CONVENTION ON PREVENTING AND COMBATING **VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE**

(ISTANBUL CONVENTION)



Crimes committed in the name of so-called honour

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).

So-called honour crimes are one form of gender-based violence. However, if you are looking for an outright criminalisation of such crimes, your search will be in vain. The drafters of the convention analysed so-called honour crimes very carefully: the reasons why they are committed and what perpetrators are trying to achieve with this type of violence. This exercise showed that crimes committed in the name of so-called honour are usually crimes that have been part of the criminal law landscape of Council of Europe member states for a very long time: murder, manslaughter, bodily injury, etc. What makes them different is the intent behind them. They are committed to pursue an aim other than, or in addition to, the immediate effect of the crime. This ulterior aim may be the restoration of family "honour", the desire to be seen as respecting tradition or complying with the perceived religious, cultural or customary requirements of a particular community. To capture this, the drafters of the convention moved away from the original idea of introducing a separate criminal offence for so-called honour crimes and agreed instead to ban any attempts to justify criminal behaviour on the basis of culture, custom, religion, tradition or so-called honour. This means that family or community members who kill, maim or injure a woman for her real or perceived transgression from cultural, religious or traditional norms can not invoke any of the above grounds in criminal proceedings (Article 42).

ENDING IMPUNITY

There are many examples from different countries, mainly from the 1990s, but some more recent, where judges handed down lenient sentences simply because the perpetrator claimed to have acted out of respect for his culture, tradition, religion or custom or to restore his so-called honour. This is exactly what the convention intends to eliminate. Rather than allowing judges to reduce sentences, the convention actually demands harsher punishment if the crime is committed by a family member or by two or more people acting together. Article 46 calls for aggravating circumstances to be taken into account when determining sentences in such cases. This provision is aimed, among others, at crimes committed in the name of so-called honour, which are usually committed by family members, who, in many cases, plot against the victim.

INSTIGATING A YOUNGER MEMBER OF THE FAMILY TO CARRY OUT A CRIME

The convention also makes it clear that choosing a younger member of the family, somebody who has not yet reached the age of criminal responsibility, to carry out the crime, still leaves the instigator of the crime, often the head of the family or adult brothers, liable for incitement (Article 42, paragraph 2).

RESTRAINING AND PROTECTION ORDERS

Ending impunity for gender-based violence is one of the aims of the convention. But its provisions are also directed at preventing such violence. That is why, in Article 53, the convention introduces restraining and protection orders for all forms of gender-based violence, not just domestic violence. This means that, for example, a young woman who has reason to believe that her family is plotting her murder because they disapprove of her lifestyle shall be given the possibility of applying for a protection or restraining order against the family members in question. This, of course, must be enforced by the authorities and any transgressions must be sanctioned. In many countries it is, in theory, possible to apply for an injunction to have somebody stop doing something, but this legal instrument is rarely, if at all, applied in this context. To keep women at risk safe from harm, the convention introduces restraining and protection orders as a new standard in the context of so-called honour crimes.

SUPPORT SERVICES FOR VICTIMS

There are additional measures which the convention requires parties to take to prevent such crimes. For example, the requirement to set up services for women at risk of being murdered by their relatives, which would offer legal and psychological counselling and a safe place to stay. How this is done is left to the party to decide, but there needs to be a telephone number that victims can call and that will direct them to a place where they can get help, preferably in several languages (see Articles 22 and 24).

ALERTING AUTHORITIES

The convention also acknowledges the special role that professionals can play. Often, a girl or woman at risk will confide in a person she trusts, maybe a teacher, her doctor or a friend. Articles 27 and 28 require parties to encourage all these people to notify the competent authorities so that action can be taken. However, confidentiality rules imposed on some professionals often stand in the way, which is why the convention calls on parties to review this in order to strike a balance between much-needed confidentiality and the desire to save lives.

Once a case comes to the attention of the authorities, the convention requires all authorities, not just the police, to jointly assess the risk to a particular woman under threat, and devise a safety plan for her. Any such risk assessment must, of course, take into account the probability of life-threatening violence and whether or not firearms are involved. The idea is to ensure that a multi-agency network of professionals is set up to protect high-risk victims (Article 51).

FEAR OF SO-CALLED HONOUR CRIMES AS GROUNDS FOR ASYLUM

Most of the measures of the Istanbul Convention cover women at risk of "honour crimes" on the territory of a party to the convention. There are, however, many women elsewhere in the world who are under threat because of the way they dress, the way they live, the person they want to marry or other choices they have made. For some of these women, the risk is so great that they flee their country and apply for asylum in a party to the convention. To protect them from serious harm, parties are required to recognise that gender-based violence such as so-called honour crimes may amount to persecution and may give rise to refugee status or leave to remain in the country. Articles 60 and 61 address this complex issue by requiring parties to interpret the 1951 Convention Relating to the Status of Refugees in a more gender-sensitive manner, to recognise persecution on the grounds of gender, and not to expel anyone to a country where their life or freedom is under threat.

For further information please visit:
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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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