

Borba protiv nasilja nad ženama kroz prizmu socijalne pravde – izazovi u primeni Istanbulske konvencije

Marta Kowaliszyn

UDK 316.624

Univerzitet u Gdanjsku, Pravni fakultet, integrisane studije



0009-0002-0144-6277

Referenca:

Kowaliszyn, Marta. 1/2026. Combating Violence Against Women Through the Lens of Social Justice – Challenges in Implementing the Istanbul Convention. *Eudaimonia – Journal of Legal, Political and Social Theory and Philosophy* 10: 80–91

DOI: 10.51204/IVRS_26108A

Ključne reči:

- Pristup temeljen na sposobnostima
- Formalna i supstantivna jednakost
- Istanbulska konvencija
- Pravda kao pravičnost
- Nasilje nad ženama

Autor za korespodenciju:

Marta Kowaliszyn,
mkowaliszyn@outlook.com

Nasilje nad ženama predstavlja sistemsko kršenje ljudskih prava i jedan od osnovnih izazova prilikom ostavljavanja socijalne pravde. Konvencija Saveta Evrope o sprečavanju i borbi protiv nasilja nad ženama i nasilja u porodici (Istanbulska konvencija) uspostavlja sveobuhvatan okvir zasnovan na prevenciji, zaštiti, krivičnom gonjenju i integrisanim politikama. Uprkos visokim standardima koje postavlja, njena primena i dalje je neujednačena i predmet političkih sporova u više evropskih država. U ovom radu kritički se razmatra primena Konvencije u Poljskoj i Srbiji kroz prizmu socijalne pravde. Oslanjajući se na koncept pravde kao pravičnosti Džona Rolsa i stavove Marte Nussbaum, u radu se tvrdi da formalne pravne garancije nisu dovoljne ukoliko ne postoje stvarni uslovi koji ženama omogućavaju da ostvaruju svoja prava. Nedоследna primena, nedovoljno finansiranje i institucionalni nedostaci održavaju strukturnu nejednakost i podrivaju delotvornu zaštitu.

Combating Violence Against Women Through the Lens of Social Justice – Challenges in Implementing the Istanbul Convention

Marta Kowaliszyn

University of Gdańsk, Law Faculty, Long-cycle studies

UDK 316.624



0009-0002-0144-6277

Cite this article:

Kowaliszyn, Marta. 1/2026. Combating Violence Against Women Through the Lens of Social Justice – Challenges in Implementing the Istanbul Convention. *Eudaimonia – Journal of Legal, Political and Social Theory and Philosophy* 10: 80–91

DOI: 10.51204/IVRS_26108A

Key words:

- Capabilities Approach
- Formal and Substantive Equality
- Istanbul Convention
- Justice as Fairness
- Violence Against Women

Author for correspondence:

Marta Kowaliszyn,
mkowaliszyn@outlook.com

Violence against women constitutes a systemic violation of human rights and a fundamental challenge to social justice. The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) establishes a comprehensive framework based on prevention, protection, prosecution, and integrated policies. Despite its high standards, implementation remains uneven and politically contested in several European states. This paper critically examines the implementation of the Convention in Poland and Serbia through the lens of social justice theory. Drawing on John Rawls' concept of justice as fairness and Martha Nussbaum's capabilities approach, it argues that formal legal guarantees are insufficient without substantive conditions enabling women to exercise their rights. Inconsistent enforcement, inadequate funding, and institutional shortcomings perpetuate structural inequality and undermine genuine protection.

1. INTRODUCTION

Violence against women remains one of the most pervasive human rights violations globally (World Health Organization 2021, 9–12; United Nations 2006, 27–31). It occurs across societies, cultures, and social groups, affecting women regardless of age, education, or economic background. Importantly, this violence is not merely a series of isolated criminal incidents committed by individuals. Rather, it constitutes a structural social problem deeply rooted in unequal power relations, gender norms, and historically entrenched discrimination (MacKinnon 1989, 161–167). It undermines women's dignity, autonomy, and the very possibility of full participation in social and public life (United Nations 2006, 35–38).

In response to this challenge, the international community has developed various legal and policy instruments. The most comprehensive among them is the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention).¹ Adopted in 2011, the Convention goes beyond merely criminalizing acts of violence. It requires states to adopt a holistic approach based on four pillars: prevention of violence, protection and support for victims, prosecution of perpetrators, and coordinated public policies integrating social services, law enforcement, and education (Council of Europe 2011, Arts. 1–7). In this sense, the Istanbul Convention sets a high standard by recognizing that violence against women is not only a criminal justice issue, but also a matter of public health, social equality, and human rights (Council of Europe 2011, Preamble).

However, despite its comprehensive framework, the implementation of the Istanbul Convention has faced significant challenges. In some countries, including Poland and Serbia, the Convention has become the subject of political controversy and cultural debate. Critics often frame it as a threat to national identity or traditional family values, which has slowed, fragmented, or weakened the enforcement of its provisions (Krizsán, Roggeband 2018, 97–102). As a result, many victims still encounter obstacles when seeking help, whether due to insufficient support services, economic dependency, social stigma, or distrust in state institutions (World Health Organization 2021, 54–60).

The purpose of this paper is to critically examine these challenges of implementation in Poland and Serbia. The analysis considers not only the legal frameworks, but also the broader social, cultural, and institutional factors that influence how effectively the Convention is put into practice. To guide this analysis, it employs two theoretical perspectives from social justice theory: John Rawls' concept of justice as fairness and Martha Nussbaum's capabilities approach. Rawls argues that just in-

1 Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, CETS No. 210, Istanbul, 11 May 2011.

stitutions must secure equal basic liberties and protect the least advantaged (Rawls 1971, 72–75), while Nussbaum emphasizes that justice requires enabling individuals to exercise central human capabilities, including bodily integrity and control over one's environment (Nussbaum 2011, 33–36). These frameworks allow an assessment of whether state measures truly enable women to live free from violence and to exercise their rights in meaningful ways.

2. WHAT IS THE ISTANBUL CONVENTION?

The Istanbul Convention, formally the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, was adopted in 2011 and entered into force in 2014.² It is currently the most comprehensive international treaty addressing gender-based violence (Council of Europe 2011, Preamble; Explanatory Report 2011, paras. 1–4). What makes the Convention particularly significant is that it recognizes violence against women not as a private matter or a rare occurrence, but as a widespread and systemic violation of human rights requiring coordinated and proactive state intervention (Council of Europe 2011, Art. 3; Explanatory Report 2011, paras. 37–43).

One of the core strengths of the Convention is that it does not treat violence solely as a criminal issue. Instead, it is built around four interconnected pillars that together create a holistic approach (Council of Europe 2011, Art. 1).

The first pillar is prevention. This involves addressing cultural and social norms that enable violence to persist. The Convention calls for public education campaigns, gender equality training in schools, and awareness programs aimed at challenging harmful stereotypes (Council of Europe 2011, Arts. 12–14). The underlying premise is that reducing violence requires transforming social attitudes that normalize aggression, control, and inequality (Explanatory Report 2011, paras. 86–95).

The second pillar is protection. States are required to ensure that victims have access to immediate and effective support, including shelters, telephone helplines, psychological counseling, legal assistance, and medical care (Council of Europe 2011, Arts. 18–24). Protection is not limited to post-incident intervention; it also entails creating safe and accessible pathways for women to seek help without fear of retaliation or secondary victimization (Explanatory Report 2011, paras. 118–130).

The third pillar is prosecution, which concerns the establishment of effective legal frameworks to hold perpetrators accountable. The Convention requires states to criminalize various forms of violence, including physical, psychological, and sex-

2 Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, CETS No. 210, Istanbul, 11 May 2011.

ual violence, stalking, forced marriage, female genital mutilation, and forced sterilization (Council of Europe 2011, Arts. 33–39). It further emphasizes the need for specialized training of police officers, judges, and prosecutors to ensure sensitive and effective handling of cases (Council of Europe 2011, Art. 15).

Finally, the fourth pillar concerns integrated policies. The Convention requires states to adopt comprehensive and coordinated policies involving cooperation among social services, law enforcement, healthcare providers, educational institutions, and civil society organizations (Council of Europe 2011, Art. 7). The Explanatory Report stresses that only a cross-sector approach can ensure consistent and sustainable protection (Explanatory Report 2011, paras. 60–70).

An important feature of the Istanbul Convention is that it explicitly identifies gender inequality as a root cause of violence against women (Council of Europe 2011, Preamble; Art. 6). It recognizes that violence is not merely the result of individual deviant behavior but is linked to historically unequal power relations and structural discrimination (Explanatory Report 2011, paras. 43–52). For this reason, the Convention promotes gender equality as a fundamental precondition for preventing violence (Council of Europe 2011, Art. 12).

In summary, the Istanbul Convention is not simply a legal instrument aimed at punishing perpetrators. It constitutes a comprehensive framework designed to transform social norms, strengthen institutional responsiveness, and ensure that women can live with dignity, autonomy, and safety (Council of Europe 2011, Art. 1; Explanatory Report 2011, paras. 1–4).

3. SOCIAL JUSTICE FRAMEWORKS: RAWLS AND NUSSBAUM

To evaluate the effectiveness of the Istanbul Convention, it is helpful to turn to the concept of social justice. Legal reforms alone do not necessarily lead to real equality or meaningful protection. Two influential philosophical frameworks help explain why: John Rawls' concept of justice as fairness and Martha Nussbaum's capabilities approach.

Rawls argues that a just society is one in which basic rights and liberties are not merely formally guaranteed but genuinely accessible to all (Rawls 1971, 3–6). According to Rawls, institutions must be structured so as to secure equal basic liberties and arrange social inequalities in a way that benefits the least advantaged members of society (Rawls 1971, 72–75, 83). When this framework is applied to violence against women, it becomes clear that the mere existence of laws prohibiting violence is insufficient. If women cannot safely report abuse, if shelters are underfunded, or if the justice system fails to respond effectively, then the formal right to protection

does not translate into real security. From a Rawlsian perspective, justice requires active institutional arrangements that remove structural barriers preventing vulnerable individuals from exercising their rights (Rawls 1971, 266–267). Protection, therefore, must be substantive rather than symbolic.

Nussbaum's capabilities approach shifts the focus from institutional design to the lived realities of individuals. She argues that justice requires enabling people to develop and exercise certain central capabilities necessary for a dignified human life (Nussbaum 2011, 18–19). Among these capabilities are bodily integrity, emotional health, practical reason, affiliation, and control over one's environment (Nussbaum 2011, 33–36). Violence against women directly undermines these capabilities by restricting freedom of movement, damaging psychological well-being, and impairing the ability to make independent choices. Furthermore, when women are economically dependent on abusive partners or lack access to support services, their capability to escape violence is severely constrained (Nussbaum 2011, 39–42).

Nussbaum's framework highlights a crucial point: even where rights are formally recognized, justice is not achieved if individuals lack the real opportunity to exercise them (Nussbaum 2011, 25–27). The mere presence of protective legislation does not automatically translate into the capability to live free from violence. Genuine protection requires social, economic, and institutional conditions that enable autonomy.

When Rawls' theory of justice as fairness and Nussbaum's capabilities approach are read together, it becomes clear that combating violence against women is not solely a matter of punishing perpetrators. It is fundamentally a question of whether the state creates conditions that allow women to live in safety and exercise self-determination. Accordingly, the implementation of the Istanbul Convention must be assessed not only in formal legal terms but also in light of whether it expands women's real opportunities to seek help, rebuild their lives, and live without fear.

4. CASE STUDY: POLAND

Poland ratified the Istanbul Convention in 2015, signaling a formal commitment to strengthening the protection of women from violence (Council of Europe 2015). However, the implementation process in Poland has been highly politicized and deeply contested (Krizsán, Roggeband 2018, 97–102). Rather than being treated as a neutral human rights instrument, the Convention has become the focus of broader cultural and ideological conflict, significantly influencing both public perception and practical enforcement (Graff, Korolczuk 2022, 45–51).

A central issue in Poland has been the narrative that the Convention promotes so-called “gender ideology.” Political actors and influential religious institutions have argued that the Convention challenges traditional family structures by questioning culturally prescribed gender roles (Graff, Korolczuk 2022, 53–60). As a result, debates about violence against women have in some instances shifted away from victims’ protection toward symbolic disputes over national identity and morality (Krizsán, Roggeband 2018, 100–104). This politicization has slowed the development of coordinated policies and has contributed to public distrust toward organizations working in the field of gender-based violence (Amnesty International 2022, 12–15).

Because of this ideological resistance, implementation in Poland remains uneven. While legislation formally recognizes domestic violence and provides for restraining orders and intervention measures, support services remain underfunded and insufficient in practice (GREVIO 2021, 18–25). Shelters are unevenly distributed, and many lack stable financing, which undermines long-term assistance (GREVIO 2021, 30–34). Access to psychological support and free legal aid is limited, particularly in rural areas (Human Rights Watch 2020, 22–27).

Concerns also arise regarding the response of law enforcement and the judiciary. Although training programs exist, they are not consistently implemented, and some officials continue to treat domestic violence as a “private family matter” (GREVIO 2021, 41–45). Victims have reported instances of secondary victimization, including discouragement from filing complaints or pressure to reconcile with perpetrators (Human Rights Watch 2020, 30–33). These practices demonstrate how institutional attitudes can undermine legal protections.

Economic dependency further complicates the situation. Many women experiencing violence lack financial independence, especially when they have children or limited employment opportunities (Amnesty International 2022, 18–21). Without adequate housing assistance, childcare support, and long-term social programs, leaving an abusive relationship may lead to poverty or social exclusion. Legal reform alone cannot remove these structural barriers.

When assessed through the lens of social justice theory, the gap between formal and substantive equality becomes evident. On paper, the Polish legal framework guarantees protection. However, where institutional shortcomings and cultural stigma prevent effective access to services, protection remains largely symbolic. From a Rawlsian perspective, institutions fail to sufficiently protect the least advantaged (Rawls 1971, 83). From a capabilities perspective, women’s bodily integrity and autonomy are not fully secured (Nussbaum 2011, 33–36).

In summary, Poland’s experience illustrates that ratification is only an initial step. Without sustained funding, institutional training, and cultural transformation,

the Istanbul Convention cannot fully achieve its objectives. Political and cultural resistance has weakened implementation, leaving many women without effective protection.

5. CASE STUDY: SERBIA

Serbia ratified the Istanbul Convention in 2014, committing itself to harmonizing domestic legislation with international standards on violence against women (Council of Europe 2014). Following ratification, Serbia introduced several legal and policy reforms. Notably, it adopted the Law on the Prevention of Domestic Violence in 2016, which established procedures for urgent protective measures, including temporary restraining orders and the removal of perpetrators from the household (GREVIO 2020, 17–20). In addition, Serbia created local coordination and cooperation groups bringing together police, prosecutors, social welfare centers, and healthcare professionals, reflecting the Convention's emphasis on integrated policies (GREVIO 2020, 22–24). On paper, these reforms represent significant progress.

However, the principal challenge in Serbia concerns implementation. Despite a relatively developed legislative framework, many mechanisms suffer from insufficient funding, inconsistent professional training, and uneven application across different regions (GREVIO 2020, 10–12). Victim support services, including shelters and counseling centers, are available in certain municipalities but absent or severely limited in others, particularly in rural areas (OSCE 2019, 28–34). Many service providers operate with unstable financial support and limited staff capacity (GREVIO 2020, 30–33).

Patriarchal norms and entrenched social expectations further complicate effective enforcement. In some communities, domestic violence continues to be perceived as a “private family matter,” discouraging reporting and public intervention (OSCE 2019, 15–18). Victims may fear social stigma, blame, or economic abandonment. Even when violence is reported, institutional responses are sometimes delayed or inconsistent. For example, emergency barring orders may be issued but are not always systematically monitored or effectively enforced (GREVIO 2020, 45–48).

Economic dependency represents an additional structural barrier. Many women lack stable employment and financial independence, particularly when responsible for childcare (OSCE 2019, 36–40). Without adequate access to social housing, long-term financial assistance, and employment opportunities, leaving an abusive relationship may lead to poverty or homelessness. In such circumstances, the formal right to protection exists, but the material conditions necessary to exercise that right remain inadequate.

When analyzed through the lens of social justice theory, these shortcomings reveal deeper institutional challenges. From the perspective of John Rawls, justice requires institutions to secure effective access to basic liberties and to protect the least advantaged members of society (Rawls 1971, 72–75, 83). Where protection is regionally uneven or inconsistently enforced, the institutional structure fails to meet this standard. From the perspective of Martha Nussbaum, violence directly undermines core capabilities such as bodily integrity, emotional well-being, and control over one's environment (Nussbaum 2011, 33–36). If women cannot rely on stable support systems or economic security, their substantive freedom to live without violence remains constrained.

In sum, Serbia illustrates that legislative alignment with the Istanbul Convention does not automatically guarantee effective protection. While notable progress has been achieved at the normative level, persistent gaps in funding, institutional coordination, professional training, and cultural transformation continue to limit substantive equality. Without addressing these structural conditions, the objectives of the Convention cannot be fully realized.

6. KEY ISSUE: FORMAL VS SUBSTANTIVE EQUALITY

A central theme emerging from both case studies is the distinction between formal equality and substantive equality. Formal equality refers to the principle that the law treats everyone the same, without explicit discrimination (Fredman 2011, 7–9). On paper, both Poland and Serbia guarantee equal rights, prohibit domestic violence, and provide legal mechanisms intended to protect victims. However, formal equality does not necessarily produce real, lived equality.

Substantive equality, by contrast, focuses on whether individuals actually possess the practical ability to exercise their rights (Fredman 2011, 14–18). When women face economic dependency, cultural stigma, or institutional indifference, legal rights may exist in theory but remain inaccessible in practice. A woman may formally have the legal right to leave an abusive partner, yet without access to shelters, affordable housing, childcare, or stable income, that option is not realistically available. Similarly, if police and courts treat domestic violence as a private matter rather than a serious criminal offense, victims may be discouraged or blamed when seeking help. In such situations, the law's promise of protection becomes largely symbolic rather than effective.

This gap between formal and substantive equality is precisely what both John Rawls and Martha Nussbaum help to illuminate. Rawls argues that justice requires not only equal formal liberties but institutional arrangements that ensure fair equal-

ity of opportunity and protect the least advantaged members of society (Rawls 1971, 72–75, 83). If structural barriers prevent women from accessing support services or effective remedies, then justice has not been realized in a substantive sense.

Nussbaum's capabilities approach further emphasizes that justice must be evaluated in terms of what individuals are actually able to be and do (Nussbaum 2011, 18–19). Violence and the absence of effective support undermine core human capabilities, including bodily integrity, emotional well-being, and control over one's environment (Nussbaum 2011, 33–36). Without the real opportunity to escape violence, rebuild stability, and exercise independent choice, the conditions necessary for a dignified human life are not met.

Therefore, implementing the Istanbul Convention cannot be reduced to legislative reform alone. It requires transforming the material and cultural conditions that shape women's everyday lives. Adequate funding for support services, consistent and sensitive institutional responses, and the rejection of social norms that tolerate violence are necessary to bridge the gap between formal and substantive equality. Only under such conditions can legal equality translate into genuine safety and freedom.

7. CONCLUSION

To conclude, violence against women is not merely an individual tragedy but a systemic problem rooted in unequal power relations, discriminatory cultural norms, and institutional shortcomings (Council of Europe 2011, Preamble; Explanatory Report 2011, paras. 43–52). The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence offers one of the most comprehensive international frameworks for addressing this issue, as it connects criminalization with prevention, victim protection, coordinated policies, and broader structural change (Council of Europe 2011, Art. 1, Arts. 7–14).

However, as the examples of Poland and Serbia demonstrate, the existence of a legal framework does not automatically guarantee effective implementation. In Poland, ideological resistance and political polarization have limited the development of stable and coordinated support systems and have weakened institutional trust (GREVIO 2021, 12–18). In Serbia, although legislative reforms align closely with Convention standards, gaps in funding, regional disparities in service provision, and weaknesses in enforcement continue to hinder effective protection (GREVIO 2020, 30–33, 45–48).

In both cases, a clear gap emerges between formal equality, which exists at the level of legal norms, and substantive equality, which depends on practical access,

institutional responsiveness, and lived social conditions (Fredman 2011, 14–18). From the perspective of John Rawls, justice requires institutional arrangements that effectively protect the most vulnerable and secure real access to basic liberties (Rawls 1971, 72–75, 83). From the perspective of Martha Nussbaum, justice demands that individuals possess the genuine capability to live with dignity, bodily integrity, and autonomy (Nussbaum 2011, 33–36). When women cannot safely report violence, access shelters, or achieve economic independence, these principles remain unrealized.

Therefore, implementing the Istanbul Convention is not solely a legal obligation arising from international commitments; it is also a normative demand grounded in principles of social justice. Effective implementation requires sustained political will, adequate financial resources, institutional training, cultural transformation, and the empowerment of women as rights-bearing individuals (Council of Europe 2011, Art. 7; Explanatory Report 2011, paras. 60–70). Only by addressing structural barriers alongside societal attitudes can states move toward substantive equality and ensure that all women are able to live free from violence.

REFERENCES

1. Amnesty International. 2022. *Poland: Women's Rights under Threat*. London: Amnesty International.
2. Council of Europe. 2011. *Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence*. CETS No. 210. Strasbourg: Council of Europe.
3. Council of Europe. 2011. *Explanatory Report to the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence*. Strasbourg: Council of Europe. Council of Europe. 2014. *Chart of Signatures and Ratifications of the Istanbul Convention*. Strasbourg: Council of Europe.
4. Council of Europe. 2015. *Chart of Signatures and Ratifications of Treaty 210: Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence*. Strasbourg. Council Of Europe.
5. Fredman, Sandra. 2011. *Discrimination Law*. 2nd ed. Oxford: Oxford University Press.
6. Graff, Agnieszka, Elżbieta Korolczuk. 2022. *Anti-Gender Politics in the Populist Moment*. London: Routledge.
7. GREVIO. 2020. *Baseline Evaluation Report on Legislative and Other Measures Giving Effect to the Provisions of the Istanbul Convention (Serbia)*. Strasbourg: Council of Europe.
8. GREVIO. 2021. *Baseline Evaluation Report on Legislative and Other Measures Giving Effect to the Provisions of the Istanbul Convention (Poland)*. Strasbourg: Council of Europe.

9. Human Rights Watch. 2020. *"I Felt Like the State Was Failing Me": Domestic Violence in Poland*. New York: Human Rights Watch.
10. Krizsán, Andrea, Conny Roggeband. 2018. "The Politicization of Gender Equality in Central and Eastern Europe." *Gender and Politics* 14: 90–112.
11. MacKinnon, Catharine A. 1989. *Toward a Feminist Theory of the State*. Cambridge, Mass.: Harvard University Press.
12. Nussbaum, Martha C. 2011. *Creating Capabilities: The Human Development Approach*. Cambridge, Mass.: Harvard University Press.
13. Organization for Security and Co-operation in Europe (OSCE). 2019. *Well-being and Safety of Women: Serbia Results Report*. Vienna.
14. Rawls, John. 1971. *A Theory of Justice*. Cambridge, Mass.: Harvard University Press.
15. United Nations. 2006. *In-Depth Study on All Forms of Violence against Women*. New York: United Nations.
16. World Health Organization. 2021. *Violence against Women Prevalence Estimates, 2018*. Geneva: World Health Organization.