



## Provisional Version

## Committee on Equality and Non-Discrimination

## Promoting best practices in tackling violence against women

### Report<sup>1</sup>

Rapporteur: Ms Sahiba Gafarova, Azerbaijan, European Conservatives Group

#### *Summary*

With the entry into force of the Council of Europe Convention on preventing and combating violence against women and domestic violence (CETS No. 210, the “Istanbul Convention”), a major milestone was achieved. It proved violence against women had become an issue of great concern ranking high on political agendas. However, despite major progress over the last decade, statistics are still alarming.

In this fight against violence, parliamentarians have a key role to play. Firstly, by guaranteeing that national legislation is in conformity with the Istanbul Convention. Secondly, by ensuring that this legislation is duly implemented. For the first time in a Council of Europe treaty, the role of parliaments and of the Parliamentary Assembly in monitoring the implementation of this convention is expressly recognised.

By providing in-depth information on examples of legislation and practice in combating violence against women which are applied in Council of Europe member States, this report aims at enhancing their expertise as legislators. It is also meant to complement the future work of the Convention’s monitoring body GREVIO and parliamentary monitoring-related activities. The list of measures highlighted in the report is non-exhaustive and should primarily serve as an incentive for future actions.

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<sup>1</sup> Draft resolution adopted unanimously by the Committee on 29 September 2015.

## **A. Draft resolution**

1. Violence against women is a widespread phenomenon affecting one in three women in Europe. From domestic abuse to rape as a weapon of war, violence against women is a form of discrimination and a gross violation of human rights, threatening women's health and their social and economic well-being. Through the adoption of several texts, including Resolution 1861 (2012) on Promoting the Council of Europe Convention on preventing and combating violence against women and domestic violence and Resolution 1963 (2013) on violence against women, the Parliamentary Assembly has constantly supported the Council of Europe's actions in the field of combating violence against women.
2. With the entry into force of the Council of Europe Convention on preventing and combating violence against women and domestic violence (CETS No. 210, the "Istanbul Convention"), a major milestone was achieved. It proved violence against women had become an issue of great concern ranking high on political agendas. The Council of Europe member States should keep the momentum.
3. The Assembly recalls that national parliaments and the Parliamentary Assembly have important roles to play in the implementation of the Convention, both as legislators and through parliamentary monitoring-related activities.
4. Acknowledging that member States have taken important measures in fighting violence against women, the Assembly wishes to bring to light good practices as a possible source of inspiration. The Assembly also commends and supports the activities of the Parliamentary Network Women Free from Violence.
5. In the light of these considerations, the Assembly calls on Council of Europe member States:
  - 5.1 to sign and/or ratify, if they have not yet done so, the Council of Europe Convention on preventing and combating violence against women and domestic violence (CETS No. 210);
  - 5.2 to implement the provisions of the Convention effectively, in light of the future findings of the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) and any recommendations made by the Committee of the Parties;
  - 5.3 to draw on the experiences already gathered by other states to develop laws and strategies to effectively fight all forms of violence against women;
  - 5.4 to call upon the expertise of women's support service organisations working in the field and national human rights institutions while examining ratification or implementation of the Convention in national parliaments;
  - 5.5 to undertake research and data collection in several fields pertaining to the fight against violence against women, including reporting by professionals, compensation procedures and delivery of residence permits;
  - 5.6 to continue to ensure adequate funding for prevention measures and assistance and protection services for victims of all forms of violence against women, including domestic violence.

## **B. Explanatory memorandum by Ms Sahiba Gafarova, Rapporteur**

### **1. Introduction**

1. The Council of Europe Convention on preventing and combating violence against women and domestic violence (CETS No. 210, hereinafter the “Istanbul Convention”) entered into force on 1 August 2014 and has been ratified by 18 States Parties.<sup>2</sup> Members of the Parliamentary Assembly and national parliamentarians have played an important role throughout the process which has led to this result and they will continue to do so.<sup>3</sup>

2. By providing in-depth information on examples of legislation and practice on violence against women which are applied in Council of Europe member States, this report aims at enhancing their expertise as legislators. It is also meant to complement the future work of the Convention’s monitoring body GREVIO and parliamentary monitoring-related activities.

3. In this report, I will address the Convention’s four main areas, known as the 4Ps, (namely prevention, the protection of victims, the prosecution of offenders and integrated policies), through a catalogue of good practices that have been implemented in Council of Europe member States. The list provided is non-exhaustive and should primarily serve as an incentive for future actions.

4. To identify examples of these good practices, I benefited from the support of Women against Violence Europe (WAVE), a formal network of European women’s NGOs which annually publishes country reports on topics related to violence against women. I wish to thank them for their valuable help.

5. When pertinent, I also referred to the survey published by the European Union Fundamental Rights Agency (FRA) in March 2014.<sup>4</sup> Though it only partially addresses the geographical areas covered by the Council of Europe, it provides valuable data in different fields pertaining to the issue of violence against women. A more detailed report on the issue of data collection is being carried out by my colleague Maria Edera Spadoni (Italy, NR).<sup>5</sup>

## **2. Examples of legislation and practice on violence against women in Europe**

### **2.1 Prevention**

#### **a) General obligations (Article 12)**

6. In its Article 12, the Istanbul Convention requires states to adopt a wide range of measures at the national level to prevent all forms of violence against women. These measures aim to change attitudes, gender roles and stereotypes that increase tolerance of violence against women. They should, for instance, encourage men and boys to contribute actively to preventing all forms of violence.

7. In 2002, the United Nations Population Fund (UNFPA) and the **Turkish** Ministry of Health and the Turkish Armed Forces decided to introduce a specific module on gender equality and the prevention of gender-based violence against women for Turkish soldiers.<sup>6</sup> By 2009, three million men had received the training, and the project had been made permanent by a decree from the armed forces. Though many of the soldiers said the training had a profound effect on them, the programme met resistance from some soldiers and faced problems with achieving involvement from military leaders at all levels.<sup>7</sup>

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<sup>2</sup> Albania, Andorra, Austria, Bosnia and Herzegovina, Denmark, Finland, France, Italy, Malta, Monaco, Montenegro, Poland, Portugal, Spain, Serbia, Slovenia, Sweden and Turkey – as of 1 July 2015.

<sup>3</sup> The Istanbul Convention’s monitoring mechanism consists of two bodies: an independent expert body, the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) and a political body, the Committee of the Parties. Parties shall submit the reports of GREVIO to national parliaments while the Parliamentary Assembly will be invited regularly to take stock of the implementation of the Convention (cf. Article 70 of the Istanbul Convention). On 4 May 2015, the Committee of the Parties held its first meeting and elected the members of the GREVIO, who will in turn hold their first meeting in September 2015.

<sup>4</sup> Violence against women: an EU-wide survey. Results at a glance, EU Fundamental Rights Agency, March 2014.

<sup>5</sup> Systematic collection of data on violence against women, Doc.13607, 23 September 2014.

<sup>6</sup> Partnering with men to end gender-based violence: Practices that work from Eastern Europe and Central Asia, United Nations Population Fund, New York, 2009.

<sup>7</sup> Preventing violence against women: Article 12 of the Istanbul Convention, a collection of papers on the Council of Europe Convention on preventing and combating violence against women and domestic violence, prepared by Marianne Hester and Sarah-Jane Lilley, Council of Europe, September 2014, page 33.

## **b) Awareness-raising campaigns (Article 13)**

8. According to FRA's report, most cases of violence against women are reported neither to the police nor to any victim support organisation. Half of the women surveyed state either that there is no specific legislation on domestic violence in their country of residence or that they do not know if there is. On average, almost one in five women (19 %) in the EU is not aware of any of the support services for victims of violence against women in their country. However, every second woman in the EU, on average, has recently seen or heard campaigns addressing the issue of violence against women.<sup>8</sup> This leads me to the conclusion that most women victims of violence do not know about their rights and support services available for victims. Awareness-raising campaigns are therefore an essential way to reach out to them.

9. In 2011 and 2012, a pioneering campaign on psychological violence was conducted in **Belgium**.<sup>9</sup> Two short films, broadcast on national television, described the decline of a relationship and the underhand violence attached to it. The campaign had a tremendous impact on Belgian society as it rightly showed that violence was not only limited to physical violence as it is often pictured, but could take many other forms, including psychological ones. This was also an opportunity to publicise the free and anonymous hotline for victims of domestic violence.

10. The rape crisis centre in Saarbrücken (**Germany**) together with the family planning association found an interesting way to spread their helpline number widely and in a simple manner. The information was printed on bakery bags that are commonly used to sell bread and pastries in German bakeries. The awareness-raising campaign spread information among bakery users, raised the interest of the media and has since been replicated across the country and beyond.<sup>10</sup>

11. Awareness-raising campaigns should be designed in close collaboration with national human rights institutions and equality bodies, civil society and non-governmental organisations, especially women's organisations, and need to be based on accurate data to ensure that they target their messages to the right audience.<sup>11</sup>

## **c) Education (Article 14)**

12. Education plays a fundamental role in shaping future attitudes and behaviour and ultimately in changing society's perception of violence against women. According to the Convention, it is necessary to include formal and informal education teaching materials on issues such as gender-based violence against women, equality between women and men, non-stereotyped gender roles, mutual respect, non-violent conflict resolution in interpersonal relationships and the right to personal integrity.

13. To illustrate this, I would like to mention a particular initiative, "**Voices against Violence**", initiated by the World Association of Girl Guides and Girl Scouts (WAGGGS) and UN Women.<sup>12</sup> Through age-tailored activities such as story-telling, games, poster competitions, campaigns and community service, this co-educational curriculum is a tool for young people to understand the root causes of violence in their communities, to educate and involve their peers and communities to prevent such violence. The campaign addresses specific forms of violence against women and girls.

## **d) Training of professionals (Article 15)**

14. The Istanbul Convention calls for training of relevant professionals in the many causes, manifestations and consequences of all forms of violence. Training not only allows raising awareness among professionals, but contributes to changing the outlooks and the conduct of these professionals with regard to the victims. Furthermore, it significantly improves the nature and quality of the support provided to victims.<sup>13</sup>

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<sup>8</sup> Supra note 3.

<sup>9</sup> « La violence psychologique, c'est de la violence tout court » - [www.fredetmarie.be](http://www.fredetmarie.be).

<sup>10</sup> Bakery bag campaign : "Rape/Violence – not in my bag" (*Verwaltung/Gewalt kommt nicht in die Tüte*) - in Raising awareness of violence: Article 13 of the Istanbul Convention, a collection of papers on the Council of Europe Convention on preventing and combating violence against women and domestic violence, prepared by Karine Heisecke, Council of Europe, September 2014, page 26.

<sup>11</sup> Supra note 3, p.10.

<sup>12</sup> [www.unwomen.org/en/digital-library/publications/2013/10/voices-against-violence-curriculum](http://www.unwomen.org/en/digital-library/publications/2013/10/voices-against-violence-curriculum), 1 July 2015.

<sup>13</sup> Explanatory report to the Council of Europe Convention on preventing and combating violence against women and domestic violence (CETS No. 210), para.98.

15. From 2010 to 2013, **Serbia** developed a series of protocols to fight violence against women.<sup>14</sup> In these protocols, all participating agencies were required to provide training for their staff in the area of violence against women and domestic violence. In 11 towns, 550 public service providers, including judges, prosecutors, social workers, police officers, health workers, professors and educators, were trained on how to deliver integrated services at local level. Furthermore, the police and judicial academy as well as the governmental human resources office introduced specialised curricula in their regular educational programs. 361 police officers, 292 judges and prosecutors and 150 state officials were trained on gender equality and on how to deal with victims of gender-based violence without exposing them to secondary victimisation.<sup>15</sup>

16. The basic training of **Swedish** prosecutors includes training in domestic violence and sexual and psychological abuse. There are also senior public prosecutors specialising in domestic violence. Their number has increased gradually over the years and, in April 2010, they were no less than 31 in the 32 local public prosecution offices in Sweden.

17. The **Turkish** Police Academy<sup>16</sup> recently developed a series of in-house training programs on gender equality and the prevention of violence against women. In its first session, organised in May 2015, the police force which primarily handles violence against women cases was trained particularly on the applicable standards and State obligations under the Istanbul Convention.

18. A total of 45 out of 46 Council of Europe member States reported regular training on some level for professionals.<sup>17</sup> However, detailed information about the quality and effectiveness of training is not available and appropriate specific training can stand for a range of possibilities from merely learning about legal provisions and short information to longer sessions, be they optional or obligatory. It would therefore be necessary to obtain data on training and to carry out comparative evaluation research on content, quality and effects of training activities.

#### e) Preventive intervention and treatment programmes (Article 16)

19. The Istanbul Convention requires states to set up or support treatment programmes for perpetrators of domestic violence and sex offenders aimed at teaching them how to adopt non-violent behaviour, take responsibility for their actions and examine their attitudes towards women.

20. In **Luxembourg**, the Domestic Violence Act, amended in July 2013, imposes an obligation on perpetrators who are under a barring order to appear, within a week, before a specialised service in charge of perpetrators of violence. If perpetrators do not attend, they will be summoned while the service files a report to the prosecutor's office. The perpetrator must collaborate with police, judicial and state authorities and closely work with the assistance service for victims of domestic violence. Such an initiative aims at encouraging perpetrators to take responsibility for their actions and also at preventing them from reoffending.

21. In **France**, section 15 of the Gender Equality Act, which was passed on 23 July 2014, provides for the insertion in the criminal code of the obligation to “undergo awareness training on preventing and combating gender-based violence at his own expense” into provisions relating to obligations that a court may impose as part of a criminal sentence. This addition is a direct consequence of the ratification of the Istanbul Convention by France.<sup>18</sup>

22. In the **United Kingdom**, the Core Sex Offender Treatment Programme began in 1991 and is the main programme offered on a voluntary basis to medium and high-risk sex offenders in UK prisons. It helps offenders understand how and why they have committed sexual offences and increases awareness of

<sup>14</sup> The measures were developed by a Task Force led by the Ministry of Labour, Employment and Social Policy of the Republic of Serbia and published with the support of UN Women and UNDP.

<sup>15</sup> [www.rs.undp.org/content/serbia/en/home/ourwork/povertyreduction/successstories/combating-the-violence-against-women/](http://www.rs.undp.org/content/serbia/en/home/ourwork/povertyreduction/successstories/combating-the-violence-against-women/), 1 July 2015.

<sup>16</sup> As part of cooperation program entitled Turkey Human Rights Capacity Development Program. This programme is run by the Raoul Wallenberg Human Rights Institute and supported by the Swedish Development Agency (SIDA).

<sup>17</sup> Analytical study of the results of the 4th round of monitoring the implementation of Recommendation Rec(2002)5 on the protection of women against violence in Council of Europe member States, Council of Europe/Gender Equality Commission, Strasbourg, 2014, pp. 77-78.

<sup>18</sup> Article 41-1 of the Code of Criminal Procedure and Articles 132-45 and 222-44 of the Criminal Code. See PACE Report on “Focusing on the perpetrators to prevent violence against women” (Rapporteur: Ms Kyriakidou), doc.13634, para.26.

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victim harm. Over a two-year period, treated offenders had statistically significantly lower sexual and/or violent reconviction rates than untreated offenders, with medium-risk offenders showing the biggest improvement. Participants reported an improved understanding of their offences and their effects on the victims, and that they had learned alternative coping strategies for the future. However, the Core SOTP did not seem to be sufficient treatment for high-risk offenders.<sup>19</sup>

#### f) Participation of the private sector and the media (Article 17)

23. Whilst respecting their freedom of expression and independence, the private sector and the media shall be encouraged to participate in the elaboration and implementation of policies and to set guidelines to prevent violence against women and enhance respect for their dignity. To date, 16 Council of Europe member States have a code or set of guidelines for the media.<sup>20</sup>

24. In January 2013, the Minister of Labour and Social Policies of **Italy** and the President of the Advertising Self-Regulation Institute (*Istituto di Autodisciplina Pubblicitaria - IAP*) agreed to increase their co-operation in the monitoring and removal of offensive and indecent ads. The Department for Equal Opportunities of the Italian Presidency of the Council of Ministers is therefore now entitled to ask for the removal of advertisements showing degrading images of women, containing images of violent acts perpetrated against women or inciting violence against women. This would also be done following a report from other entities. Between February 2013 and July 2014, the Department for Equal Opportunities reported 14 offensive advertisements to the IAP, of which 7 were removed. During the same period of time, 19 offensive advertisements were blocked by the IAP.<sup>21</sup> One might want to accelerate the procedure between the actual complaint and the decision for removal, as fifteen days elapse during which the ad and its message are still largely broadcast.

25. The Commission for Citizenship and Gender Equality (CIG), the **Portuguese** national mechanism for equality of women and men, has been promoting in partnership with the Professional Training Center for Journalists (CENJOR) a 12-hour training module entitled "Gender and Information" addressed to journalists with a professional title, including training on gender-based violence as an expression of power asymmetries between men and women; violence against women (the case of female genital mutilation); domestic violence as an example of gender-based violence; the media coverage of homicide in the context of intimate relationships. The trainer responsible for the issue of gender-based violence is a co-ordinator of the Observatory of Murdered Women, a structure created in 2004 by UMAR, a Gender Equality NGO. The Observatory analyses all journalistic works and news in the press focusing on homicide cases in the context of intimate relationships.<sup>22</sup>

26. In **Scotland (United Kingdom)**, the Zero Tolerance campaign produced a handbook for media professionals "Handle with Care: A guide to responsible media reporting of violence against women".<sup>23</sup> The guide provides recommendations on standards of reporting on these issues while giving examples of good practice and advice on how to communicate with victims of violence.

## 2.2 Protection of victims

27. Measures to ensure protection and support of women victims of violence must *inter alia* be based on a gendered understanding of violence against women and domestic violence, avoid secondary victimisation and aim at their empowerment and economic independence.

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<sup>19</sup> Domestic and sexual violence perpetrator programmes: Article 16 of the Istanbul Convention, A collection of papers on the Council of Europe Convention on preventing and combating violence against women and domestic violence, prepared by Marianne Hester and Sarah-Jane Lilley, Council of Europe, September 2014, pp. 28-29.

<sup>20</sup> Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, France, Germany, Greece, Montenegro, Netherlands, Serbia, Spain, Turkey, Ukraine, and United Kingdom - supra note 16, in Annexes page 75.

<sup>21</sup> [www.pariopportunita.gov.it/index.php/primo-piano/2489-protocollo-dpo-iap-riunione-di-insediamento-del-comitato-paritetico](http://www.pariopportunita.gov.it/index.php/primo-piano/2489-protocollo-dpo-iap-riunione-di-insediamento-del-comitato-paritetico), 1 July 2015.

<sup>22</sup> In "Gender Equality and the media at national level – Compilation of good practices from member States", Gender Equality Commission, Council of Europe, July 2014, pp.38-39.

<sup>23</sup> [www.zerotolerance.org.uk/sites/all/files/files/HWC\\_V5%281%29.pdf](http://www.zerotolerance.org.uk/sites/all/files/files/HWC_V5%281%29.pdf).

**a) Scope of the Convention (Articles 2, 4, 59, 60 and 61)**

28. **Definition of “victim”** - The term “victim” refers to both victims of violence against women and domestic violence. The Convention encourages States Parties to extend its application to male and children victims of domestic violence. They may do so in the manner they consider the most appropriate, taking account notably of the specific national situation and of the developments in their society.<sup>24</sup>

29. **Austria** introduced the first law on protection from domestic violence in 1997.<sup>25</sup> The law applies to all victims, regardless of their gender, age or family status. By not defining the relationship to the perpetrator, the law is applicable to all victims, protecting them from any form of violence in any place, public or private (home, workplace, school, kindergarten, while on holidays, etc.).

30. **Residence status of migrant women** - The threat of deportation or loss of residence status are often used by perpetrators to prevent victims of violence against women and domestic violence from seeking help or from separating from the perpetrator. In the majority of the member States of the Council of Europe the foreign spouses or partners need to remain married or in a relationship for a certain period (often between 1 and 3 years) to have access to an autonomous residence status. In consequences, many victims have to endure the violence for a long period of time. The Convention wants to ensure that migrant victims whose residence status is conditional on marriage or on being in a relationship are granted an autonomous residence permit of a limited validity in the event of the dissolution of the marriage or the relationship.

31. In August 2012, the **Irish** Naturalisation and Immigration services (INIS) published a policy providing an independent residence permit for migrant victims of domestic violence, who would otherwise be dependent on their abuser to renew their permit. INIS also published guidelines<sup>26</sup> to help the victims of domestic violence whose relationship has ended, to obtain an independent residence status. INIS requires the applicant to prove that he or she is victim of domestic violence through, for example, a protection order, a medical report indicating injuries or a police report relating the incidents.

32. In **Belgium**, in 2006 and 2007, new provisions were introduced in the immigration law to allow migrant women victims of domestic violence not to lose their residence status when leaving their abusive partner. This applies under the condition that the women prove their status as victims of domestic violence.<sup>27</sup>

33. In this field, research is urgently needed to understand the situation better, to learn from experiences and to provide Parties to the Convention with concrete recommendations regarding the implementation of this important article.

34. **Refugee women** - The Convention also makes explicit reference to the protection of refugee women from violence and establishes several obligations in relation to asylum claims (Article 60). States Parties should take measures to ensure that gender-based violence against women may be recognised as a form of persecution within the meaning of Article 1, A (2) of the 1951 Convention relating to the Status of Refugees. The Convention also calls on States to adopt gender-sensitive interpretation of each of the Convention’s grounds, as well as gender guidelines and gender-sensitive asylum procedures, while respecting the principle of *non-refoulement* (Article 61).

35. In 2007, **Belgium** adopted a law on gender mainstreaming<sup>28</sup> which obliges its authorities to integrate a gender dimension into all public policies, including asylum procedures. A set of instructions to guide asylum officers when examining gender-related asylum claims was adopted; training on gender-related issues were organised for interpreters. A gender-specific brochure entitled “Women, girls and asylum in

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<sup>24</sup> Explanatory report, para.37.

<sup>25</sup> The Domestic Violence Act 1997 was published in *Bundesgesetz zum Schutz vor Gewalt in der Familie – GeSchG, Bundesgesetzblatt 759, Jahrgang 1996, ausgegeben am 30. Dezember 1996*. Major additional provisions came into force in 2009 (the so-called Second Violence Act). The last amendment came into force in September 2013.

<sup>26</sup> INIS, Victims of Domestic Violence Immigration Guidelines, 2012.

<sup>27</sup> Collectif contre les violences familiales et l’exclusion, regroupement familial et violence conjugale : éviter la double victimisation des femmes migrantes, Novembre 2013.

<sup>28</sup> La loi du 12 janvier 2007 visant au contrôle de l’application des résolutions de la Conférence mondiale sur les femmes, réunie à Pékin en septembre 1995 et intégrant la dimension du genre dans l’ensemble des politiques fédérales (M.B. 13/02/2007) [Law of 12 January 2007 introducing a gender dimension to all federal policies in Belgium and aiming at monitoring the implementation of the Beijing Declaration and Platform for Action adopted at the Fourth World Conference of Women in Beijing in 1995 (M.B. 13/02/2007)].

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Belgium: information for women and girls seeking asylum” was developed in seven languages. It provides specific information on the rights and obligations of asylum seekers such as the right to ask for a female interviewer and interpreter, the right to have an individual interview and access to childcare during the interview. The brochure also gives information on particular issues which could be relevant for women: pregnancy, contraception and other sexual and reproductive health and rights matters, health and well-being issues, violence within the family, other forms of abuse, exploitation and female genital mutilation.<sup>29</sup>

36. With regard to the refugee and migrant crisis, which currently affects Europe, I would like to stress that violence against women during their clandestine journey is widespread and should be a huge concern for us all. Indeed, in addition to the hardships during any journey as an illegal migrant – hunger, thirst, extreme fatigue, appalling travel conditions with thousands of women and men drowning in the Mediterranean Sea – women suffer from sexual violence, abductions by smugglers and traffickers and abuses in immigration detention centres. These women have fundamental rights which must be respected. This means that when they arrive, they should be accommodated in safe reception centres. They should have access to gender-sensitive asylum procedures and support services as required by the Istanbul Convention. Not to mention the necessity of challenging the legality of lengthy detentions when inappropriate.

37. **Women with disabilities** - The list of grounds for discrimination included in Article 4.3 of the Convention draws on Article 14 of the European Convention on Human Rights and its Protocol No. 12.<sup>30</sup> The open-ended list includes disability.

38. It is estimated that women with disabilities are 1.5 to 10 times more likely to be exposed to violence than women without disabilities.<sup>31</sup> According to the FRA survey, more than one woman in two with a health problem, a disability or with difficulties in her daily life is or has been subjected to psychological violence by their partner or to sexual harassment. One third are victims of physical violence.<sup>32</sup>

39. I would like to add that women with disabilities who are victims of violence face specific obstacles which may prevent them from reporting the abuse and violence they suffer.<sup>33</sup> The following obstacles may be mentioned, among others: difficult access to information, very low number of shelters accessible to women with disabilities, the risk that they will no longer benefit from a carer if they leave their home, the fear of being institutionalised or of losing the custody of their children.

40. Beverley Lewis House is the only refuge in the **United Kingdom** that caters for women with learning disabilities who have suffered domestic violence.<sup>34</sup> The service can accommodate 12 women and they stay an average of two years. The intensive support plan includes one-to-one counselling and cognitive behavioural therapy. Most women move on to supported living, some with a few hours a week of social care support, after having gained new life skills and confidence.

## **b) General support services (Article 20)**

41. Central to the effective protection and recovery of women victims of violence are support services. These services help to prevent further violence and assist the victims’ physical, psychological and social recovery. They should be easily and safely accessible and free of charge.

42. A distinction is made between general and specialist support services.<sup>35</sup> General support services refer to help offered by public authorities such as social services, health services, employment services, which provide long-term help and are not exclusively designed for the benefit of victims only but serve the public at large. In contrast, specialist support services provide support and assistance tailored to the – often immediate – needs of victims of specific forms of violence against women or domestic violence and are not available to the general public. While these may be services run or funded by government authorities, the large majority of specialist services are offered by NGOs.

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<sup>29</sup> The Istanbul Convention: a tool to end female genital mutilation, Council of Europe – Amnesty International, November 2014, page 32.

<sup>30</sup> Explanatory report, para.52.

<sup>31</sup> Human Rights for Women and Children with Disabilities, Human Rights Watch, 2012, p. 5. See also PACE report on “Equality and Non-Discrimination for people with disabilities” (Rapporteur: Ms Quintanilla), doc.13650, para.56.

<sup>32</sup> Violence against women: an EU-wide survey, European Union Fundamental Rights Agency, Main results report, 2014, pp. 187-188.

<sup>33</sup> AS/Ega disability inf(2014)01, Violence against women with disabilities, 18 June 2014.

<sup>34</sup> Women with learning disabilities are hidden victims of domestic violence, The Guardian, 10 February 2015.

<sup>35</sup> Explanatory report, para.125.

43. In **Austria**, the Second Act on Protection against Violence (2009) ensures psychosocial and legal assistance in courts for victims of violence during criminal and civil proceedings. Assistance is provided by victims' protection organisations, intervention centres and violence prevention centres. Psychosocial court assistance includes accompanying the victim to the police when making a report, informing them about and preparing them for criminal proceedings, accompanying them to questioning at court and to the trial. Legal court assistance consists of legal representation in criminal proceedings by a lawyer for the protection of the rights of the victim. During criminal proceedings, the legal assistance is free of charge. In October 2014, Austria received the silver award of the 2014 Future Policy Award for Ending Violence against Women and Girls for this law.<sup>36</sup>

### c) Shelters

44. Women victims of violence and their children need to have immediate and possibly around-the-clock access to safe accommodation. Shelters should be set up in sufficient numbers – to be determined according to the actual need – and offer support and protection by trained staff.

45. The Final Activity Report of the Council of Europe Task Force to Combat Violence against Women, including Domestic Violence (EG-TFV (2008)6) recommends safe accommodation in specialised women's shelters, available in every region, with one family place per 10 000 head of population. According to the 2014 WAVE report<sup>37</sup>, two countries among the Council of Europe member states meet this criteria, namely Luxembourg and Slovenia.

### d) Telephone helplines (Article 24)

46. Helplines are one of the most important ways of enabling victims to find help and support. The Convention requires states to set up nation-wide 24/7 telephone helplines free of charge.

47. In **Turkey**, the ALO 183 hotline, set up in 2007 by the Ministry of Family and Social Policies and state-funded, receives calls from 81 provinces and helps women, children and persons with disabilities victims of violence to gain quick access to the psychological, judicial, economic advice and guidance services. The Hürriyet "No! To Domestic Violence Helpline", a nation-wide women's helpline, which provides assistance to women victims of all forms of violence, is run by the newspaper Hürriyet and funded by private donations.

48. In 2013, the **German** Federal Ministry for Family, Senior, Women's and Youth Affairs set up a national, toll-free telephone helpline that offers victims of all forms of violence against women competent advice on demand. Around 60 specially trained counsellors provide confidential support in 15 languages, around the clock, 365 days a year and free of charge. If needed, they can point callers to appropriate local support options in their area. This new service filled a gap in the support structure in Germany and is an important tool in directing victims, relatives and friends, as well as professionals, to appropriate support resources across the country.<sup>38</sup>

### e) Support for victims of sexual violence (Article 25)

49. The prevalence of sexual violence against women is still high in Europe and women experience sexual violence by strangers as well as by partners or ex-partners. According to the FRA survey, an estimated 3.7 million women in the EU had experienced sexual violence in the course of the 12 months before the survey interviews – corresponding to 2% of women aged 18–74 years in the EU.<sup>39</sup> One in 20 women (5 %) has been raped since the age of 15.

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<sup>36</sup> [www.worldfuturecouncil.org/fpa\\_2014.html](http://www.worldfuturecouncil.org/fpa_2014.html), 1 July 2015.

The World Future Council, Inter-Parliamentary Union and UN Women also awarded the Istanbul Convention with its newly created Vision Award. Presented as part of the World Future Policy Award 2014, this award honoured the ground-breaking nature of the Istanbul Convention and the vision it carries for women in Europe and beyond to lead a life free of violence.

<sup>37</sup> Wave report 2014, Specialised women support's services and news tools for combating gender-based violence in Europe, page 32

<sup>38</sup> The Istanbul Convention: a tool to end female genital mutilation, Council of Europe – Amnesty International, November 2014, page 26.

<sup>39</sup> FRA survey, page 15.

50. Thirty-three member States confirm that services for victims of rape and sexual assault do exist.<sup>40</sup> However, the majority reports the number of such services as small or cannot provide data on the number. Only 20 states indicate that services for victims of sexual violence are accessible in a sufficiently wide geographic distribution. 13 member States report no services for victims of sexual violence.

51. Sexual violence has especially severe and long-term effects and victims often suffer from a higher number of psychological consequences as stated in the research project “We are still alive. We have been harmed but we are brave and strong” conducted by the NGO Medica Zenica in **Bosnia and Herzegovina** with victims of war-time rape.<sup>41</sup> Since 1993, the organisation has developed a comprehensive approach which consisted of combining gynaecological care, psychosocial counselling, legal advice, income-generating activities, capacity-building measures and advocacy work to improve the situation of women and girls who had been victims of rape and other forms of sexual violence, and to strengthen their rights.

52. In the **United Kingdom**, Sexual Assault Referral Centres (SARCs) deliver an integrated, comprehensive service to victims of rape and other sexual violence. Initially, SARCs were concerned with improving the medico-legal response to rape and as such the focus was on achieving good practice standards for immediate health interventions and forensic evidence collection. Today, these core services have expanded to include sexual and reproductive health interventions, crisis support, mental health examinations, counselling and advocacy. Victims have access to a crisis worker and lawyer from the time they first access the SARC until the time the victim “self-discharges” from the service. A SARC provides sexual violence and rape services to a geographically defined area. It is easily and safely accessible and available 24 hours a day, seven days a week.<sup>42</sup>

53. In **Denmark**, the Danish Centre for Rape and Sexual Assault Victims (CRV) was established in 1999 in the city of Aarhus following a 1998 decision from the Danish parliament to improve services offered to the victims of violence including rape.<sup>43</sup> This centre is based on a multi-disciplinary and victim-focused approach aiming at providing multi-disciplinary services and avoiding secondary victimisation. The centre is located in the emergency room of the regional hospital, operates 24/7 and serves victims of sexual violence over 12 years of age. It provides medical treatment, forensic examination and counselling and, if needed, overnight accommodation, all free of charge. The staff of the CRV receives regular training and CRV developed an evidence sampling kit which is today the national standard kit for collecting evidence in cases of rape. They also published a handbook of standardised guidelines for professionals which are in use at national level. Since the establishment of the CRV, seven additional centres have opened in Denmark.

#### **f) Protection and support for child witnesses (Article 26)**

54. Exposure to physical, sexual or psychological violence and abuse between parents or other family members has a severe impact on children. According to Article 26 of the Convention, measures should be adopted to ensure that due account is taken of the rights and needs of child witnesses of violence, including age-appropriate psychosocial counselling.

55. In **Luxembourg**, the Psychological Counselling for Children and Young People victims of domestic violence, a service supported by the Ministry on Equal Opportunities, welcomes children and young people from 3 to 18 years old, who are direct victims of violence, present during the violence and actively witnessing it, or exposed to screams and other sounds of violence. The aim is to educate them about domestic violence processes and roles and responsibilities of each member of the family, facilitate the expression of their emotions through a variety of media (language, singing, drawings etc.), discuss stereotypes, and reinforce the relationship with the parent victim of violence. A support group targeting children victims of violence will start in September 2015.

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<sup>40</sup> Analytical study, in Annexes, page 69.

<sup>41</sup> Research on the long-term consequences of war rape and coping strategies of survivors in Bosnia and Herzegovina - “We are still alive. We have been harmed but we are brave and strong.” Second revised edition, MedicaZenica and medica mondiale, Bosnia and Herzegovina, Nov. 2014. In this research, the exact term used is survivor, as often when it relates to victims of sexual violence.

<sup>42</sup> [www.rapecrisis.org.uk/Referralcentres2.php](http://www.rapecrisis.org.uk/Referralcentres2.php), 1 July 2015.

<sup>43</sup> A Danish Model for Treating Victims of Rape and Sexual Assault: The Multidisciplinary Public Approach, Journal of Aggression, Maltreatment & Trauma, Rikke H. Bramsen/ Ask Elklit / Louise H. Nielsen, 2009 - [www.svri.org/danish.pdf](http://www.svri.org/danish.pdf).

## g) Reporting (Article 27)

56. The majority of incidents of violence against women go unreported. Healthcare professionals can play an enhanced role in identifying and helping to prevent cases of violence against women. The Convention provides for the possibility for rules of confidentiality to be lifted to enable professionals to choose to report serious incidents of violence when they believe it has occurred and will occur again. The provision does not oblige professionals to report; it merely removes barriers to reporting in cases of severe violence and danger.

57. In **Austria**, when faced with a case of violence against children, doctors have to file a report to the police or to the child protection authorities. As far as adults are concerned, doctors have to report acts of grievous bodily harm to the police even if they do not obtain the consent of the patient. If the injury is not serious but the person is restricted in his/her ability to take care of her/himself (for instance a person with intellectual disabilities), doctors need to inform the Local Intervention Centre (a support service for victims of violence against women and domestic violence).<sup>44</sup>

58. According to the 2014 FRA survey, close to nine out of 10 women (87 %) would support the practice whereby doctors routinely ask about violence when they see women with certain injuries in their practice.<sup>45</sup> However, it raises important questions relating to the confidentiality and the relation of trust between a doctor and his or her patient. I could imagine that in this field, enhancing training, networking and a holistic approach when dealing with victims of violence - as violence is a problem requiring multi-professional responses and co-operation - might help doctors to report in a more serene manner.

59. **Emergency barring orders and restraining or protection orders (Articles 52 and 53)** - In situations of immediate danger, the most effective way to protect a victim of domestic violence is to install a physical distance between the victim and the perpetrator of violence. It is equally important to ensure the removal of the perpetrator so that the victim can remain in the home. The Convention establishes an obligation to transfer to the competent authorities the power to order a perpetrator of violence to leave the residence of the victim and to bar him or her from returning or contacting the victim. Existing examples of such orders in Council of Europe member States provide for orders of a duration ranging between 10 days and four weeks, with or without the possibility of renewal. The term "immediate danger" refers to any situations of domestic violence in which harm is imminent or has already materialised and is likely to happen again.<sup>46</sup>

60. In **Spain**, the above-mentioned Organic Act 1/2004 provides for restraining orders and the possibility to use electronic devices to monitor their fulfilment by the alleged perpetrators of domestic violence. Electronic devices may consist of bracelets worn by the perpetrator but also by the victim to enable them to contact the police rapidly in case of threats or violation of the restraining order. These devices document any infringement of a restraining order by the perpetrator, who may then incur criminal liability. Since the introduction of the Electronic Monitoring of Restraining Measures System in 2009, more than 1,800 devices have been activated. In October 2014, Spain received the honourable mention of the 2014 Future Policy Award for Ending Violence against Women and Girls for its Organic Act.

## 2.3 Prosecution of the offenders

61. According to the Istanbul Convention, violence against women must be criminalised and appropriately punished. Besides physical violence, the Convention establishes a number of specific criminal offences such as forced marriage, female genital mutilation, forced abortion and forced sterilisations. No excuses on the grounds of culture, custom, religion or so-called "honour" should be acceptable. The Convention also ensures that these offences are subject to criminal or other legal sanctions, prohibits mandatory alternative dispute resolution processes or sentencing and seeks to improve the protection of victims in a manner that respects their rights at all stages of the proceedings.

### a) Specific criminal offences

62. **Forced marriage (Article 37)** - The Convention considers in this provision two types of conduct: forcing a person to enter into a marriage and luring a person abroad with the purpose of forcing this person

<sup>44</sup> Ärztegesetz 1998, Fassung vom 08.01.2015.

[www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10011138](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10011138), 1 July 2015.

<sup>45</sup> FRA survey, page 36.

<sup>46</sup> Explanatory report, para. 264 and 265.

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to enter into marriage. According to the Convention, these acts should be covered by the criminal law of the Parties so as to take into account the standards established under other legally-binding international instruments.

63. As explained by Ms Lucy Monaghan, deputy head of Forced Marriage Unit (FMU),<sup>47</sup> victims of forced marriage in the **United Kingdom** have the ability to take action against perpetrators through the criminal justice route as well as the civil courts. Forced Marriage Protection Orders can be established through the Forced Marriage Act 2007 and can be used to protect victims from being forced into marriage whether religious or otherwise and from being taken overseas. They are critical in cases where the victim is in a country in which the FMU cannot assist, is overseas and not a British National, where the freedom of movement is restricted or where the FMU has no contact address. Since 16 June 2014, forced marriage has become a criminal offence (Anti-social Behaviour, Crime and Policing Act 2014) along with using deception with the intention of causing another person to leave the United Kingdom for the purpose of forcing that person to enter into marriage. If a person lacks the capacity to consent (or is under the age of 16), conduct carried out for the purpose of causing the victim to marry, whether or not it amounts to violence, threats or any other form of coercion is also an offence. In practical terms, the FMU helps victims through a national helpline and email service by providing advice and support; works with the police, social workers, teachers, welfare officers, health professionals and many others in the United Kingdom to protect people at risk; and helps to arrange safe accommodation in the United Kingdom with the support of non-government organisations and charities. Overseas, the FMU works closely with High Commissions and Embassies to ensure the safe return to the United Kingdom in cases where victims have fled a forced marriage situation. This could involve issuing emergency travel documents; arranging flights and safe transport to the airport; providing emergency refuge accommodation or just advice and support.

64. Since July 2011, forced marriages in **Germany** have been recognised as a separate criminal offence and are punishable by a prison term from six months to five years. The deadline for the annulment of a forced marriage has been extended from one year to three years. A right to return for foreign minors having their legal residence in Germany was introduced to address cases of forced marriages concluded abroad. In November 2012, a German study showed that victims of forced marriages were in most cases subject to psychological violence but also to physical assault to make them submit to the forced marriage.<sup>48</sup>

65. In **Spain**, following the reform of the Penal Code in 2015, new article 172bis establishes a sentence from six months to three years of prison to anyone obliging an individual to marry with violence or grave intimidation. The same sentence applies to anyone forcing the victim to leave the Spanish territory to contract a marriage abroad.

66. It is to be noted that **Article 32** of the Convention deals with the legal consequences of a forced marriage and ensures that such marriages may be "voidable, annulled or dissolved".

67. **Female genital mutilation (Article 38)** - Female genital mutilation (FGM) refers to all procedures involving the partial or total removal of the external female genitalia or other injury to the female genital organs for non-medical reasons (World Health Organization, 2008). Inspired by this WHO classification, Article 38 of the Convention introduces the obligation to criminalise such conduct, which can cause irreparable and lifelong damage and is usually performed without the consent of the victim. Due to the nature of female genital mutilation (FGM), this is one of the criminal offences that break with the principle of gender neutrality of the criminal law part of this Convention as the victims are necessarily women or girls.<sup>49</sup>

68. In October 2014, the **United Kingdom** underwent a major legal reform in its fight against violence against women. Under the Serious Crime Bill, if a girl is suspected to be at risk of female genital mutilation (FGM), courts will from now on be able to use new FGM protection orders to prevent her parents taking her out of the country. They could also pave the way for a mandatory medical examination of girls believed to be at risk, who will be required to live at a named address so that authorities can check they have not been subjected to the practice.<sup>50</sup>

69. As far as the legal and policy framework at the **European Union** level is concerned, the European Parliament adopted a resolution on combating female genital mutilation in the EU<sup>51</sup> while the European

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<sup>47</sup> Hearing on forced marriage, Parliamentary Network Women Free from Violence, Strasbourg, 23 April 2014.

<sup>48</sup> [www.bmfsfj.de/RedaktionBMFSFJ/Broschuerenstelle/Pdf-Anlagen/Zwangsverheiratung-in-Deutschland-Anzahl-und-Analyse-von-Beratungsf\\_C3\\_A4llen.property=pdf,bereich=bmfsfj,sprache=de,rwb=true.pdf](http://www.bmfsfj.de/RedaktionBMFSFJ/Broschuerenstelle/Pdf-Anlagen/Zwangsverheiratung-in-Deutschland-Anzahl-und-Analyse-von-Beratungsf_C3_A4llen.property=pdf,bereich=bmfsfj,sprache=de,rwb=true.pdf), 1 July 2015.

<sup>49</sup> Explanatory report, para.198.

<sup>50</sup> UK to introduce measures to stop girls being taken abroad for FGM, The Guardian, 20 October 2014.

<sup>51</sup> European Parliament Resolution of 24 March 2009 on combating female genital mutilation in the EU

Institute for Gender Equality (EIGE) together with the European Commission are currently developing a common methodology and indicators to estimate risk of female genital mutilation in EU member States.<sup>52</sup>

70. Amnesty International and the Council of Europe have released a guide<sup>53</sup> to put female genital mutilation (FGM) on the political agenda and to promote the Istanbul Convention. This guide includes examples of promising practices such as the “Statement opposing female circumcision”, an official document developed by the Dutch government in 2011, to help parents withstand pressure from their families. The statement, which exists in several languages, outlines the health consequences of FGM and explains relevant Dutch legislation. Parents are given a copy of the document by children’s health-care centres and school doctors. “Ambassadors” against FGM for 2010-2011 were also appointed to communicate on the dangers of the practice to parents who originally come from countries where the custom is practised, such as Somalia, Ethiopia and Sudan. This initiative was replicated by the United Kingdom and Belgian governments.<sup>54</sup>

71. A report on female genital mutilation is currently being prepared by my colleague Béatrice Fresko-Rolfo (EPP/CD, Monaco).<sup>55</sup> This report should favour a multidisciplinary approach addressing the origins of the practice, the psycho-social structures available for victims and recent medical advances to repair damage to female sexual organs.

72. **Forced abortion and sterilisation (Article 39)** - This article establishes the criminal offence of forced abortion and forced sterilisation for women and girls, breaking with the principle of gender neutrality of the criminal law part of this convention.<sup>56</sup> The term forced abortion refers in the convention to the act of intentional termination of pregnancy without prior and informed consent. Sterilisation means surgery which is intended to end the capacity of a woman or a girl to reproduce naturally. This sterilisation is forced if it is done without the prior and informed consent of the woman or girl. Article 39 is in line with standards set out in the Convention on Human Rights and Biomedicine (ETS No. 164).

73. This article acknowledges the importance of respecting women’s reproductive rights, by allowing women to decide freely on their reproduction and by ensuring their access to appropriate information on natural reproduction and family planning. The Convention does not aim at criminalising any medical interventions or surgical procedures which are carried out, for example, with the purpose of assisting a woman by saving her life or for assisting a woman who lacks capacity to consent.<sup>57</sup>

74. The United Nations Convention on the Rights of Persons with Disabilities also contains relevant articles to the issue of involuntary sterilisation. Article 23 reinforces the right of people with disabilities to found and maintain a family and to retain their fertility on an equal basis with others. Article 12 reaffirms the right of persons with disabilities to recognition everywhere as persons before the law and to enjoy legal capacity on an equal basis with others, including access to the support they may require to exercise their legal capacity. Article 25 clearly articulates that free and informed consent should be the basis for providing health care to persons with disabilities. The Committee on the Rights of Persons with Disabilities recommended “the abolition of surgery and treatment without the full and informed consent of the patient” in one of its first recommendations to a state party.<sup>58</sup>

75. On 11 January 2013, the family division of High Court of Justice in **United Kingdom** refused a demand to proceed with the forced abortion of a woman with mental disabilities, thus acknowledging her capacity and her right to take her own decision about her pregnancy.<sup>59</sup>

76. **Unacceptable justification for crimes, including crimes committed in the name of so-called "honor" (Article 42)** - This article reinforces the obligation enshrined in Article 12, paragraph 5 of the Convention, where the Convention calls on Parties to ensure that culture, custom, religion, tradition or so-called “honour” shall not be considered as justification for any acts of violence covered by the scope of the Convention. National criminal law and criminal procedural law should not allow these justifications and

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(2008/2071(INI)).

<sup>52</sup> Estimation of girls at risk of female genital mutilation in Europe, June 2015.

<sup>53</sup> The Istanbul Convention: a tool to end female genital mutilation, Council of Europe – Amnesty International, November 2014.

<sup>54</sup> Ibid, page 15.

<sup>55</sup> Female genital mutilation in Europe, Doc. 13736, 24 March 2015.

<sup>56</sup> Explanatory report, para.203.

<sup>57</sup> Ibid, para.206.

<sup>58</sup> Sterilisation of Women and Girls with Disabilities , A Briefing Paper, Human Rights Watch, 10 November 2011.

<sup>59</sup> High Court of Justice, Family Division, Court of Protection, United Kingdom, decision of 11 January 2013, N°COP11984767.

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the personal convictions of the actors of the judicial system should not lead to interpretations of the law that amount to a justification on any of the above-mentioned grounds. The Convention also sets up the criminal liability of the instigator(s) of such crimes in order to avoid any gaps in criminal liability as these acts are often committed by a child below the age of criminal responsibility, which is instigated by an adult member of the family or community.<sup>60</sup>

77. In many member States, killings in the name of honour seem still to be understood as a problem of specific immigrating groups and despite increases, less than 15 of the reporting member States have a national policy on this specific issue.<sup>61</sup>

78. According to a study released by the European Commission in 2010, only 5 countries of the European Union (Germany, Denmark, Netherland, Sweden and United Kingdom) have laws on honour-based violence; these and two more have policies (Belgium and Finland); and four consider it as an aggravating factor.<sup>62</sup>

79. In 2004, the **Turkish Penal Code** was largely reformed thanks to the extensive work of the women's movement in the country. Before the reform, "killings in name of honour" benefited from a reduction of sentence.. They can now be punished with a life sentence. Article 462 of the Penal Code, which previously granted sentence reductions to a person killing or wounding a family member who had committed adultery, was also abrogated, and violence against women accomplished in the name of honour is now an aggravating factor.<sup>63</sup>

80. Section II B of the National action plan 2010-2014 of **Belgium** was dedicated to the so-called honour-related violence. Under this section, measures had to be implemented to develop knowledge and improve understanding of the problem. An extra measure is aimed at continuing to develop a concerted approach between the federal Government, the communities and the regions with the view to preventing, restricting and repressing honour-related violence.

81. Article 42 of the Convention does not only refer to so called "honour crimes", but to all kind of justifications by culture, custom, religion or tradition. In the case *Gökçe v. Austria* from the UN Committee on the Elimination of Discrimination Against Women (CEDAW), the Austrian authorities justified their failure to arrest the perpetrator by defining his threats to kill Sahide as "harsh statements resulting from his background".<sup>64</sup> They referred to the perpetrator's migrant background and suggested that such a type of threat is "normal" in his culture and might at best be harsh but not illegal. In this way, an assumed cultural background is used to qualify an act that is punishable by law, double standards are introduced - threats in that culture have to be judged differently from threats in the 'Austrian' culture - and the victim is denied protection from what, according to such reasoning, ceases to be a threat. Such justifications of crimes are of concern and are potentially dangerous for victims; they can easily lead to harm and to the violation of the obligation to exercise due diligence actively to prevent violence against women and protect victims as required in Article 5 of the Convention. They also lead to secondary victimisation of victims in legal procedures. State parties need to take effective measures to ensure a due diligence approach and to hold state actors not complying with it, accountable. The European Court of Human Rights has, in recent years, dealt with several cases concerning the failure of exercising due diligence in protecting victims.<sup>65</sup>

## **b) Sanctions and other measures**

82. **Sanctions and aggravating circumstances (Articles 45 and 46)** - Article 45 requires Parties to lay down sanctions which are "effective, proportionate and dissuasive". This includes providing for prison sentences that can give rise to extradition where this is appropriate. Other measures may be adopted, including the monitoring or supervision of convicted persons and the withdrawal of parental rights, if the interests of the child, which may include the safety of the victim, cannot be guaranteed in any other way.

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<sup>60</sup> Explanatory report, para.216 to 218.

<sup>61</sup> Analytical study, page 10.

<sup>62</sup> Feasibility study to assess the possibilities, opportunities and needs to standardise national legislation on violence against women, violence against children and sexual orientation violence, European Commission, Brussels, 2010, page 74.

<sup>63</sup> Good Practices in Legislation on Violence against Women in Turkey and Problems of Implementation, Expert Group Meeting on good practices in legislation on violence against women, Pinar Ilkcaracan and Liz Ercevik Amado, May 2008.

<sup>64</sup> CEDAW as an Instrument to Address Femicide and Violence Against Women: Two Examples from Austria, Vienna, Rosa Logar, 2011, p.16.

<sup>65</sup> Violence against Women Fact sheet, European Court of Human Rights, Press Unit, May 2015.

83. In **France**, Articles 221-5-5 and 222-48-2 of the Penal Code, established by the Gender Equality Act, require that in case of condemnation for a crime or offence committed by a parent against his or her child or against the other parent of the child, the trial court takes a decision on the total or partial removal of the parental authority, in application of Articles 378 and 379-1 of the Civil Code.

84. Article 46 requires Parties to ensure that certain circumstances may be taken into consideration as aggravating circumstances in the determination of the penalty for offences established in the Convention, for instance for offences that were committed against a former or current spouse or partner; or repeatedly; or against or in the presence of a child.

85. The diversity of legal systems makes it very difficult to form an accurate picture of how aggravating circumstances are regulated. In **France**, certain offences committed against an (ex-) partner or spouse, are always considered aggravated. The aggravated case can be a distinct named offence, as is abuse of a position of trust in **German** law, or maltreatment of a family member in **Italian** law. When asked through a questionnaire, all 46 member States gave a “yes” response to at least one aspect of aggravating circumstances. A total of 26 member States confirmed that each of the circumstances named in the questionnaire are legally regarded as aggravating. To give however a clearer and more accurate picture of the situation, criminal and procedural laws of each country would need to be thoroughly examined.<sup>66</sup>

86. **Prohibition of mandatory alternative dispute resolution processes or sentencing (Article 48)** - “Mediation can be extremely problematic and indeed dangerous in cases of violence against women, especially in cases of domestic violence. Cases of violence against women involve unequal power relationships between the parties, based on acts of assault, violent intimidation, and/or controlling, abusive, or humiliating behaviour. Mediation assumes that parties approach the process with equal resources and power – which is often not the case in these situations.”<sup>67</sup>

87. Several member States of the Council of Europe have provisions for alternative dispute resolution and mediation in criminal and civil law. If the Convention does not deny the importance and positive effects of such mechanism for a modern justice system, it calls for caution when such mechanisms are applied in the field of violence against women and domestic violence.

88. Indeed, victims of violence never enter the alternative dispute resolution process on an equal footing with perpetrators, and there is a high risk that the process will have negative effects on them. A key principle for using alternative measures is therefore that the victim’s rights and needs are taken into account at all stages of the procedure. According to Article 48, such measures should not be mandatory which implies that victims need to be consulted and give their consent.

89. In **Spain**, the Organic Act 1/2004 of 28 December 2004 on Integrated Protection Measures against Gender Violence, in its article 44 § 5, prohibits the use of the mediation in case of violence against women.

90. Whereas, in **Austria**, any victim-offender mediation in criminal law cases can only be carried out with the consent of the victim (§ 204.2 of the Criminal Procedure Law). Special procedures have been developed in penal victim-offender mediation to protect victims and to empower them: the victim has the right to be accompanied by a lawyer from a specialist women’s support service (Intervention Centre), she does not need to meet the perpetrator in person, and other specific methods.

91. In the UN Women Virtual Knowledge Center to End Violence against Women and Girls, experts recommend guidelines on how mediation should be used in cases of violence against women, including the need for training for all those involved in facilitating mediation and the possibility for women to opt out of mediation processes if they wish to do so.<sup>68</sup>

92. **Immediate response, prevention and protection (Article 50)** - The Convention requires law enforcement agencies to react promptly and appropriately by offering adequate and immediate protection to victims, including the employment of preventive operational measures and the collection of evidence. This can include the right of the responsible law enforcement agencies to enter the place where a person

<sup>66</sup> Analytical study, page 17.

<sup>67</sup> UN Virtual Knowledge Center to End Violence against Women and Girls - [www.endvawnow.org/en/articles/881-informal-justice-mechanisms.html](http://www.endvawnow.org/en/articles/881-informal-justice-mechanisms.html), 1 July 2015.

<sup>68</sup> Mediation, Stop VAW, The Advocates for Human Rights, 2010; UN Handbook for Legislation on Violence Against Women, United Nations, 2010; Women’s Struggle for Justice and Safety in the Family, Amnesty International, 2008; Towards an Integrated Model of Care for Family Violence in Central America, Mary Ellsberg, 2001.

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at risk is present; the treatment and giving of advice to victims by the responsible law enforcement agencies in an appropriate manner; hearing victims without delay by specially-trained, where appropriate female, staff in premises that are designed to establish a relationship of trust between the victim and the law enforcement personnel; and providing for an adequate number of female law enforcement officers, including at high levels of responsibility.<sup>69</sup>

93. In the **United Kingdom**, Northumbria police has joined forces with a local women's refuge to tackle violence against women. This innovation involves teaming a police response officer in a patrol car with a worker from the women's refuge. While the officer gathers evidence, the refuge worker talks to the victim, offers support services, arranges a follow-up and in some cases, may even remove the woman to a place of safety immediately.<sup>70</sup>

94. **Ex parte and ex officio proceedings (Article 55)** - According to the Convention, the States Parties have the obligation to ensure that investigations into a number of categories of offences shall not be "wholly dependent" upon the report or complaint filed by a victim and that any proceedings underway may continue even after the victim has withdrawn her or his statement or complaint. In order to encourage the victims to start criminal proceedings, the Convention calls on States Parties to ensure the possibility of assistance and support of the victim by victim organisations, specifically trained domestic violence counsellors or other types of support and advocacy services.

95. The most recent systematic review of legislation and its implementation in the EU identified five states that require a victim complaint or even private prosecution for violence within the family, and only 19 states in which prosecution of rape is an obligation of the public prosecutor ex officio. Some legal systems give the police responsibility for assessing whether a charge should be made, as it is the tradition in British common law. In such situations, the public prosecutor may not see cases, if the police have concluded that no crime was committed, as identified in nine EU states. However, several states announced that legal changes are being undertaken to facilitate ex-officio prosecution.<sup>71</sup>

96. In the **Austrian** Criminal code of procedure (sections 34, 36 and 84), ex officio prosecution is possible in cases regarding all forms of violence, no matter the level of injury.

97. In **Austria, Czech Republic, Germany, Luxembourg, Netherlands and Slovenia**, police can issue an ex-officio eviction order to expel for 10 days a person who endangers the life, the health or freedom of another person.

98. **Legal aid (Article 57)** – Article 57 aims at ensuring equal access to justice to all the victims of violence against women. Judicial and administrative procedures are often highly complex and the costs involved expensive. The Convention places an obligation on Parties to provide for the right to legal assistance and to free legal aid for victims under the conditions provided by their internal law.

99. All Council of Europe member States have legal aid mechanisms both in criminal law and civil law fields but only two member States, **France and Luxembourg**, provide free access to all courts for all cases.<sup>72</sup> In most cases victims are subject to an economic means test from which victims of domestic violence or sexual offences are generally exempted.

100. Six countries of the European Union (Austria, Belgium, Denmark, Hungary, Italy and Lithuania) provide free legal advice to all victims of violence as a fundamental right.<sup>73</sup>

101. In **Spain**, the Organic Act 1/2004 states in its article 20 that the victims of gender based-violence have the right to be defended and represented free of charge by a lawyer or court representative in all administrative processes and proceedings that are connected directly or indirectly with the violence. This provision is the direct implementation of Article 119 of the Spanish Constitution which guarantees legal assistance to all persons who can demonstrate insufficient financial means. Free legal assistance covers among others: free advice and guidance prior to the start of the proceedings, free defence and

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<sup>69</sup> Explanatory report, para.257 and 258.

<sup>70</sup> Domestic violence patrol: 'You're always thinking, what if he comes back and kills her?', The Guardian, 30 March 2015.

<sup>71</sup> Analytical study, page 18.

<sup>72</sup> PACE report on "Equality and non-discrimination in the access to justice" (Rapporteur: Mr Viorel Riceard Badea), doc.13740, para.25.

<sup>73</sup> Victims of crime in the EU: the extent and nature of support victims, Fundamental Rights Agency, 2014, page 44, table 3.

representation by a lawyer and court lawyer during the legal proceedings and free assistance from experts during the proceedings. In addition, the Act on Legal Aid of 2013 provides the right to free legal aid and its immediate provision to victims of gender-based violence regardless of the existence of sufficient resources to litigate.

102. The **Dutch** system provides legal aid to people with a low-income (on payment of a proportionate own contribution) and legal aid free of charge for victims of severe crimes of (sexual) violence. Since 1 April 2006, victims of severe (sexual) violence can apply for free legal aid through a specialised lawyer, regardless of their financial capacity. This aid is available for criminal and civil proceedings.

103. **Compensation (Article 30)** – This article of the Convention establishes the obligation of the state to ensure that victims have the right to claim compensation from the perpetrator. It also foresees that victims of serious bodily injuries or impairment of health are awarded state compensation, provided the damage is not covered by other sources such as insurance.

104. In **Norway**, victims who suffer an injury as a result of a criminal act are entitled to compensation for victims of violent crimes from the state. Not all types of criminal acts provide grounds for compensation. According to the law the act must be intended to endanger the life or health or restrict the liberty of an individual. Acts of violence and sexual assaults are examples of such acts. Children victims of violence may also be awarded compensation as well as the relatives (spouse, children and parents) if the death of the loved one results from a criminal act.<sup>74</sup>

105. No comparative information was found on how compensation in the area of violence against women and domestic violence works in different countries, apart from a report by the institute HEUNI from 1999, which is outdated. Research regarding the implementation and monitoring of the European Convention on the Compensation of Victims of Violent Crimes (ETS No. 116) also did not bring any results. Research in this field is definitely needed.

## 2.4 Integrated policies and data collection

### a) Comprehensive and co-ordinated policies (Articles 7 and 10)

106. In its Article 7, the Convention calls on states to take the necessary legislative and other measures to prevent and combat all forms of violence covered by the Convention and adopt comprehensive and co-ordinated policies that place the rights of victims at the centre of all measures by involving all relevant actors. To the question “Have you established a comprehensive and co-ordinated policy addressing all forms of violence covered by the Istanbul Convention and offering a holistic response to violence against women?” 23 member States answer in the affirmative, from which 21 have laid it out in an overarching Plan of Action or National Strategy.<sup>75</sup>

107. In **Portugal**, a working group was set up in March 2014 in the Parliament on the “legislative implications of the Istanbul Convention” which aimed at identifying the missing links between the legislation and the Istanbul Convention. Composed of five members representing the different parliamentary groups, it has organised hearings with representatives of institutions and NGOs on female genital mutilation, sexual harassment, rape and sexual coercion, forced marriage and stalking. Eight draft laws complementing the Penal Code are being discussed by the Committee on Constitutional Affairs, Rights, Freedom and Liberties. They proposed to establish female genital mutilation, stalking, forced marriages and sexual harassment as criminal offences, and to reinforce the criminalisation of rape and sexual coercion.<sup>76</sup>

108. Based in Bordeaux (**France**), the center for victims of sexual assaults (CAUVA), ensures a multidisciplinary care for women victims of violence, with the intervention of forensic doctors, psychologists, social workers, nurses and legal experts.

109. Cosc, an Irish word that means “to stop” or “to prevent”, is the National Office for the Prevention of Domestic, Sexual and Gender-based Violence in **Ireland**. It was established as an executive office of the

<sup>74</sup> [www.sivilrett.no/compensation-for-victims-of-violent-crimes.307231.no.html](http://www.sivilrett.no/compensation-for-victims-of-violent-crimes.307231.no.html), 1 July 2015.

<sup>75</sup> Analytical study, pp.52-56.

<sup>76</sup> Information shared by Mr Mendes Bota, former PACE General Rapporteur on violence against women - 16 days of activism against gender-based violence, Good practices in combating violence against women, 25 November – 10 December 2014.

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Department of Justice and Equality in 2007, with the aim to ensure the delivery of well co-ordinated government policies against domestic and sexual violence against women and men.

110. In the **Republic of Moldova**, significant progress has been made in the area of intersectoral cooperation with the development of guidelines produced by the Ministry of Labour, Social Protection and Family, based on Law 45-XVI of March 2007 on the elimination of domestic violence, as amended in 2010. There are guidelines on intersectoral cooperation for the identification of cases of domestic violence, guidelines to identify (potential) victims of human trafficking, and guidelines on intersectoral co-operation for the identification and referral of children who are (potential) victims of violence. Furthermore, a model Regulation regarding multi-disciplinary team activities at a local level within the national referral system was drafted, and detailed guidelines on the role of the health sector within the multi-sectoral approach to combat domestic violence were issued.<sup>77</sup>

111. In May 2015, a Special Commission on inquiring about the causes of violence against women established within the Turkish Parliament adopted a report that highlights the situation in **Turkey**.<sup>78</sup> This comprehensive report was prepared with the contribution of different State bodies and it thoroughly elaborates on the necessary legal and administrative measures that should be taken in order to tackle domestic violence.

112. In its Article 10, the Convention also obliges States Parties to designate or establish co-ordinating bodies for implementing, evaluating and monitoring policies to prevent and combat all forms of violence against women. In 2013, 39 member States declared the existence of a governmental co-ordinating body for implementation of policies and measures to prevent and combat all forms of violence against women, while 30 member States have a national body entrusted with monitoring and evaluating such policies and measures.<sup>79</sup>

113. On 25 April 2012, the Government of Sweden appointed Chief Commissioner Carin Götblad as Swedish Domestic Violence Coordinator. Her tasks include bringing together and supporting the relevant authorities, municipalities, county councils and organisations to increase the effectiveness, quality and sustainability of the work against violence in close relationships. "I recommend that prevention of domestic violence be a national public health goal" stated Carin Götblad when the final report with 50 recommendations was presented on 27 June 2014. "We need to considerably improve our capacity to work more broadly, co-operatively and more effectively. This means that all of society must work towards and have understanding about how one prevents violence in close relationships" she added.<sup>80</sup>

#### **b) Research and data collection (Articles 11)**

114. The Istanbul Convention reaffirms the importance of data collection and research to understand the nature and prevalence of violence against women and domestic violence and to design evidence based policies to address it and assess how well they work. In this regard, I sincerely welcome Ms Spadoni's report on Systematic collection of data on violence against women.

115. While there is still considerable variety in the collection, analysis and publication of police data, the number of member States who have procedures for compiling disaggregated and integrated statistics (that is, statistics that combine the information on age, sex and relationship) on violence against women, or at least on domestic violence, has been increasing. In a total of 23 member States, the police record the recommended data, combine them, and publish the results.<sup>81</sup>

116. In 2004, the government of Norway established a national Centre for Violence and Traumatic Stress Studies (NKVTS). Its main objective is to integrate and strengthen expertise in violence, sexual abuse, disasters and refugees/asylum seekers through an interdisciplinary perspective, which includes medical, psychological, social, cultural and legal aspects. The centre is engaged in research and development, training, guidance and counselling.<sup>82</sup>

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<sup>77</sup> In Eliminating Violence against Women in Europe - Intersectoral Approaches and Actions, Conference report Vienna, 25-26, November, 2013, page 26

<sup>78</sup> [www.tbmm.gov.tr/sirasayi/donem24/yil01/ss.717-bolum-1.pdf](http://www.tbmm.gov.tr/sirasayi/donem24/yil01/ss.717-bolum-1.pdf), 1 July 2015.

[www.tbmm.gov.tr/sirasayi/donem24/yil01/ss717-bolum-2.pdf](http://www.tbmm.gov.tr/sirasayi/donem24/yil01/ss717-bolum-2.pdf), 1 July 2015.

<sup>79</sup> Analytical study, page 59.

<sup>80</sup> Report: Domestic violence should be public health concern, Radio Sweden, 27 June 2014.

<sup>81</sup> Analytical study, pp.42-43.

<sup>82</sup> [www.nkvts.no/en/Pages/index.aspx](http://www.nkvts.no/en/Pages/index.aspx), 1 July 2015.

117. In **Cyprus**, an office dedicated to domestic violence and child abuse operates within the Cyprus Police. Its main responsibilities are to monitor cases of domestic violence and child abuse reported in police stations, to maintain an electronic registry of all cases of domestic violence and issue yearly statistics, to review criminal files and provide opinions, to train the police members on domestic violence and child abuse and to publish awareness materials for the general public.

### **3. Conclusions**

118. The entry into force of the Istanbul Convention has sent out a strong signal across Europe. Violence against women has become an issue of great concern ranking high on political agendas. Related crimes should not go unpunished. In reality, and despite major progress over the last decade, statistics are still alarming. Thousands of women are killed every year and the vast majority of perpetrators escape conviction. Not only should national legislation be in conformity with the Convention, it should also be duly implemented.

119. Due to the economic crisis, prevention and assistance programmes for victims of violence have been subjected to cuts all over Europe. Women victims are more hesitant to leave their homes or ask their partner to leave and reluctant to file a complaint. When they leave with their children, too many of them are turned away from shelters because they cannot be accommodated. As stated by the Parliamentary Assembly in Resolution 2032 (2015) on Equality and the crisis, the preservation of assistance and protection systems is essential to the respect for women's rights.

120. In this common fight against violence against women, parliamentarians have a key role to play. As General Rapporteur on Violence against Women and Political Coordinator of the Parliamentary Network Women Free from Violence, I would like to underline the tireless commitment of the Network members to constantly raise legal and policy standards in the area of the prevention of violence against women, the protection of victims and the effective prosecution of perpetrators, and to promote the Convention which finally led to the entry into force of the Istanbul Convention. A new phase is now commencing, in which national parliaments and the Parliamentary Assembly are invited to take part in the monitoring process of the Convention. I hope this report will help them in their mission.