

- Stalking -

Introduction

- The Council of Europe Convention on preventing and combating violence against women, or *Istanbul Convention* for short, 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).
- A woman who is stalked has no chance at leading a normal life. Fear and anxiety take over every aspect of daily life and trying to cope makes holding down a job, being in a relationship, caring for children, etc. extremely difficult. It is extremely difficult for victims to put an end to the stalking and to seek justice. Most Council of Europe member states do not have specific legislation on stalking, neither in criminal nor in civil law. In many languages, there isn't 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 against stalking and to support its victims. It is hoped that once the Convention enters into force and is implemented at national level, it will make a real difference for victims of stalking.

Stalking as a specific criminal offence

- **First** of all, the Convention makes clear that stalking is a form of violence against women. Although data from Council of Europe member states is patchy, it is well-known that many victims of stalking are female and many perpetrators are male. Often, women are stalked after a relationship, often abusive, has come to an end. This type of stalking clearly has a gendered nature, because it is about dominance and control. But women are also very frequently stalked by men they never had a relationship with. Usually, however, the stalker is no stranger to the woman but someone she knows from somewhere.
- **Second**, national legislation must be equipped to deal with stalking. Because there can be no penalty without a law, the Convention requires all states 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 “his” or “her” 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 capture 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 friends and family, or whatever else it is a stalker does, does 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.
- A specific criminal offence is no panacea. The success of a new offence 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 states 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 state parties to set up specialist support services for victims of any type of violence covered by the Convention. This includes services for victims of stalking. Just like there need to be 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 there needs to be a number that victims 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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