

# GENDER BASED VIOLENCE STILL UNDER FIRE. THE ISTANBUL CONVENTION AND THE ROMANIAN WAY

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## Abstract

Romania ratified the Istanbul Convention on 23 May 2016, and this can be considered a very important moment in the history of fighting gender-based violence. The Istanbul Convention is considered to be the most far-reaching international treaty addressing violence against women and domestic violence by offering a detailed and comprehensive set of provisions together with important and overarching preventive and protective measures in fighting these phenomena. Nevertheless, there are voices openly criticizing the Convention and advocate for different countries to withdraw from the international agreement. Given the abovementioned context, in my article I will first try to make an analysis of the arguments that made the Convention into the gold standard in protecting women and girls' rights. Secondly, I will briefly present how and why this "gold standard" has been contested. Last but not least, using the document analysis method, I will attempt a critical review of the way in which Romania responded to the Istanbul Convention requirements, underlining the most important conceptual and legal developments/adjustments that have been done.

**Keywords:** Romania, Istanbul Convention, gender-based violence, gold standard, opponents.

## 1. Introduction

Gender-based violence (GBV) is stated to be a global issue and an extensive human rights abuse that we cannot afford to overlook. Gender-based violence that disproportionately affects women is considered to be alarmingly high, even if we still do not have a complete image of the phenomenon's real amplitude due the fact that this kind of abuse is still considerably and systematically under-reported to the authorities. For instance, the FRA study – which is reflecting the EU state of affair - illustrates that only 14 % of women reported their most serious incident of intimate partner violence to the police, and 13 % reported their most serious incident of non-partner violence to the police<sup>1</sup>. Addressing gender-based violence in developing countries, Palermo, Bleck and Peterman are reporting that forty percent of women experiencing GBV previously disclosed to someone; however, only 7% reported to a formal source (regional variation, 2% in India and East Asia to 14% in Latin America and the Caribbean)<sup>2</sup>.

Also, FRA – The European Union Agency for Fundamental Rights in the study *Violence against*

women: an EU-wide survey (2014), has reported the following:

- one in 10 women has experienced some form of sexual violence since the age of 15;
- one in 20 has been raped;
- just over one in five women has experienced physical and/or sexual violence from either a current or previous partner, and
- just over one in 10 women indicates that they have experienced some form of sexual violence by an adult before they were 15 years old.<sup>3</sup>

UNwomen<sup>4</sup> also reports that:

- **Globally, an estimated 736 million women have been subjected to intimate partner violence, non-partner sexual violence, or both at least once in their life (30 per cent of women aged 15 and older).** This figure does not include sexual harassment. The rates of depression, anxiety disorders, unplanned pregnancies, sexually transmitted infections, and HIV are higher in women who have experienced violence compared to women who have not, as well as

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<sup>1</sup> FRA – European Union Agency for Fundamental Rights, 2014, Violence against women: a EU-wide survey), p. 3, available at: [https://fra.europa.eu/sites/default/files/fra-2014-vaw-survey-at-a-glance-oct14\\_en.pdf](https://fra.europa.eu/sites/default/files/fra-2014-vaw-survey-at-a-glance-oct14_en.pdf).

<sup>2</sup> Palermo T, Bleck J, Peterman A. Tip of the iceberg: reporting and gender-based violence in developing countries. Am J Epidemiol. 2014 Mar 1;179(5):602-12. doi: 10.1093/aje/kwt295. Epub 2013 Dec 12. PMID: 24335278; PMCID: PMC3927971.

<sup>3</sup> FRA – European Union Agency for Fundamental Rights, 2014, Violence against women: a EU-wide survey), p. 3, available at: [https://fra.europa.eu/sites/default/files/fra-2014-vaw-survey-at-a-glance-oct14\\_en.pdf](https://fra.europa.eu/sites/default/files/fra-2014-vaw-survey-at-a-glance-oct14_en.pdf).

<sup>4</sup> UNWomen, Facts and figures: Ending violence against women, accessed in 27.03.2022 at <https://www.unwomen.org/en/what-we-do/ending-violence-against-women/facts-and-figures>.

many other health problems that can last even after the violence has ended;

- **Most violence against women is perpetrated by current or former husbands or intimate partners.** More than 640 million women aged 15 and older have been subjected to intimate partner violence (26 per cent of women aged 15 and older);

- **In 2018, an estimated one in seven women had experienced physical and/or sexual violence from an intimate partner or husband in the past 12 months (13 per cent of women aged 15 to 49).** These numbers do not reflect the impact of the COVID-19 pandemic, which has increased risk factors for violence against women;

- **One hundred thirty-seven women are killed by a member of their family every day.** It is estimated that of the 87,000 women who were intentionally killed in 2017 globally, more than half (50,000) were killed by intimate partners or family members. More than one third (30,000) of the women intentionally killed in 2017 were killed by their current or former intimate partner;

- Calls to helplines have increased five-fold in some countries, as rates of reported intimate partner violence increased due to the COVID-19 pandemic. Restricted movement, social isolation, and economic insecurity are increasing women's vulnerability to violence.

Underlining that human life, pain and suffering do not have a price, and perhaps also as a strategy to get the issue on the formal agenda of mostly male politicians holding power in the EU member states, the European Institutes for Gender Equality (EIGE) **has estimated that the cost of gender-based violence across the union is €366 billion a year. Violence against women makes up 79 % of this cost, amounting to €289 billion<sup>5</sup>. EIGE has calculated that** the biggest cost coming from physical and emotional impact (56 %), followed by criminal justice services (21 %) and lost economic output (14 %). Other costs can include civil justice services (for divorces and child custody proceedings for example), housing aid and child protection.<sup>6</sup> That is why Carlien Scheele, EIGE's Director said that "EU countries need to invest more in activities that prevent violence against women and protect victims - this is both a moral imperative, as

well as savvy economics"<sup>7</sup>. The need for effective and efficient intervention in fighting GBV is also stated by the Istanbul Convention, which is considered to be perhaps the most important international documents relating to fighting gender-based violence. In January 2022 the Convention has been ratified by 21 EU members states (Austria, Belgium, Croatia, Cyprus, Denmark, Finland, Estonia, France, Germany, Ireland, Greece, Luxemburg, Italy, Malta, Portugal, Poland, Netherlands, Romania, Slovenia, Sweden and Spain) and signed by all. Turkey was the first but also the only one to withdraw from the Convention, even though was also the first who ratified it.

## 2. The Istanbul Convention. Why is it so important?

The Council of Europe Convention on preventing and combating violence against women, known also as the Istanbul Convention after the city in which it opened for signature on 11 May 2011, was negotiated by its 47 member states and adopted on 7 April 2011 by its Committee of Ministers. It came into force in 2014, and its importance is also related to the fact that it is the first legally binding international instrument on preventing and combating violence against women and girls at the international level. Until the Istanbul Convention, which is also considered to be very important due the fact that offers a common framework and common tools in addressing GBV, we faced a variety of ways of defining and addressing the phenomenon which differed a lot from country to country. The Convention substantively **addressed the need to offer clear definitions and conceptualizations** in the field, clear common definitions and concepts that would enable researchers to do comparative studies, and, even more important, to use the data collected in order to facilitate policy transfer. That is why defining and conceptualizing violence against women is from my point of view, one of the important added value of the Convention. In this respect, the art. 3 is defining four very important concepts:

1. **"violence against women"** is understood as a violation of human rights and a form of discrimination against women, encompassing 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

<sup>5</sup> EIGE, 2021, The costs of gender-based violence in the European Union, accessed on 27.04.2022, at <https://eige.europa.eu/publications/costs-gender-based-violence-european-union>.

<sup>6</sup> EIGE, 2021, The costs of gender-based violence in the European Union, accessed on 27.04.2022, at <https://eige.europa.eu/publications/costs-gender-based-violence-european-union>.

<sup>7</sup> EIGE, 2021, The costs of gender-based violence in the European Union, accessed on 27.04.2022, at <https://eige.europa.eu/publications/costs-gender-based-violence-european-union>.

arbitrary deprivation of liberty, whether occurring in public or in private life;

2. **“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;

3. **“gender”** shall mean the socially constructed roles, behaviors, activities and attributes that a given society considers appropriate for women and men;

4. **“gender-based violence against women”** shall mean violence that is directed against a woman because she is a woman or that affects women disproportionately.

Those definitions are stated in order to reflect the premises and the values on which the text is based, some of which are strongly stating, that the roots of the problem are to be looked for in the patriarchal construction of the societies most of us live in. That is the reason why *gender* reflected especially as a power relation between women and men (a contested term as we shall see) became very important in the Convention text, but also in developing integrated policies for ending violence that affects women and girls. In this respect, the Preamble of the Convention underline “that violence against women is a manifestation of historically unequal power relations between women and men, which have led to domination over, and discrimination against, women by men and to the prevention of the full advancement of women”. Furthermore, the convention is “recognizing the structural nature of violence against women as gender-based violence, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men”. That was why domestic violence was also considered not enough to cover the complexity of the reality addressed. That was why also **violence against women** and **gender-based violence against women** were added in the convention text.

Another extremely important **added value of the Istanbul Convention I consider to be the deconstruction of the patriarchal (mis)interpretation of the public-private division.** The public-private division is directly connected both with the gender roles, but also with what we can call the area of legitimate state intervention, and in consequence with the status of citizen. Feminist scholars have substantively challenged the patriarchal public-private divide, one of the epic illustrations of

this contestation process being the expression “The personal is political!”. For instance, Ruth Lister recalls two of the connotations of this division: the state-market separation and the patriarchal separation between the domestic sphere and the public one. Lister recalls also the original liberal meaning of the public-private division - which refers to the need to create a sphere of personal autonomy, an area of personal inviolability, body security, freedom of thought, conscience and religion - and it’s distortion by the introduction of the patriarchal domestic area in the equation.<sup>8</sup> In *Gender, the Public and the Private*, Susan Moller Okin begins her plea precisely from the original liberal meaning of the distinction referring to private as the space in which intrusion or interference with freedom requires further justification, while public refers to the more generally and just accessible spheres - the society/state jurisdiction<sup>9</sup>.

But what happens when we add gender to the public-private divide in a patriarchal world? One of the paradoxes of doing that is the reversal of the value added to the two spheres. Thus, if initially in the liberal sense the private sphere was the one valued in its sense of enhancing individual autonomy, now the public sphere is the one that acquires a socially valued meaning.

The existence of the gendered hierarchy between the two spheres has also led to the limitation of women's private sphere by virtue of their so-called inability to be autonomous. The paradox is also manifested in the identification of the family with the private sphere and, in one way or another, the translation of autonomy - which is a fundamental individual attribute - over a form of social organization - the family. This translation becomes even more natural in a patriarchal world in the context in which the supreme authority in the family is held by the father/man, the head of the family or the household.

Assuming the above criticism the Convention text state “that violence against women and domestic violence can no longer be considered a private matter, but that states have an obligation, through comprehensive and integrated policies, to prevent violence, protect victims and punish the perpetrators.” That is why the **governments of the states that signed and ratified the Convention are obliged to take action in order to stop GBV.** They are obliged “to change their laws, introduce practical measures and allocate resources to adopt a zero-tolerance approach to violence against women and domestic violence.”<sup>10</sup>

<sup>8</sup> Ruth Lister, *Citizenship: Feminist Perspective*, New York: Palgrave, 2003, 2<sup>nd</sup> ed., p. 119.

<sup>9</sup> Susan Moller Okin, *Gender, the Public, and the Private*, in Anne Phillips, ed. *Feminism and Politics*, Oxford: Oxford University Press, 1998, p. 119.

<sup>10</sup> The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention): Questions and answers, accessed in 27.04.2022 at <https://rm.coe.int/istanbul-convention-questions-and-answers/16808f0b80>.

Last but not least, by **underlying the importance of gender-based stereotypes and prejudice in powering the tolerance towards violence against women**, the Istanbul Convention is addressing the phenomenon in a very complex and in-depth way, pushing steps forward towards the discourse and actions regarding GBV. That is why prevention becomes one of the four pillars (prevention, protection, prosecution and integrated policies) of the Convention. Is not less important that prevention is strongly related in the text with patriarchal norms and power relations between women and men: Chapter III – Prevention, Article 12 of the Convention states that “Parties shall take the necessary measures to promote changes in the social and cultural patterns of behavior 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.”<sup>11</sup>. So we are facing a consistent update of approaching GBV, one which integrates a particularly useful set of tools for addressing violence such as: power, consensus, choice, autonomy, exploitation, dominant culture, hate, culture of violence, toxic masculinity etc.

The text and spirit of the Istanbul Convention underlines once again the fact that protection and prosecution are not enough in fighting GBV and that this happens because we still witness stereotypical representations of women and men and their relations, but also stereotypical representation of violence itself. Unfortunately, for instance in the case of Romania there are many studies that underline the fact that neither school nor media brings useful approaches in this respect and that in fact we are dealing with traditional gendered socialization that perpetuates violence<sup>12</sup> (Rughiniș, Grunberg, Popescu 2015; Grunberg 2004; Grunberg, Ștefănescu 2002). The media does not help either in this respect by presenting unreliable information, with unreliable victims and aggressors - men have more authority, have decision-making positions in the media and identify with the aggressors. The excusing of aggressors and perpetuation of stereotypes about victims (blaming and victimization), the focus on women's behaviors - provocative - and not men's, the symbolic dissociation of sexual violence from the social mainstream; the omission or misinterpretation by positioning attackers as 'others', 'others' and victims as well, the association with mental illness, drug addiction remain

unfortunately mainstream in the so-called understanding of violence against women. Last but not least, the emphasis on law-and-order can hide gender inequalities: the law is not neutral, it is often built on patriarchal, racist, homophobic foundations (Kitzinger, 2004). The lack of analysis of society as a whole, of intersectional approaches, can put us in a situation in which efforts to protect and prosecute to be only partially effective (Kitzinger, 2004). In this context, the Convention calls for a joint effort to develop a series of integrated policies – educational policies inclusively - aimed at addressing the harmful beliefs, stereotypes and prejudice that perpetuate violence against women and girls.

That was why Amnesty International called the Istanbul Convention “**the gold standard that can save the lives of millions of women and girls**” also adding **to the above-mentioned arguments the fact that the convention is** “a widely accepted human rights instrument”.

### 3. A contested gold standard?

It is now notorious the fact and Turkey, which was the first state ratified the convention on 14 March 2012, is also the first and only country in the Council of Europe to have withdrawn from the international human rights convention, but also from an international human rights convention in general. The Amnesty International called shameful Turkey's withdrawal from the Istanbul Convention and underlined that this today will put millions of women and girls at greater risk of violence. How Turkey justified the decision? Zehra Zumrut Selcuk, Minister of Family, Labor and Social Services, said that Turkey, by virtue of its own laws and constitutional provisions, has the power to protect women's rights without the need for the Istanbul Convention – a pseudo -argument dismantled by other experts in the field. For instance, Alina Isac Alak, a Romanian islam researcher said, in a commentary for the paper *Adevărul*, that the withdrawal can be read as a sign of weakness of Erdoğan's regime and in line with the AKP ideology, which from a gender perspective is a conservative and nationalist party that has constantly promoted a neo-traditionalist ideology in the style of the Muslim Brotherhood. This ideology is based on the

<sup>11</sup> The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention): Questions and answers, accessed in 27.04.2022 at <https://rm.coe.int/istanbul-convention-questions-and-answers/16808f0b80>.

<sup>12</sup> UNICEF and ISE. 2004, *Perspective asupra dimensiunii de gen în educație* (Perspectives about a gender sensitive approach in education), Bucharest, available at [http://www.unicef.org/romania/ro/STUDIU\\_de\\_GEN.pdf](http://www.unicef.org/romania/ro/STUDIU_de_GEN.pdf); Cosima Rughiniș, Laura Grünberg, Raluca Popescu, 2015, *Alice în țara manualelor* (*Alice in the country of textbooks*), The Faculty of Sociology and Social Work, Bucharest University, accessible at <http://doctorat-sociologie.ro/wp/wp-content/uploads/2017/09/Alice-in-Tara-Manualelor.pdf>; Claudia-Neptina Manea, *Gender Stereotypes. A Comparative Analysis: Preschool Children from Romania and France*, *Procedia - Social and Behavioral Sciences*, vol. 78, 2013, pp. 16-20, ISSN 1877-0428.

preservation of traditional gender roles with minor, culturally opportunistic adjustments.”<sup>13</sup>

But not only Turkey has contested the Convention, Poland also announced the intention to withdraw. Slovenia had also some street demonstrations against it. What happened there? Agnieszka Graff and Elzbieta Korolczuk explain the Polish anti-Istanbul Convention in the wider framework of the Polish “anti-genderism” which they connect with the strong right-wing, catholic, conservative movement in the country that officially inaugurated, on 29 December 2013 (by the Pastoral Letter of the Bishops’ Conference) a campaign against “gender equality education and legislation, sexual and reproductive rights, as well as the very use of the term “gender” in policy documents and public discourse.” Polish anti-gender campaigners claim that their aim is to protect the Polish family (especially children) against feminists and the “homosexual lobby”; to defend authentic Polish cultural values (which are equated with Catholic values) against the foreign influence of the corrupt West and liberal European Union, which has supposedly replaced the USSR as Poland’s “colonizer”. Targets include sex education, ratification of the Istanbul Convention and gender equality policies more broadly. Conference read in Poland’s parishes.”<sup>14</sup> In this context the Polish minister of justice Jarosław Gowin publicly opposed ratification of the Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), calling it a “carrier of gender ideology” (Graff 2014; Grzebalska 2015). As Graff and Korolczuk says “the rationale offered by Gowin was that the Convention is an ideological Trojan Horse: Its hidden agenda, he claimed, was undermining the traditional family. The fact that the text of the Convention includes the word “gender” was viewed as proof of its portrayed as traitors, mere puppets in the hands of an international or even global conspiracy against the existing traditional gender order.”<sup>15</sup> This perspective on “gender” word is also officially stated in the Comments submitted by Poland on GREVIO’s final report on the

implementation of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Baseline Report)<sup>16</sup> in which the Polish Government makes the following remark: “The use of the term “gender” in the Convention poses many problems of interpretation. The term is not a legal term and is not rooted in universally binding international mechanisms. Furthermore, because of its ambiguity, it has a forcible character which, in the context of the rights and obligations guaranteed, creates doubts about the correct understanding and application of the legislation.”<sup>17</sup> Also in the same document is stated that “There is a risk that measures to combat “gender-based violence” may include, among other things, attempts to reduce the importance of basic social institutions, in particular the family, as the family and the roles of its members associated with it may be wrongly perceived as a source of women’s oppression and a space for men’s domination.”<sup>18</sup> With this comment and invoking the Polish Constitution and its values<sup>19</sup> Poland designed its anti-Istanbul Convention/anti-gender profile.

But interesting is also the fact that the above-mentioned Polish traditional, cultural, deeply socially rooted values that were invoked seems not to be that Polish, but in fact are invoked as being much more spread and accepted. That was why for instance on 2 September 2020, the same Polish Justice Minister Zbigniew Ziobro has invited Slovenia in an official letter to join Poland in withdrawing from the Istanbul Convention. We have reasons to believe that Ziobro in fact wanted to speculate the effervescence of an anti-gender movement that took shape also in Slovenia. Roman Kuhar makes an analysis of the anti-gender movement in Slovenia saying that the discourse concentrated on the controversies around public schools education and children being exposed to “gender theory”. In this context there were voices that urged the Slovenian government not to ratify the Istanbul Convention due the “extreme ideas of gender theory” that should not be integrated into national

<sup>13</sup> Alina Isac Alak, 22 March 2021, *Turcia, violența îndreptată asupra femeilor și succesul nefast al neotraditionalismului Islamic (Turkey, violence against women and the disastrous success of Islamic neo-traditionalism)*, accessed in 03.05.2022, at [adev.ro/qgd20n](http://adev.ro/qgd20n).

<sup>14</sup> Agnieszka Graff and Elzbieta Korolczuk, “Worse than communism and Nazism put together”: War on gender in Poland in Kuhar R., Paternotte D. (eds) (2017). *Anti-Gender Campaigns in Europe Mobilizing against Equality*. Maryland: Lowman & Littlefield, p. 132.

<sup>15</sup> *Idem*, pp. 134-135.

<sup>16</sup> Received by GREVIO on 8 September 2021 GREVIO/Inf(2021)10 Published on 16 September 2021, accessed in 03.05.2022 at <https://rm.coe.int/grevio-inf-2021-10-eng-final-comments-gov-poland/1680a3d208>.

<sup>17</sup> See p. 5.

<sup>18</sup> Comments submitted by Poland on GREVIO’s final report on the implementation of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Baseline Report), 2021, p. 3.

<sup>19</sup> - the obligation of impartiality of public authorities in the field of religion, convictions and philosophical beliefs (Article 25, paragraph 2, of the Constitution of the Republic of Poland), – the fulfilment of the fundamental obligation of public authorities to respect and protect human dignity and to guarantee the freedoms and rights derived from it (art. 30 of the Constitution of the Republic of Poland), – the protection of marriage as a union of a man and a woman, the family, motherhood and parenthood (art. 18 of the Constitution of the Republic of Poland), – respect for the right of parents to bring up their children in accordance with their beliefs (art. 48, para. 1 of the Constitution of the Republic of Poland), – respect for the right of parents to provide their children with moral and religious education and training in accordance with their convictions (art. 53, para. 3, of the Constitution of the Republic of Poland).

legislation and school curricula.<sup>20</sup> The Slovenian officials refused the Polish invitation to join what is in fact a global-conservative club. The Modern Centre Party (SMC), of which Justice Minister Lilijana Kozlovič is a member, said that Slovenia's withdrawal from the Istanbul Convention would be unacceptable, and Janja Sluga member of the same party underlined that "Slovenia as a state should not be even considering that", and that Poland's initiative jeopardizes Slovenia's constitutional and legal system and that the withdrawal would push Slovenia back to the dark times when women and children's abuse was a norm.<sup>21</sup>

Bulgaria also does not ratified the Convention due to its so called incompatibility with the Bulgarian constitution, the controversies being also around the gender meaning. The Constitutional Court said that the word "gender" can only indicate biological sex, and that ratification of the Istanbul Convention which defines gender as a social construct would be anti-constitutional. Emberi Méltóság Központ in Hungary also criticized the Convention as being part of the "gender ideology" and in Croatia the implementation of the Convention has been delayed due to the conservative protests organized all over the country.

Romania also had a number of public voices that opposed to the Istanbul Convention. It is now not a surprise that the voices were from the orthodox side of the story, for instance priest Necula, a prominent public figure in Romania, signed in March 2018, together with other 8 high-education professors an open letter denouncing the gender theories adopted by Romania through the Istanbul Convention. Also, in 2018 a group of NGOs sent the Ministry of Education an address in which concerns regarding the Istanbul Convention were expressed. In the address was mentioned and criticized the definition of gender as a social construct, the fundamental right of parents to choose the values they pass to their children that was threatened by the Convention provisions, but also the fact that the GREVIO monitoring mechanism violates the national sovereignty of Romania.<sup>22</sup> The Education Ministry requested clarification from NAEO (National Agency for Equal Opportunities) which clearly in the response stated that the "whole process of ratifying the

Convention has complied with all the steps provided by law and the rules of a real democracy in terms of the legislative process in our country" and that "the ratification of the Istanbul Convention is a certainty of continued governmental efforts to prevent and combat the phenomenon of violence against women and domestic violence and that Romania is reaffirming its support for the Convention also in the spirit of solidarity other countries that ratified the convention, but also as a sign of its unquestionably support for the elimination of all discrimination against women and men on the grounds of sex"<sup>23</sup>. In this respect, addressing the most important topics of the anti-gender rhetoric in Romania Oana Băluță identifies the following issues: 1. Gender equality *per se*, understood as "making the girls boys, and the boys girls", or conservative rhetoric pro traditional gender roles; 2) Feminist movement; 3) LGBTQ rights – see the 2018 Romanian referendum for the traditional family; 4) Istanbul Convention, 5) Sexual and reproductive rights; 6) Formal gender education, including gender studies; 7) Non-formal gender education.<sup>24</sup>

But even though Romanian did not escape this anti-gender rhetoric, the Istanbul Convention was not until now in the front line of the attacks. In Romania the anti-gender rhetoric worked as an ideological glue for a variety of conservative groups (around 30 Romanian NGOs) - the Coalition for Family - that initiated in 2018 a National Referendum for changing the Constitution of the country. On the same track of hostility, in November 2019, a Senator – member of a young right-wing party (Popular Movement in Romania) known as the Parliamentary Prayer Group, which includes prominent supporters of the Coalition for Family, proposed a law that should forbid any kind of sex/gender proselytism in education, because gender theory is not scientifically proven and gender sensitive education artificially creates different kinds of minorities. As a follow-up, the Romanian Parliament passed in June 2020 an amendment to the education law, banning all educational institutions from "activities propagating theories and opinions on gender identity according to which gender is a separate concept from biological sex"<sup>25</sup>. At the end of 2020, the

<sup>20</sup> Roman Kuhar, Changing gender several times a day: The anti-gender movement in Slovenia, in Kuhar R., Paternotte D. (eds) (2017). *Anti-Gender Campaigns in Europe Mobilizing against Equality*. Maryland: Lowman & Littlefield, p. 160.

<sup>21</sup> Poland Invites Slovenia to Withdraw from Convention Aimed at Preventing Violence Against Women, By STA, 02 Sep 2020, accessed in 03.05.2022 at <https://www.total-slovenia-news.com/politics/6881-poland-invites-slovenia-to-withdraw-from-convention-aimed-at-preventing-violence-against-women>.

<sup>22</sup> National Agency for Equal Opportunities, Response to The Education Ministry referring some concepts and provisions of the Istanbul Convention, no. 3975/SG/MC/22.11.2018.

<sup>23</sup> *Ibidem*.

<sup>24</sup> Băluță, Oana, *Egalitatea de gen. Politici publice sau un câmp de luptă discursiv și politico-religios?* Transilvania, no. 11-12 (2020): 18-33. <https://doi.org/10.51391/trva.2020.12.03>.

<sup>25</sup> See Cătălin Avramescu, lecturer at Bucharest University and his interview (18 Jun. 2020) about gender studies as pseudo-science: <https://www.libertatea.ro/stiri/catalin-avramescu-studiile-de-gen-sunt-pseudostiinta-3039462> (accessed on March, 5<sup>th</sup>, 2021); Adina Papahagi, lecturer at Babeș Bolyai University, facebook post about gender studies as being ideology and propaganda, [https://www.facebook.com/papahagi/posts/595211791109749/?\\_rdc=1&\\_rdr](https://www.facebook.com/papahagi/posts/595211791109749/?_rdc=1&_rdr) (accessed on March, 3<sup>rd</sup>, 2021) or his article about gender studies as being non-science, intellectual imposture and leftist indoctrination published in June, 17<sup>th</sup> 2020 at <https://inliniedreapta.net/monitorul->

Constitutional Court, in perfect opposition with the Bulgarian one, declared the law unconstitutional in response to a claim of the Romanian president.

#### 4. Consolidating legal framework in Romania: follow up after the Istanbul Convention ratification

Romania ratified the Istanbul Convention on 23 May 2016. The coordinating body is the NAEO (National Agency for Equal Opportunities Between Women and Men). The agency is responsible for the elaboration, coordination and implementation of strategies and policies in these two areas of competence and as a state authority, coordinates the implementation of two programmatic documents in the two areas of competence: the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention).

The NAEO's competencies are based on the 202/2002 Law and treatment between women and men, republished, with subsequent amendments and completions and its functions and from the provisions of the Law no. 217/2003 on preventing and combating domestic violence, republished.

As such, NAEO is the responsible body for the coordination and monitoring of the implementation of the National Strategies for promoting equal opportunities for women and men and combating domestic violence and the operational plans, but also for developing, coordinating and implementing the national strategy on preventing and combating sexual violence (see "Synergie" 2020-2030).

In order to give meaning to various requirements of the Istanbul Convention Romania, especially via NAEO, made since 2016 a series of amendments to various laws, but in particular the Law no. 217/2003 for the prevention and combating of domestic violence (the Domestic Violence Law) and Law no. 202/2002 on equal opportunities and treatment for women and men (the Gender Equality Law).

**New concepts and definitions have been added** to Domestic Violence Law by the amendments made in 2018 in order to provide a comprehensive understanding of domestic violence. The conceptualization was done in full compliance with art.

3 (Definitions) of the convention<sup>26</sup>, but also recognized two additional forms of domestic violence - social and spiritual violence.

The law domestic violence law was also amended in in July 2020 when cyber violence was recognized and added as a form of domestic violence. Art. 4 para. 1 letter (h) defines cyber violence as: "online harassment, online messages that instigate hate on the basis of gender, online stalking, online threats, non-consensual publishing of information and intimate graphic content, illegal access to interception of communications and private data and any other form of misuse of Information and Communication Technology by means of computers, smartphones or other similar devices that use telecommunications or can connect to the Internet and may transmit and use social platforms or email platforms, with the intent to cause embarrassment, humiliate, scare, threaten, or silence the victim". Like that all forms of domestic violence are now covered by the Romanian legal framework: verbal, physical, psychological, sexual, economic, social, spiritual and cyber violence.

Also, there were amendments provided a more detailed definition of family members (art. 5), one that overpassed the traditional perspective on what family is and can be. In this respect, children from previous relationships and the children witnesses to domestic violence were explicitly acknowledged as victims. But, in line with the need for a common understanding of GBV it is important to underline that some other changes and updates are to be done by Romania in order to have a coherent legal framework in addressing this kind of abuses. For instance, even though the Domestic Violence Law was amended in accordance with the Istanbul Convention provisions, the Criminal Code still contains a restrictive definition of "family members" (art. 177) and only covers current - but not former - family relations (spouses and partners) and also limits the recognition of the aggression to the condition of family members that share the same residence.

Another very important step made by Romania in order to define and recognize violence against women as an issue of gender and power relations was the introduction in the Law no. 178/2018 (which completes the Law no. 202/2002 regarding the equal opportunities and treatment between women and men) of the concept of "gender-based violence" as follows: "gender-based violence is the act of violence directed against a woman or, as the case may be, a man and motivated by gender.

neoficial/adrian-papahagi-studiile-de-gen-nu-sunt-stiinta-ci-impostura-intelectuala-indoctrinare-stangista/(accessed on March 1<sup>st</sup> 2021); Daniel Funeriu's (former minister of Național Education) facebook post about academic freedom and political correctness cited in the article published by Newsweek in June, 19<sup>th</sup> 2019 at <https://newsweek.ro/educatie/teorii-opinii-gen-aparare> (accessed on February, 27<sup>th</sup> 2021); Alexandru Lăzescu article about gender studies as pseudo-science and neo-marxist ideology published in June, 2<sup>nd</sup> 2020 at <https://inliniedreapta.net/monitorul-neoficial/alexandru-lazescu-studiile-de-gen-sunt-pseudo-stiinta-ce-ar-trebuie-studiate-ca-parte-a-curentelor-neo-marxiste/> (accessed on March, 13<sup>th</sup> 2021).

<sup>26</sup> "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.

Gender-based violence against women or violence against women represents any form of violence that affects women disproportionately. Gender-based violence includes, but is not limited to, domestic violence, sexual violence, genital mutilation of women, forced marriage, forced abortion and forced sterilization, sexual harassment, trafficking in human beings and forced prostitution”.

**Multiple discrimination** is also addressed by the Romanian legislation in art. 2 para. 6 of the Antidiscrimination Law – which states that the discrimination on multiple criteria shall be considered an aggravating circumstance (art. 2, para. 6) - and art. 4(h) of the Gender Equality Law. Although the concept of multiple discrimination is reflected in the legislation, it is important to underline here that it is also a reported lack of acknowledgment and understanding of the concept of multiple and intersectional discrimination within the courts and legal institutions, but also within the population in general.<sup>27</sup>

**Sexual harassment** is criminalized in Romania since 200, but the definition offered by Criminal Code, which entered into force in 2014 refers to it as acts of repeatedly demanding sexual favors in the context of an employment which intimidate the victim or place her in a humiliating situation (art. 223). This approach is not in line with the Istanbul Convention due the fact that limits the harassment once to requesting sexual favors and second to the repetitiveness of the abuse. The Istanbul Convention refers to any unwanted verbal, non-verbal or physical conduct of a sexual nature with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment (art. 40). Also, the Romanian Criminal Code limits sexual harassment to the workplace or similar relationship which is not in line with the Convention text which does not have such reference.

In respect with the protection pillar of the convention it is also important to mention the introduction in the Domestic Violence Law of **the Provisional Protection Order (PPO)**, as a measure of immediate protection. The PPO allows and requires law enforcement bodies (especially the police) to quickly intervene in order to protect victims of domestic violence also by the immediate removal of the

aggressors from the home. The PPO was accompanied by measures to monitor compliance and prevent infringement of court-ordered protection orders and to assess risk in cases of domestic violence according to art. 51 of the Convention, supportive legal framework consolidated by the changes done in 2018. The PPO proved to be a very useful tool in fighting GBV due the fact that the overwhelming majority of the PPO were later confirmed by the prosecutors.

Year	PPO	Confirmed by a prosecutor	Unconfirmed	Transformed in PO (Protection Orders)	PPO violated
2020	8393	7296	1097	3887	479
2021 (first 6 months)	4561	4040	521	2065	264

Source: National Agency for Equal Opportunities Between Women and Men

It is also important to underline the fact that, in Romania, there is no specific offence or other legislation expressly criminalizing **female genital mutilation, forced abortion or forced sterilization and forced/early (illegal child) marriage**. Further efforts should be done by Romania in this respect and in order to have a substantive implementation of the IC. The Convention addresses those forms as violence in the art. 37, 38 and 39 and underlines that they are a serious violation of the human rights of women and girls and a major obstacle to the achievement of equality between women and men.

## 5. Conclusions

To sum up, gender-based violence is still under fire of the detractors that are not sporadic and isolated, but global and organized. This can be seen by the same ideological framework that was invoked in different contexts, a conservative/religious framework that goes against the women empowerment, against women’s rights as human rights. The contesters of the Istanbul Convention are in fact part of a wider anti-gender global movement that are in the back of the global gender backlash, a phenomenon well documented in the last years<sup>28</sup>. As Kuhar and Paternotte notes “in fact, Slovenian activists were inspired by Italian activists, and Italian activists were themselves inspired by a French group, the Veilleurs (Vigilist), which they

<sup>27</sup> See here the research results presented in the Intersectionality – Training Manual, 2022 accessible here [Training-Manual-Final-Intersect-Voices.pdf](#).

<sup>28</sup> Pető A. (2018). *Attack on Freedom of Education in Hungary. The case of gender studies, LSE Blogs*. Accessed at: <https://blogs.lse.ac.uk/gender/2018/09/24/attack-on-freedom-of-education-in-hungary-the-case-of-gender-studies/>, August 30<sup>th</sup>, 2020; Băluță, I. (2020) *Studiile de gen: un turnesol al democrației românești (Gender Studies: a Litmus for the Romanian Democracy)*, Transilvania, no. 11-12 (2020), pp. 34-41. <https://doi.org/10.51391/trva.2020.12.04>, accessed in August, 23<sup>rd</sup>, 2021; Băluță, O. (2020), *Egalitatea de gen. Politici publice sau un câmp de luptă discursiv și politico-religios? (Gender Equality. Public Policies or Political and Religious Discursive Battlefield?)*, Transilvania, no. 11-12, pp. 18-33. <https://doi.org/10.51391/trva.2020.12.03>, accessed in August, 23<sup>rd</sup>, 2021; Case, M.A. (2019), *Trans Formations in the Vatican’s War on ‘Gender Ideology’*, Signs: Journal of Women in Culture and Society 44, issue 3; Corredor E S. (2019), *Unpacking ‘Gender Ideology’ and the Global Right’s Antigender Countermovement*, Signs: Journal of Women in Culture and Society 44, issue 3; Kováts, E., Poim M. (2015). *Gender as symbolic glue: The position and role of conservative and far right parties in the anti-gender mobilization in Europe*. Foundation for European Progressive Studies & Friedrich-Ebert-Stiftung.

imported to their own country and hybridized. Born in 2013 in Paris, this group initially gathered a few (mostly Catholic) youngsters who wanted to oppose the same-sex marriage bill and promote “human ecology”<sup>29</sup>. But even though for scholars is obvious that we are dealing with a strong ideological opposition to gender equality, for the rest of the citizens we are dealing with a dangerous play. We are dealing with a war which is delegitimizing the actions/policies aimed at ending GBV and is re-legitimizing the submission of women, the patriarchal norms that are reinforcing the power relations and inequalities between women and

men. In this ambiguous global and regional context, one in which some of its neighbors had had strong voices opposing the Council of Europe Convention, Romania is showing signs of keeping its commitment to the values and principles stated by this important international document. The milestones I consider worth mentioning in this respect are related to the Constitutional Court response to the sex/gender debate, the NAEO response to the detractors which addressed the Education Ministry, but also the steps are being done in order to do an ambitious and comprehensive reform of gender-based violence legal framework.

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