

CONVENTION ON
PREVENTING AND COMBATING
**VIOLENCE AGAINST WOMEN
AND DOMESTIC VIOLENCE**
(ISTANBUL CONVENTION)



Stalking

SAFE FROM FEAR
SAFE FROM
VIOLENCE

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INTRODUCTION

■ The Council of Europe Convention on Preventing and Combating Violence against Women (Istanbul Convention, CETS No. 210) covers various forms of gender-based violence, which is defined as “violence that is directed against a woman because she is a woman or that affects women disproportionately” (Article 3.d).

■ Fear and anxiety take over every aspect of the daily life of a woman victim of stalking and trying to cope prevents her from holding down a job, being in a relationship, caring for children, etc. It is extremely difficult for victims to put an end to the stalking and to seek justice. Some Council of Europe member states do not have specific legislation on stalking, either in criminal or in civil law. In many languages, there is not even a word for stalking, which says a lot about how little accepted the concept is – or was.

■ The Istanbul Convention recognises this and offers, for the first time, a set of measures to combat stalking and to support its victims. The monitoring of its implementation is showing good progress in the level of criminalisation of this offence.

STALKING AS A SPECIFIC CRIMINAL OFFENCE

■ First of all, the convention makes it clear that stalking is a form of violence against women. Although data from Council of Europe member states are patchy, it is well known that many victims of stalking are female and many perpetrators are male. Often, women are stalked after a relationship, frequently abusive, has come to an end. This type of stalking clearly has a gendered nature, because it is about dominance and control. Women are also very frequently stalked by men with whom they have never had a relationship. Usually, however, the stalker is no stranger to the woman, but someone she knows.

Second, national legislation must be equipped to deal with stalking. Because there can be no penalty without a law, the convention requires all parties to introduce the specific criminal offence of stalking. This means that a country that ratifies the convention will have to criminalise the act of stalking, which is defined as “repeatedly engaging in threatening conduct directed at another person, causing her or him to fear for her or his safety”. However, during the negotiations some member states preferred to attach non-criminal sanctions to stalking, but to nonetheless make it an offence. That is why it is possible to make a reservation to this provision (Article 78, paragraph 3).

- ▶ The drafters of the convention considered it important to phrase all provisions in gender-neutral language, which is why the definition of stalking contains a reference to “her” or “his” safety. This means that, in principle, all provisions of the convention are applicable to women and men. This is in line with the approach of most member states to criminal law: criminal offences are usually worded in gender-neutral language and are applicable to both men and women.
- ▶ The idea behind introducing a specific crime of stalking is to allow criminal courts to establish the pattern of stalking. Taken on their own, the individual elements of stalking, for example, sending someone unwanted messages, showing up at somebody’s house or place of work uninvited, calling their friends and family, or whatever else it is a stalker does, do not always amount to criminal behaviour. It is the pattern, the intent of the stalker, and the fear the stalker causes, that make up the criminal nature. Existing criminal offences of coercion or trespassing do not capture this. To fill this gap, introducing a specific offence is crucial.
- ▶ Creating a specific criminal offence for stalking is no panacea as its effectiveness very much depends on its implementation. Judges and law-enforcement personnel have to be trained on how to deal with cases of stalking. They need to understand what stalking really is. That is why the convention contains a number of provisions to improve the way investigations are conducted and judicial proceedings carried out. The aim is to place the rights of victims at the heart of criminal proceedings, to make sure the victim is safe and to render investigations and prosecutions more effective (Article 49).



RESTRAINING AND PROTECTION ORDERS

Third, the convention introduces restraining or protection orders for victims of stalking. In most countries, it is technically possible to apply for a civil injunction to stop the behaviour of another person but this instrument has rarely been used against stalkers. The convention requires parties to make sure that restraining or protection orders are available to all victims of violence covered by the convention. This includes stalking. Criminal proceedings may not deter a stalker, which is why it is important to ensure the safety of the victim. The convention makes sure that a court of law can order a stalker to stop his behaviour and stay away from the victim. Any breaches of such orders need to be met with criminal or other legal sanctions.

SUPPORT SERVICES FOR VICTIMS

Finally, a word on support services. The convention requires parties to set up specialised support services for victims of any type of violence covered by the convention. This includes services for victims of stalking. Just as there is a need for counselling centres for victims of rape, or forced marriage, or any other form of violence, there needs to be help for victims of stalking. How this is done is left to the state party to decide, but victims must have access to a telephone number that they can call and that will direct them to a place where they can get help (see Articles 22 and 24).

For further information please visit
www.coe.int/conventionviolence

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The Council of Europe is the continent's leading human rights organisation. It comprises 46 member states, including all members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.

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