

The Istanbul Convention and its Contribution to the Fight Against Domestic Violence

This article aims to analyze international human rights instruments through a gendered lens in regard to Domestic Violence and Violence against Women. Taking into account the Istanbul Convention as the gold standard in fighting gender-specific violence, it examines the mechanisms the Convention entails and compares them to standard human right treaties.

A. Introduction

Violence against Women constitutes a fundamental issue in modern society. Estimates published by the World Health Organization indicate that worldwide about one in three women have been subjected to physical and/or sexual intimate partner violence or non-partner sexual violence.¹ 58 % of the women that were killed globally in 2020 died through the hands of an intimate partner or a family member.² Thus, Violence against Women, including Domestic Violence (DV), have secured a spot on the agenda. The rising amount of attention is proof that Domestic Violence is one of the most pervasive and pressing Human Rights violations faced by the international community.³ To put such priority into practice, the Council of Europe adopted the “Convention on Protecting and Combating Violence against Women and Domestic Violence”, the so-called Istanbul Convention (IC). Yet, even though pursuing a valuable goal, types of contestation are noticeable in a political and legal context, raising the question whether the IC really is needed and contributes to an improved fight against DV and other forms of Violence against Women.

¹ WHO, Violence against Women, 25.05.2023.

² WHO, Violence against Women, 25.05.2023.

³ Meyersfeld, Domestic Violence and International Law, 2010, p. vii.

B. Domestic Violence as a Human Rights Issue

The prerequisites to establish DV as a Human Rights issue are firstly to understand that the victims of DV are disproportionately female and secondly the fact that DV happens at home and has therefore been considered a private matter for a long time.⁴

Human Rights have originally been constituted to protect *all* people from an encroachment on their rights by the state.⁵ Traditionally, they cover the relationship between the state and its citizens – the so called ‘public sphere’.⁶ The regulation of relationships between individuals and family members – the ‘private sphere’ mainly remained outside of the scope of international Human Rights law.⁷

However, while in principle, all people should be equally protected by Human Rights, not all people are equally partaking and represented in the public and private spheres. Men, across most cultures, are predominant in the public sphere and are therefore able to enjoy all-encompassing civil rights as they exist as *public legal entities* in all states.⁸ Women’s participation in public life on the other hand, is not very pronounced.⁹ Con-

⁴ Weissmann, The Personal Is Political-and Economic: Rethinking Domestic Violence, BYU Law Review 2007, 387 (387).

⁵ Thomas/Beasley, Domestic Violence as a Human Rights Issue, HRQ 1998, 36 (38).

⁶ Radačić, Human Rights of Women and the Public/Private Divide in international Human Rights Law, Croatian Yearbook of European Law and Policy 2007, 443 (451).

⁷ Radačić, Croatian Yearbook of European Law and Policy 2007, 443 (451).

⁸ Thomas/Beasley, HRQ 1998, 36 (39).

⁹ Thomas/Beasley, HRQ 1998, 36 (39).

fronted with social and economic disadvantages in practice and by law, they are removed from the public sphere.¹⁰

Thus, the (in theory) gender-neutral Human Rights interact with gender-biased domestic laws and social systems that “relegate men and women to separate spheres of existence”.¹¹ Nowhere is this dichotomy more evident and harmful than in the context of DV.¹²

Feminist movements helped to break up the duality of private and public spheres by challenging DV as a private matter, explaining the interactions between the patriarchy and DV as well as capturing the links between DV and crimes as rape or sexual harassment.¹³ Thus, it was put on the international agenda of Human Rights law.¹⁴

Violence against Women, which includes DV, has been recognized, *inter alia*, as a form of discrimination on the basis of sex¹⁵, which is forbidden in all major international Human Rights agreements.¹⁶ Therefore, states can no longer rest on the assumption that cases of DV only fall into the private sphere and, thus, are outside their scope of responsibility. Further, states are said to be responsible if misconduct can be attributed to them, for instance, by way of omission.¹⁷ There is a responsibility of the state to protect victims in the private sphere, ergo victims of DV, with *due diligence*.¹⁸

.....
¹⁰ *Thomas/Beasley*, HRQ 1998, 36 (39).

¹¹ *Thomas/Beasley*, HRQ 1998, 36 (39).

¹² *Thomas/Beasley*, HRQ 1998, 36 (40).

¹³ *Herring*, Domestic Abuse and Human Rights, 2020, p. 6.

¹⁴ *McQuigg*, Domestic Violence as a Human Rights Issue: Rumor v. Italy, in: *The European Journal of International Law*, EJIL 2016, 1009 (1009).

¹⁵ CEDAW General Recommendation No. 19: Violence against Women, 1992; cf. ECtHR 09.06.2009, no. 33401/02.

¹⁶ cf. Art. 14 EMRK, Art. 4 ICCPR, Art. 2 (2) ICESCR, Art. 1 (1) ACHR, Art. 2 African Charter, Art. 2 Arab Charter.

¹⁷ *Elsuni*, Geschlechterbezogene Gewalt und Menschenrechte, 2011, p. 265.

¹⁸ IACTHR, 29.07.1988, Ser. C., no. 4, *Velásquez Rodríguez v Honduras*, para. 172; in depth cf. *Elsuni*, Geschlechterbezogene Gewalt, 2020, pp. 264-272. For responsibility of states in general: *von Arnould*, Völkerrecht, 4th ed. 2019, § 5; *Herdegen*, Völkerrecht, 21st ed. 2022, Chp. XIV.

C. Istanbul Convention

Such responsibility was recognized by the international community and in 2014 the Istanbul Convention entered into force, constituting the first legally binding instrument in Europe with such far reaching scope as it is considered the gold standard in fighting gender-specific violence.¹⁹ The preamble acknowledges the structural character of Violence against Women that lies in the unequal power relations of men and women in society.²⁰ Thus, it officially recognizes the bigger picture of Violence against Women and accompanying DV as an all-encompassing societal problem, rather than a private matter in one’s own home.

I. Gendered Human Rights Violations

Equality as an ideal shines brightly in the galaxy of liberal aspirations.²¹ Yet, the present patriarchal system supports the exact opposite “[as] violence and inequality are two phenomena feeding each other’s existence and maintenance in a vicious circle.”²²

To understand concepts and connections of Violence against Women, gender-specific violence as well as DV shall be briefly explicated.

Art. 3 lit. a IC acknowledges Violence against Women as a Human Rights violation and a form of discrimination. Most of the international human rights treaties are gender-symmetrical,²³ meaning that they do not differentiate between binary (cis)gender identities. Therefore, gender-specific violence such as Violence against Women is not referred to in these conventions.²⁴ Contrary

.....
¹⁹ OSCE, On the 10th anniversary of the Istanbul Convention, 25.05.2023.

²⁰ *Bock/Steinl*, Der Beitrag der Istanbul-Konvention zur Bekämpfung geschlechtsspezifischer Gewalt, NK 2021, 308 (309).

²¹ *Fredmann*, Discrimination Law, 2nd ed. 2011, p. 1.

²² *Guney*, The Istanbul Convention: A Genuine Confirmation of the Structural Nature of Domestic Violence against Women within a Human Rights Law Framework, in: *Kewley/Barlow* (Edt.), Preventing Sexual Violence, 2020, 131 (134).

²³ *Guney*, in: *Kewley/Barlow* (Edt.), Preventing Sexual Violence, 2020, 131 (131).

²⁴ *Guney*, in: *Kewley/Barlow* (Edt.), Preventing Sexual Vio-

to that, the IC clarifies the term in Art. 3 lit. a IC: Violence against Women²⁵ includes “[...] all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.”

Gender-specific Violence against Women is violence that is directed against women due to their gender²⁶ or violence that women are disproportionately affected by.

While Violence against Women is a gender-specific form of violence, DV can objectively be gender-neutral. According to Art. 3 lit. b IC, “‘Domestic Violence’ shall mean all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim.” Since it refers to violence between (ex-)partners resp. intergenerational violence, e.g. from parents towards children, this also includes violence by all towards all genders.²⁷ However, when facing reality, women are disproportionately affected by domestic abuse,²⁸ which makes most cases of DV a form of gender-specific Violence against Women. Consequently, when analyzing the tools and mechanisms of the IC for its prospective fight to prevent DV, it must be done by looking through a gendered lens. Yet, it shall be added, that Art. 2 (2) IC encourages the member states to also apply the IC to all victims of DV.

II. Mechanisms and Tools

To reach its goal of preventing DV the IC pursues a holistic approach:²⁹ It not only obliges states to refrain from Violence against Women, it also goes beyond other human rights treaties by establish-

.....

lence, 2020, 131 (134).

²⁵ Women also include girls under the age of 18 (cf. Art. 3 lit. f IC).

²⁶ For a definition of gender cf. Art. 3 lit. c IC.

²⁷ IC Explanatory Report, para. 41.

²⁸ IC Explanatory Report, para. 42.

²⁹ *Guney*, in: Kewley/Barlow (Edt.), *Preventing Sexual Violence*, 2020, 131 (142).

ing several mechanisms to end such.³⁰ It relies on the principle of *due diligence*:³¹ Art. 5 (1) IC requires that states shall refrain from engaging in any act of Violence against Women and ensure that state authorities, officials, agents, institutions, and other stakeholders acting on behalf of the State act in conformity with this obligation. Further, Art. 5 (2) IC requires states to act due diligence to prevent forms of violence by private actors. This is especially of relevance for victims of DV as it opens the possibility for intervention as well as the call to hold the state to account for actions of private individuals.³²

The core practical mechanisms of the IC can be summarized as the *four Ps*: Prevention, Protection, Prosecution of Perpetrators, and the implementation of Policies.³³

1. Prevention of Violence

Violence against Women and DV cause great human suffering and can ultimately lead to the victim’s death.³⁴ Therefore, prevention is ultimately needed to eventually save lives.

As a general obligation, the IC requires its member states to strive for change in social and cultural behavior to break up stereotypes and gender roles (Art. 12 (1) IC). The pursuit of equality is a fundamental measure because of its close correlation with violence.³⁵

To achieve such, the IC not only targets the behavior of states themselves, but also involves civil society as well as NGOs and the entire public sector and the media (cf. Art. 13, 17 IC).

In this way, regular awareness-raising campaigns and programs are to be held at all levels in cooperation with all parties. The state has the essential task of ensuring appropriate dissemination of

.....

³⁰ *Council of Europe*, *The Istanbul Convention and the CE-DAW Framework*, 2019, p. 1.

³¹ *McQuigg*, *A Contextual Analysis of the Council of Europe’s Convention on Preventing and Combating Violence against Women*, IHRLW 2012, 367 (381).

³² Cf. IC Explanatory Report, para. 57, 58.

³³ *Herring*, *Domestic Abuse and Human Rights*, 2020, p. 105.

³⁴ ECtHR, 08.10.2021, no. 33056/17; ECtHR, 15.06.2021, no. 62903/15.

³⁵ Cf. *Guney*, in: Kewley/Barlow (Edt.), *Preventing Sexual Violence*, 2020, 131 (134).

the contents (Art. 13 IC). Further importance has the overall commitment to educational measures by various stakeholders: Not only in traditional education systems, but also in informal education facilities (Art. 14 IC). Comprehensive prevention requires education and training of specific professional groups that work with both victims and perpetrators. One of the main aims is to ensure that those involved do not re-victimize victims.³⁶ Finally, prevention includes preventive intervention and treatment programs to “[teach] perpetrators of [DV] to adopt non-violent behavior in interpersonal relationships with a view to preventing further violence and changing violent behavioral patterns“ (Art. 16 IC).

In a transversal sense, the above-mentioned tasks not only oblige the bodies of the states themselves, but also call upon every individual citizen to take up the fight against Violence against Women and DV.

2. Protection of Victims

In cases where preventive measures have not been sufficient and violent crimes have occurred, it is important that those affected receive appropriate protection e.g. through police intervention as an initial measure (Art. 52 IC).

While prevention can be seen as a macrosocial task, protective mechanisms must take effect primarily in individual cases. Art. 18 IC obliges states to protect victims from further criminal acts. This requires, above all, internal cooperation between all actors involved, such as the judiciary or NGOs that have made it their task to support victims. It needs to be highlighted that the provision of support must not depend on the victim's willingness to file a complaint or testify against her perpetrator.³⁷ This may require adjustments, particularly in national law, if the prosecution of a perpetrator may only be pursued upon request.³⁸

Accordingly, states must first align their national laws to allow for the immediate removal of offenders from their homes when necessary to ensure the safety of those at risk (Art. 51 IC). Access

.....
³⁶ ECtHR, 28.08.2015, no. 41107/10; ECtHR, 19.03.2019, no. 49089/10.

³⁷ IC Explanatory Report, para. 279.

³⁸ Cf. ECtHR, 09.06.2009, no. 33401/02.

to all information and assistance must also be in clear and understandable language, in all geographical locations and, above all, accessible to all people from all social classes. Further special care needs to be provided for victims of sexual violence (Art. 25 IC). Due to mechanisms protecting victims of cross border violence, the IC also has a significant impact on asylum law.

3. Prosecution of Perpetrators

The third mechanism with which the IC tries to ameliorate the fight against Violence against Women and DV is the prosecution of perpetrators. In its Art. 33–40, the IC criminalizes psychological violence, stalking, physical violence (including rape), forced marriages, female genital mutilation, forced abortions and sterilizations as well as sexual harassment. Consequently, parties are obliged to make sure that the national law punishes corresponding behavior of offenders. Particularly noteworthy in this context is Art. 43 IC, which states that the offenses established apply *regardless* of the perpetrator-victim relationship. This is especially important with regard to cases of DV.³⁹

Art. 45 (1) IC further constitutes that necessary legislative or other measures are taken to ensure that the offences established in accordance with the IC are punishable by effective, proportionate, and dissuasive sanctions. These sanctions shall include, where appropriate, sentences involving the deprivation of liberty, which can give rise to extradition. Chapter VI of the IC explicitly deals with investigation, prosecution, procedural law and protective measures. According to Art. 49 IC, states must ensure that investigations and judicial proceedings in relation to all forms of violence covered by the scope of the IC are carried out without undue delay, while taking into consideration the rights of the victim during all stages of the criminal proceedings.

Last but not least, there is the possibility of *ex parte* and *ex officio* proceedings according to Art. 55 IC. This allows that in cases where a victim decides to withdraw its complaint, a prosecution is still possible on the part of the state.⁴⁰

.....
³⁹ Herring, Domestic Abuse and Human Rights, 2020, p. 108; IC Explanatory Report, para. 219.

⁴⁰ IC Explanatory Report, para. 279.

The hurdle to turn a partner or family member in is huge and often the power dynamics in abusive relationships are dangerous for the victim. In fact, they can be so frightening that complaints will either not be filed in the first instance or withdrawn once handed in because the offender is pressuring the victim to do so. To minimize the victims' own responsibility for prosecuting their offender, the IC inhibits the prerequisite for such by enabling prosecution measures from the side of the state.⁴¹

4. Gender-Sensitive Policies

The preamble of the IC acknowledges Violence against Women and DV as an expression of historically arisen power differences between men and women that lead to control and discrimination of women from men. It accepts the fact that Violence against Women is a structural issue, and that *genuine* equality can only be achieved if Violence against Women, and therefore DV, is fought in its entirety. Thus, it can only be combated sustainably, if traditional role images and gender stereotypes are dismantled.⁴² To reach such goal, law can certainly be helpful, however only relying on (criminal) law will not suffice.⁴³ Therefore, measures for long-term structural and systematic transformation of state concepts and social awareness through education and training based on reliable data collected by states is the final tool the IC entails.⁴⁴

According to Art. 6 IC, gender-sensitive policies are supposed to be inserted by the parties to include a gender perspective in the implementation and evaluation of the impact of the provisions of the IC and to promote and effectively implement policies of equality between women and men for the empowerment of women. This also includes examining how measures of the IC impact genders differently. Further, it obliges parties to take further steps than "just" imply measures to prevent and fight Violence against

Women and DV,⁴⁵ but also provide sufficient monetary and human resources.

Art. 12 (1) IC binds the parties to undertake all measures that change both mentalities and behaviors. Such correctives shall reach the hearts and minds of the people who uphold the structures that benefit Violence against Women and DV through their behavior.⁴⁶ As most of the prohibited crimes under the IC are being committed by boys and men, they may also play a relevant role in the prevention of such crimes.⁴⁷ In a position of being a role model, they may stand up for equality and respect for and among all genders. In sum, this final mechanism of integrating gender-sensitive policies is advocating a bottom-up approach to not only prevent Violence against Women and DV through measurements of criminal punishment, but rather through an entire transformation of patriarchal societies. Such wholesale change in societal norms can eventually help break the vicious circle of the patriarchal structures that continuously fuel Violence against Women.

5. Control Mechanism

In order to control the states in their implementation in the long term and to monitor the implementation of the IC, Art. 66 IC introduces the Group of Experts on action against Violence against Women and Domestic Violence. This group of 10-15 members is an independent body of experts that is to monitor compliance with the Convention together with the 'Committee of the Parties'. The Committee is composed of the representatives of the member states. At the heart of the Istanbul Convention's monitoring mechanism is a country-specific assessment process carried out by the group of experts on the basis of reports and other information.⁴⁸

In summary, the IC thus provides a holistic legal framework within which states must implement various measures to combat Violence against

.....
⁴¹ Ibid.

⁴² *Bock/Steinl*, NK 2021, 308 (312).

⁴³ Ibid., (313).

⁴⁴ *Lembke/Steinl*, Die Istanbul-Konvention – ein Meilenstein für den Schutz vor geschlechtsbezogener Gewalt, *djbZ* 2018, 203 (203).

.....
⁴⁵ IC Explanatory Report, para. 62.

⁴⁶ IC Explanatory Report, para. 85.

⁴⁷ IC Explanatory Report, para. 88.

⁴⁸ *Council of Europe*, Die Istanbul-Konvention, ein wirksames Instrument zur Verhütung geschlechterspezifischer Gewalt, 2019, p. 21.

Women, specifically DV, that are subject to close-meshed scrutiny.

III. Political and Legal Contestation

However, the IC is not uncontested. Accepting that Violence against Women and traditional patriarchal structures correlate appears to be an obstacle for certain countries as a sustainable prevention of Violence against Women (may) require fundamental changes in law and society. Especially in countries with right-wing political alignments, such changes encounter resistance:⁴⁹ The insight that gender and sex are not always identical constitutes a problem in a conservative country since acceptance of the difference between gender and sex is also an implicit nod to the advocacy of LGBTQIA+ rights. In doing so, the alleged conservative consensus about gender and family is endangered.⁵⁰ However, critique is also expressed from progressive feminists: As e.g., a lack of intersectionality is criticized.⁵¹ Additionally, the wording "Violence against Women" would once again propose a binary gender system.⁵²

D. Classic Human Rights Instruments

The measures of the IC against Violence against Women and DV are, as elaborated, useful for victims of such violence. However, neither Violence against Women nor DV are new phenomena to be suddenly combated. They are rather a deep-seated problem of continuous relevance.⁵³ Consequently, before the IC was developed and ratified,

.....

⁴⁹ *Avenarius*, Austritt aus der Istanbul-Konvention rechtlich fragwürdig, 19.05.2023; *Meier*, Austritt aus der Istanbul-Konvention: Polen belässt es bei der Drohung – bisher, 20.05.2023.

⁵⁰ *Avenarius*, Austritt aus der Istanbul-Konvention rechtlich fragwürdig, 19.05.2023; *Meier*, Austritt aus der Istanbul-Konvention: Polen belässt es bei der Drohung – bisher, 20.05.2023.

⁵¹ *Sosa*, The Istanbul Convention in the context of feminist claims, in: Niemi et al. (Edt.), *International Law and Violence Against Women*, 25 (41).

⁵² *Rabe/Leisering*, *Die Istanbul Konvention*, 2018, p. 11

⁵³ *Vesa*, *International and Regional Standards for Protecting Victims of Domestic Violence*, *Journal of Gender, Social Policy & the Law* 2004, 309 (310).

other classic Human Right Instruments have provided protection for victims of Violence against Women and DV.

In the following those will be analyzed to gain insights into their included protection mechanisms regarding DV. The instruments selected are those that are legally binding and serve the general protection of Human Rights. Agreements that, like the IC, also specifically serve the protection of women or have other protection priorities are therefore excluded.⁵⁴

I. International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights (ICCPR) serves as a classic Human Rights instrument. As a gender-symmetrical treaty, the ICCPR does neither explicitly refer to any specifics when it comes to gender-based violence nor to DV. Consequently, protection for victims of DV need to be derived from non-specific provisions.

It protects fundamental Human Rights such as the rights to live and to be free from torture, degrading or inhuman treatment (Art. 6, 7 ICCPR). Those rights can be infringed when being affected by DV.⁵⁵ Additionally, when considering a case of a female victim of DV, *ergo* also Violence against Women, the right to gender equality and to be free from gender discrimination is violated. Protection of such, in turn, can be derived from multiple provisions: As e.g., Art. 2 (1) ICCPR forbids any discrimination on the basis of sex and Art. 3 ICCPR obliges the states to secure the equality of men and women.

As the ICCPR is a legally binding document for the states who have ratified it, states are obliged to ensure that the rights are protected through national law. This is further confirmed in Art. 2 (2) (3) ICCPR which states that parties of the IC-CPR are required to frame their legal system in

.....

⁵⁴ This includes CEDAW but also the Universal Declaration of Human Rights, even though some of its standards are considered binding as customary law (cf. *Hannum*, *The Status of the UDHR in National and International Law*), *Georgia Journal of International and Comparative Law* 1996, 289 (352 f.).

⁵⁵ *Vesa*, *Journal of Gender, Social Policy & the Law* 2004, 309 (310).

such a manner that it is guaranteed that the protection of Human Rights is given and there is access to effective remedies in cases where those rights have been impeded upon.

Consequently, a victim of DV has in theory the chance to find protection under the ICCPR once an infringement of right has taken place. This especially holds true when reading the ICCPR through a gendered lens. Yet, special provisions for prevention are lacking.

II. International Covenant on Economic, Social and Cultural Rights

In addition to the ICCPR, the UN also adopted the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1966.⁵⁶ Even though it is usually used to assert economic, social and cultural rights,⁵⁷ depending on the circumstances, one may transfer those rights to victims of DV.⁵⁸ Art. 12 (1) ICESCR, e.g., recognizes the right to physical and mental health and the obligation to provide for measures to uphold such.⁵⁹ Since DV encompasses physical, but also mental abuse, one could read in Art. 12 (1) ICESCR that a state is obliged to ensure that every citizen is able to enjoy such standard. Thus, in the case of a violent partner, the state is in duty to protect the other partner's physical and mental health and provide for adequate domestic remedies, if said provisions are violated.⁶⁰

Additionally, the ICESCR can also be read in conjunction with the ICCPR in regard to the insurance of legal redress.⁶¹ Especially in cases where women economically depend on their male coun-

.....

⁵⁶ *Saul et al.*, International Covenant on Economic, Social and Cultural Rights, 2014, p.1.

⁵⁷ *Vesa*, Journal of Gender, Social Policy & the Law 2004, 309 (324).

⁵⁸ *Vesa*, Journal of Gender, Social Policy & the Law 2004, 309 (324).

⁵⁹ *Centner*, Frauen heute: Implementierung und Follow-Up der Vierten UN- Frauenkonferenz, in: Schorlemer (Edt.), Die Vereinten Nationen und neuere Entwicklungen der Frauenrechte, p. 62.

⁶⁰ *Vesa*, Journal of Gender, Social Policy & the Law 2004, 309 (324).

⁶¹ *Vesa*, Journal of Gender, Social Policy & the Law 2004, 309 (324); prerequisite being that the accused state ratified both conventions.

terpart and are deprived of financial independence, they may be forced to endure continued abuse as they neither have money to move out nor to pay counsels in order to get legal aid.⁶²

III. European Convention on Human Rights

Besides global Human Rights instruments, also regional ones are granting Human Rights. Previous to the IC, the European Convention on Human Rights (ECHR) to protect the citizens of Europe was signed.⁶³ This Convention is again gender-symmetrical and does neither address Violence against Women nor DV directly. However, it does protect rights such as the right to live, the right to be free from torture and inhuman treatment, or the right to privacy and family life (c.f. Art. 2 ,3, 8 ECHR). The ECHR found a way, to protect victims of DC under the ECHR as it is considered as a living instrument that needs to be interpreted "in light of the present-day conditios".⁶⁴ Consequently, it pays attention to shared values and emerging consensus⁶⁵ and thus acknowledges the consensual issue of Violence against Women.

In general, the ECHR requires that the member states take reasonable measures itself or fellow compatriots.⁶⁶ This is reasoned with the fact that the state needs to protect the Human Rights of its citizens - irrespective of the source of interference to the individuals' rights.⁶⁷ In the case of DV, a state infringes the rights of a victim if it is informed about a certain degree of abuse and yet fails to take reasonable⁶⁸, adequate⁶⁹ or effective⁷⁰ steps to protect the victim from the breaches of

.....

⁶² *McQuigg*, The European Court of Human Rights and Domestic Violence: Valiulienė v Lithuania, IJHR 2014, 756 (763).

⁶³ *Schabas*, ECHR, 2015 p. 8.

⁶⁴ ECtHR, 25.04.1978, no. 5856/72.

⁶⁵ *Letsas*, The ECHR as a Living Instrument: Its Meaning and Legitimacy, in: Føllesdal et al. (edt.), Constituting Europe 2013, 106 (122).

⁶⁶ *Herring*, Domestic Abuse and Human Rights, 2020, p. 61.

⁶⁷ ECtHR, 26.06.2013, no. 33234/07.

⁶⁸ ECtHR, 10.05.2001, no. 29392/95.

⁶⁹ ECtHR, 23.09.1998, no. 25599/94.

⁷⁰ ECtHR, 10.05.2001, no. 29392/95.

their rights.⁷¹ The enhancement of those duties can be derived from the fact that if there is a failure to meet them, it means that there has been a discrimination against women under Art. 14 ECHR.⁷² For the first time this was acknowledged in the *Opuz v Turkey* case: The court made a significant milestone by acknowledging Violence against Women as a systematic issue that constitutes a type of discrimination according to the ECHR. As a result, the court, for the first time, found a violation of Art. 14 ECHR (which prohibits discrimination) in a DV case.⁷³ Consequently, the right to be protected from DV under the ECHR depends on three questions: First, is there proof of an interference with the rights of the victim? Second, did the state agency have knowledge? Third, is there proof that the state failed to act as it should have acted?⁷⁴ If the answer to these questions is yes, the ECHR provides sufficient protection to victims.

Outside of Europe, treaties such as the American Convention on Human Rights, the Inter-American Convention on Violence against Women and the African Charter on Humans and Peoples Rights with its Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) should not be forgotten.

E. Between Progress and Promises?

The previous analysis has shown that classic Human Rights instruments can indeed be useful to protect victims of DV. Therefore, the question remains if a gender-focused convention as the IC is truly needed and really provides for an “added-value” in comparison to the traditional treaties or if the given protection of e.g., the ECHR suffices. In order to assess a potential added value, it is first necessary to recall that the victims of DV are primarily female. Combating DV is thus inseparable from combating Violence against Women.

⁷¹ Cf. ECtHR 15.01.2003, no. 33218/96.

⁷² *Herring*, Domestic Abuse and Human Rights, 2020, p. 61.

⁷³ *Ebru*, The European Court of Human Rights' Engagement with International Human Rights Instruments, The Age of HR 2021, 79 (80).

⁷⁴ *Ebru*, in The Age of HR 2021, 79 (80).

Due to the disproportionate effect on women, the phenomenon of DV must be viewed through a gendered lens. The question then is whether gender-asymmetrical problems can be addressed sufficiently with gender-symmetrical solutions? There is no doubt that there is a certain level of protection under classic Human Rights instruments for victims of DV. Nevertheless, such cases usually end up in court when the acts have already occurred, people have already fallen victim to perpetrators and the state's legal protection mechanisms have failed. Consequently, when the fight against DV, *ergo* also Violence against Women, were to only depend on prosecution and a certain degree of protection, one could argue that the protection of classical Human Rights instruments is enough.

However, reality looks different: The ever-increasing number of cases of DV evidently shows that it requires a more all-encompassing approach. One that makes sure that affected ones are safe in the first place. The IC with its holistic measures may therefore be a fitting tool.

With very detailed provisions the IC sets new legally binding standards to fight Violence against Women.⁷⁵ As there is an undeniable connection between patriarchal structures and violence against women, *ergo* also DV, there is a need for a long-term reorientation of society, aiming for genuine equality. To achieve this, the involvement of civil society plays a crucial role. The IC with the tools for prevention and implementation of gender-sensitive policies therefore provides for an encompassing legal framework - one that cannot be derived from any other classic Human Rights instrument.

Further, the detailed protection mechanisms that are applicable to potential victims provide for a victim-centered approach, that focusses on the well-being of affected individuals. Additionally, the (inter-) national prosecution mechanisms contribute to the safety of victims. Nevertheless, it would be inadequate to leave out

.....
⁷⁵ *McQuigg*, What potential does the Council of Europe Convention on Violence against Women hold as regards domestic violence, IJHR 2012, 947 (947).

of sight that numbers of Violence against Women and DV – also in member states – are continuously rising. It is therefore foolish to only praise the IC without acknowledging potential complications and shortcomings: E.g., Art. 8 IC obliges states to provide for sufficient financial means to implement education/ awareness raising campaigns. Those costs can be a heavy weight for countries running on low budgets. Further, the provision of financial resources is at the discretion of the states, so that there must be a genuine interest in its promotion. This also applies for all other measures that leave a lot of room for discretion.

Finally, it should not go unmentioned that in the fight against DV the IC mainly seeks the protection of female victims as particularly vulnerable. However, it must be remembered that DV can also affect male/non-binary victims. In such cases however, member states are only encouraged to use IC.⁷⁶

Yet, the biggest added value may be one that cannot be derived from articles or paragraphs, but is rather the acknowledgment that Violence against Women and DV constitute a structural problem.⁷⁷ The IC is considered the most far-reaching treaty for protecting women from violence and victims of DV.⁷⁸ It consequently offers gender-sensitive solutions for gender-sensitive issues.

F. Conclusion

This paper has shown that DV as a gender-specific form of Violence against Women is a Human Rights matter. As a gendered issue, the IC encounters this problem with gender asymmetrical measures of prevention, protection, prosecution and the implementation of gender-sensitive policies. With those measures the IC offers a holistic framework to fight Violence against Women and DV that is a form of Violence against Women, sustainably. In doing so, it provides states with a broader guide than the classic Human Rights instruments. While these, too, have certain safe-

⁷⁶ Rabe/Leisering, Die Istanbul Konvention, 2018, p. 11.

⁷⁷ Cf. Preamble of the IC.

⁷⁸ Council of Europe, The IC and the CEDAW Framework, p. 1.

guards to protect victims from DV, they do not do so as comprehensively due to their gender symmetry and a lack of prevention mechanisms.

Nevertheless, the still high and recently even rising number of victims show that the efforts under the IC are not yet sufficient(ly implemented). Ultimately, a rethinking of the entire society is needed as the fight against Violence against Women and DV remains a cross-sectional task. Yet, even if still contested, overall a symbolic aspiration for systematic change can be derived from the IC. It is a change that should be fully supported as this is the least that is owed to all victims of abuse – past, present and future.

Toni Meiswinkel studiert, nach einem Studium der Politikwissenschaft, Jura an der Universität Hamburg.