



THE COUNCIL OF EUROPE CONVENTION ON PREVENTING AND COMBATING VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE

(ISTANBUL CONVENTION)



Global Exchange on Migration and Diversity, Centre on Migration, Policy and Society, University of Oxford

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Undocumented migrant women's rights to live free from violence in the Istanbul Convention

Rosa Logar, Member and First Vice President of the Council of Europe GREVIO Committee

PRESENTATION OVERVIEW

My presentation aims at addressing the following issues and questions:

- How the Istanbul Convention came about
- Short overview on content, ratification and monitoring
- How the Convention protects and supports the rights of undocumented women victims/survivors of violence
- How the argument for these provisions was fought for, and finally won
- Requirements for governments in implementing the provisions, evaluation and monitoring process.



WHY WAS IT NECESSARY TO ESTABLISH A NEW CONVENTION? EUROPEAN CHALLENGES

- Male-oriented or gender-neutral laws not taking into account the realities of women
- Different levels of protection and support
- Lack of comprehensive, holistic policies based on human rights and safety of victims/survivors
- Lack of effective laws and implementation
- Insufficient funding of women's support services
- Protection and support not meeting the needs of victims
- Negative and discriminatory attitudes taken towards women victims by the police, judiciary or social services

DEVELOPMENT OF THE ISTANBUL CONVENTION

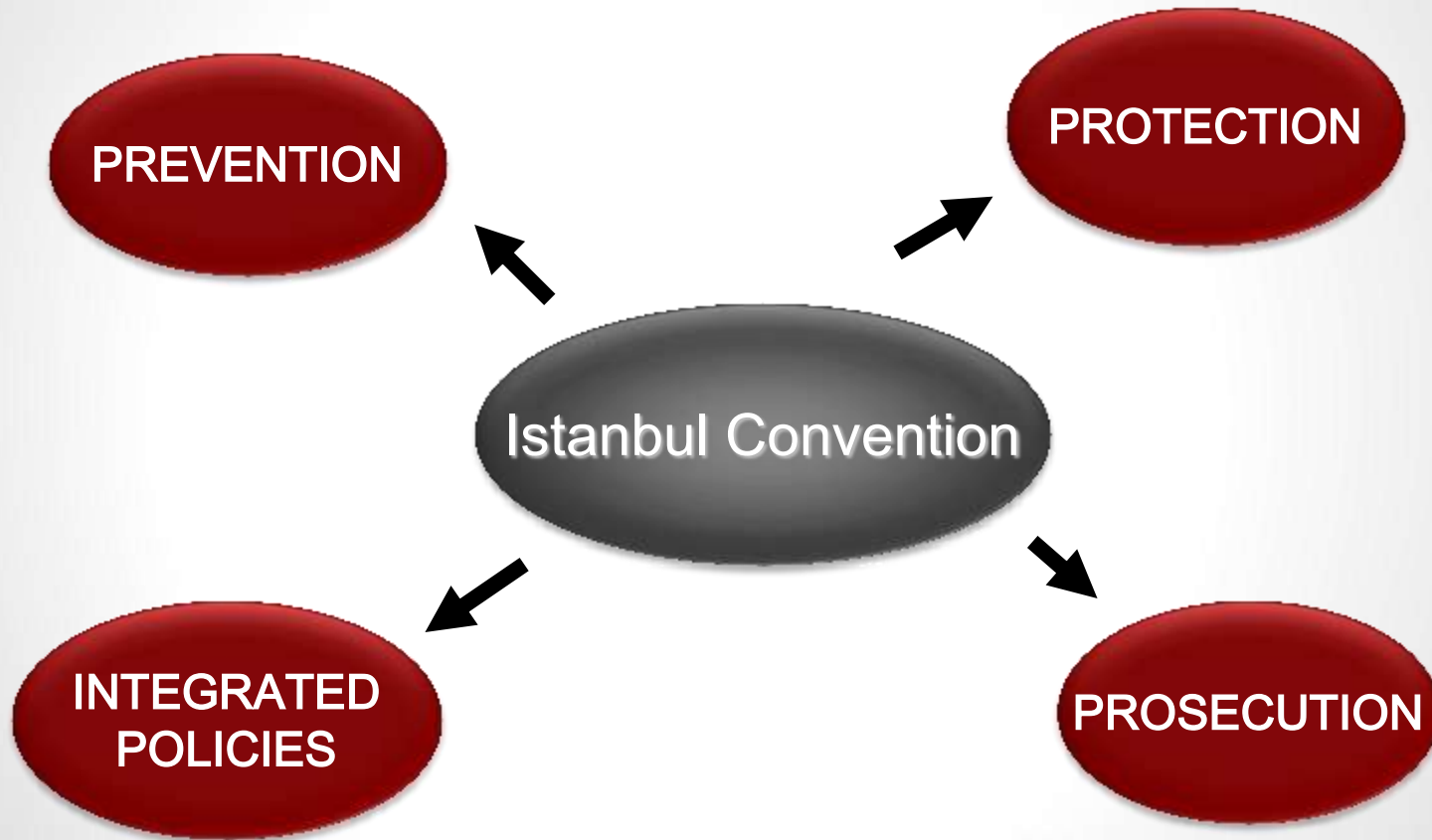
- **Adopted in May 2011 in Istanbul, after more than 10 years of intensive work in the COE on violence against women**
- **Following the Council of Europe 2002-5 Recommendation on the protection of women from violence**
- **First legally binding instrument aimed at eliminating violence against women and domestic violence in Europe.**
- **Most comprehensive international document on violence against women and domestic violence: 12 chapters, more than 80 articles**
- **Sets common standards in the prevention of violence against women and domestic violence in Europe.**
- **Open to ratification for all countries**



WHO IS COVERED BY THE CONVENTION? SCOPE

- The Convention covers women and girls, from any background, regardless of their age, race, religion, social origin, sexual orientation, migrant status or any other status.
- The Convention recognises that there are groups of women and girls that are often at greater risk of experiencing violence, and states need to ensure that their specific needs are taken into account.
- The Convention recognises that domestic violence affects women disproportionately. States are also encouraged to apply the Convention to other victims of domestic violence.

HOLISTIC APPROACH TO COMBATING VIOLENCE AGAINST WOMEN





STATUS OF RATIFICATION AND SIGNATURES

As of 5th of July 2017, the Convention has been

Ratified by 24 countries:

Albania, Andorra, Austria, Belgium, Bosnia and Herzegovina, Denmark, Finland, France, Georgia, Italy, Malta, Monaco, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, San Marino, Serbia, Slovenia, Spain, Sweden, Turkey.

Signed by 20 countries:

Bulgaria, Czech Republic, Croatia, Cyprus, Estonia, Germany, Greece, Hungary, Iceland, Ireland, Latvia, Liechtenstein, Lithuania, Luxembourg, Macedonia, Moldova, Slovakia, Switzerland, Ukraine, UK.

EU Council agreed to access the Istanbul Convention in May 2017.

RIGHTS OF UNDOCUMENTED MIGRANTS IN THE CONVENTION



- **The Convention clearly applies a human rights based approach – important to protect the rights of undocumented migrant women survivors of violence**
- **It recognises violence against women as a human rights violation and as a gender-based and historically developed problem of domination over and discrimination against women**
- **It places the human rights of all women at the centre and demands that basic human rights principles be applied:**



Human rights principles 1

Core principles of human rights as we know them:

• ***Universality***: Human rights must be afforded to everyone, without exception. The premise of the human rights framework is that people are entitled to these rights simply by virtue of being human.

• ***Indivisibility***: Human rights are indivisible and interdependent; in order to guarantee civil and political rights, parties/governments must also ensure social, economic and cultural rights. The indivisibility principle recognises that the violation of rights such as safety or health affects people's/women's/girls' ability to exercise other rights such as the right to life the right to freedom.



Human rights principles 2

Further human rights principles:

Participation: People have a right to participate in how decisions are made regarding protection of their rights. To ensure human rights, governments must engage and support the participation of civil society in these issues.

Accountability: Governments must create mechanisms of accountability for the enforcement of rights. It is not sufficient to recognise rights in domestic law or in policy documents; effective measures must be in place so that governments can be held accountable if rights are not granted.

Transparency: Transparency means that governments must be open about all information and decision-making processes related to rights. People must be in a position to know and understand how major decisions affecting rights are made and how public institutions, such as hospitals and schools, which are needed to protect rights, are managed and run.

Non-Discrimination: Human rights must be guaranteed without discrimination of any kind. This includes not only purposeful discrimination, but also protection from policies and practices which may have a discriminatory effect.



RIGHTS OF UNDOCUMENTED MIGRANTS IN THE CONVENTION 2 – CORE PROVISIONS

Core provisions in the Convention to guarantee human rights:

- **Protect and promote the right for everyone, particularly women, to live free from violence in both the public and the private sphere (Article 4.1)**
- **No discrimination on any ground (Article 4.3)**

Question of intersectionality: Who is included regarding measures and provisions? Who is excluded and why? How can we ensure inclusiveness in measures to prevent violence and protect victims?

- **All measures must place the rights of the victim at the centre (victims rights oriented approach, Article 7.2)**



RIGHTS OF UNDOCUMENTED MIGRANTS IN THE CONVENTION 3 – CORE PROVISIONS

- The due diligence principle implies that (undocumented migrant) women **shall be actively protected from any form of violence.**
- Recent rulings in femicide/(child) homicide cases in the European Court of Human Rights (ECHR) establish the **due diligence obligation to actively protect women in danger of being subjected to violence if the authorities knew or ought to have known of any danger** (see Opuz vs Turkey and other cases).
- **Human rights principle of participation:** the Convention demands from parties to **ensure that all policies and measures place the rights of the victim at the centre of all measures** (Article 7.2). This means that victims need to have the right to participate in all processes concerning them, that they are involved and asked for consent and that their rights and needs are represented by a specialist women's support service they trust.



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SPECIFIC PROVISIONS ON RIGHTS OF MIGRANT AND ASYLUM SEEKING WOMEN

- Right to an independent residence status (Art 59)
- Gender-based asylum claims (Article 60)



HOW THE ARGUMENT FOR THESE PROVISIONS WAS FOUGHT FOR, AND WON 1

- Considerable resistance from some countries in the Council of Europe Committee (CAHVIO) to recognise the rights and specific needs of undocumented migrant women
- Attempts of several members of CAHVIO to explicitly address the rights and needs in the text of the Convention failed
- However, they were successful in getting undocumented migrant women recognised and specifically mentioned as a vulnerable group in the Explanatory report to the Convention (Para 87).



HOW THE ARGUMENT FOR THESE PROVISIONS WAS FOUGHT FOR, AND WON 2

- Strong argument: to accept discrimination on any ground would mean to jeopardise the right of some groups of women to a life free from violence.
- Concern: the concept of “vulnerability” tends to individualise the problem of gender-based violence and is not as strong as the rights-based approach.



FREQUENT VIOLATIONS OF RIGHTS OF UNDOCUMENTED MIGRANT WOMEN TO BE PROTECTED AGAINST VIOLENCE

- Barriers in accessing safety measures and safe environments such as women's shelters.
- Discriminatory regulations and/or inappropriate funding models (no recourse to public funds for undocumented migrant women).
- Barriers in accessing justice – fear to call the police or to take legal steps for protection.
- No right to legal aid.
- **WAVE Step-up campaign to remove barriers:**

<http://www.wave-stepup.org/>



MEASURES TO GUARANTEE HUMAN RIGHTS OF UNDOCUMENTED WOMEN

- Guarantee **immediate access to shelters** for undocumented women victims of violence and their children
- Guarantee **access to justice and legal aid** for undocumented migrant women
- **Firewall (PICUM concept)**: A clear separation in law and practice between immigration law enforcement authorities and the powers and responsibilities of those working in social services (e.g. health-care providers; shelters for victims of domestic violence) or in the justice system (e.g. labour inspectors, police).
- Guarantee the **right to compensation** for violation of rights of undocumented women.
- Provide **temporary and humanitarian visas** to be able to exercise fundamental rights.



MONITORING AND EVALUATION

The Istanbul Convention monitoring mechanism rests on two pillars:

- **the Committee of the Parties:**
Political body composed of government representatives of all the Parties to the Convention.
- **the Group of Experts on action against Violence against Women and Domestic Violence (GREVIO):**
Independent expert body set up to monitor the implementation of the Convention composed of 10 independent and impartial experts.

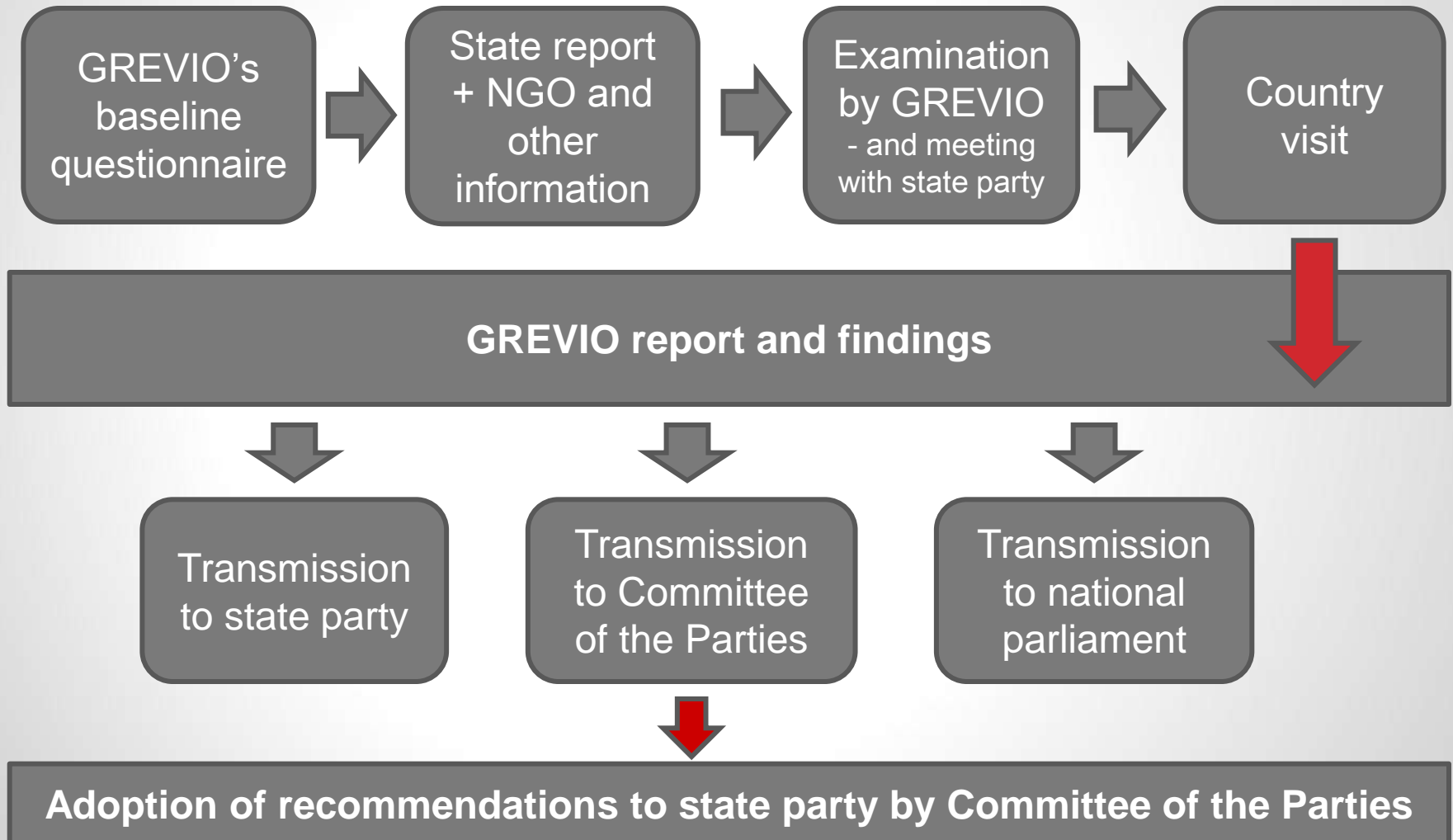


PARLIAMENTARY INVOLVEMENT IN MONITORING

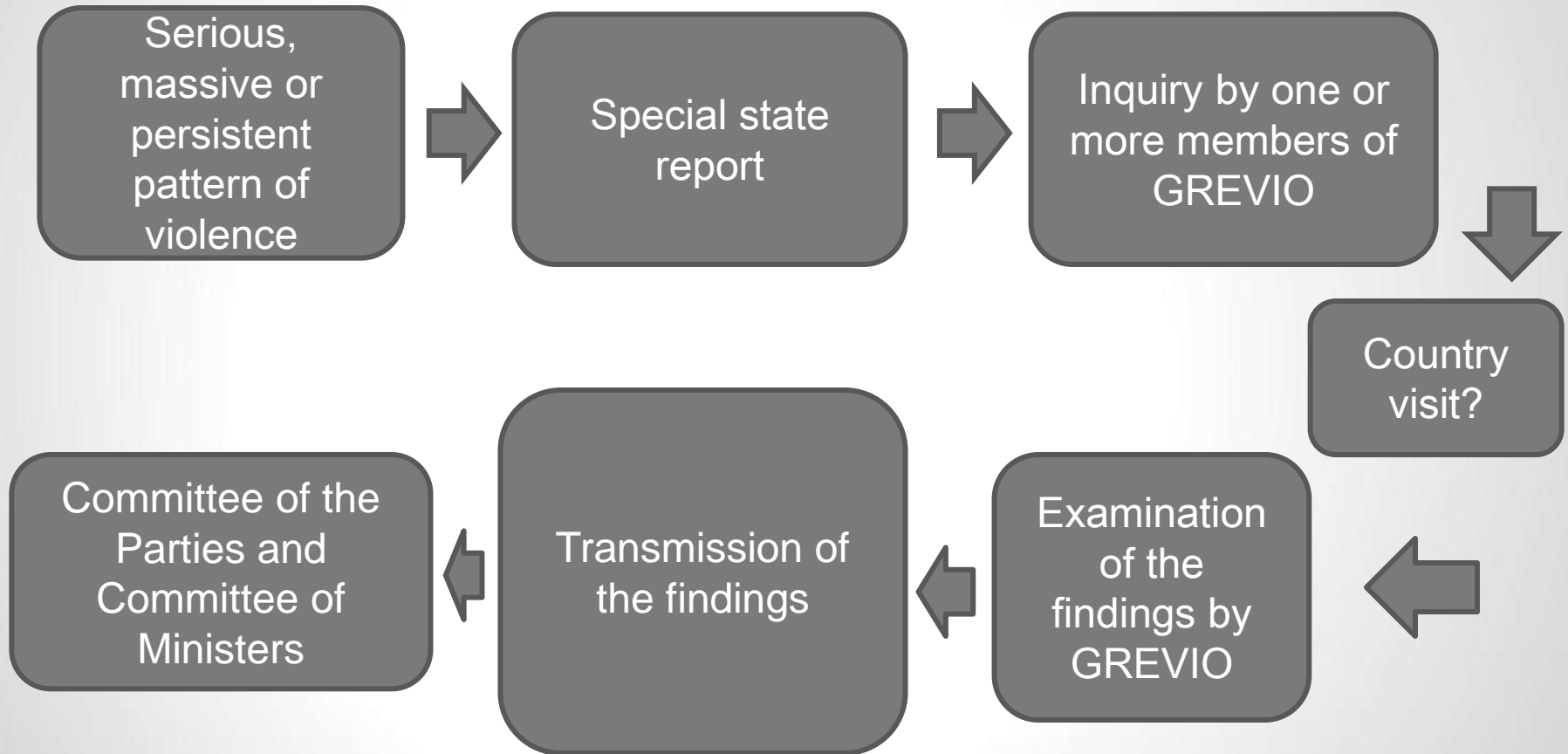
- Article 70 paragraph 1 of the Istanbul Convention:
 - “National parliaments shall be invited to participate in the monitoring of the measures taken for the implementation of this Convention.”



FIRST EVALUATION ROUND



SPECIAL INQUIRY PROCEDURE



ONGOING COUNTRY MONITORING

Questionnaire for reporting:

<http://www.coe.int/en/web/istanbul-convention/grevio>

First evaluations: Austria and Monaco – reports will be published in September 2017.

Denmark, Albania (state report and shadow reports submitted in January 2017)

Turkey, Montenegro (deadline reporting: May 2017)

Portugal, Sweden (deadline reporting: September 2017)

Finland, France, Italy (deadline for reporting: March 2018)

Netherlands, Serbia, Spain, Andorra (deadline for reporting: June 2018).



THANK YOU!

**For further information and
contact:**

**www.coe.int/conventionviolence
conventionviolence@coe.int**