

# Thematic perspectives on the implementation of the Istanbul Convention



**GREVIO**  
Group of Experts on  
Action against Violence  
against Women and  
Domestic Violence

**Compilation of focus sections no.1 to 5**  
as presented in GREVIO activity reports  
(from June 2015 to December 2023)

Council of Europe Convention  
on preventing and combating  
violence against women  
and domestic violence  
(Istanbul Convention)

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## Foreword by Maria-Andriani Kostopoulou, President of GREVIO

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I am honoured to introduce, as the President of GREVIO, the first five focus sections included in GREVIO's general activity reports covering a decade of implementation of the Istanbul Convention. GREVIO's first report on general activities was presented after four years of activities (2015-2019) and since then GREVIO publishes such reports on an annual basis.

Each and every GREVIO activity report offers an important perspective of the work of the monitoring mechanism and the state of play in the protection of women against violence. Together, however, these reports are much more than a record or collection of activities. They showcase ten years of action, progress and achievements at national level as well as of setbacks and backsliding in some cases. They also highlight a decade of strenuous action by and unstoppable commitment from women's rights NGOs and activists, who have been sharing their satisfaction, disappointment and concerns with GREVIO, often placing their expectations and hopes in its work. What the general activity reports also reflect is the collective dedication, efforts and perseverance of all GREVIO members, past and current, who have served and are pursuing steadfastly and forcefully a common vision: advancing equality and ending violence against women. GREVIO has shed light on the unique

transformative power of the Istanbul Convention and its remarkable potential. I am deeply grateful for everything my colleagues have done and continue to do. Invaluable and indispensable co-travelers in this unique journey is the Secretariat to the Istanbul Convention, all these brilliant persons who are supporting the work of GREVIO in an unmatched way.

It is in this particular context that the focus sections of the activity reports have been selected and developed. The very first focus section offers reflections on the convention's implementation since its entry into force on 1 August 2014, by reflecting on the progress made and the challenges identified in this regard. Inevitably, this section is set in the wider context of a backlash against women's rights which coincided with the first years of life of the Istanbul Convention. As soon as the convention spread its wings and began its journey into the world, it came across a heavy mist of false narratives and misinformation about its aims and purpose which at times amounted to a downright distortion of its founding principles.

As Feride Acar, the first GREVIO President, mentioned in her foreword to the first activity report, this deliberate spreading of false narratives, which in reality targets women's equality with men, aims to hold the convention hostage to irrational fears and domestic political agendas<sup>1</sup>. Indeed, such narratives are based on flagrant disrespect for the distinction between truth and fiction, nurturing division and polarisation in society. Truth be told, the Istanbul Convention has never been short of movements or persons who spread misconceptions and misinformation about what it stands for. At the same time, it has never lacked strong and determined allies, those who always stand ready to deconstruct false narratives and stand up forcefully for the principles and values of the Convention. These principles unite us all because they are the only ones compatible with democracy: equality, inclusiveness, protection of human rights, justice and the rule of law.

The focus section of the second activity report zooms in on the importance of specialist support services as a lifeline for victims of violence against women, before, during and after the pandemic, covering examples of good practice as well as setbacks and challenges. Through their victim-centered approach, these services play a key role in the convention in securing the protection of victims from further violence, supporting and assisting them to recover from their trauma, to overcome the multiple consequences of such violence and rebuild their lives. Their accessibility and proper functioning require "significant investment and a sense of urgency", as highlighted by Marceline Naudi, GREVIO President from 2019 to 2021 in her Foreword, and I think this can never be emphasised enough.<sup>2</sup>

Picking up from the trends and challenges in the implementation of the Istanbul Convention showcased in its work, GREVIO selected as a focus area for its third activity report the issue of child custody, visitation and domestic violence. The Istanbul Convention is the first legally binding instrument to recognise the severe impact that exposure to violence has on children. This third focus section draws the linkages between domestic violence and risks related to custody and visitation

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1. Feride Acar, Foreword in First general report on GREVIO's activities, June 2015 to May 2019, page 9.

2. Marceline Naudi, Foreword in Second general report on GREVIO's activities, June 2019 to December 2020, page 6.

arrangements, explains the extent to which representations of women as hostile, uncooperative and alienating, often driven by pseudo-scientific concepts, may be used to minimise evidence of domestic violence in civil proceedings and underlines measures which are necessary to ensure the safety of women victims and their children. The section also elaborates twelve cross-cutting actions, as identified by GREVIO, which are necessary to achieve continued progress for victims of domestic violence in relation to custody and visitation. Although there are important signs of improvement at national level and the impact of domestic violence on children is progressively recognised in more and more parties- much more remains to be done, as revealed also by some recent thematic evaluation reports of GREVIO.

The focus section of the fourth activity report delves into the approaches taken in Parties to the Istanbul Convention on the criminalisation and prosecution of sexual violence, including rape. Promisingly, and often as a result of the ratification and implementation of the Istanbul Convention, parties are moving away from a legal definition of sexual violence requiring the use of force or coercion, towards a definition that criminalises all non-consensual sexual acts, in accordance with Article 36 of the Istanbul Convention, as affirmed by Iris Luarasi, President of GREVIO from 2021 to 2023 in her Foreword.<sup>3</sup> The fourth focus section analyses the different approaches taken in the criminalisation of sexual violence and rape and identifies their distinctive characteristics. Building a criminal justice system which is mindful of real-life experiences is extremely important. In this relation, the legislator, the prosecution and judicial authorities should recognise the wide range of behavioral responses by victims of sexual violence and rape, including reactions such as freezing. The section also lays out promising practices identified through GREVIO's monitoring work, concerning the investigation and prosecution of sexual violence and highlights the essential role of rape crisis and sexual violence referral centers in supporting women victims.

The importance of risk assessment and risk management in preventing and combating violence against women is in focus of the fifth activity report of GREVIO, which I had the honour to introduce. In view of the disproportionate manner in which women and girls are affected by gender-based violence, including threats to life and limb and gender-related killings, risk assessment and management procedures form a cornerstone of the comprehensive set of measures required by the Istanbul Convention. These measures play a pivotal role in preventing violence against women and their children and in keeping them safe. The section explains the different approaches taken by Parties to the convention and identifies challenges in their implementation. Such procedures should always be comprehensive, reliable and ongoing; otherwise, victims may be lulled into a false sense of security, exposing them to greater risk. The evaluation of risk-assessment tools and the need to put in place a system to analyse all cases of gender-based killings of or attempted killings of women, such as domestic homicide review mechanisms, are also addressed in this fifth focus section.

Overall, the importance of the focus sections of all five GREVIO activity reports is evident. These sections crystallise the country-specific findings made by GREVIO

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3. Iris Luarasi, Foreword in fourth general report on GREVIO's activities, January to December 2022, page 6.

and illustrate even more clearly and in a practical and realistic way what the Istanbul Convention is about and what GREVIO expects from Parties. Diving into and exploring the above-mentioned themes may help national authorities and other stakeholders to gain a better understanding of how to implement the provisions of the convention. Beyond this, the sections offer valuable guidance on very topical issues, analyse complicated notions and complex issues and put forward practices at national level that may serve as a useful source of inspiration for others. None of these themes have lost their relevance. What transpires as a *“leitmotif”* is the need to step up efforts to truly acknowledge the structural link between gender inequality and violence against women as well as to take more action on the political level. Indeed, continuous political will is absolutely necessary to achieve satisfactory levels of implementation of the convention.

The ten years after the entry into force of the Istanbul Convention reveal a number of achievements and shortcomings. The thematic perspectives included in the publication at hand showcase important progress which should not go unnoticed. What stands out indeed is that the convention brings real change. GREVIO has already published 36 baseline evaluation reports and eight first thematic evaluation reports, offering tailored-made guidance to Parties on how to fully implement the provisions of the convention.

In an international context where basic women’s rights are put under strain – if not flagrantly denied – and in a general atmosphere where lack of information or even deliberate disinformation is tolerated or even supported by some, my colleagues in GREVIO and myself will continue to shed light on the provisions of the convention through our work. With more perseverance than ever, we will guide Parties towards greater implementation of the Istanbul Convention – a path which will lead to a better and just society for all.

I wish to express my sentiments of gratitude to all those who contributed to this publication and hope that GREVIO’s experience and output over the past decade as presented in the focus sections will prove valuable.



## Introduction

This compilation presents the five thematic focus sections as extracted from each of the reports on general activities published to date by the Council of Europe Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO). Each focus section addresses a different theme, offering essential reflections on the implementation of the Council of Europe Convention on preventing and combating violence against women and domestic violence, also known as the Istanbul Convention, as evidenced by GREVIO's monitoring activities.

GREVIO's first report on general activities was presented four years into its activities as a monitoring body, which is why the very first focus section offers reflections on the progress made in the convention's implementation since its entry into force on 1 August 2014. Since then, GREVIO has published its reports on general activities on an annual basis, highlighting themes as varied as the role of women's specialist support services in preventing and combating violence against women before, during and after the Covid-19 pandemic, the complex nature of family law decisions on child custody and visitation rights after domestic violence, the approaches taken to the criminalisation and prosecution of sexual violence, including rape, and lastly, the role and importance of risk assessment and risk management in preventing and combating violence against women.

With these respective focus sections, GREVIO brings into focus specific themes of crucial importance in the implementation of the Istanbul Convention. They showcase important progress made in individual parties to the convention in addressing these themes and demonstrate how they link in with other crucial treaty provisions. At the same time, they demonstrate clearly where implementation efforts are lacking. Together, they show the interconnections between the different provisions of the

Istanbul Convention and offer guidance beyond the country-specific evaluation reports by GREVIO. A collective reading of all five focus sections renders a practical understanding of the need for comprehensive and holistic policymaking on all forms of violence against women, one of the Istanbul Convention's premises.

Prepared for publication ten years after the Istanbul Convention entered into force, this compilation contributes to a comparative understanding of the level of implementation of critical provisions of the Istanbul Convention as revealed by GREVIO's baseline evaluation reports on 36 parties so far. While GREVIO will continue its baseline evaluations where they are outstanding, it has already moved into its first thematic evaluation round, focusing on the theme of 'Building trust by providing support, protection and justice'. Future focus sections will thus offer a digest of findings and reflections from both evaluation procedures.



## First trends and challenges emerging from the country monitoring

**Focus section No. 1 extracted from GREVIO's first report on its general activities covering the period from June 2015 to May 2019**

1. In the period under review, GREVIO has published first baseline evaluation reports on Albania, Austria, Denmark, Monaco, Montenegro, Portugal, Sweden and Türkiye. On-site evaluations of Finland, France, Italy, the Netherlands and Serbia have also been carried out. As indicated earlier, the evaluation reports assess parties' implementation of the convention, looking at the normative framework, as well as at states' policies and practices. The growing corpus of these evaluation reports indicates that the convention has already had a tangible and positive impact. It has, for one thing, propelled gender-based violence to the forefront of public debate and increased victims' and society's awareness of the urgent need to combat it. It has also introduced higher legislative and policy standards at the national level in a number of countries. It is also clear through the on-site evaluation visits that the convention is extremely well regarded by women's organisations, victims' associations and state authorities alike. It is looked on as a beacon that sheds much needed light on the legislative and practical measures required to prevent violence against women, protect the victims and prosecute the perpetrators.

2. On the other hand, from the body of evaluation reports it is also apparent that insufficient resource allocation and the lack of a co-ordinated and systematic approach, as well as the continued deliberate circulation of ingrained misconceptions about the convention, still stand in the way of its full integration and effective implementation in parties.

### **Shortcomings and challenges in the implementation of the provisions of the convention**

3. In countries such as Albania,<sup>4</sup> Denmark<sup>5</sup> and Finland,<sup>6</sup> GREVIO has criticised the gender-neutral approach of legal provisions and policy documents that address domestic violence. While under its Article 3, the convention provides a gender-neutral definition of domestic violence that encompasses both victims and perpetrators of both sexes, it also spells out with great clarity that domestic violence affects women disproportionately and is therefore a form of violence that is distinctly gendered. The gender-neutral approach taken by parties fails to address the specific experiences of women that differ significantly from those of men thus hindering their effective protection. Such an approach deflects the focus away from persisting challenges to the safety of women and children who predominantly suffer domestic violence at the hands of male perpetrators.

4. Moreover, the gender-neutral approach fails to recognise domestic violence as a social mechanism that helps keep women in a subordinate position to men, thus countering the convention's fundamental emphasis on the need for a comprehensive, holistic approach and coordinated policies to effectively combat violence against women.

5. Furthermore, where domestic violence is defined and criminalised at the national level, it unfortunately does not always capture all its manifestations. In Portugal<sup>7</sup> and Austria,<sup>8</sup> for example, the definitions of domestic violence did not encompass economic violence, as required by Article 3b of the convention.

6. An additional common feature that has emerged is the insufficient allocation of financial and human resources for the implementation of integrated policies, measures and programmes to prevent and combat all forms of violence covered by the convention. This is particularly true for states' financial support to specialist support services as well as NGOs active in this area at national, regional and local level, as provided for under Article 8 of the convention. Where this is the case, it indicates states' limited degree of commitment to the implementation of a comprehensive and co-ordinated approach to preventing and combating violence against women. It must therefore be addressed as a matter of priority.

7. Notwithstanding the welcome initiatives taken in parties (see below) in developing integrated policies addressing violence against women through national action

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4. See GREVIO's baseline evaluation report on Albania, paragraph 8.

5. See GREVIO's baseline evaluation report on Denmark, paragraph 6.

6. See GREVIO's baseline evaluation report on Finland, paragraphs 4-5.

7. See GREVIO's baseline evaluation report on Portugal, paragraph 8.

8. See GREVIO's baseline evaluation report on Austria, paragraph 8.

plans, GREVIO has noted that in many cases the national action plans consisted in project-based initiatives. These initiatives were limited in duration and therefore not conducive to building a sustainable, comprehensive and holistic approach to the problem and fell short of ensuring integrated structural policies to address violence against women. More importantly, the national action plans do not always address all forms of violence against women or they prioritise certain forms of violence over others. As such, these rarely offer a comprehensive set of measures on more than one form of violence. This results in the compartmentalisation of approaches and impedes the holistic implementation of the convention.

8. Under Article 7, the convention calls for comprehensive and co-ordinated state-wide policies addressing measures to prevent and combat all forms of violence covered by the convention and requires effective multi-agency co-operation in the implementation of such policies (including government agencies, national, local and regional parliaments, national human rights institutions and civil society). Furthermore, Article 10 provides that such policies should be co-ordinated, implemented, monitored and evaluated by one or more official co-ordinating bodies. Yet, many national co-ordinating bodies have a limited mandate and inadequate powers vested in them. Others struggle to fulfil their goals for lack of sufficient and/or dedicated financial and human resources. Thus, GREVIO has found that mechanisms to ensure the effective co-ordination of integrated policies, measures and programmes among the relevant stakeholders tend not to be sufficiently robust. In its reports GREVIO has interpreted these provisions of the convention and clarified that the role of co-ordinating body should be assigned to one or more fully “institutionalised entities” with clear mandates, powers and competences and equipped with the necessary human and financial resources. It has also explained that the monitoring and evaluation of policies is best vested in one or more separate bodies in order to ensure objectivity in such evaluation.

9. Instead, GREVIO has found that the mechanisms put in place in the parties reviewed do not satisfy these standards. In those countries in which the co-ordinating bodies take the form of an interministerial ad hoc committee (i.e. Austria<sup>9</sup> and Denmark<sup>10</sup>) these structures are not sufficiently institutionalised; their mandates lack clarity and are not resourced with a dedicated budget and staff. In Albania,<sup>11</sup> on the other hand, while the co-ordinating body is an institution, its purely advisory role and insufficient decision-making powers limit its ability to exercise effectively its functions as a co-ordinating body and its capacity to obtain commitment from the political decision-making bodies. GREVIO has also found that relevant NGOs are not systematically involved in the design and co-ordination of policies, contrary to the requirements of Article 7, paragraph 3, of the convention.

10. GREVIO reports have also highlighted public authorities’ inadequate collection of data. Under Article 11 of the convention, parties are requested to collect disaggregated statistical data at regular intervals on cases relating to all forms of

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9. See GREVIO’s baseline evaluation report on Austria, paragraphs 34-39.

10. See GREVIO’s baseline evaluation report on Denmark, paragraphs 34-39.

11. See GREVIO’s baseline evaluation report on Albania, paragraphs 33-36.

violence covered by the scope of the convention, for a number of reasons, including to ensure the design and implementation of evidence-based policy making. The judiciary, police, social welfare and health-care services therefore need to set up data systems that go beyond the internal recording needs of their respective agencies/ services and as a minimum collect data on victims and perpetrators disaggregated by sex, age, type of violence, the relationship of the victim to the perpetrator and geographical location. Recorded data should also contain information on conviction rates of perpetrators of all forms of violence against women. Furthermore, institutions responsible for processing and deciding on asylum claims should also collect data on the granting of refugee status on the basis of gender-related persecution. Moreover, GREVIO reports have highlighted the relevance of collecting data for the purposes of monitoring the implementation of the provisions of the convention: as an example, judicial data on custody and visitation rights of child witnesses are necessary to assess how the requirements of Article 31 are taken into account when determining custody and visitation rights.

11. Parties are increasingly establishing systems to disaggregate data by type of violence, sex, age and relationship of the perpetrator to the victim. However, only very few collect data disaggregated on the basis of all of the categories mentioned in the preceding paragraph, allowing only a partial picture to emerge. Moreover, data collection systems often vary from one public body to another and are not harmonised, preventing any case flow to surface – particularly in the criminal justice sector. Furthermore, no state party has set up a data collection system that allows recording the granting of refugee status on the basis of gender-related persecution.

12. Data collected by parties show worrying rates of violence resulting in the death of a woman. Where the authorities had prior knowledge of the woman's exposure to violence, such fatal outcomes raise the question of whether the victims might have been saved if proper, immediate and efficient measures of protection had been applied to ensure women's safety. In its reports,<sup>12</sup> GREVIO has recommended conducting systematic post-homicide reviews with the aim of identifying possible systemic gaps in the institutional response to violence.

13. While progress has been achieved in many parties (see below), nevertheless, the number of specialist support services for victims of violence against women is still insufficient and its funding extremely volatile. In countries such as Albania,<sup>13</sup> Denmark,<sup>14</sup> Austria<sup>15</sup> and Türkiye,<sup>16</sup> the geographical reach of specialist support services is also problematic, as support services are missing in rural areas, leading in practice to the exclusion of segments of the population. Whereas counselling services and shelters for victims of domestic violence are better serviced, specialist support services that address different forms of sexual violence are often insufficient. Several

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12. See GREVIO's baseline evaluation report on Portugal, paragraph 205.

13. See GREVIO's baseline evaluation report on Albania, paragraph 103.

14. See GREVIO's baseline evaluation report on Denmark, paragraph 114.

15. See GREVIO's baseline evaluation report on Austria, paragraph 105.

16. See GREVIO's baseline evaluation report on Türkiye, paragraph 144.

countries, including Albania,<sup>17</sup> Montenegro,<sup>18</sup> Monaco<sup>19</sup> and Türkiye,<sup>20</sup> for instance, have not established a rape crisis centre or referral centre for victims of sexual violence, as required by Article 25 of the convention. GREVIO has also observed that telephone helplines set up in Albania,<sup>21</sup> Monaco,<sup>22</sup> Portugal,<sup>23</sup> and Türkiye<sup>24</sup> either did not meet the standards provided under the convention – notably the provision of advice regarding all forms of violence covered by the convention, round the clock, free of charge and with due confidentiality – or were not fully operational. The helpline in Portugal,<sup>25</sup> for instance, did not expressly target women victims of different forms of violence, other than domestic violence, whereas the helpline established in Monaco<sup>26</sup> did not operate round the clock.

14. Lacunae with regards to the protection afforded to women victims of domestic violence and their children, including in the context of custody and visitation decisions, as well as regarding the ban of obligatory mediation in civil procedures have also consistently been noticed. One such shortcoming concerns the provision of protection and support to child witnesses when violence occurs in the family unit. Under Article 26 of the convention, whenever children have witnessed domestic violence, rape, sexual harassment or other forms of violence covered by the convention, the services provided to direct victims must also be equipped to address the needs and rights of any children who were present (i.e. age-appropriate psychological counselling). By way of example, the GREVIO report on Portugal<sup>27</sup> found that policies and measures addressing child witnesses tended to focus more on their procedural rights with respect to their participation in criminal proceedings (hearing them in separate rooms) than on providing them with support and protection as of their own right as indirect victims of violence.

15. Likewise, insufficient measures to ensure the safety of mothers who are victims of domestic violence and their children in the decision on and exercise of child custody and visitation rights have been observed in all parties reviewed to date. Parties tend to give priority to the presumed best interest of the child, which is deemed to be to maintain contact with both parents at all costs, regardless of the violence he or she had witnessed. The joint exercise of parental authority is generally maintained even in the event of a final criminal conviction for violence committed against the other parent and the withdrawal of parental authority of the violent parent remains the exception, despite the persistence of the danger to the mother and child.<sup>28</sup>

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17. See GREVIO's baseline evaluation report on Albania, paragraph 109.

18. See GREVIO's baseline evaluation report on Montenegro, paragraph 135.

19. See GREVIO's baseline evaluation report on Monaco, paragraph 86.

20. See GREVIO's baseline evaluation report on Türkiye, paragraph 186.

21. See GREVIO's baseline evaluation report on Albania, paragraph 107.

22. See GREVIO's baseline evaluation report on Monaco, paragraph 82.

23. See GREVIO's baseline evaluation report on Portugal, paragraph 140.

24. See GREVIO's baseline evaluation report on Türkiye, paragraph 181.

25. See GREVIO's baseline evaluation report on Portugal, paragraphs 140-141.

26. See GREVIO's baseline evaluation report on Monaco, paragraphs 82-85.

27. See GREVIO's baseline evaluation report on Portugal, paragraphs 147-148.

28. The need to consider intimate partner violence as an essential factor in the determination of child custody is at the heart of the joint statement issued on 31 May 2019 by the Platform of the United Nations and regional independent mechanisms on violence against women and women's rights.

16. Moreover, practices requiring mandatory mediation in civil procedures and divorce proceedings that address child custody matters have also been reported. In Türkiye,<sup>29</sup> for instance, existing bans on reconciliation in family disputes and divorce proceedings, in cases where there is a history of domestic violence, are not being implemented. In Denmark,<sup>30</sup> quasi-mandatory mediation between two parents in disagreement over custody and visitation arrangements is required through the state administration with a view to reaching mutually acceptable outcomes. While this procedure is not formally recognised as a mediation process, individual meetings on custody arrangements are rarely granted in practice – even in cases where the parent has a legitimate reason to avoid encounters with an abusive ex-partner. Parents who do not attend may face serious repercussions, such as being considered unfit for parenting.

17. A further trend that has been noted is the lack of adequate implementation of legal frameworks providing for protection measures and/or protection orders, as well as inadequate enforcement of such orders by the relevant authorities. Articles 52 and 53 of the convention require that the competent authorities have the power to order fast legal remedies to protect persons at risk. These encompass both emergency barring orders against the perpetrators, thereby removing the perpetrator from the home, as well as restraining or protection orders for victims of all forms of violence covered by the convention. While the possibility of being granted protection orders in the form of a contact ban or eviction order is increasingly made available in parties, the legal regimes vary significantly, as does their level of implementation and their appropriate enforcement. As concerns the varying legal regimes, exceptions to protection orders are provided by law in Denmark,<sup>31</sup> Sweden<sup>32</sup> and Finland<sup>33</sup> to allow for communication on children and enable visitation rights. These exceptions are criticised by GREVIO as the aim of protection orders is to ensure the safety of the victim. Regarding the implementation of protection orders in practice, their application is weak in many countries as law-enforcement officials and judicial actors often lack the necessary awareness about the positive effects of such orders. As concerns the enforcement of such protection/emergency barring orders, very few countries monitor their enforcement through electronic means, leaving most law-enforcement agencies to resort to more traditional practices such as an increase in police patrols around the areas where the order has been issued.

18. GREVIO has also identified several gaps in the non-discriminatory implementation of the provisions of the convention (as foreseen under Article 4 (3)) and has noticed the absence of effective measures addressing the needs of women from vulnerable groups. Indeed, the evaluation reports highlight that women victims of violence who belong to vulnerable groups (women with disabilities, women from national minorities including the Roma community, LBT (Lesbian, Bisexual, Transgender) women, women from rural areas, migrant, asylum-seeking and refugee women, women without a residence permit, and women with addiction issues) frequently face specific barriers with regards to the application of the convention and

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29. See GREVIO's baseline evaluation report on Türkiye, paragraphs 271-272.

30. See GREVIO's baseline evaluation report on Austria, paragraphs 183-186.

31. See GREVIO's baseline evaluation report on Denmark, paragraph 210.

32. See GREVIO's baseline evaluation report on Sweden, paragraph 228.

33. See GREVIO's baseline evaluation report on Finland, paragraph 224.

experience intersectional discrimination in their access to protection and assistance. In Sweden,<sup>34</sup> even though extensive policy attention is given to combating violence against women, such policy does not always extend systematically to groups of women who belong to national and other minorities, such as the Sami, whose circumstances, life options and cultural context differ significantly from those of the majority women. Moreover, this is coupled with a lack of specific research into the prevalence rates of domestic or sexual violence experienced by these groups and a general lack of awareness among the authorities of the cultural specificities, constraints and barriers that these women face in seeking support. Similar concerns can also be found in the reports on Türkiye,<sup>35</sup> Austria,<sup>36</sup> Montenegro<sup>37</sup> and Albania<sup>38</sup> with respect to women belonging to other vulnerable groups. As regards more specifically discrimination in access to support services, a recurrent problem is the limited support services for women without a residence permit. In Denmark<sup>39</sup> and in Sweden,<sup>40</sup> for example, the support available to these women is extremely limited as they cannot access any of the general social services or other support services such as shelters. Access to shelters is also problematic for women with disabilities and mothers of children with disabilities, as several GREVIO baseline evaluation reports indicate.

19. As concerns asylum, GREVIO has consistently highlighted difficulties experienced by parties in ensuring gender-sensitive asylum determination procedures and gender-sensitive reception facilities. Under Article 60 of the convention, the asylum procedures should allow women victims of gender-based persecution to put forward their claims in an informed and dignified manner with the help of same-sex case managers and interpreters that are trained to recognise women's specific reasons to flee their country of origin. GREVIO has noted that women who lodge asylum requests are often ill-informed about the procedure, their rights, the support available to them and about how to bring a successful case. GREVIO reports have found that cultural and gender bias are still a reality and training of asylum case managers on the different forms of violence against women and gender-based persecution is necessary. While legal aid is provided in countries like Austria,<sup>41</sup> Finland<sup>42</sup> and Sweden,<sup>43</sup> asylum-seeking women are often unaware of the possibility to request a lawyer. Furthermore, in Finland the quality of legal aid available to women seeking asylum was particularly problematic, as was the ability of lawyers to take on cases at short notice as a result of accelerated asylum procedures.

20. Although efforts have been made by parties to receive the ever-increasing number of asylum seekers, nonetheless, GREVIO has observed difficulties in ensuring gender-sensitive reception facilities. Women-only accommodation and hygiene facilities are in effect not always provided, creating safety concerns for single women,

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34. See GREVIO's baseline evaluation report on Sweden, paragraphs 13-16.

35. See GREVIO's baseline evaluation report on Türkiye, paragraphs 15-22.

36. See GREVIO's baseline evaluation report on Austria, paragraph 106.

37. See GREVIO's baseline evaluation report on Montenegro, paragraphs 18-20.

38. See GREVIO's baseline evaluation report on Albania, paragraphs 16-17.

39. See GREVIO's baseline evaluation report on Denmark, paragraph 11.

40. See GREVIO's baseline evaluation report on Sweden, paragraph 16.

41. See GREVIO's baseline evaluation report on Austria, paragraph 207.

42. See GREVIO's baseline evaluation report on Finland, paragraph 251.

43. See GREVIO's baseline evaluation report on Sweden, paragraph 257.

as well as girls and women travelling with their families. This has led to many cases of sexual harassment as well as physical and sexual violence, including isolated cases of women killed, as observed in Sweden for example.

### **Improvements and valuable practices identified in the course of the baseline evaluation procedure**

21. From the completed baseline evaluation and those that are currently underway, it is possible to identify a number of valuable practices and/or steps taken by parties to improve the implementation of the convention.

22. One of the steps taken to improve the implementation of the Istanbul Convention is the criminalisation of more forms of violence against women and the introduction of new criminal offences. It is important to recall that the convention requires parties to criminalise particular intentional conduct that amounts to violence against women, and not necessarily introduce new dedicated provisions for every specific type of conduct. Where the provisions in place at the national level do not sufficiently cover the conduct provided for by the convention, then new offences should be introduced in the legal framework. Harmonisation of domestic law in this field facilitates action against crime at the national and international level.

23. Further to the ratification of the convention, the crime of stalking has been introduced in Albania,<sup>44</sup> Portugal<sup>45</sup> and Montenegro.<sup>46</sup> A new offence of female genital mutilation has also entered into force in Portugal<sup>47</sup> and Montenegro,<sup>48</sup> although the act of inciting, coercing or procuring a girl or woman to undergo the procedure is not criminalised under the Montenegrin criminal code as required by the convention. Furthermore, the offence of forced marriage has been newly introduced in Portugal,<sup>49</sup> and the offence of forced sterilisation introduced in Montenegro.<sup>50</sup>

24. GREVIO has also welcomed in a growing number of parties the amendment of provisions on sexual violence so that they are no longer founded on an approach based on coercion but reflect instead an approach based on consent. These legal changes depart from previous narrower definitions of sexual offences that required proving the offender's use of force or threats. Under Article 36 of the convention, the central element of the definition of sexual violence is the lack of consent given voluntarily by the victim; Article 36 therefore does not require proof of the use of force or threat by the perpetrator, nor proof of the victim's physical or verbal resistance. This position is in line with the European Court of Human Rights' judgment in the landmark case *M.C. v Bulgaria*, which stated that:

25. [A] rigid approach to the prosecution of sexual offences, such as requiring proof of physical resistance in all circumstances, risks leaving certain types of rape

44. See GREVIO's baseline evaluation report on Albania, paragraph 129.

45. See GREVIO's baseline evaluation report on Portugal, paragraph 170.

46. See GREVIO's baseline evaluation report on Montenegro, paragraph 170.

47. See GREVIO's baseline evaluation report on Portugal, paragraph 170.

48. See GREVIO's baseline evaluation report on Montenegro, paragraph 170.

49. See GREVIO's baseline evaluation report on Portugal, paragraphs 170-171.

50. See GREVIO's baseline evaluation report on Montenegro, paragraph 7.

unpunished and thus jeopardising the effective protection of the individual's sexual autonomy.<sup>51</sup>

26. Furthermore, Article 36, paragraph 2, requires that the prosecution of sexual offences is based on a context-sensitive assessment of the evidence in order to establish on a case-by-case basis whether or not the victim has freely consented to the sexual act. This enables the recognition and the acknowledgement of the wide range of behavioural responses to sexual violence and rape that victims exhibit.

27. A particularly significant example of good practice is provided by Sweden.<sup>52</sup> With a recent amendment to the criminal code, Sweden has moved away from an approach requiring the use of force, threats or the taking advantage of the vulnerable situation of the victim as constituent elements of the offence of rape and sexual abuse, to an "only yes means yes" approach, criminalising all non-consensual sexual acts. More specifically, Sweden has introduced two new offences, "negligent rape" and "negligent sexual abuse", which aim to ensure criminal liability in cases in which sexual acts and intercourse are carried out without any reasonable measures taken to establish the victim's consent. With these amendments, passivity cannot be per se considered a sign of voluntary participation. These amendments bring Sweden in full compliance with Article 36 of the convention and represent a good practice that should pave the way for similar reforms in other countries. Austria,<sup>53</sup> Portugal<sup>54</sup> and Montenegro<sup>55</sup> have also passed new laws to criminalise non-consensual sexual acts and depart from previous narrower definitions of sexual offences that required proving the offender's use of force or threats. However additional steps would be required to bring the legislation fully in line with the convention. More specifically, Austria<sup>56</sup> provides for the criminal offence of rape, which requires the use of force, deprivation of liberty or a threat to life or limb, as well as the separate offence of "violation of sexual integrity". This new provision covers instances of sexual intercourse or equivalent conduct "against the will of a person", "under coercive circumstances" or "following an act of intimidation". While this represents a step in the right direction, it may not allow for the prosecution of cases where the victim remains passive and has not expressed her opposing will verbally or otherwise, and therefore does not bring the provisions in line with the convention. Similarly, Portugal<sup>57</sup> amended its criminal provisions on sexual coercion and rape to cover sexual acts committed without violence or threat, and without having suppressed the victim's ability to resist. Nonetheless, GREVIO noted in its report that the wording used to qualify these sexual offences (the term "constraint") was not sufficient to break away from the longstanding practice of Portuguese courts to require proof of the victim's resistance in order to sentence the perpetrator.

28. As indicated earlier on, Article 7 of the convention calls for comprehensive and coordinated policies, encompassing a multitude of measures to be taken by

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51. European Court of Human Rights, Case of *M.C. v. Bulgaria* (no. 39272/98), 4 December 2003, paragraph 166.

52. See GREVIO's baseline evaluation report on Sweden, paragraphs 181-183.

53. See GREVIO's baseline evaluation report on Austria, paragraph 140.

54. See GREVIO's baseline evaluation report on Portugal, paragraph 173.

55. See GREVIO's baseline evaluation report on Montenegro, paragraph 179.

56. See GREVIO's baseline evaluation report on Austria, paragraph 140.

57. See GREVIO's baseline evaluation report on Portugal, paragraph 173.

different actors, which, taken as a whole, offer a holistic response to violence against women. Many parties are successfully developing national action plans (NAPs) and public policies that address more forms of violence against women. In Portugal,<sup>58</sup> for instance, three consecutive NAPs on Female Genital Mutilation (2007-2017) have been adopted and implemented, whereas Türkiye<sup>59</sup> has adopted a Draft National Strategy and Action Plan on Combating Early and Forced Marriages (2019-2023). Denmark,<sup>60</sup> on the other hand, has implemented since 2014 NAPs and strategies on domestic violence, so-called honour-related conflicts, stalking and rape, whereas Austria<sup>61</sup> has adopted an NAP on the Protection of Women from Violence (2014-2016) and an NAP on the Prevention of Violence in schools (2014-2016). Nonetheless, GREVIO in its reports has also noted the limitations to the current approaches taken with regards to the NAPs (please see section above).

29. Under Article 15 of the convention, parties are required to ensure that systematic initial and in-service training are provided to relevant professionals in contact with victims and perpetrators of all acts of violence against women. In Austria, domestic violence, including its gender-based dimension, are encompassed in the two-year basic initial training of law-enforcement officers. In Denmark, GREVIO has underlined that professionals working in specialist support services (shelters, perpetrator programmes and support services for victims of sexual violence) were particularly well trained and have reached a high level of expertise that ensures the respect of victims' and perpetrators' rights and needs. With a view to guaranteeing continuous training for professionals, various states have passed laws introducing mandatory training. In Monaco, a legal provision (Law No. 382) stipulates that regular training for professionals who deal with victims of violence shall be organised. To implement this provision, a consultation was held between representatives of the Ministry of Health and Social Affairs, the Police department, the Department of Justice, the Fire Brigade and the sole public hospital, which resulted in the creation of new teaching modules on victim support, demonstrating a multi-agency approach. Türkiye's Law No. 6284 introduces mandatory training for professionals dealing with victims. The Turkish co-ordinating body that led the effort to systematise training is responsible for providing in-service training on gender equality and violence against women to various state employees. However, some barriers remain regarding the effectiveness of training in Türkiye, such as the lack of monitoring procedures and mechanisms ensuring the continuity of this training. In Sweden, GREVIO has noted positively that starting from the academic year 2018-2019, through the amendment of the Higher Education Ordinance, men's violence against women became a compulsory subject for university students within various fields of study.

30. The convention calls for support services for victims of violence against women in the form of general and specialist support services, including shelters and telephone helplines. While general support services provide long-term help in a variety of areas and are not specifically designed for victims of violence against women, specialist support services provide support that is tailored to the specific

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58. See GREVIO's baseline evaluation report on Portugal, paragraph 26.

59. See GREVIO's baseline evaluation report on Türkiye, paragraph 44.

60. See GREVIO's baseline evaluation report on Denmark, paragraph 16.

61. See GREVIO's baseline evaluation report on Austria, paragraph 16.

and immediate needs of these victims. Notwithstanding the continuing shortage of specialist support services for victims of violence against women described in section I of this chapter, further to the ratification of the convention by parties an increase in support structures for victims of violence against women and domestic violence, or the improvement of existing ones, has been noted, in particular those run by women's rights NGOs. By way of example, Portugal<sup>62</sup> has focused on providing extra support to specific vulnerable groups, by opening a new shelter for women victims of domestic violence that belong to the LGBTI community. Montenegro,<sup>63</sup> on the other hand, has decided to address the existing shortage of shelters in the northern part of the country and fund an NGO-run and licensed domestic violence shelter in that area. GREVIO has further recorded a dramatic increase in shelters in Türkiye<sup>64</sup> for women victims of violence against women.

31. Some parties such as Albania<sup>65</sup> have increased the funds allocated to support services/shelters assisting victims of violence against women and domestic violence. Finland,<sup>66</sup> in particular, has significantly increased the funding allocated to shelters to ensure higher levels of service provision, including in remote areas of the country. Furthermore, the legislation has been amended so that the funding of shelters is no longer dependent on municipalities' budgets – it is now made available by the central government, in advance, for a period of twelve months, irrespective of service use. The new method of financing offers more funding stability by moving from per capita funding to a lump sum annual funding system.

32. As concerns rape and sexual violence, Article 25 of the Istanbul Convention requires that parties adopt a holistic and sensitive response by setting up and ensuring specialist support services, including rape crisis centres that offer long-term help, counselling and therapy, and sexual violence referral centres, which provide immediate medical care, forensic practice and crisis intervention. In line with this provision, support services for victims of sexual violence have been established or increased in a number of countries, including in Portugal<sup>67</sup> and Austria.<sup>68</sup> Moreover, the need for high-quality sexual violence referral centres is increasingly gaining recognition. Finland, for example, has set up a sexual violence referral centre in its capital and is launching a roll-out (replication) of such a centre, accompanied by satellite support centres in each province to fill the existing gap in service provision for victims of rape and sexual violence. Across Denmark, 10 centres for victims of rape and sexual violence have been established. They are located within hospitals and provide medical, forensic, residential and non-residential services to women victims above the age of 15. Offering a highly professional service, they provide crucial support to victims of sexual violence regardless of their willingness to report the act of violence to law-enforcement agencies. In Türkiye, GREVIO has commended the setting up of 31 Child Monitoring Centres (CMCs), which are hospital units specialising in assisting child

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62. See GREVIO's baseline evaluation report on Portugal, paragraph 133.

63. See GREVIO's baseline evaluation report on Montenegro, paragraph 129.

64. See GREVIO's baseline evaluation report on Türkiye, paragraph 169.

65. See GREVIO's baseline evaluation report on Albania, paragraph 24.

66. See GREVIO's baseline evaluation report on Finland, paragraphs 112-115.

67. See GREVIO's baseline evaluation report on Portugal, paragraph 142.

68. See GREVIO's baseline evaluation report on Austria, paragraph 100.

victims of sexual abuse and/or forced marriage. The Turkish authorities are considering how to replicate the model of CMCs for the purpose of creating sexual violence referral centres or rape crisis centres for adult victims that match the requirements of Article 25 of the convention. In its final comments on GREVIO's baseline evaluation report, the Austrian Government recognised the need to step up specific counselling services for victims of sexual violence and expressed its intention to continue its efforts to improve availability.<sup>69</sup>

33. Notwithstanding the concerns indicated above, the fact that some parties have set up new telephone helplines should be welcomed as a positive development per se. Montenegro<sup>70</sup> has introduced a single national helpline for women and children victims of domestic violence that is free of charge and available round the clock, albeit not addressed to all victims of violence against women. Albania,<sup>71</sup> through an agreement between the government and a feminist NGO, also set up a women's helpline in 2016. Finland<sup>72</sup> introduced its Nollalinja helpline in 2016 in response to the entry into force of the convention. It is important to also recall the anonymous, free-of-charge helpline launched by Monaco<sup>73</sup> for victims of domestic violence.

34. The inclusion of gender-based persecution as a ground for the recognition of refugee status in asylum law in a number of parties also represents a tangible outcome of the application of the convention. Indeed, one of the many groundbreaking features of the Istanbul Convention is that it departs from the gender blindness that has often characterised the application of the 1951 United Nations Convention relating to the Status of Refugees (the 1951 Convention). More specifically, Article 60 of the convention requires that parties ensure that gender-based violence is recognised as a form of persecution when establishing refugee status or international subsidiary protection. States should thus recognise that rape and other forms of gender-related violence, such as female genital mutilation, dowry-related violence, domestic violence or trafficking, are acts that have been used as forms of persecution, whether perpetrated by state or non-state actors. Paragraph 2 of Article 60 also requires that parties ensure that a gender-sensitive interpretation is given to each of the 1951 Convention grounds.

35. Official recognition of women's specific experiences as refugees is gaining ground in asylum law in parties. Sweden<sup>74</sup> and Finland,<sup>75</sup> in particular, have broadened the grounds on the basis of which refugee status can be granted to encompass persecution based on gender and sexual orientation, while Montenegrin legislation<sup>76</sup> now expressly considers "acts of persecution specifically related to sex" as persecution within the meaning of the 1951 Convention, thus enabling women asylum seekers subjected to certain forms of gender-based violence to lodge an asylum request on the basis of membership of a particular social group. This will greatly facilitate

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69. See Comments submitted by Austria on GREVIO's baseline evaluation report.

70. See GREVIO's baseline evaluation report on Montenegro, paragraph 132.

71. See GREVIO's baseline evaluation report on Albania, paragraph 107.

72. See GREVIO's baseline evaluation report on Finland, paragraph 118.

73. See GREVIO's baseline evaluation report on Monaco, paragraph 82.

74. See GREVIO's baseline evaluation report on Sweden, paragraphs 254-255.

75. See GREVIO's baseline evaluation report on Finland, paragraph 248.

76. See GREVIO's baseline evaluation report on Montenegro, paragraph 256.

the implementation of Article 60 of the convention and allow for more systematic training of asylum case managers and the collection of data on the number of cases granted on the basis of gender.

## **Challenges in promoting and securing support for the Istanbul Convention in the context of the backlash against women's rights**

36. As stated earlier in this report, the convention is widely recognised as the most far-reaching legal instrument to prevent and combat violence against women and has been awarded national and international prizes for its comprehensive approach, ground-breaking features and vision. While it has inspired and brought changes to legislation and practices in parties (see section above), in many ways, it has also fallen victim of its own success, giving rise to intense criticism, misinterpretation or, at times, downright distortion of the founding principles on which it is based. More specifically, over the last few years, very vocal opposition to the convention has emerged in some countries where some political parties, religious institutions and ultra-conservative groups have led a movement using, as ammunition, false narratives about the convention. Against a backdrop of a general regression in the area of gender equality and women's rights in the world, including back-tracking in the area of reproductive health and rights and the cutting of funds for women's rights NGOs and support structures, this movement has attempted to make the convention a scapegoat for its unfounded accusations about what it claimed was the convention's "hidden agenda". Detracting attention from the phenomenon of violence against women, its root causes and the ways to tackle it, this discourse has gained some support, which in some cases has resulted in a delay or rejection of the ratification of the convention by creating domestic political debates.<sup>77</sup>

37. Some of the objections that have been levelled at the convention include that the concept of "gender" is foreign to many legal systems and is therefore incompatible with domestic legal norms; that the convention attempts to recognise a third gender or to legalise same-sex marriage; that it challenges traditional gender roles that are beneficial for families and public life/society and thus represents a direct threat to the family institution and to society; and that it has an unjustified focus on women.

38. GREVIO has addressed all of these objections by demystifying the myths and misconceptions around the convention with very clear messages and in an equally vocal manner (see the booklet and other action taken described below). It has clarified that the convention does not require an adaptation of the national legal systems to incorporate the use of the term "gender" but uses it to explain the purpose of the measures that it asks states to adopt and implement. Moreover it has explained that the purpose of this term is not to replace the biological definition of "sex", nor the terms "women" and "men", but to emphasise how much inequalities,

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77. In two countries, Bulgaria and Slovakia, the ratification process was suspended recently. In Bulgaria, the suspension resulted from the decision of the Constitutional Court (Решение № 13, 27 юли 2018 г) finding a contradiction between the Istanbul Convention and the Constitution of Bulgaria. In Slovakia, on 29 March 2019, the National Council voted by a large majority against the ratification of the Istanbul Convention requesting the government to discontinue the ratification process.

stereotypes and – consequently – violence do not originate from biological differences, but rather from attitudes and perceptions of how women and men are and should be in society, namely stereotypical roles. Defining the term gender also helps understand the definition of “gender-based violence against women”, which means violence that is directed against a woman because she is a woman or that affects women disproportionately.

39. As regards the convention’s position on gender identity and sexual orientation, including the recognition of same-sex couples, GREVIO has clarified that the convention does not set any new standards in this respect. It simply enounces the principle of non-discrimination on an open-ended list of grounds, including gender identity and sexual orientation, in the application of its provisions. Furthermore, its provisions that ensure protection from domestic violence apply to legally married partners, and also extends to all partners, married or not, whether these are of the same or of different sex.

40. As concerns the allegation that the convention is a threat to traditional families and societies, GREVIO has clarified that the convention does not regulate family life/family structures and does not promote a certain type of family institution or setting; it simply requires governments to ensure the safety of victims who are at risk at home or are threatened by family members/spouses/partners. Moreover, its call to eliminate gender stereotypes doesn’t mean imposing life choices on women/men. Nor does it imply overturning all traditions and customs. What the convention opposes are those traditions that are discriminatory; that confine women and men to stereotyped roles limiting their developments and life opportunities; that justify patriarchy and sexist attitudes that prevent gender equality; and that are harmful to women and put them in harm’s way. Lastly, regarding the criticism that it has an unjustified focus on women, GREVIO has clarified that the convention applies mostly to women because it covers forms of violence that only women experience because they are women, or that women experience much more often than men. These forms of violence are a result of unequal power relations between men and women and a consequence of discrimination against women. However, the convention and GREVIO recognise that, albeit less often and frequently in less severe forms, men can also experience some forms of violence covered by the Istanbul Convention, such as domestic violence, rape and forced marriage. Therefore, the convention encourages its parties to apply its provisions to all victims of domestic violence, including men, children and the elderly.

41. Members of GREVIO and of the Committee of the Parties have been active in countering disinformation campaigns against the convention at public events. On 30 November 2018, an exchange was organised by the Secretary General of the Council of Europe in the form of a round table with NGOs from Eastern European countries. The event provided an opportunity for participants to identify specific challenges faced in the implementation and ratification of the convention as well as strategies to counter misconceptions. The PACE Rapporteur of the report “The Istanbul Convention on violence against women: achievements and challenges”<sup>78</sup> recalled during the round table that parliamentarians and politicians have to actively

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78. See [Doc 14908 of 8 June 2019](#).

promote the added value of the convention and counter attacks against it. In addition, GREVIO joined forces with other global and regional women's rights treaty bodies and issued a press release in March 2019, joining the Secretary General in the call for strengthened efforts to fight against pushbacks on women's rights in all regions of the world.<sup>79</sup>

42. GREVIO has also published the booklet "Questions and Answers" on the Istanbul Convention in 20 languages, presenting arguments (see above) on how to counter recurring misrepresentations of the convention and recalling its real aim – preventing and combating violence against women through multi-agency action.

43. Furthermore, GREVIO collects information, including through national and international NGOs, for each country experiencing a backlash against the convention and gender equality policies and works with governments, parliamentarians and civil society to counter such phenomena. The Committee of the Parties to the Istanbul Convention and GREVIO also regularly follow the evolution of the debates on the backlash, with a view to assessing the need for a possible intervention on their part to clarify misconceptions and provide necessary information on the subject. Moreover, GREVIO continues to strengthen partnerships with regional and international partners to keep gender equality and the ratification of the convention high on the political agenda.

44. Finally, states that have benefited from being party to the convention or that have been evaluated by GREVIO have been invited to take a more active stance in support of it by showing, with facts and real results, what the convention addresses and the change it can produce on the ground. As a result, many state representatives and parliamentarians have denounced the spread of misguided beliefs related to the convention. Along this line, when the government of Poland, upon its ratification of the convention, introduced a declaration stating that the Republic of Poland would apply the convention in accordance with the principles and the provisions of its constitution, various parties registered formal objections to that declaration. The objections were raised on the grounds that by referring to the principles and provisions of its constitution, the declaration amounted to a reservation of a general and indeterminate scope that did not clearly define the extent to which the state with the reservation had accepted the obligations of the convention. The objections were raised further on the grounds that the declaration was incompatible with the object and purpose of the convention.

45. Through collective action, the strength and importance of the convention has been reiterated. As a result, the European Union signed the convention on 13 June 2017. Furthermore, on 12 June 2018, Croatia ratified the Istanbul Convention despite demonstrations against the convention organised by national "conservative" groups. Above all, regardless of the backlash, the number of parties to the convention has increased steadily since its entry into force: three states ratified the convention in 2016, six states ratified it in 2017, five states ratified it in 2018 and one state ratified it in 2019, bringing the number of parties to a total of 34 as of May 2019.

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79. See: "Joint statement: Independent women human rights mechanisms are part of the solution to 'push back the pushbacks and keep pushing back'".



## Specialist support services as a lifeline for violence against women – before, during and after the pandemic

Focus section No. 2 extracted from GREVIO's second report on its general activities covering the period from June 2019 to December 2020

### Overview of specialised support services and their role

1. Specialist support services play a key role in the convention in securing the protection of victims from further violence, supporting and assisting them in overcoming the multiple consequences of such violence and rebuilding their lives. They aim to ensure the complex task of empowering victims through assistance catered to their specific needs, including the needs of women who are subject to multiple discrimination and/or women in rural areas. Their approach, therefore, must always be victim-centred and based on a gendered understanding of violence against women. The convention recognises that service provision is thus best ensured by women's organisations and by support services provided, for example, by local authorities with specialist and experienced staff and with in-depth knowledge of gender-based violence against women.

2. More specifically, under Article 22 of the convention, parties are under the obligation to provide short and long-term specialist services to victims of any form of violence covered by the Istanbul Convention in adequate geographical distribution. This includes shelter and safe accommodation, immediate medical support, the collection of forensic medical evidence in cases of rape and sexual assault, short and long-term psychological counselling, trauma care, legal counselling, advocacy and outreach services. It also encompasses telephone helplines to direct victims to the right type of service and specific services for children as victims or witnesses. The convention distinguishes between general support services provided under Article 20 of the convention, which are not exclusively designed for victims only but serve the public at large, and specialist support services, underlining that they are complementary. Article 18 of the convention sets out a number of general principles to be respected in the provision of both general and specialist protective and supportive services. These include, *inter alia*, the need for services to act in a concerted and co-ordinated manner with the involvement of all the agencies concerned, taking into account the relationship between victims, offenders, children and their wider social environment and based on a gendered understanding of violence against women. It also clarifies that such services should, as far as possible and with a view to avoiding secondary victimisation, aim at the empowerment of women and allow for a range of protection and support services to be located on the same premises.

3. GREVIO's first general activity report outlined some non-exhaustive examples of shortcomings in the area of specialist support services that have been identified by GREVIO in the context of its baseline evaluations.<sup>80</sup> These included insufficient and volatile funding and limited geographical reach – particularly in rural areas – leading to the exclusion of segments of the population. The limited number of specialist support services that address different forms of sexual violence and the significant shortcomings in relation to telephone helplines have also been highlighted. Building on the trends and challenges identified in GREVIO's first activity report, this report provides a comprehensive picture of the overall level of parties' compliance with the convention's standards in the area of specialist support services (see section 3 below).

### **Setbacks and challenges arising from/ during the Covid-19 pandemic**

4. The GREVIO baseline evaluation reports published to date do not yet reflect the direct and indirect effects of the Covid-19 pandemic on women and girls and on gender-based violence perpetrated against them in parties. This dimension is being addressed, however, in the ongoing GREVIO evaluations and baseline evaluation reports that will be published in the course of 2021. This notwithstanding, it is clear that restrictions on movement and the social isolation measures adopted by governments as a result of the Covid-19 pandemic have by and large led to an exponential increase in gender-based violence, including domestic violence and acts of

80. See the First general report on GREVIO's activities, covering the period from June 2015 to May 2019, April 2020, paragraph 50.

sexual violence and rape, as well as an increase in gender-related killings of women.<sup>81</sup> Women and girls' safety has been further eroded by a reported decrease in police interventions, the closure of courts, limited access to legal assistance and the closure of shelters and/or specialist support services for victims during the pandemic.<sup>82</sup> In this last respect, indeed, women's NGOs who often play a central role in the provision of specialist support services to victims of violence against women have been hard hit by regional/national lockdowns – including as a result of the reallocation of resources.<sup>83</sup>

5. Notwithstanding the above, women's NGOs and other civil society organisations have strived to quickly adapt to the challenges posed by the pandemic and ensure the continuation, as far as possible, of the provision of services to victims. Moreover, the Covid-19 pandemic has spurred in certain countries some positive and/or creative solutions in the area of specialist support services and/or provision of information. By way of example, during the pandemic, some countries formally qualified emergency services and measures of protection for victims of violence against women as fundamental priorities during the Covid-19 crisis.<sup>84</sup> Innovative ways of providing information to victims about services and assistance have also been deployed by a number of states, such as SMS helplines, the use of code words at pharmacies and an increase in support services offered online.<sup>85</sup> Although GREVIO has not yet had the opportunity to assess them in the context of an evaluation, these measures demonstrate goodwill on the part of parties to address the surge in violence against women, which GREVIO welcomes.

6. Overall, however, the pandemic has shed light on pre-existing gaps already identified by GREVIO in the area of specialist services, magnifying them and/or giving rise to new shortcomings. From submissions by Council of Europe member states in response to a call for information by the Gender Equality Commission and the Committee of the Parties to the Istanbul Convention,<sup>86</sup> it emerges that, with regard to access to shelters, insufficient funding has been made available to ensure that all victims are offered safe refuge throughout the pandemic. Also of particular concern has been the paucity of accommodation catered to the needs of women or children with disabilities. An increase in the number of callouts to helplines has also been reported during the pandemic, in parallel with the deployment of novel online tools that allow victims to seek help discreetly. Such a surge in the number of requests for help has not, however, been matched by an increment in human resources that would allow civil society organisations that manage those helplines

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81. See Joint statement by the Special Rapporteur and the EDVAW Platform of women's rights mechanisms on Covid-19 and the increase in violence and discrimination against women, Covid-19 and increase in gender based violence and discrimination against women.

82. Ibid.

83. See UN Policy Brief: The Impact of Covid-19 on Women, 9 April 2020.

84. See "Violence against women and girls before, during and after Covid-19: the shadow pandemic that must be addressed", Synthesis report of the Council of Europe webinar on the Istanbul Convention held on 20 May 2020, Cristina Oddone: Expert on gender-based violence and research associate at the University of Strasbourg, France, p. 5, available at: [www.coe.int/en/web/istanbul-convention/webinar](http://www.coe.int/en/web/istanbul-convention/webinar).

85. Both France and Spain introduced a scheme allowing victims to use a code word in pharmacies or other stores to obtain advice and information on where to find help.

86. Available at [www.coe.int/en/web/genderequality/promoting-and-protecting-women-s-rights](http://www.coe.int/en/web/genderequality/promoting-and-protecting-women-s-rights).

to effectively take the calls and help victims. Moreover, the new online solutions are not readily available to all women, including elderly women or women with certain disabilities. Access to specialist health service provision has also been raised as a concern, particularly for victims of rape and sexual violence, exacerbating specific barriers that already existed for this group of victims before the pandemic. Mental health services have equally been negatively affected. More generally throughout the pandemic, civil society has pointed to insufficient funding for all the different types of specialist support services. Finally, access to health services for women, particularly sexual and reproductive health services, has also been negatively affected, thus impacting on maternal health and child health.

## **Trends and challenges in service provision identified by GREVIO in the course of its evaluation procedures**

### **a) Shortcomings and challenges**

7. This section reviews the 17 baseline GREVIO baseline evaluation reports that have been published up to December 2020 and aims to provide a panoramic view of the shortcomings and challenges that GREVIO has identified in the area of specialist support services in parties. While the review addresses the reality of states prior to the impact of the Covid-19 pandemic, the shortcomings identified are much the same as those identified, and rightly much decried, during the Covid-19 pandemic, albeit less pronounced.

8. **As regards specialist support services** and the implementation by parties of Article 22 of the convention, a recurring shortcoming that has been noted by GREVIO is that most countries have developed a wider and stronger network of specialist support services that assist victims of domestic violence, while specialist support services for victims of other forms of violence such as sexual violence, female genital mutilation, forced marriage, forced abortion and sterilisation or sexual harassment are, if at all, available in a much lower number. Consequently, many GREVIO baseline evaluation reports<sup>87</sup> have consistently addressed the need to set up specialist support services for other forms of violence other than domestic violence – this is particularly true in the most recent evaluation reports published by GREVIO.<sup>88</sup> In the same vein and with a view to filling, on a needs basis, the gaps in service provision, GREVIO has urged/strongly encouraged Austria,<sup>89</sup> Spain<sup>90</sup> and Portugal<sup>91</sup> to carry out a comprehensive mapping of existing specialist support services for all forms of violence against women other than domestic violence. In its report on Italy, it welcomed the mapping that had been done but suggested that any further mapping exercises take into account the methodology developed by the Council of Europe

87. See GREVIO's baseline evaluation reports on Austria, paragraph 107; Portugal, paragraph 137; France, paragraph 149; Serbia, paragraph 125; Belgium, paragraph 125; Malta, paragraph 114; Spain, paragraph 160; and, Andorra, paragraph 116.

88. Notably, the GREVIO baseline evaluation reports on Serbia, paragraph 125; Belgium, paragraph 125; Malta, paragraph 114; Spain, paragraph 159; and Andorra, paragraph 116a.

89. See GREVIO's baseline evaluation report on Austria, paragraph 107.

90. See GREVIO's baseline evaluation report on Spain, paragraph 160.

91. See GREVIO's baseline evaluation report on Spain, paragraph 137.

to chart the various support services available for women who are victims of the different forms of violence by taking into account key principles of service provision as set out in Article 18 of the convention.<sup>92</sup>

9. In view of the growing incidence of digital manifestations of violence against women, including in the context of domestic violence, the availability of specialist support services for women victims of online violence could usefully be included in any future mapping exercises. While GREVIO is increasingly expanding its attention on the level of support and protection from violence against women experienced in the digital sphere, it has to date witnessed very few dedicated support services that comprehensively address the complex issues involved.

10. Nonetheless, even when it comes to specialist support services for victims of domestic violence, inadequacies have also been identified in terms of the number and/or distribution of such specialist services<sup>93</sup> and the types of specialist services made available to victims of domestic violence to achieve their empowerment. In this last respect, the offer of long-term counselling in the area of psychological counselling and trauma care was found to be scarce in several parties reviewed, including in Denmark<sup>94</sup> and Sweden.<sup>95</sup>

11. In states such as Austria,<sup>96</sup> Portugal,<sup>97</sup> Sweden,<sup>98</sup> Italy<sup>99</sup> and Belgium,<sup>100</sup> GREVIO baseline evaluation reports have also consistently identified shortcomings in the provision of specialist support services catered to the needs of specific groups of victims such as children and women at the intersection of discrimination, notably, women with mental health issues, victims with a history of substance abuse, women with intellectual or physical disabilities, irregular migrant women and women from ethnic minorities, in particular Roma women and Sami women.

12. In the GREVIO baseline evaluation reports of Türkiye,<sup>101</sup> Monaco<sup>102</sup> and Andorra<sup>103</sup> GREVIO highlighted that the provision of both general and specialist services takes place through state-run institutions. GREVIO has noted in this respect in its baseline evaluation report on Türkiye that while this is not contrary to the requirements of the convention, there are inherent limitations to such an approach because good practice and research shows that that both state and civil

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92. See GREVIO's baseline evaluation report on Italy, paragraph 149. See also Mapping support services for victims of violence against women in line with the Istanbul Convention standards, methodology and tools, Prof Liz Kelly, Roddick Chair on Violence Against Women, London Metropolitan University, Strasbourg, December 2018.

93. See GREVIO's baseline evaluation reports on Albania, paragraph 106, p. 40; Denmark, paragraph 118; Türkiye, paragraphs 167-168; Montenegro, paragraph 125; Finland, paragraph 111; France, paragraph 149; Italy, paragraph 151; Belgium, paragraph 125; and Malta, paragraph 114.

94. See GREVIO's baseline evaluation report on Denmark, paragraph 119.

95. See GREVIO's baseline evaluation report on Sweden, paragraph 137.

96. See GREVIO's baseline evaluation report on Austria, paragraph 107.

97. See GREVIO's baseline evaluation report on Portugal, paragraph 136.

98. See GREVIO's baseline evaluation report on Sweden, paragraph 136.

99. See GREVIO's baseline evaluation report on Italy, paragraph 151.

100. See GREVIO's baseline evaluation report on Belgium, paragraph 125.

101. See GREVIO's baseline evaluation report on Türkiye, paragraphs 150-153 and 165-168.

102. See GREVIO's baseline evaluation report on Monaco, paragraphs 71-76.

103. See GREVIO's baseline evaluation report on Andorra, paragraphs 112-116.

society organisations are needed to provide support to victims. Certain victims will in fact hesitate to report their experiences of violence to state-run agencies and many women are more likely to disclose their experiences to independent women's NGOs acting in absolute confidentiality. What is more, unlike Monaco and Andorra, the GREVIO report on Türkiye highlights that all public institutions (including those providing specialist support services) are under a legal obligation to report violence or the risk thereof to law-enforcement agencies and courts. Because this obligation may dissuade women victims from seeking support from specialist services and receiving the needed protection, GREVIO strongly encouraged the Turkish authorities to develop, within and/or in addition to state-run services, alternative, low-threshold specialist support services acting in the interest of victims and giving them the choice to decide whether or not to press charges against the perpetrator.

13. Article 18, paragraph 3, of the Istanbul Convention provides a number of aims and principles that specialist support services should pursue and be based on. Measures taken should be based on a gendered understanding of violence against women and focus on women's safety and human rights, taking into account the relationship between victims, perpetrators, children and their wider environment to address their needs holistically. It also requires specialist support services to aim at the empowerment and economic independence of women victims of violence and to avoid their secondary victimisation. A way to avoid this is to offer services under the same premises, or on a "one-stop-shop" basis if possible.

14. **As regards the need for the principle of a gendered understanding of violence against women and a focus on women's safety and human rights to underpin specialist support services**, GREVIO noted in its baseline evaluation reports on Monaco,<sup>104</sup> Türkiye<sup>105</sup> and, to a certain extent, Belgium<sup>106</sup> that the governmental specialist support services' structures are often based on a family mediation approach. This approach places a great emphasis on keeping families together and mediation in the resolution of conflicts, which may fail to take account of the unequal relationship between victims and perpetrators and may run counter to protecting victims and prioritising women's needs and safety. GREVIO noted in its baseline evaluation report on the Netherlands<sup>107</sup> that policies governing support services generally lacked a gendered understanding of violence against women and that this is reflected in the terminology used by such policies, which uses "persons directly involved" to designate both victims and perpetrators. As a result, many of the programmes and measures implemented to combat domestic violence, including service provision, are gender-neutral and fail to recognise or address the persisting challenges to the safety of women and children who predominantly suffer domestic violence at the hands of male perpetrators. Additionally, further to the merging of domestic violence and child-protection services, no women-specific services exist. Similarly, in its GREVIO baseline evaluation report on Portugal, GREVIO noted that, despite the fact that the majority of support services

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104. See GREVIO's baseline evaluation report on Monaco, paragraphs 65-70.

105. See GREVIO's baseline evaluation report on Türkiye, paragraphs 145-146, paragraph 153.

106. See GREVIO's baseline evaluation report on Belgium, paragraph 108 and paragraph 172.

107. See GREVIO's baseline evaluation report on the Netherlands, paragraphs 119-125.

for domestic violence victims are run by civil society organisations, they are mostly managed by organisations with a gender-neutral and assistance-based approach, intervening also in other social areas. GREVIO thus strongly encouraged the authorities to ensure that the provision of protection and support services by both private and public entities is based on a gendered understanding of violence against women.<sup>108</sup> GREVIO has consistently identified the provision of training to relevant stakeholders, including a component on the recognition of gendered dynamics and the impact and consequences of violence on victims, as a necessary pathway to ensure service provision based on a gendered understanding.

**15. As regards the aim of avoiding secondary victimisation and ensuring women’s empowerment and economic independence, including through the setting up of one-stop-shop services provided under Article 18, paragraph 3, of the convention,** GREVIO has addressed findings on the obligation to ensure service provision that avoids secondary victimisation and ensures victims’ empowerment and economic independence to most states that have been evaluated, including Albania, Türkiye, Montenegro, the Netherlands, Belgium, Malta and Spain. By way of example, gaps were identified by GREVIO in its baseline evaluations on the Netherlands in this respect, with disempowering and revictimising interventions having been noted. These included examples of instances in which victims had been expected by support services to accommodate perpetrators’ behaviour, change their own behaviour or otherwise risk losing access to her child for “non-co-operation”.<sup>109</sup> In Montenegro,<sup>110</sup> the GREVIO baseline evaluation report noted many examples of secondary victimisation such as the tendency to downplay the violence and suggest reconciliation and the insistence on mediation in divorce proceedings between victim and perpetrator.

**16.** One way to reduce secondary victimisation is by setting up one-stop-shop services. Only a few states have set in motion initiatives that go in this direction. In its GREVIO baseline evaluation report on Sweden,<sup>111</sup> GREVIO notes that there have been some examples of local municipalities that have rearranged their response to domestic violence so as to offer services to victims through a number of agencies, including law-enforcement agencies, in a co-ordinated manner and under the same roof, significantly reducing the risk of secondary victimisation. However, this endeavour has not been replicated and extended. On the other hand, the GREVIO baseline evaluation report on Belgium noted that the state had established “Family Justice Centres”, which act as a one-stop shop for case co-ordination, co-support and consultation, following a referral from a professional.<sup>112</sup> GREVIO, however, observed in this report that their focus on child abuse and domestic violence, the lack of recognition of the gendered nature of violence against women and the potential for tending towards alternative dispute resolution, may question this model’s ability to contribute towards women’s empowerment and the avoidance of secondary victimisation. In its baseline evaluation report on Andorra, GREVIO welcomed that

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108. See GREVIO’s baseline evaluation report on Portugal, paragraphs 120-122.

109. See GREVIO’s baseline evaluation report on the Netherlands, paragraphs 123-126.

110. See GREVIO’s baseline evaluation report on Montenegro, paragraph 105, p. 31, and paragraph 124

111. See GREVIO’s baseline evaluation report on Sweden, paragraphs 114-116.

112. See GREVIO’s baseline evaluation report on Belgium, paragraphs 108-109.

the government-run body providing specialist support services to victims of gender-based violence operated on a “one-stop-shop” basis, with the caveat, however, that the expertise offered did not cover all forms of violence against women, and that its resources needed to be increased in order to perform all its tasks effectively and sustainably.<sup>113</sup>

**17. As regards the requirement for access to services to not be made subject to the victim’s willingness to press charges or testify against the perpetrator, provided under Article 18, paragraph 4, of the Istanbul Convention, problems have been identified in this respect in various states, including in Türkiye and Spain. For example, in some parts of Spain, women’s access to domestic violence shelters will depend on official recognition of her as a victim of intimate partner violence, with women’s access barred to such shelters where protection orders are denied.<sup>114</sup> In Türkiye, ŞÖNİMs (specialist support services for victims of violence) and all public institutions providing support to victims are under a legal obligation to report violence, or the risk thereof, to law-enforcement agencies and courts, and professionals failing to comply with the duty to report violence incur criminal liability. Although reporting is not a prerequisite to access services in ŞÖNİMs and women’s shelters, it is very common for the ŞÖNİMs to report cases of violence to law-enforcement agencies. This practice rooted within ŞÖNİMs may determine women’s decisions to seek support from these services, affecting their rights to receive protection and support regardless of their willingness to press charges. For this reason, GREVIO strongly encouraged the authorities to develop, within and/or in addition to state-run services, alternative, low-threshold specialist support services acting in the interest of victims and giving them the choice to decide whether or not to press charges against the perpetrator.<sup>115</sup> Similar situations of mandatory reporting of instances of violence against women imposed by the law on professionals/civil servants with the potential to affect victims’ help-seeking behaviour have been noted in Montenegro, Italy, Serbia, the Netherlands, Malta, Spain and Andorra. GREVIO’s understanding and approach has developed and further refined itself over time. Earlier reports have encouraged/strongly encouraged the respective authorities to ensure that the duty to report is tempered by full and sensitive information being provided to the victim to allow her to make an informed decision herself and maintain autonomy, while also ensuring the safety of all, especially minors. More recent reports, such as those on Andorra<sup>116</sup> and Malta<sup>117</sup>, while reiterating the latter finding, have specified that:**

to this end the authorities should review the obligation for professionals to report cases of violence against women and their children, other than in situations in which there are reasonable grounds to believe that a serious act of violence covered by the scope of the convention has been committed and further serious acts are to be expected; and that this may well require making the obligation to report contingent upon the prior consent of the victim, unless the victim is a child or is unable to protect her/himself due to disabilities.

113. See GREVIO’s baseline evaluation report on Andorra, paragraph 116.

114. See GREVIO’s baseline evaluation report on Spain, paragraph 135.

115. See GREVIO’s baseline evaluation report on Türkiye, paragraph 150, p. 56 and paragraph 153.

116. See GREVIO’s baseline evaluation report on Andorra, paragraph 146.

117. See GREVIO’s baseline evaluation report on Malta, paragraph 140.

18. GREVIO has noted in this respect that while the imposition of reporting obligations on professionals does not run counter to Article 28 of the Istanbul Convention, blanket reporting obligations may raise issues around the provision of victim-centred and gender-sensitive support services.

19. **Funding for specialist support services and/or NGOs that provide such services** is addressed in GREVIO baseline reports in the analysis under Articles 8 and 9 of the convention. Article 8 aims to ensure adequate financial and human resources for the implementation of policies, measures and programmes, including those implemented by NGOs. It thus requires parties to finance NGOs that provide specialist support services at national, regional and local level on a long-term basis and in a way that ensures the sustainability of services. Article 9 emphasises the important contribution that NGOs and civil society make to preventing and combating all forms of violence covered by the scope of this convention, as they provide the overwhelming majority of the relevant support services and are strongly anchored in a gendered understanding of violence against women. It thus requires parties to recognise and support their work, including financially, tap into their expertise and involve them as partners in multi-agency co-operation or in the implementation of comprehensive government policies.

20. In most countries reviewed, including Austria,<sup>118</sup> Denmark,<sup>119</sup> Malta,<sup>120</sup> the Netherlands,<sup>121</sup> Portugal,<sup>122</sup> Montenegro,<sup>123</sup> Serbia<sup>124</sup> and France,<sup>125</sup> GREVIO noted that while specialist support services for women victims of violence received some form of public funding, including for staff costs, it was widely considered to be insufficient to ensure an adequate and sustainable level of funding for their work. In addition, GREVIO found that in Austria and Andorra<sup>126</sup> the legal basis and the criteria for the allocation of funding to NGOs were not clear, leading to an inadequate level of funding over the long term and non-uniform service provision. Similarly, GREVIO observed the absence of a transparent and accountable procedure under which specialist NGOs can access sustainable and long-term funding in Malta,<sup>127</sup> and, accordingly, GREVIO called on the state authorities to put in place dedicated, transparent and accountable public procedures under which NGOs that provide specialist support services to victims of all forms of violence against women and their children can compete for and request sustainable and long-term funding on an equal footing. In Italy<sup>128</sup> and Spain,<sup>129</sup> GREVIO noted instead that while public tendering procedures were in place for the funding of NGOs providing specialist support, they tended to favour the lowest bidder, sometimes resulting in public contracts being attributed

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118. See GREVIO's baseline evaluation report on Austria, paragraph 24.

119. See GREVIO's baseline evaluation report on Denmark, paragraph 26.

120. See GREVIO's baseline evaluation report on Malta paragraph 31.

121. See GREVIO's baseline evaluation report on the Netherlands, paragraph 46.

122. See GREVIO's baseline evaluation report on Portugal, paragraph 45.

123. See GREVIO's baseline evaluation report on Montenegro, paragraph 43.

124. See GREVIO's baseline evaluation report on Serbia, paragraph 38.

125. See GREVIO's baseline evaluation report on France, paragraph 47.

126. See GREVIO's baseline evaluation report on Andorra, paragraph 47.

127. See GREVIO's baseline evaluation report on Malta, paragraph 35.

128. See GREVIO's baseline evaluation report on Italy, paragraph 51.

129. See GREVIO's baseline evaluation report on Spain, paragraph 39.

to private companies not specialised in support services for victims of violence. This was of particular concern in Italy where a lack of appropriate financial mechanisms to secure long-term funding for women's specialist services was observed. In its GREVIO baseline evaluation report on Serbia, GREVIO noted that where public tenders for specialist services took place, GREVIO noted that it was not necessarily the established women's specialist support services with decades of experience that won them, with contracts being awarded to newer/other players in the field for reasons that were unclear.<sup>130</sup>

21. GREVIO has consistently stated that funding processes should be harmonised in order to provide an adequate and guaranteed level of funding for all specialist support services, and that access to public funding should be based on criteria in line with the standards of the Istanbul Convention, including the valorisation of extensive victim-centred expertise in the area of violence against women. Despite this consistency in the assessment offered by GREVIO, the issue of access to public funding for NGOs providing crucial and widely recognised services such as national helplines remains topical.<sup>131</sup>

22. In its baseline evaluation reports on Albania,<sup>132</sup> Montenegro<sup>133</sup> and Serbia,<sup>134</sup> despite the state's heavy reliance on the women's NGO sector to discharge its obligations to ensure specialist support services, GREVIO observed a dependency on international donors and therefore urged the authorities to establish suitable programmes and grants, and transparent procurement procedures, to ensure stable and sustainable funding levels.

23. **Shelters** are one category of specialist support services envisaged under Article 22 of the Istanbul Convention. Their purpose is to ensure immediate, round-the-clock access to safe accommodation for victims. Shelters do not only provide accommodation, but support women to face the multiple and interrelated problems they face, helping them to regain their self-esteem and the abilities and capacities that are necessary for their future independent life. Article 23 of the convention calls for shelters to be set up in sufficient numbers to provide appropriate temporary accommodation for all victims, and the recommendation is one family place per 10 000 head of population. However, the number of shelter places should depend on the actual need. Shelters for other forms of violence need to address the specific protection and support needs of victims and the number will depend on the need.

24. In many cases, GREVIO reports address Articles 22 and 23 jointly, and therefore shortcomings and trends mentioned above are also applicable to this section.

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130. See GREVIO's baseline evaluation report on Serbia, paragraph 36.

131. In France, civil society expressed concerns about the public tendering procedure originally announced by the government in December 2020, but which was later withdrawn to provide a 24/7 telephone line for victims of violence against women. The concerns expressed concerned the competitive tendering procedure of a service of general interest created by women's organisations and funded through grants, as well as the criteria applied in the tendering procedure, which, according to women's NGOs, seemed to favour quantitative elements and did not appear to be aligned with the requirements of the Istanbul Convention.

132. See GREVIO's baseline evaluation report on Albania, paragraphs 31-32.

133. See GREVIO's baseline evaluation report on Montenegro, paragraph 35.

134. See GREVIO's baseline evaluation report on Serbia, paragraph 30.

Although Article 23 requires that shelters offer safe and secure accommodation to victims of all forms of violence, GREVIO reports have primarily focused on shelters for victims of domestic violence. Several GREVIO baseline evaluation reports, such as those on Italy<sup>135</sup> and France,<sup>136</sup> have highlighted difficulties in determining the number of shelters and beds that are effectively available for victims' safe accommodation, noting discrepancies in the information provided by state authorities and that provided by civil society. The baseline evaluation reports of Italy and France<sup>137</sup> have in fact noted that state authorities included in the figures generic emergency accommodation that does not specifically cater to the needs of victims of gender-based violence against women.

25. As regards compliance with the standards set of one family place per 10 000 head of population, with the exception of Malta and Austria, the latter being very close to the target, the rest of the parties do not meet the convention's standard. The lack of available emergency accommodation for women and their children was particularly stressed in the baseline evaluation reports on France<sup>138</sup> and the Netherlands.<sup>139</sup> Indeed in France, a large proportion of the places that are available for victims of domestic violence are not women's shelters, but emergency accommodation created within other types of services (for instance, for the homeless), which do not provide adequate services to address women's needs and help them to recover from the violence experienced. GREVIO has noted in this connection that under no circumstances should the creation of new places in generalist structures be considered as a suitable measure to ensure safe accommodation for victims and their children. Accordingly, it has urged the French authorities, *inter alia*, to: recognise the principle that only accommodation in dedicated, single-sex and specialist structures can meet the requirements of the convention; and to increase the number and/or capacity of such facilities to meet the needs of all victims and ensure that women victims and their children in such facilities have access to adequate and appropriate living conditions, as well as support and empowerment services through multidisciplinary teams trained in the issue of violence against women. In its baseline evaluation report on the Netherlands, GREVIO has noted that the number of places available has increasingly dropped as a consequence of the new model for the allocation of resources for shelters that aims to match the distribution of shelter places with the demand. However, while some regions have been required to reduce their number of shelter places, those regions required to increase theirs did not, leading to an overall fall in the number of shelter places.

26. In GREVIO's baseline evaluation reports on Albania, Austria, Türkiye, Portugal, Finland, France, Italy, Serbia, the Netherlands, Malta and Spain, barriers to accessing safe accommodation have been identified for victims belonging to vulnerable groups such as women with disabilities or older women. In its baseline evaluation reports on Austria, Albania, Türkiye, Portugal, Finland, Malta and Spain, GREVIO has noted that women with mental health and substance abuse issues are not admitted to shelters

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135. See GREVIO's baseline evaluation report on Italy, paragraphs 146-151.

136. See GREVIO's baseline evaluation report on France, paragraphs 154-156.

137. *Ibid.*

138. *Ibid.*

139. See GREVIO's baseline evaluation report on the Netherlands, paragraph 159, p. 36 and paragraph 165.

because of a lack of expertise in the area among staff. Likewise, barriers to accessing shelters are experienced by women whose children include boys above a certain age, as noted in the GREVIO baseline evaluation reports of Austria, Belgium, Türkiye and Portugal. Finally, GREVIO has observed the exclusion of migrant and asylum-seeking women from sheltered accommodation in its GREVIO baseline evaluation reports on Austria, Belgium, France, Serbia, Spain and, indirectly, in Malta. In some of these parties, in fact, the ways in which shelters are funded *de facto* exclude the coverage of accommodation for this category of women.

27. Another trend that GREVIO has noted with concern in its baseline evaluation reports on Montenegro<sup>140</sup> and Malta<sup>141</sup> is the imposition of mandatory referrals of victims to shelters by government bodies providing specialist support services. GREVIO has in fact noted that this might prevent some women from coming forward to seek help due to a possible lack of trust in the authorities. At the same time, mandatory referrals would stand in the way of self-referrals by victims themselves. GREVIO has accordingly strongly encouraged the authorities to remove mandatory referrals to domestic violence shelters, including by offering women victims of domestic violence the possibility to self-refer.

28. **With regard to telephone helplines**, under Article 24 of the Istanbul Convention parties are required to set up state-wide telephone helplines, available 24 hours, seven days a week and free of charge, to ensure easy and confidential access to information and counselling by trained professionals on all forms of violence against women in all relevant languages.

29. While all parties have set up a helpline that can, to various degrees, provide support and information to women victims of gender-based violence, many do not sufficiently comply with the requirements provided under Article 24 of the convention to be considered national helplines for victims of violence against women. In its baseline evaluation reports, GREVIO has noted that helplines need to be specifically aimed at women victims of violence against women and domestic violence and that the staff providing information and counselling need to be trained in this area. In its baseline evaluation reports on Türkiye,<sup>142</sup> Portugal,<sup>143</sup> the Netherlands<sup>144</sup> and Malta,<sup>145</sup> GREVIO noted that the parties had made available various emergency and support helplines, but none of them were dedicated telephone helplines catered to the needs of women victims of violence, nor specialised in providing advice on the different forms of gender-related violence from qualified staff. Accordingly, GREVIO urged these four countries to set up a dedicated telephone helpline addressing women victims of different forms of violence within the scope of the Istanbul Convention and run by specialist staff trained in all these forms of violence.

30. In its baseline evaluation reports on Monaco, France and Belgium, GREVIO noted that while the parties have dedicated helplines to address gender-based

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140. See GREVIO's baseline evaluation report on Montenegro, paragraphs 40 and 43.

141. See GREVIO's baseline evaluation report on Malta, paragraphs 37-38.

142. See GREVIO's baseline evaluation report on Türkiye, paragraph 181.

143. See GREVIO's baseline evaluation report on Portugal, paragraph 141.

144. See GREVIO's baseline evaluation report on the Netherlands, paragraph 166.

145. See GREVIO's baseline evaluation report on Malta, paragraph 121.

violence, they failed to provide round-the-clock services, seriously limiting victims' access to information and support. In Portugal and Andorra, while the national helplines are, in principle, accessible round the clock, after-office-working-hours callers are redirected to other emergency telephone services serviced by staff that are not sufficiently trained in violence against women.

31. GREVIO has also identified deficiencies in the scope of the national helplines in Monaco,<sup>146</sup> Albania,<sup>147</sup> Montenegro,<sup>148</sup> Finland,<sup>149</sup> Portugal,<sup>150</sup> Malta<sup>151</sup> and Spain,<sup>152</sup> where the existing helplines are limited to providing information and support solely to victims of domestic violence. The national helpline set up recently in Albania<sup>153</sup> is designed to serve all victims of violence against women. However, in practice it is advertised as a domestic violence hotline. In Türkiye,<sup>154</sup> the only nationwide specialist helpline devoted to domestic violence run by an NGO currently lacks the means to ensure 24/7 coverage. In Finland,<sup>155</sup> even though its national telephone helpline is in principle on all forms of violence against women and domestic violence, it appears to focus only on intimate partner violence and it is unclear to what extent it frames violence against women, including intimate partner violence, as gender-based violence. In Denmark,<sup>156</sup> a nationwide helpline provides information and support to victims of domestic violence, dating violence and so called honour-related violence, but does not cover rape and sexual violence, female genital mutilation, forced marriage and forced abortion and sterilisation. A specific helpline for victims of stalking exists, but is only available 16 hours per week.<sup>157</sup>

32. In its baseline evaluation report on Serbia<sup>158</sup> and Malta, GREVIO has raised some concerns with regard to the practice of keeping records of the calls and the risks it poses in terms of ensuring due respect for the confidentiality and anonymity of all callers. In Malta, the victim's identity is disclosed to the police only where there is an imminent risk of harm. The data is kept as evidence in the event that the victim wishes to press charges and in order to identify patterns of abuse and risk factors. In Serbia, records of all calls are kept should they be requested upon the order of a court. GREVIO expressed concern in this respect and recalled the Istanbul Convention's requirement to ensure confidentiality or due regard for the anonymity of callers. It specified that this can be achieved in many ways and does not require a complete ban on the recording of any data of callers. It must, however, be ensured that the identity of callers is under no circumstances disclosed to helpline staff and that personal data, that is, any information relating to an identified or identifiable individual, is adequately protected against unauthorised access, alteration or dissemination.

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146. See GREVIO's baseline evaluation report on Monaco, paragraphs 82-85.

147. See GREVIO's baseline evaluation report on Albania, paragraph 107.

148. See GREVIO's baseline evaluation report on Montenegro, paragraph 133.

149. See GREVIO's baseline evaluation report on Finland, paragraph 119.

150. See GREVIO's baseline evaluation report on Portugal, paragraph 140.

151. See GREVIO's baseline evaluation report on Malta, paragraph 120.

152. See GREVIO's baseline evaluation report on Spain, paragraph 166.

153. See GREVIO's baseline evaluation report on Albania, paragraph 107.

154. See GREVIO's baseline evaluation report on Türkiye, paragraph 181.

155. See GREVIO's baseline evaluation report on Finland, paragraph 120.

156. See GREVIO's baseline evaluation report on Denmark, paragraph 126.

157. Ibid.

158. See GREVIO's baseline evaluation report on Serbia, paragraph 136.

33. As regards support services for victims of sexual violence and rape, under Article 25 of the Istanbul Convention, parties are required to provide a set of holistic services to such victims, including immediate medical care and trauma support combined with forensic examinations and short and long-term psychological counselling and therapy to ensure the victim's recovery. Such services should be provided by trained and specialist staff in an appropriate manner to respond to the victims' needs, preferably within rape crisis or sexual violence referral centres established in sufficient number through the country to ensure their easy access. The recommendation is to set up one such centre per every 200 000 inhabitants.

34. As has already been mentioned in this section, domestic violence is the form of violence that has been addressed the most in the different parties that have been evaluated, to the detriment of other forms of violence, such as sexual violence. Except for Denmark, no other state party that has been evaluated by GREVIO complies with the standard of one rape crisis or sexual violence referral centre per 200 000 inhabitants. In Albania, Türkiye and Montenegro, there are no rape crisis centres or sexual violence referral centres to address the needs of victims of sexual violence. In Austria, Portugal, Sweden, Finland, France, Italy, Serbia, Belgium, the Netherlands and Spain, there are rape crisis centres and/or sexual violence referral centres, but, in most cases, in insufficient numbers to ensure proper coverage and easy access by victims. GREVIO has consistently addressed the need to set up sufficient rape crisis centres or sexual violence referral centres for all these countries. While in Serbia the number of specialist services in the area of sexual violence has dramatically dropped due to insufficient funding, Finland has planned a roll-out of its sexual violence referral centre in Helsinki to other parts of the country.

35. Despite the absence and/or insufficient distribution of specialist support services in the area of sexual violence in most countries, nevertheless, medical care and forensic examinations are conducted in all states that have been evaluated, albeit with several limitations. In most of its baseline evaluation reports, including those on Monaco,<sup>159</sup> Türkiye,<sup>160</sup> Montenegro,<sup>161</sup> Italy,<sup>162</sup> the Netherlands,<sup>163</sup> Serbia,<sup>164</sup> Malta<sup>165</sup> and Andorra,<sup>166</sup> however, insufficient training or lack of sensitivity of the professionals involved in providing medical care and conducting forensic examinations has been noted. Moreover, lack of standardised protocols and guidelines that set clear procedures in the provision of treatment and care to victims of sexual violence have been noted in the GREVIO baseline evaluation reports on the Netherlands,<sup>167</sup> Malta<sup>168</sup> and Spain.<sup>169</sup>

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159. See GREVIO's baseline evaluation report on Monaco, paragraph 87.

160. See GREVIO's baseline evaluation report on Türkiye, paragraph 186.

161. See GREVIO's baseline evaluation report on Montenegro, paragraph 137.

162. See GREVIO's baseline evaluation report on Italy, paragraph 158.

163. See GREVIO's baseline evaluation report on the Netherlands, paragraph 174.

164. See GREVIO's baseline evaluation report on Serbia, paragraph 143.

165. See GREVIO's baseline evaluation report on Malta, paragraphs 130 and 131.

166. See GREVIO's baseline evaluation report on Andorra, paragraph 128.

167. See GREVIO's baseline evaluation report on the Netherlands, paragraph 170.

168. See GREVIO's baseline evaluation report on Malta, paragraph 131.

169. See GREVIO's baseline evaluation report on Spain, paragraph 175.

36. Other limitations with regard to immediate medical care and forensic examinations have been identified in some countries. For example, in France, Malta and Spain the taking of forensic evidence is subject to the victim having filed a complaint. Evidence, thus, is not stored systematically for use in case the victims wish to report the crime at a later stage. In Belgium, in places other than the CPVS, not all victims have access, systematically and irrespective of whether they file a complaint, to a gynaecological examination that would make it possible to gather evidence of rape for the purposes of any future legal proceedings.<sup>170</sup> In the case of Serbia, outside of the Autonomous Province of Vojvodina where some specialist services that perform forensic examinations exist, victims rely on non-specialist examiners for forensic evidence, and the certificates from forensic examiners are subject to a fee, adding a financial burden and an obstacle to women's access to justice.<sup>171</sup> In the Netherlands, although the taking of forensic evidence is free of charge, medical health services are funded by insurance and therefore victims are usually required to pay a personal contribution. This represents a financial burden that not all women can afford and may therefore disincentivise women to seek support.<sup>172</sup>

37. In its baseline evaluations on Sweden and Serbia, GREVIO noted that rape kits were made available within the few rape referral centres/specialist support services in place, and were likewise provided to general practitioners on duty in other hospital settings so that they are able to carry out the relevant forensic examinations. GREVIO stressed in this respect that professionals performing such examinations should be specialised, and that counselling and support services should be made available to compensate for the lack of specialist sexual violence referral centres.

38. Across the parties that have been evaluated, GREVIO noted that long-term counselling was far less available than immediate medical and trauma care. GREVIO noted this specifically in its baseline evaluation report on Denmark,<sup>173</sup> highlighting the highly professional nature of the existing sexual violence referral centres, but noting the insufficient provision of long-term psychological counselling. Insufficient provision of long-term psychological counselling was also noted in Finland, Sweden, France and Serbia. Indeed, generally, more support services appear to be available to respond to recent episodes of sexual violence than past violence.<sup>174</sup> This runs counter to the nature and dynamics of this form of violence, in respect of which a great deal of stigma, shame and guilt are still associated and is one of the reasons why many victims do not immediately seek help but wait days, weeks, months and sometimes even years.

39. In its more recent baseline evaluation reports on Malta<sup>175</sup> and Andorra,<sup>176</sup> GREVIO has addressed victims' ability to access support services for victims of sexual violence, including when they wish to terminate their pregnancy. These reports noted that several European studies reveal that a significant proportion of women who decide

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170. See GREVIO's baseline evaluation report on Belgium, paragraph 131.

171. See GREVIO's baseline evaluation report on Serbia, paragraph 142.

172. See GREVIO's baseline evaluation report on the Netherlands, paragraph 170.

173. See GREVIO's baseline evaluation report on Denmark, paragraph 125.

174. See GREVIO's baseline evaluation report on Finland, paragraph 122 and paragraph 126.

175. See GREVIO's baseline evaluation report on Malta, paragraphs 127-130.

176. See GREVIO's baseline evaluation report on Andorra, paragraphs 124-128.

to use emergency contraception or resort to an abortion, and all the more so in cases of successive abortions, have suffered sexual violence, often committed by a former or a current intimate partner.<sup>177</sup> Because in these countries recourse to abortion is penalised even in the event of rape, GREVIO noted that it is necessary to examine, within the limits of the scope of the convention, the impact of this context on the application of Article 25. Women victims of sexual violence, including in the context of domestic violence, face many risks relating to their sexual and reproductive health, such as sexually transmitted infections, unwanted pregnancies, stillbirths, obstetric complications and recourse to non-medical abortion practices. These harmful effects are amplified by attacks on the right to self-determination of these women when perpetrators control their ability to make autonomous choices on reproduction. Such control can have the effect of hampering their access to contraception and/or forcing them to carry an unwanted pregnancy to term or, conversely, requiring them to terminate a pregnancy. In these complex situations, women experience grave psychological suffering linked to sexual violence but also to coercion of their reproductive rights. GREVIO noted that because sexual violence has a direct impact on the sexual and reproductive health of victims, its consequences need to be addressed by support services so that victims' traumatisation can adequately be tended to and negative lifelong consequences can be prevented. GREVIO expressed concern about these obstacles to the self-determination of victims of rape, which affect all the more women with little financial and social autonomy. Taking into account that abortion very much remains a taboo in these countries, GREVIO also expressed its concern that fear of stigma and prosecution may discourage victims of sexual violence who wish to terminate their pregnancy from seeking the necessary support services, including psychological support. GREVIO therefore urged the authorities to take additional measures to guarantee all victims of sexual violence access to specialist support services for sexual violence, as well as longer-term psychological support, ensuring that the reproductive choices of women victims of rape do not constitute a barrier to their access.

## **b) Improvements and valuable practices**

40. Building on the first general report on GREVIO's activities, this section aims to provide a non-exhaustive overview of the valuable practices and the improvements that have been described by GREVIO in its 17 baseline evaluation reports that have been published up to December 2020, in the area of specialised support services for women victims of violence.

41. **As regards funding for specialist support services**, in its baseline evaluation report on Italy, GREVIO noted that anti-violence centres and shelters use property

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177. See, for example, Citernes A. et al. (2015), "IPV and repeat induced abortion in Italy: A cross sectional study", in *The European Journal of Contraception & Reproductive Health Care*, 20(5), 344-349; Öberg M. et al. (2014), "Prevalence of intimate partner violence among women seeking termination of pregnancy compared to women seeking contraceptive counseling", in *Acta Obstetrica et Gynecologica Scandinavica*, 93(1), 45-51; Pinton A. et al. (2017), "Existe-t-il un lien entre les violences conjugales et les interruptions volontaires de grossesses répétées?", in *Gynécologie, Obstétrique, Fertilité & Sénologie*, 45 (7-8), pp. 416-420; Lewis N. et al. (2018), "Use of emergency contraception among women with experience of domestic violence and abuse: a systematic review", in *BMC Women's Health*, 18 (156).

seized from the mafia, using assets confiscated from organised crime, for the benefit of victims of violence. GREVIO observed that this represents a new way to fund specialist services run by NGOs and that GREVIO recognises the potential for its replication in other countries.<sup>178</sup> Moreover, in its baseline evaluation reports, GREVIO has observed that some parties such as Albania have increased the funds allocated to support services/shelters assisting victims of violence against women and domestic violence.<sup>179</sup> Finally, in its baseline evaluation report on Finland, GREVIO observed that the authorities have significantly increased the funding allocated to shelters to ensure higher levels of service provision, including in remote areas of the country. Furthermore, the legislation has been amended so that the funding of shelters is no longer dependent on municipalities' budgets – it is now made available by the central government, in advance, for a period of 12 months, irrespective of service use. GREVIO has noted that the new method of financing offers more funding stability by moving from per capita funding to a lump sum annual funding system.<sup>180</sup>

42. In a more general bid to improve institutional responses to and support for victims of intimate partner violence, the State Pact on Gender-based Violence adopted in Spain in 2019, reflecting political consensus across a wide range of stakeholders, sets out an array of measures accompanied by extensive funding to ensure its implementation across the regions.<sup>181</sup> While GREVIO identified several challenges in the implementation of this pact, its large-scale attempt at improving the level of service provision for victims of intimate partner violence across the country can serve as inspiration.

**As regards shelters**, further to the ratification of the Istanbul Convention by parties, GREVIO has noted an increase in support structures for victims of violence against women and domestic violence, or the improvement of existing ones. By way of example, Portugal<sup>182</sup> has focused on providing extra support to specific vulnerable groups, by opening a new shelter for women victims of domestic violence that belong to the LGBTI community. Montenegro<sup>183</sup> has addressed the existing shortage of shelters in the northern part of the country by funding an NGO-run and licensed domestic violence shelter in that area. GREVIO has further recorded a dramatic increase in shelters in Türkiye<sup>184</sup> for women victims of violence against women.

43. **As regards support for victims of sexual violence**, GREVIO remarked in its baseline evaluation report on Denmark that the authorities have developed a network of 10 highly specialised centres for victims of rape and sexual violence that provide assistance to women and girls over 15 years of age who have been victims of sexual violence, in the form of medical care and trauma support combined with forensic examinations. These allow victims to seek these services any time after the assault took place, including several years later. It further noted that the standard procedure for medical and forensic examination is carried out irrespective of whether

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178. See GREVIO's baseline evaluation report on Italy, paragraph 150.

179. See GREVIO's baseline evaluation report on Albania, paragraph 24.

180. See GREVIO's baseline evaluation report on Finland, paragraphs 112-115.

181. See GREVIO's baseline evaluation report on Spain, paragraph 109 and paragraph 139.

182. See GREVIO's baseline evaluation report on Portugal, paragraph 133.

183. See GREVIO's baseline evaluation report on Montenegro, paragraph 129.

184. See GREVIO's baseline evaluation report on Türkiye, paragraph 169.

the victim wants to report and that evidence is collected and stored for up to three months or longer if the victims request it, so that it can be used for future judicial proceedings, in compliance with the standards set by Article 25.

44. The GREVIO baseline evaluation report on Belgium indicates that three support centres for victims of sexual violence (CPVSs) have been set up in Belgium and there are plans to roll out CPVSs nationwide. They are based on a multidisciplinary collaborative model and holistic approach that offers immediate medical care, psychological support related to trauma they have suffered and a forensic examination to gather evidence for prosecution. After care, victims can, if they wish, file a complaint and be interviewed by a police officer.

45. The need for high-quality sexual violence referral centres is increasingly gaining recognition and support services have been established or increased in a number of countries, including in Portugal<sup>185</sup> and Austria.<sup>186</sup> Finland has set up a sexual violence referral centre in its capital and is launching a roll-out of the centre, accompanied by satellite support centres in each province, to fill the existing gap in service provision for victims of rape and sexual violence. In Türkiye, GREVIO has commended the setting up of 31 Child Monitoring Centres (CMCs), which are hospital units specialising in assisting child victims of sexual abuse and/or forced marriage. The Turkish authorities are considering how to replicate the model of CMCs for the purpose of creating sexual violence referral centres or rape crisis centres for adult victims that match the requirements of Article 25 of the convention.

46. **As regards telephone helplines**, the Swedish national telephone helpline on violence against women (Kvinnofridslinjen) stands out for addressing all forms of violence against women, with well-trained and experienced social workers and nurses who refer callers to locally available specialist support services and where more than 50% of women in Sweden know of the existence of such a helpline. Also worthy of mention in terms of accessibility is the Spanish national helpline on intimate partner violence, which is available in 52 languages and is accessible for callers with disabilities through visual interpretation services, textphone and an online chat forum.

47. More generally, several countries such as Monaco, Albania, Montenegro, Finland and Serbia have set up national helplines in recent years, coinciding with the entry into force of the Istanbul Convention. Montenegro<sup>187</sup> has introduced a single national helpline for women and children victims of domestic violence that is free of charge and available round the clock, albeit not addressed to all victims of violence against women. Albania,<sup>188</sup> through an agreement between the government and a feminist NGO, also set up a women's helpline in 2016 devoted to violence against women, covering the entire territory and operating free of charge and 24/7. Finland<sup>189</sup> introduced its Nollalinja helpline in 2016 in response to the entry into force of the

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185. See GREVIO's baseline evaluation report on Portugal, paragraph 142.

186. See GREVIO's baseline evaluation report on Austria, paragraph 100.

187. See GREVIO's baseline evaluation report on Montenegro, paragraph 132.

188. See GREVIO's baseline evaluation report on Albania, paragraph 107.

189. See GREVIO's baseline evaluation report on Finland, paragraph 118.

convention and Monaco<sup>190</sup> has launched its anonymous, free-of-charge helpline for victims of domestic violence.

### Call for action

48. Parties to the Istanbul Convention have committed to setting up specialist support services for victims to protect them from further violence, so that they can regain control over their lives, seek justice and undo the harm of violence. GREVIO baseline evaluation reports published thus far show that while concrete steps have been taken by all parties towards implementation of the convention, the road ahead is long and implementation is still patchy with too many victims left to fall between the cracks.

49. GREVIO, through its monitoring activity, has described at length and brought to light parties' strengths and weaknesses in the area of support and protection of victims of violence against women. The Covid-19 pandemic has magnified those very shortcomings and made glaringly clear the need for state authorities to ensure that a robust network of specialist support services is in place and is provided with the financial and legal means to function both in "normal times" and during adverse events such as health pandemics. The first step is, therefore, to implement the Istanbul Convention with the aid of GREVIO's expertise and the relative findings that are tailored to each party. The second step, as has been noted both in the statement of the EDVAW Platform of July 2020 and the "Declaration of the Committee of the Parties to the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence on the implementation of the convention during the Covid-19 pandemic", is for parties to consider qualifying as "essential" specialist support services for victims of violence against women, including support services for child witnesses, and to guarantee their continuity even in times of crisis such as in the case of the Covid-19 pandemic. This means, *inter alia*, ensuring access to rape crisis centres and safe shelters and might entail taking additional measures to adjust the capacity of existing support structures to emerging needs, repurposing other spaces or creating new structures altogether. The Covid-19 pandemic has also shown the merit of developing novel online services to report violence, all the while ensuring that the digital divide does not jeopardise access to such services and the usefulness of designating safe spaces for women where they can report violence discreetly, and of providing access to fully resourced specialist support services that are trained and effectively enabled to provide victim-centred counselling in relation to all forms of violence against women.

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190. See GREVIO's baseline evaluation report on Monaco, paragraph 82.



## Child custody, visitation and domestic violence

Focus section no. 3 extracted from GREVIO's third report on its general activities covering the period from January to December 2021

### Overview

1. Domestic violence is one of the most serious and pervasive forms of violence against women. The most comprehensive and recent research across Europe conducted by the EU Agency for Fundamental Rights in 2014 found that one in three women have reported some form of physical or sexual violence since the age of 15 and that most violence is carried out by a current or former partner, with 22% of women in relationships reporting partner violence.<sup>191</sup> Given the prevalence of domestic violence in relationships, a focus of increasing concern has been the effect of such violence on children and the dangers posed by post-separation contact. A vast body of research now exists which points to the negative effects domestic violence and abuse may have on children, as well as the potential overlap between domestic violence and the direct abuse of children.<sup>192</sup> Living with coercive control

191. Violence Against Women: An EU Wide Survey by the European Union Fundamental Rights Agency.

192. Holt, S., Buckley, H. and Whelan, S. (2008) "The impact of exposure to domestic violence on children and young people: A review of the literature", *Child Abuse and Neglect*, 32, 797–810: identified over 1,000 articles in their literature review on this topic.

can have the same cumulative impact on children as it does on adult victims, which may contribute to emotional and behavioural problems in children as much as, or even more than, physical violence perpetrated against their mothers.<sup>193</sup>

2. Separation from an abuser can often be the most dangerous period; victims of domestic violence (adults and children) are at the greatest risk of death and violence at or after separation. Many domestic abusers retaliate by abusing their children through neglect, psychological, sexual and/or physical violence,<sup>194</sup> including their deliberate murder, and many children live with violence and the threat of death on a daily basis.<sup>195</sup> Women victims of domestic violence who leave their abusers are often confronted with threats of harm to the children. This is borne out by an increasingly alarming rate of homicides of both women and children victims of domestic violence, which are reported regularly in the media across Europe. A recent study in this field concludes that adult and child homicides that occur in the context of domestic violence have similar warning signs.<sup>196</sup> Indeed these concerns recently led to the European Parliament voting overwhelmingly in favour of a resolution<sup>197</sup> on the impact of intimate partner violence and custody rights on women and children. Highlighting the alarming number of femicides and infanticides taking place after women report instances of gender-based violence, the resolution emphasises that the protection of women and children from violence, and the best interests of the child, must take precedence over other criteria when establishing arrangements for custody and visitation rights. The resolution also discourages the abuse of “parental alienation” and of similar concepts and terms invoked to deny child custody to the mother and grant it to a father accused of domestic violence in a manner that totally disregards the possible risks for the child.

## The relevance of the Istanbul Convention

3. These issues have not only been actively addressed by GREVIO in its monitoring activity, aided by three particularly relevant articles in the Istanbul Convention.

4. Firstly, there is **Article 26** which recognises that exposure to physical, sexual, or psychological violence and abuse between parents or other family members has a severe impact on children. It breeds fear, causes trauma and adversely affects

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193. Callaghan, J.E., Alexander, J.H., Sixsmith, J. and Fellin, L.C. (2018) “Beyond ‘Witnessing’: Children’s Experiences of Coercive Control in Domestic Violence and Abuse”. *Journal of Interpersonal Violence*, 33(10), 1551–1581; McLeod, D. (2018) *Coercive Control: Impacts on Children and Young People in the Family Environment*. Totnes: Research in Practice and Katz, E. (2016) “Beyond the Physical Incident Model: How Children Living with Domestic Violence are Harmed by and Resist Regimes of Coercive Control”. *Child Abuse Review*, 25(1), 46–59.

194. There is also 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), pages 31-39.

195. 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*, page 838.

196. 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”.

197. European Parliament resolution of 6 October 2021 on the impact of intimate partner violence and custody rights on women and children (2019/2166(INI)).

their development. Indeed, research has shown that children who witness one parent's assaults on another in the home often develop emotional and developmental problems, psychological, social and cognitive functioning disorders and accept attitudes and behaviour around violence that need to be addressed in the long term (transgenerational transmission).<sup>198</sup> For this reason, Article 26 sets out the obligation to ensure that, when providing services and assistance to victims with children who have witnessed violence, their rights and needs are taken into account. While this is most relevant to domestic violence cases, it is important to bear in mind that other forms of violence may also be witnessed by children. The term "child witnesses" refers not only to children who are present during the violence and actively witness it, but to those who are exposed to screams and other sounds of violence while hiding close by or who are exposed to the long-term consequences of such violence, such as the physical, psychological and/or emotional injury sustained by the victim. It is important to recognise and address the victimisation of children as witnesses to all forms of violence covered by the scope of this convention and their right to support. Article 26, paragraph 2, therefore calls for age and developmentally appropriate evidence-based psychosocial interventions that are specifically tailored to children to cope with their traumatic experiences where necessary. All services offered must give due regard to the best interests of the child.

5. Secondly, there is **Article 31** which seeks to ensure that incidents of violence covered by the convention, in particular domestic violence, are taken into account in decisions on custody and visitation rights to ensure that the exercise of these rights do not harm the rights and safety of the victim or children. Paragraph 1 aims at ensuring, among other things, that judicial authorities do not issue contact orders without taking into account incidents of violence against the non-abusive parent as much as against the child itself, while paragraph 2 lays out the obligation to ensure that the exercise of any visitation and custody rights does not jeopardise the rights and safety of the victim and/or the children.

6. Thirdly, there is **Article 45** requires parties to impose sanctions which are "effective, proportionate and dissuasive". While this article is closely linked to Articles 33 to 40 which establish a number of criminal offences, it applies to all types of sanctions, regardless of whether the offences are of a criminal nature or not. GREVIO underlines that where effective, proportionate and dissuasive sanctions are missing, a counter-productive message is sent to perpetrators implying that committing violence against women, even repeatedly, is not a serious crime.<sup>199</sup> This article is also relevant with regard to the manner in which civil courts have dealt with allegations of domestic abuse either in terms of repeated breaches of orders that have been imposed in relation to family law proceedings or the removal of parental responsibility from parents who have engaged in abusive behaviour towards their children.<sup>200</sup> Paragraph 2 is particularly relevant in this regard, since it specifically states that parental rights may be withdrawn if the best interests of the child, which may include the safety of the victim, cannot be guaranteed in any other way.

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198. See GREVIO's baseline evaluation report on Türkiye, paragraph 190; Jeffrey L. Edleson, "Problems associated with children's witnessing of domestic violence", VAW Net.

199. See GREVIO's baseline evaluation report on Türkiye, paragraph 261.

200. See GREVIO's baseline evaluation report on Spain, paragraphs 195 and 196.

7. Before moving on to discuss GREVIO findings in relation to domestic violence, child custody and visitation it must be noted that they cannot be seen in isolation from the development of important and fundamental principles by the European Court of Human Rights in this regard and the development of positive obligations in relation to a number of articles under the European Convention on Human Rights. To this end, GREVIO itself submitted, for the first time since its inception, written observations<sup>201</sup> to the ECtHR in connection with the case of *Kurt v. Austria*.<sup>202</sup> This case concerned an applicant who had suffered domestic violence over a number of years and whose husband shot and killed their son before committing suicide.<sup>203</sup> GREVIO drew the Court's attention, in particular, to the heightened risk of harm to children in the context of separation.

8. GREVIO's Third Party Intervention further addressed the key elements of emergency barring orders, which should guarantee not only the protection of victims and persons at risk in their own home but also the prohibition that the perpetrator contact the victim or person at risk anywhere else for a sufficient time. GREVIO further stressed the need, where warranted, to extend the scope of the protection to the children of the victim and drew 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 GREVIO baseline evaluation reports. This focus section will now address the key issues that have emerged within this area during the course of its evaluation procedure and the signs of progress before moving on to consider the way forward.

### **Custody, visitation and domestic violence: key issues**

9. In its monitoring activity to date, GREVIO has described at length and brought to light parties' strengths and weaknesses in the implementation of Articles 26, 31 and 45 with regard to victims of domestic violence and decisions made on custody and visitation. In its baseline evaluation reports published thus far it can be seen that, while concrete steps have been taken by all parties in this regard, the road ahead is long and implementation is inconsistent with too many victims being failed by states authorities. In its 1st General Report, GREVIO<sup>204</sup> commented that three shortcomings existed with regards to the protection afforded to women victims of domestic violence and their children in the context of custody and visitation

201. 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.

202. *Kurt v. Austria* [GC]: ECHR 15 June 2021. In relation to children victims of domestic violence, the Court held that they are "particularly vulnerable individuals and entitled to State protection, in the form of effective deterrence, against such serious breaches of personal integrity, notably as a consequence of the States' positive obligations under Article 2 of the Convention." It stressed that "[v]iolence against children belonging to the common household, including deadly violence, may be used by perpetrators as the ultimate form of punishment against their partner." (Ibid., paragraph 163)

203. See the section "Co-operation with civil society and national institutions for the protection of human rights" in this document.

204. See first General Report on GREVIO's activities, April 2020, page 28.

decisions. These concern the provision of protection and support to child witnesses of domestic violence, insufficient measures to ensure the safety of mothers who are victims of domestic violence and their children in decisions regarding child custody and visitation, and mandatory mediation in civil procedures and divorce proceedings that address child custody matters. These shortcomings continue to persist while a number of additional issues have emerged.

## **Insufficient measures to ensure the safety of victims of domestic violence and their children**

10. As set out above, separation from an abuser can often be the most dangerous period; victims of domestic violence (adults and children) are at the most risk of death and further violence at or after separation. Moreover, child contact has been highlighted by numerous studies as the key site for the perpetration of continued and potentially more serious abuse<sup>205</sup> and at its worst, child contact can be the site for fathers' homicide of mothers.<sup>206</sup> Ninety-four percent of the women in one study<sup>207</sup> were abused as a result of contact arrangements, either because fathers used the contact to track down where mothers and children were living, or because mothers were supervising the contact and/or taking children to and from contact visits. It is imperative therefore that state authorities ensure that the safest decision is made during family law proceedings. In order to achieve this, it is crucial that adequate risk assessment and screening processes are in place, that civil and criminal processes share information and evidence on perpetrators, and that victims are not forced into mediation with perpetrators. It is also necessary to ensure that evidence of violence is explicitly taken into account by family courts, that children who witness domestic violence are regarded as victims so that effective legal protection is provided and visitation is safe for both mother and child. It is clear, however, that this has not been the case in the majority of parties reviewed by GREVIO, a situation which puts the safety of the victims of domestic violence at considerable continued risk:

- ▶ **Inadequate risk assessments** – In many baseline evaluation reports, such as France, Italy, Montenegro, the Netherlands, Portugal, and San Marino<sup>208</sup> GREVIO observed that judges do not screen cases related to the determination of custody and visitation rights for domestic violence.<sup>209</sup> GREVIO also observed that judges do not conduct risk assessments or ask for the disclosure of the risk assessment and safety plans drawn up by law-enforcement

205. See Holt, S. (2017) "Domestic Violence and the Paradox of Post-Separation Mothering". *British Journal of Social Work*, 47, 2049–2067; Violence was found to be most likely to occur when mothers met fathers face-to-face for contact "handovers" or if supervising contact between fathers and very young children; McLeod, D. (2018) "Coercive Control: Impacts on Children and Young People in the Family Environment. Totnes: Research in Practice"; and Morrison, F. (2015) "All Over Now? The Ongoing Relational Consequences of Domestic Abuse through Children's Contact Arrangements", *Child Abuse Review*, 24, pages 274–284.

206. See Women's Aid. (2016), "Nineteen Child Homicides: What must change so children are put first in child contact arrangements and the family courts", Bristol: Women's Aid.

207. See Radford, L. and Hester, M. (2006), "Mothering through Domestic Violence", London and Philadelphia: Jessica Kingsley Publishers.

208. See GREVIO's baseline evaluation report on San Marino, paragraph 144.

209. See GREVIO's baseline evaluation reports on: France, paragraph 182; Italy, paragraph 187; Montenegro, paragraph 165; the Netherlands, paragraphs 200-202; and Portugal, paragraph 160.

agencies and/or other competent stakeholders, with a view to taking them into account and determining the best interest of the child.<sup>210</sup> In Poland, GREVIO noted reported incidents of secret shelter addresses disclosed to the abusive parent in the context of divorce and custody proceedings and urged the authorities to take steps to ensure that procedures and decisions do not endanger the safety of women victims of intimate partner violence, in particular by disclosing their place of residence.<sup>211</sup>

- ▶ **A lack of co-ordination between civil and criminal processes** – In its first General Report on its activities, GREVIO underlined the need to recognise the interrelationship between criminal and civil remedies with respect to victims (adult and child) of domestic violence and the crucial role that court orders in relation to custody and access can play with regard to the assessment of risk.<sup>212</sup> In its baseline evaluation reports on Italy and Malta, GREVIO raised the problematic lack of consultation of family courts with criminal courts when taking decisions on custody and visitation, including on whether criminal proceedings are pending against the father of the victim's children or have been brought in the past.<sup>213</sup> In its baseline evaluation report on Slovenia, GREVIO noted that despite legislative requirements to examine whether measures for the protection of the best interests of the child had already been imposed under the different legal provisions, in practice, they are rarely applied. Due in particular to a lack of co-ordination between civil justice and criminal justice, courts may order a perpetrator of violence to have contact with his children in spite of a restraining order issued by another court in another set of proceedings.<sup>214</sup> The baseline evaluation reports on Italy, Montenegro, and Portugal have also stressed the importance, to the same end, of consulting and co-ordinating with other relevant bodies and/or professionals, including, but not limited to, law-enforcement agencies, health and education authorities, and specialist women's support services.
- ▶ **Inappropriate use of mediation** – GREVIO has observed in a number of parties that victims of domestic violence wishing to separate may be strongly encouraged or required to undergo mediation as a first step – a procedure that can be decisive in determining custody and visitation rights. GREVIO has noted that in these cases victims are particularly vulnerable due to the power imbalance that is typical in cases of domestic violence and that this power imbalance is likely to impair the ability of the victim to negotiate and reach acceptable agreement that ensures, *inter alia*, the children's and the mother's safety.<sup>215</sup> GREVIO was concerned therefore to hear evidence in its baseline evaluation report on Slovenia that courts often encourage parties to conclude a settlement (even if serious violence has occurred between the parties), which leads to the case being processed quickly,

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210. See GREVIO's baseline evaluation reports on: Denmark, paragraph 161; Italy, paragraph 186; Montenegro, paragraph 165; the Netherlands, paragraph 204; and Portugal, paragraph 160.

211. See GREVIO's baseline evaluation report on Poland, paragraph 194.

212. Available at <https://rm.coe.int/1st-general-report-on-grevio-s-activities/16809cd382> at page 28.

213. See GREVIO's baseline evaluation reports on: Italy, paragraphs 180-188; and Malta, paragraphs 155-159.

214. See GREVIO's baseline evaluation report on Slovenia, paragraph 240.

215. See Mid-Term Horizontal Review of GREVIO baseline evaluation reports, Article 48, paragraphs 406-414.

not all evidence being presented and a failure to provide a final decision, which could then be subject to the judgment of a higher court.<sup>216</sup> GREVIO expressed particular concern with respect to decisions taken on custody and visitation in Denmark where it noted that family courts did not exist and that conflicts about custody and visitation were not resolved in an adversarial procedure presided over by a neutral authority but through a system of joint meetings between the two parents, guided or mediated by the State Administration. GREVIO found this system to be inappropriate for couples whose relationships have been marred by violence.<sup>217</sup>

- ▶ **A failure to regard child witnesses of domestic violence as victims** – In its baseline evaluation report on Serbia, GREVIO noted that legislation did not acknowledge the harm that witnessing violence by one parent against the other has on a child. GREVIO also noted, in its baseline evaluation report on Poland, that the harmful effect on children of witnessing such violence does not seem to be systematically considered in decisions on child contact.<sup>218</sup>
- ▶ **A failure to take incidents of domestic violence into account in court decisions on custody and visitation** – In Albania, Belgium, Italy, Monaco, Poland, San Marino, Slovenia and Türkiye, GREVIO found that there was no explicit reference to domestic violence as a legal criterion to be taken into account when deciding on custody and/or and visitation rights.<sup>219</sup> In its baseline evaluation report on Malta, on the other hand, GREVIO noted that although incidents of domestic violence are explicitly provided as a cause for forfeiture of custody rights, they are not explicitly referred to as instances giving rise to forfeiture of visitation rights when separation is pronounced.<sup>220</sup> In Poland, although several provisions of the Law on Family and Guardianship offer the possibility of limiting custody and visitation rights where incidents of violence are present, GREVIO noted with concern the information provided by a range of experts and professionals in this field which suggests that evidence of one parent's abuse of the other is only rarely, if at all, taken into account when deciding over custody and visitation rights.<sup>221</sup> This was also the case with parties such as Andorra, Austria, Finland, France, the Netherlands, Portugal, Spain and Sweden, that do have a legal basis to prevent the granting of parental responsibility, including custody and visitation, to abusive parents.<sup>222</sup> In Denmark, GREVIO noted with concern that it had received information on several cases that had culminated in the imprisonment of mothers who had not been able to convince the State Administration of the safety risk which visitation with

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216. See GREVIO's baseline evaluation report on Slovenia, paragraph 236.

217. See GREVIO's baseline evaluation report on Denmark, paragraphs 148-160.

218. See GREVIO's baseline evaluation report on Poland, paragraph 193.

219. See GREVIO's baseline evaluation reports on: Albania, paragraphs 117-120; Belgium, paragraphs 145-149; Italy, paragraphs 180-187; Monaco, paragraphs 106-110; Poland, paragraph 184, San Marino, paragraph 142; Slovenia, paragraph 236 and Türkiye, paragraph 207.

220. See GREVIO's baseline evaluation report on Malta, paragraphs 151-158.

221. See GREVIO's baseline evaluation report on Poland, paragraph 193.

222. See GREVIO's baseline evaluation reports on: Montenegro, paragraphs 163-167; and Serbia, paragraphs 166-171.

the father could present to their child and who had not complied with visitation decisions. GREVIO thus found that ultimately incidents of domestic violence were not taken into account in decisions on custody and visitation and that the exercise of visitation and custody rights in Denmark frequently endangered the physical safety and psychological well-being of domestic violence victims and their children.

- ▶ **A failure to ensure safe supervised visitation** – States tend to give priority to the best interest of the child, which is deemed to be to maintain contact with both parents at all costs, regardless of the violence he or she had witnessed. A number of shortcomings were observed in the implementation of Article 31, paragraph 2, regarding the facilities and the personnel responsible for enabling supervised visitation. GREVIO noted that several parties lacked the necessary resources/infrastructure to ensure safe supervised visitation. By way of example, in its baseline evaluation reports on Andorra and France, GREVIO observed that such meeting spaces were more equipped to deal with conflictual relationships than cases involving violence. It therefore drew the authorities' attention to the high risks to victims and children posed by maintaining contact between the victim and the perpetrator, without protection and appropriate measures.<sup>223</sup> In the absence of suitable arrangements, in fact, victims may feel that the only way to protect their children from violence is to refuse to comply with decisions on visitation rights. In its baseline evaluation report on Malta, in particular, GREVIO noted that the lack of adequate infrastructure meant that victims had to wait in the same waiting area as the perpetrator, thus endangering the physical safety and psychological well-being of victims and their children and perpetuating the cycle of power and control.<sup>224</sup> As regards sufficient trained personnel for supervised visitation, GREVIO noted substantial shortcomings in this regard in its baseline evaluation reports on Andorra, Austria, Malta, Montenegro, Slovenia and Spain.<sup>225</sup> In its baseline evaluation reports on Montenegro and Spain, it highlighted the demonstration of bias by such staff towards women victims of domestic violence.<sup>226</sup> Other concerns included the lack of a general obligation to inform the judicial authorities where such staff detects exposure to violence during the visit, such as in the case of Spain.<sup>227</sup> In its report on Slovenia, the lack of clear rules and protocols that govern the supervised contact, as well as the lack of well-trained staff at the social work centres supervising such contact, was of great concern to GREVIO, which noted that the father's right to exercise contact often appear to be prioritised over the needs of the child, even when supervised contact is harmful to the child.<sup>228</sup>

223. See GREVIO's baseline evaluation reports on: Andorra, paragraphs 146-150; and France, paragraphs 179-185.

224. See GREVIO's baseline evaluation report on Malta, paragraphs 158-159.

225. See GREVIO's baseline evaluation reports on: Andorra, paragraphs 146-150; Austria, paragraphs 133-137; Malta, paragraphs 151-158; Slovenia, paragraphs 239-240; and Spain, paragraphs 196-206.

226. See GREVIO's baseline evaluation reports on: Montenegro, paragraphs 163-167; and Spain, paragraphs 196-206.

227. See GREVIO's baseline evaluation report on Spain, paragraph 202.

228. See GREVIO's baseline evaluation report on Slovenia, paragraph 239.

- ▶ **A lack of adequate implementation of legal frameworks providing for protection measures** – This includes not only the lack of availability of protection orders and the inadequate enforcement of such orders by the relevant authorities,<sup>229</sup> but also the maintenance of the joint exercise of parental authority even in the event of a final criminal conviction for violence committed against the other parent. Despite a wide range of possibilities to suspend, limit or otherwise regulate the exercise of parental rights of parents who have been abusive towards their spouses or children in Spain, GEVIO noted in its baseline evaluation report their limited use in practice. Criminal law judges seem particularly reluctant to suspend or limit parental rights, both in pre-trial rulings and in final sentences.<sup>230</sup> The withdrawal of parental authority of the violent parent remains the exception, despite the persistence of the danger to the mother and child.<sup>231</sup>

### **The lack of provision of protection and support to child witnesses when violence occurs in the family unit**

11. Despite the well-established recognition of the harmful effects of witnessing violence set out above, the analysis of the GREVIO baseline evaluation reports published to date reveals that parties mostly fail to provide appropriate and sufficient access to specialised and age-appropriate services for children in direct contravention of Article 26. In several parties, including Austria and Finland, such services are provided in shelters only, and therefore are timebound – with the departure from the shelter entailing the termination of such essential specialist support.<sup>232</sup> In other parties such as the Netherlands, Portugal, Serbia and Sweden, shelters support children accompanying their mothers, but such services are not specialised and tailored to address their specific needs.<sup>233</sup> In Portugal’s case, for instance, GREVIO noted insufficient specialised personnel to tend to children’s needs and/or difficulties in accessing schools.<sup>234</sup> In its baseline evaluation report on Belgium, on the other hand, GREVIO noted that provision of services for children relies on the initiative of individual shelters, with no structural support from the state.<sup>235</sup> In Sweden, GREVIO noted the concerning practice whereby shelters ask victims to move out if a perpetrator

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229. Articles 52 and 53 of the Istanbul Convention require that the competent authorities have the power to order fast legal remedies to protect persons at risk. These encompass both emergency barring orders against the perpetrators, thereby removing the perpetrator from the home, as well as restraining or protection orders for victims of all forms of violence covered by the convention. While the possibility of being granted protection orders in the form of a contact ban or eviction order is increasingly made available in parties, the legal regimes vary significantly, as does their level of implementation and their appropriate enforcement.

230. See GREVIO’s baseline evaluation report on Spain, paragraph 197.

231. The need to consider intimate partner violence as an essential factor in the determination of child custody is at the heart of the joint statement issued on 31 May 2019 by the Platform of the United Nations and regional independent mechanisms on violence against women and women’s rights (EDVAW Platform).

232. See GREVIO’s baseline evaluation reports on: Austria, paragraph 118; Denmark, paragraph 131; and Finland, paragraph 128.

233. See GREVIO’s baseline evaluation reports on: Malta, paragraph 135; the Netherlands, paragraph 177; Serbia, paragraph 145; and Sweden, paragraph 147.

234. See GREVIO’s baseline evaluation report on Portugal, paragraph 13.

235. See GREVIO’s baseline evaluation report on Malta, paragraph 135.

is suspected of using visitation with the children to locate the whereabouts of the family, and subsequently the shelter.

12. GREVIO has also observed that access to counselling services outside of shelters is even more limited. Despite the legal recognition of child witnesses of violence as victims, in Slovenia, concerns were raised about the lack of psychosocial support available to children tailored to their needs and the legal recognition of child witnesses of violence as victims.<sup>236</sup> In its baseline evaluation report on Malta, it observed that dedicated services for children who are victims of domestic violence are not provided for and that extremely long waiting periods have been reported in accessing psychological counselling services, including where children are concerned.<sup>237</sup> In Poland, in 2016, a report of the Supreme Audit Office (NIK) showed that specialist counselling provided by child psychologists or therapists only represented 4% of the support services in the field of domestic violence, delivered by local social welfare centres and crisis intervention centres.<sup>238</sup> In some parties such as Austria, Finland, France, Montenegro, and Spain, specialised counselling services for children who are direct or indirect victims of violence is available, however, either insufficient funding hindered the promptness and sustainability of the assistance and/or insufficient coverage throughout the country actively prevented its provision.<sup>239</sup> Other support either failed to include children who witnessed violence and/or deployed measures which were too punitive in terms of protection. In its baseline evaluation report on San Marino, GREVIO noted that the Child Protection Unit which is responsible for the psychological support and protection of children mostly dedicated itself to children who are direct victims of child abuse. Measures employed included removing them from the family unit, whereas GREVIO recalled that their safety in conditions that allow them to stay with the non-abusive parent, and preferably within their own home, should be ensured.<sup>240</sup> Sufficient training in providing support services for children has also been a persistent concern. In its baseline evaluation reports, including those on France, Italy, and Poland, GREVIO explained that staff from general support services may not have the required training or expertise to support and protect children victims of domestic violence.<sup>241</sup> Finally, in its baseline evaluation reports, including those on France and Italy, GREVIO noted that barriers for child witnesses/victims with regards to support and protection are linked to the judicial practice of granting joint parental custody in cases of domestic violence, which result in the perpetrator impeding the counselling of their children in some cases.

### **The use of “parental alienation” as a means of minimising evidence of domestic violence in civil proceedings**

13. It is now clear that the minimisation of domestic violence within family court processes is closely linked to an increasing use of the concept of “parental alienation”

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236. See GREVIO’s baseline evaluation report on Slovenia, paragraph 202.

237. See GREVIO’s baseline evaluation report on Malta, paragraph 135.

238. See GREVIO’s baseline evaluation report on Poland, paragraphs 164-166.

239. See GREVIO’s baseline evaluation reports on: Austria, paragraph 117; Finland, paragraph 129; France, paragraph 165; Montenegro, paragraph 143; and, Spain, paragraph 179.

240. See GREVIO’s baseline evaluation report on San Marino, paragraphs 123 and 124.

241. See GREVIO’s baseline evaluation reports on: France, paragraph 169; Italy, paragraph 161; and Poland, paragraph 164.

to undermine the views of child victims of domestic violence who fear contact with parents who have perpetrated domestic abuse<sup>242</sup> despite the obvious risks this would entail for both adult and child victims.<sup>243</sup> This is despite concerns raised by the scientific community as to its legitimacy as a scientific construct, a syndrome or as a mental disorder.<sup>244</sup> Furthermore, serious concerns have been expressed regarding the recourse to the concept of parental alienation by family courts and child protection services in the context of domestic and family violence, where victims of domestic abuse may have sound reasons to want to limit visitation due to their ex-partners' violent behaviour and threats to their own and to their children's safety<sup>245</sup> and in relation to children who have been exposed to domestic violence who refuse to visit their fathers.<sup>246</sup> A number of research studies have found that claims of parental alienation were used to negate allegations of domestic and sexual abuse<sup>247</sup> and that in a large proportion of cases involving indications or findings of domestic abuse these concerns 'disappeared' once the focus was on parental alienation.<sup>248</sup> Allegations of domestic abuse can even be used against women as "evidence" of parental alienation.<sup>249</sup> Evidence of parental alienation being used to minimise domestic abuse has been referred to in research conducted in Spain,<sup>250</sup> Italy<sup>251</sup> and France<sup>252</sup> and in a range of other European countries as cited in a number of GREVIO baseline evaluation reports. It is of note therefore that in February of 2020 the World Health Organisation (WHO) published its new draft International

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242. See 1st General Report on GREVIO's activities covering the period from June 2015 to May 2019, Council of Europe and civil society representations to the Beijing+25 Regional Review Meeting Geneva on 29-30 October 2019, UN Economic and Social Research Council on 27 November 2019, ECE/AC.48/2019/2, at paragraph 30.
243. As noted in the Platform of Undersigned United Nations and Regional Independent Mechanisms on Violence against Women and Women's Rights on 31 May 2019, available at <https://rm.coe.int/final-statement-vaw-and-custody/168094d880>.
244. See W. O'Donohue, L.T. Benuto & N. Bennett (2016), "Examining the validity of parental alienation syndrome", 13 *Journal of Child Custody* 2-3, 113-125.
245. Lapiere, S. and Côté, I. (2016) "Abused women and the threat of parental alienation: shelter workers' perspectives", *Children and youth services review*, 65 (1), 120-126; and Neilson, L. C. et al. (2019), "Inclusion of "Parental Alienation" as a "Caregiver-child relationship problem" Code QE52.0 in the International Classification of Diseases 11th Revision (ICD-11)", Collective Memo of Concern to: World Health Organization.
246. Lamb, K., Humphreys, C., and Hegarty, K. (2018), "Your behaviour has consequences: children and young people's perspectives on reparation with their fathers after domestic violence", *Children and youth services review*, 8 (1), 164-169.
247. Meier, J. and Dickson, S. (2017), "Mapping Gender: Shedding Empirical Light on Family Court's Treatment of Cases Involving Abuse and Alienation", *Law and Inequality*, 35(2), 311-334; Meier, J. (2020) "U.S. child custody outcomes in cases involving parental alienation and abuse allegations: what do the data show?", *Journal of Social Welfare and Family Law*, 42(1), 92-105; and Neilson, L. (2018), "Parental Alienation Empirical Analysis: Child Best Interests or Parental Rights?" - Fredericton: Muriel McQueen Fergusson, Centre for Family Violence Research and Vancouver: The FREDA Centre for Research on Violence Against Women and Children.
248. Barnett, A. (2020) 'A genealogy of hostility: parental alienation in England and Wales', *Journal of Social Welfare and Family Law*, 42(1), 18-29.
249. Birchall, J. and Choudhry, S. (2018), "What About My Right Not To Be Abused: Domestic Abuse, Human Rights and the Family Courts", Bristol: Women's Aid.
250. Casas Vila, G. (2020), "Parental Alienation Syndrome in Spain: opposed by the Government but accepted in the Courts", *Journal of Social Welfare and Family Law* 42:1, pages 45-55.
251. Feresin, M. (2020), "Parental alienation (syndrome) in child custody cases: survivors' experiences and the logic of psychosocial and legal services in Italy", *Journal of Social Welfare and Family Law*, 42:1, 56-67, DOI: 10.1080/09649069.2019.1701924.
252. Romito, P, Crisma, M. (2009), "Les violences masculines occultées : le syndrome d'aliénation parentale", *Empan*, 2009/1 (n° 73), pages 31-39.

Classification of Diseases, 11<sup>th</sup> Revision (ICD-11) and confirmed that it had removed parental alienation from index term in the final ICD-11.<sup>253</sup>

14. GREVIO has addressed state authorities' use of the so-called principle of "parental alienation syndrome"<sup>254</sup> in its baseline evaluation report on France,<sup>255</sup> and thereafter in a number of recent reports, namely the baseline evaluation reports on Andorra, Belgium, Italy, Poland and Spain.<sup>256</sup> In its recent baseline evaluation report on Poland it noted with concern that the notion of parental alienation and related concepts have been used in training initiatives as well as recent policy and legislative initiatives.<sup>257</sup> An example of particular concern is the revised draft National Programme on Equal Treatment (2021-2030) which includes the launch of "a public consultation with organisations active in the field of parental alienation" as part of the process of reviewing and analysing to what extent court decisions on child custody discriminate against fathers and mothers, with a view to possibly developing a legislative package based on the findings of this analysis.<sup>258</sup>

### **The lack of attention being paid to the wishes and feelings of child victims of domestic violence**

15. This is particularly concerning in relation to children who expressly do not wish to have contact with the perpetrator parent due to their experiences of violence but are being forced to participate in visitation and, in some cases, joint custody. This is not only a breach of Article 26 in failing to take into account children's rights and needs in delivering support and protection to their abused mothers, but also a breach of Article 31 in potentially harming their safety. The relevance of Article 45 can also be seen where authorities do not provide adequate enforcement measures to prevent the use of parental right/responsibilities being used to force children into such contact. While GREVIO fully supports the right of the child to maintain its ties with both parents as enshrined in Article 9, paragraph 3, of the United Nations Convention on the Rights of the Child, it has also consistently stated that exposure to domestic violence requires exceptions to be made in the best interests of the child and where required by national legislation to respect the views of children in this regard. Authorities must therefore

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253. World Health Organization removes parental alienation from its classification index (February 2020), Réseau International des Mères en Lutte (wordpress.com).

254. See Violence against Women: Psychological violence and coercive control Study, Study requested by the FEMM Committee, European Parliament, 2020, page 35. This study notes that although the phenomenon of the "parental alienation syndrome" lacks universal clinical or scientific definition, it is generally referred to the presumption that a child's fear or rejection of one parent (typically the non-custodial parent) stems from the malevolent influence of the preferred (typically custodial) parent. In its baseline evaluation reports GREVIO has consistently referred to the statement of December 2017 by the European Association for Psychotherapy (EAP), which draws attention to the fact that the concepts of "parental alienation syndrome" (PAS) and "parental alienation" (PA) are unsuitable for use in any psychotherapeutic practice. This statement by the EAP, which is made up of 128 psychotherapy organisations from 41 European countries, acts as a guiding principle for European psychotherapists.

255. Ibid.

256. See GREVIO's baseline evaluation reports on: Andorra, paragraphs 146-150; Belgium, paragraphs 145-149; Italy, paragraphs 180-187; Poland, paragraphs 188-195; and Spain, paragraphs 196-206.

257. See GREVIO's baseline evaluation report on Poland, paragraphs 188 and 189.

258. See GREVIO's baseline evaluation report on Poland, paragraphs 189-191.

demonstrate an awareness of the dynamics of domestic violence and its impact upon victims in making such decisions. In its baseline evaluation report on Poland, GREVIO noted that, where child contact and visitation regimes have been established but children do not wish to comply, the primary carer – often women victims of intimate partner violence – can be fined for obstructing visitation. GREVIO noted that where this is pursued at the instigation of the abusive parent, it must be seen as part of the pattern of intimate partner violence, amounting to economic harm, which Article 3 of the Istanbul Convention considers as forming part of domestic violence.<sup>259</sup> Further, in its baseline evaluation report on Slovenia, although GREVIO welcomed the fact that, under the relevant legislation, courts must take into account the opinion expressed by children in proceedings concerning their interests, it noted with concern that information provided by civil society indicates that there have been cases in which children who were victims of domestic violence were obliged to have contact with their abusive parents against their will.<sup>260</sup>

## Evidence of bias and the lack of training among professionals

16. Research has consistently demonstrated that judges, lawyers, health care and child welfare professionals all operate on the presumption that there should be contact unless there are overwhelming reasons to the contrary, and that courts strive to try to achieve this, even in circumstances of proven domestic abuse.<sup>261</sup> Research has also found that domestic violence may be misunderstood, and therefore minimised, marginalised and downgraded by professionals because of their strong pro-contact stance and pointed to evidence of gender discrimination towards women victims of domestic violence.<sup>262</sup> This demonstrates the need to ensure that all professionals involved in the process of custody and visitation are sufficiently trained in the dynamics of domestic violence. These issues have also been observed in several baseline evaluation reports, where GREVIO noted that parties tend to give priority to the best interest of the child, which is deemed to be to maintain contact with both parents at all costs, regardless of children's exposure to violence. In countries such as Austria, France, Italy, Portugal and Spain, GREVIO observed that the joint exercise of parental authority was generally maintained, even in the event of a final criminal conviction for violence committed against the other parent or where a

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259 See GREVIO's baseline evaluation report on Poland, paragraph 194.

260. See GREVIO's baseline evaluation report on Slovenia, paragraph 238.

261. See All-Party Parliamentary Group on Domestic Violence (APPG) (2016) Domestic Abuse, Child Contact and the Family Courts. London: All-Party Parliamentary Group on Domestic Violence and Women's Aid.

262. See Thiara, R. and Gill, A. (2012) Domestic Violence, Child Contact, Post-Separation Violence: Experiences of South Asian and African-Caribbean Women and Children, London: NSPCC; Mariachiara Feresin. (2020) Parental alienation (syndrome) in child custody cases: survivors' experiences and the logic of psychosocial and legal services in Italy, *Journal of Social Welfare and Family Law* 42:1, pages 56-67. Vila, Glòria. (2019). Parental Alienation Syndrome in Spain: opposed by the Government but accepted in the Courts. *Journal of Social Welfare and Family Law*. 42. 1-11. 10.1080/09649069.2019.1701923; Sueur, G. et Prigent, P.-G. (2018, 26 avril), *Histoire et usage du syndrome d'aliénation parentale contre les mères séparées en France*. Communication présentée au Colloque "L'aliénation parentale : une menace pour les femmes et les féministes ?", Université du Québec à Montréal; and Birchall, J. and Choudhry, S. (2018) "What About My Right Not To Be Abused: Domestic Abuse, Human Rights and the Family Courts", Bristol: Women's Aid.

protection order exists.<sup>263</sup> In its baseline evaluation reports on Belgium, Italy and Portugal, GREVIO criticised the tendency of the judiciary to consider domestic violence as mere disputes between parents.<sup>264</sup> More generally, GREVIO observed in Austria, Montenegro, Portugal, Serbia, Sweden and Türkiye a lack of understanding among judges and other professionals of the harm borne by children in witnessing domestic violence.<sup>265</sup> In its baseline evaluation reports on Italy and Malta, GREVIO underlined the lack of expertise and understanding of violence against women of court-appointed experts whose contributions are relied upon by judges to reach their decisions.<sup>266</sup> In its baseline evaluation report on France, GREVIO noted that it had been informed of numerous cases where expert reports on the mental health status of children in these proceedings were entrusted to psychiatrists untrained in violence against women and its traumatic consequences on child witnesses. This resulted in the non-recognition of violence suffered by children, as well as in the secondary victimisation of victims, for example when they attributed the psychological state of children to “parental alienation syndrome.”<sup>267</sup> In Poland, GREVIO was concerned to note that the extensive in-service training provided to Consultative Teams of Court Specialists (OZSS) which operate in the district courts and are mandated to prepare, at the order of the public prosecutor or court, opinions on questions related to custody and parental authority, comprises the notion of parental alienation.<sup>268</sup> Shortcomings related to the lack of training of court appointed professionals are also discussed in the Mid-Term Horizontal Review of GREVIO baseline evaluation reports.<sup>269</sup>

17. A further worrying trend is the demonstration of bias against women who raise issues of domestic violence in proceedings related to custody and visitation. In its baseline evaluation reports on Denmark and Italy, GREVIO noted with concern that victims who raise the issue of domestic violence as a reason for not attending meetings in the presence of the perpetrators or not agreeing to custody or visitation, are labelled as an unco-operative parent and thus, paradoxically, “unfit for parenting.”<sup>270</sup> In Slovenia, GREVIO heard evidence that women’s allegations regarding domestic violence or child abuse are often dismissed without any investigation, resulting in

263. See GREVIO’s baseline evaluation reports on: Austria, paragraphs 133-137; France, paragraphs 179-185; Italy, paragraphs 180-187; Portugal, paragraphs 159-163; and Spain, paragraphs 196-206.

264. See GREVIO’s baseline evaluation reports on: Belgium, paragraph 148; Portugal, paragraphs 159-163; and Italy, paragraphs 180-187

265. See GREVIO’s baseline evaluation reports on: Austria, paragraphs 133-137; Montenegro, paragraphs 163-167; Serbia, paragraphs 166-171; Sweden, paragraphs 163-170; and Türkiye, paragraphs 206-211.

266. See GREVIO’s baseline evaluation reports on: Italy, paragraphs 180-188; and Malta, paragraphs 155-159.

267. See *Violence against Women: Psychological violence and coercive control Study*, Study requested by the FEMM Committee, European Parliament (2020), page 35. This study notes that although the phenomenon of the “parental alienation syndrome” lacks universal clinical or scientific definition, it is generally referred to the presumption that a child’s fear or rejection of one parent (typically the non-custodial parent) stems from the malevolent influence of the preferred (typically custodial) parent. In its baseline evaluation reports GREVIO has consistently referred to the statement of December 2017 by the European Association for Psychotherapy (EAP), which draws attention to the fact that the concepts of “parental alienation syndrome” (PAS) and “parental alienation” (PA) are unsuitable for use in any psychotherapeutic practice. This statement by the EAP, which is made up of 128 psychotherapy organisations from 41 European countries, acts as a guiding principle for European psychotherapists.

268. See GREVIO’s baseline evaluation report on Poland, paragraph 188.

269. Under Article 15, Challenges, Shortcomings that are specific to categories of professionals, Training of relevant court appointed professionals.

270. See GREVIO’s baseline evaluation reports on: Denmark, paragraph 154; and Italy, paragraph 185.

custody or visitation decisions that may expose them and their children to ongoing danger. According to indications provided to GREVIO by women's rights groups and NGOs, the experience of violence in the past and its impact on contact around visitation and custody is minimised, resulting in courts prioritising the perpetrator's right to contact with their child over the right of the victims to be safe from all violence.<sup>271</sup> Similarly, in Sweden the notion of an abused mother as unfit to fully care for her children is generally established.<sup>272</sup>

## Penalising child victims for their experiences of violence

18. GREVIO has emphasised that the healing process is greatly enhanced if children are permitted to stay within their own home and with their attachment figures. GREVIO has also consistently advocated for the focus to be placed onto securing protection for the abused parent as a primary measure of safety before exploring other avenues of protection for the child.<sup>273</sup> However, despite this, it can be seen that rather than ensuring the protection of the woman victim of gender-based violence as the primary measure to ensure the safety of children, many states parties interpret the best interest of the child in a very narrow manner and often this translates in children effectively being penalised for their experiences of violence. In Denmark, GREVIO noted with concern that following disclosures of experiencing domestic abuse, the removal of the child from the family home and therefore, from their mother, is always an option.<sup>274</sup> Likewise, in its baseline evaluation report on Serbia, GREVIO has noted the practice of placing the child with other family members or in foster care.<sup>275</sup> It further discussed the alarming practice of removing children from their mother's care in cases of domestic violence, particularly in the Roma community, which appeared to equate the inability to protect children to a lack of parental ability.<sup>276</sup>

19. Furthermore, in its evaluation report on San Marino, it was noted that the wording of the relevant legislation fails to acknowledge the power imbalance between perpetrators and victims in cases of domestic violence against women and treats them equally by stipulating that the suspension of parental rights may be ordered with respect to both the defendant and the parent who tolerated the violence. This provision may lead to protection mechanisms turning against women victims of intimate partner violence and exposing them to secondary victimisation by restricting the exercise of their parental rights.<sup>277</sup> In Poland, GREVIO noted in its evaluation that great weight is attached to the material living conditions that a parent is in a position to offer, often to the detriment of women victims of intimate partner violence who have sought safety in a domestic violence shelter and may not (temporarily) possess adequate financial means.<sup>278</sup>

271. See GREVIO's baseline evaluation report on Slovenia, paragraph 237.

272. See GREVIO's baseline evaluation report on Sweden, paragraph 165.

273. See GREVIO's baseline evaluation report on Denmark, paragraph 133.

274. See GREVIO's baseline evaluation report on Denmark, paragraph 133.

275. See GREVIO's baseline evaluation report on Serbia, paragraphs 163-170.

276. See GREVIO's baseline evaluation report on Serbia, paragraph 171.

277. See GREVIO's baseline evaluation report on San Marino, paragraph 141.

278. See GREVIO's baseline evaluation report on Poland, paragraph 193.

## Signs of progress

### Recognising the impact of domestic violence on children

20. GREVIO has noted that many parties recognise directly or indirectly the harmful effects that witnessing domestic violence has on children and provide for the obligation to inform the relevant authority, be it the municipality, child protection or child welfare services, of any suspicion or confirmed incident whereby a child has witnessed or has been a direct victim of violence.<sup>279</sup> In some countries such as Montenegro and Italy, GREVIO has observed that the commission of domestic violence in the presence of children entails aggravated sentences.<sup>280</sup> Moreover, once again in Italy, as well as in the Netherlands, committing violence against women in the presence of a child is equated to a form of child abuse.<sup>281</sup> In Andorra, Montenegro, and Türkiye, witnessing such violence is considered tantamount to experiencing it directly as legislation calls for the same level of protection and support by statutory agencies.<sup>282</sup> By way of example, Andorran legislation defines all women who have been the object of gender-based violence as well as their minor children as “victims” so that they can be granted the right to social, psychological and medical support.<sup>283</sup> In its baseline evaluation report on Spain, GREVIO commended the official recognition of children’s victimisation when they witness intimate partner violence. It noted that the applicable legislation includes children who are underage or under the guardianship or custody of women who are victims of intimate partner violence in the scope of the holistic support and protection offered by this law.<sup>284</sup>

### Improving support services for victims of domestic violence

21. Bearing in mind the difficulties encountered in its practical implementation, nonetheless, in its baseline evaluation report on Spain, GREVIO welcomed a recent change to Article 156 of the Civil Code that removes the requirement of both parents’ consent for psychological counselling and support for common children. The perpetrator can thus no longer prevent his children from attending much-needed counselling sessions – a frequent obstacle to children receiving psychological support.<sup>285</sup> Of note is also the Danish Stalking Centre, which offers psychological support to children who have witnessed the effects of the stalking on their parent(s).<sup>286</sup> In terms of child victims of sexual abuse, GREVIO noted the five state-funded Children Aid Centres in Poland, created in 2018 and run by the Foundation Empowering Children which offer free-of-charge psychological, educational and legal support

279. See GREVIO’s baseline evaluation reports on Andorra, paragraph 130; Austria, paragraph 116; Denmark, paragraph 131; Finland, paragraph 128; Italy, paragraph 159; Monaco, paragraph 96; and Montenegro, paragraph 140.

280. See GREVIO’s baseline evaluation reports: on Italy, paragraph 159; and Montenegro, paragraph 140.

281. See GREVIO’s baseline evaluation reports: on Italy, paragraph 159; and the Netherlands, paragraph 175.

282. See GREVIO’s baseline evaluation reports on: Montenegro, paragraph 140; and Türkiye, paragraph 181.

In Montenegro’s case it is the Protocol on Actions, Prevention of and Protection Against Family Violence which equalled clearly witnessing domestic violence with experiencing it.

283. See GREVIO’s baseline evaluation report on Andorra, paragraph 130.

284. See GREVIO’s baseline evaluation report on Spain, paragraph 178.

285. See GREVIO’s baseline evaluation report on Spain, paragraph 178.

286. See GREVIO’s baseline evaluation report on Denmark, paragraph 130.

to abused children and their guardians,<sup>287</sup> and in its baseline evaluation report on Denmark, the Children's Houses, available across the five regions of Denmark which offer professional support and psychological counselling for child victims of sexual abuse. Their child-friendly environment may be also used by law enforcement agencies to carry out interviews with children exposed to domestic violence by one parent against the other.<sup>288</sup>

## Improving the legal framework on custody and visitation

22. In its baseline evaluation report, GREVIO considered that Austria has established an excellent legal basis on which to prevent the granting of custody to abusive parents, following the signature of the Istanbul Convention.<sup>289</sup> It pointed out that the civil code foresees the notion of "reducing the risk of a child to suffer violence or to witness violence inflicted upon people close to them" when considering the best interest of the child. Moreover, in Austria a group of professionals (social workers, psychologists, and child pedagogues) are available as part of an institution called "family court assistance", set up in 2013 following the signature of the Istanbul Convention, to assist family judges in reaching satisfactory decisions. In France, GREVIO noted with interest the "measure of accompaniment under protection" which provides for the child to be accompanied by an adult other than a family member during the exercise of visitation rights.<sup>290</sup>

## Twelve steps towards continued progress

23. Although this focus section has highlighted a wide range of issues which continue to persist and require action by a number of authorities, it is also clear that there are positive signs of improvement, which in some cases has been as a direct result of GREVIO's intervention and monitoring work. This demonstrates not only the enduring purpose of the monitoring process but also the value in GREVIO's consistent identification, and, where relevant, repetition of the steps that need to be taken to improve the situation for victims in order to further reaffirm the rights and dignity of the victims of domestic violence that are guaranteed under the Istanbul Convention.<sup>291</sup> To that end, GREVIO has identified twelve cross cutting actions to take in order to achieve continued progress on improving the situation for victims of domestic violence in relation to custody and visitation:

1. ensure that adequate screening of family court applications, including a mandatory question regarding violence, is undertaken, and disclose risk assessments originating from other authorities;

287. See GREVIO's baseline evaluation report on Poland, paragraph 164.

288. See GREVIO's baseline evaluation report on Denmark, paragraph 130.

289. See GREVIO's baseline evaluation report on Austria, paragraphs 133-137.

290. See GREVIO's baseline evaluation report on France, paragraphs 179-185.

291. See Choudhry, S. "When Women's Rights are Not Human Rights – the Non-Performativity of the Human rights of Victims of Domestic Abuse within English Family Law", *Modern Law Review*, 92(190) 82: 1072-1106.

2. strengthen inter-institutional co-operation and information exchange between civil courts and criminal courts, as well as between these courts and services that assist and support victims of violence and their children or other bodies (such as women's specialist services, social protection and health services, or educational institutions), in order to prevent, inter alia, ordering contact between a perpetrator and a child/children in spite of a restraining order issued by another court;
3. build in safeguards to the procedure for victims of domestic violence, such as offering parents separate appointments and separate waiting areas in courts and/or monitoring court practices;
4. provide appropriate training, together with the development of professional guidelines, including on the level of violence required and/or what tests should be applied by judges in reaching a decision on custody and visitation rights, with a view to raising awareness among the professionals concerned as to the harmful effects of exposure to violence on children;
5. ensure that, where allegations of domestic violence are made, courts do not mandate the use of mediation or other dispute resolution processes;
6. step up efforts to ensure wider levels of awareness among the professionals concerned, such as educators, teachers, social workers, legal and health professionals, and psychologists, of the harmful effects of witnessing domestic violence on children, and to provide access for child witnesses to appropriate, age-specific support services based on a gendered understanding of violence against women and pay due regard to the best interests of the child;
7. ensure the recognition of witnessing violence against a close person as jeopardising the best interest of the child and take their wishes and feelings into account where possible with regard to custody and visitation, including in judicial proceedings;
8. explicitly recognise the need to take into account incidents of violence covered by the scope of the Istanbul Convention in the determination of custody and visitation rights of children, including by consulting with all relevant professionals and/or conducting independent investigations, as well as amending the law to remedy existing gaps;
9. ensure that only those professionals, including psychologists and child psychiatrists, who are attuned to the issue of violence against women and the requirements of the Istanbul Convention, are asked to give expertise or are appointed by courts to provide advice on issues of custody and visitation in situations of violence against women;
10. ensure the necessary resources/infrastructure are in place to ensure safe and sensitive supervised visitation, including sufficient training for personnel involved in the supervision of visitation, and that clear rules and protocols are provided to govern visitation;

11. introduce dedicated specialist support services for children who are victims of or exposed to any forms of violence against women, such as age-appropriate psychosocial counselling both in and outside shelters and in conditions that ensure their continuity and quality, while at the same time ensuring their safety in conditions that allow them to remain with the non-abusive parent, preferably in their own home; and
12. ensure that relevant professionals are informed of the absence of scientific grounds for “parental alienation syndrome” and the use of the notion of “parental alienation” in the context of domestic violence against women to overshadow the violence and control exerted by abusive men over women and their children, and their perpetuation through child contact.



# Approaches taken in states parties to the Istanbul Convention on the criminalisation and prosecution of sexual violence, including rape

Focus section No. 4 extracted from GREVIO's fourth report on its general activities covering the period from January to December 2022

## Introduction

1. Sexual violence, including rape, are not only pervasive crimes but are the most under-reported crimes and the least likely to end in conviction.<sup>292</sup> Research conducted by the EU Agency for Fundamental Rights in 2014 found that one in 10 women has experienced some form of sexual violence since the age of 15, and one in 20 women has been raped since the age of 15.<sup>293</sup> The research also found that about one in four

292. Council of Europe (2022), "Mid-term Horizontal Review of GREVIO baseline evaluation reports", paragraphs 442 and 446. For a comparative study, see also Burman M., Lovett J. and Kelly L. (2009), Lovett, J. & Kelly, L. (June 2009) "Different systems, similar outcomes? Tracking attrition in reported rape cases in eleven countries", p. 3.

293. EU Agency for Fundamental Rights (2014), "Violence Against Women: An EU Wide Survey by the European Union Fundamental Rights Agency", p. 14.

victims of sexual assault, by either a partner or a non-partner, did not contact the police or any other organisation after the most serious incident because of feelings of shame and embarrassment.<sup>294</sup> GREVIO has consistently drawn attention to the issue of under-reporting<sup>295</sup> and to the phenomenon of attrition (the process by which cases fail to proceed through the criminal justice system) in cases of sexual violence, including rape.<sup>296</sup> In addition to being one of the most under-reported crimes, GREVIO has also noted in a number of baseline evaluation reports that these cases have high dropout rates at the investigation and prosecution stages,<sup>297</sup> low conviction rates<sup>298</sup> and attract low sentences.<sup>299</sup> This state of affairs results in women losing trust in the criminal system, low reporting rates and a culture of impunity, leading to the normalisation of sexual violence, including rape.<sup>300</sup>

## **The Istanbul Convention – a comprehensive framework to prevent and punish sexual violence, including rape, and to protect victims**

2. The Istanbul Convention provides a comprehensive framework to prevent, criminalise and prosecute sexual violence, including rape, and it requires the setting up of specialist support services for victims. The backbone of such a framework is provided by Article 36, on sexual violence, including rape, Articles 49, 50 and 56 in the areas of investigation, prosecution and protective measures, and Article 25 on support services for victims of sexual violence.

3. The central legal element of the convention's definition of sexual violence, as articulated under Article 36, is the lack of consent given voluntarily as a result of the person's free will. This provision recognises the risks of leaving certain types of rape and sexual violence unpunished if the relevant criminal offences are based on force, threat or coercion rather than lack of consent. Article 36 of the convention builds on the case law of the European Court of Human Rights, which stresses that

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294. *Ibid.*, p. 69.

295. For example, in Finland and France it has been estimated that less than 10% of all rape cases are reported. See GREVIO's baseline evaluation reports on Finland, paragraph 198; and France, paragraph 219. Other GREVIO reports that raise concerns of under-reporting include Austria, paragraph 153; Montenegro, paragraph 221; Türkiye, paragraph 281; Italy, paragraph 221; the Netherlands, paragraph 254; Belgium, paragraph 184; Slovenia, paragraph 306; Romania, paragraph 340; Bosnia and Herzegovina, paragraph 259; Estonia, paragraph 204; Georgia, paragraph 306; and Norway, paragraph 221.

296. Council of Europe. 2022. "Mid-term Horizontal Review of GREVIO baseline evaluation reports", paragraph 450.

297. See GREVIO's baseline evaluation reports on Denmark, paragraph 198; Belgium, paragraph 187; Poland, paragraph 265; Iceland, paragraph 252; Estonia, paragraph 215; and Norway, paragraph 221.

298. See GREVIO's baseline evaluation reports on Portugal, paragraph 195; Finland, paragraph 206; France, paragraph 230; Italy, paragraph 221; Slovenia, paragraph 323; Germany, paragraph 303; Bosnia and Herzegovina, paragraph 267; Iceland, paragraph 261; Georgia, paragraph 311; Cyprus, paragraph 235; and Norway, paragraph 231.

299. See GREVIO's baseline evaluation reports on Italy, paragraph 222; Slovenia, paragraph 323; Bosnia and Herzegovina, paragraph 273; Switzerland, paragraph 225; and Cyprus, paragraph 235.

300. Council of Europe (2022), "Mid-term Horizontal Review of GREVIO baseline evaluation reports", paragraph 446. For more information on the impunity of perpetrators of sexual violence and recommendations to rectify it, see UN Special Rapporteur on violence against women (2020), "Report on rape as a grave and systematic human rights violation and gender-based violence against women".

such rigid approaches jeopardise the effective protection of the individual's sexual autonomy.<sup>301</sup> For this reason, Article 36 sets out the obligation to criminalise all forms of non-consensual sexual acts, including rape. This definition, therefore, does not require the offender's use of force or threat, or proof of the victim's physical or verbal resistance. The Istanbul Convention's emphasis on "consent" is elaborated on in paragraph 2 of Article 36, which requires that the prosecution of sexual offences shall be based on a context-sensitive assessment of the evidence in order to establish, on a case-by-case basis, whether or not the victim has freely consented to the sexual act. In its mid-term horizontal review and subsequent baseline evaluation reports, GREVIO stresses the need to ensure that the legal definitions of sexual offences fully capture the realities of women experiencing sexual violence and their coping mechanisms to deal with such violence.<sup>302</sup> In order to ensure that certain types of sexual violence do not go unpunished, paragraph 1 of Article 36 further describes the types of non-consensual sexual acts that parties must criminalise. This covers non-consensual vaginal, anal or oral penetrative sexual acts with any bodily part or object; non-consensual non-penetrative sexual acts; and causing another person to engage in non-consensual acts of a sexual nature with a third person.

4. Articles 49, 50 and 56, furthermore, are essential provisions aimed at decreasing attrition rates of cases involving sexual violence, including rape. While Articles 49 and 50 set out the obligation of immediate response, prevention and protection for women victims of the forms of violence covered by the convention, having regard to a gendered understanding of violence, Article 56 lists a range of measures to protect the rights and interests of victims at all stages of investigation and judicial proceedings. Recognising that victims who are protected and supported are more likely to report and continue their participation in the criminal justice chain, these articles reflect a victim-centred approach to investigations and prosecutions and aim to make criminal justice systems more tailored to the actual needs of victims, starting at police stations.

5. On the other hand, Article 25 of the convention requires states to ensure the provision of support to victims of sexual violence when they are the most vulnerable. Such support services must aim to empower victims and accompany them throughout their journey of recovery, while facilitating and enabling the gathering of forensic evidence, thereby increasing their chances of obtaining justice. More specifically, this article requires parties to take the necessary legislative or other measures to provide for the setting up of appropriate, easily accessible rape crisis and/or sexual violence referral centres for victims in sufficient numbers, to cover medical and forensic examination, trauma support and counselling for victims.

6. GREVIO's mid-term horizontal review of its first baseline evaluation reports highlights a number of factors that contribute to low reporting and high attrition rates in sexual violence cases.<sup>303</sup> These include low levels of awareness and the professional capacity concerning sexual violence and lack of specialised training for law

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301. *M.C. v Bulgaria* (Application No. 39272/98), judgment of 4 December 2003.

302. Council of Europe (2022), "Mid-term Horizontal Review of GREVIO baseline evaluation reports", paragraph 365.

303. Council of Europe (2022), "Mid-term Horizontal Review of GREVIO baseline evaluation reports", paragraphs 442 and 446.

enforcement, prosecutors or judges, resulting in poor gendered understanding of this violence, entrenched stereotypes and patriarchal attitudes.<sup>304</sup> Other contributing factors include narrow definitions of sexual offences and the lack of guidance in terms of specialised protocols, which result in poor case building, over-reliance on victim testimony as primary evidence and the influence of bias and stereotyping that minimise the violence, blame the victim or assume that victims make false allegations about the violence.<sup>305</sup> GREVIO has also emphasised problems encountered in the process of obtaining and storing evidence in cases of rape, including cases in which forensic evidence is gathered from the victim only if she reports the crime to the police. This is compounded by the limited numbers of women police officers; a lack of adequate, victim-friendly police and courtroom premises; lengthy judicial procedures; and a lack of holistic support services to victims of sexual violence.<sup>306</sup> These factors illustrate how secondary victimisation can stem from the criminal justice system. Indeed, a number of studies describe victims of sexual violence as being the most re-traumatised by the criminal justice process itself, with some victims viewing the criminal justice system as a “second assault” and feeling that they themselves were on trial.<sup>307</sup>

7. In recent years there has been a succession of positive developments in many parties to the convention in the area of sexual violence, resulting in improvements for victims. Many states are embracing definitions of rape based on the lack of consent, improving investigation, prosecution, procedural and protective measures and establishing rape crisis and/or sexual assault referral centres to offer specialist support services for victims of sexual violence. Many of these developments are recognised to have been driven by states’ efforts to comply with the Istanbul Convention standards. This is but one example of the convention’s and GREVIO’s ability to deliver so that women and girls are better protected and safe from violence. Most of the promising practices reflected in this section have been acknowledged in GREVIO baseline evaluation reports, whereas some have been documented through the Committee of the Parties conclusions.<sup>308</sup> Other states have made reforms that have not yet been analysed by GREVIO, either because the changes post-dated the GREVIO baseline evaluations or because GREVIO has not yet evaluated the state party in question. The following section provides an overview of the different approaches to criminalising rape and sexual violence.

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304. Ibid., paragraphs 435 and 447.

305. Ibid., paragraphs 364-365, 435, 437 and 447.

306. Ibid., paragraphs 445, 438, 443 and 277-287.

307. Craig E. (2015), “The Inhospitable Court”, *University of Toronto Law Journal* 10.3138; also see studies discussed in UNODC (2019), “Handbook for the Judiciary on Effective Criminal Justice Response to Gender-based Violence against Women and Girls”.

308. The Committee of the Parties to the Istanbul Convention plays a role in monitoring the Istanbul Convention. Since 2018, it has been adopting, on the basis of GREVIO’s findings, recommendations to parties to further the implementation of the convention. Parties are given three years to implement such recommendations and report back to the committee. At its 10th meeting on 13 April 2021, the committee agreed on a framework to supervise the implementation of these recommendations, issuing a standardised reporting form. On the basis of the information provided by parties and any additional information, the committee then adopts conclusions on the implementation of its recommendations in relation to each state party under review. So far, the committee has reviewed Austria, Albania, Denmark, Monaco, Montenegro, Portugal and Sweden.

## Different approaches in the criminalisation of sexual violence, including rape

8. The criminalisation of sexual violence, including rape, by parties to the convention is characterised by different definitions and scopes of protection, and various behaviours, different sanctions and aggravating and mitigating circumstances.<sup>309</sup> From a review of GREVIO's monitoring activity to date, there appear to be four different approaches in the criminalisation of sexual violence, including rape. This includes one that requires the use of force, coercion or vulnerability. Another approach is based on a two-tiered approach, with a legal provision that requires the use of force, threat or coercion and adding another offence that is based entirely on lack of consent. A third approach, otherwise known as the "no means no" model, does not require the use of force, threat or coercion but, rather requires proof that the sexual act was committed against the will of a person. In the fourth approach, also informally called the "only yes is yes" model, or "affirmative consent", the voluntary participation of both or all parties is required for sexual acts not to be criminalised.

### Laws based on the use of force, coercion or threat

9. The traditional criminal law approach to sexual violence was based on purely force-based definitions, requiring the use of force, threats, coercion or intimidation. This approach was not designed to protect sexual autonomy, but rather was based on religious and/or moral rules for sexual conduct.<sup>310</sup> Moreover, such an approach reflects the archaic view that when it comes to rape, the most pervasive danger comes from strangers. However, studies refute the common myth that "real rape" involves strangers, physical force and physical injury and find that most rapes involve people known to the victim and do not result in visible injury.<sup>311</sup> This effectively consigned most rapes to a place beyond law's reach and out of step with modern concepts of women's sexual agency.<sup>312</sup> As GREVIO has observed, historically such models represent beliefs and practices based on the idea that women are the bearers of society's "moral standards", fostering an environment in which perpetrators of sexual violence are exonerated and the responsibility for the violence is transferred to the victims. Because laws based on the use of force or coercion reflect more concern for the accused than for the victim, and reflect the persistent belief that false rape accusations are easily made but are challenging to disprove, this had a negative impact on the development of the rules of evidence and criminal procedures around sexual offences.<sup>313</sup> For example, GREVIO noted in its baseline evaluation

309. For an analysis of aggravating factors applied by different European Union member states, see European Network of legal experts in gender equality and non-discrimination (2021), "Criminalisation of gender-based violence against women in European States, including ICT-facilitated violence", pp. 172-178.

310. For a discussion on the evolution of sexual autonomy, see Tatjana Hörnle, "#MeToo – Implications for Criminal Law?" (2019), *Bergen J. Crim. L. & Crim. Just.* 6, 129-306.

311. Among other sources, studies listed in UNODC (2014), "Handbook on effective prosecution responses to violence against women and girls", page 31, confirm this.

312. Tuerkheimer D. (2015), "Rape on and off campus", *Emory Law Journal*, Vol 65:1, pp. 44-45.

313. The 17th Century statement by English jurist Sir Matthew Hales "rape is an accusation easily made and hard to be proved and harder to be defended by the party accused, tho never so innocent", discussed in Lonsway K. et al. (2009), "False Reports: Moving Beyond the Issue to Successfully Investigate and Prosecute Non-Stranger Sexual Assaults", 3:1 *The Voice* 1.

reports on Finland and Norway that a consequence of a force-based model is the requirement of higher thresholds of evidentiary standards of physical resistance and a shifting of the focus onto the victim's behaviour rather than on the accused's actions.<sup>314</sup> In relation to Georgia<sup>315</sup> and Poland,<sup>316</sup> GREVIO noted with concern that the strict corroboration rules for evidence to establish sexual violence may result in high evidentiary requirements for rape.<sup>317</sup>

### **A limited understanding of lack of consent based on vulnerability**

10. Early reforms to move away from force-based definitions introduced limited situations in which the lack of consent became a defining element of sexual violence and rape. More specifically, some countries included in the definition of rape certain cases of invalidated consent, such as where the victim is in a helpless state due to unconsciousness (caused by alcohol or drugs) or the particular situation of the victim (illness or mental disability or detention of some form).<sup>318</sup>

### **Parties that have adopted a force-based approach**

11. A significant number of parties – Albania, Andorra, Bosnia and Herzegovina, Estonia, France, Georgia, Italy, the Netherlands, Norway, Poland, Romania, San Marino, Serbia and Switzerland – continue to require as constituent elements of sexual offences the use of violence, coercion, compulsion, threat, intimidation or a state or situation of the victim which makes them incapable of resisting.<sup>319</sup> GREVIO did, however, welcome the law reform efforts being discussed in the Netherlands, Norway, Serbia and Switzerland at the time of GREVIO's respective evaluations.

12. The majority of force-based definitions make reference to using violence or threat of violence (such as France, Italy and the Netherlands) or going against the person's will by using force (such as Estonia) or by constraint (Romania). That said, it should be noted that in all jurisdictions, including those where the legal definition is force-based, situations which invalidate consent are also recognised in the criminal law or introduced by case law.<sup>320</sup> Some forms of annulment of consent refer to the

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314. See GREVIO's baseline evaluation reports on Finland, paragraph 165; and Norway, paragraph 185.

315. See GREVIO's baseline evaluation report on Georgia, paragraph 310.

316. See GREVIO's baseline evaluation report on Poland, paragraph 215.

317. As regards in particular the baseline evaluation report on Georgia, GREVIO found that although according to Georgian legislation evidence has no predetermined value and should be evaluated in terms of its relevance, admissibility and credibility for each criminal case, prosecutors and the judiciary interpret the legislation in a sense that requires two pieces of direct evidence on which to base an indictment or a conviction for sexual violence. GREVIO expressed its concern that this may result in high evidentiary requirements for rape, as this rule is not only applied for a conviction but also for an indictment and may result in low levels of indictments and, subsequently, convictions.

318. As regards European Union member states, see the European Network of legal experts in gender equality and non-discrimination (2021) cited above.

319. See GREVIO's baseline evaluation reports on Albania, paragraphs 135-138; Andorra, paragraphs 158-161; Bosnia and Herzegovina, paragraphs 218-220; Estonia, paragraphs 171-172; Finland, paragraphs 165-168; France, paragraphs 190-195; Georgia, paragraphs 252-256; Italy, paragraphs 189-190; Monaco, paragraph 116; the Netherlands, paragraphs 223-225; Norway, paragraphs 184-189; Poland, paragraph 213-216; Romania, paragraphs 278-281; San Marino, paragraphs 157-160; Serbia, paragraphs 184-186; Spain, paragraphs 220-224; and Switzerland, paragraphs 183-184.

320. European network of legal experts in gender equality and non-discrimination (2021), cited above.

helpless state of the victim, with formulations such as “taking advantage” or “abusing the vulnerability”. This “helpless” state is connected in most cases to some kind of unconsciousness due to alcohol or drugs or the particular situation of the victim, for example illness or mental disability or detention of some form. Italy describes this act of taking advantage as “abusing the conditions of physical or mental inferiority of the injured person”. In France, besides the use of force, reference is also made to penetration achieved by “coercion and surprise”, and it is left to the judge to determine its meaning on a case-by-case basis. Hence, references to the inability of victims to consent are present in all definitions, regardless of whether they are force or consent based. These result in the alleviation of the need for the victim to demonstrate their resistance. However, national experts reported that courts do not interpret these “non-consensual” elements consistently and the threshold of proof remains high, often resulting in secondary victimisation.<sup>321</sup>

13. In its baseline evaluation reports on Andorra, Bosnia and Herzegovina, Norway, Poland, Romania and San Marino, GREVIO has clearly stated that the above-mentioned approach requiring elements of violence, coercion and threat do not fully capture the realities of women experiencing sexual violence and their coping mechanisms to deal with such violence, which include reactions such as flight, fight, freeze, flop or befriend. This conflicts with the requirement under the Istanbul Convention that prosecutions of sexual offences are to be based on a context-sensitive assessment of the evidence in order to establish, on a case-by-case basis, whether or not the victim has freely consented to the sexual act.<sup>322</sup> GREVIO has therefore strongly encouraged or urged the relevant parties to amend their legislation on sexual violence so that it is based on the notion of freely given consent as required by Article 36.

### The two-tiered approach

14. In the two-tiered approach, a provision requiring the use of force and a provision requiring the element of lack of consent coexist in parallel. However, the former often carries a harsher prison sentence compared to the latter. In the “one crime model”, threats or violence enhance the severity of the wrongdoing as additional elements, but are not constituent for the existence of wrongdoing, as it is for the two-tier approach. In its baseline evaluation reports, GREVIO has adopted the view that it is the fact that the act is carried out without the consent of the victim that should determine the punishment, whether this is committed by someone who employs violence or abuses his position of power over the victim, for example. Where the circumstances of the act are particularly violent, abusive and traumatising, however, aggravating circumstances should be applied to ensure a sanction commensurate with the gravity of the act.<sup>323</sup>

### Parties that have adopted this approach

15. A number of states do not follow the “one crime model” but rather have tiers of sexual offences with different constituent elements, such as force, threat of violence

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321. Ibid.

322. Explanatory Report to the Istanbul Convention, paragraph 192.

323. See GREVIO’s baseline evaluation report on Serbia, paragraph 186.

or incapacity of the victim, with different severity of the sanctions across the different sexual violence offences. GREVIO observed this approach in its baseline evaluation reports on Austria, Georgia, Norway and Serbia.<sup>324</sup> An example is found in Georgia, where the legislation incriminates two different types of acts of rape, one which is termed “rape” and attracts more serious penalties, and one that is termed “coercion to intercourse” and is defined as a less serious crime, mainly because it does not require the use of force or threats. Similarly, in Norway, most of the sexual offences continue to be categorised according to the degree of physical violence or threat employed, or to the degree of the victim’s helplessness, except for section 297 of the criminal code which covers sexual acts performed without consent, which is punishable by a fine or imprisonment for up to one year.

### The “no means no” approach

16. The “no means no” approach is based on the premise that sexual intercourse is considered consensual as long as neither party said “no”. This approach criminalises sexual acts that happen “against the will of a person”. The degree of resistance, whether verbal or non-verbal, is used as a measure of whether the victim consented to the sexual acts.<sup>325</sup> The “no means no” approach presumes consent, unless it is withdrawn – explicitly or implicitly – by the victim. The prosecutor is therefore required to prove beyond a reasonable doubt that the act took place against the will of the complainant. In other words, the prosecutor must demonstrate to the satisfaction of the fact-finders (the judge or jury) that the complainant made the accused aware that she/he did not wish to engage in sexual acts. This includes resistance that is verbally expressed or through unequivocal gestures or conduct such as pushing away, crying, attempting to leave, etc. In other words, where a prosecutor is unable to prove a victim’s communication of a “no”, whether verbal or non-verbal, proof of a constituent element of the crime will be considered to be lacking, and therefore the accused will not be found criminally liable. By way of example, in Austria, which in its two-tiered approach has adopted a “no means no” provision, for sexual acts to be punishable, the victims must express their opposing will verbally or otherwise.<sup>326</sup>

17. In practical terms, scholars have highlighted the risk that where this approach is taken, the burden is on the victim to verbally or non-verbally reject sexual advances or ward off sexual violence, rather than on the perpetrator to ascertain the agreement of another to engage in a sexual act.<sup>327</sup> More specifically, a risk has been identified that criminal proceedings may focus on the former as a central element, thereby placing undue attention on the behaviour of the victim. GREVIO in its baseline evaluation report on Germany observed that its “no means no” approach means that criminal proceedings will focus on the actions of the victim rather than those

324. See GREVIO’s baseline evaluation reports on Austria, paragraphs 139-143; Georgia, paragraphs 256-257; Norway, paragraph 189; and Serbia, paragraph 186.

325. Little N. (2019), “From No Means No to Only Yes Means Yes: The Rational Results of an Affirmative Consent Standard in Rape Law”, *Vanderbilt Law Review*, 58, 1 321.

326. See GREVIO’s baseline evaluation report on Austria, paragraphs 140-142.

327. Little N. (2019), “From No Means No to Only Yes Means Yes: The Rational Results of an Affirmative Consent Standard in Rape Law”, *Vanderbilt Law Review*, 58, 1 349; and Leary M. G. (2016), “Affirmatively replacing rape culture with consent culture”, *Texas Tech Law Review*, Vol 49:1, pp. 49-51.

of the accused, creating room for gender stereotypes and rape myths to resurface.<sup>328</sup> Moreover, myths continue to abound to suggest that “no” may not actually mean “no”, and that many still believe that a woman’s outright verbal rejection of sexual advances does not, in and of itself, create a case of sexual violence by the man who engages in sexual acts with the woman.<sup>329</sup> Another concern of requiring conduct “against the will of a person” is that this will not cover instances where the victim remains passive but does not consent.<sup>330</sup>

### Parties that have adopted this approach

18. The “no means no” approach has been adopted, among others, by Austria and Germany. More specifically, GREVIO noted in its baseline evaluation reports on Austria and Germany that framing sexual offences to cover instances of sexual intercourse against the will of a person meant that for non-consensual sexual acts to be punishable under Austrian and German legislation, the victim must express her opposing will verbally or otherwise, hence not covering instances where the victim remains passive but does not consent.<sup>331</sup> In other words, regarding consent-based definitions that take the “no means no” approach, GREVIO has noted that there is – however slight – a difference between sexual acts committed against the will of the victim and all non-consensual sexual acts, as required by the convention.<sup>332</sup>

19. Furthermore, GREVIO reviewed a preliminary draft law to amend sexual assault offences in its baseline evaluation report on Switzerland, which, at the time, proposed a “no means no” approach stating that the act of rape or sexual assault is defined as being committed “against the will of victims”.<sup>333</sup> Specifically, GREVIO pointed out that such a conceptualisation does not fully meet the requirement under Article 36 of criminalising all non-consensual sexual acts. GREVIO was concerned that the situation envisaged by the revised bill would require victims to have to express their lack of consent, either verbally or in some other way, for rape and sexual assault to be punishable and that this would mean the focus would be on the victims’ actions rather than on those of the accused. A promising development has been that after the adoption of GREVIO’s baseline evaluation report, Switzerland’s Parliament decided to amend the current law, which is based on force, threats or psychological pressure, and opted, in March 2023, in favour of a new definition of rape based on the “no means no” approach, expanded through a provision indicating that sexual acts committed on a person in a situation of “freezing” also constitutes rape. The parliament’s decision paves the way for the adoption of a law based on this definition.

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328. See GREVIO’s baseline evaluation report on Germany, paragraph 252.

329. Little N. (2019), cited above, p. 1 322.

330. See GREVIO’s baseline evaluation reports on Austria, paragraphs 140-142; and Germany, paragraph 252.

331. See GREVIO’s baseline evaluation report on Germany, paragraph 252.

332. See GREVIO’s baseline evaluation reports on Austria, paragraphs 140-142; and Germany, paragraphs 250-252.

333. Swiss Council of States, Legal Affairs Committee, decision of 18 February 2022.

## The “only yes is yes” approach

20. The “only yes is yes” approach, also known as the “affirmative consent standard”, equates consent to sexual acts to mean “affirmative and freely given consent”.<sup>334</sup> This focuses on an affirmative expression, whether verbal or non-verbal. Consent is seen as an “agreement” communicated between the parties based on free will. Advocates have noted that the difference between sex and rape is simply whether someone wants to have sex or not, and the fact that the responsibility is not for a person to say no, but for the other person to listen for a yes.<sup>335</sup> Such an approach has been reflected in laws criminalising sexual acts with a person “who is not participating voluntarily”<sup>336</sup> or “who has not given consent”.<sup>337</sup> This approach specifically means that passivity, silence, lack of protest or lack of resistance cannot be deemed to mean consent. In such an approach, affirmative consent must be ongoing through the sexual activity and can be revoked at any time.

21. Ultimately, the shift from “no means no” to “only yes is yes” is a shift in the way society, and in particular the justice system, looks at the process of consenting to sexual acts. This shift views sex as an act that should be entered into willingly by both parties. Affirmative consent approaches provide clearer rules to parties at risk of perpetrating or being victims of sexual violence, as well as providing clarity to those charged with investigating and prosecuting such cases.<sup>338</sup>

## Parties that have adopted this approach

22. Out of the 29 GREVIO baseline evaluation reports published by the end of 2022, GREVIO acknowledged that five states have an offence of sexual violence based on the lack of freely given consent, namely Belgium, Iceland, Malta, Slovenia and Sweden.<sup>339</sup> GREVIO has positively noted that Iceland, Malta and Sweden have amended their legislation on sexual violence following their ratification of the Istanbul Convention to comply with Article 36. A good example of promising practice has been noted by GREVIO in Sweden, where intercourse or any other sexual act with a person “who is not participating voluntarily” is criminalised.<sup>340</sup> GREVIO has observed that under this offence, participation must be voluntary and perceived to be so, as passivity cannot be, per se, considered a sign of voluntary participation. GREVIO has further noted that Sweden has introduced two new offences of “negligent rape” and “negligent sexual

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334. Tatjana Hörnle, “#MeToo – Implications for Criminal Law?” (2019), *Bergen J. Crim. L. & Crim. Just.* 6, 130; Linnea Wegerstad (2021), “Sex must be voluntary: Sexual communication and the new definition of rape in Sweden”, *German Law Journal*, Vol 22, Special Issue 5: “Sexual Violence and Criminal Justice in the 21st Century”, p. 740.

335. Olivia Björklund Dahlgren, FATTA (NGO that means “Get it”), Presentation on the law reform in Sweden at the UN Special Rapporteur on violence against women and Equality Now at the 2020 Expert Group Meeting on Rape as a Grave and Systematic Human Rights Violation and Gender-Based Violence against Women. [www.ohchr.org/sites/default/files/Documents/Issues/Women/SR/Call\\_on\\_Rape/Olivia\\_Bjorklund\\_Dahlgren.pdf](http://www.ohchr.org/sites/default/files/Documents/Issues/Women/SR/Call_on_Rape/Olivia_Bjorklund_Dahlgren.pdf).

336. See GREVIO’s baseline evaluation report on Sweden, paragraphs 181-183.

337. See GREVIO’s baseline evaluation report on Belgium, paragraph 155.

338. Leary M. G. (2016), “Affirmatively replacing rape culture with consent culture”, *Texas Tech Law Review*, Vol 49:1 p. 32.

339. GREVIO’s baseline evaluation reports on Belgium, paragraphs 155-156; Iceland, paragraphs 202-204; Malta, paragraphs 169-171; and Sweden, paragraphs 181-183.

340. See GREVIO’s baseline evaluation report on Sweden, paragraphs 181-183.

abuse”, in order to ensure criminal liability for perpetrators of sexual acts who ought to have been aware of the victim’s lack of consent. More specifically, the aim of these offences is to ensure criminal liability in cases where sexual acts or intercourse are carried out without any reasonable measures taken by the perpetrator to establish the victim’s consent. In other words, the difference between rape and negligent rape is based on the different required “state of mind” (*mens rea*) of the accused.<sup>341</sup> For rape cases, the prosecutor must prove that the accused acted with criminal intent, either because he was certain that the complainant’s participation was non-voluntary or because he was indifferent to whether or not she was participating voluntarily. In cases of negligent rape, the prosecutor must prove gross negligence on behalf of the accused. This includes situations where the accused appreciated that there was a risk that the complainant was not participating voluntarily, but nevertheless went through with the sexual act and/or did not appreciate the risk that the complainant was participating in a non-voluntary manner, but should and could have done so.

23. GREVIO also commended Belgium for its definition of sexual violence, which rests on the victim’s lack of consent. The criminal code of Belgium defines rape as “any act of sexual penetration, of whatever nature and by whatever means, committed in respect of a person who has not given consent”.<sup>342</sup> Another practice worthy of note is the amendments to the criminal code of Malta, which GREVIO noted to have resulted in a standard that is more explicit than the convention in requiring not only that consent “be assessed in the context of the surrounding circumstances” but that attention should be given to the “state of that person at the time, taking into account that person’s emotional and psychological state, among other considerations”.<sup>343</sup> As regards Iceland, GREVIO commended the amendment of the General Penal Code to specifically include the notion of consent in the elements of sexual offences, in order to obtain consensus within society on the definition of rape, to prompt a change in culture for professionals dealing with such cases and to provide victims with sufficient protection.<sup>344</sup> GREVIO also commended Slovenia for its amendment of the criminal code aligning the relevant provisions with the notion of lack of freely given consent, noting, however, that since the amendment was adopted by the Slovenian Parliament after the submission of the government’s comments to GREVIO’s draft evaluation report, GREVIO was not in a position to assess its content.<sup>345</sup>

24. A further illustration of the Istanbul Convention and GREVIO’s positive impact on legislation, policies and, ultimately, victim’s safety in parties are the positive responses to the findings issued in this area by GREVIO in its baseline evaluation reports. These findings have urged the relevant parties to amend the criminal legislation on sexual violence and rape to ensure that provisions are firmly rooted in the lack of freely

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341. Linnea Wegerstad (2021), “Sex must be voluntary: Sexual communication and the new definition of rape in Sweden”, *German Law Journal*, Vol 22, Special Issue 5: “Sexual Violence and Criminal Justice in the 21st Century”, p. 742.

342. See GREVIO’s baseline evaluation report on Belgium, paragraph 155.

343. See GREVIO’s baseline evaluation report on Malta, paragraphs 169-171.

344. See GREVIO’s baseline evaluation report on Iceland, paragraph 202.

345. See GREVIO’s baseline evaluation report on Slovenia, paragraphs 258-260.

given consent and to fully incorporate the notion of consent.<sup>346</sup> While noting that GREVIO has not yet had the opportunity to assess these developments as they post-date the publication of the respective baseline evaluation reports, five additional states, namely Denmark, Finland, Monaco, Portugal and Spain, have transitioned to the “only yes is yes” approach. As regards Denmark, following GREVIO’s baseline evaluation urging the state party to amend its rape law in line with the standards of the convention, Denmark amended its law on 17 December 2020 and criminalised sexual intercourse without explicit consent. In order to bring a rape charge, the law previously required proof of violence, threat or evidence that the victim was unable to fend off the assault, whereas the new provision now clearly states that if both parties do not consent to sex, it is rape. This amendment was welcomed as a positive development in the 2021 Conclusions on the implementation of recommendations in respect of Denmark adopted by the Committee of the Parties to the Istanbul Convention.<sup>347</sup> In Finland, a bill to redefine rape as sexual acts with a person, regardless of age, who has not indicated their consent verbally or non-verbally was adopted on 1 January 2023.<sup>348</sup>

### Recent developments that remain to be assessed

25. In Portugal, law reforms in January 2019 expanded the definition of rape to include the lack of consent,<sup>349</sup> but it appears that consent remains linked to coercion and that the current definition would then not be entirely in line with Article 36 of the convention. Similarly, Monaco redefined, by Law 1 517 of December 2021, the offences of rape and sexual assault by making reference to the “lack of consent”. However, the new definition still includes an element of constraint. In Spain, the Organic Law on Comprehensive Guarantee of Sexual Freedom was adopted in September 2022, making sexual acts without consent liable as sexual assault.<sup>350</sup> The law was amended in April 2023 to introduce harsher penalties for sexual assault carried out with violence or intimidation, or against a person whose free will has been annulled. In August 2023, Luxembourg adopted a law amending the Criminal Code and the Code of Criminal Procedure and specifying that consent to a sexual act must be assessed “in the light of the circumstances of the case” and that “it cannot be inferred from a lack of resistance by the victim”<sup>351</sup>. As highlighted by GREVIO in its first baseline evaluation on Luxembourg, this law should “allow the judiciary to focus,

346. Such a specific finding was articulated in 19 GREVIO baseline evaluation reports: Albania, Denmark, Portugal, Finland, France, Italy, the Netherlands, Serbia, Spain, Andorra, Poland, San Marino, Romania, Bosnia and Herzegovina, Switzerland, Estonia, Georgia, Cyprus and Norway.

347. Committee of the Parties, “Conclusions on the implementation of recommendations in respect of Denmark adopted by the Committee of the Parties to the Istanbul Convention”, IC-CP/Inf(2021)6, adopted on 7 December 2021.

348. Aleksu Teivainen (January 2023), “Finnish Police to re-think rape interrogations after legislation overhaul”, *Helsinki Times*: [www.helsinkitimes.fi/finland/finland-news/domestic/22795-finnish-police-to-re-think-rape-interrogations-after-legislative-overhaul.html](http://www.helsinkitimes.fi/finland/finland-news/domestic/22795-finnish-police-to-re-think-rape-interrogations-after-legislative-overhaul.html).

349. Helen Battaglini (21 February 2019), “Portugal finally expands the legal definition of rape”, amicus info: <https://info.amicus-curiae.net/author/helenbattaglini/>

350. Guy Hedgcock (26 May 2022), “Spanish MPs back ‘only yes means yes’ sexual consent law”, BBC: [www.bbc.com/news/world-europe-61591615](http://www.bbc.com/news/world-europe-61591615). In particular, the provision clarifies that “It will only be understood that there is consent when ... the will of the person is clearly expressed”.

351. Law of 7 August 2023 law amending the Criminal Code and the Code of Criminal Procedure, strengthening the means of combating sexual abuse and sexual exploitation of minors.

in the context of the surrounding circumstances of the case, on the assessment of the woman's free will and the ability of the perpetrator to take notice of the woman's will, instead of evidence of other constituent elements of fact. The definition could also help to encourage more victims of sexual violence to lodge complaints".<sup>352</sup>

## **Parties where GREVIO has identified the need for additional steps to bring legislation in line with the Istanbul Convention**

26. In addition to the shortcomings discussed above concerning the elements of consent, GREVIO has identified some additional steps needed to bring legislation in line with the Istanbul Convention in a number of parties, including in those states that have adopted an "only yes is yes" or a "two-tiered" approach.

27. In its baseline evaluation report on Cyprus, GREVIO observed that the criminal code does not qualify the concept of consent in order to clarify that it should be given voluntarily as the result of the person's free will assessed in the context of the surrounding circumstances, as required by the convention.

28. GREVIO has also identified gaps in a number of parties as regards the type of sexual acts covered by the respective laws. For example, GREVIO has consistently drawn attention to those parties that do not cover the specific conduct referred to in Article 36, paragraph 1, indent c, namely "causing another person to engage in non-consensual acts of a sexual nature with a third person", which aims to criminalise the conduct of abrogating a woman's sexual self-determination.<sup>353</sup>

### **Creating "hierarchies" of victims**

29. In a number of baseline evaluation reports, GREVIO specifically warned against the creation of a "hierarchy of victims" on the basis of their characteristics, such as age, helplessness, dependence, disability or others, calling for appropriate legislative measures to send the message that rape is rape.<sup>354</sup> By way of example, in GREVIO's baseline evaluation report on Serbia, when comparing the offence of rape to the offence of sexual intercourse with a helpless person, GREVIO was concerned that this sends the message that the violation of sexual decision making and autonomy does not amount to rape. Similarly, in Bosnia and Herzegovina, the offence of sexual intercourse with a helpless person carries markedly lower sentences than the offence of rape, which requires proof of the use of violence, coercion or threats by the perpetrator.

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352 GREVIO baseline evaluation report on Luxembourg, published on 10 July 2023, paragraph 152.

353. GREVIO's baseline evaluation reports on Albania, paragraphs 135-138; Austria, paragraphs 140-142; Bosnia and Herzegovina, paragraphs 219-223; Georgia, paragraphs 259-262; Monaco, paragraph 116; Montenegro, paragraphs 179-180; Poland, paragraphs 219-221; Sweden, paragraphs 181-183; and Türkiye, paragraphs 222-225.

354. See GREVIO's baseline evaluation reports on Bosnia and Herzegovina, paragraph 221; Cyprus, paragraph 196; Denmark, paragraph 178; Estonia, paragraph 173; Finland, paragraph 167; Georgia, paragraphs 256-257; Norway, paragraph 189; Poland, paragraph 218; Romania, paragraph 287; and Serbia, paragraph 186.

## Trends identified and lessons learned

30. Since the Istanbul Convention entered into force in 2014, there has been a positive shift in European states to move away from force as a necessary element of sexual offences, towards the view that sexual intercourse without consent is, by itself, sexual violence/rape.<sup>355</sup> While the drafters left it “to the Parties to decide on the specific wording of the legislation and the factors that they consider to preclude freely given consent”,<sup>356</sup> it is vital that all non-consensual sexual acts are criminalised.<sup>357</sup> Only then will it be possible to make the necessary paradigm shift to recognise the central role of the victim’s willingness to consent and thereby improve the criminal justice response to the needs of victims of sexual violence.

31. GREVIO has pointed out in several baseline evaluation reports that conceptualising sexual offences as sexual acts committed “against the victim’s will” does not fully meet the requirement under Article 36, as it fails to ensure that all non-consensual sexual acts are criminalised.<sup>358</sup> It can be deduced that in GREVIO’s opinion the affirmative consent approach is more aligned with the spirit of the convention as a whole and with the overall objective to improve prevention, protection and prosecution. Indeed, an “only yes is yes” approach is more likely to have an impact in the field of prevention and to raise the awareness of society about the gender prejudices and stereotypes that are often expressed when dealing with rape and sexual offences. It is also a powerful way of changing the mindset of law-enforcement and judicial officers and of providing better protection to victims, by putting them at the centre of any intervention.

32. A recent assessment of the impact of the Swedish definition of rape from the Swedish National Council for Crime Prevention has also identified a number of specific practical advantages of the “only yes is yes” approach.<sup>359</sup> First, the assessment found that the number of reports, prosecutions and convictions increased after the law was changed and that, more specifically, the rate of convictions increased by 75%.<sup>360</sup> Moreover, the assessment found that new types of cases now reach the courts. These are the very types of situations that the changes to the law were intended to cover, namely instances of “surprise rape” and cases where the victim remained passive during the sexual act.<sup>361</sup>

33. Where the state has adopted an “only yes is yes” approach, the investigation and prosecution of rape and sexual offences no longer hinges on proving that the acts were a result of violence, threatening behaviour or a particularly vulnerable

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355. Council of Europe (2022), “Mid-term Horizontal Review of GREVIO baseline evaluation reports”, paragraphs 361-364.

356. Explanatory Report to the Istanbul Convention, paragraph 193.

357. For example, see GREVIO’s baseline evaluation report on Switzerland, paragraph 184.

358. See GREVIO’s baseline evaluation reports on Austria, paragraphs 140-142; Germany, paragraphs 250-252; and Switzerland, paragraph 184.

359. Stina Holmberg and Lars Lewenhagen (2020), “The new consent law in practice: An updated review of the changes in 2018 to the legal rules concerning rape”, the English summary of the Brå report 2020:6. (The Swedish National Council for Crime Prevention (Brå)).

360. *Ibid.* The report notes that the number of convictions increased from 190 in 2017 to 333 in 2019.

361. *Ibid.*

situation.<sup>362</sup> The police questioning will shift from determining if the suspect used violence or the threat of violence, to determining whether the victim had consented to the act. Cases will not have to be discontinued if no physical evidence or corroborating evidence about her vulnerability or helplessness is secured. In this connection, a positive practice can be found in Denmark, which amended its law to criminalise sex without explicit consent in 2020, where guidelines have been developed as part of the preparatory works of the law on how to establish the existence or lack of consent.<sup>363</sup> The guidelines take steps to clarify that rape is not about coercion or the duty to say no, but about whether the parties voluntarily consent to a sexual activity during the entire intercourse. It clarifies that consent can be expressed through words or action and that there is no requirement that it is done directly or in any particular way. Furthermore, they establish that, in principle, there is a presumption that a person who consents to intercourse does not behave completely passively, but participates to some extent, providing some examples of actions that can be indicative of consent to sexual intercourse.

34. The assessment carried out by the Swedish National Council for Crime Prevention also observed a change in the types of evidence used in convictions under the new law. It found a reduction in the use of evidence of injury, used only in 13% of the new cases, whereas it was used in 37% of cases pending the year prior to the change in law. Moreover, the assessment indicated that reliance on different types of evidence, such as a recording of the event, calls to the emergency services, a confession or the testimony of an eyewitness, nearly doubled in cases that resulted in convictions under the new law as compared to those under the old law. There were also a greater proportion of convictions where the only evidence used was the testimony of a person in whom the injured party had confided – the proportion was 31% under the new law, as opposed to 16% in 2017, under the previous provisions. In nine of the 12 cases that have resulted in a conviction for negligent rape, there was no additional supporting evidence other than people who had not personally witnessed the event, but who had been told about it by the injured party.<sup>364</sup>

35. The Swedish assessment also noted other advantages to victims stemming from an “only yes is yes” approach. Notably, the assessment indicates that victims feel that they are now less likely to bear the blame for what happened, and that they now have the opportunity to seek legal redress by reporting the crime. More specifically, it highlights that an “only yes is yes” approach addresses the deeply embedded myths about rape and sexual violence which can be prevalent in the criminal justice system and which can affect how the defence lawyers, police, prosecutors and judges interpret what is meant by sexual acts committed against a victim’s will.<sup>365</sup> An analysis from a non-governmental organisation in Sweden indicates that since the adoption of amendments to the Swedish law, there has been greater public awareness of the importance of consent in sexual relations and that this approach and the relevant basic principle is now also being introduced in the

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362. Aleksi Teivainen (January 2023), cited above.

363. European network of legal experts in gender equality and non-discrimination (2021), cited above. p. 80.

364. Stina Holmberg and Lars Lewenhagen (2020), cited above.

365. Ibid.

school curriculum.<sup>366</sup> Other sources, such as media reports, also attest to important societal changes and awareness stemming from the amendment of rape laws to a consent-based definition. Such law reform efforts are often accompanied by a strong civil society movement and awareness-raising campaigns.<sup>367</sup>

36. It further appears that the “only yes is yes” approach allows for incorporating and criminalising new trends on non-consensual sexual acts such as non-consensual condom removal during sexual intercourse, otherwise known as “stealthings”, and drug-facilitated sexual assault. With the “only yes is yes” approach, these practices can be understood to transform consensual sex into non-consensual sex and be viewed as violations of trust and a denial of sexual autonomy. For instance, criminal courts in Germany, Belgium and Switzerland have considered non-consensual removal of a condom as vitiating consent to the sexual act and therefore could be considered a form of sexual offence.<sup>368</sup> Furthermore, in Belgium, the “voluntary administration of inhibiting substances”, or drugging, for the purpose of abusing a person’s vulnerability, has become an aggravating factor in non-consensual sexual acts, and is to be taken into account when considering the “state of impaired free will” to determine whether the person was capable of giving consent.<sup>369</sup>

## **Analysis of positive practices identified by GREVIO in the fields of investigation, prosecution, procedural law and protective measures**

### **How to decrease attrition rates: immediate response, investigation, prosecution and protection**

37. While amending rape and sexual violence laws are a vital step towards changing attitudes and achieving justice, much more is needed to effect institutional change and to ensure a decrease in attrition rates of cases involving rape and sexual violence. The convention requires parties to ensure that law enforcement can react promptly and appropriately by offering victims immediate protection and engaging in the prevention of violence, such as by making use of preventive operational measures and through the efficient collection of evidence (Articles 49 and 50). It also requires designing procedures to protect victims of violence at all stages of proceedings, during investigations and at trial, covering – but not limited to – victims who are witnesses (Article 56). GREVIO has welcomed various promising practices that states have introduced in order to achieve a more focused, driven and outcome-based approach to perpetrators’ accountability. This section reviews the practices

366. Olivia Björklund Dahlgren, cited above.

367. Guy Hedgecoe (26 May 2022), cited above.

368. HIV Justice Network (18 December 2018), “Germany: Country broadens use of criminal law to removal of condom without consent”: [www.hivjustice.net/cases/germany-germany-broadens-use-of-criminal-law-to-removal-of-condom-without-consent/](http://www.hivjustice.net/cases/germany-germany-broadens-use-of-criminal-law-to-removal-of-condom-without-consent/); Lauren Walker (21 November 2022), “Removing condom and drugging: Belgium rewrites ‘patriarchal’ criminal code”, *The Brussels Times*: [www.brusselstimes.com/325324/removing-condom-and-drugging-belgium-rewrites-patriarchal-criminal-code](http://www.brusselstimes.com/325324/removing-condom-and-drugging-belgium-rewrites-patriarchal-criminal-code); Reuters (9 May 2017), “Swiss court upholds sentence in ‘stealthings’ condom case”, ABC News: [www.abc.net.au/news/2017-05-10/swiss-court-upholds-sentence-in-stealthings-condom-case/8512326](http://www.abc.net.au/news/2017-05-10/swiss-court-upholds-sentence-in-stealthings-condom-case/8512326).

369. Lauren Walker (21 November 2022), cited above.

highlighted in GREVIO's baseline evaluation reports that contribute to making the criminal justice system more victim-friendly, all along the criminal justice chain, from police and prosecution work to the courts; allowing for comprehensive and victim-sensitive evidence collection; and providing protective measures for victims at all stages of the investigation and judicial process.

38. GREVIO has frequently noted that while criminal justice is not the only response to be pursued in cases of violence against women, it is important to ensure accountability for criminal acts to build trust in the system and send the message that violence against women is not acceptable.<sup>370</sup> Without a process that holds perpetrators to account, the violence is unlikely to stop, whether it is continued violence towards the same victim or against a new victim. Prosecution and sanctions are therefore an essential part of the protection of women. Moreover, low conviction rates generally contribute to low reporting rates. Law-enforcement agencies and the judiciary should be seeking an increase in crime reporting as their response becomes more effective and trusted and judicial processes deliver sanctions that match the crime. Because of this, the importance of understanding attrition, as the process by which cases fail to proceed through the criminal justice system and reach trial and/or result in conviction,<sup>371</sup> is a common theme raised in a number of GREVIO baseline evaluation reports.<sup>372</sup>

### **Prioritisation of cases of sexual violence and rape in a gender-sensitive manner**

39. Traditional responses to sexual violence cases based on common gender stereotypes, prejudices and discriminatory attitudes minimise the victim's account of violence, hinder the recognition of the seriousness and specificity of the violence and feed into assumptions of false allegations. This contributes to assigning low priority to these cases, in comparison to other violent crimes, and leads to delays in initiating investigation and judicial processes, which in turn can lead to loss of vital evidence and secondary victimisation of the victim.<sup>373</sup> As noted by the convention drafters, being assigned low priority contributes to impunity for perpetrators and reinforces the misconception that such violence is acceptable in society.<sup>374</sup> A key principle of an adequate response is that of ensuring swift and effective investigations and judicial proceedings that are based on a gendered understanding of these offences and that duly take into consideration the victim during all stages.<sup>375</sup>

40. GREVIO has noted positively in its baseline evaluation report on Portugal the measures put in place to prioritise the handling of violence against women,

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370. See GREVIO's baseline evaluation reports on Portugal, paragraph 195; France, paragraph 232; Italy, paragraph 222; Belgium, paragraph 189; and Norway, paragraph 158.

371. The definition of attrition is from Lovett and Kelly (2009), cited above, p. 1.

372. See GREVIO's baseline evaluation reports on Denmark, paragraph 198; Italy, paragraph 222; and Portugal, paragraph 195.

373. Council of Europe (2022), "Mid-term Horizontal Review of GREVIO baseline evaluation reports", paragraph 439. See also GREVIO's baseline evaluation reports on France, paragraph 221; Slovenia, paragraph 311; and Romania, paragraph 341.

374. Explanatory Report to the Istanbul Convention, paragraph 255.

375. See GREVIO's baseline evaluation report on San Marino, paragraph 178; and Slovenia, paragraph 311.

including sexual violence.<sup>376</sup> More specifically, following the ratification of the Istanbul Convention by Portugal, Law No. 72/2015 was introduced establishing as an objective of criminal policies the principle that sexual violence-related offences should be investigated as a matter of priority. Another promising practice is found in San Marino, where Law 97/2008 obliges the law-enforcement agency to take immediate action in cases of violence against women and, in any case, to intervene within an hour of receiving the report. Moreover, the GREVIO baseline evaluation report on San Marino refers to an intervention protocol that clearly recognises the structured nature of gender-based violence and warns police about the risk of secondary victimisation and victim blaming.<sup>377</sup> The GREVIO baseline evaluation report on Norway notes that the Director General of Public Prosecutions has instructed the police force to give priority to cases involving violence against women and that these cases are to be handled in a swift manner.<sup>378</sup> GREVIO also welcomed initiatives to establish monitoring departments to ensure timely responses and effective investigations in sexual violence cases, as with the Georgia Human Rights Protection and Quality Monitoring Department. The baseline evaluation report on Georgia positively noted the information provided by authorities indicating that investigations into such offences rose substantially in the following two years.<sup>379</sup>

### **Improving reporting and investigation: victim-friendly police stations, specialised police units and trained police officers**

41. Improving reporting and investigations requires various measures to make the criminal justice system more victim-friendly, reduce victims' secondary victimisation and ensure a quality law-enforcement response based on a trauma-informed approach free from stereotypes and biases. This can greatly contribute to higher levels of satisfaction among victims with their experience at the reporting stage, as GREVIO noted in its baseline evaluation report on Denmark. In this report, GREVIO positively noted the statistics provided by the authorities indicating a significant drop in the rate of discouraged women attempting to report a rape after much work was done to improve the law-enforcement response.<sup>380</sup> The continued efforts made by Denmark in this area, following the adoption of the baseline evaluation report, were also noted in the 2021 Conclusions on the implementation of recommendations in respect of Denmark, adopted by the Committee of the Parties to the Istanbul Convention. More specifically, the latter conclusions welcomed the development of the 2021-2023 multiyear strategy of the police which includes the setting up of special teams for handling sexual offences cases and the opportunity afforded to victims of sexual violence to benefit from a recorded interview.<sup>381</sup> Indeed, GREVIO has observed that swift investigations based on a sensitive and professional approach to victims significantly reduces the risk of victims abandoning their cases.<sup>382</sup>

376. See GREVIO's baseline evaluation report on Portugal, paragraph 187.

377. See GREVIO's baseline evaluation report on San Marino, paragraphs 178-181.

378. See GREVIO's baseline evaluation report on Norway, paragraph 219.

379. See GREVIO's baseline evaluation report on Georgia, paragraphs 303-304.

380. See GREVIO's baseline evaluation report on Denmark, paragraph 191.

381. Conclusions on the implementation of recommendations in respect of Denmark adopted by the Committee of the Parties to the Istanbul Convention on 7 December 2021 (IC-CP/Inf(2021)6).

382. See GREVIO's baseline evaluation report on Montenegro, paragraph 219.

## Comprehensive measures to improve reporting and investigations

42. In addition to the positive practices adopted by Denmark, other promising examples noted by GREVIO are those that provide for targeted specialist training of police officers, specialised units or designated investigators, standardised protocols and the setting up of specialised victim-friendly rooms in police stations. A good example of this is described in GREVIO's baseline evaluation report on Iceland, which refers to the various measures articulated in the Icelandic Action Plan on Sexual Violence. This action plan was passed by parliament, upon the initiative of the Ministry of Interior and following a study pointing to high acquittal rates for sexual offences.<sup>383</sup> Measures included creating divisions in the Metropolitan Police specialising in sexual crimes and technology-facilitated violence; a protocol for handling and investigating sexual offences; additional full-time police officer positions; and additional funding to update procedures and for investigative equipment. It also included other initiatives such as establishing a comforting room in the main police station, where the victim can give her report with privacy, after having made an appointment online. GREVIO has also welcomed the measures taken in Italy, which include systematic initial and in-service training, specialised police units on violence against women, standardised procedures, involving psychologists during police interventions, and specialised rooms in police stations, designed to provide victims with the necessary privacy and a suitable environment for reporting in order to lower the risk of secondary victimisation.<sup>384</sup>

43. In its report on Poland, GREVIO noted that the authorities had introduced measures to improve the criminal justice response to rape cases and to avoid re-traumatisation and secondary victimisation. Such measures included a new legislative requirement that victims be interviewed only once by courts (single hearing procedure), as well as the adoption of guidelines requiring that interviews take place in a separate room and be conducted by a trained officer of the same sex, unless the victim wishes otherwise, and that the interviewing officer refrain from any statements that may be perceived as judging or questioning the victim's behaviour, her appearance or actions. These guidelines also include the requirement to inform victims of their rights and role in the process, as well as the legal and psychological assistance available to them, and to accompany them to a medical facility for medical support and a forensic examination.<sup>385</sup> While GREVIO welcomed these measures, it did raise various concerns related to major gaps in its implementation. This includes a lack of co-ordination between law-enforcement agencies and the justice system, which constitutes an obstacle to efficient and robust case building. In this context, when women victims, particularly those experiencing sexual violence committed by intimate partners or relatives, make use of their right not to testify, this usually leads to the dismissal of the case, as no further evidence may be available or even collected. In addition, the requirement to hear the victim only once, and only by the courts, means that victims can neither alter nor add to their statement and hence cannot react to any turn in the investigation. Moreover, GREVIO noted that

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383. See GREVIO's baseline evaluation report on Iceland, paragraphs 246-250.

384. See GREVIO's baseline evaluation report on Italy, paragraphs 214-216.

385. See GREVIO's baseline evaluation report on Poland, paragraphs 251-253.

some courts are slow to schedule the hearing of rape victims, which is central to the single-hearing procedure.

44. In San Marino, GREVIO welcomed the intervention protocol for law-enforcement officials in cases of gender-based violence, which clearly recognises the structural nature of gender-based violence and underlines the crucial role of the police as one of the first interlocutors for victims.<sup>386</sup> The protocol warns police officials against the risk of secondary victimisation and prescribes never questioning a victim's narrative or blaming her, but instead making clear that the only person responsible for the violence is the perpetrator. This is complemented with mandatory training on violence against women for all law-enforcement officers, the establishment of a special unit on gender-based violence, including rape, and the appointment of a police liaison person to ensure due co-ordination and exchange of information on cases.

### **Ensuring victims' privacy and confidentiality when reporting a case of sexual offence**

45. As regards victims' support and privacy when reporting sexual offences, in addition to the positive practices noted in Iceland and Italy, GREVIO has also welcomed measures taken by the Monégasque and French authorities in this respect.<sup>387</sup> More specifically, it welcomed the practice, albeit non-formalised in Monaco, to provide dedicated reception premises satisfying the requirements of confidentiality, to never leave the victim alone in reception areas and to make available police social workers specialising in victim reception, response and counselling. GREVIO also welcomed in its baseline evaluation report on France the online reporting platform in France, launched in November 2018 by the Ministry of the Interior, to help victims of sexual and gender-based violence to take the step of filing a complaint.

### **Setting up of specialised units/designated investigators for cases of sexual violence and rape, supported by dedicated instructions/guidelines and specialist training**

46. When it comes to the setting up of specialised units or designated investigators for cases of sexual violence and rape, supported by dedicated instructions/guidelines and specialist training, GREVIO has identified numerous parties that have made progress, including Bosnia and Herzegovina, Cyprus, Denmark, Georgia, Iceland, Italy, Malta, the Netherlands, Sweden and Switzerland.<sup>388</sup> GREVIO has welcomed the establishment of specialised units on sexual violence in Cyprus, noting that their work has been recognised by different stakeholders to have led to an increase in the reporting of cases of violence against women.

47. In Malta, GREVIO noted that cases of sexual violence can be referred to a specialised unit and victims requiring further support are referred to the victim support

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386. See GREVIO's baseline evaluation report on San Marino, paragraphs 180-182.

387. See GREVIO's baseline evaluation reports on Monaco, paragraph 75; and France, paragraph 224.

388. See GREVIO's baseline evaluation reports on Bosnia and Herzegovina, paragraph 258; Cyprus, paragraph 226; Denmark, paragraph 191; Georgia, paragraph 305; Iceland, paragraphs 246-250; Italy, paragraphs 214-216; Malta, paragraphs 191-193; the Netherlands, paragraph 250; Sweden, paragraph 198; and Switzerland, paragraph 215.

unit, staffed by women police officers who serve as a single point of contact, providing crisis counselling, information about the criminal case and facilitating referrals to support services. In addition, in its baseline evaluation reports on Sweden and Georgia, GREVIO noted that each police district had investigators specially trained on sexual offences, and that in the Netherlands, Bosnia and Herzegovina and Switzerland, there were specialist police officers for sexual offences, at least in some parts of the country. GREVIO welcomed, in particular, the adoption and use in Sweden of an investigators' checklist developed for rape cases.

### **Initiatives to issue guidance and set up formalised co-operation between law-enforcement authorities and other first responders**

48. GREVIO has also welcomed initiatives to formalise guidance and co-operation between law-enforcement authorities and different stakeholders to ensure a swift response and the provision of support and protection to victims of rape and sexual violence. For example, it welcomed the adoption of the joint circular on sexual assault that set forth minimal measures for all police and judicial work in Belgium, which has formalised a multidisciplinary approach between the criminal justice system, the health system and victim services.<sup>389</sup> In Andorra, following ratification of the Istanbul Convention, the police force and the state-supported victim support services negotiated a co-operation protocol with the aim of harmonising police activities with the convention standards. The protocol sets out the main guidelines for police measures, starting with the victims' first contact with police until their referral to specialist support services. The protocol establishes an obligation to create optimum conditions for victims to be heard and for their complaints to be registered, while paying particular attention to the possible presence of child victims and/or witnesses. Furthermore, it explicitly prohibits "any attitude that makes victims feel guilty or minimises the violence" in order to prevent secondary victimisation and stresses the proactive role that law-enforcement agencies should play in finding evidence that can corroborate victims' claims and/or support a judicial investigation; providing a standard model complaint that lists all the questions and information that must be covered by the police officer in charge of assisting victims.<sup>390</sup>

### **Improvements in the collection of evidence in sexual offences**

49. As regards improving evidence collection in sexual offences, GREVIO has noted that having the legal possibility for victims of rape and sexual assault to have their forensic evidence taken and stored free of charge, irrespective of their desire to report, is of essence and enables proceedings to be instituted at a later stage.<sup>391</sup>

### **Improving prosecutorial and judicial practices**

50. Reducing the risk of attrition at the prosecution and trial stages can involve various measures, including specialisation, guidance and training, along with effective case management. As GREVIO has noted, there are many factors that contribute to a solid investigation, prosecution and trial for sex offences, such as the collection of

389. See GREVIO's baseline evaluation report on Belgium, paragraph 177.

390. See GREVIO's baseline evaluation report on Andorra, paragraphs 179-180.

391. For example, see GREVIO's baseline evaluation report on Germany, paragraph 300.

evidence, its assessment by prosecution services, the support given to victims and their role in the case and the role of the judiciary in handling these sensitive cases.<sup>392</sup>

### Improvement of prosecutorial practices

51. GREVIO noted in its baseline evaluation reports on Denmark, Georgia and Sweden some positive measures taken to improve the prosecution stage of sexual violence cases.<sup>393</sup> In Denmark, a fast-track procedure was established to ensure the swift handling of all violent crime, including a time frame for assessing the case by the prosecutor. Moreover, guidance has been issued to assign such cases to experienced prosecutors, thus ensuring a certain amount of *de facto* specialisation. Similarly, GREVIO noted that in Georgia only prosecutors who have completed a special training course on sexual violence are assigned these types of cases, and their work is directed by guidelines. In Sweden, the prosecution services have set up a prosecution development centre to develop methods for the investigation and prosecution of sexual offences and have introduced checklists.

52. GREVIO has highlighted other positive trends such as the adoption of protocols, guidelines or specialisation in the prosecution and adjudication of sexual violence cases, notably in the Netherlands, Poland and Iceland.<sup>394</sup> For instance, following the ratification of the Istanbul Convention, the Public Prosecution Service in the Netherlands adopted instructions on sexual offences that detail how such forms of violence should be identified and prosecuted, including explicit information about protecting the rights of victims and avoiding secondary victimisation. In Poland, standards for the investigation and prosecution of cases of sexual violence are set out in specific Prosecutor General's Guidelines, issued in 2015. In Iceland, Instruction No. 2/2018 from the Director of Public Prosecution requires an investigation plan to be prepared for the investigation of rape offences, sexual offences against children and offences in close relationships, in order to standardise good practice. When a case of rape is entered into police records, a list of the measures to be undertaken is automatically provided. In addition, instructions issued by the Director of Public Prosecutions require such cases to be expedited and given priority. The District Prosecutor and the Chiefs of Police are also required to send a list of cases and their progress to the Attorney General, twice a year. Germany has equally set up specialist departments for the prosecution of crimes against sexual self-determination in some public prosecutors' offices across the country.<sup>395</sup>

### A comprehensive approach to the prosecution of cases of rape and sexual violence

53. A good example of an approach that involves a wide range of measures is noted in GREVIO's baseline evaluation report on Italy.<sup>396</sup> The High Judiciary Council

392. See GREVIO's baseline evaluation report on Sweden, paragraph 210.

393. See GREVIO's baseline evaluation report on Denmark, paragraphs 195-196; Georgia, paragraph 305; and Sweden, paragraph 205.

394. See GREVIO's baseline evaluation reports on the Netherlands, paragraph 263; Poland, paragraph 262; and Iceland, paragraph 251.

395. See GREVIO's baseline evaluation report on Germany, paragraphs 298 and 301.

396. See GREVIO's baseline evaluation report on Italy, paragraphs 218-223.

adopted guidelines for judicial proceedings in cases of gender-based violence. Such cases are assigned to specialist prosecutorial units/magistrates. Monitoring and evaluation of the implementation of the guidelines found that a large number of prosecutorial offices have adopted protocols describing how to handle such cases that cover the investigative stage and set “stringent deadlines as to the maximum duration of enquiries”. It also found that a high number of offices have formalised their co-operation with the victim support services that are engaged during judicial proceedings, as well as with others that deal with preventing violence against women. Moreover, GREVIO noted a promising practice adopted by the Prosecutorial Offices of the Court of Tivoli (Eastern Rome), which it suggested should be replicated around the country. More specifically, prosecutors in this court have enacted a series of measures to ensure a prompt and effective response to cases of gender-based violence against women. These measures range from increasing the number of prosecuting attorneys dealing with such crimes and prioritising these investigations, to ensuring the swift adoption of the necessary precautionary protective measures, placing their implementation under the tight supervision of prosecutors and creating a fast-track for the related trials. All these measures take place within a robust interinstitutional network, involving statutory agencies and women’s organisations, and are complemented by a wide array of preventive measures (such as training, information for victims, awareness raising and outreach activities in the community).

### **Improvement of judicial practices**

54. As regards judicial practices, GREVIO has welcomed the ruling from the Supreme Court of Sweden finding that where a victim is considered credible, a conviction may be based solely on her testimony, while noting, however, that this ruling is not always followed by the lower courts. Moreover, the Italian Code of Criminal Procedure provides that evidence relating to the sexual history and conduct of the victim which has no probative value is not permitted, and the Code of Legal Ethics for lawyers requires legal counsels to avoid questions and methods of examination that inflict further humiliation and convey a moral judgment on the victim’s experience.<sup>397</sup>

### **Protective measures during investigation and judicial proceedings**

55. As indicated earlier, Article 56 of the convention sets forth a non-exhaustive list of procedures designed to protect victims of violence at all stages of proceedings, during investigations and at trial, covering – but not limited to – victims who are witnesses. A number of good practices have been identified in this area by GREVIO.

### **Comprehensive measures for victim protection**

56. In its baseline evaluation report on Denmark, while noting that very little information was conveyed on their actual use, GREVIO welcomed the range of protective measures provided under the law to keep victims safe from intimidation and retaliation during court proceedings. These include the hiding of the victims’ addresses, occupation and even names of victims and witnesses, as well as the

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397. See GREVIO’s baseline evaluation report on Italy, paragraph 242.

holding of hearings *in camera*; ordering the defendant to leave the courtroom during the testimony of a victim or witness; video recording of children's testimony and, under specific and limited circumstances, those of adults. Law-enforcement agencies may also notify the court and request, for example, the use of separate waiting rooms at court. For all victims of crime asked to testify in court, a specific contact person within law enforcement is provided for any questions and concerns victims may have, and leaflets detailing the different steps of the investigation and criminal proceedings are available in several languages. Moreover, where perpetrators have been sentenced to a prison term for sex offences or other serious offences, victims must be notified of the perpetrator's release or escape and of major media coverage of the perpetrator and his acts.<sup>398</sup>

### **The video recording of witness statements or other means to avoid contact between the victim and the perpetrator within court and police premises**

57. GREVIO has consistently observed that ensuring the avoidance of contact between the victim and the perpetrator within court and police premises is a vital element in the protection of victims from secondary victimisation. In the baseline evaluation report on Sweden, GREVIO observed that judges can hear the victim without the presence of the accused, over the telephone or by video link. Similarly, Germany has adopted a range of measures to ensure victim protection, including the use of audiovisual recordings of testimonies for both underage and adult victims.<sup>399</sup>

### **Other types of protective measures to avoid secondary victimisation**

58. In Poland, under the Act on the Protection of and Assistance to Victims and Witnesses, hearings of rape victims must take place in a special room, be recorded and conducted by a judge in the presence of a psychologist.<sup>400</sup> In Romania, in addition to protection measures, such as the holding of *in camera* court trials and the exclusion of the media from courtrooms, in cases of violence, for victims of rape, the additional measure to anonymise victim data can also be taken, including in court summons or judgments when the information is replicated on the courts' web portals.<sup>401</sup>

## **The role and importance of rape crisis and sexual violence referral centres**

59. It is of paramount importance that the legislative and institutional reforms underway towards a consent-based definition of sexual violence and rape go hand in hand with the setting up and/or strengthening of specialised services for victims of sexual violence. Such support services are of essence to ensure victims' recovery and to address the consequences stemming from the violence, including self-blame and a sense of shame. They are also essential to facilitate access to justice as they

398. See GREVIO's baseline evaluation report on Denmark, paragraphs 216-218.

399. See GREVIO's baseline evaluation report on Germany, paragraph 301.

400. See GREVIO's baseline evaluation report on Poland, paragraph 303.

401. See GREVIO's baseline evaluation reports on Poland, paragraphs 302-303; and Romania, paragraph 408.

empower victims and provide the needed forensic evidence to enable effective prosecutorial action and an eventual conviction.<sup>402</sup>

60. Indeed, victims of sexual violence can suffer multiple and enduring consequences, including possible physical consequences such as injury, sexually transmitted infections, unwanted pregnancies and unsafe abortions, as well as a wide range of psychological consequences, such as anxiety, depression and suicidal thoughts.<sup>403</sup> Studies have shown that that post-traumatic stress disorder (PTSD) is highly prevalent among victims of sexual violence, with one study finding 94% of rape victims met the PTSD criteria approximately two weeks post-rape, and 47% continued to meet the criteria after three months.<sup>404</sup> These psychological consequences also raise the chances of future drug addiction as well as re-victimisation.<sup>405</sup> Social isolation can also ensue following sexual violence, due to strained relationships with family and friends. Moreover, victims can also experience financial hardship due to costs associated with needed care or linked to absenteeism from work, for example.<sup>406</sup> In addition, research has highlighted that a rape victim's first encounter with the support system can have very negative long-term consequences in terms of recovery, if the support is not adequate.<sup>407</sup> GREVIO has highlighted that sexual violence victims' experiences with the criminal justice system can cause further harm to them, unless certain protection measures are taken and psychological counselling and trauma support is provided in parallel.<sup>408</sup>

61. To address and minimise the above-mentioned negative consequences, victims of sexual violence need access to a set of holistic services, including immediate medical care and trauma support; forensic examinations; short and long-term psychological counselling and therapy; and legal advice. Under its Article 25, the convention provides parties with the alternative to set up either a rape crisis centre or a sexual violence referral centre per every 200 000 inhabitants.<sup>409</sup> Rape crisis centres typically offer long-term help such as face-to-face counselling and therapy, support groups and referrals to other services.<sup>410</sup> They also support victims during court proceedings by providing woman-to-woman advocacy and other practical help. Sexual violence referral centres, on the other hand, may specialise in immediate medical care, high-quality forensic practice and crisis intervention.<sup>411</sup> They can, for instance, be set up in a hospital setting to respond rapidly to sexual assaults by carrying out medical

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402 See GREVIO's baseline evaluation report on Italy, paragraph 156. For a broader discussion on the methodology, see also Council of Europe (2018), "Mapping Support Services for Victims of Violence against Women in Line with the Istanbul Convention Standards – Methodology and Tools".

403. Peeters L. et al. (2019), "Current care for victims of sexual violence and future sexual assault care centres in Belgium: the perspective of victims", *BMC International Health and Human Rights*, 19:21, p. 2.

404. Several studies listed in Bramsen R. et al. (2009), "A Danish Model for Treating Victims of Rape and Sexual Assault: The Multidisciplinary public approach", *Journal of Aggression Maltreatment & Trauma*. 2009, discuss these findings.

405. Kline N. et al. (2021), "Self-Blame and PTSD Following Sexual Assault: A Longitudinal Analysis", 36 (5-6): NP3153-NP3168.

406. Peeters L. et al. (2019), cited above, p. 2.

407. A summary of the studies confirming the long-term consequences can be found in Bramsen. R et al. (2009), cited above, p. 887.

408. See GREVIO's baseline evaluation report on Montenegro, paragraph 135.

409. Explanatory Report to the Istanbul Convention, paragraph 142.

410. *Ibid.*, paragraph 140.

411. *Ibid.*, paragraph 141.

checks and referring the victim to specialised community-based organisations for further services. They also may concentrate on the immediate and adequate referral of the victim to appropriate, specialised organisations to provide them with the necessary care. At their core, both types of centres aim to serve victims of rape and sexual violence and inform them of their options in a way that acknowledges that each victim is different, and that the best course of action is thus different for each person.

62. Whatever form they take, GREVIO has stressed that such measures should be taken within a multisectoral response, giving victims the control over the decisions taken. Victims must be granted services regardless of their willingness to report or testify against the perpetrator, and forensic evidence should be stored for a defined period of time, allowing a court case to be initiated at a later stage, should a victim so decide. Moreover, victims should be able to seek these services even several years after the assault has taken place.<sup>412</sup>

### Trends and promising practices

63. In recent years, as a result of states' efforts to comply with Article 25 of the convention, and in response to GREVIO's findings and Committee of the Parties' recommendations, the number of rape crisis centres and/or sexual assault referral centres has risen in a number of parties, a further illustration of the Istanbul Convention's positive impact in combating violence against women. Indeed, before the entry into force of the Istanbul Convention, a number of Council of Europe member states did not have specialist support service for women victims of sexual violence that could offer medical support, forensic examinations, the storage of DNA and counselling.<sup>413</sup> Less than a decade later, out of the 29 GREVIO baseline evaluation reports published so far, 19 parties have either set up rape crisis centres or sexual assault referral centres, or have taken steps towards their setting up, namely in Andorra, Austria, Belgium, Denmark, Estonia, Finland, France, Germany, Iceland, Italy, Malta, the Netherlands, Norway, Portugal, Romania, San Marino, Spain, Sweden and Switzerland.<sup>414</sup> More specifically, further to specific GREVIO findings and Committee of the Parties recommendations, issued in this area, Austria has expanded specialised counselling services for victims of sexual violence to cover all regions in the country.<sup>415</sup> Moreover, Albania

412. See GREVIO's baseline evaluation reports on Albania, paragraph 110; Belgium, paragraphs 130-132; Denmark, paragraphs 121-124; Germany, paragraphs 182-191; Iceland, paragraphs 147-153; Norway, paragraphs 134-138; San Marino, paragraphs 115-119; and Switzerland, paragraphs 146-149.

413. Council of Europe (2022), "Mid-term Horizontal Review of GREVIO baseline evaluation reports", paragraph 278.

414. However, please note that many of them are not yet in full compliance with Article 25 of the convention; see GREVIO's baseline evaluation reports on Andorra, paragraph 128; Austria, paragraphs 100-101; Belgium, paragraphs 130-132; Denmark, paragraphs 121-124; Estonia, paragraphs 129-133; Finland, paragraph 124; France, paragraph 161; Germany, paragraphs 182-191; Iceland, paragraphs 147-153; Italy, paragraph 155; Malta, paragraph 131; the Netherlands, paragraph 174; Norway, paragraphs 134-138; Portugal, paragraph 142; Romania, paragraphs 214-219; San Marino, paragraphs 115-119; Spain, paragraphs 172-175; Sweden, paragraphs 143-144; and Switzerland, paragraphs 146-149.

415. See Committee of the Parties, "Conclusions on the implementation of recommendations in respect of Austria adopted by the Committee of the Parties to the Istanbul Convention" (IC-CP/Inf(2021)5) adopted on 7 December 2021.

has set up its first sexual assault referral centre.<sup>416</sup> Nevertheless, there is still much room for improvement as GREVIO's monitoring thus far reveals that only Denmark and Iceland comply with the standard of one rape crisis or sexual violence referral centre per 200 000 inhabitants – a standard which aims to ensure proper coverage and easy access for women victims of sexual violence.<sup>417</sup>

### Centres that are based on multidisciplinary collaborative models and holistic approaches

64. GREVIO has positively noted that Belgium, Denmark, Estonia, Iceland, Norway and Switzerland have established centres that are based on multidisciplinary collaborative models and holistic approaches. For example, the Sexual Assault Centres set up in Belgium offer immediate medical care, psychological support related to trauma and a forensic examination to gather evidence for prosecution. After the care received, victims can, if they wish, file a complaint and be interviewed by a police officer on site. GREVIO considered this as an example of a “one-stop-shop” approach which can significantly reduce secondary victimisation. Reports indicate that the Belgian Sexual Assault Centres have vastly reduced reporting obstacles. Notably, 68% of victims who were supported by such centres reportedly went on to file a complaint, which was significantly higher than the national average of victims who filed complaints.<sup>418</sup> A non-governmental organisation's report noted that this was largely because the support offered at the Sexual Assault Centres is focused on providing confidential care to victims and helping them to rebuild their lives. It also enables marginalised groups, such as transgender people and women in prostitution, to report rape in a safer environment.<sup>419</sup> As regards the reporting process, the Sexual Assault Centres support victims in a way that is sensitive and mindful of the extreme stress they experience and the impact this has on their ability to process information and form memories.<sup>420</sup>

65. Another noteworthy practice is found in Denmark, where a highly specialised network of 10 centres for victims of rape and sexual violence across the country has been developed. These centres provide residential and non-residential services to women and girls over 15 years of age who are victims of sexual violence, in the form of medical care and trauma support, combined with forensic examinations. GREVIO noted that victims could seek these services any time after the assault and up to several years later. It further observed that the standard procedure for medical and forensic examination is carried out irrespective of whether the victim wants to report and that evidence is collected and stored up to three months or longer if the victims so request it, so that it can be used for future judicial proceedings. Centres

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416. See Committee of the Parties, “Conclusions on the implementation of recommendations in respect of Albania adopted by the Committee of the Parties to the Istanbul Convention” (IC-CP/Inf(2021)4) adopted on 7 December 2021.

417. See GREVIO's baseline evaluation reports on Denmark, paragraphs 121-124; and Iceland, paragraphs 147-153.

418. International Planned Parenthood Federation European, “Belgium's consent law is clear: absence of no doesn't mean yes”: <https://europe.ippf.org/stories/belgiums-consent-law-clear-absence-no-doesnt-mean-yes>.

419. Ibid.

420. Ibid.

also offer psychological treatment for all acute patients, but they have limited availability for longer-term counselling. For victims below the age of 15, a number of additional centres provide child-friendly services.<sup>421</sup> Another promising practice is found in Iceland, where emergency reception centres for victims of sexual violence are open 24 hours, offering forensic collection of evidence and any necessary medical services, free of charge, irrespective of the victim's desire to lodge a complaint with the police. The forensic evidence is stored for one year. In addition, the centres arrange for psychological support as well as free legal counselling, and if the victim wants to report their case immediately, a police officer is called to the centre or the legal counsel accompanies the victim to the police station.<sup>422</sup>

66. In Norway, two types of specialist support services are available and have been rolled out across the country to provide holistic and sensitive support to victims of rape and sexual violence, namely Sexual Assault Centres and Centres for Victims of Incest and Sexual Abuse (SMISOs). Sexual Assault Centres are located in medical clinics or hospital facilities and function as sexual violence referral centres. They offer immediate medical support by treating injuries and detecting sexually transmitted diseases and provide forensic examinations to secure evidence and crisis intervention. Forensic examination to secure evidence can be carried out regardless of whether the victim intends to report to the police. Professionals working at the Sexual Assault Centres can also refer victims to lawyers, the police and follow-up services providing more long-term support, including SMISOs and crisis centres. The SMISOs offer low-threshold support to victims of sexual violence and their relatives in the form of free-of-charge, medium-term psycho-social counselling.<sup>423</sup> In Switzerland, while there are no centres offering a "one-stop-shop" approach, GREVIO has welcomed the integrated approach taken by some hospital-based sexual violence referral centres, which make it possible to provide victims with comprehensive, long-term support. Specifically, these centres provide medical treatment and forensic examination irrespective of whether the victim is lodging a police complaint, and they work in close co-operation with other institutions and organisations, including the police and prosecuting authorities and shelters that victims may be referred to.<sup>424</sup>

67. In response to GREVIO's findings on the need to set up rape crisis and sexual violence referral centres, Albania set up its first crisis management centre for sexual violence cases in 2018, based in a hospital.<sup>425</sup> The centre provides one-stop emergency services, available 24/7, and short-term services (24-72 hours) for victims of sexual violence and their relatives. It is based on a social healthcare model, with an interdisciplinary team of forensic medical professionals, gynaecologists, paediatricians, psychiatrists, clinical psychologists, social workers, representatives from the police, prosecutor's offices, lawyers and nurses. The centre provides primary services,

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421. See GREVIO's baseline evaluation report on Denmark, paragraphs 121-124, as cited in Council of Europe (2022), "Mid-term Horizontal Review of GREVIO baseline evaluation reports", paragraph 279.

422. See GREVIO's baseline evaluation report on Iceland, paragraphs 147-153.

423. See GREVIO's baseline evaluation report on Norway, paragraphs 134-138.

424. See GREVIO's baseline evaluation report on Switzerland, paragraphs 146-149.

425. Report on the implementation of the recommendations addressed to Albania by the Committee of Parties 2018-2020, submitted on 30 June 2021: recommendation about setting up rape crisis centres and/or sexual violence referral centres in the framework of a multi-sectoral response – Recommendation A.9, IC-CP/Inf(2018)3.

such as healthcare, forensic medical services, psycho-social support, clothing, food, further referrals, statement taking, initiation of criminal justice procedures and psychological counselling, to help the victim cope with the situation. A case manager conducts an assessment of the victim's immediate needs and if the victim requires services beyond 72 hours, they are referred to another specialised support services centre. It is also encouraging that other parties, such as Romania, are also making progress by setting up pilot centres for victims of sexual violence, with the long-term aim of establishing 10 more centres. These centres are based on an integrated services model within a hospital setting and provide adult victims with emergency medical care, forensic examinations, support to access legal advice and/or report to the police, and information and counselling.<sup>426</sup>

## Conclusion

68. This focus section has shown the evolution in policies and practices in parties to the Istanbul Convention, as well as the positive impact that GREVIO's monitoring activity has had so far on the legislation on rape and sexual violence. Indeed, many countries have already moved, or are in the process of moving, away from purely force-based definitions of sexual crimes, aligning their criminal laws with the core requirement of Article 36 of the convention: the criminalisation of non-consensual sexual acts. The baseline evaluation procedure has brought to light many promising practices in this area, which states are encouraged to share and adopt within their own jurisdiction. Last but not least, the role of rape crisis and sexual violence referral centres must not be underestimated, as only a holistic approach to supporting women victims of rape and sexual violence, which includes not only an effective criminal justice response but also medical attention, psychological support and legal counselling, can mitigate the trauma inflicted upon victims. As GREVIO starts its first thematic evaluation procedure in 2023, the Group of Experts will have the opportunity to follow up on the above-mentioned points and continue to monitor progress in states' efforts to build the trust of victims by delivering support, protection and justice for women victims of rape and sexual violence.

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426. See GREVIO's baseline evaluation report on Romania, paragraphs 214-219.



# The role and importance of risk assessment and risk management in preventing and combating violence against women

Focus section No.5 extracted from GREVIO's fifth report on its general activities covering the period from January to December 2023

## Introduction

1. Risk assessments serve as a crucial mechanism for states to fulfil their due diligence obligation to prevent and protect individuals from human rights violations at the hands of private individuals. They allow the likelihood of immediate harm and the severity of threats to be assessed and form part of the tools to be employed to ensure the protection of fundamental human rights such as the right to life, physical safety, privacy and family life. In view of the disproportionate manner in which women and girls are affected by domestic violence and exposed to gender-based violence, including threats to life and limb and gender-related killings, risk assessments form a cornerstone of the comprehensive set of measures required by the Istanbul Convention in order to effectively prevent and combat violence against women and domestic violence.

2. This focus section zooms in on the standards set out in Article 51 of the convention, which covers risk assessments, as well as progress and challenges in its implementation. It equally delves into an analysis of Articles 52 and 53 on emergency barring and protection orders, as well as on Article 31 on custody, visitation rights and safety, in order to highlight the importance of carrying out a risk assessment in those specific contexts. The analysis draws on the extensive corpus of baseline evaluation reports published to date by GREVIO and their respective findings.<sup>427</sup>

3. This section also draws on the European Court of Human Rights (the “Court”) case law that sets out the requirement for effective risk assessments and contains references to the Istanbul Convention and GREVIO’s evaluation reports in this regard. The Court has consistently held in its jurisprudence that under the European Convention of Human Rights (the “Convention”) state authorities have a responsibility to take preventive operational measures in the form of effective deterrence against serious breaches of an individual’s physical integrity by a member of her family or by a partner. Taking preventive measures requires an assessment of whether there is a real and immediate risk to life or limb, taking due account of the particular context of domestic violence. The Court has held in several cases that in such a context, it is not only a question of an obligation to afford general protection to an individual at risk, but above all, to take into account the likelihood of the recurrence of successive episodes of violence within a family.<sup>428</sup>

## **Risk assessment and risk management as an international obligation**

4. Article 51 as interpreted by GREVIO through its corpus of evaluation reports provides a comprehensive and detailed framework for victims’ risk assessments and risk management. More specifically, Article 51 requires parties to take measures, through legislation and by other means, to ensure that all relevant professionals, not only law-enforcement authorities, are required to assess and take steps to manage the safety risks of a victim on a case-by-case basis, including the risk of repeated and lethal violence, according to standardised procedure and provide, where necessary, co-ordinated support.<sup>429</sup> Such co-ordinated effort must involve a range of different institutions and stakeholders, including, for example, law-enforcement agencies, staff from women’s shelters, social services, health professionals and probation and prison services, and must place the victim’s safety at the centre of any intervention. GREVIO has highlighted that risk assessments and safety plans are to be carried out for victims of all forms of violence covered by the scope of the convention, beyond domestic violence, and must be repeated at various stages of the investigation and application of protective measures, as the risk to a victim can change. The effec-

427. See the GREVIO baseline reports on Albania, Andorra, Austria, Belgium, Bosnia and Herzegovina, Croatia, Cyprus, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, Republic of Moldova, Monaco, Montenegro, North Macedonia, Norway, Poland, Portugal, the Netherlands, Romania, San Marino, Serbia, Slovenia, Spain, Sweden, Switzerland and Türkiye.

428. See *Kurt v. Austria* [GC], Application No. 62903/15, paragraphs 164 and 190, *Talpis v. Italy*, Application No. 41237/14, paragraph 122, and *Volodina v. Russia*, Application No. 41261/17, paragraph 86.

429. Explanatory Report to the Istanbul Convention, paragraph 260.

tiveness of risk assessment also hinges on recognising the continuum of violence, which is to be prioritised over an approach that addresses individual instances of violence in isolation. Therefore, it is essential to consider, evaluate and assess incidents of violence within the broader context of violence against women as a form of gendered violence and systematically address the safety not only of the woman involved but also of her children.

5. In its third-party intervention in the Court case *Kurt v. Austria* [GC],<sup>430</sup> GREVIO referred to several indicators that should be included in any risk assessment because they are known to be indicative of a high risk. Of particular significance is whether the perpetrator possesses or has access to firearms as this is identified by the convention as a heightened risk factor that must be taken into account systematically. Such possession represents a powerful means to exert control over victims and increases the risk of homicide.<sup>431</sup> Other important red flags include instances where the victim initiates separation or ends the relationship, past instances of violence, in particular sexual violence, coercive and controlling behaviour, the imposition of restrictive measures in the past, threats regarding the care of or access to the victim's children, threats of homicide against the victim and her children, substance abuse, mental health issues, unemployment and threats of suicide. A risk factor that has received growing attention by GREVIO due to its gravity is non-fatal strangulation.<sup>432</sup> Indeed, research has shown that victims of prior strangulation are seven times more likely to later become victims of murder<sup>433</sup> and that strangulation is a common method of killing in domestic violence settings.<sup>434</sup> On the other hand, where it does not have a fatal outcome, it is likely to cause serious permanent injuries, such as brain damage, as well as extreme distress to victims, who commonly feel like they are about to die.<sup>435</sup>

6. The legal standard of requiring that risk assessment be carried out in cases of violence against women enshrined in the Istanbul Convention is mirrored in General Recommendation No. 35 (2017) on gender-based violence, updating General Recommendation No. 19 (1992) adopted by the UN Committee on the Elimination of all Forms of Discrimination against Women (CEDAW Committee).<sup>436</sup>

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430. Cited above.

431. Explanatory Report to the Istanbul Convention, paragraph 113.

432. Strangulation is the obstruction of blood vessels and/or airflow by external (often manual) pressure to the neck, which causes decreased oxygen supply to the brain and can lead to unconsciousness and the loss of bladder control within seven to 15 seconds. These time spans are commonly accepted in the medico-legal field and were first examined in a study from 1943: Kabat H. and Anderson J. P., "Acute arrest of cerebral circulation in man: Lieutenant Ralph Rossen (MC), U.S.N.R.," *Arch Neuropsych*, 1943, 50(5): 510-528, available at: [www.jamanetwork.com/journals/archneurpsyc/article-abstract/649750](http://www.jamanetwork.com/journals/archneurpsyc/article-abstract/649750).

433. Glass N., Laughon K., Campbell J., Block C. R., Hanson G., Sharps P. W. and Taliaferro E., "Non-fatal strangulation is an important risk factor for homicide of women", *The Journal of Emergency Medicine*, Volume 35, Issue 3, 2008, pp. 329-335, available at: [www.ncbi.nlm.nih.gov/pmc/articles/PMC2573025/](http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2573025/).

434. See for example [www.femicidecensus.org/reports/](http://www.femicidecensus.org/reports/) for data from the UK.

435. White C., Martin G., Schofield A. M. and Majeed-Ariss R., "I thought he was going to kill me: Analysis of 204 case files of adults reporting non-fatal strangulation as part of a sexual assault over a 3-year period", *Journal of Forensic and Legal Medicine*, Volume 79, 2021, available at: [www.sciencedirect.com/science/article/abs/pii/S1752928X21000135](http://www.sciencedirect.com/science/article/abs/pii/S1752928X21000135).

436. See the Committee on the Elimination of Discrimination against Women, General recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19 (1992), CEDAW/C/GC/35, 2017: [www.ohchr.org/en/documents/general-comments-and-recommendations/general-recommendation-no-35-2017-gender-based](http://www.ohchr.org/en/documents/general-comments-and-recommendations/general-recommendation-no-35-2017-gender-based).

It specifies that measures to protect and assist women victims of gender-based violence need to provide appropriate and accessible protective mechanisms to prevent further or potential violence and should not be conditional on the victim initiating legal action. More specifically, such measures of protection should encompass immediate risk assessment and protection, comprising a wide range of effective measures and, where appropriate, eviction orders, protection, restraining or emergency barring orders against alleged perpetrators and adequate sanctions for non-compliance. Moreover, the EU Victims' Rights Directive (2012/29/EU) requires that an individual assessment of the victim be carried out by the relevant services with a view to identifying victims' specific protection needs.<sup>437</sup>

## Different approaches to risk assessment and management

7. Across the parties to the Istanbul Convention, a range of standardised tools are being used, at times adapted to the national context. These include several internationally recognised tools that are applied to assess the risk, including the lethality risk, that perpetrators of domestic violence pose to their victim, including, for example, the Spousal Assault Risk Assessment (SARA). GREVIO also found other models in use, notably B-SAFER, CARE, ODARA, DA and DASH. Moreover, several countries hold multi-agency risk-assessment conferences (MARACs) when a victim of domestic violence is known to be at risk of (further) serious harm. MARACs bring all relevant statutory agencies together and allow information on high-risk perpetrators to be shared with a view to identifying appropriate protective measures for the victim.

8. Where such internationally recognised tools are being incorporated into national practice, their use across all regions of the country may not be uniform (Austria, Bosnia and Herzegovina, Germany).<sup>438</sup> Other countries have developed their own tools, such as Portugal and Spain, the latter significantly enhancing the effectiveness of risk-assessment tools through the use of artificial intelligence.<sup>439</sup>

9. Specific risk-assessment tools for violence related to "honour" have also been developed, notably the Assessment of Risk for Honour-Based Violence (PATRIARCH). Such specific tools, however, are not in use throughout all parties to the Istanbul Convention and GREVIO's baseline evaluation reports point to their use mainly in the Nordic countries.

## Shortcomings in the use of existing risk-assessment tools

10. Where standardised risk assessments are in use, GREVIO baseline evaluation reports have highlighted several shortcomings in their implementation. In certain baseline evaluation reports, GREVIO noted with concern the lack of inclusion of

437. Directive 2012/29/EU of the European Parliament and of the Council of October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

438. See GREVIO's baseline evaluation reports on Austria, paragraph 179; Bosnia and Herzegovina, paragraph 282 and 283; and Germany, paragraph 308.

439. See GREVIO's baseline evaluation reports on Portugal, paragraph 201; and Spain, paragraph 259.

important red flags such as the perpetrator's possession or access to firearms (Spain)<sup>440</sup> or the recent separation of the victim from the perpetrator (Poland).<sup>441</sup> The baseline evaluation reports on North Macedonia and Iceland, on the other hand, highlight that risk assessments are not systematically carried out.<sup>442</sup> Accordingly, GREVIO has, *inter alia*, strongly encouraged the authorities to ensure that an assessment of the victim's risk is carried out systematically and speedily by all relevant authorities in co-operation, providing co-ordinated protection and support.

11. Concern has equally been expressed by GREVIO where standardised risk-assessment tools are used improperly and inaccurately or, despite their availability for use, they are overridden with preference given to police officials' own assessment of the risk based on their experience and intuitive skills.<sup>443</sup> As regards the former case, in its baseline evaluation report on Georgia, GREVIO noted with concern that police officers did not accurately/fully record the information provided by victims, including facts that could reveal aggravating circumstances or that were crucial to identifying the discriminatory gender motive, which resulted in the crime being qualified as less grave. Moreover, police officers did not ask all of the relevant questions included in the risk-assessment checklist and filled out some parts of the assessment on their own, thereby diminishing the effectiveness of the risk-assessment process.<sup>444</sup> GREVIO has equally identified in some parties the problematic practice of different agencies using different risk-assessment tools, leading to inconsistent results.

### **Risk-assessment tools mainly used for domestic violence**

12. A review of the baseline evaluation reports published thus far reveals a predominant concentration of risk-assessment efforts on domestic violence, although these efforts vary significantly in terms of their comprehensiveness, level of multi-agency co-operation and mandatory nature. Forms of violence covered by the convention beyond domestic violence are far less frequently recognised as requiring a systematic risk assessment. GREVIO has therefore urged parties, including Bosnia and Herzegovina, Cyprus, Georgia, Germany, Ireland, Italy, Malta, North Macedonia, Poland, Romania, Serbia, Slovenia and Switzerland, to ensure that risk-assessment instruments are available for all forms of violence covered by the convention.<sup>445</sup> By way of example, GREVIO noted in relation to Cyprus that there is no risk-assessment tool to assess the risk that a victim or her daughter/siblings may be subject to FGM and therefore to allow the timely implementation of protective measures such as travel bans.<sup>446</sup>

440. See GREVIO's baseline evaluation report on Spain, paragraph 235.

441. See GREVIO's baseline evaluation report on Poland, paragraph 276.

442. See GREVIO's baseline evaluation reports on Iceland, paragraph 267; and North Macedonia, paragraph 323.

443. GREVIO's baseline evaluation report on Italy, paragraph 228.

444. See GREVIO's baseline evaluation report on Georgia, paragraph 326.

445. See GREVIO's baseline evaluation reports on Bosnia and Herzegovina, paragraph 285 ; Cyprus, paragraph 240; Georgia, paragraph 330; Germany, paragraph 308; Iceland, paragraph 274; Ireland, paragraph 266; Italy, paragraph 233(a); Malta, paragraph 214; North Macedonia, paragraph 325; Poland, paragraph 280; Romania, paragraph 371; Slovenia, paragraph 330; and Switzerland, paragraph 233.

446. See GREVIO's baseline evaluation report on Cyprus, paragraph 240.

13. As regards violence related to “honour”, GREVIO found that Denmark, Norway and Sweden used the PATRIARCH risk-assessment tool, which was mainly used by law-enforcement agencies, albeit on the basis of varying degrees of training.<sup>447</sup>

14. Several countries have yet to introduce systematic risk-assessment procedures for any form of violence against women. For example, GREVIO urged the authorities in Germany and Poland to ensure that in cases of all forms of violence covered by the Istanbul Convention, including domestic violence and forced marriage, systematic and gender-sensitive risk assessment and safety management is carried out.<sup>448</sup>

### **Children are overlooked in risk assessment**

15. Another recurrent shortcoming identified in GREVIO reports concerns the failure of the relevant authorities to carry out a risk assessment on the victims’ children parallel to their mothers. In this respect, GREVIO has clarified that it must be made clear in the law and in any protocol/guideline that the risk assessment should also systematically be carried out for the victim’s children.<sup>449</sup> As was detailed by GREVIO in its third-party intervention before the European Court of Human Rights in the case of *Kurt v. Austria* [GC], perpetrators are often also violent towards children with whom they cohabit. 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, leading, in some tragic cases, to their murder. The importance of carrying out a risk assessment for all victims, including children, cannot therefore be over-emphasised.

### **Risk-assessment procedures are not always fully integrated into MARACs**

16. In a number of baseline evaluation reports, GREVIO has expressed concern over the fact that risk-assessment procedures, even when formalised, are not fully integrated into multi-agency co-operation efforts. GREVIO has recalled that the risk assessment is not a goal in and of itself, but a first step to ensuring co-ordinated safety measures and support to victims.<sup>450</sup> It has also emphasised that where key information from other stakeholders such as schools or the judiciary is missed, co-ordination and the safety of the victim can be compromised.<sup>451</sup> More specifically, in a consistent number of GREVIO baseline evaluation reports, including Croatia, Greece, Georgia, Ireland, Poland and Spain, GREVIO drew attention to the fact that the risk-assessment tools were based almost exclusively on information from law-enforcement authorities and that there was no efficient mechanism in place to consider, in a standardised and timely manner, information from other relevant

447. See GREVIO’s baseline evaluation reports on Denmark, paragraph 20; Norway, paragraph 235; and Sweden, paragraph 215.

448. See GREVIO’s baseline evaluation reports on Germany, paragraph 311; and Poland, paragraph 281.

449. See GREVIO’s baseline evaluation reports on Germany, paragraph 308; Iceland, paragraph 27; and Ireland, paragraph 265.

450. See GREVIO’s baseline evaluation report on Georgia, paragraph 324.

451. See GREVIO’s baseline evaluation report on Cyprus, paragraph 240.

sources, including the judiciary, women's specialist services or supervised visitation facilities such as family meeting points.<sup>452</sup>

17. In requiring multi-agency co-operation to protect high-risk victims, the drafters of the convention intended that risk-assessment processes also include mechanisms such as a safety plan for the victim, to co-ordinate safety and support.

### **Assessment of dynamic risk development**

18. Risk levels are dynamic and may spike in relation to certain steps in legal proceedings, such as the opening of criminal proceedings or requests made by the victim for sole custody of shared children. Ensuring continuous risk assessment and continuous adjustments to safety measures by law-enforcement authorities, prosecutors and judges throughout all stages of any legal proceedings, starting from the initial interaction with the victim to potential sentencing, is of utmost importance. Without consistent and ongoing risk assessments and management, victims might in fact develop a false sense of security, placing them in greater jeopardy.

19. GREVIO baseline evaluation reports, including those on Bosnia and Herzegovina, Cyprus, Georgia, Ireland, Romania, and Norway, have noted with concern that procedures for risk assessment and management were not repeated at all relevant stages of proceedings.<sup>453</sup> In this connection, GREVIO has clarified that the assessment of the risk and identification of safety measures should be conducted continuously from the first meeting with the victim all the way to a possible sentence, because victims' risk can change and must, therefore, be assessed during all phases of the procedure.<sup>454</sup> Conversely, in Spain, once the victim has been registered in the central risk-assessment and risk-management tool in use by law enforcement (VioGen), following the first police assessment of risk, the police will make regular assessments of changes to this risk according to the level of risk that the victim is exposed to and the protection measures that have been imposed. If the level of risk is considered to have changed, the measures are adapted by informing the courts, which shall then decide on a case-by-case basis the legal measures of protection to be adopted. Moreover, in Spain, a risk assessment should be carried by the judiciary and further measures of legal protection can be put in place alongside those taken by the police.

20. It is equally noteworthy that in Iceland the Prison and Probation Administration has developed a risk-assessment tool to assess perpetrators' likelihood of further violent behaviour and to determine whether he should be released on probation.<sup>455</sup>

### **Firearm management and risk assessment**

21. Under Article 51, paragraph 2, parties are specifically required to ensure that risk assessments comprehensively consider credible information regarding the

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452. See GREVIO's baseline evaluation reports on Croatia, paragraph 269; Georgia, paragraph 323-324; Greece, paragraph 270; Ireland, paragraph 267; Poland, paragraph 275; and Spain, paragraph 260.

453. See GREVIO's baseline evaluation reports on Bosnia and Herzegovina, paragraph 285; Cyprus, paragraph 241; Georgia, paragraph 324; Ireland, paragraph 270; Norway, paragraph 236; and Romania, paragraph 372.

454. See GREVIO's baseline evaluation reports on Bosnia and Herzegovina, paragraph 281; and Ireland 267.

455. See GREVIO's baseline evaluation report on Iceland, paragraph 272.

possession of firearms by perpetrators. The possession of firearms not only serves as a potent means to control victims but also heightens the risk of homicide, particularly in post-conflict scenarios or regions where firearm ownership is customary, granting perpetrators easier access to such weapons. Indeed, a 2017 study investigated the relationship between, on the one hand, state laws on the possession and relinquishment of firearms in cases of domestic violence and, on the other, the levels of intimate-partner homicide (by any means).<sup>456</sup> The study has shown that states with laws that ban the possession and mandate the relinquishment of firearms by perpetrators in cases of intimate-partner violence have 9.7% lower rates of intimate-partner homicide and 14% lower rates of intimate-partner firearm homicide.<sup>457</sup>

22. GREVIO has noted through its monitoring work that several countries recognise the critical link between firearm possession and domestic violence and thus include access to or possession of firearms as a risk factor in its risk-assessment procedures. By way of example, risk-assessment procedures in Montenegro, Poland, Romania and San Marino require law-enforcement agencies to establish whether a known perpetrator of domestic violence possesses firearms or other weapons.<sup>458</sup> By contrast, GREVIO has noted with concern the absence of such a risk indicator in the risk assessments of a number of parties, including France, Monaco, North Macedonia and Serbia.<sup>459</sup>

## The evaluation of risk-assessment tools

23. Monitoring and evaluation systems are crucial in supporting quality assurance of risk-assessment and risk-management processes, and in identifying weaknesses and areas for improvement. At the same time, they are also an important element in the process of ensuring that the police are accountable in carrying out their obligations to assess risk and respond to intimate-partner violence within a multi-agency framework.

24. Indeed, ongoing efforts in parties to the Istanbul Convention to ensure the objective evaluation of risk-assessment tools in use have been identified. Notably, GREVIO observed in its baseline evaluation report on Estonia that a study had been commissioned by the authorities in 2016 to determine the effectiveness, need and feasibility of the MARAC risk assessment currently in use. The model impact assessment included the effect of the MARAC programme on victims and the cost-effectiveness of the intervention programme and was due to be carried out in 2022. Additionally, in its state report submitted to GREVIO in the context of the baseline evaluation procedure, the United Kingdom reported that the College of Policing has published an evaluation of the Domestic Abuse Risk Assessment (DARA) tool, which was piloted to improve recognition of controlling or coercive behaviour and provide a more structured method of obtaining information to assess the threat posed by the

456. Targeting gun violence and trafficking in Europe, Flemish Peace Institute, 2021, available at: <https://vlaamsvredesinstituut.eu/wp-content/uploads/2021/12/TARGET-OnlineVersion.pdf>.

457. Ibid.

458. See GREVIO's baseline evaluation reports on Montenegro, paragraph 225; Romania, paragraph 265; Poland, paragraph 275; and San Marino, paragraph 190.

459. See GREVIO's baseline evaluation reports on France, paragraph 235; Monaco, paragraph 145; North Macedonia, paragraph 328; and Serbia, paragraph 224.

perpetrator.<sup>460</sup> Based on this research, all frontline officers are advised to use DARA when conducting risk assessment at domestic abuse incidents. This notwithstanding, studies indicate that risk management is under-researched, under-evaluated and hard to link with risk-assessment outcomes.<sup>461</sup>

## The digital dimension of violence against women and risk assessment

25. In monitoring the implementation of the Istanbul Convention, GREVIO frequently observes that the digital dimension of violence against women is overlooked in domestic laws and policies. This observation extends to risk-assessment frameworks, which often do not include or prioritise women and girls' exposure to risk online. This is despite the growing incidence of the digital dimension of violence against women and its increased criminalisation. For example, GREVIO welcomed the fact that Spain had been among the first European countries to explicitly criminalise, in 2015, stalking perpetrated through digital means of communication ("cyberstalking") under Article 172 *ter* of its Criminal Code.<sup>462</sup> In Germany, GREVIO found a solid legal framework applicable to the digital dimension of violence against women which explicitly criminalises several forms of technology-facilitated abuse such as cyberstalking, the unauthorised taking of pictures of private bodily parts, the sharing of images online and the use of stalkerware.<sup>463</sup> Similarly, in Iceland, GREVIO welcomed the clear stance taken against violence against women in the digital sphere. The newly introduced Article 199a of the General Penal Code incriminates image-based abuse and the sharing or distributing of such content without the consent of the victim.<sup>464</sup> The Act on the Protection of Sexual Privacy was adopted in February 2021 with the objective of increasing the protection against digital sexual violence and strengthening the sexual liberty of individuals. As regards Norway, this party to the convention had adopted a separate strategy on internet-related abuse (2021-2025), which addresses the online sexual abuse of children, while the Strategy against Hate Speech (2016-2020) covered certain forms of violence against women in its digital dimension, including sexist hate speech.<sup>465</sup> The National Action Plan on Rape included the digital dimension of sexual violence, emphasising the increase in digital manifestations of such violence, the different forms it may take, such as image-based abuse or sexualised extortion, and its specific characteristics, such as the anonymity of perpetrators and the interjurisdictional nature of offences, as well as its impacts on the well-being of victims. GREVIO had also pointed to the awareness-raising activities by the Norwegian law-enforcement agencies on the digital manifestations of violence against women, such as lectures in secondary schools, publishing information on various social media platforms and the forming

460. Report submitted by the United Kingdom pursuant to Article 68, paragraph 1, of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Baseline Report), page 49.

461. "Risk assessment and management of intimate partner violence in the EU", page 34.

462. See GREVIO's baseline evaluation report on Spain, paragraph 214.

463. See GREVIO's baseline evaluation report on Germany, paragraph 239.

464. See GREVIO's baseline evaluation report on Iceland, paragraphs 192, 137 and 225.

465. See GREVIO's baseline evaluation report on Norway, paragraphs 3, 6 and 64.

of a “net patrol” in each police district, who are present on the internet and social media and offer advice and guidance on crimes committed on the internet, including violence against women.

26. In its General Recommendation No. 1 on the digital dimension of violence against women, GREVIO recognises the growing levels of violence against women committed in the digital sphere and that its impact is particularly pronounced for women and girls at risk of or exposed to intersecting forms of discrimination.<sup>466</sup> It offers recommendations for the convention’s full implementation in the digital space, developing detailed proposals for action for the prevention of such violence, the protection of victims, prosecution of perpetrators and the development of holistic policies. Notably, it recommends monitoring, through data collection, the number of suicides, suicide attempts and gender-based killings of women and their children with a link to a history of harassment, stalking or psychological violence perpetrated in the digital sphere.<sup>467</sup>

### **Domestic homicide (femicide) review mechanisms**

27. Gender-related killings of women and girls, also referred to as femicide and feminicide,<sup>468</sup> represent the lethal end point of a continuum of multiple, overlapping and interconnected forms of gender-based violence. The United Nations Office on Drugs and Crime (UNODC) estimates that globally 81 100 women and girls were killed intentionally in 2021 and that the largest share of gender-related killings of women and girls are homicides perpetrated by intimate partners and other family members.<sup>469</sup> Such homicides usually follow prior experiences of physical, sexual or emotional abuse.<sup>470</sup> By assessing the seriousness of the situation and the probability of repeated violence – including lethal violence – and managing the level of risk for a woman and/or girl, risk assessments and risk management play a crucial role in preventing the spiralling of violence and, ultimately, in averting gender-related killings. Accordingly, GREVIO pays close attention to whether parties to the convention have taken the necessary legislative or other measures to ensure that a risk assessment is systematically carried out by the competent authorities in cases of violence against women, in line with Article 51 of the convention. Such preventive efforts are further strengthened by the requirement to ensure that any gender-related killing is carefully analysed with a view to identifying any possible failure of protection and improving and developing further preventive measures.<sup>471</sup> Indeed, GREVIO has consistently highlighted in its baseline evaluation reports the need to put in place a system to analyse all cases of gender-based killings of or attempted killings of women, such as a domestic violence killings review mechanism, with the

466. General Recommendation No. 1 on the digital dimension of violence against women, paragraph 12.

467. *Ibid.*, paragraph 56 (e).

468. See UN General Assembly resolutions A/RES/68/191, adopted in 2013, and A/RES/70/176, adopted in 2016.

469. Gender-related killings of women and girls (femicide/feminicide). Global estimates of gender-related killings of women and girls in the private sphere in 2021 – Improving data to improve responses.

470. UNODC, *Global Study on Homicide 2019*, booklet 5, *Gender-related Killing of Women and Girls* (Vienna, 2019).

471. Explanatory Report to the Istanbul Convention, paragraph 259.

aim of preventing them in the future, preserving the safety of women and holding to account both the perpetrator and the multiple agencies that come into contact with the victim.<sup>472</sup> In-depth reviews such as domestic homicide reviews or domestic violence fatality reviews offer an opportunity to identify gaps in the responses given by various agencies and support services to violence against women and to improve their responses and cross-sector collaboration. Reports have identified the following as some of their defining characteristics: the analysis of all previous contact between the victim and the relevant support services or institutions and with the perpetrator, intersectoral co-ordination when reviewing such killings, data-collection efforts and the formulation of recommendations to improve the relevant interventions.<sup>473</sup>

28. GREVIO has found that most parties that have been evaluated have not put in place a systematic review mechanism for domestic killings. Nevertheless, it has welcomed as a first positive step the commissioning and carrying out of ad hoc reviews of gender-related killings within limited time frames in certain parties, including in France, Republic of Moldova,<sup>474</sup> Norway,<sup>475</sup> some cantons in Switzerland and in Bosnia and Herzegovina.<sup>476</sup> GREVIO has equally welcomed the setting up of a Retrospective Domestic Violence Homicide Analysis Team in its baseline evaluation report on Portugal, which has published review reports into the deaths of women, as well as the publication of reports on femicide monitoring in Georgia.<sup>477</sup> As regards France more specifically, GREVIO in its baseline evaluation report welcomed the review of all domestic homicide cases committed in 2015 and 2016 for which a final judgment had been reached, commissioned in 2019. Such analysis looked into whether a thorough risk assessment had been carried out repeatedly and a co-ordinated security plan had been established and whether appropriate measures had been applied to protect victims from further violence. It equally assessed whether victims had benefited from or had requested the issuing of a protection order and whether such an order had been breached.

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472. See GREVIO's baseline evaluation reports on Belgium, paragraph 196; Bosnia and Herzegovina, paragraph 284; Greece, paragraph 276; Iceland, paragraph 274; Ireland, paragraph 274; Italy, paragraph 233.d; Luxembourg, paragraph 197; Malta, paragraph 214; Portugal, paragraph 206; and Switzerland, paragraph 234; and GREVIO's baseline evaluation report on Liechtenstein, paragraph 244 (for attempted killing).

473. See Commission on Crime Prevention and Criminal Justice, 22-26 May 2023, Background paper on Femicide Review Committee, pages 1 and 37. This report defines a domestic homicide review or a domestic violence fatality review as a "multi-agency review process that is conducted following the death of a person as a result of domestic violence" entailing "a systematic examination of the circumstances surrounding the death, to identify what lessons can be learned from them, in order to improve responses to domestic violence and help prevent future deaths".

474. The authorities commissioned a National Analytical Study on Femicide in 2021 examining femicide perpetrated between 2016 and 2019, in order to improve the institutional response to gender-based and domestic violence.

475. The relevant committee reviewed 19 homicide cases where the perpetrator had been a current or former partner and found that in all of them intimate-partner violence preceded the killing of the victim, identifying various shortcomings. This analysis was taken into account when creating the National Action Plan on domestic violence.

476. See GREVIO's baseline evaluation reports on Bosnia-Herzegovina, paragraph 284; France, paragraph 236; Republic of Moldova, paragraph 66; Norway, paragraph 21; and Switzerland, paragraph 232.

477. See the baseline evaluation report on Georgia, paragraph 85; and Portugal, paragraph 205.

## Gender-based violence-related suicides and forced suicides not sufficiently included in homicide reviews

29. Gender-based violence-related suicides and forced suicides of women and girls can also represent a lethal end point for those who are on the receiving end of acts of violence against women. Indeed, as evidenced by the World Health Organization's multicountry study on women's health and domestic violence, violence against women is strongly associated with suicide attempts.<sup>478</sup> According to studies, 76% of victims of intimate-partner violence have suicidal ideation – a rate that is seven times higher than in non-victims.<sup>479</sup> While there are no reliable statistics, studies in France, the United Kingdom and the United States estimate that suicides committed in a context of intimate-partner violence represent 12% of all women's suicides. By way of example, 217 women took their lives as a result of intimate-partner violence in 2018 in France and more than 1 000 across the European Union.<sup>480</sup> Moreover, studies equally show that experiences of sexual violence account for a significant share of women's increased risk of suicidal ideation.<sup>481</sup> For this reason, a history of sexual violence should be investigated, when possible, in the event of attempted or completed suicide, in order to better quantify the effect that sexual victimisation has on the suicide risk.<sup>482</sup>

30. While not defined internationally, "gender-based violence-related suicides" or "forced suicides" are understood as suicides committed as a result of or following instances of violence against women and domestic violence<sup>483</sup> and/or as the ultimate effect of severe and repeated psychological intimate-partner violence.<sup>484</sup> Equally grave and important to analyse retrospectively are instances in which women or girls are forced or pressured to commit suicide including for reasons linked to "honour". The United Nations Office on Drugs and Crime (UNODC) refers to such cases as "instigated suicide" and defines them as "the unlawful death of a woman inflicted upon herself after incitement by another person".<sup>485</sup>

31. GREVIO has not identified, thus far, any party to the Istanbul Convention that examines the above-mentioned suicides in the context of homicide reviews with a view to assessing retrospectively whether preventive measures could and should

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478. Devries K., Watts C., Yoshihama M., Kiss L., Schraiber L. B., Deyessa N., Heise L., Durand J., Mbwapo J., Jansen H., Berhane Y., Ellsberg M. and Garcia-Moreno C., World Health Organization Multi-Country Study Team, "Violence against women is strongly associated with suicide attempts: evidence from the WHO multi-country study on women's health and domestic violence against women", *Soc Sci Med.* 2011 Jul; 73(1): 79-86. doi: 10.1016/j.socscimed.2011.05.006. E-pub, 27 May 2011. PMID: 21676510.

479. European Guide on Forced Suicides – Guidance systems for frontline professionals, Henry N. et al.: [www.pystel.eu/PSYTEL/psy-documents/Suicides\\_forces/2022-SF\\_Eur\\_Guide\\_EN3\\_221228\\_web.pdf](http://www.pystel.eu/PSYTEL/psy-documents/Suicides_forces/2022-SF_Eur_Guide_EN3_221228_web.pdf).

480. Ibid.

481. El-Khoury F., Puget M., Leon C., du Roscoat, E., Velter A., Lydié N. and Sitbon A., "Increased risk of suicidal ideation among French women: the mediating effect of lifetime sexual victimisation. Results from the nationally representative 2017 Health Barometer survey".

482. Ibid.

483. European Guide on Forced Suicides – Guidance systems for frontline professionals, Henry N. et al.: [www.pystel.eu/PSYTEL/psy-documents/Suicides\\_forces/2022-SF\\_Eur\\_Guide\\_EN3\\_221228\\_web.pdf](http://www.pystel.eu/PSYTEL/psy-documents/Suicides_forces/2022-SF_Eur_Guide_EN3_221228_web.pdf).

484. "Combating coercive control and psychological violence against women in the EU Member States", European Institute for Gender Equality, 2022.

485. Statistical framework for measuring the gender-related killing of women and girls (also referred to as "femicide/feminicide").

have been taken.<sup>486</sup> Nonetheless, in its baseline evaluation report on Türkiye, GREVIO noted with satisfaction that the authorities were planning to conduct research on killings and suspicious suicides of women committed in the name of “honour” within the framework of the National Action Plan on Violence against Women and thus urged the authorities to ensure that suicides, accidents and deaths of women that might disguise killings in the name of “honour” are effectively investigated and prosecuted.<sup>487</sup> Equally worthy of note is the fact that France has criminalised “gender-based violence-related suicide” as an aggravated form of harassment of one’s spouse, civil partner or live-in partner.<sup>488</sup> Since 2020, such behaviour is liable to 10 years’ imprisonment and a fine of €150 000 where the harassment has led the victim to commit or attempt to commit suicide. It can be argued that the inclusion of completed or attempted suicide in domestic homicide reviews could be seen as a logical next step for a truly comprehensive review of gender-based deaths of women.

## Case law of the European Court of Human Rights

32. The European Court of Human Rights has had the opportunity to pronounce itself in several cases on the necessity and requirements of risk assessments in the context of domestic violence.<sup>489</sup> Most notably, in its landmark case of *Kurt v. Austria* [GC] the Court established an obligation on the contracting parties to conduct an autonomous, proactive and comprehensive risk assessment when faced with a situation of domestic violence.<sup>490</sup> The terms “autonomous” and “proactive” in this context refer to the requirement of the authorities to base their assessment not only on the victim’s testimony and own perception of the risk but also on an investigation, initiated *ex officio*. This can include collecting evidence and assessing information obtained from other state agencies, witnesses and other relevant sources on all relevant risk factors. While the Court did not stipulate an absolute requirement to use standardised risk-assessment tools, it underlined, referencing GREVIO’s third-party intervention, that their use could contribute to the comprehensiveness of the authorities’ risk assessment. Additionally, the Court considered necessary some form of basic documentation of any risk assessment conducted, in the light of the requirement of the often urgent nature of intervention and information sharing between state authorities.<sup>491</sup>

486. Bearing in mind that the United Kingdom had not been monitored by GREVIO in the period under review, the relevant domestic homicide review mechanism does indeed encompass cases of suicide as a consequence of domestic violence. See Commission on Crime Prevention and Criminal Justice, 22-26 May 2023, Background paper on Femicide Review Committee, p. 25.

487. See the GREVIO baseline evaluation report on Türkiye, paragraphs 255 and 256.

488. Notably it qualifies it as “an aggravated form of harassment of one’s spouse, civil partner or live-in partner through repeated comments or behaviour with the aim or effect of degrading their living standards, resulting in an alteration of their physical or mental health”. See Article 222-33-2-1 (Law No. 2020-936 of 30 July 2020), available at: [www.legifrance.gouv.fr/codes/section\\_lc/LEGITEXT000006070719/LEGISCTA000006165282/#LEGISCTA000047052746](http://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006070719/LEGISCTA000006165282/#LEGISCTA000047052746).

489. See, for example, *Gaidukevich v. Georgia*, Application No. 38650/18, 15 June 2023; *Landi v. Italy*, Application No. 10929/19, 7 April 2022; *Y and Others v. Bulgaria*, Application No. 9077/18, 22 March 2022; *Tunikova and Others v. Russia*, Application Nos. 55974/16 et al., 14 December 2021.

490. *Kurt v. Austria* [GC], cited above, paragraph 190.

491. *Ibid.*, paragraph 174.

33. When it comes to child victims of domestic violence, including in cases in which they have witnessed violence by one parent against the other, the Court has pointed out that risk assessments must also be conducted in relation to them, bearing in mind the possibility that the outcome of the assessment may be different for each person affected.<sup>492</sup> Should a risk to children be established, law enforcement must share this information with the child-protection authorities and with persons who are in regular contact with the children, for example teachers, schools and other childcare facilities.<sup>493</sup> In this respect, the Court explicitly pointed to the requirements under Article 51 of the Istanbul Convention and GREVIO's third-party intervention.

34. If a real and immediate risk to a victim of domestic violence is detected, the authorities' duty to take preventive operational measures to mitigate and manage the risk is triggered. To that end, the authorities must be equipped with a "toolbox" containing an array of possible legal measures, including, for example, an emergency barring order, the arrest of the perpetrator or other measures that offer immediate protection to the victim. The Court has underlined that preventive operational measures inevitably constitute an interference with the (alleged) perpetrator's rights, which, however, may be necessary in order to protect the life and physical integrity of a victim of domestic violence.<sup>494</sup> To balance the rights of the different persons involved, any measure taken must be adequate and proportionate to the level of the risk assessed.<sup>495</sup> In addition, the Court has pointed out that risk-management plans and co-ordinated support services have proved valuable in practice to avert further risks, in addition to treatment options for the perpetrator.<sup>496</sup>

35. Under the Court's jurisprudence, the obligation to conduct a risk assessment is not limited to criminal or administrative law. In the case of *I.M. and Others v. Italy*, where a knowingly violent father killed his son in the course of a supervised visit, the Court severely criticised the Italian authorities for not having assessed the risk to the child at any point in time.<sup>497</sup> In the recent judgment of *Bizdiga v. the Republic of Moldova*, the Court for the first time explicitly stipulated the requirement to conduct a risk assessment in family law proceedings where allegations of domestic violence have surfaced in the context of custody and visitation right disputes. It held that an assessment of any risks of violence or other forms of ill-treatment, therefore, must form an integral part of such proceedings. In addition, an alleged history of domestic violence is a "relevant and mandatory factor to be weighed in the assessment of domestic authorities when deciding on contact rights".<sup>498</sup> The failure to do so led to a violation of Article 8 of the Convention in the case of *Luca v. the Republic of Moldova*.<sup>499</sup> In this case, the Court referenced the focus section contained in GREVIO's 3rd Report on its General Activities, which pointed to information obtained in the course of its evaluation visits that one parent's abuse of the other was only

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492. *Ibid.*, paragraph 173.

493. *Ibid.*, paragraphs 174 and 180.

494. *Ibid.*, paragraph 183.

495. *Ibid.*, paragraph 190.

496. *Ibid.*, paragraphs 180-181.

497. *I.M. and Others v. Italy*, Application No. 25426/20, 10 November 2022.

498. *Bizdiga v. the Republic of Moldova*, Application No. 15646/18, 17 October 2023.

499. *Luca v. the Republic of Moldova*, Application No. 55351/17, 17 October 2023.

rarely taken into account when taking decisions on custody and visitation rights. Therefore, a systematic screening and following risk assessments constitute a necessary practice in such proceedings.

## **The importance of risk assessment in family law proceedings**

36. Underscoring the importance of risk assessment at various points in time in a woman's journey towards a life free from violence, GREVIO has throughout its baseline evaluation procedure continuously emphasised the need for robust risk assessment and screening for a history of domestic violence in family law proceedings. It has repeatedly called for such screening to include a history of intimate-partner violence by one parent against the other, in order to allow information on the level of threats to the safety and well-being of the non-abusive parent and the child to surface.<sup>500</sup> Family law professionals must be enabled to consider a history of abuse for decisions on child custody and visitation to ensure the safety of victims and their children.

37. Article 31 of the Istanbul Convention seeks to ensure that incidents of violence covered by the convention, in particular domestic violence, are taken into account in decisions on custody and visitation rights to ensure that the exercise of these rights do not harm the rights and safety of the victim or children. Paragraph 1 aims at ensuring that judicial authorities do not issue contact orders without taking into account incidents of violence against the non-abusive carer as much as against the child itself, while paragraph 2 lays out the obligation to ensure that the exercise of any visitation and custody rights does not jeopardise the rights and safety of the victim and/or children.

38. In its assessment of the level of implementation of Article 31, GREVIO has developed important elements that it deems essential for the full implementation of this provision. Ensuring adequate levels of training of family law professionals on the nature of domestic violence, including psychological violence and post-separation violence, as well as on other forms of violence, features among these elements. Similarly, consultation by family courts of all relevant professionals and statutory agencies to assess the full spectrum of past and ongoing violence is another important element in order to enable family law judges to consider the history of violence when deciding on custody and visitation rights. Of equal relevance is the need to ensure adequate risk assessment and screening at the level of family law courts. The Mid-term Horizontal Review of GREVIO baseline evaluation reports published in 2021 offers insights into the shortcomings established by GREVIO in this regard.<sup>501</sup> These were further detailed in the focus section dedicated to the intersection between domestic violence and child custody and visitation rights as contained in its third Report on GREVIO's General Activities published in 2022.<sup>502</sup>

500. GREVIO's baseline evaluation report on Germany, paragraph 220; and Poland, paragraph 191.

501. Mid-term Horizontal Review of GREVIO baseline evaluation reports, paragraphs 324-338.

502. 3rd General Report on GREVIO's Activities, covering the period from January to December 2021, paragraphs 67-85.

## Inadequate risk assessments and screening

39. The shortcomings identified by GREVIO in its baseline evaluation reports mainly pertain to the failure to conduct a risk assessment or screening for domestic violence in cases related to the determination of custody and visitation rights. GREVIO had noted the absence of such screening in relation to France, Italy, Montenegro, the Netherlands, Portugal and San Marino.<sup>503</sup> It had also found that judges did not conduct risk assessments or ask for the disclosure of the risk assessment and safety plans drawn up by law-enforcement agencies and/or other competent authorities with a view to taking them into account when establishing the best interests of the child.<sup>504</sup> Since then, GREVIO has identified similar shortcomings in its baseline evaluation reports on Bosnia and Herzegovina, Croatia, Estonia, Germany, Greece, Iceland, Ireland, Norway and Slovenia.<sup>505</sup> Similarly, the need to increase the level of consultation and co-operation across various statutory agencies was raised by GREVIO in relation to Bosnia and Herzegovina, Croatia, Cyprus, Ireland, Luxembourg and Norway, among others.<sup>506</sup>

## Risks to women and children overlooked or minimised in family law settings

40. The inadequacy or inexistence of formalised procedures in place to identify risks women and children face from an abuser is compounded by the frequent positioning of mothers as “alienating” the other parent or as being “un-co-operative”. This is particularly the case where they raise before the competent courts a perpetrators’ past or ongoing abusive behaviour or seek sole custody of children after separation from their abusive spouse. GREVIO has revealed the use of such notions and labels in nearly all parties under evaluation and has pointed to the impact this has: minimising evidence of domestic violence and masking the level of risk women and children are exposed to.<sup>507</sup> In many of its baseline evaluation reports, GREVIO has found these notions to be “invoked without a proper understanding of the dynamics of domestic violence against women and its effects on children”, and “in the absence of a thorough risk assessment and case-by-case examination”. In several of its reports, it found the application of such concepts, including the scientifically unfounded concept of “parental alienation syndrome” to downplay the level of abuse, to disregard the gender-based nature of domestic violence and to ignore essential aspects of child welfare in Andorra, Belgium, Croatia, Cyprus, Estonia, France, Germany, Greece,

503. GREVIO’s baseline evaluation reports on France, paragraph 182; Italy, paragraph 187; Montenegro, paragraph 165; the Netherlands, paragraphs 200-202; and Portugal, paragraph 160.

504. GREVIO’s baseline evaluation reports on Denmark, paragraph 161; Italy, paragraph 186; Montenegro, paragraph 165; the Netherlands, paragraph 204; and Portugal, paragraph 160.

505. GREVIO’s baseline evaluation reports on Bosnia and Herzegovina, paragraph 195; Croatia, paragraph 196; Estonia, paragraph 158; Germany, paragraph 229; Greece, paragraph 197; Iceland, paragraph 189; Ireland, paragraph 194; Norway, paragraph 164; and Slovenia, paragraph 236.

506. GREVIO’s baseline evaluation reports on Bosnia and Herzegovina, paragraph 192; Croatia, paragraph 196; Cyprus, paragraph 177; Ireland, paragraph 194; Luxembourg, paragraph 138; Norway, paragraph 164.

507. Third General Report on GREVIO’s Activities, paragraph 79.

Iceland, Ireland, Italy, Luxembourg, Poland, Romania and Spain.<sup>508</sup> For this reason, GREVIO has repeatedly voiced grave concern over the use of such concepts and has pointed repeatedly to its lacking scientific foundation. It consistently refers to the statement of December 2017 by the European Association for Psychotherapy (EAP), which draws attention to the fact that the concepts of “parental alienation syndrome” (PAS) and “parental alienation” (PA) are unsuitable for use in any psychotherapeutic practice. Similarly, the United Nations Special Rapporteur on violence against women and girls, its causes and consequences, has pointed to the harmful impact recourse to such scientifically unfounded concepts as “parental alienation” lead to.<sup>509</sup>

41. Numerous baseline evaluation reports call on the authorities to ensure wider levels of training on patterns of domestic violence, concepts of coercive control, manipulation and abuse, including psychological violence, which may also involve the use of technology or may be perpetrated online. Separation from an abusive partner will often increase not lower the risk to children, which is why dynamic risk-assessment procedures and screening, including within family law proceedings, is crucial. Understanding the level of risk for women and children who leave abusive situations, including situations of psychological abuse, is vital for adequate decision making in proceedings on custody and visitation rights. Research is increasingly pointing to child custody and visitation proceedings as an arena for continued abuse after separation, often taking the form of malicious litigation.<sup>510</sup> Such proceedings and subsequent visitation rights may also result in the potential targeting of children, which family law professionals need to be aware of. For these reasons, GREVIO frequently points to the need for a more thorough understanding of how post-separation abuse manifests itself in family law proceedings concerning custody and visitation rights. Robust screening and risk-assessment procedures are thus vital for the Istanbul Convention’s premise of safety first to develop its potential.

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508. GREVIO’s baseline evaluation reports on Andorra, paragraph 149; Belgium, paragraph 146; Croatia, paragraph 193; Cyprus, paragraph 176; Estonia, paragraph 157; France, paragraph 181; Germany, paragraph 227; Greece, paragraphs 194-197; Iceland, paragraph 185; Ireland, paragraph 189; Italy, paragraphs 182 and 185; Luxembourg, paragraph 140; Poland, paragraphs 188-190; Romania, paragraph 256; and Spain, paragraphs 200-201.

509. A/HRC/53/36, “Report of the Special Rapporteur on Violence against Women and Girls, Its Causes and Consequences – Custody, Violence against Women and Violence against Children” (2023), paragraph 15.

510. Gutowski E. R. and Goodman L. A., “Coercive Control in the Courtroom: the Legal Abuse Scale (LAS)”, *Journal of Family Violence* 38, No. 3 (April 2023): 527-42, <https://doi.org/10.1007/s10896-022-00408-3>.



## Conclusion

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In the course of its mandate, the Group of Experts on Combating Violence against Women and Domestic Violence (GREVIO) has proved its key role by identifying the challenges that parties to the Istanbul Convention face. Its findings offer tailor-made guidance resulting from an in-depth dialogue with the authorities which point the way forward in the convention's implementation. The focus sections as presented in each of GREVIO's activity report allow GREVIO to offer a contextual analysis of a particular theme of the convention based on its growing corpus of evaluation reports.

The compilation of these thematic perspectives shows that there is still significant progress to be made in combating violence against women. Whether this in the area of criminalisation of sexual violence and rape, its investigation and prosecution, ensuring adequate consideration for a history of domestic violence in child contact proceedings, or the systematic rollout of risk assessment and management for women and girls at risk of any of the forms of violence covered by the convention, the findings by GREVIO are rich in detail and targeted in their nature. Together, they offer insights into the structural changes that are still required in many parties to the convention in order to ensure higher levels of implementation.

GREVIO will continue to share its expertise on specific issues in the thematic sections through its general activity reports, aiming to guide and support Parties, NGOs, and civil society in identifying and implementing sustainable solutions.

This document contains a compilation of the thematic “focus sections” included in the first five general reports on activities carried out by GREVIO, the Council of Europe independent Group of Experts on Action against Violence against Women and Domestic Violence. Covering the period 2015-2023, these focus sections highlight a variety of themes and issues of relevance in implementing the provisions of the Istanbul Convention. Together, they offer important reflections for their further implementation in order to enhance parties’ responses to preventing and combating violence against women.

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