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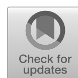

The Istanbul Convention: yes and nos

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Abstract
The article discusses the *status quo* of the Istanbul Convention in the context of the Council of Europe. The investigation delves into three areas: The first deals with the lack of an intersectional approach underpinning the text and approach of the Convention; the second covers the effectiveness of the Convention, by examining the Council of Europe's member states' responses in terms of signatures, ratifications, reservations, and withdrawals; lastly, the article investigates the European Court of Human Rights' case-law to test whether and to what extent the ECtHR is acting like a supplementary judicial treaty body, ensuring the implementation of the Convention.

Keywords Istanbul convention · Gender-based violence · Intersectionality · Women's rights

1 Introduction. The Istanbul Convention: a missed opportunity?

The Istanbul Convention has been welcomed as one of the major achievements in the long history of women's rights. Despite its regional scope, it has been described as a model to guide prospective legislative interventions in the fields of violence against women and domestic violence. More than ten years after its adoption, it is now time to look back and discuss whether all the original expectations have been met. And, if not, to question what is missing and what continues to not be covered under the ambit of application of the Istanbul Convention.

The article seeks to examine these last points according to three perspectives: The first features a substantial nature and deals with the ongoing lack of references to the

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intersectionality theory and its corollaries in the content of the Convention as well as in the GREVIO's monitoring and reporting activities. The second is, conversely, more factual and aims at discussing the effectiveness of the Istanbul Convention in the European scenario in light of two major and disrupting phenomena: the anti-gender ideology and the gender backlash first nurtured in Eastern Europe. Thirdly, and lastly, the significance of the Istanbul Convention will be explored from the angle of the jurisprudence of the European Court of Human Rights. The investigation of the ECtHR's case law on violence against women represents, in fact, a litmus test for the impact of the Istanbul Convention on the context of the Council of Europe and beyond.

2 Three areas to explore

2.1 The first intersectionality matters: what about the Istanbul Convention?

> "[What is] often missing from our research and analysis of gender-based violence is its connection to other interlocking and mutually reinforcing systems of oppression, power and inequality".[1]

If there is one thing that is missing in the approach of the Council of Europe's Convention on Violence Against Women, that is intersectionality.[2] Despite the theory of intersectionality nowadays permeating the understanding and the interpretation of women's rights, the Istanbul Convention opted to not include either an explicit or an implicit reference to it. Whether deliberate or not, such a choice was certainly an unexpected one. The United Nations Convention on the Elimination of all Forms of Discrimination against Women and another remarkable regional treaty, the Inter-American systems' Belém do Pará Convention, both insist on the concept of intersectionality. The latter more explicitly, the former through a landmark General Recommendation.

With General Recommendation No. 28, the Committee on the Elimination of Discrimination against Women (CEDAW),[3] for the first time, shed light on the urge to

[1] A Gill, *Survivor-Centered Research: Towards an Intersectional Gender-Based Violence Movement'*, in *Journal of Family Violence*, 2018, 559 e ss.

[2] The article chooses to discuss the loopholes and negative consequences related to the lack of endorsement of an intersectional approach in the contents of the Council of Europe's Istanbul Convention. Such a choice does not overlook the additional challenges and criticisms featuring the Istanbul Convention. In short, these are: the missing acknowledgement of the importance of the empowerment of women victims of violence as the Convention mainly focuses only on prevention and post-violence remedial without discussing long term strategies; the preference for not including the concept of consent in the definition of sexual violence (a choice, unfortunately, similarly made by the European Union Directive on violence against women); the weaknesses related to the lack of a judicial treaty body, due to the fact that the Istanbul Convention may benefit just from the GREVIO, whose role and functions are merely of reporting nature; lastly, the lack of coordination with the other Council of Europe's, ILO's and United Nations' treaties on violence against women.

[3] General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women. The full text is available at the following Link: https://www.refworld.org/legal/general/cedaw/2010/en/77255.

overcome the assumption that all women are equal among one another, expand the understanding of women's rights as rights about all women without any distinction, and, eventually, endorse the view that there are additional traits to consider in shaping women's identities and their rights under international law.

Whether it is race, ethnicity, national origin, disability, or sexual orientation, the idea was that women should be recognised and protected in their rights even and, maybe, especially in light of these additional human traits.

This was the time when the discussion about women belonging to minority communities[4] or minority women[5] started gaining proper attention. This was also the time when, not without difficulties, laws and courts began addressing - not always and not only - the needs of all women, as well as also women affiliated with vulnerable social groups.

All of the above seems to be somehow missing in the Istanbul Convention and in its approach towards violence against women and domestic violence.

Without discussing and delving into the reasons for this gap, it is, instead, more important to examine its consequences. At the outset, the lack of an intersectional approach results firstly in a narrower conceptualisation of who the victims of gender-based violence are, and secondly, which forms of violence against women may take. That is to say that the effects of the non-intersectional reading of violence against women emerging from the Istanbul Convention is twofold and it may be appreciated from two sides: that of the forms of violence perpetrated against women and girls, on the one hand; and that of the ideal-type victim of gender-based violence, on the other. Concerning the forms of violence against women, the Istanbul Convention does not include a wide range of manifestations of violence against women. It chooses to enumerate them according to a non-exhaustive list, that, nevertheless, excludes some basic ones which are worth mentioning.

[4]About the concept of minority and minority group, see, extensively, L. Wirth, *The Problem of Minority Groups*, in R. Linton (Ed.), *The Science of Man in the World Crisis*, Columbia University Press, New York, 1945, 347 ff.; J.A. Laponce, *The Protection of minorities*, University of California Press, Oakland, 1960; F. Capotorti, *Study on the persons belonging to ethnic, religious and linguistic minorities*, United Nations, New York, 1979 and, of the same A., *Minorities*, in R. Bernhardt (a cura di), *Encyclopedia of Public International Law*, Macalister-Smith Publications, Amsterdam, 1985, 385 ff.

[5]With the concept "minority women", we refer to women affiliated to already marginalized communities divided by the majority according to ethnic, racial, religious, linguistic or cultural lines. On this, see A.S. Spiliopoulou, *Human Rights of Minority Women: A Manual of International Law*, Turku: Åland Åbo Akademi University Institute for Human Rights, 2000; A. Xanthaki, *Women's Rights v. Cultural Rights: The Indigenous Woman*, in *Diritti umani e diritto internazionale*, 2018, 359 ff.; see, also, C. Nardocci, *Minority Women, Human Rights, and Cultures in the Multicultural Discourse*, in Fornale, E., Cristani, F. (Eds.) Women's Empowerment and Its Limits. Palgrave Macmillan, Cham., 2023, 53 ff. Minority women are, also, often defined as "double minority", meaning a minority group within an already stigmatized social group, exposed to many different forms of violent conduct affecting their fundamental rights. On the concept of double minorities, see extensively, L Green, *Internal Minorities and Their Rights*, University of Toronto Press, Toronto, 1992.

This is the case for: violence perpetrated in armed conflicts, including gang, mass, and genocidal rape;[6] so-called contemporary forms of slavery;[7] violent conduct relying on customs and traditions, with the exceptions of female genital mutilation, forced marriages, and honour killings, that the Council of Europe's Convention mentions explicitly;[8] violence associated to reproduction, as for obstetrical and gynecological violence;[9] the "new" forms of violence against women resulting from the resort to technological innovation and artificial intelligence, such as cyberstalking, image-based sexual violence, and many more.

All these forms of violence against women have something in common that connects them to the concept of intersectionality. Each of them happens to target women affiliated to vulnerable communities at a much higher rate than women belonging to the majority or dominant group.

Put differently, the victims of the above-listed forms of violence against women are women who are exposed to violent conduct not just because they are women. Conversely, these women are targeted, because they are women plus 'something else'. The 'something else' refers to one or more additional human qualities, often regarded as factors of discrimination, that entertain a relationship with sex and gender, and that contribute to identifying the specific traits of the victim. In these hypotheses, the victim could be a woman belonging to a racial, ethnic, national, or religious minority, a disabled woman, or an indigenous woman. In short, not just a woman, but a woman whose traits result from the intersection among more than one single factor of discrimination.

Contrary to the predominant literature and legislative responses to violence against women, the 'ideal' type of gender-based violence does not exist.

The tendency to envision women suffering from gender-based violence as a homogeneous social group asking for equal mechanisms of protection should be rejected.[10]

Quite the opposite, the intersectional perspective allows for disclosure of the extreme variety of the features of women exposed to violence, to disclose and meet their needs, and to tackle more adequately the specifics of the forms of violence these women are predominantly exposed to.

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[6] On this, please, refer to C. Nardocci, *A Gendered Re-Reading of Genocide: From Mass to Genocidal Rape*, in M. D'Amico, T. Groppi, C. Nardocci, I. Spigno (Eds.), *Sexual and Gender-Based Violence against Women: Constitutional Perspectives from International Law*, in *Diritti comparati*, 2023. On the challenging relationships between interpreting mass rape as a group crime or as an individual crime, see D. De Vito, A. Gill, D. Short, *Rape characterized as genocide*, in *International Journal On Human Rights*, 2009, 29 ff.; and, on the interpretation of mass rape as a group crime, see J.L. Green, *Uncovering Collective Rape: A Comparative Study of Political Sexual Violence*, in *International Journal of Sociology*, 2004, 97 ff.; S.L. Russell-Brown, *Rape as an Act of Genocide*, in *Berkeley Journal of International Law*, 2003, 350 ff.

[7] Reference is made to practices such as: sexual exploitation, human trafficking, forced marriages, domestic servitude, sex trafficking.

[8] See Articles 37, *Forced Marriages*, 38, *Female Genital Mutilations*.

[9] Here should be included forms of violence such as: forced sterilisation and forced abortions. See Article 39.

[10] On this, see A. Xanthaki, who points out that: "victims' voices are treated as homogenized without taking into account the different immigration status of minority women, but other inequalities including caste, class and religion".

Examples of women that depart from the common and socially accepted description of the woman victim of violence are: migrant women, stateless women, indigenous women, and disabled women.

None of these women have anything in common except being a woman, and the differences among them are exactly the consequence of the role played by additional human traits intersecting with sex and gender. The latter human qualities are, however, seldom disregarded in the discourse about violence against women, and, unfortunately, so are the women showing these same attributes.

2.2 Lessons to learn from the Inter-American system

Such difference blindness does not feature all international human rights law treaties dealing with violence against women. More specifically, the counter-intersectional approach has not been endorsed by the other two major regional treaties on women's rights: the Inter-American system's Belém do Parà Convention[11] and the African Continent's so-called Maputo Protocol.[12]

Adopted in 1994, the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women represents the first example of a regional human rights law treaty entirely dedicated to violence against women.

Building on the CEDAW Convention, the Belém do Parà Convention benefits from a large number of states' ratification, which ensures its effectiveness within the Inter-American System. 33 out of 35 Member States of the Organization of the American States chose to be bound to its legislative provisions with the only exceptions being the United States of America and Canada.

Although the North American States chose not to ratify the Convention, following the decisions already made concerning the Inter-American Convention of Human Rights, the Belém do Parà Convention no doubt represents an emblematic example of a treaty that fully recognised intersectionality.

Be it for the multiethnic and multicultural composition of the Member States, for the widespread presence of Indigenous communities, or for an inherent sensitivity towards the need to safeguard diversity in the context of women's rights protection, the Belém do Parà Convention explicitly mentions women belonging to vulnerable communities under Article 9 of the text.

According to Article 9, "... States Parties shall take special account of the vulnerability of women to violence because of, among others, their race or ethnic background or their status as migrants, refugees or displaced persons.". The provision goes on to require that same care and consideration "... shall be given to women subjected to violence while pregnant or who are disabled, of minor age, elderly, socioeconomically disadvantaged, affected by armed conflict or deprived of their freedom.".

At first glance, it appears that the women the Belém do Parà Convention emphasise should be provided with additional protection due to their vulnerable statuses are the

[11] Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, known as the Convention of Belém do Pará.

[12] Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, better known as the Maputo Protocol.

same women the Istanbul Convention fails to consider the worthy additional forms of safeguarding before the states, other individuals as well as non-state actors.

The Belém do Parà Convention refrains from enumerating the types and forms of violence against women that should be targeted, prevented, and, eventually, punished as the Istanbul Convention does. On the contrary, it opts for a general and wide prohibition on violating women's rights, utilising a broad definition of violence against women and taking into proper account the diverse condition of women and their heterogeneous set of needs.

It emerges from the wording of Article 9, in particular, that there is nothing in the Belém do Parà Convention suggesting a "monolithic"[13] interpretation of women and their rights. Women are depicted as a heterogeneous social group, requiring states to differentiate their intervention, to balance and gauge their mechanisms of protection in light of the specifics of the woman involved.

The references to ethnicity, nationality, and personal conditions such as disability, age, or pregnancy status situate the Belém do Parà Convention coherently with intersectional theory, shedding light on the conditions of minority women and not only on women belonging to the majority.

A similar rationale stands behind the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, also known as Maputo Protocol.

Although the treaty does not exclusively address violence against women, focusing instead on a broad range of women's rights, it is nevertheless worth recalling here as it contains several insightful provisions that serve the purpose and goal of underlying intersectionality, meaning the safeguarding of all women without imposing majoritarian or dominant values on all of them.

The Maputo Protocol, first, thoughtfully safeguards rights that are globally recognised as women's rights, while adding specifications aimed at better clarifying the ambit of application and the corollaries of the protected rights.

This is especially true for the provisions dedicated to: family life matters, including marriage and divorce; harmful practices, that are not simply listed as in the Istanbul Convention, but that, rather, are placed at the centre of a detailed list of mechanisms of prevention and repression; health and reproduction, featuring, for the first time globally, the recognition of the right to a safe and legal abortion and the likewise highly controversial right to have access to contraceptives; food; housing; welfare as well as protection against sexual harassment and violence in the workplace; armed conflicts and peace.

Beyond these, the Maputo Protocol chose to provide certain women, identified as belonging to social groups resulting from the intersection between sex/gender and at least one more human feature, with forms of supplementary protection.

The examples are multitude.

References are made to women with disability, elderly women, and the so-called women "in distress".

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[13]For the term "monolithic" to critically refersto women as a united and invisible social group, see J Bond, *International Intersectionality: A Theoretical and Pragmatic Exploration of Women's International Human Rights Violations*, in *Emory Law Journal*, 2003, 71.

The definition of "women in distress" is particularly interesting from the perspective of this article, as it allows us to enlarge the lens of the categorisation of vulnerable women conceived, and *vice versa*, under the Belém do Parà Convention solely relying on certain traditional human traits such as race, disability, or age.

Under Article XXIV, women in distress are, in fact, first and foremost, poor women, female heads of families, and those belonging to marginalised communities.

In addition to these, the Maputo Protocol lists other and newest hypotheses as in the case of pregnant women, nursing women, and, lastly, women in detention.

To draw some preliminary conclusions about the two regional treaties, which share with the Istanbul Convention the same concern and purpose to tackle violence against women, it should be highlighted that, in juxtaposition with the latter, the Belém do Parà Convention and the Maputo Protocol, each by way of their own means, do make space for intersectionality ensuring that wider protection of the rights of all women, which is, unfortunately, culpably absent in the treaty of the Council of Europe.

2.3 ... A change of path in Europe? The European Union's Directive on Violence against Women

The adoption of the first Council of Europe's Convention on Violence against Women and Domestic Violence was later followed by the landmark initiative of the European Union.

In 2024, after years of debate and negotiations, the European Union approved its very first legal instrument to tackle violence against women in the Member States.

The European Union Directive on combatting violence against women and domestic violence was finally adopted on 14 May 2025 with the purpose of "provid[ing] a comprehensive framework to effectively prevent and combat violence against women and domestic violence throughout the Union [...] by strengthening and introducing measures about the following areas: the definition of relevant criminal offenses and penalties, the protection of victims and access to justice, victim support, enhanced data collection, prevention, coordination and cooperation".[14]

Going beyond the ambit of application and the specific features of the EU Directive, what matters most is to verify whether and to what extent the European Union has been willing to overcome some of the criticisms and gaps of the Council of Europe's treaty or if the EU Directive simply represents a legal mechanism that it shares with the Istanbul Convention: ambit of application, purpose(s), *rationale*, approach and, eventually, its contents.

While the EU Directive recalls the Istanbul Convention[15] only twice, the overall content does not significantly depart from the Council of Europe's approach whose main features are, instead, almost reflected in the Directive.

Almost. When it comes to intersectionality, the EU Directive seems to be moving along a different path than the Istanbul Convention.

Whereas the Council of Europe's treaty chose not to address the consequences of multiple marginalised identities when coupled with violence against women, as if

[14] Directive (EU) 2024/1385 of the European Parliament and of the Council of 14.5.2024 on combatting violence against women and domestic violence, § 1 of the Preamble.

[15] See §§ 4 and 67.

violence against women could be depicted as one single phenomenon subjected to being identically replicated regardless of any supplementary element, the EU Directive explicitly mentions intersectionality in its text.

First and foremost, the Preamble opens with the acknowledgment of the urge to tackle intersectional forms of violence against women properly, because "violence against women can be exacerbated as a result of the intersection among sex and other traditional suspect grounds of discrimination".[16]

The Preamble goes on to specify who are the women exposed to heightened risks of violence against women. The list featured in the Preamble is extensive, and remarkable in that it includes a wide range of women who are often neglected and have no space or voice in the discussion about violence against women. Under paragraph 71 of the Preamble, women suffering from intersectional forms of violence are, among others, disabled women, undocumented migrant women, women with dependent resident permits or residence status, those applying for international protection, fleeing from armed countries, belonging to racial and ethnic minorities or in poor living conditions.

However, these are not just some of the women the EU Directive considers worthy of special protection and support by the Member States due to their compounded identities. From this angle, the EU Directive proves to be even more progressive than the Belém do Pará Convention and the Maputo Protocol in uncovering the reality of minority women and intersectional violence.

Looking closer at paragraph 71, other groups of women finally gained the attention they deserved. Rural women, bisexual, gay, lesbian, intersex, and trans women, and women with alcohol and drug disorders are finally recognised as women exposed to a much greater risk of becoming victims of violence. The EU Directive builds on the regional treaties on violence against women and brings the discussion forward. No question that this is the most remarkable success conquered by the EU Directive on violence against women.

But the focus on vulnerable women does not end with the Preamble.

Article 16, on individual support and assessment of the victim's special needs, states under paragraph no. 4[17] that assistance to women victims of violence must take into account their status of vulnerability, resulting from the intersection among sex and other factors of discrimination, even expressively using the wording "intersectional discrimination" to describe the situations experienced by these women.

The preference for personalised support features other provisions of the Convention.

Article 25[18] requires that special measures of support should be put in place in favour of women victims of violence who happen to simultaneously compound a

[16] See § 6.

[17] "The individual assessment as referred to in paragraph 2 shall take into account the victim's individual circumstances, including whether the victim experiences discrimination based on a combination of sex and any other ground or grounds of discrimination as referred to in Article 21 of the Charter ('intersectional discrimination'), and, therefore, faces a heightened risk of violence, and the victim's own account and assessment of the situation. It shall be conducted in the best interest of the victim, paying special attention to the need to avoid secondary or repeat victimization".

[18] Article 25, *Specialist support to victims*.

variety of support grounds alongside sex. The same approach follows Article 27,[19] this time about victims of female genital mutilation, while no dedicated provision exists about women victims of forced marriages although the Directive does not omit to qualify and punish the latter as one of the condemned forms of violence against women.

Lastly, again about the support mechanisms offered to women, Article 33[20] reminds the Member States to ensure specific support to the victims of intersectional discrimination. Particularly interesting is, ultimately, the reference to the principle of reasonable accommodation that the Directive asks the Member States to respect in favour of women with disabilities.

Eventually, the EU Directive appears to have turned the page, left the Istanbul Convention behind, and inaugurated a new season, that sees intersectionality finally conquering its space in the general discourse on violence against women.

An additional confirmation of the intersectional reading of violence against women under the EU Directive came from the Court of Justice of the European Union (CJEU).

In March 2024, just a few months before the definitive approval of the Directive, the CJEU delivered a landmark judgment stating that migrant women subjected to violence in their country of origin should be granted the right to asylum.[21]

For the very first time, the CJEU acknowledged the peculiar status of minority women, emphasising, at the same time, the collective dimension of violence as a form of discrimination against migrant women conceived as a social group in need of specific forms of support.

The CJEU confirmed this line of reasoning in a subsequent and likewise groundbreaking judgment,[22] held on October 2024, where it declared that the segregation based on sex experienced by Afghan women, subjected to forms of violence daily, should be interpreted as a form of prosecution consistent with the granting of the right to asylum in the European Union.

In light of the above and despite some criticisms that came along with its approval,[23] the EU Directive demonstrates endorses, and substantially realises the principle of intersectionality ensuring minority women with a higher degree of protection, at least, in the European Union Member States.

[19] Article 27, *Specialist support for victims of female genital mutilation*.

[20] Article 33, Targeted support for victims with intersectional needs and groups at risk.

[21] EU ECJ, *WS v. Intervyuirasht organ na Darzhavna agentsia za bezhantsite pri Ministerskia savet* (C-621/21), 16.1.2024. About the judgement, please, see C. Nardocci, *Le donne* (*di minoranza*) *e il diritto di protezione sussidiaria nella prima decisione della Corte di Giustizia in tema violenza contro le donne*, in *Quaderni costituzionali*, 2024, 448 ff.

[22] EU ECJ, *AH & FN v. Federal Office for Immigration and Asylum*, (C-608/22 and C-609/22), 4.10.2024. See, also, EU ECJ, (C-646/21), *K and L v Staatssecretaris van Justitie en Veiligheid*, 21.6.2024.

[23] Among these, it should be recalled that involving the definition of rape, that does not include any reference to the lack of consent of the victim. On this, see, below, the last paragraph of the Article.

3 The second: the effectiveness of the Istanbul Convention at the time of gender backlash and anti-gender ideology

The second perspective to test the effectiveness of the Istanbul Convention in the European scenario is much more pragmatic.

The number of signatures, ratifications, new accessions, and even withdrawals provides a very detailed picture of the *status quo* of the Istanbul Convention.

While states' options are sometimes overlooked since there is a preference to focus, instead, on the contents, there is nothing more important to assess the state of health of a treaty than examining how states react to its adoption and which choices they make in this respect.

The history of the Istanbul Convention testifies to the controversies and ongoing challenges in handling violence against women at the supranational level, but not only.

The coming into force of the Istanbul Convention was not welcomed everywhere, as not all national governments in Europe were inclined to be bound to a Convention so strongly committed to strengthening gender equality.

The result of these tensions is traceable in the numbers.

Contrary to other Council of Europe treaties,[24] the Istanbul Convention cannot even count on the signatures of all the contracting States of the Council of Europe. Rather, the number of states that opted for the signature and ratification of the Istanbul Convention continue to be low, although recent years have witnessed a reverse of the described trend.

At this point, 40 of 46 contracting states signed and ratified the Istanbul Convention, while the opposite option, meaning neither the signature nor the ratification, has been chosen by only two countries, Türkiye and Azerbaijan after the expulsion of the Russian Federation following the invasion of Ukraine.

Although the number of states that ratified the Convention may seem high, there is one point to consider.

Among the 40, 26 states made reservations to the Convention under Article 79.

It goes beyond the scope of the Article to examine every state's reservation, but it should at least be pointed out here that the majority of states have been moved by the willingness to limit the binding effects of the Convention on the national level. Moreover, 26 out of40 means more than half, which allows the bottom line to question the equal geographical applicability of a Convention inspired by some of the more fundamental and universal principles, as it is for gender equality.

Alongside states' reservations, there has been one more event that shook Europe in the past few years.

As widely known, in 2021, Türkiye denounced the Istanbul Convention, declaring its intention to withdraw under Article 80, becoming the leading country in giving voice to the so-called gender backlash inspired by a deep-rooted anti-gender ideology.

Following Türkiye, other states attempted to follow the same path, but did not do so within the Convention system by following Article 80, and hence did not in fact leave.

[24] Reference is made to the European Convention of Human Rights.

Some of these are worth recalling as they represent case studies to monitor in an ongoing scenario featuring an unfortunate divide between Eastern and Western Europe.

One of the most famous is Poland.

The Polish government declared its willingness to withdraw from the Istanbul Convention. A declaration of intent which does not come as a surprise in light of the recent choice made about women's reproductive rights with the famous Constitutional Court's judgment[25] on the constitutional illegitimacy of voluntary termination of pregnancy, followed by the enactment of one of the most restrictive laws in Europe about abortion.[26]

Hungary is another state that made clear that it is not its intention to be bound by the Istanbul Convention. Hence, in 2020, Hungary's parliament approved a declaration refusing to ratify the Istanbul Convention.[27] Moreover, in Bulgaria, the mistrust towards the Istanbul Convention resulted in the Constitutional Court's declaration of the incompatibility of the Convention with the constitutional principles of the Bulgarian state.[28]

Similarly to Hungary and more recently, the Lithuanian parliament referred the question of the constitutional legitimacy of the Istanbul Convention to the Constitutional Court. In May 2024, the Lithuanian Constitutional Court ruled that the Istanbul Convention does not contradict the Constitution.

Luckily, recent years have not merely testified to attempts to question the legitimacy of the Istanbul Convention, beginning with its rationale and purposes.

However, getting back to numbers, it cannot be said that the Istanbul Convention counts robust support from the member states of the Council of Europe.

Compared to the United Nations' CEDAW Convention, signed and ratified by an overall majority of states, the Istanbul Convention still does not possess the same significance in the Council of Europe, with the former continuing to have a much further reach. The same discourse applies to correlate the Istanbul Convention with the above-mentioned regional treaties on violence against women, the Maputo Protocol, and the Belém do Pará Convention.

One last note in this regard.

Although the anti-gender ideology seems to be the most plausible cause of the never-ending challenges faced by the Istanbul Convention since its approval in 2021, there might be another reason that stands behind the weakness of the Convention.

[25] See the Polish Constitutional Tribunal's abortion ruling released on 22.10.2020, K 1/20, *Journal of Laws*, 175 ff. For a comment, P. Grzebyk, *The Polish Women's Strike, abortion, and the right to strike*, in *Italian Labour Law E-Journal*, *2022*, 151 ff.

[26] Polish abortion law raised several concerns worldwide. Among these, see the CEDAW Report, that considers the restrictions to access to legal and safe abortion as a "cruel, inhuman or degrading treatment". The full text of the CEDAW Report, released in August 2024, can be read at the following link: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2FC%2FPOL%2FIR%2F1&Lang=en.

[27] For the official news, see the following: https://www.europarl.europa.eu/doceo/document/E-9-2020-002981_EN.html.

[28] The judgment was delivered on 27.7.2018. For a comment, see R. Vassileva, *Bulgaria's Constitutional Troubles with the Istanbul Convention*, in *Verfassungsblog*, Link: https://verfassungsblog.de/bulgarias-constitutional-troubles-with-the-istanbul-convention.

As mentioned at the outset, the enforcement of the Istanbul Convention is not granted by any tailored judicial treaty body.

Without wanting to diminish the GREVIO, it cannot be underestimated that the absence of a judicial body supervising States's compliance and the coherent application of the treaty will have not solved, perhaps, but at least favour, the pervasiveness of the Convention at domestic level. The supplementary role involuntarily played by the European Court of Human Rights has proved to be not enough.

Especially, but not only, when it comes to intersectional violence and minority women. Whether the European Court of Justice will do more for women victims of violence is an open question and a key aspect to keep under scrutiny for the upcoming years.

3.1 Is there good news out there?

Although numbers did not play out in favour of the Istanbul Convention, the last three or four years did not witness just bad news.

On the contrary.

Maybe the major achievement has been the ratification of the Istanbul Convention by the European Union in 2023 and following the signature in 2017.[29]

The EU's ratification was anticipated just a few months after the definitive approval of the above-mentioned Directive on violence against women, establishing a structural bond and a shared commitment between the two European international organisations.

But the European Union was not alone in reversing a worrisome trend, made of states denouncing the Istanbul Convention and neglecting its values.

The same year Türkiye declared its intention to withdraw from the Istanbul Convention, Lichtenstein definitively ratified the treaty.

In 2022, a similar move was shared by other member states of the Council of Europe: in the United Kingdom,[30] Ukraine, and the Republic of Moldova.[31]

The Ukrainian parliament approved the Istanbul Convention in late 2024 and, lastly, Latvia ratified the Convention in 2024.[32]

In 2023, Czechia also began the ratification process, which, unfortunately, did not end as expected. In January 2024, by a handful of votes, Czechia's upper house senate voted against the ratification of the Istanbul Convention.[33]

Beyond the member states of the Istanbul Convention, in the last couple of years, the Council of Europe has invited non-member states to join the Istanbul Convention.

[29]On 1.10.2023, the Istanbul Convention entered into force for the European Union, which became the 38th party. For more details, see the following link: https://www.europarl.europa.eu/legislative-train/theme-a-new-push-for-european-democracy/file-eu-accession-to-the-istanbul-convention.

[30]The United Kingdom ratified the Convention in July 2022, link to the official news: https://www.coe.int/en/web/istanbul-convention/-/the-united-kingdom-ratifies-the-istanbul-convention.

[31]The Republic of Moldova ratified the Convention in May 2022.

[32]The Convention entered into force on 1.5.2024, becoming the 39th Party of the Convention.

[33]In Ukraine, the Istanbul Convention entered into force on 1 November, after the approval by the Ukrainian Parliament and ratification on 18.7.2022.

Unfortunately, the states involved, Morocco, Israel, and Tunisia, refused to accede to the Convention.[34]

In light of the above, the picture that emerges is quite complex and ambiguous.

Attempting to draw some conclusions from the above, it appears that, despite some limited successes as in the cases of Ukraine and Czechia, the Council of Europe continues to demonstrate a high degree of division concerning whether and how to safeguard women's rights.

Regardless of some episodes of anti-gender ideology in western countries, especially in the aftermath of the United States Supreme Court's Dobbs case which worried all those who believed unquestionably the constitutional legitimacy of the right to abortion, the east-west divide represents an unsolved challenge left to the future ahead.

And, unfortunately, the Istanbul Convention became the perfect litmus test to gauge the status of women's rights in Europe and, even beyond.

4 The third: is the European Court of Human Rights doing 'enough'? Numbers first

The third perspective to evaluate the status and, more specifically, the effectiveness of the Istanbul Convention derives from the investigation of the European Court of Human Rights case law on violence against women and domestic violence.

Given the absence of a judicial treaty body scrutinising the compliance of the Member States with the Istanbul Convention, the ECtHR's case law provides some food for thought to at least gauge the readiness of the Council of Europe to identify, acknowledge and, eventually, sanction episodes of violence against women and domestic violence. That is to say, the ECtHR's case law allows us to verify whether and to what extent the adoption of the Istanbul Convention impacted the awareness and willingness of the Court of Strasbourg to condemn States' negligent behaviour when asked to protect women and young girls from violent conduct.

As to the relevance of the Istanbul Convention in terms of its effects on the number of cases the ECtHR chose to handle and judge, the response should be positive.

Despite the numbers being nothing like those about other Convention rights violations, after 2011 the jurisprudence of the Court of Strasbourg featured an increase in the judgments featuring episodes of violence against women and domestic violence.

While before 2011 the ECtHR discussed the consequences of women's rights violation following episodes of violence perpetrated especially by intimate partners in only 10 judgments, the adoption of the first Council of Europe's Convention on Violence against Women, at least looking at the numbers, lead to a significant rise in judgments.

[34] Euro Med Rights reports that despite the invitation to access the Istanbul Convention, "... the Tunisian government took note of the recommendations by several countries to ratify the Convention, highlighting, however, that the Convention contained terms like 'gender' or 'sexual orientation and gender identity' that were not consistent with the Tunisian reality". Regarding Israel, it is reported that "[t]he Israeli government declared in December 2022 that it will not approve the country's accession to the Istanbul Convention, being concerned about clauses granting asylum to victims of domestic violence". Link to the reported news: https://euromedrights.org/publication/the-istanbul-convention-a-crucial-instrument-to-counteract-gender-based-violence-in-an-increasingly-contested-international-context.

A second point has to do with the outcome of these judgments. The vast majority of these ended with states' condemnations, whereas cases of non-receivable or inadmissible applications were reduced consistently.

That being said, the ECtHR case law on violence against women is filled with lights and shadows.

Going beyond a purely quantitative evaluation, there are notable aspects and trends that chiefly characterise the ECtHR's smaller volume of and more recent case law.

While there is a non-controversial tendency to find violations of Articles 8, 2 and 3, the ECtHR's case law continues to be highly reluctant to ascertain a violation of the prohibition to discriminate. Thus, although the outcome could be in favour of the victim, the ECtHR rarely interprets states' negligence or other types of culpable behaviour as manifestations of discrimination based on sex or gender.

More often, when the applicant invokes the violation of Article 14 ECHR, read in conjunction with Articles 2 or 3, the ECtHR prefers to sanction the respondent state for a procedural rather than substantial violation.[35] Imagine a typical domestic violence case that ended with the murder of a woman, who had previously been labelled a victim of domestic violence, by her intimate partner.

Before the invoked violation of Article 2, safeguarding the right to life, in conjunction with Article 14 ECHR, prohibition to discriminate, the recurrent response of the Court of Strasbourg would be the condemnation of the state, because of its inertia in protecting the woman, meaning, in preventing her death.

But, and here lies the major concern, the ECtHR would seldom interpret states' negligence as a form of gender-based discrimination. In short, the ECtHR would conclude the procedural violation of Article 2, in conjunction with Article 14, but it will never go too far to say that the avoidance of preventive measures put in place to avoid murder could be explained by a discriminatory attitude towards the victim.

The denial of the discriminatory dimension of cases of violence against women and domestic violence did not prevent the ECtHR from sanctioning a variety of forms of gender-based violence.

Regardless of the unquestionable prevalence of domestic violence cases, from *Opuz v. Turkey*[36] to *Talpis v. Italy*[37] onwards, the recent jurisprudence has featured a slow opening to a wider range of violence against women.

[35]For further studies on the ECtHR's procedural scrutiny, see O.M. Arnardóttir, *The "procedural turn" under the European Convention on human rights and presumptions of convention compliance*, in international *Journal of constitutional law*, 2017, 9 ff.; J. Gerards, E. Brems (Eds.), *Procedural Review by the ECTHR—a typology*, in *Procedural Review in European Fundamental Rights Cases*, Cambridge University Press, 2017, see 127 ff.; P. Popelier, *The Court as regulatory watchdog: the procedural approach in the case law of the European court of human rights*, in *The Role of Constitutional Courts in Multilevel Governance*, Intersentia, 2013.

[36]ECtHR, *Opuz v. Turkey*, [Third Section], no. 33401/02, 9.6.2009.

[37]ECtHR, *Talpis v. Italy*, [First Section], no. 41237/14, 2.3.2017.

Cases like *Volodina v. Russia*[38] and *Buturuga v. Romania*,[39] about cyberstalking, or *J.L. v. Italy*,[40] on secondary victimisation, are emblematic of a new course of the ECtHR, which is not only focusing on domestic violence cases anymore.

However, despite the above-mentioned cases, there continue to be two major gaps in the ECtHR's case law. One is the difficulty, whether deliberate or not, or the unwillingness of the ECtHR to handle cases other than domestic violence.

The second concerns intersectionality. And yet intersectional forms of violence still struggle to make their way before the ECtHR.

The two aspects are interrelated, as one of the main causes of the diversity in the ways violence against women expresses and manifests itself is exactly connected with the features of the victim. This is true for traditional or custom-based violent practices and for several forms of violence perpetrated against vulnerable women.

As a preliminary conclusion, it could be argued, therefore, that the Court of Strasbourg reflects the approach of the Istanbul Convention. In other words, the more the latter refrains from considering intersectionality and its consequences on the phenomenology of violence, the more the former does not distance itself from the same route, confining its judgment on the ideal type of violence against women, that is, predominantly, the (Western interpretation of) domestic violence.

4.1 The Court of Strasbourg and Intersectionality: same old story

Much has been said about the poor enforcement of the Istanbul Convention by the ECtHR in cases of violent conduct perpetrated against women and girls.

The conclusion does not depart from what is already discussed when the circumstances of the fact involve women belonging to vulnerable communities. Similarly to the challenges faced to give access to intersectionality in the context of the Istanbul Convention, the ECtHR has rarely discussed intersectionality cases and even more seldom has it used the wording "intersectionality" to describe episodes of violence that have been caused by the simultaneous agency of many factors of discrimination.

As observed, the ECtHR's case law, examined from the angle of cases on intersectional forms of violence, reflects a similar trend compared to those featuring non-intersectional violent conducts.

There has been a development in the number of judgments since 2011,[41] which has led to the well-known *B.S. v. Spain*.[42] In *B.S. v. Spain*, the ECtHR found a violation

[38] ECtHR, *Volodina v. Russia No. 2*, [Third Section], no. 40419/19, 14.9.2021.

[39] ECtHR, *Buturuga v. Romania*, [Section Five], no. 56867/15, 11.2.2020.

[40] ECtHR, *J.L. v. Italy*, [First Section], no. 5671/16, 27.5.2021.

[41] Research using the HUDOC Database on cases of intersectional violence against women before 2011 lead to six judgments, each of whom characterised by being the victim a woman affiliated to some marginalised community. These judgments are: ECtHR, *X and Y v. The Netherlands* (disability and age); ECtHR, *M.C. v. Bulgaria* (age - minor, rape of a 14 year old girl); ECtHR, *Collins and Akaziebie v. Sweden* (ethnicity and "minority women" – FGMs), on this case, see below; ECtHR, *Izevbekhai v. Ireland* (FGMs); ECtHR, *N. v. Sweden* (ethnicity); ECtHR, *Rantsev v. Cyprus and Russia* (ethnicity – slavery). The latter is a very significant case as here the ECtHR found a violation of the European Convention, sanctioning for the first time a case of contemporary form of slavery, which, as known, could be regarded as an additional manifestation of the multifaceted phenomenon of violence against women.

[42] ECtHR, *B.S. v. Spain*, [Third Section], no. 47159/08, 24.7.2012.

of Article 14, read in conjunction with Article 3 ECHR, in a case concerning the verbal and sexual abuses suffered by an African woman, while explicitly endorsing the concept of intersectional discrimination.

Despite the acknowledgement of the intersectional dimension of the case, the ECtHR did not go too far to ascertain the substantial violation of Article 14, in conjunction with Article 3, ECHR. Instead of condemning the state because the police refused to investigate for a discriminatory motive, the ECtHR only ascertained the procedural facet of the claim, concluding that the police did not take into consideration the vulnerable *status* of the victim.[43]

Going beyond *B.S. v. Spain*, the timeframe that followed the approval of the Istanbul Convention saw other judgments, in which the ECtHR was asked to rule on cases presenting intersectional features.

Leaving aside those about the intersection of gender, traditions, and customs,[44] many involve extraditions cases and others about the risks of being subject to honor killings, human trafficking, or forced prostitution.

Among the judgments about migrant women at risk of extradition and of being subject to human trafficking, one of the most significant is *S.M. v. Croatia*.[45]

The case is noteworthy as it was one of the first times the ECtHR straddled the line between violence against women and contemporary forms of slavery, without separating the former from the latter.

Moreover, and the perspective of the present analysis, the judgment represents an emblematic example of a correct assessment of the vulnerable condition of migrant women, hinging on the intersection between gender, ethnicity, and national origin.

S.M. v. Croatia features several aspects of interest, whose analysis cannot be exhausted here. And yet, there are at least some deserving to be emphasised. On the one hand, the ECtHR framed forced prostitution within the scope of Article 4 ECHR and defined it as a form of violence against women, despite the silence of the Istanbul Convention. On the other, it explicitly pointed out the prejudices affecting national authorities' procedures linking them to the phenomenon of secondary victimisation.

Another area touched upon by the ECtHR covers cases involving migrant women exposed to the risk of being first deported to their country of origin, and later being subjected to forced prostitution[46] or honour killings. The ECtHR even reached some noteworthy verdicts, condemning the state for not having impeded the woman's extradition and her subsequential exposure to forms of violence, as in *L.E. v. Greece*,[47] about forced prostitution, and *R.D. v. France* on honour killings.[48]

Lastly, there are two additional streams of the ECtHR's case law about intersectional violence worth mentioning.

[43] See §§ 62-63.

[44] On these, see, below, the following paragraph.

[45] ECtHR, *S.M. v. Croatia*, [First Section], no. 60561/14, 18.7.2018. See, also, ECtHR, *J. and Others v. Austria*; ECtHR, *O.G.O. v. the United Kingdom*; ECtHR, *M. and Others v. Italy and Bulgaria*.

[46] See ECtHR, *V.F. v. France*, and ECtHR, F.*A. v. the United Kingdom*.

[47] ECtHR, *L.E. v. Greece*, [First Section], no. 71545/12, 21.1.2016.

[48] ECtHR, *R.D. v. France*, [Fifth Section], no. 34648/14, 16.6.2016. See, also, ECtHR, *A.A. and Others v. Sweden*.

The first deals with minority women and is well represented by *W.H. v. Sweden*,[49] about a single woman of Iraqi nationality, belonging to the Mandaeans minority, who claimed asylum in Sweden, stating that her expulsion would have resulted in the risk of being forcibly remarried and discriminated as a consequence of her affiliation to a minority group. Following the decision of the Swedish migration board that granted the victim a residence permit, the Grand Chamber struck out the application, but, nevertheless, it implicitly endorsed the respondent state deliberation, taking into proper consideration the applicant's status as a minority woman at risk of intersectional discrimination and violence.

The second, instead, deals with young girls, victims of violence, usually rape and sexual assaults, where the intersectional facet of the judgments lies in the intersection between gender, age, and, often, race and ethnicity.[50] This was the case of *Y. v. Slovenia*,[51] where the ECtHR found a violation of Article 8 ECHR in a case involving a Ukraine girl, who went to Slovenia with her family, who complained of being the victim of repetitive sexual assaults by a family friend.

Lastly, in an intermediate place between the above-mentioned streams, there is *Aydin v. Turkey*,[52] the first judgment in which the ECtHR found a violation of the ECHR following the rape of a 17 year old Kurdish woman by a police officer while in custody.

4.1.1 When gender interlaces with customs and traditions

Although the case law on cases of violence resulting from the intersection between gender, customs, and traditions is limited, it nevertheless offers interesting insights.

Reference is to the ECtHR's case law on female genital mutilation and forced marriages.[53]

As widely known, these practices constitute forms of violence against women as established under Articles 39 and 37 of the Istanbul Convention. The two provisions should be read in conjunction with Article 42, which excludes the applicability of the cultural defence doctrine before conducts, such as those of female genital mutilation and forced marriages, which violate fundamental human rights.

Despite the universal condemnation of these practices, the few judgments delivered by the ECtHR do not effectively respond to the applicants' submissions, relying instead on questionable use of the margin of appreciation doctrine.

Concerning female genital mutilation, the ECtHR considers these practices a violation of Article 3 ECHR as a form of inhuman and degrading treatment. Despite their uncontested qualification, the ECtHR has never sanctioned states' decisions to

[49] ECtHR, *W.H. v. Sweden*, [Grand Chamber], no. 49341/10, 8.4.2015.

[50] See ECtHR, *I.G. v. Republic of Moldova* (rape of a minor), ECtHR, *P. and S. v. Poland* (rape and case about the refusal to grant the minor an abortion by healthcare providers); ECtHR, *O'Keeffe v. Ireland* (sexual abuse in education).

[51] ECtHR, *Y. v. Slovenia*, [Fifth Section], no. 41107/10, 28.5.2015.

[52] ECtHR, *Aydin v. Turkey*, [Grand Chamber], no. 23178/94, 25.9.1997.

[53] On this, recently and with respect to how European Courts react towards forced marriages, see Cristina María Zamora-Gómez, *The Best Interests of Refugee Girls Victims of Forced Marriage in the European Justice: Family Reunification and Private Life*, in *Ordine internazionale e diritti umani*, 2024, 283 ff.

expel migrant women and young girls when they were at risk of being subjected to female genital mutilations once returned to their home country. Since the ECtHR has no competence to judge domestic regulations about forced expulsions, and states are considered better placed and afforded a wide margin of appreciation, cases of violence against women and girls end up without sanctions under the ECHR.

One of the first cases the ECtHR judged on the compliance with the ECHR of female genital mutilation was *Collins and Akaziebie v. Sweden*,[54] about a Nigerian woman who sought asylum in Sweden and wished to protect herself and her daughter from being forcibly subject to FGM if deported to their home country. Although the ECtHR acknowledged that genital mutilation amount to ill-treatment contrary to Article 3 ECHR,[55] it then declared the application manifestly ill-founded, because the applicant failed to prove that she and her daughter were exposed to a real and concrete risk.

The weaknesses of Article 14 ECHR emerge very clearly.

Parties do not invoke Article 14 ECHR in conjunction with Article 3 ECHR and, as a consequence, the ECtHR has an easy job in refusing to look into Article 14 ECHR's violations. Not only does the ECtHR avoid acknowledging the recurrence of unequal treatment, it also refuses to recognise the vulnerability of the victims and to ensure a proper realisation of the principle of the parity of arms, which would suggest that the proof of the lack of risk should be shifted to the respondent state's side.

Unfortunately, this approach has not been abandoned. To date, there are no ECtHR judgments that result in findings of ECHR violation in FGM cases.

Other cases have shared the same fate.

In *R.B.A.B. and Others v. The Netherlands*[56] and *Sow v. Belgium*,[57] the ECtHR found no violation of Articles 3 and 13 ECHR. In the latter, the finding of non-violation was even based on the age and economic conditions of the applicant, who had not been considered "vulnerable".

The second area to consider covers forced and child marriages.

Like in FGM cases, the ECtHR rarely faced the issue.

In *Z.H. and R.H. v. Switzerland*,[58] the ECtHR was asked to decide whether the denial of the recognition of a child marriage legally contracted abroad amounted to a violation of Article 8 ECHR. In recalling that "Article 8 [. . .] cannot be interpreted as imposing on any State party to the Convention an obligation to recognize a marriage, religious or otherwise [and that] nor can such obligation be derived from Article 12 of the Convention",[59] the ECtHR concluded that in denying the recognition of the legal effects of the religious marriage between the applicants, the state did not overstep its margin of appreciation.

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[54] ECtHR, *Collins and Akaziebie v. Sweden*, [Third Section], no. 23944/05, 8.3.2008. Other cases worth mentioning are the following: *Omeredo v. Austria* and *Bangura v. Belgium*.

[55] *Ibidem*.

[56] ECtHR, *R.B.A.B. And Others v. The Netherlands*, [Third Section], no. 7211/06, 7.6.2016.

[57] ECtHR, *Sow v. Belgium*, [Second Section], no. 27081/13, 19.1.2016.

[58] ECtHR, *Z.H. and R.H. v. Switzerland*, [Third Section], no. 60119/12, 8.12.2015. See, also, ECtHR, *R.H. v. Sweden*; ECtHR, *Z.H. and R.H. v. Switzerland;* ECtHR, *K.A.B. v. Sweden*, and ECtHR, *MOJ and Others v. The Netherlands*, where the ECtHR ended up with a declaration of inadmissibility.

[59] Cfr. § 44.

Although the ECtHR did not tackle the issue in its subsequent case law on Articles 8 and 12 ECHR, the CoE took a clear stand against child marriages, first, in 2005 with the Parliamentary Assembly Resolution, *Forced marriages and child marriages*,[60] and, later, in 2018, with Resolution No. 2233, *Forced Marriage in Europe*,[61] which invites the Member States to refrain from recognising forced or child marriages contracted abroad within their legal systems, regardless of the legality of the conduct in the state of origin.

Beside the specifics of each case, the ECtHR's case law proves to be inadequate to ensure the effective safeguarding of the rights of the young girls involved. Both when it comes to FGM and child or forced marriages, it never takes into proper consideration the provisions of the Istanbul Convention, which qualify the two conducts at stake as forms of violence against women. The choice to preserve states' discretion in migration policies proves to be controversial as it clearly does not comply with the principle that requires the protection of victims of forms of violence against women.

5 Summing up and contextualising the issue: boosting access to justice and strengthening women's safeguards in the Council of Europe

Many concerns and issues have been raised throughout the article. Many challenges are still wide open when discussing the effectiveness of women's and young girls' protection from violent conduct on the European continent.

Unfortunately, the perplexities about the role and impact of the Istanbul Convention have not altered since the adoption of the European Union's Directive in March 2024, except for the acknowledgment of intersectionality as a tool to unravel cases of women exposed to higher risks of becoming victims of violence.

Although a thorough evaluation of the EU Directive on violence against women will require waiting for its implementation by the Member States and the European Court of Justice, its content leaves the door open to quite the same concerns as the Istanbul Convention. This means that there continue to exist many reasons to advocate for the amendment and improvement of the two supranational legislative texts.

In short, the major criticisms rest on the following:

Number one is consent.

Although the Istanbul Convention does not specifically tackle the issue, the debate that preceded the approval of the definitive version of the EU Directive on violence against women was exactly about the definition of rape as an act of violence perpetrated without the consent of the victim.

Over consent and its relevance for the definition of rape, there has been an intense debate that, unfortunately, saw the approval of a definition of rape that does not mention the lack of consent.

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[60] The full text is available here: https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17379&lang=en. The United Nations likewise took a stand against forced marriage with Resolution no. 75/167, 2020, about child, early and forced marriage.

[61] The full text is available here: https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=25016&lang=en.

The interpretation of what should be called rape and what, instead, consensual sexual intercourse remains at the centre of a never-ending discussion and continues to expose women to uncertainty when they decide to bring their case before the Courts. This is true even in the controversial cases of spousal rapes, wrongly conceived as a non-Western phenomenon as only women of the Global South were subject to it. There is a deafening silence around consent in the rape discourse, and the light at the end of the tunnel seems unseen.

A second area of concern covers custom practices like forced marriages and female genital mutilation. Honour killings should be considered aside. Episodes of killings motivated by the believed or presumed violation of the honour of the family are, in fact, traceable both in the North and in the Global South suggesting, therefore, that the equation between honour killing and minority cultures should be rejected.

Although these forms of violence are included and explicitly mentioned in the Istanbul Convention and, later on, in the EU Directive, the ECtHR's case law proved the inadequacy of the protection afforded to women. Besides exceptional cases, the Court of Strasburg has repeatedly preferred to resort to the contracting states' margin of appreciation in cases of migrant women invoking the protection of the European Convention because they are at risk of being exposed to violent custom practices if deported to their countries of origin.

A third aspect rarely discussed in the overall debate about the improvement of supranational mechanisms to contrast violence against women is the lack of proper coordination between the Istanbul Convention and the other Council of Europe treaties dealing with different forms of violence. A paramount example is offered by the Convention on action against trafficking in human beings.[62] The Convention condemns, in fact, several forms of violence that are relevant from a gender perspective as it covers conduct like sexual exploitation whose victims are predominantly women and young girls.

The same argument applies to the relationship between the Istanbul Convention and the United Nations treaties and soft law mechanisms.

Beyond the CEDAW, one example is the UN Resolution about women and peace,[63] which happens to be the only soft law document worldwide specifically dedicated to forms of violence against women occurring during armed conflict and situations of geopolitical concern.

A fourth point to be made is about migrant and stateless women.

Migrant and stateless women continue to suffer from discriminatory laws on nationality and citizenship with severe consequences on their status which expose them to increasing risks of becoming victims of violent conduct. These are the same women who failed to be protected under the European Convention because of the preference of the ECtHR to give precedence to states' discretion in their migration policies over the safeguarding of women's rights.

Lastly, to conclude, there is the urge to tackle all forms of violence that are connected to women's reproductive rights. Obstetrical and gynecological violence is fre-

[62] See Council of Europe Convention on Action against Trafficking in Human Beings adopted on 16.5.2005.

[63] Reference is made to the Security Council's Resolution (S/RES/1325) on women and peace and security on adopted on 31.10.2000.

quent and embraces different manifestations, ranging from pregnancy-related misconduct, such as non-consensual C-sections, to forced sterilisations and forced abortions.[64] Since there is no consensus about the line to be drawn between violence against women per se and medical negligence, it should be recommended that scientific and legislative development should rightly address these new manifestations of violence against women that continue to be largely neglected.

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[64] On this, see M. D'Amico, C. Nardocci (Eds.), *Obgyn and Obstetric Violence between Canada, Italy, and Europe*, FrancoAngeli, Milan, forthcoming, 2025.