

## Danish NGO-Shadow Report to GREVIO

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# Danish NGO-Shadow Report to GREVIO

Copenhagen, January 2017

## INTRODUCTION

The Danish National Observatory on Violence against Women headed by The Women's Council in Denmark welcomes the invitation from GREVIO to contribute to the evaluation of the Danish implementation of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) with a shadow report.

We hope that the present shadow report will add useful information, perspectives and recommendations into the monitoring of the Danish implementation of the Istanbul convention. In addition, the shadow report might be a useful tool in intensifying our dialogue with the Danish Parliament, the Government and other stakeholders concerning an optimal implementation of the Convention in Denmark.

The Danish National Observatory consists of a number of experts that covers various aspects of gender-based violence. The Observatory exchanges experience and collects information on violence against women in the aim of initiating and strengthening prevention of violence against women in Denmark, encouraging government bodies to meet national and international action plans and conventions. The observatory serves as an expert group for The Women's Council in Denmark and the Observatory on Violence against Women under the European Women's Lobby (EWL).

The present shadow report relies on the experiences and knowledge of the members of the Danish National Observatory, and furthermore, by invitation, a number of other relevant NGOs have contributed to the report on specific areas.

In our opinion, the Istanbul Convention covers the major issues of violence against women, and, thus, will become a strong instrument in combating violence against women. However, we have chosen to focus only on selected articles and, thus, have left other articles of the Convention uncommented. This does not indicate that the uncommented articles are less important from our point of view.

We commit ourselves to contribute to and push for implementation in Denmark of the convention and shall provide GREVIO with further information if needed.

On behalf of the signatories,

Nanna Højlund

President

The Women's Council in Denmark

6th of January, 2017

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## Chapter I – Purposes, definitions, equality and non-discrimination, general obligations

### Article 4 – Fundamental rights, equality and non-discrimination

#### **Background**

According to article 4 Denmark is obliged to condemn all forms of discrimination against women, and take, without delay, the necessary legislative and other measures to prevent it, e.g. by abolishing laws and *practices* which discriminate against women.

It is a fundamental principle of Danish law that everyone is equal before the law, and thus entitled to the same protection and respect for human rights. The principle of equality is incorporated in the Danish Act on Gender Equality<sup>1</sup>, which intention is to promote equality between women and men, to prevent direct and indirect discrimination on grounds of gender, and to prevent harassment and sexual harassment.

In the legislative material for implementing the Istanbul Convention in Danish law, The Ministry of Justice considers that Article 4 of the Convention does not require change of legislation.<sup>2</sup> . However, the Ministry of Justice has not evaluated on whether Danish case law reflects the principle of equality between women and men, although it is stated in the Explanatory Report to the Istanbul Convention that enshrining the principle of equality in law is often insufficient and that practical measures are required to implement the principle in a meaningful way.<sup>3</sup>

A recent legal extended essay with focus upon the implementation of the Istanbul Convention in Danish law identified how indirect discrimination against women takes place in the field of criminal law.<sup>4</sup> The essay shows the tendency that judges in Denmark who sentence cases of domestic violence, in a mitigating direction consider it essential if 1) there prior to the violence have been disagreements between the victim and the perpetrator, 2) the offence was performed by a perpetrator who was in an agitated state of mind (so-called "oprørt sindstilstand"), or 3) the relationship between the parties still exists or is resumed at the time of the trial. On these grounds, the perpetrators of domestic violence do not seem to receive dissuasive punishments, because the courts mitigate sentences.

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<sup>1</sup> <https://www.retsinformation.dk/forms/r0710.aspx?id=160578>

<sup>2</sup> <http://www.ft.dk/samling/20121/almdel/reu/bilag/340/1265074.pdf>

<sup>3</sup> <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800d383a>

<sup>4</sup> <http://jura.ku.dk/pdf/cora/specialer/speciale-trine-louise-larsen-og-mathilde-worch-jensen.pdf>

In 2002, the maximum penalty for persons convicted of violence (section 244, section 245 and section 246 of the Criminal Code) was increased. Among other purposes, the increases were aimed to change the level of penalties in cases of domestic violence, so that the level of penalties in a better way would reflect the violation that the victims had been subjected to.<sup>5</sup> In that connection it was particularly emphasized that the intention of the penalty increases was not an enhanced use of conditional sentences (section 56 of the Criminal Code), combined judgments (section 58 of the Criminal Code) or sentences to community service.<sup>6</sup> However, a high number of court rulings regarding domestic violence still results in conditional sentences and/or sentences to community service. Moreover, the above-mentioned essay reveals, after comparison with other relevant case law, that the penalties in court rulings regarding domestic violence are generally lower than the penalties sentenced for similar acts of violence exercised in other relationships, such as at work or in the nightlife.

### **Challenges**

Due to the well incorporated legal maxims in Denmark regarding common and specific equal treatment principles, which can best be compared to the figure “direct discrimination”, and which are seen as all-encompassing regarding unequal treatment, the Danish legal culture prevents recognition of the legal figure indirect discrimination in the field of domestic violence.

While the practice regarding the default of the length of the sentence in domestic violence cases apparently is gender neutral, it puts persons of the womankind (who are the clear majority of the victims in cases of domestic violence) at a particular disadvantage compared with men (who are more often victims in cases of violence outside of the home).

The Danish courts perceive a lack of recognition of the gender discrimination perspective and women’s rights to equality, and since the discrimination cannot be justified by a legitimate interest, the Danish legal *practise* does not reflect the principle of equality between women and men, but does indirectly discriminate against women.

Such failure to recognise how indirect discrimination against women occurs within the Danish legal system emphasises the importance of incorporating The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) into Danish law and thereby ensuring the recognition of gender-based violence against women as a specific form of discrimination against women (Denmark ratified the Convention in 1983, but the Convention has yet to be incorporated).

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<sup>5</sup> <https://www.retsinformation.dk/Forms/R0710.aspx?id=87985>

<sup>6</sup> <https://www.retsinformation.dk/Forms/R0710.aspx?id=87985>

## Recommendations

- The Danish legal system should recognize the on-going discrimination in the field of domestic violence and be aware of how the discrimination is taking place (which is often in the form of indirect discrimination or in the special form of discrimination that gender-based violence constitutes).
- Offences committed in a domestic context should be regarded as being no less serious than offences committed in a nondomestic context. Thus, the starting point for sentencing should be the same irrespective of whether the perpetrator and the victim are known or unknown to each other.
- A guideline that identifies the principles relevant to the sentencing of cases involving violence that has occurred in a domestic context and includes details of particular aggravating and mitigating factors should be introduced. It should be even further examined to which extent the average penalty in cases of domestic violence is significantly lower than the average penalty in other cases of violence. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) should be incorporated into Danish law.

## Chapter II – Integrated policies and data collection

### Article 7 – Comprehensive and co-ordinated policies, and article 8 – Financial resources

#### Background

In 2014 Denmark launched its fourth national action plan: "Measures to Combat Violence in The Family and in Intimate Relations" with a budget of DKK 36 Mio over a four-year period 2014-2017. Other vital areas such as prevention, intervention and treatment of sexual violence and harassment have no national action plans. Denmark has not allocated the financial and human resources for the full implementation of *integrated* policies, measures and programmes to prevent and combat all forms of violence covered by the Convention.

#### Challenges

No specific funding resources have been allocated for national action plans and strategies against gender based violence in general – other than in the area of combating domestic violence. There are no funds allocated by the Danish government for *coordinating* initiatives and efforts by both governments supported, NGO and civil society organisations.

The police have been entitled to expel the violent part from the household where there is domestic violence as a preliminary measure since 2004, following the Austrian model. Unfortunately, it was introduced in Denmark without any cross-sectorial supporting setup and the police has been reluctant to use the entitlement since its introduction. A pilot-project however, has been implemented with success in the East Jutland police district for a two-year period from

2012-2014, covering cases of police reported domestic violence.<sup>7</sup> Despite of proven positive outcomes the initiative was closed down when the project period ended instead of being rolled out to national coverage.

Sexual violence is acknowledged as a serious public health issue in Denmark. Sexual education is an obligation in all primary schools, and The Danish Family Planning Association conducts an annual feature week in schools with focus on sex, gender and body. However, efforts on primary prevention of sexual violence seem almost non-existent and reach only a small selection of the youth and even that on an unsystematic basis. In Denmark no specific long-term strategies has been decided regarding primary prevention of sexual violence on a national level, neither is there financial resources allocated to establish a platform for coordinated cooperation between research, practice and policy makers in order to ensure steady improvements to prevent sexual violence.<sup>8</sup>

The majority of the resources used in Denmark to combat sexual violence focus on activities after the violence has occurred. Access to immediate health support is well organised in the hospital system for victims of rape and incest. However, access to adequate and accessible support for victims of sexual violence is *generally* not in place and is often financed by projects i.e. provisionary means. Access to adequate and accessible support is critical for women who have experienced sexual violence from a preventive perspective as well as because women who have experienced sexual violence are at higher risk of further sexual violence than the general female population.

The support for adults having experienced sexual violence in their childhood is organized in three main areas: 3 regional support centres (mainly social and psychology support), the health system (mainly psychiatry and health support) and support by the civil society. The public budget for the 3 regional support centres for adults who have experienced sexual violence in their childhood are only about 20-25% of the professional statement of need.<sup>9</sup> As a result, the victims in need of support have to wait up to two years, only 3 regional centres exist where 5 regional centres are recommended<sup>10</sup>, and the most vulnerable victims are not reached by the present setup outside the psychiatric system. And finally, a platform for coordination and cooperation between the regional support centres and the psychiatry does not exist.

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<sup>7</sup> <http://socialstyrelsen.dk/udgivelser/interventionscenter-ved-partnervold-1>

<sup>8</sup> <http://www.dkr.dk/sites/default/files/Prim%C3%A6r%20forebyggelse%20af%20seksuel%20vold-160412.pdf>

<sup>9</sup> <http://www.ft.dk/samling/20142/almdel/sou/bilag/42/1545754.pdf>

<sup>10</sup> *ibid.*



## **Recommendations**

- In order to meet the intention of article 8, national action plans should cover all forms of violence against women and specific budgets should be allocated to primary prevention and to secondary prevention of health and societal consequences of exposure to physical, sexual and psychological violence, including digital (IT) violence and harassment. And there should be specific funding for a coordinating body.
- Research on primary prevention of sexual violence and effective primary prevention strategies and knowledge about the most efficient intervention actions should be prioritized financially.
- Financial resources should be allocated to establish a platform for coordinated cooperation between research, practice and policy makers in order to ensure steady improvements to prevent sexual violence.
- Financial resources should be allocated to ensure a cross-sectorial supporting setup for victims of domestic violence (including the police, social and psychology support) in all 12 police districts in Denmark. The annual budget for the pilot-project in the East Jutland police district was EUR 0.267 million annually (DKK 2 million), for 12 police districts the annual budget would be EUR 3.2 million based on the budget level from the pilot-project in East Jutland police district.
- Financial resources should be allocated to ensure that the regional support centres for adults who have experienced sexual violence meet the professional statement of need. The professional statement of need is EUR 9.3 million annually (DKK 70 million).<sup>11</sup>
- Financial resources should be allocated to establish a platform for coordination and cooperation between the regional support centres for adults who have experienced sexual violence in their childhood and the health/psychiatry system.

## Article 10 – Co-ordinating body

### **Background and challenges**

There is no overall coordinating body for the actions of the central government, the regions, the local authorities, NGOs and researchers. The Women's Council in Denmark has established The National Observatory on Violence against Women with representatives from governmental and non-governmental institutions and organisations, and individuals working within this field. However, the monitoring group has no budget.

### **Recommendations**

- An official body as described in article 10-1 acting both to coordinate, monitor and evaluate policies and measures devised, as well as disseminating research results needs to be established.

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<sup>11</sup> *ibid.*

## Article 11 – Data collection and research

### **Background**

Statistics Denmark, in cooperation with a number of stakeholders including the National Police Board, National Health Board, Social Security Administration, is responsible for updating and maintaining the national administrative databases that illuminate the magnitude and character of VAW.

The following nationwide statistics present data on violence exposure:

- a) Criminal statistics on alleged offenders and of victims based on police reporting*
- b) National Patient Register on contacts to all hospitals*
- c) Shelter statistics on users of regional and municipal shelters for women victims of violence in close partnership*

- a) Criminal Statistics; police reported cases of violence against women*

The Danish Police collects regularly data on all police reported offences. The Police Administrative System (POL-SA) that has been in function since 2001 regulates the data collection. All data are recorded by a case-specific identification number that provides information on the reported criminal offence by a Criminal Code that refers to the reported criminal act. The case specific number also provides information about the individual police department and the date of police reporting. The case specific number enables the identification of the reported offence/violence e.g. homicide; severe, potential lethal violence; threats of violence etc. In Denmark, no specific Criminal Code identifies cases of domestic violence. The Criminal Statistics record the victim's personal identification number that is composed of data of birth and a code, indicating the sex/gender of the victim – and similarly record information about the alleged perpetrator by the personal identification number (indicating date of birth and sex). By linking information in different registers, it is, however, possible to identify the relationship between the alleged perpetrator and the victim. However, the violence recorded is dependent upon the consistency with form of violence criminalised in the Criminal Code. This means some forms of acts that are specified as violence according to the Convention may not be regarded as such in the Criminal Code e.g. psychological violence.

In Denmark Statistics' various databases, information can be retrieved about the victim's and the alleged perpetrator's residential address (thus region and municipality of residence); civil status (married, co-habiting, divorced, single) family status (including number of children in the family); level of education (e.g. length of education); occupational status; social allowances; and income.

Data in the Criminal Statistic is nationwide and includes both Danish citizens and non-citizens, e.g. asylum seekers, foreign students, tourists.

Annual data at national and regional level, by specific Criminal Code, by age groups and sex of victim and of alleged offender, their ethnicity (country of birth) – and data about outcomes of court trials (verdicts) are publically available on Denmark Statistics web-site:

Reported criminal offences:

<http://www.dst.dk/da/Statistik/emner/kriminalitet/anmeldte-forbrydelser>

Victims-statistics:

<http://www.dst.dk/da/Statistik/emner/kriminalitet/ofre-for-anmeldte-forbrydelser>

Verdicts:

<http://www.dst.dk/da/Statistik/emner/kriminalitet/domme>

*b) Regular data collection of hospital contacts due to violence exposure*

It is compulsory for all public and private hospitals to register a number of well-defined data on contacts to emergency departments, to outpatient clinics and on inpatients. Data are registered by the patient's personal identification number – and shall include medical information about the reason for contact and the *specific nature of the injuries* coded by the World Health Organisation's ICD 10 (International Classification of Diseases, tenth revision

A specific code indicates that a hospital contact was due to exposure to violence/intentional injury and enables to identifying all cases of violence registered in the database. The registration further includes data that inform about *place of occurrence* and *mechanism of injury* as well as *activity of the patient* when injured. The registration does not include information on relationship of victim to offender.

*c) Shelter Statistics*

The Ministry of Social Affairs is responsible for collection of data on all contacts to the shelters for women exposed to partner violence. At present, 42 shelters situated in all regions of Denmark offer counselling and shelter for women and their children.

The Ministry publishes annual statistics:

<http://socialstyrelsen.dk/udgivelser/arsstatistik-2014-kvinder-og-born-pa-krisecenter>

Interviews of the victim at the first contact to the shelter and at a follow-up when she leaves the centre provide data for the shelter statistics. Data includes personal identification number of the individual woman, the cause of her contact to the shelter (forms of violence), possible injuries caused by physical violence, former contact to shelters, age, socio-economic status, ethnicity, housing conditions, children – and also a number of data about the perpetrator.

These data are registered by the woman's personal identification number – and may, hence, be linked to other administrative data sources, e.g. the National Patient Register or Criminal Statistics – in case of data linkage all analyses are performed on encrypted data that do not allow identification of the individual woman/victim.

### **Research in the field of all forms of violence**

Both quantitative and qualitative research in different forms of violence under the Convention are carried out by a number of research institutions, all of which have the possibility to be granted access to the before-mentioned administrative data.

The Danish Act on Processing of Personal Data regulates access to administrative data and data analyses:

<http://www.datatilsynet.dk/english/the-danish-data-protection-agency/introduction-to-the-danish-data-protection-agency/>

At present, tables and analyses on victims of violence can be produced from Denmark Statistics web-site:

<http://www.statistikbanken.dk/statbank5a/default.asp?w=1280>

For administrative crime surveillance and for research projects there is access to the various registers in Denmark Statistics, conditioned by the nationwide registration of administrative data by the unique personal identification number of all inhabitants in Denmark – and of a modified identification number of non-residents in Denmark. The Danish Act on Processing of Personal Data regulates the access to identifiable-person-linked data in the register and regulates data linkage between different administrative registers.

All data in the National registers are linked to an individual number, the personal citizen identification number (CPR). This enables a linkage to data concerning the same person in all other national register, allowing analysing, for example, the health consequences of exposure to violence - through follow-up of further hospital contacts (National Patient Register) or by analysing prescriptions of specified types of medicine (National Prescription Register) and by merging information about police recordings in the Register, Criminal Statistics.

The nationwide, comprehensive data on contacts to shelters enable to evaluate the use and the outcome of this offer and to target the future structure and dimension of the shelters. As an example, these data were the basis for a recent evaluation of the offers at the 42 shelters in Denmark to women exposed to domestic violence.

By the initiative of the Danish Council of Women's National Observatory on VAW, from 2000 to 2010, a specific database on violence against women was created that included both survey and to

administrative data. By this database, research on different aspects of violence was conducted, e.g. on the costs of violence.

### **Challenges**

Denmark lacks to collect disaggregated statistical data on cases of psychological violence, sexual harassment and sexual abuse on the social media (“revenge pornography” as well as other forms of cyber-harassment). Moreover, further qualitative research is needed on the dynamics of the phenomena and what causes these in order to better develop primary preventive measures. Research is also needed covering violence against vulnerable groups such as elderly women and women with disabilities, which are not covered in any qualitative projects. Consequential, neither preventive measures nor support targeting these groups is available.

Denmark conducts, however, nationwide collection of data about violence exposure by the integration of a number of questions on specific violence exposure in the regular national victim surveys. These self-reported data can be linked to administrative data, and thus, illuminate both trends and various aspects of the different forms of violence, including partner violence, violence in the public space, at work places or education institutions.

In addition to these victim surveys, prior to 2015, Denmark also collected self-reported data on violence exposure by the regular national health interview surveys (NHIS) that enabled analyses of different risk factors and consequences of violence among women and men. By the linkage of these self-reported data to the various administrative data, research provided evidence of correlations between violence exposure, living conditions, use of health care, social services and social allowances by comparing victims to violence to non-victims.

NHIS surveys are contrary to specific victim survey – as for example the FRA survey 2015, and the International Violence against Women Survey, IVAWS 2005 – conducted regularly, and is therefore an important source for trend analyses. NHIS, in general, obtain a higher response rate than specific victim surveys.

But, the recent Danish national health interview survey (NHIS) does not include any data on violence exposure. Hence, at present, it is not possible to analyse the trends in self-reported exposure to violence and the individual consequences of all forms of violence exposure, including non-police reported case or those that did not cause contact to hospitals (the cases registered in administrative data sources).

### **Recommendations**

- Denmark shall undertake to collect disaggregated relevant statistical data at regular intervals on cases of *all* forms of violence covered by the scope of the Istanbul Convention, including psychological violence, economic violence, sexual harassment, stalking and sexual abuse on

the social media (“revenge pornography” as well as other forms of cyber-harassment), which are for now uncovered.

- Denmark should undertake both quantitative and qualitative research on violence among vulnerable groups such as elderly women and women with disabilities.
- Denmark should undertake research to understand the causes of the different forms of violence in order to develop appropriate measures for primary and secondary prevention.
- Violence in close partnership (domestic violence) is not covered by a specific Criminal Code. Hence, criminal statistics should include data on relationship between alleged offender and victim to enable/facilitate identification of cases of police reported domestic violence.
- Denmark should as previously include questions on violence exposure in the NHIS.
- Data collection of contacts to hospitals due to violence exposure should include information on relationship of victim to offender.

## **Chapter III – Prevention**

### Article 12 – General obligations

#### **Background and challenges**

There exists no 'strict' definition of psychological violence and there are no reliable data on its individual effects. The lack of a concrete definition of psychological violence results in the fact that in the Danish Criminal Code, psychological violence/terror is not acknowledged as a unique and dangerous act of violence with severe consequences.

Psychological violence/terror is widely recognized as a prevalent part of intimate partner violence, and often has more long-term and often more severe consequences such as depression, self-loathing and anxiety. Physical violence within intimate partner relationships is often initiated by psychological violence. A Danish report (Forebyggelse af drab og dødelig vold i nære relationer, 2016) pointed to prior psychological violence as a strong risk indicator of partner killings. In almost half of the cases studied in the report there was no evidence of physical violence prior to the homicide – solely psychological violence.

The current interpretation of article 33 (psychological violence) is leaving behind a lacuna within Danish domestic law, which undermines compliance with the convention. In order to ensure effective implementation of article 33 the Danish state is – at the very least – compelled to change case law.

Furthermore, the Danish State Administration does not recognize battered women and children as victims in need of specialised assistance to help cope with the trauma of violence. The consequence thereof is e.g. seen in custody cases where suspicion or actual evidence of violence

doesn't play a role. Here the system primarily looks at the parents' ability to take care of the child and not whether there is a family history of violence.

### **Recommendations**

- The understanding of what violence entails as a criminal act, defined in the national Criminal Code, should be reassessed to incorporate a definition on psychological violence.
- Psychological violence and its consequences should be met with a sufficient number of specialised outpatient treatment programs both for victims and perpetrators of violence.
- Although Denmark has shelters for female victims of domestic violence and treatment programs for male perpetrators, there is yet a need of specialised knowledge and expertise to guarantee appropriate response mechanisms vis-à-vis treatment and family assistance. This includes ensuring that the relevant entities such as e.g. the police, municipalities and the judicial system have the necessary background to respond fittingly and to ensure that victims of violence are assisted and supported in a timely matter.

### Article 13 – Awareness-raising, and article 14 – Education

#### **Background and challenges**

According to survey results from the National Institute of Public Health (SIF) young women has a relatively high risk of violence. Hence, priorities has been given to educational programs for young people about how to respect their own and others' limits in new relationships. The project Rough Love<sup>12</sup> is run by the Danish organisation Dialogue against Violence (DMV) that offers a nation-wide treatment program for perpetrators of violence, their partners and children. The project includes primary and secondary prevention through school based programs for 16-24-year-olds, online peer-campaigns and treatment of young perpetrators of intimate partner violence. Rough Love is showing very good results, but, unfortunately, it will close down by the end of 2016 due to lack of further funding.

#### **Recommendations**

- Continue preventive activities for young people.

### Article 15 – Training of professionals

#### **Background**

When looking at training programmes across the Danish education system, there are few education programmes that have basic modules on violence against women and children.

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<sup>12</sup> <http://xn--voldsomkrighed-4lb.dk/>

## **Challenges**

There is a lack of trained professionals among social workers, in the health sector, at police departments, among schoolteachers, lawyers etc. on the character and effects of intimate partner violence and effective response mechanisms. This means that there is a lack of specialised knowledge on the subject despite the fact that we know dealing with such trauma takes specialised help. The lack of knowledge on violence and its consequences means that women exposed to violence may be re-victimised within the system. This is e.g. the case when The State Administration (Statsforvaltningen) expects women with children to be capable of and willing to cooperate with the perpetrator, in visitation situations, custody battles etc.

Dialogue against Violence's national treatment program for perpetrators of violence, their partners and children (DMV) is the only nation-wide treatment program in Denmark and is provided by professional psychologists and therapists under regular supervision. To various professionals in the municipalities, the probation services, women's shelters and male shelters, DMV offers training and workshops on screening methods, risk assessment and treatment. However, there is a lack of focus on domestic violence in the curriculum of relevant educations such as teachers, lawyers, social workers etc.

## **Recommendations**

- Support a further incorporation of training modules on prevention of domestic violence and its consequences as an obligatory part of the curriculum in all relevant education programmes both at an undergraduate level and masters level and in-service training.

## Article 16 – Preventive intervention and treatment programmes

### *1. Experiences from women's shelters*

#### **Background**

There is a shortage in multisectorial treatment programmes for all *victims* of domestic violence. Women's shelters in Denmark experience long waiting lists for treatment programmes (up to one year of waiting time) for *perpetrators*. Furthermore, the women's shelters also experience a lack of coordination between the different treatment programmes for victims and perpetrators.

#### **Challenges**

The current treatment programmes are not coordinated appropriately, meaning for example that the women's shelters are not notified when a perpetrator to a women living at a shelter is released from prison, despite legal requirement of this, or from psychiatric hospitals, fails to appear in treatment programmes, or e.g. make threats towards the shelters themselves or the



woman at meetings at the municipality office. Thus, it is very difficult to ensure the security of victims of violence, when the women's shelters lack information about the perpetrator.

### **Recommendations**

- To provide long-term treatment programmes and a subsequent treatment programme to perpetrators.
- To establish interdisciplinary coordinated programmes, in cooperation with women's shelters.
- To establish a national competence centre with specialised trained personnel, to ensure and uphold a coordinated interdisciplinary approach to all professionals working with both victims and perpetrators of violence.
- To ensure that reports filed by women's shelters in regard to children are acknowledged in the divorce system as expert testimony.
- To ensure women's shelters as impartial when filing reports, and thereby acknowledging them as a cooperating partner by the system.

## *2. Experiences from the Danish organisation Dialogue against Violence*

### **Background and challenges**

Long-term psychological treatment is provided for free to male and female perpetrators, who are voluntarily seeking treatment and as a socialization effort for persons serving a sentence in or outside prisons.

Unfortunately DMV's offer of treatment program is far from meeting the actual needs:

- During the last many years DMV has constantly had a waiting list of 100 – 160 persons. During the waiting period of about a year new incidences of violence might take place and the motivation for treatment might vanish.
- Treatment is only available in the three largest cities of Copenhagen, Aarhus and Odense making it difficult for people in the provinces to follow the treatment program.
- Treatment of perpetrators is not implemented as an integrated part of the Social Code, where focus is on the victims access and right to seek protection, counselling and stay in a women's shelter. According to the Social Code (SEL section 109) municipalities are obliged to ensure women victims of violence a stay in a women's shelter. 50 % of the costs are refunded by the state, whereas there is no state refund for treatment. This is limiting the preventive effort of perpetrator treatment on the municipal level.

In general the perception of violence in intimate relationships and the action taken is sectoral with few examples of coordinated effort between sections. However, the Intervention Center (mentioned under art. 7), tested as a new concept in East Jutland in 2012 – 2015, was a very promising example of a coordinated approach. The police, DMV and the National Organisation of

Women's Shelters (LOKK) coordinated an intervention, where both the victim and the perpetrator in each case of police reported domestic violence were provided counselling. This project showed very good results, but unfortunately it had to close due to lack of funding.

### **Recommendations**

- Review and change of the Social Code, which ensures that treatment of both victim and perpetrator of domestic violence may be included as part of the municipal action to prevent domestic violence.
- Implementation of formal cooperation between the police, women's shelter and perpetrator programs on a national scale based on experiences from the Intervention Center programme.

## Article 17 – Participation of the private sector and the media

### **Media and Information and Communication Technology Sector**

#### **Background**

Cases of domestic violence, sexual violence and other forms of gender-based violence are often at focus in the media - not always in a victim-sensitive way, and rarely in an awareness-raising way, and rarely with a view to the gender based aspects of violence. Cases of sexualised violence are at times presented with unnecessary sexual details, additionally victimising the women in question. Recently there have also on social media been released sexual referrals to identified women without their consent, and there is reported an increase in the number of young women exposed to 'hate porn' as well as other forms of cyber-mobbing.

#### **Challenges**

A study from 2003 (Pedersen 2011), as well as a current study (Bindesbøl Holm Johansen 2016) indicate, that young women get their main knowledge about sexualised violence from diverse media. This is probably also the case for a larger part of the Danish population, and equally concerns domestic violence. The media thus becomes a central player in the field, and its ways of reporting central.

The Austrian GREVIO Shadow Report (2016, p. 42) highlights important challenges for responsible reporting on gender based violence. These challenges are likewise relevant in Denmark.

#### **Recommendations**

- Guidelines for best standards on illuminating the different aspects of violence to the public should be discussed among relevant media and integrated in the education of journalists.
- Internet and social media companies should be encouraged to be proactive in assisting persons exposed to cyber harassment to report abuse.

## **Chapter IV – Protection and Support**

### Article 18 – General obligations

#### **Background**

When dealing with family cases where violence has been a factor, shelter organisations regularly experience that women who have been exposed to violence experience to be re-victimized at their contact to police and social services. Furthermore, an effective approach to cooperation between relevant stakeholders is not followed, as the role of the women's shelters, as a professional entity in cases with violence, is undermined and submissions to authorities from women's shelters are regarded as an ex parte submission within the system, and not as an assessment on equal terms as authorities as it should be.

#### **Challenges**

In practice, lack of coordination between different laws governing the same area create situations where the battered woman might be re-victimised within the system. As an example, the Act on Central Security Register (Bekendtgørelse af lov om Det Centrale Personregister) often eliminates the wanted effect of the consolidation Act of Social Service (Serviceloven). An example can be the five-day limit for informing the municipality of current address. In practice, this means that women moving to a women's shelter cannot meet the requirement of moving her address within five days. She may also risk losing her residence and her right to have access to her home address to gather her belongings in time. Lastly, she risks losing her right to anonymity in cases with security risks as it takes longer time to have your home address unlisted than it takes to actually move the address.

The women's shelters have a general expertise in supporting and counselling victims of violence. However, when there is a presumption that a child or young person living at a women shelter is in need of special support, the shelters are not able to request the municipality to undertake a section 50 investigation on the child (The Consolidation Act of Social Service (Serviceloven, section 50.7). This can only be done when a municipality think there is reason to investigate. In addition to this, the municipalities' examinations and subsequent decisions regarding a child's wellbeing is often one-sided and disregards reports from women's shelters on violence. Furthermore, a '§ 50 investigation' may take up to four months before an actual decision is ready. Simultaneously, the State Administration can initiate visitation right for a violent parent before an investigation of violence has been processed and determined, thus enabling a potential violent parent unsupervised time with the child.

In custody cases, parents, including couples with a history of violence, are required to meet and cooperate with each other. Meaning a battered woman is required to cooperate with her violent partner. This does not meet the criteria for protection of victims, to protect from further acts of violence, and the risk of renewed violence against the woman and child(ren) increases drastically. The State Administration and the municipalities do not cooperate sufficiently, and families are thus victimised again, and are in practice referred from one end of the system to the other and back again.

The police does not investigate intimate partner violence before they have direct proof of violence. The police may only take a notification of an incident and not directly report it as a crime, which means it is not investigated.

When a woman seeks out a shelter for herself and her child(ren), no system or authority investigates the parental abilities of both the father and mother.

When a mother and her child(ren) are living in a shelter, both parents have a right to know what school or day-care center the child is attending. This means that it is difficult to uphold security measures of the child(ren) and protect them from potential further acts of violence by the violent parent in cases where there is a high risk situation. In practice, this means that some mothers have to choose to withdraw the child(ren) from schooling, and as a consequence her abilities as a parent may be questioned, as she does not provide schooling for the child as prescribed in the law.

### **Recommendations**

- Establish a Task Force to secure cooperation and coordination with municipalities, the State Administration, police and treatment facilities for victims and perpetrators.
- Reassess the Act on Parental Responsibility (Forældreansvarsloven), so to incorporate and acknowledge violence within families as a serious element when assessing e.g. visitation rights.
- Establish new procedures so to acknowledge the women's shelters as an impartial agency set on equal terms as other authority agencies.
- Establish new procedures within the system so to acknowledge the information provided by women's shelters as an assessment on equal terms with authorities.
- Ensure that the women's shelters' right to decide admission remains within the scope of the shelter organisations, so to ensure that victims of violence are met with the right expertise.
- Establish new procedures that ensures that families with suspicion of violence are investigated and referred to proper treatment programs such as "Børnehusene" (Børnehusene provide a coordinated, multi-sectoral and multi-disciplinary approach in cases of abuse of children and adolescents.) – especially in cases where a women and her child(ren) move to a shelter.

- Involve specialists in domestic violence, e.g. the women's shelters, in decisions regarding referral of victims of violence to various treatment programmes. Now, referral demands assessment by two authorities such as the municipality and the police to refer anyone to a treatment program and there is no request for specialised knowledge on domestic violence in the assessment.
- Ensure that families in risk of domestic violence are provided temporary societal efforts during periods of in-stability e.g. when moving to a shelter.

## Article 20 – General support services

### **Background**

The women's shelters offer safety and counselling to women victims of domestic violence, and they are a corner stone in the support offered to women victims of domestic violence. However, the shelters are not able to meet all the diverse needs for treatment that women exposed to violence might demand, i.e. long-term psychological treatment.

### **Challenges**

There is a lack of short and long-term specialised treatment to victims of violence. Some victims of violence will need protection by moving to a shelter. Others are in need of support and counselling, but currently not in need of protection. The number of out-patient treatment programs is not sufficient, accordingly there are only few second options for those victims of violence, who do not necessarily need a stay at a shelter.

### **Recommendations**

- Efforts should be made to establish more outpatient-counselling and treatment with professionals specialised in violence to meet all victims of violence.

## Article 23 – Shelters

### **Background**

There is not a sufficient number of rooms at the women's shelters to meet the demand of the number of victims of violence in need of protection in Denmark.

Furthermore, the Consolidation Act of Social Services (Serviceloven) does not specify the exact need for places and counselling at shelters in Denmark, hence, there are no minimum requirements as to the distribution and standards of professional services provided at women's shelters.

## **Challenges**

Many shelters experience a very high occupancy rate (up to 99%), and have to turn down women at their doorstep. Access to a shelter and efficient support at time is essential in preventing further violence. Research proves that the interval time between seeking help and being offered shelter and support is a period of high risk of re-victimisation and, thus, a dangerous period for the battered woman.

The Consolidation Act of Social Services does not specify in the section in question (SEL section 109) what “security” in principle should entail, neither does it exemplify what basic needs of treatment and counselling a shelter should provide. Research and experience of the women's shelters clearly demonstrates that a victim, who has been exposed to violence, often is in need of specialised and professional help both in terms of psycho-social and psychological issues. Danish municipalities only have to offer women and children, who have been subjected to domestic violence and/or threats of violence, a stay at a women’s shelter.

## **Recommendations**

- The municipalities should ensure sufficient accommodation for victims of violence in need of shelter, in order to offer support, treatment and security.
- The Government should elaborate and specify in section 109 of the Consolidation Act of Social Services what 'security in shelters' should entail. Security should include physical as well as psychological safety measurements – meaning ensuring an environment that can support the woman in breaking the violent cycle and maintain a life free of violence.
- Secure by law access to treatment and counselling, both legal, societal, pedagogical and psychological in all shelters, in order to ensure that women can re-establish and stabilise themselves in order to break free and live a life without violence, both during a stay at a shelter, and as a subsequent care after leaving the shelter.
- In section 109, n. 7 in the Consolidation Act of Social Services, it should be specified that the coordinating counsellor must have specialised knowledge on and experience with working with victims of intimate partner violence, and that the coordinator must work in close relation with women’s shelters.
- After-care programs for women and child(ren) should be offered by the women's shelters in order to support the women and child(ren) to maintain a life free of violence after a stay at a women’s shelter. A coherent and specialised aftercare treatment programme should be considered in addition to the already existing providings specified in the Service Act (section 109, n. 7)

## Article 25 – Support for Victims of Sexual Violence

### **Background**

Centres for victims of sexual violence are established at regional hospitals covering all parts of Denmark and ensure free access to medical, psychological and legal counselling to victims of sexual assaults and documentation of the assault - concerning both police-reported and non-reported cases. Denmark is a small area country; however, there might be a relative long distance for a given victim to a regional centre for victims of sexual violence. It might influence upon the victims ability to seek support and counselling.

Hospital teams are not always specialised enough nor broadly interdisciplinary. Support by psychologists is not always offered here, but by private practitioners. Knowledge and information about the centres is not widespread.

### **Challenges**

The period after which sexual violence has been reported to the police is often difficult, and at times a dangerous one for victims.

Also specific challenges concerning the meanings and consequences of sexual violence demand that relevant persons in their network, as well as they themselves, must have knowledge of - and access to - psychosocial support and counselling in specialised centres. Knowledge of the multiple psychosocial causes of traumatisation in the aftermath of sexual violence is necessary. This knowledge is a prerequisite for professional support, in order to avoid increasing secondary traumatisation, which may occur if focus is on psychotherapeutic systems instead of on personal psychosocial needs.

Furthermore, stigmatisation as victims may cause women to experience that they are no longer respected for being 'who they are'. Thus there is a special need for focusing on respect and recognition in all contact, including the professional one.

In the aftermath there is frequently a need for economical support for transportation and other expenses, especially since many victims are young, in danger, and may lose salary and other forms of income, as a result of traumatisation.

### **Recommendations**

- Quick legal response.

- Specialised protection of victims and relevant others including witnesses before and during court cases.
- Specialised police units to investigate cases of physical, psychological and sexual violence against women and domestic violence.
- Economical support for victims e.g. for extended psychological treatment
- Around the clock open crisis phone.
- Education of local social authorities on the municipal obligations in terms of having knowledge and a preparedness in relation to sexual abuse of children and youth.
- Research in specific psychosocial needs.

## **Chapter V – Substantive law**

### Article 33 – Psychological violence

#### **Background**

The exercise of psychological violence is not recognized as a separate criminal offense in the Danish Criminal Code. However, in the legislative material for implementing the Istanbul Convention in Danish law, the Ministry of Justice considers that article 33 of the Convention on psychological violence does not require change of legislation as it is already covered by the Criminal Code, and Denmark made no reservation pursuant to article 78, 3 of the Convention as to providing for non-criminal sanctions, instead of the criminal sanctions.

The Ministry of Justice considers that as article 33 is limited to an unspecified “severe” psychic harm, the implementation of the article is left to the contracting parties. It also considers that section 245, 2 of the Criminal Code – intentional causing of damage to another person or to the health of another person – includes psychological health. Section 266 of the Criminal Code criminalizes intentional acts or behaviour likely to induce in some other person, serious fear concerning the life, health or welfare of himself or of others or threatens to commit a punishable act. The maximum penalty of the two crimes is until 6 years (section 245, 2) of imprisonment and a fine and until 2 years (section 266) of imprisonment, respectively. The ministry concludes that the two sections separately or in combination encompass the conducts defined as psychological violence in article 33 of the convention, and that Denmark thus has met its obligations to take legislative or other measures to criminalize psychological violence.

Several organisations and some political parties demand criminalization, but no concrete definitions have been developed yet. However, the UK Criminal Code provision “Controlling or coercive behaviour in an intimate or family relationship” has been introduced in the debate as a possible legislation model.



## **Challenges**

According to an EU-wide survey from FRA, The European Agency for Fundamental Rights (2014) 60 % of women in Denmark reported to have been exposed to psychological violence by a current or former partner. 95 % of women in Danish shelters had been exposed to psychological violence (2012). Also a new Danish study indicates a specific link between psychological violence and partner femicides. The lack of provisions against the offence of psychological violence thus contributes to widespread and continuing violations of women's personal and psychological integrity.

The present state of play concerning case law, however, shows that psychological violence despite the legal possibility to apply the above sections is not recognized as a crime by the judiciaries. Studies of case law on the two sections from 2012 and 2013 show that neither sections has been applied in judgements to state psychological violence against a current partner. Nor have the scant judgements passed on threats (section 266) against a former partner referred to this as psychological violence.

In its concluding observations on Denmark's 8. periodic report (2015), the CEDAW Committee repeats its concern that Denmark has no explicit provisions to ensure the protection of women from psychological violence, and the Committee recommends that Denmark should adopt a legislative framework that explicitly provides for the protection of women from psychological violence, in line with the Istanbul Convention.

## **Recommendations**

- We recommend that Denmark adopts a legislative framework that explicitly provides for the protection of women from psychological violence, in line with the Istanbul Convention.
- Measures should be taken to ensure threats and other forms of psychological violence are taken seriously, including by sensitizing the police, public prosecutors and judges for the topic of violence against women and domestic violence and by developing binding guidelines for the handling of cases of violence against women and domestic violence, including psychological violence, by the police, public prosecutors in form of a ministerial decree.

## Article 34 – Stalking

### **1. The Danish Legislation on Stalking**

In 2012 regulations on restraining orders, prohibition on residence and expulsion were gathered under one law. The purpose of the law was to strengthen the protection against violation of the peace, persecution and harassment, including stalking.

### *Restraining*

A restraining order is a prohibition from seeking out an individual either personally, oral or through written contact, including electronic communication, or in any other way contact or pursue a person.

### *Prohibition on residence*

Prohibition on residence is a prohibition against residing or staying close to a defined area close to a person's residence, work place, place of education or within an area where a person frequently stays.

### *Expulsion*

An expulsion can prohibit a person over 18 years of age from staying in his/her own residence.

### *Punishment and stalking*

Violation of a restraining order, a prohibition on residence or an expulsion can be punished with a fine or imprisonment of up to two years. If the violation is considered stalking, it is an aggravating circumstance. Stalking is defined as a systematic and persistent persecution or harassment. When assessing whether there is a case of stalking, it may be relevant if there is a history of violating of restraining orders, prohibitions against residence or expulsions. It may also be relevant if other criminal acts have taken place in connection with violation of restraining orders, prohibition against residence or expulsions, especially trespassing, threats, violence or vandalism. From the preparatory legislation it can be seen that it is expected that unsuspended punishment is used for cases of stalking.

## **2. Statistics on stalking**

The study "The extent and character of stalking", conducted by the Danish Ministry of Justice in February 2013 shows that almost one out of ten Danes between the ages of 18 to 74 reported having been exposed to stalking one or more times during their life, and nearly one out of twenty have been exposed to stalking within the past five years. Within the past year, 2,9 % reported exposure to stalking. Women are more exposed to stalking than men, younger persons are more exposed than elderly, and singles are more exposed than people in relationships. A part from this, the study cannot single out any other special characteristics of the persons exposed to stalking.

## **3. The Danish Stalking Center recommends:**

### *Stalking is violence*

Stalking is a violation of the exposed person's peace and life. Stalking is a criminal offence and should be treated as such. In several places abroad, stalking is considered violence. In the same way, we in Denmark should characterize stalking as violence and acknowledge stalking as a criminal offence. Only by doing so can stalking cases obtain the priority of the police and legal system necessary to protect the legal security and human rights of the exposed. Apart from the

violent human and societal consequences of stalking, women exposed to stalking are murdered and attempted murdered each year.

#### *New separate stalking paragraph*

Stalking is characterized as a new form of violence. National and international research points to stalking as having as comprehensive consequences for the exposed as traditional violence. Therefore, stalking should judicially be treated as an equivalent to traditional violence. As stated in previous responses to public hearings and in the Danish Stalking Center's Intervention Package (distributed at the hearings), Denmark should, at the earliest possible time, implement a new separate stalking paragraph, which allows sanctions of imprisonment for a duration of minimum five to six years. Furthermore, the Danish Stalking Center's experience show, that fines do not put an end to stalking as intended. The Danish Stalking Center, therefore, recommends that sanction by fines in these cases are abolished in the future, in the same way that fines as a sanction in stalking cases has been abolished in Sweden.

#### *Restraining orders as a preventive measure*

From a preventive perspective, it is necessary to reevaluate procedures and guidelines in order to use restraining orders and prohibition on residence as preventive measures and not as they are currently used, when the harm has been done. A restraining order should always be used as a preventive measure in cases of harassment, persecution and stalking, and not only retrospectively as a tool for damage control. In the experience of the Danish Stalking Center, there is a greater possibility of ending stalking if action is taken early – before the stalker becomes fixated – just as it is be harm-reducing for the exposed if the measures used are of a preventive nature.

#### *Restraining order on the criminal record*

A restraining order should be registered on the criminal record as a part of the preventive efforts. Currently, only a violation of restraining orders and prohibition on residence are registered on the criminal record. Violations of restraining orders and violations of prohibition of residence are currently registered on the public criminal record for ten years. There should be an equivalent registration when giving restraining orders and prohibition on residence. It is recommended in order for registration on the criminal record to have a preventive effect that this should be done already at the time when the restraining order or prohibition of residence is granted.

#### *Education, cooperation and permanent caseworkers*

From a long-term perspective, a preventative, correct and qualified case management by permanent specialized trained caseworkers at the police and public prosecutors, would entail a significant saving of resources. Fast visitation, screening, prioritization and case management can prevent the stalking process from becoming so complex, longstanding and non-transparent as is typically seen today and the police and the public prosecutors would expectably be able to limit and qualify the resources spent on individual cases.

It is essential for the strengthening and improvement of the efforts against stalking that police officers, public prosecutors and related professional groups are educated, and that the education related to this issue keeps developing and is updated.

#### *Termination of treatment sentence*

The Danish Stalking Center knows of cases where a stalker has received a sentence with treatment for an indefinite period of time. For the exposed, it is reassuring to know that the stalker is being treated for the disease that typically is the cause of the stalking. In connection to this the exposed should be informed when the Danish prison system in consultation with the treatment institution chooses to terminate a treatment sentence. It should be the right of the exposed to be informed when the stalker no longer is receiving regular treatment and no longer is under supervision as specifically termination of treatment and supervision may result in a strong likelihood of the stalker's relapse. With a duty of information, the person concerned will be able to take the necessary measures, such as moving away, thereby making it more difficult for the stalker to resume the stalking as a result of the exposed having made him/herself unavailable and difficult to find.

#### Article 35 – Physical violence

##### **Background**

The shelters in Denmark experience that women who seek to report events of violence to the Danish police force are not always guaranteed that actual action are taken on account of the report, as the police neglect to report it as an act to be investigated, but instead note it down as a 'notification'.

##### **Challenges**

When trying to report acts of violence to the Danish Police, some women, with whom the shelters come in contact, experience that if they report acts of violence by their partner/ex-partner, the police notes it down as a "notification" or as a 'domestic disputes', thereby downplaying the seriousness of the act of violence. Consequently, it means the police do not make further investigations into the matter. This not only neglects the act of violence; it also neglects the severity of the acts of violence.

The consequences of this are many;

- Secondary victimisation of women subjected to violence
- Lack of acknowledgment of the woman being a victim of a crime
- Potential perpetrators are not prosecuted and/or convicted for their acts.

## **Recommendations**

- To educate police officers in-service on all forms of violence against women and domestic violence.
- To secure that reports of domestic violence to the police, are investigated as criminal acts, and not classified as a 'request/notification' or 'domestic disputes'.

## Article 40 – Sexual harassment

### **Background**

Repeated surveys show that at least 5 % of all female employees experience exposure to sexual harassment at their work place. Surveys within specific segments of employment (precarious jobs, young people etc.) indicate an even higher number. Only few complaints reach the courts and even fewer cases result in a sentence and/or a compensation due lack of evidence. In the cases where the perpetrator is convicted the received compensation for the victim is extremely low, despite e.g. loss of work place, unemployment, great psychological and social consequences etc.

### **Challenges**

Unfortunately, there is a great lack of knowledge on the extent and consequences of sexual harassment. Currently, no political initiatives have been taken to meet the devastating growing level of sexual harassment. A widespread misconception is that sexual harassment at the work place is a condition that the individual must endure and may to some degree be seen in legal practice.

Often the perpetrator has had a higher position in regards to the women exposed to the sexual harassment. Therefore, typically, there is an unequal power relation that the perpetrator can use to make threats of e.g. demotion, firing or exposure, if the victim stands up to the perpetrator. At the moment, it is only possible within the Danish Equal Treatment Act to prosecute the legal employer (the owner or proprietor), who is typically somebody else then the harasser. The legal employer can plead that he did not have any knowledge of the sexual harassment perpetrated by a manager, and can thereby not be prosecuted.

The low compensation (approx. 25.000 DKK = approx. 3.350 Euros) indicates that sexual harassment is not acknowledged for its severity.

### **Recommendations**

- We recommend to initiate a thorough, national survey on the extent of sexual harassment, its character and consequences for victims and the society. The State should commit itself to provide the necessary knowledge and insight, in order to initiate awareness campaigns, and be able to take the necessary legal initiatives to prevent and counteract sexual harassment.

- The Danish Equal Treatment Law should be extended so to include a provision about an indirect objective employer responsibility for the cited sexual harassment. Thereby you are able to hold the legal employer responsible for the sexual harassment that could have been prevented and/or counteracted.
- We recommend that Parliament debates a rise of private and state compensation rates for violent crimes, including domestic violence and sexual harassment.

## Article 46 – Aggravating Circumstances

### **Background**

Article 46 requires Parties to ensure that the circumstances mentioned in subparagraphs a–i *may* be taken into consideration as aggravating circumstances in the determination of the penalty for offences established in the Convention. This gives flexibility to Denmark in implementing Article 46 without notably obliging Denmark to modify its principles related to the application of sanctions in the criminal law system.

### **Challenges**

The exercise of domestic violence is not recognized as a separate aggravating circumstance in the Danish Criminal Code, however section 81 in the Danish Criminal Code lists a series of elements, which generally must be included as aggravating circumstances in the determination of the penalty for criminal offences. The list is *not* exhaustive, why nothing prevents other non-mentioned elements – such as “domestic violence” – to be taken into consideration as aggravating circumstances. On these grounds the Ministry of Justice considers, in the legislative material for implementing the Istanbul Convention in Danish law, that article 46 of the Convention on aggravating circumstances does not require change of legislation as it is already covered by the Criminal Code section 81.

However, and despite the fact that the possibility exists, a review of printed court rulings has not been able to identify any judgments where the court has attributed an offence committed against a former or current spouse or partner as an aggravating circumstance as mentioned in Article 46, lit. a. Furthermore, the study also reveals that no case law is found considering the aggravating circumstances in the Criminal Code section 81, subparagraph 8 (misuse of trust) or subparagraph 11 (exploitation of the victim's defenceless position) when sentencing perpetrators in cases of domestic violence.

The above-mentioned practise is in poor compliance with the Convention's desire for an increased focus on, and an active position on the issue of domestic violence, and the Explanatory Report, which states that the common element of the cases mentioned in lit. a is the position of trust,

which is normally connected with such a close relationship and the specific emotional harm which may emerge from the misuse of this trust when committing an offence within such a relationship.

### **Recommendations**

- Denmark should address domestic violence more directly, e.g. by introducing a new aggravating circumstance into section 81 in the Danish Criminal Code that states how committing violent acts against family members and/or former or current partners are aggravating factors.
- At least, measures should be taken to ensure that judges and public prosecutors are aware of how a number of aggravating circumstances often arise by virtue of the offence being committed in a domestic context, that these will increase the seriousness of such offences, and that they therefore must be taken into consideration appropriately.

## **Chapter VI – Investigation, prosecution, procedural law and protective measures**

### Article 49 – General obligations, and article 50 – Immediate response, prevention and protection

#### **Background**

A strategy for strengthening the efforts of the police towards jealousy murders and other severe partner related crimes was issued by the National Commissioner in 2007 as a frame for the police work countrywide and is still in force. The three central elements in the strategy are 1) establishment of special units in the 12 police districts in order to establish and develop a high level of professional competence, 2) expanding the cooperation among police, social authorities and the health services, 3) effective implementation of the legislation on emergency barring orders and restraining or protection orders.

#### **Challenges**

In June 2014, The Danish Institute of Human Rights published an analysis of the legal consequences of an amendment of Danish law in accordance to the Istanbul Convention. It noted that the effort of the police authority on domestic violence is currently an assignment for local police districts. It may result in important regional variation in the extent of protection of victims of domestic violence, e.g. in implementation of emergency barring orders and restraining or protection orders, and great differences in the multi-sectoral cooperation.

The implementation efforts against domestic violence has since 2011 been rooted in the police districts which prioritize and organize the efforts based on local conditions and the local crime situation.

The local police director decides whether to organize a special unit on restraining and protection orders and emergency barring orders. All police districts have an investigation department on crimes against persons. However, the organisation and prioritization of the efforts vary among the police districts, leading to varying legal protection of victims throughout the country.

A cooperation forum with the participation of the special police unit, social welfare authorities, the health service and other relevant authorities and organisations is mandatory in each police district. However, it is uncertain if such fora exist and function efficiently in all police districts.

Two evaluations of the implementation of the act on emergency barring orders from 2006 and 2009 demonstrated that very few emergency barring orders had been issued and that the implementation of the act varies among the police district. The latter evaluation also indicated that knowledge of the emergency barring orders among social welfare professionals was insufficient.

The Act on emergency barring orders in 2012 was expanded to including stalking, as stalking was considered an aggravating circumstance of a breach of an emergency order (see art. 34). Again a study showed that knowledge of the new act varied among the police investigators, depending on the information from the director of the police district and on their own concrete experiences. It was the opinion of the investigators that stalking in general was given a low priority by the police. Also it was recognized that the implementation of restraining and protection orders varied from one police district to another.

### **Recommendations**

- We recommend that Denmark ensure a uniform, consistent and effective practice of implementation of the National Commissioner's strategy and guidelines on handling domestic violence in all police districts, in order to provide immediate and adequate protection of victims throughout the country. Likewise it should continue to provide training to all professionals involved in preventing and combating domestic violence.
- Furthermore we recommend that the government should strengthen its efforts to combat domestic violence and violence against women, by ensuring effective reporting on acts of domestic violence to the police, investigations, prosecutions and sanctions of perpetrators.

## **Chapter VII – Migration and asylum**

### Article 60 – Gender-based asylum claims

#### **Background**

The Convention requires that Parties shall take the necessary legislative or other measures to



ensure that gender-based violence against women may be recognized as a form of persecution within the meaning of the 1951 Convention relating to the Status of Refugees and is considered a mistreat for which can be granted complementary/subsidiary protection and that a gender-sensitive interpretation is given to each of the Refugee Convention grounds.

Parties shall take the necessary legislative or other measures to develop gender-sensitive reception procedures and support services for asylum-seekers as well as gender guidelines and gender-sensitive asylum procedures, including refugee status determination and application for international protection.

### **Challenges**

In Denmark it is possible to obtain asylum based on gender-based violence, but it is seldom the case. In most cases, the gender-based asylum motive is being put forward in conjunction with other asylum motives. It is of outmost importance that the Danish Immigration authorities from the very beginning of the asylum procedure secure the possibility for the women to safely account for the gender-based persecution. If the motive is not disclosed at the first interview with the Danish Immigration Service it can lead to a negative credibility assessment of the asylum claim as such, even if there are good psychological reasons for the woman not to have talked openly about e.g. domestic violence.

In cases of gender-based violence the Danish Immigration authorities often acknowledge that a woman has a gender-based asylum motive, but refer her to seek protection from the authorities in her country of origin. Gender-based asylum claims are hereby often referred to as “a conflict of a private nature”. This is in some cases happening without regard to the general conditions for women in the country of origin.

In Denmark, it is possible to obtain asylum based on the risk of forced marriage. However, there are not many cases where women have been granted asylum based on that motive. From the case law of the Refugee Appeals Board from 2012-2016 it is mostly Afghan women who have been granted international protection based on the risk of forced marriage. In October 2016 two women from Afghanistan, at risk of being subjected to forced marriage, were granted asylum according to the 1951 Refugee Convention because they belonged to a particular social group. It is the first time that the Danish Refugee Appeals Board has granted asylum to women with this reasoning. A challenge is to maintain that praxis where gender-based asylum claims are viewed in the light of the Refugee Convention grounds. Single women from Afghanistan without a family network in the home country have a special option under Alien Act art. 9b (humanitarian reasons) to be granted protection. Firstly, this should be under art. 7(2) as they are in need of protection and it is therefore not a humanitarian issue. Secondly, it is being used less and less, and we have two examples of women who are rejected and where the authorities state that they have a network in the form of that same family member who wanted to marry them off against their will

(to the brother of their deceased husband, as tradition says).

### *Reception facilities*

There are no specific gender-sensitive reception procedures or reception centres for asylum seekers in Denmark. All asylum seekers – regardless of vulnerability - live at the same reception centres for the first period of time in Denmark and have to go through the same procedures. Even if single or vulnerable women can be separated from single men or families within the asylum centre we occasionally meet women through legal counselling at the asylum centres who do not feel secure when leaving their room. As a consequence, the women very often stay in their room and are therefore not a part of the everyday life at the asylum centre. There is one special asylum centre for single women and other very vulnerable asylum seekers but it is often difficult to access due to lack of room.

### **Recommendations**

- Include special procedures in the asylum process to ensure that victims of gender-based violence feel more secure and safe to account for violence, e.g. from their spouses. UNHCR recommends that special procedures are implemented in this regard because a claim for asylum mainly is assessed from the asylum seekers own information during the case - see UNHCR Guidelines On International Protection: Gender-Related Persecution within the context of Article 1A (2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees.
- The Danish authorities should also follow UNHCR guidelines in relation to a gender-sensitive interpretation of the Refugee Convention grounds. Today victims of gender-based persecution are very often granted complimentary protection instead of protection with reference to the Refugee Convention.
- Establishment of more gender-based asylum facilities so it will be easier for victims of gender-based violence to feel and actually be secure and receive the medical and psychological help they acquire.

### Article 61 – Non-refoulement

#### **Background**

The Convention requires that Parties shall take the necessary legislative or other measures to respect the principle of non-refoulement in accordance with existing obligations under international law and that Parties shall take the necessary legislative or other measures to ensure that victims of violence against women who are in need of protection, regardless of their status or residence, shall not be returned under any circumstances to any country where their life would be

at risk or where they might be subjected to torture or inhuman or degrading treatment or punishment.

### **Challenges**

Pursuant to section 7(1) and 7(2) of the Danish Aliens Act, a residence permit will be issued to an asylum seeker upon application if the asylum claim falls within the scope of the Refugee Convention, or if the asylum seeker risks the death penalty or being subjected to torture or to inhuman or degrading treatment or punishment in case of return to his country of origin.

It follows from section 31(2) of the Danish Alien Act that no alien may be returned to a country where he risks persecution on the grounds set out in Art 1A of the Refugee Convention, or where the alien will not be protected against being send on to such a country.

However, as mentioned under comments concerning Article 60, there are cases where victims of gender-based persecution have been reluctant to disclose their full story from the beginning partly because of fear and a lack of procedures to handle this situation leading to a full rejection of their asylum claim due to a negative credibility assessment. As also previously mentioned it is a problem that very often violence against women is regarded as a private matter from which the women can seek protection from the authorities in their country of origin without any regard to the general conditions for women in that country.

It is unarguably up to the Danish Immigration authorities to assess an asylum seekers claim for asylum. However, it is also the States responsibility to provide a safe environment for victims of gender-based persecution to be able to freely explain their full asylum motive. As long as no special measures are taken in this regard, there is a risk, that some victims of gender-based persecution will not feel safe to do so.

As a consequence, these women risk being send back to their country of origin regardless of their gender-based asylum motive.

### **Recommendations**

- More consideration should be put into the assessment of whether it is realistic that a victim of gender-based persecution can actually obtain protection from the authorities of the country of origin
- Special procedures in the asylum process to ensure that victims of gender-based violence feel more secure and safe to account for violence, e.g. from their spouses. UNHCR recommends that special procedures are implemented in this regard because a claim for asylum mainly is assessed from the asylum seekers own information during the case - see UNHCR Guidelines

On International Protection: Gender-Related Persecution within the context of Article 1A (2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees.