

## **The Istanbul Convention: Where are we now?**

### **A. Introduction**

1. The Council of Europe Convention on preventing and combating violence against women and domestic violence, commonly known as the Istanbul Convention, is a legally binding instrument which is designed to create a comprehensive framework to counter violence against women and girls. The Convention covers all forms of violence against women and girls and includes offences such as rape and stalking. It highlights the need for preventative measures, such as establishing refuge shelters, providing education on equality between men and women, criminalising forced and underage marriages, collecting data on prosecutions of gendered crime and promoting women's economic and social independence.
2. The UK signed the Istanbul Convention in 2012, yet a decade later it has still not been ratified. On 17 May, the Home Secretary, Priti Patel MP, made a written statement indicating that the Convention had been laid before Parliament, under the Constitutional Reform and Governance Act 2010, and that if no objections are raised within 21 sitting days then the Convention would be ratified.<sup>1</sup>
3. In her statement, the Home Secretary indicated that ratification would be subject to two reservations which would be entered under Article 78(2) of the Convention. A reservation is a formal legal declaration which would mean that the UK would not be bound by a particular provision. The reservations which the UK proposes to enter relate to: (a) Article 44 of the Convention which would otherwise allow for the prosecution of UK residents who commit acts in another country which are crimes in UK law but not under the law of that other country; and (b) Article 59, which relates to migrant victims whose residence status depends on that of their spouse or partner.<sup>2</sup>
4. This jointly authored note sets out the background to the significant delays in the UK ratifying the Istanbul Convention, and the rationale for, and potential impact of, the proposed reservations.

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<sup>1</sup> [Written statements - Written questions, answers and statements - UK Parliament](#)

<sup>2</sup> Article 59 provides, amongst other things, that (1) Parties shall take the necessary legislative or other measures to ensure that victims whose residence status depends on that of the spouse or partner as recognised by internal law, in the event of the dissolution of the marriage or the relationship, are granted in the event of particularly difficult circumstances, upon application, an autonomous residence permit irrespective of the duration of the marriage or the relationship; and (2) Parties shall take the necessary legislative or other measures to ensure that victims may obtain the suspension of expulsion proceedings initiated in relation to a residence status dependent on that of the spouse or partner as recognised by internal law to enable them to apply for an autonomous residence permit. The Article also makes provision for renewable residence permits in certain circumstances, and provides additional protections for the victims of forced marriage.

## B. Why has it taken a decade to ratify the Convention?

5. The Istanbul Convention was opened for signature in 2011 and, at the time of writing, it has been signed by 45 states and ratified by 35 of them.<sup>3</sup> After the UK signed the Convention in 2012, it quickly became apparent that our domestic laws were not in a fit state to fully meet its requirements. Since then, the UK has remained in a strange limbo, indicating that it wishes to accede to the Convention, but never quite managing to do so.
6. In 2015, the Joint Committee on Human Rights published a report<sup>4</sup> identifying several legal issues which needed to be resolved in order for the Convention to be ratified. These included criminalising psychological violence; ensuring extraterritorial jurisdiction, so that a UK national or resident could be prosecuted for certain offences (including murder, manslaughter, and offences relating to bodily harm or injury) committed outside the UK and providing support to victims with migrant status.
7. By 2017, little had changed and parliamentarians from several parties combined to back a Private Members' Bill<sup>5</sup> which required the government to make annual reports on progress towards ratification. This had only limited impact. Reports were published but, for several years, there was little evidence of any concrete progress in meeting the unresolved issues. Matters came to a head during the passage of the Domestic Abuse Act 2021. The government indicated that it would make provision for extraterritorial jurisdiction and that separate legislation, before the Northern Ireland Assembly, would deal with the unresolved question of criminalising psychological violence in that jurisdiction.
8. This still left the question of the treatment of migrant victims unresolved. This issue was picked up by the House of Lords International Agreements Committee in February 2021. It held an evidence session with Victoria Atkins, then the Home Office minister with responsibility for preventing violence against women and girls. The Committee suggested the Domestic Abuse Bill should be amended to provide equal treatment to migrant victims of domestic violence.
9. While the Government refused to accept amendments to the Domestic Abuse Bill which would have had the effect of supporting victims of domestic abuse regardless of their immigration status, it did make a concession on this issue and undertook to run a pilot scheme to support migrant victims.
10. In April 2021, the Government announced a £1.5m grant for accommodation and wraparound support for migrant victims of domestic abuse who had no recourse to public funds. The scheme was due to run for 12 months. The final report from the pilot scheme was expected in June 2022<sup>6</sup>, however it had not been published at the time of writing.

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<sup>3</sup> However, Turkey has since denounced the Convention.

<sup>4</sup> [Violence against women and girls - Human Rights Joint Committee \(parliament.uk\)](#)

<sup>5</sup> [Preventing and Combating Violence Against Women and Domestic Violence \(Ratification of Convention\) Act 2017 - Parliamentary Bills - UK Parliament](#)

<sup>6</sup> [Istanbul Convention: 5th progress report 2021 \(accessible web version\) - GOV.UK \(www.gov.uk\)](#)

### C. The proposed reservations and their potential impact.

11. Article 78(2) of the Convention permits reservations at the time of signature or ratification, by way of declaration that the relevant State reserves the right not to apply or to apply only in specific cases or conditions certain of the Convention's provisions. As noted above, the UK Government is proposing to enter two separate reservations in respect of Articles 44 and 59 of the Convention.
12. The Government has set out the rationale for these proposed reservations in an Explanatory Memorandum (EM) which was laid at the same time as the text of the Convention.

#### *(i) The reservation in respect of dual criminality*

13. Article 44(3) of the Convention states that signatories may not apply a dual criminality requirement<sup>7</sup> for offences encompassed by Articles 36 (sexual violence, including rape), 37 (forced marriage), 38 (female genital mutilation) and 39 (forced abortion and forced sterilisation). The EM notes the fact that dual criminality "is the norm in UK law when dealing with extraterritorial jurisdiction", suggesting that "it is not generally right to prosecute someone for doing something in another country for which they could not be prosecuted in that country."
14. The EM indicates that the UK is "compliant with Article 44(3) to the extent that it relates to offences covered by Articles 37 and 38"; however it highlights some issues relating to Articles 36 and 39.
15. The EM also sets out some examples where the Government feels that the removal of dual criminality in respect of Article 36 might be problematic. These include acts which might be committed by UK non-national residents.<sup>8</sup> It argues that this situation "respects principles of international law and comity in relation to non-UK nationals who are ordinarily resident in the UK" and contends that it means that "it is less likely that other countries will make reciprocal provisions which affect our nationals in ways which we would not welcome."<sup>9</sup>
16. The Government provides a rather less clear-cut rationale for why it has issues relating to Article 39. But the EM states that, in respect of forced abortion and forced sterilisation, a dual criminality requirement "should not be a barrier to prosecution as we know of no jurisdiction which does not have general offences of violence equivalent to ours."
17. In a separate letter to the House of Lords International Agreements Committee, dated 19 May 2022, the Minister for Safeguarding, Rachel McClean MP, stated that:

"Article 44(3) states that our ability to prosecute British nationals and residents for certain crimes committed overseas must not be made subject to a condition that the behaviour is

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<sup>7</sup> In UK law extraterritorial jurisdiction usually applies only when the offending behaviour is a criminal offence in the country where it happened as well as in the UK. This is known as 'dual criminality'.

<sup>8</sup> The EM provides an example of a German national, who lives in the UK, and who on return to Germany for a short period has sex with their 15 year old partner, which is legal in Germany, where the age of consent is 14.

<sup>9</sup> The EM suggests that this could occur, for example, with a country where same sex sexual activity is a crime. Such a country could theoretically prosecute a UK national who lived in that country, returned to the UK for a holiday, and whilst in the UK had sex with their same sex partner. The EM argues that "If we were to criminalise our non-national residents for doing things overseas which are not illegal there, such reciprocal action could become more likely."

also illegal in the country where it was committed. Ministers in the UK, Scottish and Northern Ireland Governments have previously decided that such a condition is necessary for Article 39 crimes (committed by anybody) and for Article 36 crimes committed by UK non-national residents, and the provisions of the Domestic Abuse Act 2021 reflect those decisions.”

18. Government has argued, in its EM, that it is following 12 other countries, including France and Sweden, in entering such a reservation in respect of Article 44(3).

**(ii) *The proposed reservations on migrant victims***

19. The proposed reservation in respect of the provisions laid down in Article 59 of the Convention, which relates to the residence status of migrant victims, is also discussed in the EM. It highlights the fact that the UK’s position on Article 59 is “under review pending the results and evaluation of the Support for Migrant Victims Scheme.” Accordingly, it states that

“Since the position for Article 59 is under review and the evaluation of the Support for Migrant Victims Scheme (the Scheme) will not have concluded before summer 2022, in order to enable swift ratification, the Government has decided to apply this reservation to the whole of Article 59.”

20. The EM explains that, unlike the reservation in respect of Article 44, the Government *may* revisit the reservation under Article 59 in the light of the results of the Scheme. However, the EM provides no timetable for any review, nor does it set out any criteria under which the success of the Scheme might be measured.
21. Under Article 79 of the Convention, any Reservation could remain in place for a (renewable) period of 5 years. In February 2021, the House of Lords International Agreements Committee wrote to the then Minister for Safeguarding to express “serious doubts” about any reservation to Article 59. It argued that this “could result in the issue of non-discrimination remaining unaddressed for a prolonged period.”<sup>10</sup>
22. It may be helpful to the Committee to outline the expectations under the provisions in the Istanbul Convention in this area. In the area of migration and asylum, the main requirement of the Istanbul Convention is to ensure that residence status laws and asylum procedures do not turn a blind eye to the realities of women living in abusive relationships or those who are subjected to sexual violence and exploitation and other forms of gender-based violence. It is clear from research and organisation working within this area that the issue of residence status and services are crucial to ensuring this is the case. The Convention states that residence status laws shall provide for the possibility of obtaining autonomous residence permits for women in specific circumstances (Article 59) and it is this specific requirement that would not apply should a reservation be sought.
23. To put this into context, 44 States have signed the Convention, 9 of which have not ratified, including the UK (Turkey has recently suspended and denounced its ratification of the Treaty). Out of the 35 States that have ratified the Convention, only 7 countries have entered a reservation regarding Article 59. These are: Germany; Liechtenstein; Malta, Monaco; North Macedonia; Romania and Slovenia. It is of note that Germany is the only

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<sup>10</sup> <https://committees.parliament.uk/publications/4670/documents/47065/default/>

country to have provided detailed reasons for doing so. The reason given by Germany in not ratifying Article 59 is because German law differentiates between residence for family reasons and humanitarian grounds; prerequisites for, and legal consequences of, these two residence permits differ. Nonetheless German law allows a spouse who is the victim of domestic violence to be granted an independent right of residence, even if the stipulated requirement, i.e. three years of lawful marital cohabitation in the Federal territory, has not been met. It appears therefore to have been a technical issue which could not be resolved during the negotiations at the time of ratification.

24. This statement should also be read against the context of a large evidence base, submitted to various committee inquiries, regarding the need for article 59 to provide vital support for migrant women experiencing violence. This evidence, provided by numerous specialist 'led by and for' Black and minoritised women's organisations, during the passage of the Domestic Abuse Act, clearly established the gap in support for migrant victims of domestic abuse whose residence is connected with their abuser and who had no recourse to public funds. Despite this, the Government did not incorporate secure equal protection and support for migrant women through this legislation – and it is declining to do so again through this reservation. Given the leading role that the UK has traditionally played in terms of a strong commitment to the eradication of violence against women and girls in Europe, this reservation will be viewed with some disappointment by the majority of our European partners who have ratified without a reservation in this area.
25. In any event, the intention is not to seek a reservation for Article 60 which covers the related point concerning the need to ensure that asylum procedures and support services are sensitive to the needs of women victims or those at risk of violence. GREVIO, the monitoring body of the Convention, has consistently stated that the Convention requires that asylum services must be gender-sensitive and allow women to disclose their stories in full, and grounds for persecution shall be interpreted in a gender-sensitive manner. These requirements would continue to apply regardless of any reservations entered under Article 59.

#### **D. Conclusion**

26. While it is a very positive move that the UK is finally moving to ratify the Istanbul Convention, it is regrettable that the Government feels that it must enter reservations against Article 44, and particularly Article 59, given that it has had a decade to resolve the underlying issues.

*2 June 2022*