

The Criminal Code's Response to the Act of Stalking – Implementation of the Istanbul Convention 10 Years Later

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Abstract

In order to prevent and combat all forms of violence against women, Istanbul Convention recognize stalking as a serious form of gender – based violence against the women, equal as all other forms of physical, sexual and psychological harassment. Topic of this work is to discuss where are border lines between socially acceptable conduct in which one person tries to get in touch with another, and when this conduct became form of violence that requires a criminal code reaction to protect victims right to private life. Furthermore, stalking is predicate crime, especially for domestic violence. Repeated attempts to unwanted contact can have seriously psychological consequences for the victim. To prevent that persistent contact from having serious consequences on the victim's private life, it is crucial for the victim to identify in time when the behavior becomes stalking, in order to file a complaint appropriate timely manner, so that state law enforcement can react and provide protection. But the question is whether the Criminal Code requests that stalking is a repeated behavior how much intrusion is enough or is there any time frame in which intrusion must last longer, for reasonable and prompt reaction before the stalking gain some of the form of domestic violence.

Keywords: *stalking, psychological violence, Istanbul Convention, Criminal Code*

I. Introduction

Ten years after the adoption of the Istanbul Convention¹, stalking has been recognized as a serious criminological and sociological phenomenon, which significantly threatens the right to a person's private life. In basic, stalking is considered every act in which one person repeatedly attempts to make unwanted contact with another person. Not all unwanted contact is an act of stalking, threatening conduct directed at another person, which instils fear for one's own safety, is considered stalking in the light of Convention. Recognizing stalking as a type of serious psychological abuse is important to prevent gender-based violence against women.

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¹ Council of Europe *Convention on preventing and combating violence against women and domestic violence*, signed 11th of May 2011, came into force on 1 August 2014. As of March 2019, it has been signed by 45 countries and the European Union.

In terms of gender-based violence most of the victims are women. More often the perpetrator of stalking women are men. The women also can commit stalking, but these cases are significantly low in total number of victims. Studies show that about 7%-19% of women and 2%-10% of men are being stalked at least once in their lifetime².

The Survey conducted among representative sample of women aged 18 to 74 living in Serbia, a total 2,023 interviews, in a period between April and August 2018, shows high prevalence of a different forms of violence against women, in which is 11% of total 62 % of all violence³. Notwithstanding the fact that stalking appears to account for a small proportion of 11% of all forms of violence against women, the proportion of stalking is significant precisely because it is a predicate crime for serious forms of violence against women.

The statistical data collected in surveys in the EU, show that 18% of women have been stalked at some point since the age of 15, while 5% of women have experienced stalking in the 12 months prior to interview. Also, out of all stalking victims in the EU, one in five had been stalked for over two years. When it comes to the consequences in the victim's private life, the data show that 23% of stalking victims have changed their email address or phone number due to the most serious case of stalking⁴.

In general, the literature suggests that being the victim of stalking is associated with significant psychological distress. One study found that 83% of the sample of stalking victims reported anxiety symptoms, and many victims reported distressing recollections, flashbacks, nightmares, appetite changes, and depressed mood⁵. Another study of stalking victims, of which 68% were stalked by an ex-partner, concluded that 78% had symptom levels that indicated the presence of at least one psychiatric disorder.

The data show that stalking is a significantly represented form of violence. Every form of violence, including stalking, affects one of the basic human rights. It is the right of every person to be afforded effective and timely protection of his or her fundamental rights guaranteed by the European Convention on Human Rights. The need to recognize and protect against stalking is also recognized by the ECtHR⁶. The Court reiterates that in cases raising issues of domestic violence States have positive obligations under Articles 2, 3 and 8 of the Convention⁷ to take preventive operational measures to protect victims, or potential victims, from real and immediate risks to their life and from breaches of their physical and psychological integrity⁸.

II. Definition of stalking

Persistent and repeated attempts to contact another person can also be interpreted in a positive sense, as one of the ways of expressing emotions and courtship, especially

² C. Kuehner, P. Gass, H. Dressing, *Mediating Effects of Stalking Victimization on Gender Differences in Mental Health*, Journal of Interpersonal Violence, vol. 27(2), 2012, pp. 199-221.

³ N. Sami, *Violence Against Women: An EU-wide survey*, European Agency for Fundamental Rights, 2014.

⁴ *Ibid.*

⁵ T.K. Logan, R. Walker, *Partner stalking: Psychological dominance or "business as usual*, Trauma, Violence, & Abuse 2009, 10.3, pp. 247-270.

⁶ Council of Europe- European Court of Human Rights.

⁷ European Convention on Human Rights.

⁸ *Kurt v. Austria*, App. No. 62903/15; *Volodina v. Russia*, App. No. 40419/19; *Malagić v. Croatia*, App. No. 29417/17.

when directed from a man to a woman. However, in order to separate the sociological phenomenon of stalking as a form of courtship from behavior that constitutes a criminal offense that violates the right to privacy of another person, it is necessary to start from the criminal definition of stalking. More specifically, it is necessary to determine when a certain behavior that shows persistence in resetting communication with another person, becomes a behavior that is illegal.

The problem of defining stalking as a criminal offense among EU countries is that until the entry into force of the Istanbul Convention, the regulation of stalking differed among the legislation of the EU member states. Namely, various forms of criminal, civil and misdemeanor protection were provided to victims from stalking, but in many countries stalking was not regulated as a separate criminal offense. For example, in *Italy, Poland, Slovakia, Portugal, Spain, Sweden*, protection is provided under other crimes, which mainly relies on the consequences suffered by the victims of stalking. Therefore, providing protection through the criminalization of various criminal offenses does not raise the question of the quality and frequency of stalking, i.e. its definition, but the focus is on eliminating the consequences of harmful behavior.

In *Poland*, protection is provided under Penal Code as Article 156 "Bodily harm", Article 190 "Threat", Article 216 "Insults", Article 288 "Damages", Article 189 "Deprivation of liberty", Article 191 "Illegal duress (threat)"; in *Slovakia* as crimes against persons, offences against public order and peace, sex offences, crimes of passion, offences against reputation and good name; in *Italy* under Penal Code Article 660 "Harassment or disturbance to persons"; Article 610 "Private Violence"; Articles 582 and 583 "Bodily Harm"; Article 594 "Insults"; Article 612 "Threats"; Article 635 "Damage to private property"; in *Portugal* under Penal Code Article 143 "Simple offences to physical integrity"; Article 153 "Threat", Article 152 "Physical or psychological ill-treatments of a spouse or analogous", Article 154 "Coaction"; article 190 "Violation of home"; Article 192 "Inquest of the private life", Article 199 "Illicit records and photographs"; in *Spain* under Article 620.2 "Misdemeanor of humiliation or coercion"; Article 172 "Offence of coercion"; Article 173 "Tortures and other offences against moral integrity"⁹.

Therefore, there is no unique definition of stalking as a criminal offence, because the criteria for defining stalking vary between legislations. Antistalking laws differ not only regarding what behaviours comprise stalking but also regarding the minimum number of occasions required before a person's conduct is considered as stalking (2,3 or more than 3 occasions) and existence of stalk intent¹⁰. For example, the Austria is one of the countries that has defined stalking as a separate crime in the Criminal Code since 2006., through Section 107a of Penal Code "Persistent pursuit"¹¹.

Unlike Europe, where the recognition of stalking behavior varies from country to country, and was first prescribed in law in Belgium¹², stalking was recognized as a

⁹ *Protecting Women from The New Crime of Stalking: A Comparison of Legislative Approaches within the European Union Final Report*, Modena group on stalking, University of Modena and Reggio Emilia, 2007, pp. 2-149.

¹⁰ P.L. Sheridan, E. Blaauw, M.G. Davies, *Stalking: Knowns and Unknowns*, Trauma Violence Abuse; Sage publication, 2003, no. 4, pp. 148-159.

¹¹ *Protecting Women from The New Crime of Stalking: a Comparison of Legislative Approaches within the European Union Final Report*, Modena group on stalking, University of Modena and Reggio Emilia, 2007, pp. 2-149.

¹² In Belgium the anti-stalking law came into force in 2003.

criminal offence in California-USA much earlier in 1990. Since then, there have been several attempts in theory to describe the definition of stalking.

Stalking can be described as an unwanted and repeated course of conduct directed toward a specific individual that induces fear or concern for its own safety¹³. In the United States, most legislation depicts stalking as an intentional pattern of repeated or unwanted pursuit that a reasonable person would consider threatening or fear inducing¹⁴. It also points out that stalking definition generally includes some reference to “intentionally harassing, threatening, and/or intimidating a person by following them about, sending them articles, telephoning them, and waiting outside their house”¹⁵. The common is that stalking refers to a course of conduct by which one person repeatedly inflicts on another unwanted intrusions to such an extent that the recipient fears for his or her safety¹⁶.

The issue of stalking in Europe jurisprudence was considered also through the cases of the ECtHR as a form of psychological violence against women. But these came later than there have been cases of stalking in EU Member States. Furthermore, until 2007 domestic violence had not been directly addressed substantively by the European Court of Human Rights¹⁷. Certainly, as a criminal and social phenomenon stalking was early known. Some important studies were conducted at the European Union (EU) level, starting in 2003 with the multidisciplinary so-called Modena Group¹⁸, from whose work some articles of the Istanbul Convention are clearly derived¹⁹. However, since 2007 the Court has directly addressed this issue in a series of cases involving violence against women in the home²⁰. Violation of the European Convention on Human Rights were found in all these cases²¹. In these cases, it is established that domestic violence can breach the right to life (Article 2), the right to be free from torture and from inhuman or degrading treatment (Article 3), the right to respect for ones private and family life (Article 8) and the equality provision (Article 14).

Therefore, the jurisprudence of the ECtHR in individual cases of domestic violence has led to the need to describe and define domestic violence more closely through the adoption of the Istanbul Convention. This is also stated in an explanatory report by Council of Europe. Consequently, the ECtHR and the Istanbul Convention contribute to a uniform understanding of the concept of stalking. The Istanbul Convention in its Article 34 prescribed obligations for Countries to take necessary legislative measures to ensure that the intentional conduct of repeatedly engaging in causing her or him to fear for her or his safety, criminalize. Apparently, for a behaviour to become stalking,

¹³ T.K. Logan, R. Walker, *cited*, p. 247-270.

¹⁴ P.L. Sheridan, E. Blaauw, M.G. Davies, *cited*, pp. 148-159.

¹⁵ M. Brewster, *Trauma symptoms of former intimate stalking victims*, Women and Criminal Justice, 2002, no. 13, pp. 141-161.

¹⁶ R. Purcell, M. Pathe, E.P. Mullen, *Editorial: When do repeated intrusions become stalking?*, The Journal of Forensic Psychiatry and Psychology, Vol.15 No. 4, 2004, pp. 571-583.

¹⁷ R. McQuigg, *The Istanbul Convention, Domestic Violence and Human Rights*, Routledge, London, 2017, p. 79.

¹⁸ *Female victims of stalking and helping professions: Recognition and intervention models: A European study*, Franco Angeli, Milano, 2005, pp. 75-77.

¹⁹ *Case of Giuliano Germano v Italy App.No. 10794/12*.

²⁰ *Kontrova v Slovakia App. No.75/04; Bevaqua and S v Bulgaria App. No 71127/01; Branko Tomasic and Others v Croatia App. No 46598/06; Opuz v Turkey 33401/02; Hajdukova v Slovakia App. No.2660/03; E.M. v Romania App. No. 43994/05*.

²¹ R. McQuigg, *cited*, p. 79.

Convention recommends that only such behavior that is repeated and causes fear, can be treated as stalking. This is a widely definition. Because it is not further prescribed which harmful forms of repetitive behavior can cause fear in the victim. Most legislation depicts stalking as an intentional pattern of repeated or unwanted pursuit that a reasonable person would consider threatening or fear inducing. However, in order to distinguish stalking as a crime from conduct that is not, it is necessary to take a closer look at the relations between the stalker and the victim.

III. Stalker – victim

When describing criminal behavior, the question always arises as to who can be the perpetrator and who is most often the victim. When it comes to defining stalking, in theory, it is found that by observing who the victim might be, also the quality of the previous relationship between perpetrator and the victim, it is possible to predict whether stalking will occur, or how long such harmful behavior will last.

Statistics show that women are victims of stalking significantly more often than men. Results suggest that stalking is largely a crime against women perpetrated by men. There are studies that indicate that women's violence is significantly different from men's violence in terms of frequency, nature, intensity, intention, physical and emotional consequences, which is why it is considered that there is no consensus in the literature on the question of whether women's violence in inter-partner relationships is most often the result of self-defense, i.e. a woman's reaction to male violence, or whether women are aggressive as their partners²². The results of research regarding the issue of stalking do not cast doubt that this form of behavior is more associated with men as perpetrators.

The gender disparity in stalking cases parallels other violent cases. The specific crime of domestic violence pre-existed the stalking behavior in one-third of research cases – a pattern first noted also by other studies – which accentuates the further need for combined domestic violence and stalking research and risk management²³.

Furthermore, the Modena Group conducted study that includes 100 police records about cases in which social workers of the police, counselled with victims of stalking. The tested period was from 1999 to 2003 in Belgium. The goal of analyses of police records was to study the characteristics of reported stalking cases²⁴. The total stalking cases concerned 104 stalker and 106 victims. The study suggests that most stalking victims were women (91,5%), versus 8,5% men. Most of the victims were single when the stalking incident started, 42,4 % were unmarried, 38,7 % divorced. 17% were married and 1,9% of the marital state was unknown. The mean age of the victims was 37. The youngest was 14 and the oldest victim was 85. The stalker group considered of 73% of males, 15% of females and 12 % unknown. The mean age of this group was 38. The youngest stalker was 13 and the oldest was 75. Most stalkers were single

²² N. Lukić, *Violent Crime of Women*", in Punitive reaction in Serbia, Edicia Crimen, Belgrade, 2019, pp. 327-348.

²³ K. Mohandie, J. Reid Meloy, G.M. McGowan, *The RECON Typology of Stalking: Reliability and Validity Based Upon a Large Sample of North American Stalkers*", J. Forensic Sci, January 2006, Vol. 51, No. 1, pp. 147-155.

²⁴ Modena Group of Stalking: *Female Victims of Stalking: Recognition and Intervention Models a European Study*, Roma, 2005, p. 75.

during the stalking, specifically 75% of whom 44% were unmarried and 31% divorced. Also, the study results suggest that the end of romantic relationship was the reason for the stalking in 63% of the cases.

The meta-analysis which included 103 sample of studies stalking related phenomena, representing more than 70,000 participants, conclude that approximately one fifth of people have been stalked, 24% of women have been stalked, 10% of men have been stalked, 75% of victims are female and 25% of victims are male, half of all stalking emerges from prior romantic relationships. Further information regarding gender differences is available across studies by examining the proportion of stalking by gender. For example, across 43 studies, almost 75% of stalking victims are female, and 25% of victims are male²⁵.

Another study analyzed the association between previous intimate relationships between the perpetrator and the victim with subsequent behaviors consisting of two or more unwanted contacts between the perpetrator and the victim, that induced a reasonable fear in that victim²⁶. The study also suggests that the intimate stalkers are far the most malignant.

Previously, there was an opinion that stalking as a social phenomenon was present between persecutors and public figures. But scholars since have continued to demonstrate that most stalking victimization emerges from the decay of preexisting relationships. This meta-analysis revealed a similar picture across studies, an average of 49% of stalking emerged from relationships that were previously romantic, whereas almost 18% of stalking was perpetrated by strangers²⁷. Today, we can conclude that the most surveys are based on the earlier intimate relationship between the stalker and the victim, believing that this form of stalking is crucial as a predictive behavior for other forms of violence, especially domestic violence.

Therefore, many researchers suggests that prior sexual intimacy substantially increases the risk of personal violence by intimate stalkers²⁸. Many stalkers pursue their victims because they both yearn for affection and are very angry. Some express only a desire for a relationship, while others disparage and devalue their object. Each rejection may humiliate him and intensify his anger²⁹.

Previous intimate sexual intercourse is also important as a predictor of how long the stalker can be persistent in accordance with his behavior towards the victim. Study implies that the best predictor of stalking duration is the type of prior relationship shared by stalker and victim, with rejected ex-partners thought to be the most persistent, and strangers least³⁰. Rosenfeld (2003) did examine factors associated with stalking recidivism in his New York study. He found that ex-intimate partners and those with personality disorders were most likely to be charged with further stalking offences, indicating that these individuals might be more persistent in their stalking behavior³¹. Meloy concludes that most stalkers are males whose victims are "prior sexually intimate

²⁵ B.H. Spitzberg, *The tactical topography of stalking victimization and management*, Trauma, Violence, & Abuse, no. 3.4 (2002): pp. 261-288.

²⁶ K. Mohandie, J. Reid Meloy, G.M. McGowan, *cited*, pp. 147-155.

²⁷ B.H. Spitzberg, *cited*, pp. 261-288.

²⁸ K. Mohandie, J. Reid Meloy, G.M. McGowan, *cited*, pp. 147-155.

²⁹ *Ibid*.

³⁰ T.E. McEwan et al., *A Study of the Predictors of Persistence in Stalking Situations*, Law and Human Behavior, vol. 33, no. 2, 2009, pp. 149-158.

³¹ T.E. McEwan et al., *cited*, pp. 149-158.

females". Victims of former intimate stalkers have reported common perceptions regarding their stalkers' motives, including the desire for reconciliation, obsession with the victim, retaliation and jealousy. Research suggests that most stalkers are not physically violent; however, simple obsessional males stalking former intimates are more likely to be violent than other types of stalkers³².

The literature also discusses that the duration of time in which the victim suffers stalking is one of the criteria for recognizing the frequency of harassment.

One study suggests that there are two types of stalking, the first one, which is a self-limited intrusiveness, characterized by intense but short-lived harassment, the behavior usually abates within 1 or 2 days, though may continue for up to 2 weeks. This type of stalking is usually carried out by someone who is a stranger to the victim³³. In contrast, victims pursued beyond 2 weeks were most likely to be harassed by someone previously known to them (82.5%), including former intimates in 21.4%, casual acquaintances in 30.3%, individuals encountered in a work context in 22.2% and estranged family or friends in 8.5%³⁴.

The duration of stalking is a criteria that is important for determining the type and severity of the consequences suffered by the victim. The longer the stalking lasts, the more likely it is that serious consequences will occur for the victim.

Victims who have suffered stalking for a long time, especially for more than two weeks, are significantly more exposed to post-traumatic stress than those exposed to brief harassment³⁵. Researchers also suggests that the longer stalking continues, the greater the potential for psychological, social and physical damage, making gauging the potential for persistence an important aspect of stalking risk assessment³⁶. Research shows that stalking can last for different lengths of time, and contrary to the opinion that any stalking that lasts longer than two weeks can cause serious consequences for the victims, there is no clear destination for what is the longest average duration of stalking. A study conducted among interviewed 50 Chicago women who had been harassed either after a relationship had ended or after they turned down romantic overtures, show that they were harassed for an average of 13 months, with an upper range of 120 months³⁷.

As mentioned, the definition of stalking suggested by the Istanbul Convention, as the decisive demarcating element of behavior that is stalking from that which is not, is precisely the fear that the victim suffers. The problem with such a broad construction of stalking is that many instances of intrusiveness overlap with the mundane, albeit irritating, commonplaces of social life³⁸. The fact that the definition of stalking in legislation has different criteria according to which certain behavior is considered a criminal offence has, in the practice of the courts, the consequence of determine boundaries when a particular behavior is considered stalking. **In this regard, the**

³² *Ibid.*

³³ R. Purcell R., M. Pathe, E.P. Mullen, *Editorial: When do repeated intrusions become stalking?*, The Journal of Forensic Psychiatry and Psychology, Vol.15 No.4, 2004., pp. 571-583.

³⁴ *Ibid.*

³⁵ *Ibid.*

³⁶ T.E. McEwan et al., *cited*, pp. 149-158.

³⁷ P.L. Sheridan, E. Blaauw, M.G. Davies, *Stalking: Knowns and Unknowns*, Trauma Violence Abuse; Sage publication, 2003, 4:148, p. 148-159.

³⁸ R. Purcell R., M. Pathe, E.P. Mullen, *cited*, pp. 571-583.

question is whether stalking as a criminal offense of persecution is constituted by a single act or several repeated actions, or whether under certain circumstances even one act of stalking is sufficient to cause fear in the victim.

IV. Consequences of stalking

Gaps in the interpretation of complex social behaviors, such as stalking, are attempted by science to compensate by conducting certain studies aimed at helping those who engage in stalking, especially police officers, to recognize when a particular behavior can be considered stalking. This is important both from the point of view of workers who provide assistance to victims who report a stalking, and to all those victims who cannot recognize that they are suffering stalking.

One of the forms to describe particularly what kind behavior constitute acts of stalking as a criminal offence is to give specific examples of which acts of stalking are most often considered stalking.

In the literature, it is considered that stalking typically includes a variety of behaviors, but physical approach and phone calls are among the most common³⁹. Another study suggest that the most frequent types of stalking include unwanted telephone calls (78%), wandering nearby (63%), unwanted letters, e-mails or faxes (50%), following (38%), approach via a third party (36%), standing in front of the door (33%), silently hanging around (24%), leaving messages at doors (19%), pursuing by car (19%), property damage (17%), invading the home damage (17%), sending unsolicited goods (18%), placing orders under the victim's name (10%), and sending offensive materials (9%). Written messages contained statements of love (50%), abusive language or denouncements (47%), threats (35%) and sexual content (24%). Physical assaults were reported by 31% of victims, including physical restraint (24%), beating (12%) and hitting with objects (9%). Sexual harassment was reported by 42% (33) harassment was reported by 42% and 19% had experienced sexual assaults⁴⁰.

In one study conduct between 1844 respondents of which 23% met the legal criteria for stalking, in that they acknowledged experiencing two or more harassing intrusions by the same person that rendered them fearful (female=324; male= 104)⁴¹. Respondents were asked to indicate whether any person, male or female, had ever:

- (a) followed them;
- (b) kept them under surveillance;
- (c) wandered around their home, workplace or other places they frequent;
- (d) made unwanted approaches;
- (e) made unwanted telephone calls;
- (f) sent unwanted letters, faxes or emails;
- (g) sent offensive materials;
- (h) ordered things on their behalf that they did not want; or

³⁹ T.E. McEwan et al., *cited*, pp. 149-158.

⁴⁰ H. Dressing, C. Kuehner, P. Gass, *Lifetime prevalence and impact of stalking Lifetime prevalence and impact of stalking in a European population in a European population*, British Journal of Psychiatry, 2005, 187, pp. 168-172.

⁴¹ R. Purcell R., M. Pathe, E.P. Mullen, *cited*, pp. 571-583.

- (i) interfered with their property. For each item endorsed, respondents were asked to indicate the frequency with which it occurred (once, twice, 3–9 times, 10 or more times)⁴².

In this survey, in order to make for respondents clearer to understand what stalking behavior encompasses, the research started from as listed the characteristic forms of stalking that appear in practice, in accordance with the legal definition of stalking that requires the frequency and repetition of behavior that causes fear in the victim.

In all studies, the starting criterion of the behavioral model required that the stalking was repetitive, a certain number of times, usually minimum twice, and that such behavior caused a certain consequence. Therefore, each of the above forms of behavior that will most often appear in practice as stalking, it produces certain consequences, more severe or either lighter in the psychological or physical state of the victim. The severity and duration of the consequences will depend on the previous relationship between the stalker and the victim, as well as on the duration of the stalking, but also on the general psychological state of the victim.

Women stalked by a violent partner or ex-partner typically experience more psychological abuse and controlling behavior, more serious threats, more severe physical assault, and more of them experience injury as well as sexual assault during the relationship⁴³. In one study the respondents who indicated any incidence of harassment were asked to answer additional questions relating to the stalking incidence, for example, on the nature, duration, and frequency of the intrusions, and their relationship with the perpetrator. The stalking definition restricted the presence of stalking to more than one episode of harassment that had to be present over a minimum of 2 weeks, involved more than one form of intrusive behavior, and provoked at least some fear⁴⁴. More of those who experienced stalking reported problems concentrating at work, job performance problems, more illness that interfered with work, and more frequently reported they were unable to go to work because they were upset. Also, perceived intrusion or lack of reprieve (time in between episodes) may also play a role in psychological distress. For example, one victim summarized how her stalker was just “constantly there,” which could be interpreted as literally or figuratively in her mind⁴⁵.

This is important to emphasize that the importance of early recognition of stalking lies precisely in preventing the occurrence of serious consequences for the psychological health of the victim. One recent study found that only about 40% of women who reported stalking type victimization labelled the experience as stalking victimization although the definition of stalking in this study was very broad. Analysis of the National Violence Against Women Study found that of those that met the study definition of stalking (defined by repeated behavior that made the victim feel very frightened) a quarter of them (26.2%) did not label the experience as stalking⁴⁶.

The survey which analyzed 51-item self-report stalking questionnaire assessing the experience of harassing intrusions. When it comes to consequences that occur in

⁴² *Ibid.*

⁴³ T.K. Logan, R. Walker, *Partner stalking: Psychological dominance or “business as usual,”* Trauma, Violence, & Abuse 2009, 10.3, pp. 247-270.

⁴⁴ C. Kuehner, P. Gass, H. Dressing, H., *Mediating Effects of Stalking Victimization on Gender Differences in Mental Health*, Journal of Interpersonal Violence, 2012, no. 27(2), pp. 199-221.

⁴⁵ *Ibid.*

⁴⁶ T.K. Logan, R. Walker, *cited*, pp. 247-270.

victims' mental health, this survey shows that women reported higher levels of depressive, anxiety, somatic, and stress-related symptoms and a more severe global impairment of psychosocial functioning due to mental health problems. Also, it identified a higher-point prevalence of any mental disorder and a more frequent use of psychotropic medication in women. According to numerous studies, depression and post-traumatic stress disorder are the most prevalent consequences of mental health⁴⁷.

Further, study results consistently showed that women who were stalked by their partner experienced psychological abuse, physical abuse, sexual abuse, and injury at significantly higher rates compared with women who were not stalked by their partners⁴⁸. In addition to experiencing more violence, women in the stalking group also had more PTSD and anxiety symptoms, even after controlling for severe threats, severe physical violence, and sexual violence⁴⁹. Other studies point out another consequences as a sleep disturbances and depression⁵⁰.

Definitions of stalking require specific key elements, regardless of the victim–stalker relationship. These key elements typically include the experience of unwanted attention that is repeated and that invokes fear. One of the common issues of stalking is changes that occur in private life of the victim. Many victims make changes in their routines and activities of daily life. Victims respond to stalking by changing phone numbers, jobs, or residences, and many seek counselling⁵¹. The tendency of the victim, who is afraid of repeated unwanted intrusion, is to change something in the daily routine. If the stalking has the form of an unwanted contact, through e-mail or phone or social network, the victims first reaction, when she acknowledges the threat of repeating such behavior, she will usually avoid such intrusions by blocking stalkers e-mail, phone number or his profile on the social network. The change in routine does not have to be drastic, it is enough for the victim to change the direction in which she travels to work every day, or to start looking behind her in fear when she enters the building where she is living. Participants indicated any day missed from school or work or any social activity missed because of stalking violence and any specific behavior used in response to dating violence⁵². Regardless of duration of stalking, this is one of the first alarms which sign that one repeated behavior become stalking. The quality of a change in the behavior of the victim must be indicator to the state authorities to provide effective protection when the victim files a complaint. The fear that the victim feels can last indefinitely and will depend not only on the length of the stalking, the quality of the previous relationship between the stalker and the victim, but also on the personal character of the victim.

Victims of stalking also report changes in personality traits, post-traumatic stress disorder, fear, powerlessness, greater paranoia and cautiousness, distrust, depression, and other symptoms⁵³. Although stalking constitutes a form of psychological violence,

⁴⁷ *Ibid.*

⁴⁸ T.K. Logan, L. Shannon, J. Cole, *Stalking victimization in the context of intimate partner violence*, in *Violence and victims*, 22.6, 2007, pp. 669-683.

⁴⁹ *Ibid.*

⁵⁰ M. Brewster, *Trauma symptoms of former intimate stalking victims*, *Women and Criminal Justice*, 13, 2002, pp. 141-161.

⁵¹ F.A. Amar, *College Women's Experience of Stalking: Mental Health Symptoms and Changes in Routines*, *Archives of Psychiatric Nursing*, Vol. 20, No. 3, 2006, pp. 108-116.

⁵² *Ibid.*

⁵³ M. Brewster, *cited*, pp. 141-161.

it has also been identified as a form of violence that may lead to physical injury. Population-based surveillance data collected through random-digit-dialed telephone surveys revealed that 42 of the 132 women who reported being stalked (32%), also reported injuries from being physically assaulted by their stalker, such as swelling, cuts, scratches, bruises, broken teeth, and knife or gunshot wounds⁵⁴.

By reviewing the consequences of stalking that the victims most often declared, it can be concluded that each of the consequences that occur can cause significant damage to the mental or physical health of the victim. Especially when considering that all the psychological consequences can last for a long period of time. Also, regarding the length of the stalking, its frequency of repetition over a longer period, even after short-term pauses in the behavior of the persecutors, it is undoubted that the longer the disturbing behavior lasts, the more severe the consequences the victim will suffer. Faced with continuing intrusions over which they have little or no control, victims of this form of stalking often report significant disruption to their daily functioning and elevated rates of psychological distress⁵⁵.

In order to recognize in a timely manner that frequently repeated behavior that harasses the victim can grow into more permanent stalking, the Istanbul Convention requires states to prevent the undesirable effects of stalking by effective measures in the initial stages of harmful behavior. Believing that stalking is just as harmful to the mental state of the victim as any other form of psychological violence by a partner. Therefore, it is believed that as the potential of stalking is to disturb the peace of the victim, it is predictive behavior and indicates the possibility that some of the other forms of domestic violence may occur. In the initial stages of harmful behavior, the victim primarily feels fear and discomfort. According to the Istanbul Convention, this will also be the first sign to be recognized by both the victim and the official authorities.

V. Criminal code response

There are opinions that the major source of harm to the greatest number of victims of stalking is not from assault, as might be expected, but from prolonged, unwanted, and unpredictable intrusions that produce a sense of powerlessness and fear⁵⁶. As the theory points out, the problem with stalking is that they are not in themselves criminal acts, in the classical sense of *mala in se*, which are recognized as evil. On the contrary, stalking involves repetitive actions on a daily basis, which do not have to be deviant in nature. Therein lies the danger of stalking as a behavior that only under certain conditions requires a criminal reaction. Recognizing the boundaries when a repetitive behavior becomes so undesirable that it produces a feeling of discomfort and then fear in the victim is the limit of necessary criminal repression.

Therefore, the Istanbul Convention proposes the definition of stalking which includes beside repetitive conduct and fear consequently. In primary step, the fear as a concern for its on safety is the first predictor that one behavior could persist in prolonged unwanted intrusion. The presence of fear is a criterion that requires a criminal response to provide protection to the victim.

⁵⁴ *Ibid.*

⁵⁵ R. Purcell R., M. Pathe, E.P. Mullen, *cited*, pp. 571-583.

⁵⁶ T.E. McEwan et al., *cited*, pp. 149-158.

When we talk about sociably acceptable behaviors, then we can start from the fact that even a persistent suitor to a beautiful woman becomes a persecutor. Therefore, there is opinion that it is advisable to exclude specific behaviors, a minimum number of occasions or behaviors, and consequences for the victim⁵⁷. The problem with such wide and general definition is that any persistent, unwanted behavior can be considered harassment, but in that case, police can intervene before the behavior escalates to violence⁵⁸. Although there are opinions that human rights are violated in this way, especially situations of persistent courtship, there is a reasonable need to react in a timely manner due to the prevalence of the problem. On the one hand, the general definition extends the range of cases that are considered stalking to those cases that are not initially stalking but may become, while on the other hand, prescribing certain alternative forms of stalking, and requiring that such behavior be repeated in a certain number of cases and over a certain period of time, can reduce the severity and significance of the consequences that can occur as a result of stalking in a short period of time and in two repeated behaviors.

It should also be noted that Article 35 of the Istanbul Convention stipulates that Parties shall take the necessary legislative or other measures to ensure that appropriate orders for prohibition or protection are available to victims of all forms of violence falling within the scope of this Convention. Thus, the Convention does not provide for an obligation for Parties to punish stalking as a criminal offence, but it leaves members the legislative freedom to decide how to provide the most effective protection to victims of stalking, either by making stalking a misdemeanor or a felony. However, in setting the boundaries of when stalking becomes harmful behavior, the Istanbul Convention has played a significant role in clearly defining stalking as a behavior that should be criminalized and under what conditions. The aim of the Convention is to ensure that States Parties recognize stalking as harmful conduct and take all legislative measures to detect and sanction such conduct at an early stage.

Although the Convention refers to the definition of stalking, the Criminal Code of the Republic of Serbia prescribes in its article 138a the act of stalking, where, apart from persistence and attempts to achieve unwanted contact, fear is not an important element of the crime. This does not mean that victims won't suffer a fear, but only that the Criminal Code, when prescribing the criminalization of this criminal offense, does not require that the victim has suffered a consequence in the form of fear. Therefore, the Criminal Code of Republic of Serbia didn't follow Convention, when prescribing the criminalization of this criminal offense, because it didn't not require the victim to suffer fear because of a criminal behavior.

Contrary to the general definition of stalking, the Criminal Code of the Republic of Serbia, also prescribes alternative behaviors that are considered stalking. The law prescribes that the act of stalking is committed by the perpetrator who, during a certain period, persistently undertakes one of the alternatively prescribed actions⁵⁹. For example, when someone follows another person without permission or takes other actions with the aim of getting physically closer to such a person contrary to his will; 2) Contrary to the will of another person attempts to establish contact with him/her directly, through a third person or through means of communication; 3) Abuses

⁵⁷ P.L. Sheridan, E. Blaauw, M.G. Davies, *cited*, pp. 148-159.

⁵⁸ *Ibid*.

⁵⁹ *The Criminal Code of the Republic of Serbia: "Official Gazette of RS" no. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014, 35/2019, 27/2021, 62/2021.*

personal data of another person or of a person close to him/her for the purpose of ordering goods or services; 4) Threatens to assault the life, body or freedom of another person or a person close to him/her; or 5) Takes other similar actions in the manner that may perceptibly jeopardize the personal life of the person vis-à-vis whom such actions are taken, shall be punished with a fine or imprisonment of up to three years. According to the case law of the Supreme Court of the Republic of Serbia⁶⁰, for the existence of the criminal offense of stalking, it is sufficient that the perpetrator has achieved one of the alternatively prescribed legal actions by his behavior. Through examples of how the perpetrator most often stalks the victim, the research conducted so far has shown that the perpetrator most often tries to get in touch with the victim, through means of communication, monitoring, and it has been noticed that intimidation and various forms of threat are also present.

Thus, the Code requires that stalking is not an isolated action, but it is necessary that one action be repeated. How long a period it takes and how many times it is necessary to repeat the action, is left to the jurisprudence to answer the question in each individual case.

In the practice of courts in Serbia, it is considered that stalking as a criminal offence exists even when the stalker, against the will of another person, persistently tries to establish contact within a period of 24 hours. A criminal offense will also exist when communication between two persons on a voluntary basis lasted for a certain period of time, but at some point the will to communicate in one person ceased and this was clearly made known to the other person⁶¹. From that moment on, when one person makes it certain that he wishes to cease all further communication and communicates it to the other person, any further attempt to establish contact will constitute stalking, certainly only when it begins to cause fear in the victim. As studies have confirmed, stalking most often occurs between former intimate partners, and therefore an important moment has been recognized in practice, that regardless of the length of the previous intercourse, it is necessary that the victim made it clear to the perpetrator that she no longer wants contact with him. The absence of a clear signal from the victim to the perpetrator will be one of the aspects of the defendant's defense in court proceedings aimed at proving the absence of intention to stalk through the lack of awareness that the victim no longer wanted contact and that she did not inform the perpetrator about it.

In the similar manner, the Criminal Code of the Republic of Austria provides in its Section 107a four different forms of persistent pursuit, 1. seeking the victim's proximity; 2. getting in touch with the victim by way of telecommunications, by using other means of communication or via third person; 3. ordering goods or services for the victim by using his or her personal data; 4. prompting others to contact the victim by using his or her personal data. If these acts happen unlawfully and are in addition likely to infringe upon private life of the victim, imprisonment up to one year may be imposed on the perpetrator. Persistent behavior is necessary, but the law does not state a minimum of acts⁶². Important is the general intent (*dolus eventualis*) of the

⁶⁰ Judgment of the Supreme Court of the Republic of Serbia, No. Kzz 1240/22 from 23.11.2022.

⁶¹ V. Turanjanin, *Criminal Policy in the Criminal Offense of Persecution*, in *Criminal Policy and Adequacy of Reaction to Crime*, 2024, pp. 188-205.

⁶² *Protecting Women from The New Crime of Stalking: a Comparison of Legislative Approaches within the European Union Final Report*, Modena group on stalking, University of Modena and Reggio Emilia, 2007, pp. 2-149.

perpetrator to continue his behavior. If that intent is proven, even one single act can be punishable. Therefore, the impact persistent pursuit has on the victim is not a criterion for making the behavior a criminal act; the concrete reaction of the victims is not relevant. If an objective threshold is passed in a manner that the way of living of an average victim is unacceptably affected, Section 107a Penal Code can be enforced⁶³. Thus, according to Austrian law, even though the description of the crime does not contain fear as a consequence of the perpetrator's behavior, when from an objective point of view the behavior of the perpetrator affects a change in the victim's routine, there will be a criminal offense of stalking.

As we discussed above, due to the difference in the definition of stalking, the Istanbul Convention stipulated the obligation and duty of member states to respond to stalking in the earliest way, believing that this is the only way to prevent other serious forms of violence, especially psychological violence as one of the forms of domestic violence.

It should not be ignored that stalking is one of many forms of psychological violence and as such is difficult to recognize, which makes it difficult to provide timely and effective protection to the victim. In its form, stalking is an example of coercive behavior which consists of the act or pattern of acts of assault, threats, humiliation, intimidation or other abuse that is used to hurt, punish or intimidate its victim⁶⁴.

In practice the ECtHR has taken the view that a timely and effective response is needed in the light of the protection of the right to private life in accordance with Article 8 of the Convention.

In its rulings, which are particularly related to victims of stalking, the European Court of Justice pointed out that the state authorities, after the victim's reported harassment, did not take all available measures and provided effective protection, which resulted in more serious consequences⁶⁵. The ECtHR recognizes in its decisions that stalking is conduct related to domestic violence, especially psychological violence, and falls under the right to private life.

In theory, it is emphasized that "stalking is significantly traumatizing and is traumatizing in ways that display a broad array of potential symptoms. It is easy for practitioners to view stalking as a relatively mild trauma because there is often the same sense of urgency from law enforcement and counsellor's [as] victims of domestic violence or assault. In other words, stalking victimization is harmful to victims, but may be more difficult for mental health providers and justice system personnel to respond to when compared with other kinds of interpersonal victimizations⁶⁶. The view that stalking is at least as traumatizing as other forms of interpersonal violence, is disagreeing, especially if we have in mind the importance of recognizing and preventing stalking as a predictive behavior for other forms of domestic violence. Furthermore, seen through the prism of the consequences in the mental health of the victim, stalking due to its long-term effect and the changes it can cause in the victim's everyday life, can be considered as one of the most serious forms of behavior that violate the victim's right to private life, but also the peacefulness.

⁶³ *Ibid.*

⁶⁴ J. Igracki, D.M. Brasovan, *Protection of Victims of Psychological Abuse as Type of Domestic Violence in Criminal Procedure*, in: Journal of Eastern European Criminal Law, No.2, 2022, pp. 74-90.

⁶⁵ *Case of Volodina v. Russia*, App. No. 40419/19.

⁶⁶ T.K. Logan, L. Shannon, J. Cole, *Stalking victimization in the context of intimate partner violence*, in Violence and victims, 22.6, 2007, pp. 669-683.

VI. Conclusion

Stalking is a social behavior that most deeply affects the personality of the victim. The consequences that the victim suffers can be of different severity and range from fear as a primary reaction to the threat that the victim feels from the outside world to a different spectrum of disorders in the victim's mental health. The importance of the issue of early detection, timely response and prevention of stalking has been recognized by the Istanbul Convention, which therefore prescribes the obligation of state parties to take measures in their legislation in order to effectively prevent and punish stalking as one of the forms of domestic violence. It is up to states to decide whether to make stalking a misdemeanor or a criminal offense. By defining stalking through the Istanbul Convention, it has gone a step further in the legislative technique in terms of unifying the behavior that is considered stalking. Through the provisions of the Criminal Code, the Republic of Serbia has fulfilled its obligation as a member state to the Convention and regulated stalking as a criminal offense. Stalking is considered a complex behavior that is difficult to recognize, both from the point of view of the officers dealing with the issue and the victim. The complexity is reflected in the fact that stalking manifests itself in various forms and can be considered acceptable social behavior. Setting boundaries when a socially acceptable behavior becomes harmful is important for a timely and effective response to prevent and punish such behavior. The starting point for setting the boundary we have seen is in the definition of the concept of stalking, duration of stalking and consequences that occur.

A victimological approach to defining stalking would start from the thesis of how the victim feels, which would result in the fact that, depending on the psychological state of the victim before the incriminated behavior, especially if he suffers from mental illness, persecution mania, and an isolated unwanted attempt to establish contact is considered persecution. Such an approach is too broad and would include those behaviors that did not have a motive on the part of the perpetrator to stalk the victim.

The second approach, which requires stalking to be a multi-act action that lasts for a certain period, aims to demarcate socially acceptable behaviors from those that enter the criminal zone. From the point of view of legislative technique, the boundary will be made by the victim's refusal to establish contact, her avoidance of the perpetrator for further contact. The consequence in the form of fear for one's own safety does not necessarily have to be determined by law, but in criminal proceedings when it occurs, it must be determined. Fear for one's own safety is what the Istanbul Convention sees as a motive to prevent more serious forms of violence against women through the prevention of stalking. For the victim, the feeling of fear will be the moment to change his behavior, to start avoiding the perpetrator, and to make it clear that he no longer wants contact with him. This is the limit of the entry of the behavior of the perpetrator of stalking into the criminal zone. Then it is important that the criminal justice reacts repressively when it comes to stalking, and preventively in order to prevent further forms of domestic violence.

References

1. Amar F.A., *College Women's Experience of Stalking: Mental Health Symptoms and Changes in Routines*, Archives of Psychiatric Nursing, Vol. 20, No. 3, 2006, pp. 108–116.

2. Brewster, M., *Trauma symptoms of former intimate stalking victims*, Women and Criminal Justice, 2002, 13, pp. 141-161.
3. Dressing H., Kuehner C., Gass P., *Lifetime prevalence and impact of stalking* Lifetime prevalence and impact of stalking in a European population in a European population, British Journal of Psychiatry, 2005, 187, pp. 168-172.
4. Igracki, J. Brasovan D.M., *Protection of Victims of Psychological Abuse as Type of Domestic Violence in Criminal Procedure*, in. Journal of Eastern European Criminal Law, No.2, 2022, pp. 74-90.
5. Kuehner, C., Gass, P., Dressing, H., *Mediating Effects of Stalking Victimization on Gender Differences in Mental Health*, Journal of Interpersonal Violence, 2012, 27(2), pp. 199-221.
6. Logan, T. K., Walker, R., *Partner stalking: Psychological dominance or "business as usual"*, Trauma, Violence, & Abuse 2009, 10.3, pp. 247-270.
7. Logan, T.K., Shannon L., Cole J., *Stalking victimization in the context of intimate partner violence*, in Violence and victims, 22.6, 2007, pp. 669-683.
8. Lukić, N., *Violent Crime of Women*, in Punitive reaction in Serbia, Edicia Crimen, Belgrade, 2019, pp. 327-348.
9. McEwan, T.E., Mullen P., Mackenzie R., *A Study of the Predictors of Persistence in Stalking Situations*, Law and Human Behavior, vol. 33, no. 2, 2009, pp. 149-58.
10. McQuigg, R., *The Istanbul Convention, Domestic Violence and Human Rights*, Routledge, London, 2017.
11. Modena Group of Stalking: *Female Victims of Stalking: Recognition and Intervention Models a European Study*, Roma, 2005, p. 75.
12. Modena Group: *Female victims of stalking and helping professions: Recognition and intervention models: A European study*, Franco Angeli, Milano, 2005.
13. Mohandie K., Reid Meloy J., McGowan G.M., *The RECON Typology of Stalking: Reliability and Validity Based Upon a Large Sample of North American Stalkers*, J. Forensic Sci, January 2006, Vol. 51, No. 1, pp. 147-155.
14. Purcell R., Pathe M., Mullen E.P., *Editorial: When do repeated intrusions become stalking?*, The Journal of Forensic Psychiatry and Psychology, Vol.15 No. 4, 2004, pp. 571-583.
15. Sami, N., *Violence Against Women: An EU-wide survey*, European Agency for Fundamental Rights.
16. Sheridan P.L., Blaauw E., Davies M.G., *Stalking: Knowns and Unknowns*, Trauma Violence Abuse; Sage publication, 2003, 4:148, pp. 148-159.
17. Spitzberg, Brian H., *The tactical topography of stalking victimization and management*, in Trauma, Violence, & Abuse 3.4, 2002, pp. 261-288.
18. Turanjanin, V., *Criminal Policy in the Criminal Offense of Persecution*, in: Criminal Policy and Adequacy of Reaction to Crime, 2024, pp. 188-205.
19. Protecting Women from The New Crime of Stalking: a Comparison of Legislative Approaches within the European Union Final Report, Modena group on stalking, University of Modena and Reggio Emilia, 2007, pp. 2-149, available at http://www.europeanrights.eu/public/commenti/stalking_testo.pdf
20. Convention on preventing and combating violence against women and domestic violence, Council of Europe signed 11. May 2011., came into force on 1 August 2014.
21. The Criminal Code of the Republic of Serbia: "Official Gazette of RS" no. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014, 35/2019, 27/2021, 62/2021

22. Judgment of the Supreme Court of the Republic of Serbia, No. Kzz 1240/22 from 23.11.2022.

23. Cases of European Court of Human Rights: *Case of Kurt v. Austria App. No. 62903/15*; *Case of Volodina v. Russia App. No. 40419/19*; *Case of Malagić v. Croatia, App. No. 29417/17*, *Case of Giuliano Germano v Italy App.No. 10794/12*, *Case of Kontrova v Slovakia App. No.75/04*; *Case of Bevaqua and S v Bulgaria App. No 71127/01*; *Case of Branko Tomasic and Others v Croatia App. No 46598/06*; *Case of Opuz v Turkey 33401/02*; *Case of Hajdukova v Slovakia App. No.2660/03*; *Case of E.M, v Romania App. No. 43994/05*.