



Filomena

Centrum huiselijk geweld en kindermishandeling

Shadow report on the Istanbul Convention

From an operational perspective

Filomena – specialist center for domestic and child abuse
September 2024

Introduction

Over the past five years, Filomena has evolved into a center of expertise, applying highly specialized knowledge and an innovative way of working to complex cases that require a different approach. From this position, we observe that significant strides have been made on the Istanbul Convention in the Netherlands. Yet, major challenges remain to ensure an effective and comprehensive combat of violence against women and domestic violence. Drawing from our extensive experience in handling such cases, this report offers our operational perspective on the state of the Istanbul Convention in the Netherlands.

Recognition of the problem is growing, but it has yet to translate into concrete policies and frameworks. On a national level, the issue still struggles to make it onto the agenda, and politicians are hesitant to address critical topics such as coercive control and femicide. We are grateful to our local government and partners for recognizing the importance of Filomena and enabling our work - helping those affected by domestic violence and child abuse find the support they need to sustainably escape unsafe situations.

This report aims to provide a unique perspective on the Istanbul Convention, based on Filomena's expertise and operational position: working daily with victims of violence against women and domestic violence, while maintaining strong connections with regional, national, and international partners. From this vantage point, we highlight three critical topics that, in our view, require attention to ensure that the commitments of the Istanbul Convention are upheld:

- I. Subordinate legal position of the victim**
- II. Limitations in the operational framework**
- III. The legal position of Filomena**

PART I – subordinate legal position of the victim

The position of victims – often women and/or children – is subordinate to that of their abusers in terms of rights and obligations. This is a result of a limited recognition of violence against women and domestic violence as a high impact crime (1), as well as the fact that psychological violence, including coercive control, is still not criminalized (2). Consequently, the power position of the abuser limits the framework of action for victims and social care organizations, such as Filomena. This ultimately results in cases where victims will feel discouraged to get the support that they need. In addition, we see the need to educate the judiciary on domestic abuse (3).

1. Recognition of violence against women and domestic violence as a high impact crime

Despite the initial steps taken, we recognize the importance of acknowledging domestic violence and violence against women as a high-impact crime. This would enable a more comprehensive toolbox of administrative measures that reach beyond voluntary measures (see *part II*). As long as domestic violence is not treated as a high impact crime and the support options remain voluntary, the position of the abuser remains superior to that of the victim. Additionally, the penalties for domestic violence could be in line with that of high impact crimes, as domestic violence and violence against women have significant social impact, and the dependent nature of the relationship between victim and abuser should be judged as an aggravating circumstance.

2. Psychological violence, including coercive control, is still not criminalized

Article 33: criminalization of psychological violence

Unlike common offenses, psychological violence concerns systematic, recurring and escalating patterns of (one-sided) intimidating behaviors that escalate and can ultimately result in fatal outcomes. However, the 'red flags' for these patterns cannot be formally recognized based on our incident bases criminal code, and thus cannot be prosecuted, making it virtually impossible to gather enough evidence of psychological violence. The local prosecutor's office recognizes this problem. Examples of such 'red flags' are coercive control, stalking, (attempts at) non-fatal strangulations, isolation, violence during pregnancy and an escalating cycle of violence. Criminalization and recognition of psychological violence and the 'red flags' will make preventive interventions possible, so that we can work within a forensic framework in the phases leading up to violence or murder, rather than only after the violence has already occurred.

In addition, public education is needed to inform both victims and bystanders, but also, and especially, potential abusers about the dangers of escalating behavioral patterns. Raising awareness and knowledge about topics such as non-fatal strangulation can save victims and prevent abuse. It is also essential to provide clear information on where to access specialized help, so that the escalating pattern can be broken successfully through proper interventions.

3. Rights of abusing parents strengthen their position of power

Article 26: protection and support for child witnesses

Article 31: custody, visitation rights and safety

Currently the rights of the abusing parents put them in a position of power in relation to their victim. For example, (abusing) parents can actively obstruct investigations by simply refusing consent for empirical scientific tools such as risk assessment instruments, MASIC, NICHD, and trauma research in children. As a result, judicial interventions cannot be engaged, and thus protection and safety in dependent relationships cannot be ensured.

It is necessary to legally allow for (temporary) removal of parental authority/consent requirements. Suspicions of criminal acts should lead to the breaking of parents' legal power. The best interests of the child should be clearly defined and accompanied by uniform legal frameworks. In the Scandinavian Barnahus locations this is already possible: in cases of domestic violence, the child is appointed a representative by the public prosecutor's office, that can provide permission for using empirical scientific tools that may lead to disclosure from a child – without the need of an abusing parent's permission.

4. Educating the judiciary

Article 15 of the Istanbul Convention: training of professionals (judges)

Not all judges have the same level of knowledge on the topics of domestic violence and violence against women. This includes knowledge about the behavioral patterns of abusers and victims (particularly coercive control), the necessity for empirical risk taxation instruments (such as NICHD) and protective measures. Additionally, the role and responsibility of social service organizations such as Veilig Thuis/Filomena is sometimes limited, because the Social Support Act (Wmo) does not address safety issues without voluntary cooperation from all parties involved – including the abuser. Keeping in mind that the safety issues we are dealing with usually entail criminal offenses that require non-voluntary measures.

It is essential to provide judges with more time and opportunities to engage during the investigation phase. Facilitate their role as partners in developing an appropriate action plan to ensure the safety of victims. In Belgium, domestic abuse is part of the yearly training cycle. We see great value in this solution, ensuring that judges stay updated in recognizing criminal incidents behind the front door, but also underlying behavioral patterns.

The Rotterdam public prosecutor's office has appointed a prosecutor with specific expertise in these matters. In addition, the court provides combined court sessions (combizitting) of all cases around a family to be judged by one judge, combining criminal and civil (family) law.

PART II – limitations in the operational framework

The limited recognition of violence against women and domestic violence on a national level, and the resulting subordinate position of the victim, are the basis of insufficient, uncomprehensive and uncoordinated policies and operational framework. This translates both to a limited toolbox (1) and possibilities to share information with other organizations (2). Ultimately this limits effective collaboration between criminal justice and care partners (3).

1. Limited operational toolbox

Article 7: comprehensive and coordinated policies

Article 51: risk assessment and risk management

Article 53: restraining of protection orders

As violence against women and domestic violence are not recognized as a high impact crime (see part I.1), cannot use the same toolbox of (administrative) measures to ensure the victim's safety as can be used to ensure the safety of victims of high impact crimes. Examples of such tools are a restraining order from a specific area for stalkers and video surveillance after threats of violence or murder. We know that these employing these measures can be vital in preventing violence with severe or fatal outcomes, especially when we recognize the 'red flags' (see part I.2).

2. Limited possibilities for effective collaboration between criminal justice and care partners

Article 7: comprehensive and coordinated policies

In addition to a limited operational toolbox, we are unable to effectively share information with our partners in criminal justice and care. The system is too compartmentalized and structured in a way that discourages collaboration rather than promoting it. This means we often lack in providing solutions together with all relevant partners to make a difference. It is necessary to dismantle these barriers and enable the work of highly specialized centers like Filomena/Via225, and as such create space for collaboration. Doing more together in the early stages prevents unnecessary intensive care and escalation in later stages.

3. Limited possibilities to support the judiciary

Article 28 of the Istanbul Convention: reporting by professionals

Article 54: investigations and evidence

Professionals in our field, such as our intensive case managers or behavioral scientist, are currently not able to provide evidence to the court about the 'red flags', behavioral patterns or other relevant information about the case, unless specifically invited by the Raad voor de Kinderbescherming, Jeugdbescherming or lawyers. As a result, we experience a dependency on other partners that can provide evidence to take our conclusions and present these to the judge. This is an unproductive and vulnerable dependency. As a result, the judges are not always sufficiently aware of the behavioral patterns that play a role in the case.

PART III – position of Filomena

Filomena offers walk-in option with 'one-stop-shop' principle for victims of complex domestic abuse and child abuse, so victims can immediately and without having to share their story more than once (*one face principle*) be provided with the necessary support and safety measures can be taken. In addition, we have strong and short connections with judiciary, safety and care partners. Research indicates that these three elements provide an effective approach that is distinct from other the other support options in the region.

To put the three effective element in practice we are still faced with some barriers. There is no sufficient legal coverage to apply these measures most effectively (1). This adds onto the limited recognition of psychological violence and the limits of the operational framework as elaborated in parts I and II. In addition, there is no nationwide coverage for highly specialized centers for research and support (2), and no coordinated framework for financing (3).

1. Legal coverage for the Filomena effective elements

Article 22 of the Istanbul Convention: specialist support services

The three effective elements in the Filomena intervention are currently not covered under the Social Support Act (Wmo). To be able to operate, we positioned Filomena under Veilig Thuis, to be able to use VT's legal framework. This allows us to share information and do research. Still, we need to transcend the boundaries that this framework offers to execute our approach. For example, we stay involved with a case as long as is necessary to reach a situation of sustainable safety, by following the pace of the victim and others involved. Sometimes this means that we take more time to complete the research phase. However, the social support act (Wmo) prescribes a maximum time for the research phase.

2. Nationwide coverage

Article 22 of the Istanbul Convention: specialist support services

The Netherlands currently lacks nationwide coverage of independent centers for highly specialized research and early diagnostics of complex domestic and child abuse. Several other Dutch regions are developing similar concepts to bring together domestic and child abuse experts, medical-forensic experts, child pediatrics, sexual violence experts, trusted doctors, police, support staff, and behavioral scientists under one roof as well, but this lacks national coordination as a result of the lacking legal framework.

At the same time, the national Future Scenario for Kid- and Family Protection (*Toekomstscenario voor kind- en gezinsbescherming*) prescribes the national coverage of centers of expertise for tackling domestic abuse and child abuse. Filomena currently pioneers this role in the Rotterdam Rijnmond region, but the lacking legal framework act as a barrier. We see the necessity to formally assign this role to Filomena, and legally embed the Filomena intervention. As such, Filomena's role as a center of expertise with an accessible walk-in for highly complex cases can be developed without boundaries in addition to the "regional safety teams".

3. Uncertain financing

Article 8 of the Istanbul Convention: financial resources

As there is no legal framework for Filomena's approach in place, there is also a lack of financial covering from a national level. Currently, we are very lucky with the recognition of the importance and necessity of our way of work in the Rotterdam region by our local and regional bodies of government. However, to sustain our position and be better embedded position of Filomena, a more coordinated financing from a national level is required.