

CONCIL OF EUROP CONVENTION FOR PREVENT AND COMBAT VIOLENCE AGAINST WOMEN (Istanbul 11/05/2011)

EWLA
Berlin 4/11/2011
Me Nathalie Leroy
Association Française des Femmes Juristes (A.F.F.J)
Avocat au Barreau de Lille FRANCE

INTRODUCTION

About 12% to 15% of all women have been in a relationship of domestic abuse after the age of 16. Many more continue to suffer physical and sexual violence from former partners even after the break-up.

Studies have revealed the link between domestic violence against women and child physical abuse, as well as the trauma that witnessing violence in the home causes at children.

Before the adoption of the new European convention, other texts or events have contributed to protect women against violence:

- **1992** CEDAW Committee in its general recommendation on violence against women No. 19 (1992) helped to ensure the recognition of gender-based violence against women as a form of discrimination against women
- **1993** The United Nations General Assembly adopted a Declaration on the Elimination of Violence against Women that laid the foundation for international action on violence against women
- The same year, the 3rd European Ministerial Conference on Equality between Women and Men was devoted to *Strategies for the elimination of violence against women in society: the media and other means.*
- **1994** the Organisation of American States adopted the Inter-American Convention on the prevention, punishment and eradication of violence against women

- **1995** The Beijing Declaration and Platform for Action identified the eradication of violence against women as a strategic objective among other gender equality requirements
- **2002** Adoption of Council of Europe Recommendation Rec(2002)5 of the Committee of Ministers to member states on the protection of women against violence. This text has served as the most important reference text for member states in combating violence against women.
- **2003** the African Union adopted the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa address the issue of violence against women
- **2005** the Heads of State and Government of the Council of Europe member states decided at their Third Summit (Warsaw, 16-17 May 2005) to carry out a large-scale campaign on the issue, devised and closely monitored by the Council of Europe Task Force to Combat Violence against Women, including Domestic Violence.
- **2006** the European Ministers of Justice decided during their 27th Conference (Yerevan, Armenia, 12-13 October 2006), to assess the need for a Council of Europe legal instrument on violence against the partner, while being aware that such violence can be based on discriminating prejudices in terms of inequalities resulting from gender, origins and economic dependency.
- **2008** The Task Force recommended in its Final Activity Report, that the Council of Europe develop a human rights convention to prevent and combat violence against women.

In the same time we have European parliamentary resolutions and recommendations on the various forms of violence against women; in particular :

- Resolution 1247 (2001) on female genital mutilation,
- Resolution 1582 (2002) on domestic violence,
- Resolution 1327 (2003) on so-called “honour crimes”,
- Recommendation 1723 (2005) on forced marriages and child marriages,
- Recommendation 1777 (2007) on sexual assaults linked to “date-rape drugs”
- Resolution 1654 (2009) on Feminicides
- Resolution 1691 (2009) on rape of women, including marital rape.

THE PURPOSE

The specific purpose of the Convention is the protection of women against all forms of violence, as well as the prevention, prosecution and elimination of violence against women and domestic violence.

To this end, it firmly establishes the link between achieving gender equality and the eradication of violence against women.

Based on this premise, it recognises the structural nature of violence against women as the manifestation of the historically unequal power relations between women and men.

Parties shall take the necessary measures to promote changes in the social and cultural patterns of behaviour of women and men with a view to eradicating prejudices, customs, traditions and all other practices which are based on the idea of the inferiority of women or on stereotyped roles for women and men.

The convention dedicates the principle of equality between women and men and offers two options to do that:

- a constitutional amendment
- or its embodiment in other legislative act and practical measures.

The convention dedicates the principle of non discrimination.

The convention obliged the parties to ensure that their authorities, officials, agents, institutions and other actors acting on behalf of the state refrain from acts of violence against women and protect women against violence.

This obligation is comparable to the positive obligation to protect the right to life (Article 2 ECHR) requires state authorities to display due diligence, for example by taking preventive operational measures, in protecting an individual whose life is at risk. (judgment of *Opuz v. Turkey*, 2009).

And this convention is applicable during armed conflict as complementary to the principles of international humanitarian law and international criminal law.

NEW MAJOR PRINCIPES

Nobody under the jurisdiction of the courts of one of the Parties to this Convention will be allowed to validly invoke an element of his or her culture, religion or other form of personal reason, to justify the commission violence against women and specially crimes committed in the name of so-called “honour”.

The type of relation between the victim and the author of the violence does not have to minimize or prevent the preach.

The most prominent example is rape within marriage. Rape is violence even if it is committed by the husband during the marriage.

The domestic law of many Council of Europe member states provides for alternative dispute resolution processes in particular in family law. The convention bans the alternative modes of resolution of the conflicts.

Inquiries and procedures must be led without delay and pursued, even if the victim withdraws.

The convention dedicates the principle according to which it is the responsibility of the state to provide access to the court presided by a neutral judge.

The violence based on the genre becomes an argument for refugee's status

The convention contains a number of obligations that aim at introducing a gender-sensitive understanding of violence against migrant women and women asylum-seekers.

It establishes the obligation to recognise gender-based violence against women as a form of persecution and contains the obligation to ensure that a gender-sensitive interpretation be given when establishing refugee status.

Gender-based violence against women shall be recognised as a form of persecution.