



Trends in the Implementation of the Istanbul Convention

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Abstract: Violence against women and domestic violence has attracted a lot of attention of the scientific community over the last 30 years. During that period, this topic assumed a very important place in all international agendas and was tackled by the most important international organizations and associations. The Convention on preventing and combating violence against women and domestic violence, i.e. the Istanbul Convention, is one of the basic international documents which has had an influence on numerous legislations of European countries in the field of gender equality and domestic violence. The aim of this paper is to show by a comparative method and through analysis and review of available literature the advantages of the Istanbul Convention and its importance for gender equality through a review of the literature, and also to point out the criticisms attributed to it. Research results have shown that the difference between sex and gender equality is a stumbling block and a serious objection in countries with traditional, nationalist and hard autocratic regimes. Also, most European countries have fully implemented the Istanbul Convention in their legislation and thus significantly contributed to gender equality and protection of women from abuse and domestic violence. The discussion shall focus on the importance of adopting a new convention or resolution at the level of the United Nations (UN), which would cover all contentious issues related to violence against women and domestic violence, and which would be binding on all members.

Keywords: Istanbul Convention, violence against women, gender equality, domestic violence.

Introduction

Domestic violence and violence against women is a serious social problem of global proportions that most well-developed countries are tackling through various legal provisions and regulations. Women's rights to equality are classified as belonging to the domain of human rights, wherein violence against women in partnerships and intimate relationships is a violation of human rights and a form of discrimination. The issue of women's rights has been a matter of consideration for the whole world, but the first steps in their defence were made only after the activities of international organizations such as the United Nations, the African Union, Latin and South American organizations, followed by regional organizations from Europe such as the Council of Europe and the European Union. All these entities have created legally binding instruments with the aim of prevention of, fight for and protection of human rights (Stoica, 2017, p. 45). One of the most important international subjects and protector of women's rights is UN Women, which is supported by UN member states. This entity is important because it strives to set global standards for achieving gender equality and seeks to devise the laws, policies, programs and services necessary for the implementation of these standards in cooperation with Member States and the non-governmental sector (NGOs). They promote and fight for equal participation of women in all aspects of life, focusing on five priority areas (UNW):

1. Increasing female leadership; ending violence against women;
2. involvement of women in all aspects of security processes;
3. economic empowerment of women;
4. achieving gender equality;
5. planning and budgeting

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According to UN reports, one in three women worldwide experiences physical or sexual violence, mostly from an intimate partner. Violence against women and girls constitutes a violation of human rights, and the immediate and long-term physical, sexual and mental consequences for women and girls can be devastating, including death. Although women are its most common victims, domestic violence implies a range of serious consequences for children who may be direct or indirect victims of violence. What children see and hear during episodes of violence has a direct impact on their psychophysical development and can generate intense emotional reactions and internal conflicts (Počuča, 2010, p. 53). It is estimated that male survivors of domestic violence are up to 10 times more likely to be violent in an intimate relationship than men who did not have a history of violence in their childhood (Godbout et al. 2009).

Domestic violence can be physical, psychological, sexual, economic, and emotional, and there has been increasing talk about behavior control as a separate form of violence. These forms of violence are very rarely isolated and individual. There is almost no physical violence that is free from psychological torture, nor sexual abuse which does not result in physical injury and psychological harassment. Increasing attention is paid to a special type of violence against women and children, which is indirect, but can also cause numerous consequences for the psychological integrity of women and children, i.e. media violence and cyber bullying (Debarati and Jaishankar, 2016, p. 44).

Throughout history, we have witnessed that women have always been considered the weaker sex, that their participation in social life has been minimized, that they have been in a subordinate position and have always been targets of discrimination by men. Although gender stereotypes have evolved over time and the situation has improved in many societies, patriarchal social norms still prevail around the world (Simonović, 2014, p. 594). They are embedded in various social customs or discriminatory laws according to which the man is the head of the family and is dominant over the woman in all social categories. Due to all of the above, international organizations have been trying to establish mechanisms that will completely eliminate violence and discrimination against women and lead to gender equality. The UN has been at the forefront of efforts and implementation of measures and activities aiming to oblige its members to reduce the gap between men and women and contribute to the inclusion of women in all social processes at the same level as men. As a result of decades of experience in the work on promotion of women's rights, the United Nations General Assembly adopted the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) on 18 December 1979, which was the first document to most directly promote equality between women and men. The Convention defines discrimination as any differentiation, exclusion or limitation made on grounds of sex in political, economic, social, cultural, civil, or any other field. Another important international document which tackles the promotion of equality and protection of women in the world is the Beijing Declaration and Platform for Action adopted at the IV World Conference on Women in the UN in 1995, which is revised and monitored every 5 years based on reports from around the world. This document represents the international community's commitment to achieving gender equality and providing better opportunities for women and girls in addressing civil, political, social, economic and cultural inequalities. Its achievements are still relevant today and have been implemented in numerous legislations around the world. What is typical of both documents is that they deal with gender equality and equalization of women's rights with men, but they do not tackle specifically violence against women and domestic violence. This accounts for the need to make the problem of violence against women and children, the problem of domestic violence, the subject of a special document which will strictly define the rights and obligations of countries to work on protection of women from abuse legally and through the creation of measures and programs. As a result of scientific and professional observation and monitoring of the state of women's inequality in the world, neglect and negligence, violence in partnerships, the Council of Europe adopted in Istanbul in 2011 the Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention). The objectives of this Convention are: to protect women from all forms of violence and to prevent, prosecute and eliminate violence against women and domestic violence; to contribute to combating all forms of discrimination against women and to promote essential equality between women and men, including empowerment of women; to develop a comprehensive framework, policies and measures to protect and assist all victims of violence against women and domestic violence; to promote international cooperation with regard to eliminating violence against women and domestic violence; to provide support and assistance to organizations and law enforcement agencies in effective cooperation in order to adopt a comprehensive approach to eliminating violence against women and domestic violence (COE, 2014). The Istanbul Convention was the basis and cornerstone on which most European Union countries based their legislations in the domain of protection of women from violence and domestic violence, sexual abuse and harassment, rape, forced marriage, child marriage, genital mutilation and other forms of violence against women and children. These criminal acts constitute a serious violation of human rights. However, the Convention was also met with abundant

criticism which questioned it, especially in countries with traditional and nationalist social systems. Certain European Union countries have not ratified the Convention with various explanations, but most commonly as the result of actions and opposition of ultra-conservative nationalist movements opposing women's equality. In recent years, there has been a serious delay in the implementation of the legacy of the Istanbul Convention, a regression in women's equality, and an increase in domestic violence, which, according to numerous studies, the COVID-19 pandemic has contributed to. Further on in the paper, we will try to point out the necessity of further implementation of the Istanbul Convention, but also to point out the shortcomings and debates in the European public concerning gender equality and protection of women and children from violence and domestic violence.

Definition of violence in the Istanbul Convention

Although in most modern societies domestic violence is prohibited and criminalized by law, reality points to the fact that it has become more evident in recent years and that it has a constant growth tendency, which can also be explained by the fact that victims are increasingly encouraged to report violence and that the dark figure of this phenomenon is decreasing (Merdović and Bjelajac, 2021, p. 186). What is considered violence between intimate partners and what are the criteria for defining it? In domestic and foreign literature, we encounter different terms such as violence against women, violence against wives, violence against an intimate partner, family violence, domestic violence. In some of these terms, it is clear that allusions are made to the violence of the husband against the wife, i.e. of the man against the woman, whereas the terms domestic violence and intimate partner violence show sexual neutrality. This was one of the reasons for presenting different arguments as regards definition of domestic violence.

The problem of inequality and discrimination against women has become the center of attention of the international public since the 1970s. From that period to date, debates have been conducted regarding gender equality and equality between men and women. Equalizing women with men in terms of political rights (giving women the right to vote), limiting the husband's power over the wife in marriage, women's right to manage their property independently, reforming views on divorce, abandoning traditional religious beliefs about a woman's obligation to accompany her husband constitute the basic catalysts in the fight against domestic violence (Počuča and Šarkić, 2020, p. 322). International documents have laid the foundations of today's laws regulating the areas of violence against women and domestic violence. It is clear that a significant breakthrough has been made in the context of understanding domestic violence, especially due to the rise of feminism in law and other social disciplines in the late 1970s. Above all, feminist movements have played a dominant role under the auspices of the UN and have made significant strides in the protection of women from violence and abuse. One of the broader definitions of feminism entails a social movement and an academic approach which aims to ensure gender equality, with a special focus on inequality in relation to women (Baron and Past, 2005). Feminists underline a clear distinction between sex and gender as separate categories. The sex of a woman is a matter of biological or physical difference in relation to men. Gender, on the other hand, is conceived as a culturally constructed spectrum according to which the identity of both women and men is shaped. Until the emergence of feminist movements, violence between intimate partners and spouses was considered a private and personal problem between two people. Such acts and violent behaviors were thought to be a consequence of personality disorders which could be addressed through counseling and psychological treatment (Houston, 2014). The concept of violence against women and domestic violence was defined in different ways, but each definition also had certain shortcomings. The general recommendation of the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) stated that gender-based violence is "violence directed against a woman because she is a woman or which proportionally affects women" (Article 6). The 1993 UN Declaration on the Elimination of Violence against Women states that violence against women means any act of gender-based violence which results in or which is likely to result in physical, sexual, or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of freedom, either in public or private life (UN, Declaration on the Elimination of Violence against Women, 1993). We encounter similar formulations in domestic literature. According to one of them, domestic violence is defined as continuous use of physical and psychological force against family members, while endangering and violating the domain of security and trust bonds and expression of control and power over family members, regardless of whether applicable legislations stipulate such behavior as a criminal offense and whether the perpetrator of violence has been reported to the prosecuting bodies (Konstantinović-Vilić and Nikolić-Ristanović, 2003, p. 128). Domestic violence constitutes a model of violence and control that simultaneously includes physical, psychological

and sexual violence, as well as various forms of economic dependence (Mršević, 2011, p. 61). Most definitions include primarily physical violence, although other forms of violence are not negligible and have serious consequences for the victim. Factors that contribute to the occurrence of domestic violence must also be taken into account when defining it. Research shows domestic violence to be a multicausal phenomenon where isolated action of one factor is ruled out. These factors can be divided into four categories (Golu, 2017, p. 38):

Cultural factors:

- Determining gender roles
- Belief in the superiority of men
- Values that offer men the right to “own” women
- Defining the family as an environment in which the man has control
- Marriage traditions
- Perception of violence as a method of conflict resolution

Economic factors

- Economic dependence of women
- Limited access to credit offices
- Discrimination in terms of property division
- Limited access to the labor market
- Limited access to education and medical system

Legal factors

- laws that do not support women’s rights
- Laws on divorce and child custody

Political factors

- Violence against women is rarely discussed
- The family has a private character and the state cannot interfere
- Women’s political organizations do not have the same power as men’s political organizations

From the very title of the Istanbul Convention, “Convention on Preventing and Combating Violence against Women and Domestic Violence”, it can be seen that violence against women and domestic violence are treated as two separate issues and problems. Therefore, both violence against women and domestic violence are in the focus of interest of the founders of the convention. One of the most significant contributions of the Istanbul Convention is that it provides the first legally binding definition of violence against women in Europe. In Article 3 of the Convention, “violence against women” means violations of human rights and forms of discrimination against women and represents all acts of gender-based violence that lead to, or may lead to, physical, sexual, psychological or economic harm or suffering for women, including threats of such acts, coercion or arbitrary deprivation of freedom, either in public or in private life. Domestic violence means any act of physical, sexual, psychological or economic violence that occurs in the family or household or between former or current spouses or partners, regardless of whether the perpetrator shares or has shared the same residence with the victim. By analyzing the definition of domestic violence in terms of this Convention, we can conclude that it covers two different types of violence. The first case is violence in intimate relationships between current or former spouses or partners, whereas the second is intergenerational violence that mainly occurs between parents and children. An equation sign cannot be placed between violence against women and domestic violence, because victims of domestic violence are also often men, as shown by numerous studies (Luthra and Gidycz, 2006; Straus and Ramirez, 2007; Jovašević, 2018).

The question as to what the priority of the Convention is and which form of violence is dominant, i.e. whether it is more protective of women or all victims of domestic violence was the subject of debate during the drafting of the Convention, but also later in the ratification process. The question arose as to whether gender-based or gender-neutral violence was a priority of the Convention and whether the Convention was equally binding with regard to both types of violence. It can be clearly concluded from the text of the Convention that priority is given to the elimination of all types of gender-based violence against women, including domestic violence. Article 2 states that the Convention is applicable to all forms of violence against women, including domestic violence, which disproportionately affects women as against men. It is also recommended that the Convention be applied to all victims of domestic violence, with

special attention to women victims of gender-based violence. Therefore, it is up to the signatory states whether they will pay attention to other victims of violence in the implementation of the Convention, but it is obligatory for women to be protected by legislative regulations and measures. The Istanbul Convention sees violence against women as both a cause and a consequence of gender power relations. In this context, criticisms of violence against children were somewhat neglected, although the consequences that children suffer and experience through various forms of abandonment and neglect are large and numerous in all aspects of child development (Bjelajac and Merdović, 2019). It states that violence against women is a manifestation of historically unequal power relations between women and men; that it is one of the crucial social mechanisms by which women are forced into a subordinate position compared to men; and that achieving equality between women and men is a key element in the prevention of violence against women (Allwood, 2016, p. 383).

As we have stated, the Convention is a legally binding document based on four pillars and it must be implemented on that basis in the laws of the states that have ratified it. These four pillars are prevention, protection, prosecution and coordinated policies, or 4Ps as found in foreign literature (prevention, protection, prosecution and adoption of policies).

Four pillars of the Istanbul Convention

Since the Convention is legally binding, it requires respect for the basic principles contained in it and harmonization of legislations and actions of the member states with the Convention. When we talk about the prevention of violence against women, clear guidelines are stipulated that must be respected by the countries that have ratified the Convention. The countries, including Serbia, must do everything possible to exert influence in view of changing the image of violence against women and achievement of gender equality in the society by means of public information systems and the media. This shall be achieved by the introduction of teaching materials and education at all education levels about equality between women and men, as well as non-violent communication and non-violent resolution of partner issues. Special emphasis is placed on raising awareness about the negative consequences which violence can reflect on women, but also on other victims of domestic violence. The Convention also requires the treatment of perpetrators of violence, which was a novelty that was not fully implemented. This novelty implies the creation and implementation of programs of work with perpetrators of violence against women and in the family, with the aim of preventing such behavior from repeating and the perpetrator adopting non-violent ways of solving risky situations. This points to the need of educating professionals working with the victims and perpetrators of violence in order to timely recognize violence, report violence and respond adequately to the violent act, primarily with the aim of helping and protecting the victim.

The protection of women and victims of domestic violence is one of the basic pillars on which the Istanbul Convention is based. The safety and needs of victims and witnesses must be at the heart of any protection measure adopted by a country. Women must be provided with information about their rights and the manner in which they can exercise their rights, they must be provided with free legal aid, access to counseling, legal, financial, health and social assistance. It is necessary to introduce free telephone lines that will be available to victims of domestic violence 24 hours a day, 7 days a week, where they will be able to report violence, get information on their rights, the manner in which they can protect themselves and whom they can turn to for help. It is essential for the countries that have ratified the Convention to provide safe shelters for women and children victims of violence where they will feel safe. One of the very important measures imposed by the Convention is the pronouncement of urgent measures that enable the police to immediately remove the perpetrator from the site of violence (house, apartment) and to prohibit them from approaching and communicating with the victim.

Prosecution of violence against women and domestic violence are matters the Istanbul Convention insists on and imposes the obligation on the countries that have ratified it to harmonize their legislation with the text of the Convention. This primarily refers to the criminalization of all acts of violence against women and children (physical, psychological and sexual violence, sexual abuse, stalking, female genital mutilation, forced marriage, forced abortion and forced sterilization) and prescribing criminal sanctions aimed at deterrence from committing violence and re-committing violence against women. The Convention requires the countries that have ratified to ensure efficient and effective response of all state bodies, especially the police which is the first to encounter the perpetrator and domestic violence, followed by the prosecutor's office, courts, social institutions and other actors dealing with violence against women and the family. The Convention solves one of the problems that has often occurred in practice, i.e. that the victim often renounces prosecution of the perpetrator. The Convention stipulates that the prosecution

and proceedings against the perpetrator may continue even if the victim withdraws. The Convention also requires that all relevant facts and qualified circumstances must be taken into account in the conduct of such proceedings, prosecution and determining the sentence. Although most countries have legally regulated criminal proceedings with children as victims or perpetrators, the Convention requires that children be specially covered and legally protected when they are victims of domestic violence or witnesses of violence. Special emphasis is placed on the need to protect the victim from condemnation, unnecessary and additional victimization, avoidance of confrontation of the victim with the perpetrator during the proceedings, prohibition of disclosing the victim's sexual history except when this is necessary in court proceedings. It is also necessary to provide the victim with all information on the course and outcome of the proceedings, provide free legal aid and professional assistance when necessary, instruct them about the right to appeal and compensation from the perpetrator or government body if they believe that their rights have been violated or endangered. Victims and their families must be protected from intimidation, retaliation and repeated victimization at all stages of the proceedings.

One of the special contributions of the Istanbul Convention is found in the constant coordination of all relevant actors in a country dealing with violence against women and domestic violence, but also in coordination and cooperation with other Convention signatories and other international institutions. This primarily refers to coordination and cooperation between the police, prosecutor's office, courts, local and regional authorities and non-governmental organizations, associations of citizens and all other actors which deal with domestic violence and violence against women. It is necessary to form a body that will coordinate and monitor compliance, perform evaluations and monitoring of the Istanbul Convention. In particular, they insist on the realization of projects and research to collect statistical data on the frequency of all forms of violence against women and domestic violence, implemented measures and their effectiveness, evaluation of these projects and exchange of data with other countries and international organizations. The aim of this exchange is to encourage cooperation and protection of women from violence at all levels and in all countries in a uniform manner and to eliminate violence or reduce it to a minimum.

Implementation of the Istanbul Convention in European countries

The Istanbul Convention is very important as it is legally binding and represents an important instrument of pressure on the signatory countries with a view to protecting women and victims of domestic violence. A special body which was formed and which represents a mechanism for the monitoring and control of the measures taken and compliance of the countries' legislations with the convention is GREVIO (The Group of Experts on Action against Violence against Women), while the European Court of Human Rights (ECtHR) is in charge of its implementation. This group of experts controls the countries which ratified the Convention, how far they have progressed in its implementation, and the compliance of the legal regulations with the Convention and its achievements. The states which ratified the convention were under two kinds of pressure. One kind came from the European institutions, the Council of Europe, the European Union and other international actors, and on the other side there were the non-governmental sector, the feminist lobby, citizens' associations and other organizations. As a result of this pressure, most countries ratified the Convention and harmonized their legislations with it. Although it was passed in 2011, it came into force in 2014 as it had to be ratified by 20 Council of Europe member states. The first Convention signatory was Turkey, which was of special importance due to the low status of women's rights in that country, but it was also the first country to withdraw from the Convention. Serbia was among the first countries to ratify the Istanbul Convention. It is a paradox that several European Union member states have not ratified the Convention to the present day (Bulgaria, Hungary, the Czech Republic, Latvia, Lithuania, and Slovakia), while Poland took steps to withdraw from the Convention, stating as the reason the attempt of the LGBT community to impose their gender ideas on the whole society. According to the Council of Europe data from 2019, the Convention was ratified by 34 countries, while 11 member states only signed it, without ratification. Russia and Azerbaijan are the only Council of Europe members that have not signed the Convention. In most East-European countries the Convention ratification process comes up against fierce internal resistance. The reactions of society in these countries are mainly related to fears of possible introduction of a gender ideology, and to the misinterpretation that the Convention is a step towards same-sex marriages. The most frequently quoted arguments for rejection of the ratification are non-compliance with the signatory state's Constitution, the resistance of ultra-right organizations, the pressure of conservative parties, the fear of threats to the traditional family, etc.

The Convention advocates the attitude that elimination of violence against women requires a holistic approach, which includes the achievement of gender equality. More extensive literature on gender

equality and violence against women demonstrates that the key factor in the realization of these aims is the involvement of civil society organizations in the implementation and formulation of the policy and measures (Krizsan and Lombardo, 2013). Most signatory countries have adopted the legal regulations which contribute to this fundamental position of the Convention. The signatory countries have adopted, under similar titles, the laws concerning the prevention and protection of women against violence and domestic violence. These laws define and criminalize conduct in cases of violence against women, and violence against other family members. They include the definitions of violence against women and domestic violence, and the definition of gender which has most often been the topic of controversial debates. Within criminal laws, individual criminal offenses have been criminalized and included which the Convention insisted on, and which had not been identified as distinct criminal offenses before (female genital mutilation). Most developed Western European countries (France, Italy, Spain) had even before the Istanbul Convention condemned violence against women and domestic violence under the influence of other international documents and instruments. However, the Istanbul Convention is the last, most comprehensive and binding document which has, so far, most accurately protected women's rights and women from violence. The Western Balkan countries have ratified the Convention, and brought their legislations at least partially into line with it. Most Western Balkan countries have adopted the Law on the Prevention of Domestic Violence with particular emphasis on the protection of women against violence, as women have, according to the available data, been disproportionately predominant as violence victims. Some countries do not have a distinct criminal offense, but fight against domestic violence through conducting procedures against the perpetrators for classic criminal offenses (Bošković and Puhača, 2019, p. 32).

A debate very often conducted in many countries, East-European in particular, is about the meanings of gender and sex. With regard to sex, we usually think of biological, bodily characteristics of men and women and their different reproductive roles. These differences have often been taken as the basis which determines the roles of men and women in further life and which brings women into a subordinate position regardless of their socio-economic status, race, culture, or ethnic origin. The concept of gender is of a later date and it implies the social shaping of the biological sexes of men and women determined by the understanding of their social duties (Torlak, 2011). It first appeared in American literature, but was accepted with time by all the international actors (UN, Council of Europe, EU). The concept of sex is used to define the physiological characteristics and anatomic differences between men and women, while gender denotes the social construction of gender roles (Mihaljević, 2016). Gender is a dynamic category which is subject to change and reassessment in different cultures and different social epochs, and which can have different meanings even in the same society, in different cultural settings.

The Istanbul Convention insists on the concept of "gender", specifying in art. 3 the socially defined roles, behaviors, activities and attributes which a society deems proper for women and men respectively. It was this structure that sparked multiple polemics as it was believed that in that way the LGBT community was trying to impose their values and attitudes, which was taken as threat to the traditional family and the traditional culture-specific ideas of marriage. In certain countries the advocates of same-sex marriages have lately been insisting on the introduction of the term of gender into textbooks and school teaching, which has been countered protests of the public and opposition to the Istanbul Convention (Poland, Bulgaria). However, the concept of gender and gender-based violence has come into use, and has in turn been applied in documents and legal acts of the countries which have ratified the Convention.

One of the forms of violence against women which the Istanbul Convention focused on in particular is violence against women in the name of honor, which dominated in conservative societies and is a reflection of culture-specific and other ethical norms. Insisting on the prevention of these forms of violence is very important due to frequent instances of female genital mutilation. One of the definitions of the "violence out of honor" phenomenon implies injuries to the physical or mental integrity or personal autonomy through threats or the use of violence committed by family members in the name of honor, the central element of which is the obligation of compliance to the sexual and social behavior which is the norm in the community (Grans, 2018, p. 137). The Convention stipulates that no culture, custom, religion, tradition or honor can serve as justification for any act of violence.

The most heated controversy in the scientific community has been caused by the condemnation of such forms of behavior, in particular those relating to the genital mutilation of women that the Istanbul Convention insists on. In our criminal legislation it is criminalized by art. 121a of the Criminal Code entitled "Mutilation of Female Genitals". Some other legislations such as the Criminal Code of the Republic of Srpska define it as "Female Genital Mutilation". While Serbia is criticized for failing to consistently apply the Istanbul Convention position, in the Republic of Srpska it is stated it was unnecessary, but that the Convention position was adhered to nonetheless. Special attention was devoted to the phenomenon

of forced marriages, which are also characteristic of certain social groups which justify them by their subculture and customs, and which often serve as grounds for violence against women and young girls.

The effect of the Istanbul Convention on the domestic violence situation in Serbia

Serbia was among the first countries to sign the Istanbul Convention, and ratified it among the first 20 in November 2013. As a member of the Council of Europe, it assumed all the obligations arising from the Convention and undertook to implement the Convention achievements in the legislative acts, but also realize them in practice. Domestic violence was for the first time criminalized in the Republic of Serbia Criminal Code from 2002 (art. 118a), after which it underwent certain changes in the Criminal Code of 2006 (art. 194). Domestic violence is one of the subjects tackled by the Family Law of 2005. In both cases through criminalization in the Criminal Code, the offense was classified in the group of criminal offenses against marriage and family. The difference lies in the object of protection, as it is evident that the Law from 2006 does not protect the family, but the individual as its member (Škulić, 2016). The legislator's aim was obviously to devote special attention to this kind of criminal offenses and improve the criminal-law protection in this area (Đorđević, 2007). Following the ratification of the Istanbul Convention, significant progress has been made in the building of the legislative, political and institutional framework for the implementation of all the Convention provisions. The accession negotiations conducted between our country and the European Union further step up the pressure of legal harmonization and cooperation with all the relevant international subjects in this area. In 2016 Serbia passed a separate law dealing specifically with domestic violence prevention, thus meeting one of the main Istanbul Convention requirements. The aim of this law is to regulate in a general and uniform way the organization and procedures of state authorities and institutions, thus enabling effective prevention of domestic violence and urgent, timely and effective protection and support to domestic violence victims. In other words, it does not exclusively deal with violence against women, but with protecting all domestic violence victims (children, men, other family members). The Law stipulates that prevention of domestic violence and protection and support of domestic violence victims and victims of crimes are in the domain of the police, prosecutors' offices, courts and centers for social work as state authorities, as well as other institutions in the field of child care, social care, education, upbringing and health. It also stipulates that other social actors and citizens' associations can also be an important factor in preventing violence and helping the victims. One organization which has been particularly prominent in fighting domestic violence and violence and discrimination against women is the Autonomous Women's Center (Autonomni ženski centar - AŽC), which has also been recognized by the state as an important partner in this area. AŽC's cooperation with international organizations and bodies has contributed to this organization's growing credibility and importance in all the activities concerning violence against women and domestic violence, primarily in protecting women against all kinds of discrimination. This organization has done and contributed a lot towards alleviating discrimination against and inequality of women in Serbia, as well as protecting women from all forms of abuse. The non-governmental sector is an important factor which, along with state authorities, makes a significant contribution in the form of protection and help to domestic violence victims. The Istanbul Convention insists on the inclusion of all the relevant actors with the aim of protecting women from abuse and protecting victims of domestic violence.

Alterations to the Criminal Code from 2016 recognized as crimes the offenses which had not existed in the law before, such as stalking, sexual harassment and female genital mutilation, thus further improving protection of women against violence, which represents further harmonization with the Istanbul Convention. Despite the legal measures taken and certain programs and projects aimed at preventing and censuring all forms of domestic violence and violence against women, it is assumed that the dark figure of crime is still high. The reasons for that are manifold, but the most commonly quoted are fear of the aggressor's retaliation and condemnation by the social community (Matijašević-Obradović and Stefanović, 2017), secondary victimization through media reporting, with sensationalist presentation of information which helps identify the victim and breach its privacy (Višnjić, 2012), culture-specific features and patriarchal social characteristics. As a result, numerous legal acts and action plans have been passed with the aim of preventing violence against women and domestic violence, and empowering women and the public to report violence so that it emerges from the silence where it is often concealed. In addition to the existing criminalizations, the development of science and technology has led to specific forms of violence against women which also have negative consequences for the victim's psychological and social life. This includes, first of all, aggressive forms of behavior on the internet and social networks (Meta, Instagram, Tik Tok, etc.). Sexual blackmail, threats, distribution of intimate photos and videos without the

consent of the person shown in them (the so-called revenge porn) online are a mechanism of violence against women and children, which has extremely negative consequences for the victim, which can even lead to the development of suicidal ideas. The consequences of pedophilia are especially negative, as one of the most pronounced forms of paraphilia, which is characteristic of all strata of society (Bjelajac, 2020). It follows from the above that Internet development enabled violence to be committed without direct contact, at long distances, from any place on the planet, to any person and often without the possibility to determine the identity of the aggressor hiding behind a false profile.

With a view to harmonizing our legislation to the Istanbul Convention, our country has adopted and amended numerous laws: [The Law on Prevention of Domestic Violence \(2016\)](#), alterations to the Criminal Code (2016) which recognize as crimes the criminal offenses of stalking, sexual harassment and forced marriage, the [Law on Free Legal Aid \(2018\)](#). Individual state authorities and institutions have also adjusted their activities to the obligations and responsibilities arising from the Istanbul Convention. The Council for combating domestic violence was thus formed within the Republic of Serbia Ministry of Justice, while public prosecution offices formed groups for coordination and cooperation, the Ministry of Internal Affairs set up a work group for combating domestic violence, and the 2019 job classification resulted in the formation of the Department for domestic violence avoidance and prevention, while a division for combating domestic violence was also established at the Police Administration level for the City of Belgrade. In addition, multiple strategies and action plans have been adopted, which specify the activities and obligations of state authorities and institutions regarding prevention and combating violence against women and domestic violence, as well as protecting violence victims. The ideas promoted through the media, which suggest that the adopted legal regulations, projects and strategies will solve the problem by the mere act of passing (Stajić and Radivojević, 2018), have led to the multiplication of legal regulations, without any significant results in the practical application of the relevant provisions. According to the statistical data of the Ministry of Internal Affairs, there was a rise in the number of criminal acts of domestic violence in 2021 compared to earlier years. The Law on Prevention of Domestic Violence stipulates the activities and obligations of police officers dealing with domestic violence cases. All the police officers have to hold specific certificates for acting in cases with elements of domestic violence, and are obliged to take several specific measures. The police officers face the delicate job of risk assessment in each particular situation, and the further course of the proceedings and protection of the victim against potential or actual violence most often depends on them. The urgent measures stipulated by this law are the culprit's temporary removal from the residence and temporary injunction banning them from contacting and approaching the victim. This is primarily aimed at protecting the victim, as opposed to the long-standing practice where the victim was, to avoid further violence, moved out of the shared residence and provided shelter such as temporary accommodation in a safe house (Bošković and Puhača, 2019, p. 36). The Law also stipulates measures and activities aimed at correcting behavior and providing professional help to the abuser with a view to developing nonviolent communication forms, but this has not been applied in practice so far.

As stated in the Strategy for Preventing and Combating Gender-Based Violence against Women and Domestic Violence for the period 2021-2025, even though considerable results have been made in the past period with a view to combating and preventing gender-based violence against women and domestic violence, these forms of violence are still widespread in private and public spheres of life alike. Along with dissemination of misogynous and sexist messages, sensationalist reporting on violence against women is still predominant in the media, while an insufficient number of media reports approach the gender-based violence phenomenon from an educational angle (United Nations Development Programme). According to research results (Jovanović et al., 2020), the predominant domestic violence victims are women. In addition, women from sensitive social groups (the Roma women, women with disabilities, women from rural areas, single mothers, women of different sexual orientation and gender identity) are at a higher risk of becoming victims of gender-based violence.

Conclusion

Despite all the efforts taken by international and local organizations, violence against women and domestic violence still represent a serious social problem with numerous negative implications for the victims, mostly women. The Istanbul Convention represents the basis and instrument used in endeavors to eliminate gender-based domestic violence. However, as we have pointed out, the success of combating violence against women and domestic violence primarily depends on the countries which have signed and ratified this Convention. Even in cases when the countries assumed the obligation of implementing

the Convention, there are ways to avoid and minimize its realization in practice. Although Serbia ratified the Convention and harmonized its legal acts almost totally with the requirements arising from it, women's rights and protection against violence in Serbia are not at a satisfactory level. This is demonstrated by the latest reports of international bodies which monitor the situation concerning women's rights and gender equality, which state that the programs and measures created for combating violence against women often fail to recognize that it is gender-based violence, which is a key obstacle for women enjoying human rights to the fullest extent.

The punishment of the abusers is an efficient method and a preventive measure in general, but insufficient to prevent and eliminate domestic violence and violence against women. The stipulated measures imposed on the abusers are only short-term and it is necessary to undertake activities aimed at preventing abusers and potential abusers from resorting to violence. This requires a multidisciplinary approach which would lead to a change of attitudes which support violence in society. A change of the collective awareness and culture-specific traits of our society, which are deep-rooted and related to gender-based violence and violence against women, should represent the basis of preventative action. Encouraging women to report violence and supporting victims in all stages of the procedure are the starting point in successful reducing of the dark figure of gender-based violence. Helping the victims financially also presents a problem which has been successfully solved in other countries, while Serbia has no clear and precise criteria on this issue. The treatment of the abuser after the act and helping them professionally in order to develop nonviolent communication and not repeat the act has remained mere words on paper, and invisible in practice, which leads us to the conclusion that the institutional and non-institutional treatment of abusers in the Republic of Serbia is either missing or only plays a secondary role. Although important steps have been taken towards harmonization of the legal regulations to the Istanbul Convention, there are segments in which this harmonization is not complete, and many bylaws and mechanisms for efficient implementation of the existing law are missing.

It is obvious that the Istanbul Convention itself has been increasingly subject to criticism, that it has not been ratified by several European Union member states, and that some countries which ratified it have announced withdrawal from it or have already withdrawn. For that reason, it is essential to work toward drawing up a similar document which would be adopted by the United Nations and binding on all the member states. References to a new UN convention are partly based on the argument that there exists a "normative gap" at the international level and that the adoption of the agreement and a new convention would contribute to lessening that gap.

Conflict of interests

The authors declare no conflict of interest.

References

- Allwood, G. (2016). Gender-based violence against women in contemporary France: domestic violence and forced marriage policy since the Istanbul Convention. *Modern & Contemporary France*, 24(4), 377-394. <https://doi.org/10.1080/09639489.2016.1203886>
- Analiza medijskih objava o problemu nasilja prema ženama grupe u periodu od početka januara do kraja decembra 2019. godine, *Novinarke protiv nasilja prema ženama* [Journalists against violence against women], Retrieved from https://www.rs.undp.org/content/serbia/sr/home/library/womens_empowerment/analiza-medijskog-izvestavanja-2019.html
- Baron, C. & Past, L. (2005). *Controversy in Feminist Theorizing: Differing Approaches to the Public and the Private*. Women's Rights: The Public/Private Dichotomy, 9-29.
- Bjelajac, Ž. (2020). Fenomenološka i etiološka obeležja pedofilije [Phenomenological and etiological attributes of pedophilia], *Kultura polisa*, 17(1), Special edition 1, 11-28. Retrieved from <https://kpolisa.com/index.php/kp/article/view/253>
- Bjelajac, Ž., & Merdović, B. (2019). Nasilje nad decom u porodici [Violence against children in family]. *Kultura polisa* 16(39), 191-202. Retrieved from <https://kpolisa.com/index.php/kp/article/view/343>
- Bošković, A. & Puhača, J. (2019). Analysis of practical application of the Law on Prevention of Domestic Violence with a view on applying urgent measures. *NBP. Nauka, bezbednost, policija*, 24(1), 30-48. <https://doi.org/10.5937/nabepo24-20343>
- CEDAW (Committee on the Elimination of Discrimination against Women). 1992. "General Recommendation no. 19 on Violence Against Women adopted by the Committee on the Elimination of Discrimination against Women (CEDAW)."
- Council of Europe (2014). *Convention on preventing and combating violence against women and domestic violence* (Istanbul Convention). Retrieved from: <https://www.coe.int/en/web/gender-matters/council-of-europe-convention-on-preventing-and-combating-violence-against-women-and-domestic-violence>
- Debarati, H., & Jaishankar, K. (2016). *Cyber Crimes Against Women in India*. Sage Publications Pvt. Ltd.
- Đorđević, Đ. (2007). Krivičnopravni aspekti nasilja u porodici [Criminal law aspects of domestic violence]. *Pravni život*, 56(9), 55-67.
- Galić, B. (2012). Promjena seksističkog diskursa u Hrvatskoj? Usporedba rezultata istraživanja 2004. i 2010. godine [Promjena seksističkog diskursa u Hrvatskoj? Usporedba rezultata istraživanja 2004. i 2010. godine]. *Socijalna ekologija: časopis za ekološku misao i sociološka istraživanja okoline*, 21(2), 155-178. Retrieved from <https://hrcak.srce.hr/ojs/index>.

- php/socijalna-ekologija/article/view/18008/9829
- Godbout, N., Dutton, G., Lussier Y., & Sabourin S. (2009). Early exposure to violence, domestic violence, attachment representation, and marital adjustment. *Pers Relatsh*, 16(3): 365-384. <https://doi.org/10.1111/j.1475-6811.2009.01228.x>
- Grans, L. (2018). The Istanbul convention and the positive obligation to prevent violence. *Human Rights Law Review*, 18(1), 133-155. <https://doi.org/10.1093/hrlr/ngx041>
- Golu, F. (2017). A multidimensional perspective on domestic violence: Violence against women and child maltreatment. In M. Ortiz (Ed.), *Domestic Violence: Prevalence, Risk Factors and Perspectives*. (33 - 68). Hauppauge, New York: Nova Science Publishers.
- Houston, C. (2014). How feminist theory became (criminal) law: Tracing the path to mandatory criminal intervention in domestic violence cases. *Mich. J. Gender & L.*, 21, 217-271. <https://doi.org/10.36641/mjgl.21.2.how>
- Jayasinghe, D., & Noble R. (2015). *Fearless. Standing with Women and Girls to End Violence*. London: ActionAid UK. <https://doi.org/10.1080/09639489.2016.1203886>
- Jovanović, V. M., Čanković, S., Milijašević, D., Ukropina, S., Jovanović, M., & Čanković, D. (2020). Health consequences of domestic violence against women in Serbia. *Vojnosanitetski pregled*, 77(1). 14-21. <https://doi.org/10.2298/VSP171130054M>
- Jovašević, D. (2018). Suzbijanje nasilja u porodici u Republici Srbiji [Suppression of domestic violence in the Republic of Serbia]. *Vojno delo*, 70(4), 145-161. <https://doi.org/10.5937/vojdelo1804145J>
- Konstantinović-Vilić S., & Nikolić-Ristanović, V. (2003). *Kriminologija* [Criminology]. Niš: Centar za publikacije Pravnog fakulteta u Nišu.
- Krivični zakonik* [Criminal Law]. Službeni glasnik Republike Srbije, br. 85/2005, 88/2005 – ispr., 107/2005 – ispr., 72/2009, 111/2009, 121/2012, 104/2013, 108/2014 i 94/2016.
- Krizsan, A., & Lombardo, E. (2013). "The Quality of Gender Equality Policies: A Discursive Approach." *European Journal of Women's Studies* 20(1), 77–92. <https://doi.org/10.1177/1350506812456462>
- Luthra, R., & Gidycz, C. A. (2006). Dating violence among college men and women: Evaluation of a theoretical model. *Journal of interpersonal violence*, 21(6), 717-731. <https://doi.org/10.1177/0886260506287312>
- Matijašević-Obradović, J., & Stefanović, N. (2017). Nasilje u porodici u svetlu Porodičnog zakona, Krivičnog zakonika i Zakona o sprečavanju nasilja u porodici [Domestic violence in the light of the family law, the criminal code and the law on prevention of domestic violence]. *Pravo-teorija i praksa*, 34(4-6), 13-28. Retrieved from <http://casopis.pravni-fakultet.edu.rs/index.php/ftp/article/view/77>
- Merdović, B., & Bjelajac, Željko. (2021). Multidimensional perspectives of domestic violence in Serbia. *Kultura polisa*, 18(46), 185–202. <https://doi.org/10.51738/Kpolisa2021.18.3r.3.01>
- Mihaljević, D. (2016). Feminizam—što je ostvario? [Feminism – what has it achieved?]. *Mostariensia: časopis za društvene i humanističke znanosti*, 20(1-2), 149-169. Retrieved from <https://hrcaak.srce.hr/170904>
- Mršević, Z. (2011). *Ka demokratskom društvu – rodna ravnopravnost* [Towards a democratic society - gender equality]. Beograd: Institut društvenih nauka. Retrieved from <http://osvit.rs/wp-content/uploads/2020/07/Rodna-ravnopravnost-Zorica-Mrsevic.pdf>
- Počučica M. & Šarkić, N. (2020). *Porodično pravo i porodičnopravna zaštita* [Family law and family law protection]. Pravni fakultet, Univerziteta Union u Beogradu, Sl.Glasnik Beograd
- Počučica, M. (2010). Family violence. *Pravo - Teorija i Praksa*, 27(9-10), 49–61. Retrieved from <http://casopis.pravni-fakultet.edu.rs/index.php/ftp/article/view/324>
- Porodični zakon* [Family law]. "Sl. glasnik RS", br. 18/2005, 72/2011 - dr. zakon i 6/2015.
- Škulić, M. (2016). *Nasilje u porodici: kako poboljšati položaj žrtava i unaprediti saradnju između pravosudnih organa, policije i centara za socijalni rad* [Nasilje u porodici kako poboljšati položaj žrtava i unaprediti saradnju između pravosudnih organa, policije i centara za socijalni rad]. U: Postupanje u slučajevima nasilja u porodici i poboljšanje položaja žrtve u krivičnom postupku: iskustva iz prakse, Beograd: Udruženje javnih tužilaca i zamenika javnih tužilaca Republike Srbije, 79-120.
- Simonovic, D. (2014). Global and regional standards on violence against women: the evolution and synergy of the CEDAW and Istanbul Conventions. *Hum. Rts. Q.*, 36, 590-606. <https://doi.org/10.1353/hrq.2014.0040>
- Stajić, L., & Radivojević, N. (2018). Bezbednosno-pravni aspekti nasilja u porodici. *Sprska politička misao*, 25(59), 113-128. <https://doi.org/10.22182/spm.5912018.6>
- Stoica, M. M. (2017). Norms and Legal Instruments on Preventing Violence against Women and Domestic Violence. Highlights from the Istanbul Convention. *EIRP Proceedings*, 12, 45–51. Retrieved from <https://proceedings.univ-danubius.ro/index.php/eirp/article/view/1791>
- Strategija za sprečavanje i borbu protiv rodno zasnovanog nasilja prema ženama i nasilja u porodici za period 2021-2025. godine* [Strategija za sprečavanje i borbu protiv rodno zasnovanog nasilja prema ženama i nasilja u porodici za period 2021-2025. godine]. Sl. glasnik RS, br. 47/2021.
- Straus, M. A., & Ramirez, I. L. (2007). Gender symmetry in prevalence, severity, and chronicity of physical aggression against dating partners by university students in Mexico and USA. *Aggressive Behavior: Official Journal of the International Society for Research on Aggression*, 33(4), 281-290. <https://doi.org/10.1002/ab.20199>
- Tortlak, N. (2011). Medijska slika žene u Srbiji [Media image of women in Serbia]. *CM Komunikacija i mediji*, 6(19), 39-52.
- United Nations (1993). *Declaration on the Elimination of Violence against Women*, Retrieved from: <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-elimination-violence-against-women>
- Višnjić, J. (2012). „Killing me softly”: Izveštavanje štampanih medija o ženama žrtvama nasilja. *Genero: časopis za feminističku teoriju i studije kulture*, (16), 141-156. Retrieved from <https://generojournal.org/downloads/genero-16-2012-pp-141-156.pdf>
- Zakon o besplatnoj pravnoj pomoći* [Law on Free Legal Aid]. Službeni glasnik RS, br. 87/2018.
- Zakon o rodnoj ravnopravnosti* [Law on Gender Equality]. Službeni glasnik RS, br. 52/2021.
- Zakon o sprečavanju nasilja u porodici* [The Law on Prevention of Domestic Violence]. Službeni glasnik Republike Srbije, broj 94/2016