Human rights and justice for victims of gender based violence

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VAW as a human rights concern

International milestones and mechanisms

- **Mid 1990s**: Recognition of VAW as a VIOLATION OF HUMAN RIGHTS in international human rights law. Existing instruments:
  - **United Nations**
    - Convention Against Torture (applicability IPV?)
    - Beijing Platform for Action (1995; VAW as one of 12 areas)
  - **Inter-American Convention** on the Prevention, punishment and eradication of VAW (Belem do Para, 1994)
  - **Council of Europe ISTANBUL CONVENTION** on preventing and combating VAW and domestic violence (2011)

As of March 8, 2017 22 MS ratified
AVAILABLE EUROPEAN MECHANISMS TO LEGALLY ADDRESS VAW

EU-frames (and MS)
- Criminalization as the prominent tendency in EU MS
- Wide divergence in regulating VAW between EU MS
- EU/European Commission: limited competence.
  - VAW as a violation of criminal law: no legal recognition of discriminatory nature of VAW. Recent signing of IC bij EC is milestone.

CoE frame
- European Convention of Human Rights
  - *ECHR* - case law. Important changes!
    no monitoring/sanctioning mechanism
ISTANBUL CONVENTION (2011) - process

Process

• Preceded by elaborate studies/task force/resolutions (CoEurope - mid 1990s-2008).
• Intensive drafting procedure (CAHVIO, 2009-2011)
• Comprehensive
  • Based on standards and legal interpretations from different sources (ECHR, CEDAW, Inter American Convention on VAW, CEDAW-views).
  • Explanatory memorandum.
• Intensive launch
  • Website, studies available that elaborate on core articles
ISTANBUL CONVENTION (2011) - innovative approach - general

Innovative elements implying binding (new) national obligations for States

- **VAW as form of discrimination and a hr violation**: art. 3 and 4 of IC) as well as violations of criminal statutes (ch. V and VI of IC).

- **Integrated approach mandatory**: policies, including research and data-collection, and multi-disciplinary/multi-sectoral interventions (chapters II and IV).

- Explicit focus on **prevention**
Innovative elements - specific

• Connection between gender inequality and violence (cause and consequence)

• Distinguishing gender based violence and domestic violence (gender sensitive policies – art.6) -> ambiguity (Römkens, 2013; Açar/Popa, 2016)

• Research as obligation

• Strong emphasis on prevention (ch. III)

• Monitoring mechanism (GREVIO); impact?

• Obligation to assign budgets (also to NGOs) – art. 8
JURISPRUDENCE ECtHR – human rights applied to domestic violence (IPV)

- Relevant articles ECHR: 2 (right to life), 3 (right to be free of torture), 8 (right to privacy/family life) and 14 (right to be free of discrimination).

- Innovative developments:
  - concept (situations where) ‘the police knew or could have known’ to establish states’ failure to protect the woman’s right to protection.
  - discrimination (Opuz v. Turkey, 2009)
  - Landmark cases:
    - First reference to IC in 2016 to substantiate discrimination-claim (M.G v.Turkey and Halime v. Turkey).
    - Recognition of dv as torture (art.3 -> fist case Eremia v. Moldova, 2013)
FUTURE ISSUES

• Contrast international and national developments and strength of HR: VAW/DV as a form of discrimination vs. gender neutralization and culturalisation of DV (UN CEDAW Cee on the Netherlands)

• Access to justice and the meaning of international human rights: who and how? (future research).

• Impact of case law and role of monitoring mechanism (GREVIO)