspects were incorporated into the National Strategy on Violence Prevention in Schools through teaching materials, workshops, dialogues, aiming to address issues of stereotypes about beauty, bullying at schools, violence against women and girls, honor crimes, etc.

As for the measures taken in the federal provinces, the report points out that in Vorarlberg professionals working in the care and healthcare areas were provided trainings to recognize domestic violence as a potential cause of injuries suffered by women, and to provide adequate services to them. In Styria, various events on perpetrator work for victim protection were organized with the aim of raising awareness and providing networking opportunities for the regional actors. In Vienna, an initiative called Vienna Action Plan Against FGM was launched, and seminars were

²⁰⁴ Ninth Austrian CEDAW Report to the United Nations, p 18

²⁰⁵ Ninth Austrian CEDAW Report to the United Nations, p 18

held for kindergarten teachers, hospital staff members and youth social workers. The number of the available places in women shelters increased, offering 766 places for women and their children.²⁰⁶

The rights of victims in criminal proceedings were extended, giving the group of emotionally affected victims the right to psycho-social and legal assistance in criminal proceedings. Moreover, highly vulnerable victims, such as underage victims or those subjected to domestic violence were granted extended victim rights, including, language support, interrogation by the same sex interrogator, interrogation without the presence of the perpetrator, and the right to being officially informed about the escape or release of the accused from the detention. In addition, the EU Regulation on mutual recognition of protection measures in civil matters became applicable in Austria in 2015, making it possible for the victims of domestic who have been granted a protection measure in an EU country to use the protection when moving into or visiting another EU state.²⁰⁷ Austria has progressed considerably with regards to the implementation of the Convention as well. The report points out that Austria has committed to implementing gender-mainstreaming in to the line ministries, in legislative processes, in public procurement and funding. Amendments to the Equal Treatment Act and the Federal Act on the Equal Treatment Commission has led to better protection of women against discrimination, including clarification of terms marital and family status and amendment of equal treatment legislation in all provinces. Federal administration staff has been provided seminars and trainings about gender and equality, and promotion plans for women were developed and published. The Amendment of the Federal Service Code in 2011 raised the quota for women in federal service up to 50 percent.²⁰⁸

²⁰⁶ Ninth Austrian CEDAW Report to the United Nations, p 19

²⁰⁷ Ninth Austrian CEDAW Report to the United Nations, p 21

²⁰⁸ Ninth Austrian CEDAW Report to the United Nations, p 39

As for the Article 12 of the Convention, an important step was the development of the Action Plan of on Women's Health, which is a framework for a coordinated approach for actors involved in the promotion of women's healthcare. It aims to provide more gender-sensitive healthcare and services for women and girls in different stages of their lives. In the context of domestic violence, a special working group was established which aims to integrate prevention of violence against women into the agenda of health care professionals. In addition, a short guide for the documentation of violence victim injuries was developed for medical and care professionals, to make the demonstration of evidence easier in criminal proceedings. Actions were also taken in the federal provinces, including exhibitions about women's health in Burgenland, workshops about contraception were provided funding in Salzburg, and the health promotion program in Vienna started using gender checks for assessing funding applications.²⁰⁹

For the measures taken against violence in the family, Austria has granted public funding to the Federal Working Group on Perpetrator Work since 2012, which works with the people who have used violence against their family members. A Working Group on Victim-Oriented Perpetrator Work was established as well, which focuses on implementation of the victim-oriented perpetrator work throughout the country. A legal guide was published in Burgenland in 2012, which provides help for women in all matters related to divorce, maintenance and custody.²¹⁰

4.3 GREVIO Evaluation Report

The first GREVIO evaluation report on Austria will be discussed in this part of the thesis. The report covers the assessment of measures taken by the Austrian authorities in relation to all aspects

²⁰⁹ Ninth Austrian CEDAW Report to the United Nations, p 44-45

²¹⁰ Ninth Austrian CEDAW Report to the United Nations, p 47

of Istanbul Convention. However, for the purposes of the paper, only the observations and comments related to the relevant measures for domestic violence will be discussed.

The report starts with highlighting the positive legal and policy measures implemented by Austria, and its leading role in introducing emergency barring and protection orders for the victims of domestic violence. However, the Committee has expressed concerns related to preventive, protective and prosecution measures implemented in Austria. In particular, GREVIO was concerned with the fact that less policy attention and funding was allocated to other forms of violence, as compared to domestic violence. Services provided to women with disabilities and asylum-seekers are limited. Concerns were raised about undertaken preventive measures, noting that those measures were mainly focused on domestic violence, and were mostly based on awareness-raising campaigns, rather than long-term preventive actions. It was noted that there is a lack of long-term measures for forced marriage or female genital mutilation, and those who seek help either deal with less well-trained professionals or don't have sufficient support services available for them.²¹¹

The GREVIO was concerned with the low conviction rates for all forms of violence, raising concerns about the role of prosecution services and criminal justice measures. It noted the extensive use of diversionary measures applied to the offences of domestic violence, which the GREVIO considered against the principles of the Istanbul Convention, that is provision of effective criminal measures. Another issue of concern for the GREVIO was the issue funding, which noted that financial resources available for National Action Plan on Violence against Women, policy-making and prevention measures, evaluation of measures are insufficient. It thus commented that the allocated budget does not meet the requirement of Istanbul Convention to

²¹¹ GREVIO, "Baseline Evaluation Report Austria" (Council of Europe, September 2017).

carry out comprehensive and coordinated measures for all forms of violence. Concerns were raised about data collection and research, strongly encouraging the authorities to improve data collection of law enforcement agencies, criminal justice sector, civil justice sector, healthcare system, and Federal Office of Immigration and Asylum.²¹²

Concerned with the lack of systematic training for professionals, GREVIO encouraged Austrian authorities to introduce systematic and compulsory trainings on violence against women and domestic violence for the healthcare professionals, and to provide stable funding for the training of law enforcement agencies by specialists at the women support services. GREVIO raised concerns about the small percentage of perpetrators attending domestic violence perpetrator programmes. It noted that the attendance is dependent on the conviction rate, but since the conviction rate is low in itself, the attendance is affected as well.²¹³

As for the protection and support services, GREVIO drew attention to a number of concerns, including the contrast in regional spread, number, and scale of the services provided for domestic violence victims and for other forms of violence. Moreover, the level of cooperation varied between these services as well, with higher level of cooperation for the services provided to victims of domestic violence. It was noted that there are only a few support centers available for migrant women that provide information on specific forms of violence, such as forced marriage, honor-related violence and female genital mutilation. Concerns were raised related to the fact that not all women were provided access to safe accommodation because of the lack of space in shelters. In some rural areas shelters were unavailable. Moreover, it was noted that the available shelters were not equipped well enough to accommodate women with disabilities or mental health conditions. Asylum-seeking women who are not entitled to the basic financial support from the

²¹² GREVIO.

²¹³ GREVIO.

government were excluded from accessing shelters. GREVIO thus encouraged the authorities to ensure comprehensive provision of services for all forms of violence, to set up adequately equipped shelters to accommodate women with disabilities and remove all funding and administrative obstacles that prevent asylum-seeking women to access safe accommodation.²¹⁴

Concerns were raised regarding the pre-trial detention practice in relation to serious domestic violence cases. It came to the GREVIO's attention that authorities were reluctant to detain perpetrators and would rather rely on a civil law protection measure, even in the cases of serious risk. GREVIO also noted, that the protection and barring orders are linked to the places rather than the victim as such and were excluding protection at the work place. It was noted that no barring or protection orders were available for other forms of violence covered by the Convention. As for the availability of compensation provided to the victims, GREVIO expressed concerns that the established criteria to obtain the compensation was excluding some victims from eligibility. Additionally, concerns were raised regarding eligibility criteria for psycho-social and legal support services, shortcoming in the practical implementation of protection measures during court proceedings, gender-based asylum claims, etc.²¹⁵

In its final remarks GREVIO welcome the efforts of the Austrian authorities in putting the issue of violence against women in the political agenda and pointed out on Austria's innovative policies and legal measures with regard to domestic violence. It noted that with the ratification of the Istanbul Convention, Austria introduced a number of new measures, which comply with the Convention requirements. GREVIO welcomed all the measures Austria has taken to meet the requirements of Istanbul Convention, in relation to a wide range of support services available to victims of domestic violence, federal support provided to NGO's working with the victims,

²¹⁴ GREVIO.

²¹⁵ GREVIO.

efficient work of the law enforcement agencies. However, as mentioned above, some concerns were raised related to different aspects of the obligations under the Convention, which still need to be improved and maintained.²¹⁶

4.4 Chapter Conclusion

As discussed above, Austria has developed a comprehensive system for the protection of women against violence and domestic violence. By adopting legal measures for evicting perpetrators accused of domestic violence from the house, Austria became a pioneer among EU countries to prioritize the safety and protection of the victims.²¹⁷ Austria's legislation against violence is adequately planned and well-implemented. The cooperation between police, intervention centers, courts, and social services together with victim-centered approach, form a comprehensive protection system, providing protection to every person who is affected by violence at home. However, the protection measures don't ignore the gendered nature of the issue of domestic violence, putting women and their needs at the very center of intervention policies.

The comprehensive protection system that Austria has today was not established overnight, but, was developed and extended over years. Although standards of protection set by CEDAW and Istanbul Convention with regard to violence against women are demanding, Austria has demonstrated a strong commitment to its treaty obligations. By meeting its obligations under CEDAW and Istanbul Convention, Austria succeed in developing a comprehensive and well-coordinated framework for the protection of women, thus proving that isolated measures of

²¹⁶ GREVIO.

²¹⁷ "Exchange of Good Practices and Legal Instruments in the Fight Against Gender-Based Violence Between Norway, Iceland and Spain" (The Ministry of Health, Consumption and Social Welfare, October 2014), [https://www.mscbs.gob.es/en/ssi/violenciaGenero/Documentacion/otrosInformes/DOC/Segundo_borrador_preliminar_\(english\).pdf](https://www.mscbs.gob.es/en/ssi/violenciaGenero/Documentacion/otrosInformes/DOC/Segundo_borrador_preliminar_(english).pdf).

intervention and protection are not sufficient to fight an issue as complex as violence against women. However, as discussed above, along with other gaps existing in the system, protection and support measures seem to focus mostly on the victims of domestic violence, while victims of other forms of violence, as well as women with disabilities and asylum-seekers have less support services available for them.

Conclusion

The protection standards set by CEDAW with regard to violence against women changed and extended since its adoption. Initially, CEDAW was adopted as an instrument for addressing discrimination against women with no explicit mention about violence against women in the text of the Convention. However, with the adoption of General Recommendation No. 19, the Article 1 of the CEDAW was officially interpreted to include gender-based violence, thus making it a violation of women's rights and fundamental freedoms. Moreover, CEDAW Committee acknowledged that states can be held accountable for the private acts of violence against women and reaffirmed that elimination of gender-based violence was required from States for the full compliance with the Convention obligations. General Recommendation No. 19 briefly referred to the issue of family violence as well, acknowledging that it's a widespread form of violence affecting women of all ages. The adoption of General Recommendation No.19 was remarkable in many ways. Firstly, because it brought the issue of gender-based violence into the scope of the Convention. Second, because it laid the foundation for the General Recommendation No. 35, adopted almost 25 years later. It came to update the General Recommendation No. 19 by setting new standards of protection for women against violence. General Recommendation No.35 acknowledged the complex nature of gender-based violence by giving detailed recommendations to member states on how to efficiently address the issue of violence against women. At the core of the requirements of the General Recommendation No. 35 are comprehensive and coordinates protection, prevention and punishment measures, as well as victims' rights and needs. It's innovative in a way that it addresses contemporary forms of violence against women, not addressed by any other document yet. However, as authoritative as CEDAW general recommendations are, it should be noted that they are not legally binding on states.

Istanbul Convention, on the other hand, is the first comprehensive legally binding instrument in Europe which directly addresses the issue of violence against women and domestic violence. It covers a wide range of types of violence that women experience, setting high standards for member states to address all forms of violence under the scope of the convention. It requires states to implement comprehensive and coordinated measures, building their policies for combating violence against women and domestic violence based on three main pillars: the prevention of violence, protection of victims, and punishment of the perpetrators. The Convention acknowledges that these pillars are interdependent and a holistic approach to the issue of violence against women and domestic violence requires an equal contribution of each of the pillars. In response to all the forms of violence covered under Convention, states are required to establish a well-coordinated framework with the involvement of all the relevant agencies, institutions, organizations and other stakeholders.

Although the scopes of the CEDAW and Istanbul Convention are different, with the adoption of General Recommendation No.35 CEDAW established similar protection standards against gender-based violence as Istanbul Convention set for its member states. Both conventions acknowledge that the elimination of violence against women and domestic violence requires a holistic approach and the involvement of multiple stakeholders.

Austria's approach to the issue of violence against women and domestic violence follows the principles established by the CEDAW and Istanbul Convention. Notwithstanding the high standards set by the conventions for the protection of women against violence Austria succeed in establishing an effective framework for the intervention measures and victim support. Over the years, Austria amended its measures and policies to meet its obligations under CEDAW and demonstrated a commitment to achieve the standards set by Istanbul Convention. However, as

noted by the GREVIO gaps and disparities in terms of service provision for different forms of violence still exist in Austria's mechanism. Despite the established comprehensive framework and high federal financing, other forms of violence seem to get less attention and funding than domestic violence, shelters are not equipped well enough to accommodate women with disabilities, asylum-seekers are not guaranteed access to safe accommodation, and long-term needs of the victims are not efficiently met. Although Austria's criminal legislation has been amended to be in line with Istanbul Convention requirements, specific violence types are not recognized as criminal offences, and conviction rates for all forms of violence against women are low. This is an alerting sign that either criminal justice system fails to adequately respond to these offences, or that diversionary measures are preferred to criminal measures for the perpetrators of violence. The CEDAW communications against Austria discussed above also illustrated that authorities were reluctant to arrest and detain the perpetrators, which resulted in finding Austria accountable for the violations of the provisions of the Convention.

To conclude, Austria demonstrates a good example of how international and regional standards of protection against violence work at the national level. Despite the gaps and disparities that exist in the implementation of the measures, laws and policies currently in force in Austria constitute a comprehensive and coordinated protection system, that ensures the safety of millions of women and girls across the country.

To provide the same level of support and attention to the victims of other forms of violence, further research should look at the existing gap between the needs of the victims and the available services for them. It will help to identify what measures and improvements will be required from Austria to provide efficient services and support to victims of all forms of violence.

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