EPSU briefing

Protecting workers from gender-based violence and harassment in Europe

A comparative analysis of ILO Convention 190, Istanbul Convention, Social Partners Framework Autonomous Agreement

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In June 2019, the ILO adopted the Convention 190 concerning the elimination of violence and harassment in the world of work. Unions have continuously called for an instrument of this nature, and we welcome the adoption of this Convention. However, when it comes to Europe, there are also other instruments that, to differing degrees, cover the area of violence and harassment at work. Therefore, we developed this comparison to provide our affiliates with a useful tool to evaluate the ILO Convention n.190, in order to effectively advocate for its ratification by their governments, while they keep pushing for the European Union to ratify the Istanbul Convention. The methodology we decided to apply is a simple comparison between the ILO Convention and other two key instruments in Europe, namely the Council of Europe’s Istanbul Convention (2011) and the Social Partner Autonomous Framework Agreement on Harassment and Violence at work (2007). This would allow us to identify potential overlaps and differences, and therefore understand why it is so significant to endorse the Conventions’ ratification. In Annex I, it is possible to find a brief table that summarises the main points of the three documents.

Introduction

On June 21 2019, the ILO adopted the Convention No.190, together with the Recommendation No. 206, which serves as non-binding guidelines. The Convention concerns the elimination of violence and harassment in the world of work, and it is the result of a process that lasted almost 5 years. It was drafted by a tripartite constituent (governments, employers and workers), which guarantees that the interests of all of the three actors are taken into account: “They [Convention and Recommendation] are tangible evidence of the enduring value and strength of social dialogue and tripartism”, as laid out by Ms. Olney, chief of ILO’s Gender, Equality and Diversity Branch.

The Autonomous Social Partners Agreement, which implementation is in the hands of national social partners in accordance to their procedures and practices, aims at creating “an action-oriented framework to identify, prevent and manage problems of violence and harassment at work”. The Social Partners who negotiated the agreement are BUSINESSEUROPE (representing all-size enterprises), UEAPME (for the interests of European crafts, trades and SMEs), CEEP (European Centre of Employers and Enterprises providing public services) and ETUC (European Trade Union Confederation).

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1 For sake of simplicity, we will call them ILO 190, Istanbul Convention and SP Agreement.
The Istanbul Convention on preventing and combating violence against women and domestic violence was adopted by the Council of Europe in 2011, and it entered into force in 2014 after its 10th ratification. The CoE created a free online course linked with the Convention, which can be easily accessed at the HELP online platform. \(^2\)

The three documents are crucial milestones on the path for the normalisation of equality, and all of them recognise that certain groups and workplaces are more at risk than others. At the same time, they are three different instruments with different genesis and focus:

1. The Istanbul Convention concerns all gender related issues, including female employment, and it ranges broadly from basic definitions, to protection measures against domestic violence, to the regulation of data collection. Indeed, it tries to cover any possible scenario in which women can be at risk of violence.
2. The ILO 190 aims at setting global standards, including specific ones for female workers, in order to ensure a safe and healthy work environment for workers. This falls into the broader framework of non-discrimination, and the necessity to take targeted measures to protect vulnerable groups (art. 6). The ILO 190 contains innovative definitions, as it consider harassment also the single action, with no further repetitions. Also the concept of gender-based violence and harassment is explained very broadly, and it distinguishes sex from gender.
3. The Social Partners Agreement does not directly address gender-based violence, nor it mentions gender or women whatsoever, but it regards all kind of harassment and violence at the workplace, acknowledging that some groups and sectors are more vulnerable than others. Certainly, the Social Partners Agreement is a central document that defends the rights of workers, but it does not have a gender focus as the other two have.

In terms of scope, the last two documents are applicable at the workplace but, even there, there is a difference: in the ILO 190 there is a broader description of what is considered “work”, which includes commuting and a variety of situations absent from the Social Partner Agreement. Instead, the Istanbul Convention has jurisdiction on the national territory as it was declared when the party ratified it, including its citizens.

Continuing with the scope in which the agreements are applicable, we should spend some words on Third Party Violence. The topic is not mentioned in the Istanbul Convention, as it is workplace related specifically, and it is merely referred in the Social Partners Agreement: it is

\(^2\) Available here: http://help.elearning.ext.coe.int/login/index.php
directly mentioned once, and there are only few additional indirect references, such as the use of the term “individuals” as for perpetrators, and not managers or workers specifically, and a reference to “external violence”. In 2010, a number of sectoral social partners promoted a set of Multi-sector Guidelines on Third Party Violence that stemmed out of the 2007 Agreement. Currently the signatories are: CEMR (The Council of European Municipalities and Regions) CoESS (that represents national private security employers’ associations), EFEE (the European Federation of Education Employers), EPSU, EuroCommerce (representing over 6 million retailers, wholesalers and other trading companies), ETUCE (European Trade Union Committee for Education), UNI-Europa (the European services workers union), HOSPEEM (the European Hospital and Healthcare Employers’ Association). In 2020 the guidelines will celebrate their 10th anniversary, and the social partners are currently jointly working on an assessment and possible revision. The ILO 190 refers directly to Third Party Violence in article 4.2 and article 3. It further leaves the space open for interpretations, as it describes the workplace very broadly and, therefore, with a big variety of actors involved. It is mentioned also in the Recommendation No. 206 at the points 8.b and 9.

We chose to approach the documents through three interpretations. A fourth point concerning prosecution of perpetrators is deeply developed in the Istanbul Convention, but since it is missing in the other two documents, it does not have a point to establish a comparison. The three readings are:

**Prevention**

Prevention is recognised as the first measure to be taken in order to tackle discrimination. While the SP Agreement gives general indications on how to proceed, such as raising awareness, implementing trainings, and to have an enterprise statement against harassment and violence, several actions are listed in the other two documents. The ILO Convention stresses the importance of national laws and regulations, whose enforcement is crucial to protect and support victims against discrimination, as well as to improve occupational safety and health (art. 1, 6, 9, 11). The law should require employers to adopt and implement a workplace policy (art. 9), whose content is specified in the Recommendation 206. The participation of workers, their representatives and employers is strongly encouraged, and the Recommendation n. 206 reaffirms the pivotal role of collective bargaining. The importance of education is stressed in Recommendation 206, as it provides women with the power of information: in the workplace it takes the form of professional trainings and guidelines (art. 4, 9, 11). The ultimate aim is to raise awareness (art. 11), and to shape consciousness about workers’ rights (art. 5, 6), how to respect them and to whom denounce
when they are violated (art. 4). The workers and employees are called to actively participate in order to identify risks and take measures of control and prevent them, as well as in the design and implementation of a workplace policy. (art. 8, 9).

In the Istanbul Convention, a set of five consecutive articles (art. 13, 14, 15, 16, 17 and 19) regulates the main measures to take in order to prevent violence and harassment. The main focus is education, which empowers women by raising awareness about their rights and how to access them, as well as general knowledge for everyone, men included. This can be developed through a variety of forms, such as trainings for professionals, awareness raising campaigns, treatment programmes and the use of the media.

**Protection**

Protection measures are equally important as prevention measures are. The ILO Convention is the document with the most detail on the protection of women in the workplace. As in the case of prevention, the ILO keep stressing the importance of law and national policies, and it recommends to monitor their enforcement (art. 10). The creation of competent bodies such as labour inspectorates should be an efficient action to discourage perpetrators and to control the workplace (art. 4), as long as they are powerful enough to issue orders with immediate executory force. Article 10 explores other possibilities for protection, such as the user-friendliness of effective remedies, guarantees against retaliation, dispute resolution mechanisms, the safeguard of the privacy of all the parties involved, a system of appropriate sanctions and the right for the workers to remove themselves from a job they reasonably consider dangerous.

Concerning Istanbul Convention, the whole chapter IV treats the topic of protection and support, even though it appears there is more space for the latter: art. 18 mentions legislative measures and cooperation between relevant state agencies is encouraged. Art. 28 assesses the possibility to overcome professional confidentiality in case of a reported abuse.

In the SP Agreement the protection measures are not developed at length, as they only touch on recommendations on respecting the dignity and privacy of the parties, investigating without delays and on the impartiality of the treatment.

**Support**

Support measures target the victims, which is the term used to identify people when violence has already been committed and the prevention and protection measures have failed. The SP Agreement is by far the document that devotes less attention to them: it just generally approves
support for the victims, and, “if necessary”, help with reintegration. The strongest measure against the perpetrator is dismissal.

The ILO 190 is not very detailed on support, but it refers to legal, social, medical and administrative support measures and sanctions (art. 10); and to easy access to complaint and dispute resolution mechanisms, support services and remedies (art. 4 and 11). The remedies should always be “gender-responsive, safe and effective” and have confidentiality guaranteed (art. 10). However, conversely to what the SP Agreement does, the whole ILO 190 always puts the emphasis on victims, but its focus point remains prevention, as it is considered to be the main weapon against violence and harassment.

The Istanbul Convention deeply analyses the variety of support measures that should be taken. First and foremost, information is the key that allows victims to know which services and legal measures are available (art. 19). Art. 20 to art. 30 include a long list of services that the parties should make available for victims in order to help their recovery: legal and psychological counselling, financial assistance, housing, education, training and assistance in finding employment (art. 20); assistance in individual and collective complaints (art. 21); specialist support services (art. 22), shelters (art. 23), telephone helplines (art. 24); support for victims of sexual violence, including centres and medical and forensic examination (art. 25); reporting in general and by professionals (art. 27 and 28); civil remedies (art. 29), State compensation (art. 30). Art. 50 establishes immediate response and protection for victims, in the forms of emergency barring orders (art. 52), restraining of protection orders (art. 53), right to legal assistance and free legal aid (art. 57). The Istanbul convention treats in large part also the legal measures that should be taken towards perpetrators and how they should be prosecuted.

The Convention is strong and practical. (…) [It] provides a clear framework for action and an opportunity to shape a future of work based on dignity and respect, free from violence and harassment. The right of everyone to a world of work free from violence and harassment has never before been clearly articulated in an international treaty. It also recognizes that such behaviours can constitute a human rights violation or abuse.

Shauna Olney, Chief, Gender, Equality and Diversity Branch, ILO

Public Services
The European Federation of Public Services Unions tried to establish whether the three documents are specifically referring to the role of public services. In general, the distinction between public and private services is not always clear-cut, and their provision may depend on a number of factors. For example, the Istanbul Convention refers to services that are both general
(mostly regarding the health, social and employment sectors) and specialised (usually shelters, professional assistance, legal aid). It does not specify whether the latter are provided by NGOs, which could be private, or run by governmental authorities. Furthermore, specialist services might be offered by public authorities. The private sector is directly mentioned regarding education (art. 14) and communication (art. 17). While not defining who should be providing the service, the Istanbul Convention clearly states that they always be easy accessible for women and victims of gender-based violence. The ILO 190 recognizes that the quality of public services provided both by public and private sectors is affected by violence and harassment (page 4). Therefore, it establishes that the Convention shall apply to all the sectors (art. 2). The strategy is based on the premises that a coordinated action is necessary to tackle violence against women, which involves different actors. The ILO 190 therefore asks state parties to implement comprehensive and co-ordinated policies involving government agencies, NGOs as well as national, regional and local parliaments and authorities. The aim is that policies to prevent and combat violence against women and domestic violence are carried out at all levels of government and by all relevant agencies and institutions.

In any case, public authorities must be strengthen, and the State should also take adequate measures to support victims through the provision of legal, social, medical and administrative services.

**Enforcement**

The two Conventions also support a number of measures that should help the parties with their enforcement, whereas the SP Agreement foresees none. Nonetheless, the monitoring system of the Agreement allowed the compilation of a list of measures that have been implemented by each member who adopted it. The ILO 190 recognizes the pivotal role of legislation, regulations and policies, therefore it refers to them several times as the main tool through which enforce the Convention. As for the Istanbul Convention, it specifically establishes the creation of official bodies for the “coordination, implementation, monitoring, evaluation of policies and measures” (art. 10).

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**SOCIAL PARTNERS AGREEMENT**

**Positive implementation:**

Austria, Cyprus, Denmark, France, Latvia, Luxembourg, Netherlands, Poland, Slovenia, Spain.

**Neutral implementation:**

Belgium, Finland, Germany, Ireland, Italy, Sweden, UK, Iceland, Liechtenstein, Norway.

**Negative implementation:**

Bulgaria, Croatia, Czech Republic, Estonia, Greece, Hungary, Lithuania, Malta, Portugal, Romania, Slovak Republic.
All the instruments have monitoring systems for their enforcement. The implementation of the SP Agreement was monitored through three yearly reports in 2008, 2009, 2010 and a final one published in 2011, in which EU Cross Sectoral social partners positively judged its implementation. In 2015 the European Commission published a study on the implementation, in which each country received an evaluation on the actions taken to implement the SP Agreement – positive, neutral or negative.

The Istanbul Convention has a more constant and structured monitoring process, whose aim is to assess and improve the implementation of the Convention. It is divided into two bodies: the GREVIO (Group of Experts on Action against Violence against Women and Domestic Violence, 15 members) and the Committee of the Parties. There are two monitoring procedures: country-by-country (the first evaluation 2016-2023 timetable is available here) and the special enquiry procedure (only required when a relevant violation is detected). Also, national parliaments are invited to participate in the monitoring of the implementation of the Convention. At the moment, there are monitoring report available for: Austria, Monaco, Albania, Denmark, Montenegro, Turkey, Portugal, Sweden, Finland.

Concerning the Convention 190, the ILO has a consolidate supervisory system, which is composed by two bodies that examine the periodic reports submitted by the ratifying Members States: the Committee of Experts and the International Labour Conference’s Tripartite Committee on the Application of Conventions and Recommendations. They are responsible of regular monitoring mechanisms, whereas three special procedures can be activated in case a representation or a complaint are submitted.

The ILO 190 is open for the 187 countries that are members of the ILO. It will enter into force 12 months after two states ratify it: at date, no state has ratified the Convention. Nevertheless, ILO members are required to submit the adopted Convention to their competent

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3 Available here: https://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=7922&furtherPubs=yes
authorities, to consider its ratification (art. 19.5 ILO Constitution). The ILO 190 represents an important step towards the protection of female workers, converging into the broader fight for gender equality, EPSU welcomes the adoption and invites affiliates to push for its ratification by their States’ competent authorities.

The Istanbul Convention is accessible for the Council of Europe Member States, the non-members who contributed to its elaboration, and the EU. It was ratified by 21 EU member States and 13 non-EU States, for a total of 34 countries. The EU and 11 other States signed the instrument but have yet to ratify it. EPSU believes that the ratification by the EU would send a positive message to those countries who did not fully commit to the Convention’s ratification. Therefore, we urge the EU to speed up the process of accession to the Istanbul Convention.

Concerning the SP Agreement, its implementation was set to be carried out by 26/04/2010, three years after the signature. According to the EC study on the implementation of the Agreement, 11 countries out of 31 (both EU members, candidates and EEA members) took no or limited actions to implement the agreement; 10 countries took positive actions and 10 were neutral (some of them because they already had pre-existing agreements or regulations).
## Annex I: Comparison table.

<table>
<thead>
<tr>
<th>ELEMENT OF COMPARISON</th>
<th>ILO 190</th>
<th>SP AGREEMENT</th>
<th>ISTANBUL CONVENTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>SCOPE</td>
<td>To protect workers and persons in the world of work, in any sector.</td>
<td>To increase the awareness of employers, workers and their representatives of workplace harassment and violence. To provide them with an action-oriented framework to identify, prevent and manage problems of harassment and violence at work</td>
<td>To protect women, and prevent, prosecute and eliminate violence and discrimination against women and domestic violence, and to promote substantive equality. To design a comprehensive framework, policies and measures for the protection of and assistance to all victims, to promote international cooperation and to provide support to organisations and law enforcement agencies to effectively cooperate in order to adopt an integrated approach to eliminating violence.</td>
</tr>
<tr>
<td>WHERE?</td>
<td>Workplace - very broad definition.</td>
<td>Workplace</td>
<td>On national territory or by a citizen - anywhere under the State's jurisdiction</td>
</tr>
</tbody>
</table>

### DEFINITIONS

- **Gender**
  - /
  - /
  - "The socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men" (art. 3 c)

- **Gender mainstream**
  - /
  - /
  - "Parties shall undertake to include a gender perspective in the implementation and evaluation of the impact of the provisions of this Convention and to promote and effectively implement policies of equality between women and men and the empowerment of women." (Art.6)

- **Gender based violence and/or harassment**
  - "Violence and harassment directed at persons because of their sex or gender, or affecting persons of a particular sex or gender disproportionately, and includes sexual harassment." (art. 1 b)
  - /
  - "Violence that is directed against a woman because she is a woman or that affects women disproportionately" (art. 3 d). It recognises the structural nature of violence against women as gender-based violence, plus the fact that women and girls are exposed to a higher risk of gender based violence than men.

- **Third party**
  - It states that the approach should
  - "(…) by third parties, such as"
<table>
<thead>
<tr>
<th>Section</th>
<th>Text</th>
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</thead>
<tbody>
<tr>
<td>Domestic violence</td>
<td>It recognizes the effects of domestic violence: &quot;recognize the effects of domestic violence and, so far as is reasonably practicable, mitigate its impact in the world of work&quot; (art. 10)</td>
</tr>
<tr>
<td>Violence and harassment</td>
<td>&quot;(...) A range of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment.&quot; (art. 1 a)</td>
</tr>
<tr>
<td>Form of violence and/or harassment</td>
<td>&quot;Harassment occurs when one or more worker or manager are repeatedly and deliberately abused, threatened and/or humiliated in circumstances relating to work. Violence occurs when one or more worker or manager are assaulted in circumstances relating to work. Harassment and violence may be carried out by one or more managers or workers, with the purpose or effect of violating a manager’s or worker’s dignity, affecting his/her health and/or creating a hostile work environment.&quot;</td>
</tr>
<tr>
<td>PREVENTION</td>
<td>Great stress on laws, regulations and policies at national level. Main tools: guidance, education and training (art. 13)</td>
</tr>
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<table>
<thead>
<tr>
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</thead>
<tbody>
<tr>
<td>Domestic violence</td>
<td>/</td>
</tr>
<tr>
<td>Violence and harassment</td>
<td>&quot;Women and girls are often exposed to serious forms of violence such as domestic violence, sexual harassment, rape, forced marriage, crimes committed in the name of so-called “honour” and genital mutilation&quot;</td>
</tr>
<tr>
<td>Form of violence and/or harassment</td>
<td>Third parties are mentioned, and they can be clients, customers, patients, pupils, etc.</td>
</tr>
<tr>
<td>PREVENTION</td>
<td>Legislation is the main tool to use to prevent. How? Through programmes of empowerment (art. 12), awareness-raising campaigns (art. 13), education</td>
</tr>
<tr>
<td>PROTECTION</td>
<td>4. Great role of public authorities, identify the sectors where workers are more exposed to risks of violence and take measures to protect them (art. 8). Workplace policy, assess psychosocial risks, identify hazards, provide information and training (art. 9). Initiatives (art. 11)</td>
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<tr>
<td><strong>PROTECTION</strong></td>
<td>&quot;Sanctions and inspectorates or competent bodies with power to issue orders or to stop work (art. 4 and 10). Monitor and enforce national laws and policies, easy access to effective remedies, protection against retaliation and victimisation, dispute resolution mechanisms, protection of the privacy of those involved and recognition of the effects of violence and mitigation, “the right to leave the workplace if it is dangerous” (art. 10)</td>
</tr>
<tr>
<td><strong>SUPPORT</strong></td>
<td>Sanctions; legal, social, medical and administrative support measures. (art. 10), easy access to complaint and dispute resolution mechanisms, support services and remedies (art. 4 and 11).</td>
</tr>
</tbody>
</table>
| **PUBLIC SERVICES ANGLE** | The Convention is the first non-specialized instrument for the public sector that mentions it. It shall apply to all the sectors (art. 2). Public authorities have an important role in the case of informal economy | / | The Convention gives the State a number of obligations regarding relevant authorities, agents and institutions that have to act, but it leaves the space quite open whether they should be private or public. Cooperation with the third sector (NGOs) is
| ENFORCEMENT | Relevant policies and measures, sanctions, labour inspectorates or other competent bodies (art. 4); laws, regulations and policies (art. 6); workplace policy (art. 9); national laws and regulations, empower labour inspectorates, courts and tribunals (art. 10); provisions applied by national laws and regulations and collective agreements (art. 12). | "Empowerment of relevant authorities: official bodies to implement, monitor, evaluate, policies and measures to enforce the Convention (art. 10); Legislative measures and law enforcement agencies, plus the involvement of governmental agencies, parliaments and authorities, human rights institutions, CSOs (art. 7, art. 50); Legislative and other measures to provide appropriate mechanisms and cooperation (art. 18); relevant authorities to assess risks (art. 51)." |
| EVOLUTION | ILO Member States are invited to apply (187 countries) | European Social Partners | For Council of Europe MSs, non-member States that participated in its elaboration, and the EU. Also non-members can access it. |
| Signed | It will enter into force 12 months after 2 States have ratified it | The secretaries general of ETUC, BUSINESSEUROPE, UEAPME and CEEP | 45 members of Council of Europe signed it. Only 2 did not: Azerbaijan, Russia. **International Organisation:** European Union. |
| Ratified | / | / | 34 members of Council of Europe ratified, 13 did not |
| Reports and/or monitoring | ILO supervisory system/mechanism applies to all of its Conventions. There is a **regular system** of supervision (two bodies: Committee of Experts and the International Labour Conference’s Tripartite Committee on the Application of Conventions and Recommendations) and **special procedures** are considered in case complaints or representations are submitted. | To be implemented within three years, during which the Social Dialogue Committee prepared a yearly table summarizing ongoing social partners activities: **3 Yearly Joint implementation report** (2008, 2009, 2010) + **Final joint report** by the European Social Partners adopted at the Social Dialogue Committee on 27 October 2011. The agreement can be reviewed at any time, upon request of the signatory parties. | Two bodies: the GREVIO and the **Committee of the Parties**. There are 2 monitoring procedures: country-by-country and the special enquiry procedure. First country by country evaluation 2016-2023 timetable is available. At the moment, there are monitoring report available for: Albania, Austria, Denmark, Finland, Monaco, Montenegro, Portugal, Sweden, Turkey. Also national Parliaments are invited to participate in the monitoring of the implementation of the Convention. |