



**Third Party Intervention
by the Group of Experts on Action against Violence
against Women and Domestic Violence (GREVIO)
pursuant to article 36 paragraph 2 of the European
Convention on Human Rights**

**Application no. 62903/15
Kurt v. Austria**

**Transmitted by GREVIO to the European Court of
Human Rights on 21 January 2020**

GREVIO/Inf(2020)3

Published on 22 January 2020

I. Introduction

1. On 3 December 2019, the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) requested the European Court of Human Rights (hereafter: the Court) to be granted leave to submit written comments in the case of *Kurt v. Austria* (application no. 62903/15). By letter of 16 December 2019, GREVIO was informed by the Deputy Registrar of the Court of the decision of the President of the Grand Chamber to grant leave, under Rule 44 § 3 of the Rules of Court, to submit written observations in the aforementioned proceedings.

2. GREVIO is the independent expert body on issues of violence against women and domestic violence instituted by the Council of Europe Convention on preventing and combating violence against women and domestic violence (hereafter: Istanbul Convention) and is responsible for monitoring its implementation. GREVIO has carried out its first baseline evaluation procedure in relation to 13 state parties to the Istanbul Convention. Its report on Austria was published on 27 September 2017.¹

3. The case of *Kurt v. Austria* raises a number of important issues related to the implementation of the Istanbul Convention, including in relation to the effective investigation and prosecution of cases of domestic violence and the protective measures afforded to victims (Chapter IV), as well as in relation to the prevention of violence against women and domestic violence (Chapter III).

4. The Istanbul Convention entered into force in 2014 and incorporates the standards set out in CM/Rec(2002)5 to member states on the protection of women against violence. The Istanbul Convention's provisions in relation to domestic violence are directly inspired by the *Opuz v. Turkey* judgment of 2009, elevating the Court's jurisprudence to legally binding standards that design a comprehensive approach to domestic violence. These standards have been further developed through the monitoring work and interpretation by GREVIO. Since the *Opuz* case, the Court has continuously consolidated its caselaw on domestic violence and has frequently referred to the standards of the Istanbul Convention. It has reiterated that under the European Convention of Human Rights (hereafter: ECHR), state authorities have a responsibility to take protective measures in the form of effective deterrence against serious breaches of an individual person's integrity by a member of her family or by a partner.² Taking effective measures requires an assessment of whether there is a real and immediate threat, **taking due account of the particular context of domestic violence.**³ The Court has held in several cases that in such a situation, it is not only a question of an obligation to afford general protection to society, but above all **to take account of the recurrence of successive episodes of violence within a family.**⁴

5. With this intervention GREVIO seeks to address the issues arising from the case at hand related to the implementation of the Istanbul Convention. Moreover, with a view to furthering the cross-fertilisation between the Istanbul Convention and the European Convention of Human Rights, GREVIO will demonstrate in detail how the standards of the Istanbul Convention offer guidance on what it means for authorities to take due account of:

- a. "the particular context of domestic violence", and
- b. "the recurrence of successive episodes of violence within a family" when dealing with cases of domestic violence.

¹ See [GREVIO's first Baseline Evaluation Report on Austria](#).

² See Case of Volodina v. Russia, application no. 41261/17, paragraph 86.

³ Ibid.

⁴ See Case of Talpis v. Italy, para 122, application no. 41237/14, and case of Volodina v. Russia, paragraph 86.

II. How contracting states to the ECHR may implement their obligations under the ECHR in light of the requirement to take due account of the “particular context of domestic violence”

A. Applying a gendered understanding of domestic violence in order to ensure the effective investigation, prosecution and protection of victims

6. The Court has emphasised that special diligence is required when dealing with domestic violence cases and has considered that the specific nature of domestic violence as recognised in the Preamble to the Istanbul Convention must be taken into account in the context of domestic proceedings.⁵

7. Indeed, the Istanbul Convention, including its preamble, is premised on the principle of a gendered understanding of domestic violence. More particularly, under Article 49, paragraph 2 of the Istanbul Convention, Parties shall take the necessary legislative or other measures having regard to the gendered understanding of violence to ensure the effective investigation and prosecution of offences, including of domestic violence.

8. Such understanding can only be achieved if the competent national authorities entrusted with the task of preventing and prosecuting the relevant offences as well as protecting the victims, take into account the specific nature and dynamics of domestic violence as a manifestation of male violence against women based on the notion of the inferiority of women, and the specific risks for children in the context of domestic violence.

9. Domestic violence is by its very nature cyclical, recurring in time and with a tendency to escalate. Scientific research shows that it develops mainly in a cycle consisting of three phases.⁶ The first phase, called the “accumulation of tension”, is the period during which situations of great emotional tension arise and episodes of verbal aggression and threats occur. The second phase is the so-called “explosion” or “violent attack” in which the most significant maltreatment takes place. The third is the appeasement, reconciliation or “honeymoon” phase in which the perpetrator expresses regret for his conduct and declares that he will not repeat it. This is often followed by the victim forgiving the perpetrator and, if she has filed a complaint against him, the withdrawal of such complaint. Consecutive cycles of violence are generally the norm with an increase in frequency, intensity and danger over time. Factors such as financial dependency, migrant status, disability, age etc may compound the abuse and impact on the victim’s ability to break away from it.

10. The duration of each of these phases varies, depending on the specific circumstances of the case and may or may not culminate in a separation. According to research, leaving an abusive relationship in these circumstances is a process, not a “one-off” event.⁷ Most women leave and return several times before finally deciding to end their relationship. There are several factors that may lead a woman to return to a violent relationship, such as the perpetrator’s maintenance of control and the abuse of power which leads to fear of retaliation against her and/or her children, social expectations about what is “best” for children, fear of losing their children in court, the hope for change, lack of support services, economic dependency etc. Due to the power and control exerted by the perpetrator on the victim, the process includes periods of fear, denial, self-blame and suffering before women come to recognise the reality of the abuse. Unfortunately, leaving an abusive relationship does not of itself always guarantee safety. The request for separation or divorce by the abused woman is

⁵ Ibid.

⁶ See Walker L.E., “The battered woman”, New York, NY: Harper and Row, 1979; Fife, R., Schragger, S., “Family Violence: What Health Care Providers Need to Know”, Jones and Bartlett, 2012, p. 23 seq.

⁷ See [World Health Organisation, “Violence by intimate partners”, World Report on violence and health](#), p. 96.

in fact one factor that may lead to the escalation of the domestic violence (or the onset of domestic violence in some cases) against her and her child(ren).⁸

11. The above background explains why victims may not immediately report the violence (including in cases of sexual violence) or may withdraw their complaints or even forgive their violent partner. In this respect, research indicates that women typically seek protection orders after serious levels of victimisation and after abuse over a significant length of time. In other words, any complaints of domestic violence are usually filed after several episodes of violence and often following a very violent incident, which renders the continuation of the relationship unsustainable, intolerable (or even potentially lethal) for the victim.⁹

12. Recognising and understanding the processes and dynamics of domestic violence as well as its distinctly gendered nature is a precondition for authorities to fulfil their obligations and take effective measures to prevent domestic violence, protect its victims and prosecute the perpetrators. It enables statutory agencies to offer a more adequate response to women victims of domestic violence and reduces institutional bias towards them.

B. Recognising and responding to the specific risks of children in the context of domestic violence

13. The Istanbul Convention is attentive to the specific risks faced by children in the context of domestic violence. Studies and statistical data underline that perpetrators in the context of intimate partner violence are also often violent towards children with whom they cohabit.¹⁰ In this context, children may be exposed to direct and/or indirect violence, including after the end of an abusive relationship. With fewer opportunities available to subjugate their former partners after separation, many domestic abusers retaliate by abusing their children. Harming the children through neglect, psychological, sexual and physical violence,¹¹ including their deliberate murder, often comes as a form of revenge, and many children live with violence and the threat of death on a daily basis.¹² Women victims of domestic violence who leave their abusers are often confronted with threats of harm to the children, which must be taken seriously. By way of example, in 2018 in Spain, 10 children have been killed by the abusers of their mothers.¹³ A recent study in this field concludes that adult and child homicides that occur in the context of domestic violence have similar warning signs.¹⁴ Thus, it is very important to understand these signs and to conduct effective risk assessment for children as well.

14. It is important to note that the Istanbul Convention considers both children who have been the subject of direct violence and those who have witnessed domestic violence as victims in need of protection. For this reason, Article 26 requires psychological support and counselling services for child victims and witnesses, and Article 31 seeks to protect them from further harm by prioritising safety over custody and visitation rights. Custody and visitation arrangements often provide abusers with the possibility of exerting further control and abuse by harming the children.

⁸ Ibid. This study shows that in Australia, Canada and the United States, a significant proportion of intimate partner homicides involving women occur around the time that a woman is trying to leave an abusive partner (p. 96).

⁹ See [Jordan, C. E. \(2004\), "Intimate partner violence and the justice system: an examination of the interface", *Journal of Interpersonal Violence*, Vol. 19](#), pp. 1412-1434.

¹⁰ See Saunders, H (2004) "Twenty-nine child homicides: Lessons still to be learnt on domestic violence and child protection", *Women's Aid Federation of England (Women's Aid)*

¹¹ There is research that shows evidence of sexual abuse against children after the separation of parents. See Romito, P., Crisma, M., « Les violences masculines occultées : le syndrome d'aliénation parentale », *Empan* 2009/1 (n° 73), p. 31-39.

¹² See Anna Nikupeteri and Merja Laitinen, University of Lapland, Finland: "Physical Abuse, Violent Acts and the Threat of Death" in *Children's Everyday Lives Shadowed by Stalking: Post-separation Stalking Narratives of Finnish Children and Women*, in: *Violence and Victims*, p. 838.

¹³ See [Femicidio.net](#).

¹⁴ See Jaffe, PG, Campbell, M., Reif, C., Fairbairn, J. & David R (2017), "Children killed in the context of domestic violence: International perspectives from death review committees".

15. Due to the safety risks for children and the negative impact of witnessing domestic violence and the need to avoid secondary victimisation, Article 56 of the Istanbul Convention establishes that a child victim or witness of domestic violence shall be afforded special protection measures during judicial proceedings, taking into account the best interests of the child.¹⁵

C. Carrying out standardised risk assessment and risk management

16. Under Article 51 of the Istanbul Convention¹⁶ all relevant authorities, not limited to the police, must effectively assess and devise a plan to manage the safety risks that a particular victim faces on a case-by-case basis, according to a standardised procedure and in co-operation and co-ordination with each other. Many perpetrators threaten their victims with serious violence, including death, and have often already subjected their victims to serious violence in the past. It is therefore essential that any risk assessment or risk management considers the probability of repeated violence, especially lethal violence, and adequately assesses the seriousness of the situation.¹⁷

17. Article 51 therefore requires the police to carry out a risk assessment for the victims as of receipt of the complaint using standardised tools with pre-established questions that the competent authorities must *systematically* ask and answer. Several internationally recognised tools exist, for example the Spousal Assault Risk Assessment (SARA), the Multi-agency Risk Assessment Conference (MARAC) developed in the United Kingdom, VioGen from Spain or the domestic violence screening inventory (DVSI, DVSI-R)¹⁸, and are applied to assess the risk, including the lethality risk, which perpetrators of domestic violence pose to their victims.

18. There are several indicators that are normally included in risk assessments and that are considered as red flags indicative of a high risk, such as: the fact that the victim has filed for separation or the break-up of the relationship, previous acts of violence, psychological problems of the perpetrator, the prior issue of a restrictive measure, addictions, unemployment, threat to take away common children, acts of sexual violence, threats to kill the victim and her children, threat of suicide, coercive and controlling behaviour. A red flag of particular importance under Article 51 is whether the perpetrator has access to a firearm. This aspect must therefore be systematically and methodically addressed in all domestic violence cases and at all stages of the case.

19. The obligation to effectively assess the risk inherent to an individual domestic violence situation falls squarely on the statutory agencies, requiring the adequate collection of all relevant information. The competent authorities should not rely on the victim's own assessment of the risk, which, due to the dynamics of domestic violence, may not be objective. Moreover, because of the dynamics of power and control typical of domestic violence, any behaviour of the victim towards the perpetrator that seems ambivalent should not be interpreted as an indication of a lesser degree of danger posed by the perpetrator, but seen, instead, as a logical consequence of the abusive relationship.

¹⁵ In a FRA survey published in 2015, it appears that 73% of children of women who have experienced violence are aware of violent incidents against their mother. FRA, *Violence against women: an EU-wide survey*, p. 135.

¹⁶ Article 51 on Risk assessment and risk management: 1. Parties shall take the necessary legislative or other measures to ensure that an assessment of the lethality risk, the seriousness of the situation and the risk of repeated violence is carried out by all relevant authorities in order to manage the risk and if necessary to provide co-ordinated safety and support. 2. Parties shall take the necessary legislative or other measures to ensure that the assessment referred to in paragraph 1 duly takes into account, at all stages of the investigation and application of protective measures, the fact that perpetrators of acts of violence covered by the scope of this Convention possess or have access to firearms.

¹⁷ See [The Explanatory Report to the Istanbul Convention](#), p. 44.

¹⁸ See also the danger assessment (DA), the Kingston Screening Instrument for Domestic Violence (K-SID), the Ontario domestic assault risk assessment (ODARA) and the brief spousal assault form for the evaluation of risk (B-SAFER).

20. The assessment of risk and identification of safety measures should be conducted continuously and during all the phases of the procedure by police officers, prosecutors and judges from the first meeting with the victim all the way to a possible sentence, as the risk can change and new information may need to be taken into account. If risk management is not reliable and ongoing, victims may be lulled into a false sense of security, exposing them to greater risk.

21. The efficiency of the risk assessment depends also on the consideration of the continuum of violence, when there is such indication, rather than on taking into account single episodes of violence in an isolated manner. It is therefore important that incidences of violence within the family unit are considered, assessed and evaluated as a part of a broader context of domestic violence. Moreover, any risk assessment must address systematically the risk not only for the woman concerned but also for her children.

22. The purpose of Article 51 is, furthermore, to ensure that the assessment of the lethality of the risk, the seriousness of the situation and the risk of repeated violence is carried out by all relevant authorities with a view to managing the identified risk and providing coordinated safety and support through multi-agency co-operation and co-ordination. This entails that all relevant authorities, including police officers, prosecutors and judges must provide information on risks to and co-ordinated support with any other relevant stakeholders who come in regular contact with persons at risk, including, in the case of children, with teachers.

23. Moreover, it should be noted that the composure/conduct of the perpetrator with persons outside of the domestic unit, or the level of integration of the perpetrator in society should not be given weight in assessing the dangerousness and the risk of further domestic violence. The perpetrator is primarily dangerous to women or children, with whom he has intimacy, at home or in similar circumstances.¹⁹

D. Providing guidelines and training for professionals on the specific nature of domestic violence

24. The system in place should afford law enforcement officials clear guidelines and criteria governing the action or intervention in sensitive situations, such as cases of domestic violence.²⁰ Article 15 of the Istanbul Convention stresses the importance of providing or strengthening training for professionals dealing with victims/perpetrators of domestic violence, on the prevention and detection of such violence, equality between women and men, the needs and rights of victims and on how to prevent secondary victimisation.

25. Such training can significantly improve the understanding of the dynamics of domestic violence, including its gendered nature, as well as the links between domestic violence and harm to children, thus enabling professionals to better assess and evaluate the existing risk, respond appropriately and ensure prompt protection. Any training should be supported and reinforced by clear protocols and guidelines that set the standards staff are expected to follow in their respective fields.²¹

26. Moreover, training of police, prosecutors and judges on domestic violence is essential in order to evaluate the risk of re-offending and order the necessary measures of protection. Training should also ensure that judges are aware of the role, importance and possibility to

¹⁹ See [Holtzworth-Munroe, A., & Stuart, G. L. \(1994\), "Typologies of male batterers: Three subtypes and the differences among them", *Psychological Bulletin*, 116\(3\), 476–497](#). See also, Petersson J et al., "Risk factors for intimate partner violence: A comparison of antisocial and family-only perpetrators", *Journal of Interpersonal Violence* (2019); (2): pp. 219-239.

²⁰ See *mutatis mutandis*, ECtHR, *Makaratzis v. Greece*, on the obligation to afford to law enforcement officials clear guidelines and criteria governing the use of force.

²¹ See [The Explanatory Report to the Istanbul Convention](#), p. 19.

order that the perpetrator participate in dedicated domestic violence perpetrator programmes, including with a view to ensuring the protection of children.

27. In its report on Austria, GREVIO noted that legal professionals, in particular, judges and prosecutors, do not receive initial or in-service training on violence against women as a form of gender-based violence and held that this should be addressed. As the quality of investigations and the evidence collected impacts significantly on the level and outcome of prosecution and the number of convictions, GREVIO's report on Austria also highlights that the very low number of convictions in relation to violence against women, including domestic violence, compared to the number of reported cases of violence against women raise issues regarding the role of the prosecution services in relation to their due diligence obligation as set out in Article 5 paragraph 2 of the Istanbul Convention.²²

III. How contracting states to the ECHR may implement their obligations under the ECHR in light of the requirement to take into account the “recurrence of successive episodes of violence within the family unit”²³

A. Ensuring appropriate emergency barring orders

28. Article 52 of the Istanbul Convention establishes the obligation, in cases of immediate danger, of equipping the competent authorities with the power to order a perpetrator of domestic violence to leave the residence of the victim/person at risk and to bar him or her from entering the residence or contacting the victim or person at risk. In other words, the key elements that need to be guaranteed include not only the protection of victims and persons at risk in their own home (order the perpetrator to leave the home and not to return) but also their protection anywhere else by prohibiting the perpetrator to contact the victim or person at risk for a sufficient time (order to stay away from the victim or person at risk or order of no-contact). The protective scope of the barring orders extends to victims and to all individuals at risk who should be protected, regardless of their relationship or kinship with the perpetrator. In the interest of their safety, there may be the need to extend the protection to the children of the victim,²⁴ for example, by banning the perpetrator from the school and/or childcare facility as well as anywhere else. In this case, the protection should be given to the victim's children without any discrimination, for instance, on grounds of sex or age.

29. Thus, any regulation that is limited only to banning the perpetrator from the residence of the victim or person at risk but allows him/her to contact them in other places, would fall short of fulfilling the obligation under the Istanbul Convention. The same applies with regard to regulations that protect only the victim and not other persons at risk, including his/her child(ren) or that extend the protection to the victim's children under specific conditions, such as age limitations.

30. Where a no-contact order is issued, the authorities must ensure the enforcement of the order through appropriate monitoring, so that the onus of ensuring the respect of the order does not fall on the victim and/or her children. GREVIO in its reports has highlighted ways in which this can be done in practice, for instance, by the use of electronic tools, regular checks on the victim/and her children by phone as well as follow-up meetings with the perpetrator to explain the order in place and the consequences a breach may have.²⁵

²² See [GREVIO's first Baseline Evaluation Report on Austria](#), paragraphs 161 and 73 seq.

²³ The requirement to take into account the recurrence of successive episodes of violence within the family unit when implementing obligations arising under the ECHR is set out in the judgement of *Talpis v. Italy*, para 122 and *Volodina v. Russia*, paragraph 86.

²⁴ See <https://rm.coe.int/article-52-convention-istanbul-english-version/168073cae6>

²⁵ See for instance [GREVIO Baseline Evaluation Report on Denmark, paragraph 208, p.52-53](#).

31. The term “immediate danger” refers to the risk of any violence, and not a risk of lethal violence or serious injury. Harm must be imminent or has already materialised and is likely to happen again.²⁶ Moreover, there is no requirement for the danger to be high or for a pre-existing history of abuse. Barring orders must be available irrespective of the actual commission or conviction of offences covered by the national criminal code. The risk of immediate danger should be assessed on a case-by-case basis, taking due account of the nature and cycle of domestic violence as well as its gendered nature, as explained in part II of the present intervention.

32. In its report on Austria, GREVIO noted that “[t]he system currently in existence in Austria consists of police-ordered two-week bans on perpetrators of domestic violence to enter the residence of the victim(s). In addition, and upon application by the victim, a protection order may be issued by a civil law court (family courts division) for up to 12 months in the form of a no-go order, banning a perpetrator from entering certain premises, rather than a general contact ban. As a result, protection is linked to places that victims frequent rather than the victim as such. (...) Linking protection to places rather than people bears the risk of gaps (...). Such gaps have led to tragic cases in the past, inspiring the legislators to include (in addition to the home) educational institutions and child-care facilities in the list of places in respect of which a ban may be issued”.²⁷ GREVIO notes, however, that these legislative changes have since been amended, introducing contact bans instead (ordering the alleged perpetrator not to come closer than 100m to the victim and/or her children).²⁸

33. GREVIO would like to draw the Court’s attention to the fact that shortcomings in protecting child victims and witnesses from their abusive parent through the issue and implementation of emergency barring orders/protection orders have been frequently commented on in its evaluation reports. Such shortcomings include: instances in which children are not always systematically included in protective measures;²⁹ instances in which emergency barring or protection orders can cover children but do not do so in practice due to financial barriers;³⁰ instances in which emergency barring or protection orders are issued to protect victims and their children, however the lack of multi-agency approach impedes their efficient implementation.³¹

34. In light of the above, it is of paramount importance that national authorities, including judicial authorities evaluate the existence of a danger for the child at all stages and seek the adoption of protective measures, such as barring orders, even if these measures were not taken in the beginning of the proceedings.

B. Responding promptly and appropriately to domestic violence, including through the use of pre-trial detention

35. In line with the principle of due diligence provided under Article 5 of the Istanbul Convention, Article 50 requires that law enforcement agencies engage promptly and appropriately in the prevention of and protection against domestic violence, including the employment of preventive operational measures, such as pre-trial detention.

36. In its report on Austria GREVIO noted that although Austrian criminal procedural law envisages pre-trial detention on three specific grounds: (i) flight risk, (ii) risk of collusion or (iii) risk of re-offending if the offence in question carries a prison term of more than six months, in

²⁶ See [The Explanatory Report of the Istanbul Convention](#), paragraph 265.

²⁷ See [GREVIO Baseline Evaluation Report on Austria](#), paragraphs 172-173, p. 46.

²⁸ See Article 38a paragraph 1 of the Security Police Law as amended in December 2019.

²⁹ See [GREVIO Baseline Evaluation Report on Sweden, paragraph 227, p.54.](#)

³⁰ See [GREVIO Baseline Evaluation Report on Albania, paragraph 190, p.59.](#)

³¹ See [GREVIO Baseline Evaluation Report on France, paragraph 243, p.68.](#)

cases of domestic violence prosecution services rarely order this measure.³² According to specialist support services this is true even in cases of severe violence and threat where a woman and her children are clearly at risk: prosecution services rely on a (civil law) protection order to ensure their safety rather than opting for pre-trial detention. GREVIO held in this connection that the authorities should step up measures to assess the real risk of re-offending in domestic violence cases in order to make more appropriate use of pre-trial detention where warranted.³³ In replying to GREVIO's findings, the Austrian Government recognised the need to further improve assessment of the real risk of re-offending in domestic violence cases and mentioned further relevant measures to be taken.³⁴

C. Ensuring that perpetrators of domestic violence adopt non-violent behaviour through perpetrator programmes

37. Article 16 of the Istanbul Convention provides for the obligation of contracting States to develop preventive intervention and treatment programmes to help perpetrators change their attitudes and behaviour in order to prevent further acts of domestic violence. Domestic violence intervention programmes should be based on best practices and what research reveals about the most effective ways of working with perpetrators. Programmes should encourage perpetrators to take responsibility for their actions and examine their attitudes and beliefs towards women. The Istanbul Convention requires the existence of such programmes either for voluntary attendance, as part of the criminal justice system after prosecution or as part of the probation system. In its evaluation reports, GREVIO has repeatedly pointed to the need to ensure attendance of such programmes with a view to reducing recidivism³⁵ – a requirement that is in line with the positive obligation stemming from Article 2 of the European Convention of Human Rights.

38. GREVIO respectfully requests the Court to take the above observations into account in its deliberations.

³² See [GREVIO's first Baseline Evaluation Report on Austria](#), paragraphs 154-155.

³³ See [GREVIO Baseline Evaluation Report on Austria](#), proposal 35b, paragraph 155.

³⁴ See [Government Comments to the GREVIO report](#), p. 25.

³⁵ See for example GREVIO Baseline Evaluation Reports on [Denmark](#) (paragraph 93), [Finland](#) (paragraph 79) and [Portugal](#) (paragraph 105).