

CONVENTION ON PREVENTING AND COMBATING VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE

(ISTANBUL CONVENTION)



Protecting migrant women,
refugee women and women
asylum seekers from
gender-based violence

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). The most widespread forms are domestic violence, sexual violence, stalking, sexual harassment, forced marriage, female genital mutilation and forced sterilisation.

— Migrant women, with or without documents, and women asylum seekers are particularly vulnerable to gender-based violence. Although their reasons for leaving their country vary, as does their legal status, both groups are at an increased risk of violence and face similar difficulties in overcoming such violence. That is why the Istanbul Convention ensures that its provisions are implemented without discrimination on the grounds of migrant status, refugee status or other status (Article 4, paragraph 3).

SPECIFIC MEASURES WITH REGARD TO THE PROTECTION OF MIGRANT WOMEN

— The Istanbul Convention addresses the particular difficulties in relation to their residence status which many migrant women face when they become victims of, for example, domestic violence or forced marriage. It introduces the possibility of granting migrant women an autonomous residence permit if they are trapped in an abusive relationship because their residence status depends on that of their abusive spouse or partner. This allows victims of domestic violence to leave the relationship without losing their residence status. For victims of forced marriage, the convention creates the obligation to allow migrant women to regain their residence status if they left their country of residence for a longer period than legally permitted because they were forced into marriage abroad and are unable to return (Article 59). As an opt-out clause, however, states parties may reserve the right not to be bound by this provision.

SPECIFIC MEASURES WITH REGARD TO THE PROTECTION OF WOMEN REFUGEES AND WOMEN ASYLUM SEEKERS

Asylum law has long failed to address the difference between women and men in terms of why and how they experience persecution. This gender blindness in the establishment of refugee status and of international protection has resulted in situations where claims of women fleeing from gender-based violence have gone unrecognised. In the past decade, however, developments in international human rights law and standards, as well as in case law, have led an increasing number of Council of Europe member states to recognise some forms of violence against women as a form of gender-related persecution within the meaning of Article 1, A(2) of the 1951 Convention Relating to the Status of Refugees (1951 Refugee Convention). There is no doubt that rape and other forms of gender-related violence, such as female genital mutilation, dowry-related violence or trafficking, are acts which have been used as forms of persecution, whether perpetrated by state or non-state actors. That is why the Istanbul Convention requires states parties to ensure that gender-based violence against women may be recognised as a form of persecution within the meaning of the 1951 Refugee Convention (Article 60, paragraph 1).

It also requires states parties to ensure that the grounds for asylum listed in the 1951 Refugee Convention are interpreted in a gender-sensitive manner (Article 60, paragraph 2). Regarding persecution on the grounds of race or on the grounds of nationality, for example, women may face certain types of persecution that specifically affect them. Examples are sexual violence and control of reproduction in cases of racial and ethnic “cleansing”. In relation to persecution on the grounds of religion, women may be persecuted for not conforming to religious norms and customs of “acceptable behaviour”. This is particularly true in cases of crimes committed in the name of so-called “honour”, which affect women disproportionately. Persecution on the grounds of membership of a particular social group has increasingly been put forward in gender-related claims and has gradually acquired international support. If one considers women fleeing from gender-related persecution such as female genital mutilation, forced marriage and even serious domestic violence as forming a “particular social group”, women may be granted asylum. Finally, persecution on the grounds of political opinion can include persecution on the grounds of opinions regarding gender roles. Some women may be persecuted, for

example, for not conforming to society's roles and norms of acceptable behaviour and for speaking out against traditional gender roles.

— Women seeking asylum have specific protection concerns and worries that are different to those of men. In particular, women may be fleeing gender-based violence but may be unable or unwilling to disclose relevant information during a refugee determination process that does not respect cultural sensitivities. Furthermore, unaccompanied women are often exposed to sexual harassment and sexual exploitation and are unable to protect themselves. In order to address the particular issues linked to women asylum seekers, the Istanbul Convention establishes the obligation to introduce gender-sensitive procedures, guidelines and support services in the asylum process (Article 60, paragraph 3). Introducing a gender perspective into procedures allows for differences between women and men to be taken into account.

NON-REFOULEMENT

— Another provision that is included in the Istanbul Convention reiterates the obligation to respect a well-established principle of asylum and of international refugee protection, which is the principle of non-refoulement. The convention establishes the obligation to ensure that victims of violence against women who are in need of protection, regardless of their status or residence, are not returned to any country where their life would be at risk or where they may be subjected to torture or inhuman or degrading treatment or punishment.

For further information please visit:
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The Council of Europe is the continent's leading human rights organisation. It comprises 47 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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