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**The Group of Experts on Action against Violence against Women and  
Domestic Violence (GREVIO) and the monitoring system of the Istanbul  
Convention**

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**The Group of Experts on Action against Violence against Women and Domestic  
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## **I. Introduction:**

Violence against women is deeply rooted in the social and cultural structures, norms and values that govern society, and it is often perpetuated by a culture of denial and silence. One in three women (33%) in European Union has experienced physical and/or sexual violence since the age of 15, 75% of women in a professional capacity or in top management have experienced sexual harassment in their lifetime, while one in ten women has experienced sexual harassment or stalking through new technologies.<sup>1</sup>

The Istanbul Convention on Preventing and Combating Violence against Women and Domestic Violence is the first legally binding international instrument which creates a complete legal framework that protects women against any form of violence. It also defines, for the first time ever, violence against women as a violation of human rights and as a form of discrimination holding states responsible for this kind of violence. As such, it is one of the most impactful human rights treaties, on a global scale, in terms of respecting human rights from a legal, cultural, and political perspective. The Convention was adopted by the Committee of Ministers of the Council of Europe and opened for signature in 2011, while it entered into force three years later in 2014.

The Istanbul Convention covers a broad range of measures for the elimination of gender-based violence, approaching the issue on the basis of four pillars: Prevention, Protection, Prosecution and Coordinated Policies:

- It seeks to **prevent** violence by obliging States Parties to invest in awareness-raising campaigns and education, training for experts who are in close contact with victims, and treatment programs for perpetrators, as well as to address the role of media in eradicating gender stereotypes.
- It **protects** victims by obliging states to establish appropriate support services such as free national telephone hotlines, shelters, medical, psychological and legal counselling, as well as help with housing and financial issues.
- It aims to the establishment of **law enforcement and judicial proceedings**, such as dissuasive sanctions for perpetrators, effective public prosecution, aggravating circumstances, legislation criminalising violence against women and effective police investigation. It is important to highlight the fact that the Convention proceeds to define and criminalise various forms of violence against women. It does not remain to the most evident ones like sexual and physical violence (such as female genital mutilation, forced marriage, forced abortion and forced sterilisation), but it also extends to other harder to detect and to eliminate forms, such as psychological violence, stalking and sexual harassment, which disproportionately affect women due to imbalances in power and physical strength, as well as due to the social discrimination that women face. As to the judicial proceedings, the Convention provides for important rights for the victims, such as the guarantee of non-existence of

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<sup>1</sup>European Union Agency for Fundamental Rights, 2014, *Violence against women: an EU-wide survey Results at a glance*, European Union Agency for Fundamental Rights, Vienna – Austria: European Union Agency for Fundamental Rights

attitudes, behaviours and practices which blame victims and cause them additional distress during investigations and judicial proceedings.

- It provides for **coordinated policies** by obliging states to establish cooperation among the judiciary, public prosecutors, law-enforcement agencies, local and regional authorities, ensure support and work with civil society and NGOs, and create a state body that oversees the coordination, implementation, monitoring and evaluation of the Istanbul Convention.

A major issue in human rights treaties is the monitoring system they provide for in order to ensure that States Parties fulfill the obligations that they have assumed, as well as the monitoring bodies they establish. In this study I focuss on the monitoring procedures carried out by GREVIO, which are the Country-by-Country evaluation and the Special Inquiry Procedure. I also examine the possible establishment of an interstate and an individual complaint procedure as well as other mechanisms that foster the implementation of the Convention. Finally, I refer to the persisting obstacles that do not permit the complete elimination of gender-based violence. The basic question that is explored is the extent to which the monitoring system of the Convention is effective as to the accomplishment of its primary goals, which are the elimination of violence against women and the equality between genders. Interpreting the effectiveness as the outward impact of law, the monitoring procedures of the Convention are examined not only in theoretical terms, but also on the basis of the extent to which states have changed their policies and practices due to those procedures. Afterwards, further mechanisms which aim to enhance the implementation of the Convention are analyzed, while the establishment of an interstate and an individual complaint procedure is proposed with a view to increase the effectiveness of its monitoring system. Finally, the basic shortcomings in the implementation of the Convention are identified, as well as the counterweights to them. To sum up, what is aimed to be explored is how the monitoring procedures are carried out, whether the Convention and specifically GREVIO functions in a way that actually produces the desired results and in which ways the implementation of the Convention can be fostered.

## The Istanbul Convention

A new tool to fight against violence against women



### **II. Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) and Committee of the Parties**

To ensure the **effective implementation of the Convention**, a two-pillar monitoring mechanism has been established, consisting of GREVIO (Group of Experts on Action against Violence against Women and Domestic Violence) and the Committee of the Parties.

GREVIO is responsible for monitoring the implementation of the Istanbul Convention. To this end, its primary function is to draw up and publish reports evaluating the legislative and other measures taken by the States Parties in order to give effect to the provisions of the Convention, as well as to choose the appropriate means to carry out the evaluation procedures. It may also adopt, when appropriate, general recommendations on subjects and concepts of the Convention. Additionally, it may request the urgent submission of a special report about measures taken to prevent a serious, massive or persistent pattern of violence against women, designating also one or more of its members to conduct an inquiry and to report urgently back to it. Finally, it is important to stress that GREVIO is an independent body whose members are experts of the highest rank in the field of preventing and combating violence against women and domestic violence, and they also have a thorough knowledge of the Convention.

The Committee of the Parties is composed of representatives of the States Parties, who are also experts in the field of gender-based violence. In the context of the monitoring procedures, the Committee's basic role is to adopt recommendations, on the basis of the reports and the conclusions of GREVIO, as well as to promote the cooperation with States Parties for the proper implementation of the Convention. Moreover, the Committee elects the members of GREVIO through elections of secret ballot and it also examines the findings of the special inquiries.<sup>2</sup>

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<sup>2</sup>Council of Europe, *About the Committee of the Parties* [online], coe.int, Available at <https://www.coe.int/en/web/istanbul-convention/committee-of-the-parties>

The Committee of the Parties meets whenever one third of the States Parties, the President of the Committee of the Parties, or the Secretary General so requests<sup>3</sup> and it has held 10 meetings so far. In the first one, which was realized on 4 May 2015, it elected ten GREVIO members and it also adopted its own rules of procedure. During the rest of its meetings, the Committee has exchanged views with the President of GREVIO on the progress made towards the implementation of GREVIO's conclusions and it has also adopted recommendations addressed to states that have been subjected to the baseline evaluation. In addition, it has welcomed the ratification of the Istanbul Convention by states of the Council of Europe and it has encouraged the rest of them to make steps towards the same direction. Moreover, the Committee has expressed its opinion on actions of GREVIO, of the Council of Europe, and of other international organisations, when they touch upon issues of gender based-violence, having also held discussions on respective issues. For instance, in its sixth meeting the Committee expressed its support to the decision of the International Labour Organization (ILO) to move towards a convention on international standards on violence and harassment against women and men in the world of work.<sup>4</sup> Moreover, in its seventh meeting, the Committee had thematic discussions on the following issues: (a) Custody and Divorce, and (b) Comprehensive and Coordinated policies, which afterwards were made available on its website. Furthermore, in the eighth meeting it discussed upon: (a) Data collection on violence against women (including statistics in health care and social services), (b) Prevention of violence against women, (c) Cyber violence, and (d) Risk assessment tools for domestic violence.<sup>5</sup> Afterwards, in the ninth meeting, in view of the pandemic, the Committee endorsed a report entitled "The prolonged pandemic and its impact on women: the Istanbul Convention as a tool to ensure transformative change" and agreed on future action set out therein.<sup>6</sup> Finally, in the tenth meeting the members of the Committee made comments and proposals for alternative wording on GREVIO's draft General Recommendation on the digital dimension of violence against women, which later were compiled into a consolidated Committee's opinion that will be submitted to GREVIO for consideration.<sup>7</sup>

As it has already been made evident, GREVIO and the Committee of the Parties have a complementary and cooperative action representing the two vital branches of the monitoring mechanism of the Convention. They hold strong and regular channels of

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<sup>3</sup> Committee of the Parties, Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), Rules of Procedure of the Committee of the Parties, Strasbourg, 4 May 2015

<sup>4</sup> Committee of the Parties Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), List of decisions taken at the 6th meeting, Strasbourg, 25 January 2019

<sup>5</sup> Committee of the Parties Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), List of decisions taken at the 7th meeting, Strasbourg, 1 – 2 April 2019

<sup>6</sup> Committee of the Parties Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), List of decisions taken at the 9th meeting, Strasbourg, 15 December 2020

<sup>7</sup> Committee of the Parties Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), List of decisions taken at the 10th meeting, Strasbourg, 13 April 2021



communication, given that, as stipulated in GREVIO's internal Rules of Procedure, the President (of GREVIO) shall periodically meet with the Committee of the Parties to inform it about the state of work of GREVIO and the progress registered in preparing reports and conclusions concerning the measures taken by the States Parties in order to implement the provisions of the Istanbul Convention, as well as about any other issue relating to the good functioning of the monitoring mechanism of the Convention. GREVIO may also decide to invite the Chair of the Committee of the Parties for an exchange of views.<sup>8</sup> During the conversations between these two pillars of the monitoring procedure, experts are offered an opportunity to provide feedback on their experiences of the monitoring procedures and to deliver expertise based on mutual goodwill and willingness in order to facilitate progress in eradicating gender-based violence. Furthermore, the financial and human resource needs of GREVIO are also discussed, as well as the need for enhancement of coordination between the monitoring mechanism of the Convention, and other regional and international mechanisms (such as the UN Committee on the Elimination of Discrimination against Women), in order to avoid possible overlaps between the different monitoring procedures.<sup>9</sup> At the end of the day, the Committee has been established with a view to ensuring equal participation in decision-making for all States Parties, and to fostering the cooperation between them and GREVIO in order to ensure the appropriate and effective implementation of the Convention.

Finally, apart from the monitoring executed by the bodies that the Convention set up, it is also required that States Parties establish official coordinating bodies, which have the responsibility to monitor and to ensure the implementation of the Convention. These official bodies can be Ministries (Ministry of Labour, Pension System, Family and Social Policy in Croatia), Services or Chancelleries belonging to Departments of a Ministry (Service des Politiques d'Égalité of Andora, Committees, Austrian Federal Chancellery), Committees (Committee for Combating Violence against Women and Domestic Violence in Finland), Agencies (Agency for Gender Equality of Bosnia and Herzegovina), Councils (National Council on Gender Equality, Albania), or even Institutes (Institut pour l'égalité des femmes et des hommes, Belgium).<sup>10</sup> Those bodies foster the monitoring of the Convention at a national level, since their direct and continuous contact with the states' policies enables them to monitor efficiently whether states have taken the appropriate measures in order to combat violence against women, as well as to evaluate those measure and to assess any positive and negative outcomes.

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<sup>8</sup> Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), Rules of Procedure Adopted by GREVIO at its 1st meeting (Strasbourg, 21-23 September 2015) Amended by GREVIO at its 9th meeting (Strasbourg, 14-17 February 2017) Amended by GREVIO at its 12th meeting (Strasbourg, 9-13 October 2017) Amended by GREVIO at its 13th meeting (Strasbourg, 20-23 February 2018)

<sup>9</sup>1st GENERAL REPORT ON GREVIO'S ACTIVITIES, Group of Experts on Action against Violence against Women and Domestic Violence, covering the period from June 2015 to May 2019, p. 40

<sup>10</sup>Council of Europe, *Official coordinating bodies* [online], coe.int, Available at <https://www.coe.int/en/web/istanbul-convention/list-of-official-co-ordinating-bodies>

### **III. Monitoring Procedures**

The procedures which are carried out in order to monitor the extent to which states comply with their obligations under the Convention are the following:

- Country-by-country evaluation**, which begins with a baseline evaluation report elaborated by GREVIO and concludes with the monitoring of the Committee's recommendations
- Special inquiry procedure**, which may be initiated by GREVIO when there is reliable information indicating that action is required to prevent a serious, massive or persistent pattern of any of the acts of violence covered by the Convention.<sup>11</sup>

#### **III.a) Country-by-country evaluation**

The Country-by-country evaluation is divided in two rounds:

- The baseline evaluation (a general evaluation)
- The subsequent evaluations (the monitoring of specific measures)

The basic legal tools which are used in order to monitor the effective implementation of the Convention are the following:

- Questionnaire
- Country Visits
- Baseline and Subsequent Evaluation Reports



#### **III.a.i) Baseline Evaluation Report**

According to Article 68 paragraph 1 of the Istanbul Convention, States Parties undertake the obligation to submit to the Secretary General of the Council of Europe a report

<sup>11</sup>European Parliament, *The Istanbul Convention: A tool to tackle violence against women and girls AT A GLANCE* [pdf]

on legislative and other measures, which give effect to the provisions of the Convention.<sup>12</sup> This report shall be based on a questionnaire prepared by GREVIO. States are also required to communicate their report within an indicated time-limit.

Apart from the state's report, GREVIO concentrates additional information from non-governmental organisations and other civil society actors, as well as national institutions for the protection of human rights, regional and international instruments and bodies, the Council of Europe Commissioner for Human Rights, the Parliamentary Assembly and relevant specialised bodies of the Council of Europe, and finally from country visits and hearings with various actors of the field. Non-governmental organisations can also send out "shadow reports", which reflect their perspective on the implementation of the Convention by states<sup>13</sup> in order to provide GREVIO with a more objective view on the matter. GREVIO also resorts to the aforementioned sources in order to obtain relevant information in case that the state under evaluation has not submitted its report within the time-limit set by GREVIO.

On the basis of the examination of this report and the additional information collected, GREVIO holds a constructive dialogue with the representatives of the state in question. During this dialogue, all the provisions of the Convention must be covered, as well as any thematic priorities that GREVIO has identified. Such priority issues may include challenges in promoting and safeguarding the Istanbul Convention, as well as possible new developments registered in the State Party concerned, which have come to GREVIO's attention. In order to facilitate the dialogue, questions posed by GREVIO's members may be clustered by articles, themes or sub-themes, reflecting the respective substantive provisions. All clusters of the provisions shall be covered, giving also to the State Party reasonable time to answer the questions. Moreover, follow-up questions may be posed to the responses of the State Party.

It is important to stress the public nature of this dialogue, which ensures both the transparency and the trustworthiness of the whole procedure. The principle of accessibility and reasonable accommodation also applies, requiring the adoption of various measures, such as inter alia, access to physical space, to information, to communication and to sign language interpretation. After receiving accreditation, observers, such as representatives of civil society, academics and others, can attend public meetings, which can also be audiotaped and filmed, when authorised, as long as this does not interfere with the dialogue.<sup>14</sup> This dialogue between GREVIO and the state under evaluation helps GREVIO to solve any question which may have arisen by the state's report, shed light on obscure points, and ask for explanations regarding violations, in compliance, insufficiencies and inconsistencies in the implementation of the Convention, with a view to elaborating its evaluation report bearing in mind the perspective of the State Party. Finally, the dialogue offers the State Party expert advice on

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<sup>12</sup>Council of Europe, *About Monitoring* [online], coe.int, Available at <https://www.coe.int/en/web/istanbul-convention/about-monitoring1>

<sup>13</sup> Johanna Nelles, *GREVIO and the evaluation process* [online], WWVP European Network, Available at: <https://www.work-with-perpetrators.eu/ic/grevio>

<sup>14</sup> [Annex I Guidance note for States parties on the constructive dialogue with the human rights treaty bodies](#), A/69/285

how to comply with the obligations it has assumed under the Convention in order to achieve its full implementation at a national level.

To continue with, in order to have a direct and comprehensive overview of the measures taken, when the first evaluation procedure is conducted, GREVIO shall realise a country visit to the state. As to the subsequent evaluation rounds, GREVIO carries out further country visits, in case that no sufficient information has been collected. Afterwards, taking into consideration the information concentrated, GREVIO prepares a draft evaluation report, as well as suggestions and proposals on the way in which the State Party may deal with the problems which have been identified. This draft report is, afterwards, transmitted for comments to the State Party which undergoes the evaluation. On the basis of all the information received and the comments of the State Party, GREVIO adopts its report and sends it to the state under evaluation and to the Committee of the Parties.

In accordance with Article 68, paragraph 11, of the Istanbul Convention, GREVIO's reports and conclusions are made public as from their adoption, together with any comments made by the state concerned. The fact that states are obliged to submit comments on their baseline evaluation reports, as well as the publication of these comments at the same time as the reports, is a really interesting aspect of GREVIO's reporting procedure. The provision of such comments makes states consider the reports immediately and it, also, gives an immediate indication of their response to the proposals and the suggestions made.

In addition, a press release is issued whenever a report is published. On this occasion, GREVIO's members and the Secretariat may give interviews, in which they provide information on the reports and the evaluation procedure. The publication of GREVIO's reports is actually a very important element of the monitoring procedure, given that it exercises a certain degree of political pressure on the States Parties, which has both a preventive and a complaintive character. It prevents states from violating the Convention and it also pressures them to comply with the suggestions of GREVIO in order not to be exposed to criticism and reputational consequences once the report comes out.

### **III.a.ii) Country Visits**

The Country Visits allow a more in-depth understanding of the normative framework in place and its implementation in practice. They also give the opportunity of valuable direct exchange of information with state and non-state actors around legislative gaps, insufficiencies and challenges emerging from the practices of the state in question. Moreover, it is an occasion for GREVIO to visit services offered to victims, such as domestic violence shelters, counselling services, rape crisis centers and other types of specialist services. GREVIO may also make visits to facilities for asylum seekers and refugees in order to assess whether the State Party effectively protects refugee women from gender-based violence.

States' authorities ought to cooperate with GREVIO's delegation and to appoint a "contact person" that will organise meetings between governmental bodies and the GREVIO's delegation. In contrast, meetings with non-governmental organisations, other relevant organisations, members of civil society or any other individuals are organised by the delegation itself without any interference by the contact person in order to ensure the

independence and the accuracy of the procedures and the findings they will lead to. Moreover, for reasons of maintenance of independence and security both of the individuals and the NGOs, the content of meetings between GREVIO's delegation and its interlocutors (officials, NGO representatives, victims, etc.) is confidential. To set an example of such visits, GREVIO visited the "centers in charge of sexual violence" that exist in some hospitals in Brussels, Belgium [Centre de Prises en charge des Violences Sexuelles (CPVS)]. During its visit, GREVIO found out that victims of sexual violence can report to CPVS at any time, no matter the hour or the day. In CPVS the victims can receive psychological support, medical care, forensic investigation, as well as legal assistance for filing a complaint against the perpetrator if they wish to do so.<sup>15</sup> During its visit to these centers, GREVIO's delegation had the opportunity to communicate directly with the members of the medical staff who are in charge of gender-based violence's victims and, in this way, to obtain a thorough knowledge on the existing protocols on victims' treatment, as well as on the level of training and specific capacitation of the incumbent professionals.<sup>16</sup>

To continue, it is important to stress that on various occasions GREVIO has conducted visits to refugee campuses in order to examine the gender aspect of the management of the refugee flows. For instance, when GREVIO visited refugees' and asylum seekers' facilities in Belgium, Malta, Slovenia, and Spain, it reviewed whether the states had established reception procedures which ensure safety for women, as well as whether they dispose of accommodation and transit centers which are safe spaces for females. For these purposes, it has been considered necessary for States Parties to dispose of trained staff, women-only facilities and entrepreneurs available to women in case that they need help due to harassment or any form of gender-based violence.

### ***But why did GREVIO get to visit such facilities?***

Multiple reports have assessed structural violence in European refugee camps. The study Refugee Rights Data Project (RRDP), conducted by Al Jazeera in 2017, found that women refugees are exposed to high risk of falling victims of gender-based violence, including abuse by authorities, and sexual harassment. Specifically, this study, that casted light on the living condition of women refugees in their attempt to reach northern Europe, came up with the following findings:

- 46% of women feel unsafe in camps
- 88% 'do not know where to obtain contraceptives' and 25% 'do not know where to access services if they become pregnant'
- Many women claim that the poor lighting in gender-mixed transit centers means that they are afraid of going to the toilet at night

What is more, according to the Joint Report on Protection of Refugees in Europe (conducted by the United Nations Population Fund) and Women's Refugee Commission:

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<sup>15</sup> [CPVS - Centre de Prises en charge des Violences Sexuelles - Liège](#)

<sup>16</sup> 2<sup>nd</sup> GENERAL REPORT ON GREVIO'S ACTIVITIES Group of Experts on Action against Violence against Women and Domestic Violence Council of Europe, covering the period from June 2019 to December 2020, p.13

- Various refugee camps do not have ‘separate accommodation for women and children, and segregated water, sanitation and hygiene (WASH) facilities’. As a result, fundamental health care services become inaccessible to women, given the risk that they are afraid of running in case they visit gender-mixed wash facilities.
- Many girls and women ‘admitted that [they] have been refusing food and water for multiple days in order to avoid using the latrines, which they perceive as unsafe and unsuitable’
- More than 75% of women in camps have mental and physical health issues, which are attributed to their living conditions<sup>17</sup>

The aforementioned data shows that women in refugee facilities face daily dangers and live under poor conditions with a permanent feeling of fear or threat of being subjected to abusive behaviours. This gender-based double vulnerability of refugee women is what makes indispensable GREVIO’s visits to asylum seekers’ and refugees’ facilities in order for its delegation to assess in person whether states have adopted gender-oriented policies and to what extent these policies protect the corporal and the psychological integrity of refugee women.



### III.a.iii) Questionnaire

The questionnaire constitutes the basis on which states redact their reports, as provided for under Article 68, paragraph 1 of the Convention. GREVIO adopted the questionnaire for its (first) baseline evaluation round on 11 March 2016. Its main objective is

<sup>17</sup>Mie A. Jensen, 2019, *Gender-Based Violence in Refugee Camps: Understanding and Addressing the Role of Gender in the Experiences of Refugees* [online], ALJAZEERA, Available at: <https://www.aljazeera.com/news/2017/1/24/trdp-women-fear-violence-and-rape-in-refugee-camps>

to render the provisions of the Convention meaningful by developing standardised approaches on their implementation, as well as to avoid duplication with the work of other monitoring bodies. GREVIO's questionnaire, thus, highlights novel aspects of the Convention such as the need to avoid women's secondary victimization, the importance of victims' access to justice and the necessity of women's empowerment.<sup>18</sup> States Parties reply to each particular point of every section of the questionnaire providing explicit information on the relevant matter. States also present relevant data in order to prove the assistance that has been given to victims or the reduction of the percentages of violence against women. Statistics at the end of the day are the most objective parameter when it comes to assessing the effectiveness of the measures taken by the states.

*What does the questionnaire include?*<sup>19</sup>

The elaborated-by-GREVIO questionnaire contains 6 thematics, on which states have to cite analytically the legislative and other measures that they have enacted in order to give effect to the provisions of the Convention.

The thematics are the following:

- Introduction: purposes, definitions, equality and non-discrimination.
- Integrated policies and data collection
- Prevention
- Protection and support
- Substantive law
- Investigation, prosecution, procedural law and protective measures
- Migration and Asylum

In the first part (of the introduction), the questionnaire recalls the general principles of the convention, such as the principle of equality between women and men , the elimination of discrimination against women, the abolition of discriminatory laws and practices and the maintenance of a gender perspective in the implementation and the evaluation of the impact of the Convention. Moreover, it explains that the scope of application includes all forms of violence against women. Following, it analyses the obligation of due diligence of states meaning that they must pay particular attention to refraining from engaging in any act of violence covered by the Convention. It also recalls the positive and negative obligations that states assume under international human rights law, meaning that apart from refraining themselves from the commission of wrongful acts, they must also protect individuals from their commission by non-state actors. Reports submitted by State Parties should contain all relevant information on measures taken to exercise due diligence in preventing, investigating, punishing and providing reparation for any acts of gender-based violence as described in the Convention, either committed by states-parties, or committed by individuals. Finally, it calls

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<sup>18</sup>1st GENERAL REPORT ON GREVIO'S ACTIVITIES, Group of Experts on Action against Violence against Women and Domestic Violence covering the period from June 2015 to May 2019

<sup>19</sup> Questionnaire on legislative and other measures giving effect to the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence adopted by GREVIO on 11 March 2016

states to indicate which government agencies contributed to the preparation of the report (including at regional/local levels) and which other bodies, institutions or organisations were consulted when preparing the report (national human rights institution, non-governmental organisations (NGOs) and other civil society actors, etc.)

### **III.a.iii.i) INTEGRATED POLICIES AND DATA COLLECTION**

Firstly, states are requested to provide information on strategies/action plans and other relevant policies that they have adopted in order to combat gender-based violence. The following details on those strategies must include:

- Information on the scope and the results of the actions :
  1. the forms of violence covered
  2. the calendars
  3. how fundamental rights are integrated in these policies
  4. how these policies are coordinated in order to offer a global and comprehensive response to violence against women
  5. the measures adopted and their regional / local application
  6. the progress made thanks to their application.
- Financial sources of the programs
- The contribution of NGOs, other actors and the civil society, especially non governmental organizations of human rights
- The organs that have been constituted by the authorities to combat gender violence, with the following details:
  - a. name
  - b. administrative status
  - c. powers and competences
  - d. composition and. annual budget
  - f. human resources (ie staff, general professional profiles of staff members and possible training)
  - g. main results obtained since their creation
- Specification of the entities that select the data and the kind of data that each of them select. For each type of data, it is required specification of sex, age, type of violence, as well as the relationship between the perpetrator and the victim, the geographic location or scope (national, regional, local scale) and any other factor that is considered pertinent, such as a disability.

### **III.a.iii.ii) PREVENTION**

Under this section it is described that in order for gender-based violence to be prevented, states must *“promote changes in the social and cultural patterns of behavior of women and men with a view to eradicating prejudices, customs, traditions and other practices which are*



*based on the idea of the inferiority of women or on stereotyped roles for women and men.”* Consequently, states are called to indicate the specific actions they have realized in order to give effect to the obligation of prevention of gender-based violence. Specifically, States Parties are called to provide information on:

- campaigns and programs
- teaching material referring to issues such as equality between women and men, non-stereotyped gender roles, mutual respect, non-violent conflict resolution in interpersonal relationships and gender-based violence. (Article 14 par. 1)
- categories of professionals who receive relevant training ( Article 15)
- number of professionals per year who have benefitted from in-service training on violence against women
- details on action taken to set up or support programs for perpetrators of domestic violence (Article 16 par.1)
- specific information on programs that support victims of sexual assault (Article 16. par. 2)
- action taken to encourage the private sector, the information and communication technology (ICT) sector and the media, including social media, to participate in debunking gender stereotypes (Article 17)
- protocols or guidelines, for example, on how to deal with sexual harassment in the workplace and to raise awareness of human resource’s staff on issues of violence against women

### **III.a.iii.iii) PROTECTION AND SUPPORT**

As regards this thematic, States Parties are asked to provide information on the services that they have set up, which offer support, legal assistance and accommodation to women that have fallen victims of gender-based violence.

Specifically, states have to indicate:

- The establishment of financial and psychological support services, housing and education services, as well as legal counselling services.
- The appropriate health care and social services, as well as information on protocols and guidelines for staff assisting women victims
- Details on telephone helplines: 1. if they are statewide; 2. if they are free of charge; 3. if they operate round-the-clock (24/7); 4. how confidentiality and/or anonymity is ensured; 5. if those responding to calls have been trained on all forms of violence against women; and 6. the annual number of calls made to seek help for women victims.(Article 24)
- The establishment of programs of support to children witnesses of gender-based violence (Article 26)

### **III.a.iii.iv) SUBSTANTIVE LAW**

States are required to provide information on their legal framework, and specifically, they are asked to provide a compilation of extracts or summaries of the specific legislation addressing

gender-based violence. Predominantly, they must present all the relevant information on the criminalization of all forms of gender-based violence as described in the treaty, as well as on the imposition of administrative sanctions and on the existence of adequate legal remedies for the victims.

- As to civil law, states have to submit specific information on: civil remedies and compensation, both against the perpetrators and against state authorities which have failed to protect the victims or to prevent violence against women. What's more, it must be indicated how incidents of domestic violence are taken into consideration for the determination of custody and visitation of children, for the possibility of withdrawal of parental rights, as well as for the voidness, annulment and dissolution of forced marriages
- As to criminal law, it is required to indicate the criminalization of all forms of gender-based violence, as described in the Convention. For instance, psychological violence (Article 33) stalking (Article 34), female genital mutilation (Article 38) and rape, having due regard to the definition of consent under Article 36, paragraph 2.
- It must be also indicated the way in which internal law regulates punishment of aiding, abetting and attempt of the aforementioned actions, ensures that there is no justification or mitigating circumstances due to cultural, customary, religious, traditional or so-called honour reasons or due to relationship of the perpetrator to the victim and takes into consideration aggravating circumstances of Article 46.
- Finally, states have to provide on a yearly basis administrative and judicial data concerning cases either that resulted in death of women or amounted to attempted murder, as well as all other cases relating to violence against women

### **III.a.iii.v) INVESTIGATION, PROSECUTION, PROCEDURAL LAW, PROTECTIVE MEASURES**

Under this section, it is required from states to indicate the measures they have taken in order to:

- Ensure that the responsible law enforcement agencies will respond to victims immediately and appropriately
- Ensure that an assessment of the lethality risk and the seriousness of the situation will be conducted in order to provide safety and support to the victims
- Guarantee emergency barring orders ( the competent authorities, time needed for their emission, duration and other relevant information)
- Grant restraining or protection orders, specifying what relevant procedures exist, if they are at the reach of the victims, if fees are requested, the maximum time of their duration and the sanctions imposed in case of violation (including deprivation of liberty, fines, etc.)
- Provide victims with legal assistance free of charge
- Regulate the ex parte and ex officio proceedings, and the possibility of governmental and non-governmental organisations and domestic violence counsellors to assist

and/or support victims, at their request, during investigations and judicial proceedings

### **III.a.iii.vi) ASYLUM AND MIGRATION**

This thematic addresses the particular difficulties that migrant women face when they are victims of gender-based violence. In this regard States Parties are required to indicate:

- The way in which they grant residence permission to victims of violence against women (Article 59)
- The recognition by internal legislation of gender-based violence as a form of persecution for which asylum can be claimed within the meaning of Article 1, A (2), of the 1951 Refugee Convention.
- The number of women asylum has been granted on the aforementioned basis in comparison to those who claimed it.
- The steps that have been made in order to develop gender-sensitive reception procedures and support services for asylum-seekers, as well as gender-sensitive asylum procedures, including refugee status determination and application for international protection. (obligation of non-refoulement)
- In which way it is ensured that victims of gender-based violence whose asylum claims have been rejected are not returned to any country where their life would be at risk or where they might be subjected to ill treatment.

### **III.a.iv) The role of non-governmental organisations (NGOs)**

It is well known that NGOs offer legal assistance, medical care and psychological assistance, even accommodation and financial support to women victims of gender-based violence. Apart from that, their role in GREVIO's monitoring procedure is significant, too. The contribution of women's NGOs is crucial, provided that they consistently monitor whether States Parties comply with their obligations under the Convention, acting as "watchdogs" and providing an independent overview and assessment of the policies adopted for the elimination of gender-based violence. They gather information from various sources, such as other human rights NGOs, newspapers, examination of injuries and physical evidence, observation of trials and demonstrations. By gathering and disseminating information they try to draw the attention of the public and to raise the concerns of usually unheard voices.<sup>20</sup>

On the basis of **Article 68(5) of the Convention**, GREVIO reaches out to women non-governmental organizations asking for further information. GREVIO also recognizes the vital role that NGOs can play in the monitoring of the Convention in its Rules of Procedure. **According to Rule 35**, GREVIO may call non-governmental women organisations, national coalitions of organisations and national branches of international non-governmental organisations, to provide information, ensuring that the information received will be treated with confidentiality, unless a NGO requests confidentiality to be lifted. The reason why

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<sup>20</sup> Lina Marcinkutė, 2011, *THE ROLE OF HUMAN RIGHTS NGO'S: HUMAN RIGHTS DEFENDERS OR STATE SOVEREIGNTY DESTROYERS?*, BALTIC JOURNAL OF LAW & POLITICS VOLUME 4, NUMBER 2, p. 58

GREVIO does not indicate the NGOs from which it gathered information is to encourage them to maintain the objectivity of their remarks and to ensure their independence from governmental factors.

Information from NGOs is provided in form of “**shadow reports**” or “**alternative reports**”, which have apported reliable and valuable findings to GREVIO’s evaluation procedure. Moreover, information from NGOs can be offered at any time, even before the deadline set for the submission of the State Parties’ report. It would be particularly useful for NGOs, though, to prepare a joint report and share it with GREVIO, or to share information, comments, and data by the time the report of the State Party is submitted, as a reaction to this report. This input of nongovernmental organisations is of paramount importance, since it offers a measurement of comparison to GREVIO in order to assess the veracity of the report elaborated by the State Party.

What’s more, NGOs constitute a vital source of information during the evaluation procedures. During a **country visit**, they can meet with members of GREVIO’s delegation and offer relevant written information, data, and other evidence which may result useful. NGOs can also facilitate in site visits to places of relevance, like shelters for women victims of violence, as well as meetings with victims or with independent professionals of the field. Finally, after the publication of the recommendations and during the follow-up procedure, NGOs are also encouraged to submit information about the extent to which states take up activities in order to comply with the recommendations made.<sup>21</sup>

### ***But why is the involvement of the NGO’s so significant?***

To begin with, a very effective weapon of NGOs in protecting human rights is the “mobilization of shame” or the use of the so-called “**naming and shaming**” strategies. Information and records on infringements of the Convention can shame the governments into changing their behaviour, increasing their compliance with states’ international obligations. The use of the “naming and shaming” strategy can not only bring positive changes within the country, but it can also mobilize international public opinion. “Naming and shaming” may lead various states or intergovernmental organizations to take action, such as open criticism or diplomatic sanctions, against the state that committed a violation in order to make it change “the bad practice”.<sup>22</sup>

The most important contribution of NGOs, though, is that **they reveal situations that without their input would not have been disclosed**. It is of paramount importance to point out that, on various occasions, NGOs' reports have contradicted the information provided by states proving that some countries may lie about the real situation in their territory.

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<sup>21</sup>Sc.D. Natalija Petrić, Sc.M. Sabiha Husić, Irma Šiljak, 2018, *TOOLKIT FOR MONITORING IMPLEMENTATION OF THE COUNCIL OF EUROPE CONVENTION ON PREVENTING AND COMBATING VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE*, Banja Luka:Foundation United Women Banja Luka

<sup>22</sup> Lina Marcinkutė, 2011, *THE ROLE OF HUMAN RIGHTS NGO’S: HUMAN RIGHTS DEFENDERS OR STATE SOVEREIGNTY DESTROYERS?*, BALTIC JOURNAL OF LAW & POLITICS VOLUME 4, NUMBER 2, p. 58

***A striking example is the one of Poland:***

The Polish NGO “Association for Legal Intervention”, during the evaluation procedure of Poland, submitted a shadow report, which contradicts some of the statements and data of the Polish Government's report. According to the shadow report:

- Poland keeps detaining unlawfully migrant women survivors of gender-based violence.
- There is no autonomous residence permit for migrant women who are survivors of gender-based violence.
- Migrant women experiencing gender-based violence lack access to crisis intervention and basic support services.
- Polish authorities rarely recognize the fact that refugee women run the risk of falling victims of gender-based violence in their country of origin as a reason to grant international protection or cease deportation.<sup>23</sup>

Moreover, according to the shadow report of Amnesty International:

- The Polish law that defines domestic violence, includes physical, psychological and sexual violence, but it omits economic violence.
- The definition of rape in the Polish Criminal Code is narrower than the one provided in the Convention. What's more, in practice, the application of the relevant Polish provisions are implemented in an even more narrow way. For instance, in a 2013 Supreme Court judgment, it was ruled that, provided that rape is an act of brutal violence, the survivor must have resisted. In this way the Court focused not on the survivor's absence of consent, but rather on the degree of opposition or resistance, how that was communicated, and for how long.
- The reform of the Civil Procedure Code is insufficient, given that it does not provide for restraining orders that guarantee immediate protection on a permanent basis by the police, as it is required by Article 53 of the Convention<sup>24</sup>

In the case of Poland, the shadow reports submitted revealed facts that were not mentioned or were distorted in the report elaborated by the state. Therefore, it can be supported that without the NGOs' contribution, states would be given leeway to present only the facts that favours them in order to give GREVIO the impression that they act in accordance with the Convention, while in reality they remain inactive or they adopt insufficient or ineffective measures. The information given by NGOs seeks exactly to avoid such a situation, by presenting the current practices and policies of states aiming at the elimination of violence against women, as described in the Convention.

### **III.a.v) Recommendations and follow-up procedure**

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<sup>23</sup>Stowarzyszenie Interwencji Prawnej (Association for Legal Intervention), 2020, *Poland fails to comply with the Istanbul Convention* [online], Stowarzyszenie Interwencji Prawnej, Available at: <https://interwencjaprawna.pl/en/poland-fails-to-comply-with-the-istanbul-convention/>

<sup>24</sup>Amnesty International, 2020, *Poland: Shadow report on aspects of implementation of the Istanbul Convention* [online], amnesty.org, Available at <https://www.amnesty.org/en/documents/eur37/2739/2020/en/>

After the baseline evaluation, subsequent evaluation procedures are conducted, the main goal of which is to review whether the recommendations made by the Committee of the Parties have been taken into consideration by the State Party concerned. Practically, what is reviewed is whether the state has adopted them or taken measures towards the improvement/correction of its existing laws and practices according to the recommendations.

The subsequent evaluation shall be divided into rounds, the length of which, as well as the appropriate means to carry them out will be determined by GREVIO. At the beginning of each round, GREVIO shall select the specific provisions on which the evaluation procedure will be based and send out a relative questionnaire for the State Party to respond.

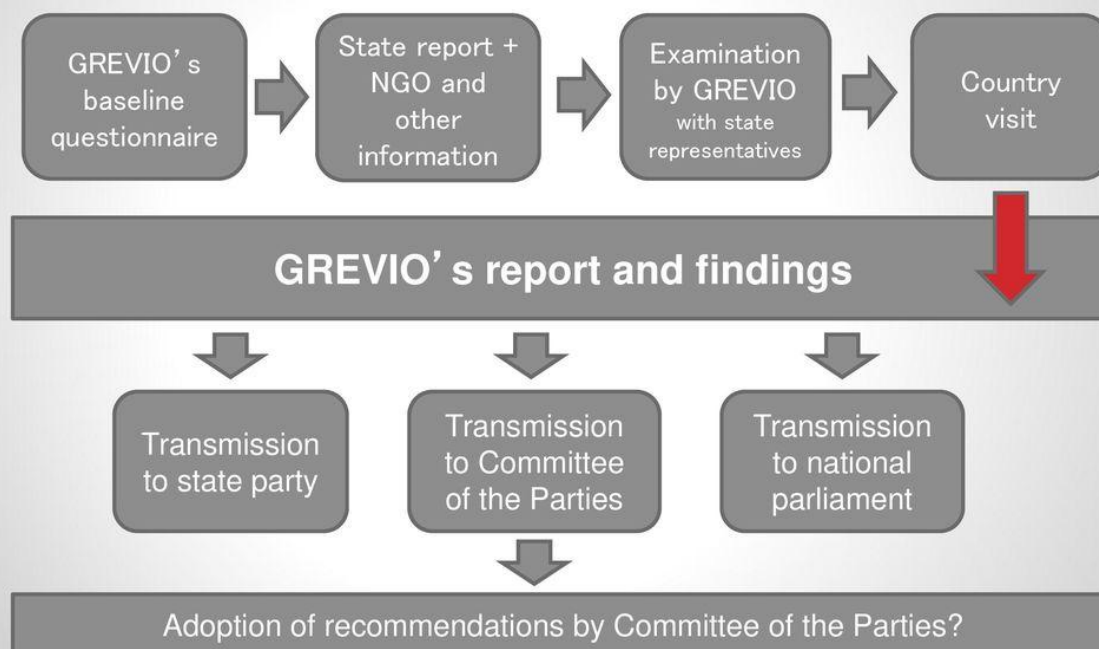
Since 2018, the Committee of the Parties has been adopting recommendations on the basis of GREVIO's reports and it has been addressing them to the States Parties in order to further the implementation of the Convention. States Parties are given a period of three years to implement the recommendations and report back to the Committee. On the basis of the information provided by states and any additional information obtained from non-governmental organisations, civil society and national institutions for the protection of human rights, the Committee adopts conclusions on the implementation of the recommendations. In its conclusions, it may welcome the progress achieved or encourage further action where necessary.<sup>25</sup>

To date, only four States Parties have reported back to the Committee of the Parties and, as a result, there is little data about the extent to which states actually comply with the recommendations. Nevertheless, the follow-up procedure is quite demanding and it tightens up states with a repetitive obligation of reporting on the measures taken in accordance with the recommendations. Due to this permanent pressure, which is exercised on states, it is expected that the follow-up procedure will achieve its compliance goal.

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<sup>25</sup>Council of Europe, *The Committee of the Parties adopts a framework for the supervision of its recommendations addressed to states parties* [online], coe.int, Available at: <https://www.coe.int/en/web/istanbul-convention/-/the-committee-of-the-parties-adopts-a-framework-for-the-supervision-of-its-recommendations-addressed-to-states-parties>

## FIRST EVALUATION PROCEDURE



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**Step 1 - Reporting to GREVIO and information gathering**

**Step 2 - Consideration of the state report in the context of an evaluation visit**

**Step 3 - Preparing the draft GREVIO report**

**Step 4 - Preparing and adopting the GREVIO report**

**Step 5 - Publication and dissemination of the GREVIO report**

**Step 6 - Follow-up to the GREVIO report<sup>26</sup>**

### III.b) The special inquiry procedure

The special inquiry procedure is established by Article 68 paragraph 13 & 14 & 15 of the Istanbul Convention, and it is regulated by Title III of Rules of the Procedure, as amended by GREVIO at its 12th meeting (Strasbourg, 9-13 October 2017). To begin with, this procedure may be initiated by GREVIO when there is reliable information indicating a special and urgent situation, which requires immediate attention in order to prevent a serious, massive or

<sup>26</sup>Council of Europe, *Istanbul Convention Action against violence against women and domestic violence, Steps in the first (baseline) evaluation procedure* [online], coe.int, Available at: <https://www.coe.int/en/web/istanbul-convention/steps-in-the-first-baseline-evaluation-procedure#%221392012%22:15>

persistent violation of the Convention.<sup>27</sup> Before GREVIO initiates the special inquiry procedure, it is first of all necessary to determine whether the situation indicates problems that require immediate attention, as well as to ascertain the reliability of the information received. GREVIO may also set up a working group for carrying out relevant duties.

In case that GREVIO concludes that the requirement of necessity of immediate attention is met, it may request within a specified time-limit the urgent submission of a special report by the State Party in question concerning the measures it has taken in order to prevent serious violations of the Convention.<sup>28</sup> Taking into account the relevant information at its disposal, GREVIO may designate one or more of its members to conduct an inquiry and to report back. Where it is warranted and after the state consents to it, the inquiry can include a country visit. The members of GREVIO which carry out the inquiry may also use any other appropriate means that can give them the necessary information so as to ascertain the facts of the specific situation. Such means are hearings, assistance of specialists of the field, as well as information from any other sources mentioned in Articles 35-38 of the Rules of Procedure. For instance, information may come from non-governmental organisations and national institutions for the protection of human rights, from other regional and international instruments and bodies, from the Council of Europe Commissioner for Human Rights, the Parliamentary Assembly etc.

The findings of the inquiry, after being examined by GREVIO, are transmitted to the State Party concerned and, where appropriate, to the Committee of the Parties and the Committee of Ministers of the Council of Europe, together with any comments and recommendations.<sup>29</sup> Moreover, GREVIO may set a specific period of time, at the end of which it will invite the state that has been subjected to the inquiry to report on any measures taken in compliance with the recommendations and the comments transmitted. The information gathered concerning the follow-up action taken by states shall be submitted to the Committee of the Parties, as well as to the Committee of Ministers of the Council of Europe and be made public, unless GREVIO decides otherwise.

### **III.c) GREVIO membership**

There is a general consensus on the fact that credibility, quality and success of a treaty body of an international treaty depends highly on the performance of its members. As to GREVIO's membership, which is governed by Article 66 of the Istanbul Convention, the following elements shall be stressed. First of all, GREVIO shall have between 10 and 15 members, which are required to be nationals of the States Parties to the Convention. Moreover, GREVIO's members' impartiality and independence in the exercise of their functions are two of the core principles of the Convention as set out in Article 66, paragraph 4

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<sup>27</sup>Council of Europe, *About Monitoring* [online], coe.int, Available at <https://www.coe.int/en/web/istanbul-convention/about-monitoring1>

<sup>28</sup> Françoise Brié, 2016, *General Introduction to the Istanbul Convention* [pdf], EuroMed Rights, Accessed by [https://euromedrights.org/wp-content/uploads/2016/03/I-PART\\_presentation-of-the-Convention\\_EN.pdf](https://euromedrights.org/wp-content/uploads/2016/03/I-PART_presentation-of-the-Convention_EN.pdf)

<sup>29</sup> Council of Europe, *About Monitoring* [online], coe.int, Available at <https://www.coe.int/en/web/istanbul-convention/about-monitoring1>



On 19 November 2014, the Committee of Ministers adopted the Resolution [CM/Res\(2014\)43 on rules of the election procedure of the members of the Group of Experts on Action against Violence against Women and Domestic Violence \(GREVIO\)](#).<sup>30</sup> According to this resolution, GREVIO's members shall be known for their recognised competence in the field of human rights and, specifically, on the subject matter of the Convention. The basic criteria that are taken into consideration in this regard are integrity, competence and publication record of the candidates, level of professional experience and language skills (English and/or French). Apart from being experts on matters of gender equality, GREVIO's members shall be independent and impartial. Thus, even though being a public servant does not exclude the possibility of GREVIO membership, individuals that hold decision-making positions as regards the issues covered by the Convention are not eligible. Additionally, GREVIO's members shall be available as to their time and capacity in order to participate in the meetings and the other activities of GREVIO. The aforementioned membership requirements set safety valves to the independence of GREVIO's procedures, as well as, to the quality of its work, both of which are indispensable in order for GREVIO's decisions to have enhanced legitimacy.

To continue with, regarding the composition of GREVIO, the parameters that shall be taken into account are the following:

- Gender is a parameter which is really significant to be duly considered, given both the long-lasting underrepresentation of women in human rights treaty bodies and the nature of the Convention. As to the inequality of the representation between genders, in 2015, the Secretary-General of the United Nations expressed concerns about the “stark gender imbalance” in treaty bodies’ membership. The Office of the High Commissioner for Human Rights’ progress report to the General Assembly in 2016 indicated that men were overrepresented in most treaty bodies, except for the Committee on the Elimination of Discrimination against Women. Given the fact that the Istanbul Convention concerns women’s rights, it would be at least ironic not to give due consideration to the inclusion of women in GREVIO, as they are the ones that are primarily concerned with the subject-matter of the Convention. Women’s participation in GREVIO is undoubtedly indispensable and their perspective counts importantly, provided that they have been experiencing during all their life-time the exposure to gender-based violence.
- Geographical balance is another parameter that shall be taken into account, in view of the need of having equal inputs in order to ensure an equilibrium among States Parties. This guarantee of equitable participation of experts from all the States Parties to the Convention encourages both its full and effective implementation and its

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<sup>30</sup>Council of Europe, *About GREVIO – Group of Experts on Action against Violence against Women and Domestic Violence* [online], coe.int, Available at <https://www.coe.int/en/web/istanbul-convention/grevio>  
In accordance with Article 66, paragraph 6, GREVIO adopted its Rules of Procedure at its first meeting held in Strasbourg from 21 to 23 September 2015, up to now they have been amended three times, in February and October 2017 and in February 2018

ratification by even more states. This happens because balanced geographical membership reaffirms the significance of national and regional particularities and historical backgrounds, as well as of different political, economic and legal systems, and it also creates a situation of equality and mutual respect among the parties of the Convention.

- Multidisciplinary expertise is of utmost importance, too. A multidisciplinary team approach brings professionals with different skills and expertise together in order to cope with all the aspects of the phenomenon of gender-based violence (sociological, legal, political, financial etc). The elimination of gender-based violence cannot be achieved only by mere legal reforms, given that it is a phenomenon deeply rooted in society and its the outcome of stereotypes, prejudices and, at the end of the day, of a whole system of oppression. Moreover, the economic situation of states plays an important role, as various of the obligations imposed by the Convention imply financial costs. For instance, shelters for women victims of gender-based violence and other assistance centers founded by the states entail various expenses that must be covered for their proper function. In line with what has been mentioned, professionals from various fields are indispensable, provided that violence against women and the measures that must be taken in order to eradicate it have, apart from legal implications, sociological and financial implications, too.

Finally, as far as the election procedure is concerned, States Parties to the Convention nominate candidates, while the members of GREVIO are elected by the Committee of the Parties by secret ballot. Even though no formal rules prescribe how the national selection procedure shall be carried out, each State Party shall ensure that the procedure is transparent and open to competition in order to lead to the nomination of the most qualified candidates. Nonetheless, even in the case that some elected GREVIO's members are not believed to be adequately expertised, the working methods of GREVIO offer an important safeguard in this regard, given that decisions are made by consensus. When the content of a matter that is debated needs to be agreed upon by everyone, biased, irrelevant or misinformed comments will be filtered out and the output of GREVIO's procedure will remain trustworthy.

In conclusion, the aforementioned rules, prerequisites and safeguards concerning GREVIO's membership, guarantee the independent expertise of GREVIO, which is necessary in order to ensure trustworthy and objective outputs, and to enhance the legitimacy of its decisions.



#### **IV. Developments registered in GREVIO's evaluation reports**

After analysing the stages of the monitoring procedures of the Istanbul Convention, as well as the independence and expertise of GREVIO's members, it is necessary to go on to the examination of the effectiveness of the system, in order to see whether, at the end of the day, the Convention attains the goals for which it was created.

The first question that must be answered in respect of the effectiveness of the monitoring system is what is even defined as "effective". According to the statement of the Secretariat of the OHCHR in 2006 the effectiveness of a treaty system must be assessed by the extent of national implementation of the relative convention.<sup>31</sup> Effectiveness is understood, first and foremost, in terms of the capacity of the monitoring system and the relative treaty body to induce States Parties to change their behaviour. It refers to 'the extent to which it requires states to depart from what they would have done in its absence'. Thus, it implies that there are 'changes in behaviour that otherwise would not have occurred'.

The Istanbul Convention is widely recognised as the most far-reaching and comprehensive legal instrument to prevent and combat violence against women and it has been awarded national and international prizes for its ground-breaking features and vision,

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<sup>31</sup>UNITED NATIONS International Human Rights Instruments 2006 ,Eighteenth meeting of chairpersons of the human rights treaty bodies,Fifth Inter-Committee Meeting of the human rights bodies, *CONCEPT PAPER ON THE HIGH COMMISSIONER'S PROPOSAL FOR A UNIFIED STANDING TREATY BODY*, UNITED NATIONS Report by the Secretariat, Geneva, 19-21 June 2006,

while it has also been proven to be an important driver to improve legislation and policies aligning national law and practice with its provisions.

More precisely, 19 out of 23 countries examined by GREVIO under the baseline evaluation procedure (83%) have improved **protection** services for women victims of violence and victims of domestic violence.<sup>32</sup> Several countries have increased their allocations to support services and set up or reinforced specialized support services, such as shelters for abused women and helplines. A notable example is Denmark, where centers for victims of sexual violence have been set up in regional hospitals, with free access to medical, psychological and legal assistance.

Moreover, the hard times of the COVID-19 pandemic and the unprecedented situation of confinement required new services which would be effective under these special circumstances. During the quarantine victims were obliged to be confined at home with their abusers all day long, thus, it was impossible for many of them to reach out to a telephonic helpline. That is why **special digital services were set up via web chats or apps in order to enable women to contact law enforcement units** without needing to use the telephone helplines. To set an example, in Spain and in France, women were informed through a campaign that a new alert mechanism that was enabling them to seek help in pharmacies was set up. Moreover, in Spain a new emergency mechanism was activated, which provided women victims of gender-based violence with the possibility of **sending an alert instant message with geolocation to the state's security forces**. A chat-system of instant messaging for psychological support was also available.

To continue with, as far as the prevention of violence against women is concerned, in 14 out of the 23 countries analysed and evaluated so far by GREVIO (61%), efforts to **prevent** violence have intensified, through awareness raising campaigns, 55 respective school programs and adequate training of professionals.<sup>33</sup> In this regard a very significant initiative was the one of the Portuguese authorities and, especially, of the **Commission for Citizenship and Gender Equality (CIG), which elaborated a comprehensive set of guides on gender and citizenship for all levels of education**. The issues that this set of guides touches upon are various, such as sexual and reproductive health, sexism and stereotypes and non-violent relationships. It also includes proposals on how to eliminate gender stereotypes and prevent gender-based discrimination at school. Finally, this initiative is accompanied by an extensive exercise of in-service training covering more than 150 schools and half of the continental municipalities.<sup>34</sup> Moreover, in France the Ministry of Culture set up a network of "persons responsible for the prevention of discrimination" for each higher education school in the field of culture, as well as in each public establishment, service and department of the ministry. This network is composed by officials who have been trained on how to promote gender

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<sup>32</sup>European Women's Lobby, 2020, *TOWARDS A EUROPE FREE FROM MALE VIOLENCE AGAINST WOMEN AND GIRLS Recommendations from the European Women's Lobby to end violence against women and girls in Europe once and for all.*- [pdf], Bruxelles: European Women's Lobby

<sup>33</sup>European Women's Lobby, 2020, *TOWARDS A EUROPE FREE FROM MALE VIOLENCE AGAINST WOMEN AND GIRLS Recommendations from the European Women's Lobby to end violence against women and girls in Europe once and for all.*- [pdf], Bruxelles: European Women's Lobby

<sup>34</sup>See GREVIO's baseline evaluation report on Portugal paragraphs 88-89.

equality and anti-discrimination policies and on how to prevent and handle sexual and gender-based violence and harassment.<sup>35</sup>

As to the training of professionals for the prevention of gender-based violence in Andorra, in-service training on the matter has become compulsory by law for all professionals who are directly or indirectly involved in detecting and preventing this kind of violence and assisting victims. Moreover, according to the same law, universities in Andorra must promote research on violence against women and ensure gender mainstreaming particularly in education for professionals and healthcare professionals.

As regards the progress made concerning the judicial proceedings, **new legislation that improves** investigations and prosecution has been enacted by 15 out of 23 countries analysed (65%).<sup>36</sup> The majority of States Parties to the Convention has established adequate mechanisms of risk assessment and early identification of victims. A recent example of this is a Romanian law that entered into force in 2019. This law introduced the possibility of issuing emergency protection orders and on the ground of this law 7,986 emergency protection orders had been issued by the end of the year. Furthermore, another well promising practice in this respect, is the fact that Swedish authorities consider violations of protection and barring orders as an offence of stalking (apart from subjecting the perpetrator to fines and imprisonment). The recent changes to the Swedish Non-Contact Order Act made breaches of non-contact orders with electronic monitoring a separate crime which is punished with a prison sentence of up to two years.<sup>37</sup>

Following, as to the progress registered regarding the **substantive law**, France has criminalised as sexual harassment, verbal and non-verbal conduct not only of a sexual nature, but also of a sexist nature (sexist insult). The offence of sexist insult differs from the sexual harassment by not requiring repetition of the facts. Practically, the introduction of “sexist insult” in the French criminal code enables the punishment of isolated incidents.<sup>38</sup> Moreover, in order to encompass acts of harassment committed on social networks (“digital raids”), the definition has been extended to verbal and non-verbal conducts imposed on the same victim by a plurality of individuals, acting either in isolation one from the other or together.

Another sterling example of promising practices has been the legislative reform of Sweden concerning rape. The new law is based upon the absence of consent and not upon the use of violence, threats or a particularly vulnerable situation or position of dependence, as the old one did. Sweden has also introduced the two new offences of "negligent rape" and "negligent sexual abuse", taking into consideration the fact that many rape cases had not resulted in a conviction due to lack of evidence or doubts about the intentions of the accused. The problems relating to evidence could be greater with the new law that does not require violence exercised by the perpetrator, provided that the absence of violence or inebriation of the injured party cannot be proven by documented physical injuries or measurements of

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<sup>35</sup> See GREVIO's baseline evaluation report on France paragraphs 99-101.

<sup>36</sup>European Women's Lobby, 2020, *TOWARDS A EUROPE FREE FROM MALE VIOLENCE AGAINST WOMEN AND GIRLS Recommendations from the European Women's Lobby to end violence against women and girls in Europe once and for all.*- [pdf], Bruxelles: European Women's Lobby

<sup>37</sup> See GREVIO's baseline evaluation report on Sweden, paragraph 221.

<sup>38</sup> See GREVIO's baseline evaluation report on France, paragraph 203.

alcohol consumed. Moreover, it could result too difficult for the court to assess whether the accused 1) understood that the injured party was unwilling to have sex or that there was a great risk that this was the case, and he remained indifferent towards that risk (reckless intent) or 2) understood that there was a risk of that being the case (negligent rape).<sup>39</sup> Given that in many cases it is too hard to distinguish between the reckless intent and the negligent rape, the new offence covers situations where the court cannot reach certainty about the perpetrator's intentions. One positive consequence of this change to the law, which has been identified by professions who work with victims of sexual assault, is that they are now less likely to be subjected to victim-blaming practices and, as a result, this development encourages victims to report the crime seeking legal redress.<sup>40</sup>

Regarding more recent developments in States Parties' legislation, Italy approved the **so-called Code Red (Codice Rosso) in 2019, which punishes revenge porn precisely because it constitutes psychological violence** and Denmark recently passed reforms recognizing sex without consent as rape, on the grounds of Istanbul Convention listed among others, whereas previously the respective Danish law required proof of violence, threat or evidence that the victim was unable to fend off the assault. France, for its part, launched a push for "feminist diplomacy" meaning the promotion of values and good practices in order to achieve gender equality through diplomatic relations.<sup>41</sup> Last but not least, in North Macedonia, a new law that defines all forms of violence against women has been also adopted. This law offers a fully-fledged protection of victims, as it includes provisions for SOS helplines, psycho-social counselling, free legal assistance, temporary shelters and long-term treatment for women who have suffered sexual violence and rape. It also regulates the socio-economic integration of survivors through assistance adapted to each woman's needs.

The developments depicted above show the positive and tangible changes made by States Parties in order to align with the Istanbul Convention's four pillars. Notably, the transposition of these pillars into national law leads to better protection and support of women and girls survivors of male violence and holds the perpetrators accountable for their violent behaviour. These improvements in states' practices, policies and legislation, many of which have been made in just a short amount of time upon ratifying the Istanbul Convention, shows the real potential of the Convention in closing gender inequality gaps and in ending gender-based violence across states which are bound by it.

Nevertheless, despite the achievements which have been registered thanks to the Convention there are still various shortcomings that prevent countries from meeting the standards set out in it. In the baseline evaluation reports of GREVIO there have been spotted important fields in which states have not taken the measures required in order to fully comply

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<sup>39</sup> Swedish National Council for Crime Prevention (Brå), 2020, *The New Consent Law in Practice an Updated Review of the Changes in 2018 to the Legal Rules Concerning Rape*, p. 8

<sup>40</sup> Swedish National Council for Crime Prevention (Brå), 2020, *The New Consent Law in Practice an Updated Review of the Changes in 2018 to the Legal Rules Concerning Rape*, p. 8

<sup>41</sup> Simone Santi, 2021, *10 things you need to know about the Istanbul Convention on violence against women* [online], LIFE GATE, Available at <https://www.lifegate.com/istanbul-convention-10-years>

with the provisions of the Convention. For instance, victim blaming attitudes are still persistent in the majority of States Parties, particularly in cases of sexual violence, in which women victims are often treated with certain suspicion as to whether or not they had given their consent to the action. The various insufficiencies and omissions regarding the implementation of the Convention need to be offset in order to achieve its goals, which are the eradication of gender-based violence and the substantial equality of women and men.

First of all, **as far as the education on non-stereotyped gender roles, equality and gender-based violence is concerned (Article 14)**, GREVIO in its evaluation reports has spotted important failures, even from countries that are considered to have a high-quality educational system, like Sweden. The problem of gender stereotypes in Swedish education, primarily, has to do with “honour-related violence” and “honour-based” value systems and their implications for women. This issue is presented at schools as something completely foreign-bred and existent only among non-ethnic Swedish. Moreover, in schools the efforts to identify children that have been victims of domestic violence focus exclusively on migrants and particularly on their membership to the migrant community.<sup>42</sup> In this way migrant communities are **stigmatised and their** integration in Swedish society is hindered,<sup>43</sup> while the children who actually face situations of violence at home, either as victims or as witnesses, are not identified.

Another country where gender stereotypes persist in education is Turkey. In the evaluation report of Turkey, GREVIO stressed the need to ensure that teaching material both in private and public schools does not convey stereotypes regarding gender roles, as well as it pointed out the necessity to closely monitor the way in which teachers approach issues of gender equality and violence against women. According to paragraph 43(a) of CEDAW’s Concluding Observations on Turkey’s seventh period report, in some textbooks women are portrayed as mothers and housewives, while men feature as active participants in economic and public life.<sup>44</sup> Those stereotypes need to be eradicated from education and to be replaced by images and texts that convey messages of equality and mutual respect in order to reach a society without gender-based prejudices and violence. In addition, it is of paramount importance to incorporate, strengthen or review teaching on physical, sexual, psychological and economic gender-based violence at all levels of education, with a view to prevent violence against women, as GREVIO has stressed in various occasions.

To continue with, regarding the shortcomings in **the protection of victims**, many States Parties have failed to establish sufficient and effective **sexual violence referral centers**. It is notable the fact that apart from Denmark, no other State Party that has been evaluated by GREVIO meets the standard of one rape crisis or sexual violence referral center per 200,000 inhabitants.<sup>45</sup> **In some countries there were found no rape crisis centers at all.** While in others, their number was insufficient to guarantee accessibility and coverage to all

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<sup>42</sup>See GREVIO's baseline evaluation report on Sweden, paragraph 87.

<sup>43</sup>Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), 2021, *Mid-term Horizontal Review of GREVIO baseline evaluation reports*, p. 60

<sup>44</sup>See GREVIO's baseline evaluation reports on Turkey, paragraph 111

<sup>45</sup>Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), 2021, *Mid-term Horizontal Review of GREVIO baseline evaluation reports*, p. 97

women victims of sexual violence. Moreover, although medical care and forensic examinations were found to be conducted in all states evaluated, there have been identified insufficiencies regarding the training of professionals and lack of standardised protocols and guidelines on treatment and care of victims.

What is more, in some States Parties victims have been found to be subjected to personal financial burden, a practice that sets an obstacle to women's access to justice. For example, in Serbia, outside of the Autonomous Province of Vojvodina, victims rely on non-specialist examiners for forensic evidence, while for certificates from forensic examiners they are obliged to pay a certain fee.<sup>46</sup> Furthermore, in the Netherlands, given that medical health services are funded by insurance, victims are usually required to pay a personal contribution (even though the taking of forensic evidence is free of charge).<sup>47</sup> This financial burden may discourage women from seeking justice, help and support, provided that not all of them are able to afford it.

**Moreover, telephone helplines** for victims of gender-based violence have also been found to have various defaults and deficiencies in their function. GREVIO has observed that telephone helplines set up in Albania, Monaco, Portugal, and Turkey either did not meet the standards provided under the Convention or were not fully operational. The two main problems observed are that in some cases they do not work round the clock (such as in Monaco and in Albania) and they are not directed specifically to women victims of gender-based violence, rather they are advertised as dedicated to victims of domestic violence with a gender neutral approach (in Portugal and in Turkey). Regarding the time-deficiencies, in Albania the national women's helpline had not been available 24 hours a day until November 2016 due to limitations in funding. To meet the standards of the Convention, a new helpline that operates 24/7 in terms of round-the-clock accessibility was established by the state. However, although this hotline is designed to serve all victims of gender-based violence, it tends to be advertised as being dedicated only or mainly to victims of domestic violence. Standards of professionalism though require the pertinent staff to be trained not only on issues related to domestic violence but equally on the specificities of other forms of violence against women, such as sexual violence, forced marriages and forced abortions.<sup>48</sup>

Furthermore, as regards the content of the **substantive laws** enacted with a view to eradicate violence against women, in some States Parties **gender-neutral** provisions still remain in national legislation. In Albania and Denmark, the gender-neutral approach of legal provisions and policies has been severely criticized by GREVIO, as it has been proved to be ineffective for the elimination of violence against women. In Albanian legislation, domestic violence is categorised amongst the criminal acts "against children, marriage and family", while the aim of the provision is to "guarantee protection to members of the family who are subject to domestic violence, paying particular attention to needs of children, the elderly and the disabled". This provision fails to address the fact that domestic violence is committed disproportionately by men against women, keeping the latter in a subordinate position.

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<sup>46</sup> See GREVIO's baseline evaluation report on Serbia, paragraph 142

<sup>47</sup> See GREVIO's baseline evaluation report on the Netherlands, paragraph 170

<sup>48</sup> See GREVIO's baseline evaluation report on Albania, paragraph 107, p. 40.



Moreover, the national action plans adopted by Denmark operate on concepts such as “family violence” or “violence in intimate relations”, making some reference to women’s over-exposure to such violence compared to that of men. More specifically, the “National Action Plan to combat violence in family and in intimate relations” recognizes that women are primarily affected by domestic violence both in percentages and level of severity. However, the initiatives taken do not set gender-based violence as a central concept and as a phenomenon that is caused due to inequality between women and men. Therefore, they are not fully in conformity with the provisions of the Convention which requires a gender-focused approach of the measures taken for the elimination of violence against women.

In addition, one more very striking finding of GREVIO in respect of the States Parties’ legislation is that in countries where **abortion is penalised**, the case of sexual violence does not constitute an exception that permits women victims to terminate their pregnancy. As a consequence of the penalization of abortion even in case of rape in Andorra and Malta,<sup>49</sup> women victims of sexual violence face many risks relating to their sexual and reproductive health such as stillbirths, obstetric complications, and recourse to non-medical abortion practices. Apart from those health related risks, the prohibition of abortion, in case of sexual violence, has been considered by GREVIO as an attack on the right to self-determination of women, given that perpetrators control their ability to make autonomous choices on reproduction, while women victims are not given this choice. Under these circumstances the perpetrators may prevent contraception and force women to carry an unwanted pregnancy to term. That’s why, GREVIO expressed concerns about the compliance of absolute prohibition of abortion with Article 25 of the Convention, although the Convention does not provide for a state’s duty to legalize abortions. Taking also into account that in some countries abortion remains a taboo, which can lead to stigmatization of women who look for help in order to terminate their pregnancy, GREVIO expressed its concern about the fact that this fear of social exclusion, together with the fear of prosecution, may discourage women from seeking the necessary support services, including psychological support. Therefore, it urged the authorities of the States Parties to guarantee that all victims of sexual violence will have access to specialist support services and to long-term psychological support, ensuring that “the reproductive choices of women victims of rape will not constitute a barrier to their access”.<sup>50</sup> In this way, GREVIO implied that states need to respect women's choice not to continue with the pregnancy, by giving them the possibility of interrupting the gestation, at least in case of rape.

To continue with, as far as criminal laws that provide for the constituent elements of **sexual violence and rape** are concerned, in many cases they do not fully comply with Article 36 of the Convention and, as a result, they do not offer effective protection to victims. A significant number of States Parties, notably, Albania, Andorra, Finland, France, Italy, Monaco, the Netherlands, Serbia, set as constituent elements of the crime of rape, the use of

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<sup>49</sup> See GREVIO’s baseline evaluation reports on Andorra, paragraphs 124-128; and Malta, paragraphs 127-130

<sup>50</sup> Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), 2021, *Mid-term Horizontal Review of GREVIO baseline evaluation reports*, p. 100

violence, coercion, compulsion, threat, intimidation or a state or situation of the victim which makes her incapable of resisting. GREVIO has observed that those requirements do not fully reflect the reality of women experiencing sexual violence. Their actual reactions include flight, fight, freeze, flop or befriend. Research on the neurobiology of sexual trauma shows that “freezing” (so-called “tonic immobility”) is a usual reaction of women who fall victims of sexual violence and it is followed by post-traumatic stress disorder (PTSD) and severe depression.<sup>51</sup> Therefore, the aforementioned constituent elements of the crime of rape and the case-by-case assessment of the evidence in order to deduce whether or not the victim has freely consented, do not offer sufficient judicial protection to victims and fail to guarantee the punishment of perpetrators.<sup>52</sup> GREVIO has, therefore, strongly encouraged the relevant States Parties to amend their legislation on sexual violence, in order to align it with Article 36 of the Convention, according to which consent must be given voluntarily as a result of the person’s free will.

As regards **the procedural law and the respective protective measure**, the use of **emergency barring orders (EBOs)** has been noticed to be scarce and to require very high-standards of danger. The aim of these orders is to ensure physical distance between victims and perpetrators by removing the perpetrator instead of taking out of the house the victims and their children. The protection of women victims' right to remain safe in their own homes is undermined when EBOs are used infrequently in practice.<sup>53</sup> Therefore, the requirement of very high standards of danger renders EBOs practically incapable of fulfilling their protective function and is not in compliance with Article 52 of the Convention. According to the aforementioned article, the expulsion of the man from the house does not require a very high threshold of danger to be met, rather emergency barring orders need to be issued in cases of immediate danger. Thus, EBO’S should be issued not only in cases where there is risk of murder or very serious violence, as it happens in Finland among other countries,<sup>54</sup> but also in less grave manifestations of violence. What is more, emergency barring orders shall be available ex officio as a part of the state’s obligation to prevent any act of violence committed by non-state actors. Additionally, some further important shortcomings concerning EBO’s are the following. During the baseline evaluation report of Denmark very low use of EBOs was noticed, due to the fact that the police usually just warns the perpetrators or accepts their offers to leave voluntarily or depends the issuance of the EBO on the will of the victim.<sup>55</sup> Relevant insufficiencies have been observed in other countries, too. In

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<sup>51</sup> See GREVIO’s baseline evaluation reports on Spain, paragraph 221, including its footnote 110, that states that: “Research studies show that a substantial number of victims do not resist the perpetrator in any way: tonic immobility is described as an involuntary, temporary state of motor inhibition in response to situations involving intense fear. In various studies, significant immobility was reported by 37% to 52% of sexual assault victims”. See Moller A., Sondergaard H. P. and Helstrom L, 2017, “Tonic immobility during sexual assault – a common reaction predicting post-traumatic stress disorder and severe depression”, *Acta Obstetrica et Gynecologica Scandinaevica*, 2017; 96: pp. 932-938

<sup>52</sup> Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), 2021, *Mid-term Horizontal Review of GREVIO baseline evaluation reports*, p. 126

<sup>53</sup> Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), 2021, *Mid-term Horizontal Review of GREVIO baseline evaluation reports*, p. 158

<sup>54</sup> See GREVIO’s baseline evaluation report on Finland, paragraph 221.

<sup>55</sup> See GREVIO’s baseline evaluation report on Denmark, paragraph 207

respect of Sweden,<sup>56</sup> police authorities tend to use other measures, such as taking victims to a protected address, while in Albania and in Turkey authorities tend to rely the issuance of the emergency orders on the statements of the victims.<sup>57</sup> In view of the aforementioned states' defaults, GREVIO has repeatedly urged states to ensure that law enforcement authorities make pro-active use of their authority to issue protective orders when a victim is in immediate danger, irrespectively of other factors, like the willingness of the perpetrator to leave or the statements of the victim.

Finally, it is worth mentioning that delayed or insufficient police responses have been attributed to **lack of training of law enforcement officers**. In the practice of various states there have been observed lack of understanding of the gender dimension of violence, as well as entrenched stereotypes and patriarchal attitudes. First of all, in Turkey, GREVIO highlighted the fact that behaviours of victim-blaming were evident especially in cases of sexual violence in which law-enforcement officers were improperly influenced by prejudices and assumptions that victims had consented to sexual activity. Moreover, in the baseline evaluation reports on Italy, Malta, and Turkey, it was also noted that such attitudes lead police officers to treat multiple disputes between couples as “a private matter”, “family quarrel” and to limit themselves to “reconcile” the couple, without recording the incidents and protecting the victim. Such a gender neutral approach has long-term consequences for women, because they remain unable to report cases of violence, and it also puts in risk their safety as well as the safety of their children. By diluting the severity of violence to a domestic dispute, the expectation to resolve the issue with their abusive partner is placed on women, and it leads them to re-traumatisation.

Last but not least, as observed in Montenegro and Turkey, officials sought justifications either in the victim's behaviour (provocation) or in that of the perpetrator (substance abuse, mental illness, poverty). This kind of practices lead to wrong assumptions regarding the cause of violence, as well as to the denial of basic human rights of women, such as the protection of their right to life and physical integrity. Therefore, they run counter to the due diligence obligation to prevent, investigate, punish and provide reparation for acts of violence covered by the scope of the Istanbul Convention.<sup>58</sup>

Consequently, the need to introduce or step up the provision of mandatory initial and in-service trainings for professionals who deal with victims or perpetrators of all forms of violence covered by the scope of the Convention, is highlighted in the majority of baseline evaluation reports, including those on Belgium, Denmark, Finland, France, Italy, Malta, Montenegro, the Netherlands, Portugal, Serbia, Spain, Sweden, and Turkey. For instance, according to the baseline evaluation report on Belgium, GREVIO strongly encouraged authorities to set the following objectives:

- compulsory training for police officers and guidelines on the reception of women victims of violence
- compulsory training for judges and prosecutors

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<sup>56</sup> See GREVIO's baseline evaluation report on Sweden, paragraphs 223-334

<sup>57</sup> See GREVIO's baseline evaluation reports on: Albania, paragraph 188(c); and Turkey, paragraph 300

<sup>58</sup> See GREVIO's baseline evaluation report on Montenegro, paragraph 211.

- even in the health sector, including psychological care, compulsory training of relevant professionals<sup>59</sup>

Some more specialised guidelines were given by GREVIO in its baseline evaluation report on Italy where, it encouraged the Italian authorities among others to:

- ensure that all law-enforcement officials who might enter into contact with victims receive continuous training on violence against women
- ensure that professionals involved in the assessment of situations of violence affecting migrant women, such as law-enforcement agencies, lawyers and social services, have access to training which enhances their understanding of gender-based violence
- strengthen the training for staff operating in initial landing settings, hotspots and reception facilities<sup>60</sup> in order to protect asylum-seeking women victims of gender-based violence, including female genital mutilation.

Given that the lack of specialisation of law enforcement officers can rout cases of violence against women out of the criminal justice system, GREVIO has called upon States Parties to train law enforcement officers in order to respond promptly, swiftly and appropriately to cases of any form of gender-based violence against women. The special training may include practical steps such as on-the-job training and mentoring schemes to combat persisting attitudes, beliefs and inappropriate practices that leave women unprotected at the disposal of the victimary.<sup>61</sup>

The aforementioned data were all extracted from the baseline evaluations reports of GREVIO and they indicate the extent to which States Parties have complied with their obligations under the Istanbul Convention. The various defaults that have been registered in the baseline evaluation reports have to be corrected in order for the objectives of the Convention not to stay just on paper. To this end, the tools that the monitoring system disposes of are:

- The Evaluation Reports, which, on the one hand, make an evaluation of the action that the state in question has taken so far, and, on the other hand, include specific proposals on the measures that the state shall take in order to bring its practices and legislation in compliance with the Convention.
- The Recommendations made by the Committee of the Parties, which indicate certain steps that the state shall proceed to in order to reach the purposes of the Convention to protect women against all forms of violence, and prevent, prosecute and eliminate violence against women and domestic violence, as well as to promote substantive equality between women and men, including by empowering women.
- The subsequent follow-up procedure during which specific recommendations that require immediate attention are selected by GREVIO, and the state is required to submit to the Committee information on the measures taken in order to implement those recommendations.

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<sup>59</sup> See GREVIO's baseline evaluation reports on Belgium, paragraph 84

<sup>60</sup> See GREVIO's baseline evaluation reports on Italy, paragraph 107

<sup>61</sup> Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), 2021, *Mid-term Horizontal Review of GREVIO baseline evaluation reports*, p. 150

The concern that arises both from the subsequent evaluation rounds and the baseline evaluation procedure is that no enforcement mechanism is in place in order to oblige states to comply with GREVIO's proposals, the Committee's recommendations and at the end of the day with the Convention. The publicizing of the evaluation reports, the answers of the states and the recommendations addressed to the states, together with the request to report back to the Committee within three years, exercise a certain degree of political pressure onto the states, given that they may be exposed to international criticism and they may receive consequences that resemble those of the “name and shame strategy” followed by NGOs. In fact, in the absence of legally enforceable rules, it is worthwhile to consider “naming and shaming” as one of the key strategies for penalizing noncompliance of states. Exposure may affect states' behaviour through social pressure and reputational concerns, even without direct enforcement. Nevertheless, the lack of enforcement mechanisms puts in doubt the final compliance of states, provided that no sanction awaits them in case that they fail to comply with the provisions of the Convention. As a result, states practically lack sufficient incentives to comply with the Convention. In large part, it is left to their “good will” to improve their existing practices and policies in the field of gender-based violence. Consequently, even though the Convention is a legally binding instrument, the absence of enforceable rules makes it resemble -in practical terms- to instruments of soft law, where states voluntarily proceed to certain actions.



#### **V. Effectiveness of states' reports**

According to the Secretariat of the Office of the High Commissioner for Human Rights (OHCHR): “Governments frequently pay insufficient attention to the recommendations adopted by the treaty bodies, and lack of awareness or knowledge among national constituencies about the monitoring procedures and their recommendations, renders

these invisible at the national level.” Therefore, the evaluation procedures based on recommendations and subsequent review of them are rarely perceived as an accessible and effective mechanism to bring about change.

Reports are usually considered to be a tool of cooperation, not one of actual monitoring, given that states remain in control of the procedure and they are free to decide the aspect of the existing situation that they will present, as well as which information they will submit to the oversight committees and in which form. The overall sovereignty-sensitive nature of state reporting obligation is probably the reason why it is widely accepted, and states have a positive attitude towards it, providing it with a powerful *raison d'être*. However, this sensitive nature is also the root cause of its dysfunctionality. The power to essentially choose the information for consideration obviously comes with a possibility of abusing this power, which may lead to reports of insufficient quality or to reports that contain nebulous or selective information. Nevertheless, under the Istanbul Convention the information and data that states are obliged to provide are extremely specified in the questionnaire, while the additional information submitted by NGOs, public institutions and other sources, contributes to the formulation of a more objective and comprehensive view about the extent to which the country implements the Convention.

Another problematic point of this procedure is the fact that, when it comes to late reporting or not submitting a report at all, the breach of the reporting obligation is without sanction. Nonetheless, in this case GREVIO resorts to other sources of information in order to find out what is going on in the state that delays or refuses to submit its report. More specifically, as it has been previously mentioned it may resort to non-governmental organisations and other civil society actors, as well as national institutions for the protection of human rights, regional and international instruments and bodies, the Council of Europe Commissioner for Human Rights and the Parliamentary Assembly, or it may conduct a country visit.

### ***The Benefits of State Reporting for the Protection of Human Rights***

One could ask why a system that apparently is not the most functional one has been upheld and selected by the drafters of Istanbul Convention?

There are actually some quite good arguments in support of the state reporting system. Firstly, it is the only instrument which with the ratification of a convention becomes immediately compulsory for the state party. It constitutes an essential part of a human rights treaty, as it offers a minimum protection level of the human rights enshrined in it, and, consequently, states cannot effectively avoid undertaking the reporting obligation once they are bound by an international treaty. In other words, the effective enjoyment of human rights is inseparably linked to a minimum oversight which is provided by the reporting obligation. In contrast, for other instruments of human rights protection, such as human rights courts or complaint mechanisms, it is required the additional consent of the state.

Secondly, state reporting has a preventive function, given that the constant review of the situation in states enables not only the oversight treaty body to find out signs of a system failure or systematic human rights violations, but also permits the state party to re-evaluate its

own action and to gradually improve it. Other procedures, such as the individual complaint procedures in front of human rights bodies, are only initiated after a human right is violated, a rather undesirable situation which is not a requirement for the monitoring of a convention by states' reports.<sup>62</sup>

### ***The enhanced effectiveness of GREVIO reports in comparison to CEDAW's Committee***

An observation of paramount importance which we pass to analyze is that, despite the general flexibility and the lack of enforceability by which state reporting is characterized, the reporting procedure under the Istanbul Convention is much more detailed in comparison to those of other international human rights treaties, as well as in comparison to the one of CEDAW. Taking as parameter of comparison CEDAW seems opportune, given that CEDAW's Committee was the primary human rights body which was monitoring the responses of states as to the matter of violence against women, prior to the ratification of Istanbul Convention. One of the most apparent differences between the monitoring procedure of CEDAW and the one of the Istanbul Convention relates to the level of details required when a State Party elaborates its report. Completing the questionnaire requires a detailed analysis by the state, given that it is requested to provide explicit and thorough information on each and every provision of the Istanbul Convention, as well as relevant data that prove the reduction of percentages of gender-based violence. That is why, the reports which have been submitted to GREVIO offer an extremely in-depth analysis of states' action. Therefore, reporting to GREVIO requires that the state in question undertake a much more considered self-assessment on its response to violence against women and to the existing lack of gender equality, than it does reporting to the CEDAW's Committee.

Moreover, the evaluation reports elaborated by GREVIO offer far more in-depth assessments of the measures taken by states, than the Concluding Observations issued by the CEDAW's Committee do. This happens because the full Concluding Observations documents address numerous issues, while the reports of GREVIO focus only on the specific issue of violence against women.

Another notable element of GREVIO's reporting procedure is that GREVIO does not stay at the level of a dialogue with the states' representatives, like the CEDAW's Committee, but it may as well conduct a country visit in order to get a fuller picture of what is happening in the state under evaluation. Furthermore, the fact that the Committee of the Parties is composed of representatives of the States Parties to the Istanbul Convention may also serve to place additional pressure on states in order to make them comply with the recommendations issued by it, more so than if they were simply made by GREVIO without further authorisation by any additional body.

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<sup>62</sup>Dr. Jule Giegling, 2020, *A Little Less Conversation, a Little More Action Please – State Reporting and the Treaty Body Review 2020* [online], Opinio Juris, Available at <http://opiniojuris.org/2020/11/27/a-little-less-conversation-a-little-more-action-please-state-reporting-and-the-treaty-body-review-2020/>

However, while GREVIO's procedure clearly holds many advantages, it is very time-consuming both for GREVIO and the state under evaluation. As a result, the timetable adopted for completing the initial round of reporting is somewhat protracted and, consequently, an important number of states are requested to submit their first report after being parties to the Convention for a substantial period of time. For example, although Malta ratified the Convention in July 2014, it was not required to submit a report until September 2019, more than five years later. By comparison, all States Parties to CEDAW are required to submit an initial report within two years from ratifying this instrument.<sup>63</sup> Nevertheless, this "disadvantage" of the reporting procedure's long duration can be seen from a positive viewpoint, given that it prevents backlogs of reports which constitute a huge problem for many UN human rights treaties' monitoring bodies.

In conclusion, despite the positive aspect that state reporting has, it can be held that it is somehow frustrating to have this whole procedure being crowned with the absolute minimum expectation of a baseline evaluation report and recommendations as the most appropriate solution. Nevertheless, the state reporting of the Istanbul Convention exercises important pressure on States Parties and it could also potentially set a paradigm that may assist in reducing the implementation difficulties which constitute such a problem for various UN human rights treaties.

## **VI. Effectiveness of the recommendations and the follow-up procedure**

As it has already been mentioned, effectiveness has to do with changes in the behaviour of states which, without the monitoring procedure of an international convention, would not have occurred. Moreover, effectiveness must be distinguished from "compliance" which is defined as "a state of conformity or identity between an actor's behaviour and a specified rule". Full compliance may not be achieved, even though a state has taken subsequent measures to address a specific issue, while, there may be a behaviour that is simply in line with an international convention, without concluding observations or recommendations having had any role whatsoever in policies' decisions.<sup>64</sup> On the contrary, the concept of effectiveness is associated with the relation between the monitoring procedure and the states' behavioural change. Given the fact that recommendations and concluding observations lack enforceability, treaty bodies that issue them need to have a high level of legitimacy, in order for states to take them into account. Legitimacy is practically defined as a "a property of a rule or rule-making institution which itself exerts a pull towards compliance on those addressed normatively because those addressed believe that the rule or institution has come into being and operates in accordance with generally accepted principles of right process".<sup>65</sup>

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<sup>63</sup> Dr Ronagh McQuigg, 2021, *The Istanbul Convention – Ten Years On*, *Queen's Policy Engagement* [online], qppl, Available at : <http://qppl.qub.ac.uk/>

<sup>64</sup> Compliance, thus, does not necessarily give a hint about the role or relative weight of the monitoring procedure of a specific convention or treaty, because there are also other factors or norms that could have contributed to it.

<sup>65</sup> Michael Banton, 2009, *Decision-Taking in the Committee on the Elimination of Racial Discrimination*, Cambridge University Press, pp 55-78



The starting point for the research on the effectiveness of the Istanbul Convention's follow-up procedure is, as it has been already mentioned, the fact that recommendations are legally speaking non-binding. Thus, the Committee of the Parties that follows up the implementation of the recommendations lacks instruments that enforce compliance. Consequently, what remains crucial for the effectiveness of the recommendations is legitimacy, meaning the subjective perception and belief of governments that they have to act upon them. It is important to point out that this is an especially crucial factor when institutions lack coercive means, given that "legitimacy is the missing link-in solving the mystery of how the international system obliges without a coercive force".<sup>66</sup>

As the Committee of the Parties is the body that issues recommendations under the Istanbul Convention, we pass to examine certain elements that foster the legitimacy of its output. First of all, the Committee is composed of representatives of the States Parties to the Istanbul Convention. The fact that the representatives express their state parties' voice in the Committee places additional pressure on states in order to make them comply with the recommendations issued by it, in comparison to a hypothetical elaboration of them by GREVIO. Therefore, the composition of the Committee contributes, to an important extent, to reducing the implementation difficulties which constitute a significant problem for various international human rights treaties.

In addition, the Committee of the Parties is constituted by high-skilled experts, given that Rule 2 of the Procedure provides that States Parties to the Convention shall endeavour to nominate, as their representatives, experts of the highest possible rank in the field of preventing and combating violence against women and domestic violence, which shall also have a thorough knowledge of the Convention.<sup>67</sup> Setting such high standards for the members of the Committee, serves as a safeguard for the reliable review of States Parties' practices. Moreover, the selection of actually eminent experts of the field is first and foremost, a matter of prestige for a state, given that a non-adequately qualified representative would expose the state to severe criticism. The high qualification of the members of the Committee also convinces states about the necessity of their compliance with the recommendations, as it guarantees that the measures recommended are able to give holistic and comprehensive responses to violence against women.

Regarding the procedure which is followed for the Committee's meetings, as a general rule, the Committee meets in camera, while an exception can be made in case that it decides otherwise. In this way, the transparency of its procedure is maintained, while an opt-out choice is available in order to ensure credentiality and privacy when it is necessary.

To continue with, it is of paramount importance the fact that the Committee does not

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<sup>66</sup> Michael Banton, 2009, *Decision-Taking in the Committee on the Elimination of Racial Discrimination*, Cambridge University Press, pp 55-78

<sup>67</sup> Rules of Procedure of the Committee of the Parties, Committee of the Parties, Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), Strasbourg, 4 May 2015, IC-CP(2015)2

delay to issue recommendations upon the comments of the states. Thanks to the Committee's immediate response, domestic stakeholders have the opportunity to use the monitoring procedure in a strategic way in order to raise awareness with respect to the Convention, as well as to stimulate discussions with NGOs. Moreover, if the Committee delayed, much of the information of the baseline evaluation report would have been out of date at the time that the recommendations were issued. Consequently, the work of the Committee would become less relevant to states' actual situation. As a consequence, states would be often required to present additional information on their action. Such implications that occur in other treaty bodies have been successfully avoided in the Committee of the Parties by virtue of the rapid rhythms with which it operates. To set an example, the report of Albania was submitted on January 16 of 2017, the baseline evaluation report was published on November 24 of 2017, the government's comments were published the same day, and the recommendations were published in only 2 months, precisely on January 30 of 2018.

To date, four States Parties have reported back to the Committee. Judging by the responses that States Parties have submitted, it seems that substantial steps have been taken in order to comply with the recommendations issued upon their practices. The high level of legitimacy is the primordial reason why states take action in accordance with the recommendations. Nevertheless, it would not be credible to claim that the rules of procedure of the Committee and its function, in general, are free of any imperfection or defect. For example, as it has been already mentioned, the safeguard which has been set forth for the trustworthiness of its recommendations is the high-standard members' eligibility criteria, given that the representatives of the states must be chosen on the basis of their recognised competences or experience in the fields of violence against women, gender equality and human rights. Nevertheless, an in-built weakness of various treaty body systems and of the Committee as well, has to do with the independence of their expertised members, given that they work on a part-time and unremunerated basis besides other full-time jobs.<sup>68</sup> As a result, membership is often only possible for government officials, university professors and academic employers, or retired persons. Unfortunately, the fact that a significant part of the members of the treaty bodies consists of serving diplomats, ambassadors, members of government and cabinet ministers, could compromise their independence, leading to vote trading and politicised bargaining.

However, it is without doubt that the major issue which arises as to the effective compliance with the Committee's recommendations, is that due to its lack of enforcement mechanisms, it cannot guarantee that all States Parties will fulfill the Convention the way the Committee indicates, given that there is no sanction that noncompliance entails. In legal terms, it is important to stress, for one more time, that the recommendations are not legally binding and the Committee has no instruments at its disposal to compel states to comply with them, such as sanctions' imposition or benefits' withhold. That's why, recommendations and concluding observations of several human right treaties have been disregarded many times by governments, due to the fact that there is 'no imminent danger' in case of noncompliance.

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<sup>68</sup> Michael Banton, 2009, *Decision-Taking in the Committee on the Elimination of Racial Discrimination*, Cambridge University Press, pp 55-78

In conclusion, despite the legitimacy of the recommendations of the Committee of Parties, the fact that there is not the possibility of initiating proceedings before a court, gives states a wide margin of discretion as to whether they will actually incorporate the recommendations in their legal system and practices. This leads to a monitoring system that relies mostly on the voluntary cooperation of the States Parties, rather than one that induces or can compel compliance through incentives and disincentives. In practical terms, it resembles cooperative systems, since there is not an authoritative organ that enforces its outcomes onto states.



## **VII. Mechanisms that foster the monitoring and the implementation of the Convention**

The monitoring procedure of the Istanbul Convention may be considered relatively flexible. But this flexibility is inherent to the special nature of international law, which is based on horizontal relations among sovereign states, provided that one state cannot impose itself on another. The authors of the Convention acknowledged that, on the one hand, they had to achieve the widest consensus possible among the states of the Council of Europe, but on the other hand, they had to create mechanisms that would not let the provisions of the Convention render void. To this end, innovative mechanisms that foster the implementation of the Convention were established. These mechanisms strengthen the cooperation between:

- a) GREVIO and National Parliaments and
- b) GREVIO and other relevant human rights treaty bodies that are oriented towards the elimination of gender-based violence and gender stereotypes that oppress women.

### **VII.a) Relationship with the National Parliaments and the Parliamentary Assembly of the Council of Europe**

One of the most important mechanisms aiming to the implementation of the Convention and the effectiveness of its monitoring system is the relation that is held between both GREVIO and national parliaments and GREVIO and the Parliamentary Assembly of the Council of Europe. To begin with, as regards the national parliaments, they play a crucial role

in supporting the Convention, given that they can enact legislative and other measures for the compliance with its requirements. National Parliaments have the responsibility to hold governments accountable for implementing the standards they have subscribed to. They can also ask for systematic data collection on violence against women and ensure that service-providers for victims are allocated sufficient financial resources. Finally, as opinion-makers, they may organise awareness-raising activities, involving also other high profile opinion-makers, such as journalists and writers.

As a pioneering international human rights convention, Article 70 of the Istanbul Convention grants a specific monitoring role to parliaments both at national and at an international level. Specifically, this article provides that “National parliaments shall be invited to participate in the monitoring of the measures taken for the implementation of the Convention.” In order to render this provision meaningful in practice, GREVIO’s Rules of Procedure set out ways in which GREVIO ensures that national parliaments express their viewpoint on the extent to which states have achieved the Convention’s implementation. First of all, the state’s report is formed as a proper and full response to the questionnaire and, therefore, its drafting requires obtaining information and data from different state authorities, such as parliamentary committees, which undoubtedly can provide significant input. GREVIO may also choose to meet with parliamentarians during a country visit carried out in the context of the evaluation procedure. In this way, it is given the possibility to flag up legislative lacunae and other shortcomings that parliaments have identified.<sup>69</sup> An example of this is when Finnish government sent a request to the parliament to express its opinion on its baseline state report. In this occasion, the Finnish parliament highlighted, inter alia, the role of the Network of Women Parliamentarians in submitting a motion for amending the statutory definition of rape to be based on lack of consent, as required by the Istanbul Convention.

What’s more, it is of utmost importance that the states transmit GREVIO’s baseline evaluation report to the national parliaments (according to Article 70 par. 2 of the Convention), along with a translation into their official national language(s). In case of delay parliamentarians can and should demand that the executive provide translations of the report into all the official languages of the country, as well as minority languages.<sup>70</sup> In the light of the findings and conclusions of the evaluation report, national parliaments shall realize the appropriate legislative and policy reforms that aim to the extinction of gender-based violence.

In addition, after the publication of the report, an oral debate, which is open to civil societies’ representatives and the media, can be held in committees or in the plenary of the parliament, along with the presence of cabinet ministers. In order to ensure an inclusive dialogue, it is also advisable for parliaments to invite the NGOs that submitted shadow

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<sup>69</sup>Parliamentary Assembly of Council of Europe, *THE ISTANBUL CONVENTION – A POWERFUL TOOL TO END GENDER-BASED VIOLENCE SAFE SAFE FROM FEAR FROM VIOLENCE A handbook for parliamentarians on the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence*, p.43

<sup>70</sup>Parliamentary Assembly of Council of Europe, *THE ISTANBUL CONVENTION – A POWERFUL TOOL TO END GENDER-BASED VIOLENCE SAFE SAFE FROM FEAR FROM VIOLENCE A handbook for parliamentarians on the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence*, p.45

reports to present their views on the baseline evaluation report elaborated by GREVIO.<sup>71</sup> Nevertheless, debates alone, while significant, will rarely lead to meaningful action. That's why, the relevant committees of the parliaments should also make respective resolutions, possibly alongside a set of recommendations to the executive. Those actions may take various forms, such as action plans with timeline for eradicating violence against women, which incorporates GREVIO's findings, or proposals for revising other national action plans in order to reflect the priority areas identified by GREVIO.<sup>72</sup>

Over the last few years, new parliamentary committees have been set up (in Italy, Portugal and Turkey) and the existing ones have adopted action plans (in Albania) in order to monitor and foster the domestic implementation of the Convention.<sup>73</sup> To be more concrete, the Albanian Parliament adopted a resolution on "Condemning violence against women and girls and increasing the effectiveness of legal mechanisms for its prevention" and pursuant to this resolution, the parliament established a permanent Sub-committee on Gender Equality and the Prevention of Violence against Women, which elaborated a detailed action plan aiming at ensuring the implementation of the GREVIO report and the CEDAW Committee's findings. Moreover, in Turkish parliament, the Committee on Equal Opportunities for Women and Men considered the report and decided to establish a Sub-Committee on Effective Implementation and Monitoring of the Istanbul Convention, which held an exchange of views with the GREVIO President, Feride Acar, on the evolution of international standards on violence against women, the provisions of the Istanbul Convention and the follow-up to GREVIO's reports.<sup>74</sup>

To continue with, as to the Parliamentary Assembly of the Council of Europe (PACE), it has consistently and forcefully condemned violence against women as one of the most serious and pervasive violations of human rights and it has also established since 2006 the Parliamentary Network "Women Free from Violence". This group brings together parliamentarians from national campaigns for the ratification of the Convention and provides both its members and national parliaments with information, expertise and practical tools about their role in the monitoring of the Convention, through activities such as hearings, conferences, thematic events and round tables.<sup>75</sup> PACE has also played a crucial role since the

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<sup>71</sup>Parliamentary Assembly of Council of Europe, *THE ISTANBUL CONVENTION – A POWERFUL TOOL TO END GENDER-BASED VIOLENCE SAFE SAFE FROM FEAR FROM VIOLENCE A handbook for parliamentarians on the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence*, p.46

<sup>72</sup> Parliamentary Assembly of Council of Europe, *THE ISTANBUL CONVENTION – A POWERFUL TOOL TO END GENDER-BASED VIOLENCE SAFE SAFE FROM FEAR FROM VIOLENCE A handbook for parliamentarians on the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence*, p.46

<sup>73</sup> p.44, 1st GENERAL REPORT ON GREVIO'S ACTIVITIES Group of Experts on Action against Violence against Women and Domestic Violence Council of Europe covering the period from June 2015 to May 2019

<sup>74</sup>Parliamentary Assembly of Council of Europe, *THE ISTANBUL CONVENTION – A POWERFUL TOOL TO END GENDER-BASED VIOLENCE SAFE SAFE FROM FEAR FROM VIOLENCE A handbook for parliamentarians on the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence*, p.46

<sup>75</sup> Parliamentary Network Women Free from Violence, Parliamentary Assembly of Council of Europe, <https://pace.coe.int/en/pages/network-violence-women>

drafting of the Convention. Back to 2008 it was the Assembly of the Council of Europe that took the initiative to call for the adoption of legally binding European standards on violence against women, while during the drafting of the Convention the Assembly was closely associated. In this way, European citizens' democratically elected representatives were able to form the content of the most progressive and comprehensive human rights treaty on eradicating violence against women. Moreover, PACE has adopted several resolutions calling for the ratification and the effective implementation of the Convention in relation to data collection (Article 11), forced marriage (Articles 32 and 37), female genital mutilation (Article 38) and gender-based asylum claims (Article 60), namely:

- ▶ Resolution 2135 (2016) Female genital mutilation in Europe
- ▶ Resolution 2101 (2016) Systematic collection of data on violence against women
- ▶ Resolution 2159 (2017) Protecting refugee women and girls from gender based violence
- ▶ Resolution 2233 (2018) Forced marriage in Europe
- ▶ Resolution 2290 (2019) Towards an ambitious Council of Europe agenda for gender equality parties' application of the convention.<sup>76</sup>

One major innovation of the Istanbul Convention is, apart from the involvement of national parliaments in the monitoring of the Convention, the significant role that PACE holds in it. Pursuant to Article 67 paragraph 2 of the Convention, the Committee of Parties and the Parliamentary Assembly of the Council of Europe shall meet (upon the request of one-third of the Parties, the Chair of the Committee of the Parties or the Secretary General of the Council of Europe) for the purposes of the exercise of the functions of the Committee, among which are the recommendations elaborated and the examination of the findings of the special inquiries. Moreover, during the supervision of the recommendations addressed to the States Parties, the Committee may forward communications to the Committee of Ministers and the Parliamentary Assembly of the Council of Europe. Over the whole evaluation procedure, GREVIO can also suggest to the Committee of the Parties to invite the Parliamentary Assembly to take stock of the implementation of the Convention.

The aforementioned cooperation is of paramount importance, given that the delegates of the Parliamentary Assembly can actually act as a conduit between GREVIO and national parliaments by promoting the national ratification of the Convention and by fostering its domestic implementation. To set an example, after the ratification of the Istanbul Convention by Finland, the Finnish delegation to PACE prepared and presented to the national parliament a seminar on the implementation of the Convention together with an annual report that detailed concerns about violence against women in the country. This kind of commendable initiatives demonstrate PACE's ability to prompt national parliamentary debates about the subject-matter of the Convention and its proper implementation. Moreover, in 2019 PACE adopted the report "The Istanbul Convention on violence against women: achievements and challenges"<sup>77</sup>, which highlighted the value of the Convention and its positive impact, as well

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<sup>76</sup> p.43, 1st GENERAL REPORT ON GREVIO'S ACTIVITIES Group of Experts on Action against Violence against Women and Domestic Violence Council of Europe covering the period from June 2015 to May 2019

<sup>77</sup> PACE, 2019, *The convention on violence against women: achievements and challenges*, Doc. 14908

as the important role of national parliamentarians that participate actively in promoting the Convention and in monitoring its implementation.<sup>78</sup>

The important role assigned to PACE in the monitoring of the Istanbul Convention and the active involvement of national parliaments contribute to the promotion of the Convention both at a national level and at a regional and international level, as well as to the creation of visibility and awareness around GREVIO's work. The construction of a meaningful link between the national and supranational dimensions of the monitoring of the Convention increases the extent of compliance with it, raises awareness on GREVIO's findings, ensures the appropriate follow-up to PACE's resolutions, and last but not least, exposes and dispels misconceptions and deliberately opportunistic criticism of the Istanbul Convention.<sup>79</sup>

### **VII.b) General Recommendations and the Recommendation on the Digital Dimension of Violence against Women**

Article 69 of the Istanbul Convention provides that GREVIO has the power to adopt, where appropriate, General Recommendations concerning the implementation of specific articles or thematics of the Convention. As indicated in paragraph 359 of the Explanatory Report of the Convention, General Recommendations have a common meaning for all States Parties (they are not country-specific). Moreover, they are not binding in legal terms, but they serve as an important reference by offering a thorough understanding of the various issues treated in the Convention. They should also be part of future monitoring rounds, as they give clear guidance on the implementation of the Convention.

During GREVIO's 21st meeting, according to Rule 46 paragraph 3 of its Rules of Procedure<sup>80</sup>, it was established the *Working Group on a General Recommendation on the Digital Dimension of Violence against Women*, with a view both to explore the relevance and the scope of the application of the Convention as regards digital violence, and to develop a General Recommendation on this matter. Due to the extended use of new technologies and social platforms, digital forms of gender-based violence have taken huge dimensions. This form of violence has a serious impact on women, as it affects their psychological health, their livelihoods, their physical safety and their reputation. In addition, digital violence has severe implications for women's participatory rights online, provided that the terror that it creates

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<sup>78</sup> p.44, 1st GENERAL REPORT ON GREVIO'S ACTIVITIES Group of Experts on Action against Violence against Women and Domestic Violence Council of Europe covering the period from June 2015 to May 2019

<sup>79</sup> Parliamentary Assembly of the Council of Europe, *THE ISTANBUL CONVENTION – A POWERFUL TOOL TO END GENDER-BASED VIOLENCE SAFE SAFE FROM FEAR FROM VIOLENCE A handbook for parliamentarians on the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence*, p.53

<sup>80</sup> Rule 46 – Preliminary consideration of information by GREVIO 1. GREVIO may, through its Executive Secretary, ascertain the reliability of the information and/or the sources of the information brought to its attention under Article 68, paragraph 13 of the Convention and may obtain additional relevant information substantiating the facts of the situation. 2. GREVIO shall determine whether the information received indicates a situation where problems require immediate attention to prevent or limit the scale or number of serious violations of the Convention in the Party concerned. 3. GREVIO may set up a working group and request, within the limits of budgetary appropriations, the Executive Secretary to have recourse to consultancy services to assist it in carrying out its duties under the present rule

can lead many women to withdraw from expressing their views on online platforms. Consequently, it can get to silence women's voices and hamper their development as human rights' defenders, journalists, social media influencers and politicians. As such, GREVIO considers that digital violence not only amounts to gender-based violence against women, but it also undermines a wide variety of women's rights protected by international law.<sup>81</sup> The General Recommendation aims at developing a more in-depth understanding of digital forms of violence against women and at providing guidance about the measures that states have to take in this area. More specifically, it aims to identify the prevailing challenges regarding the online and technology-facilitated violence against women, to take stock of the existing international human rights standards that apply in this field, and last but not least, to explore the international synergies and other relative international legal instruments on this form of violence. As to the content of the Recommendation, its draft refers to three forms of digital violence against women that need to be effectively criminalized and prosecuted according to the definitions and standards set out in the Istanbul Convention: online sexual harassment, stalking and psychological violence. It also includes a comprehensive approach on how online violence can be faced, based on the main four pillars of the Istanbul Convention ("4 Ps"), namely prevention, protection, prosecution and co-ordinated policies.<sup>82</sup> Finally, it is important to stress the participatory character of the elaboration of the Recommendation, given that GREVIO has launched a public online consultation on its draft, the feedback of which will be incorporated in the final text of the General Recommendation.

#### **VII.c) Creating synergies: International and European cooperation - Dialogue among monitoring mechanisms on women's rights and violence against women**

Since 2018, the seven regional and global independent monitoring mechanisms on women's rights and violence against women form the Platform of Independent Expert Mechanisms on Discrimination and Violence against Women (EDVAW). The seven mechanisms are namely the following, the UN Special Rapporteur on violence against women (SRVAW), the UN Committee on the Elimination of Discrimination against Women (CEDAW), the UN Working Group on the issue of discrimination against women and girls (WGDAW), the Committee of Experts of the Follow-up Mechanism to the Belém do Pará Convention (MESECVI), the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), the African Commission on Human and Peoples' Rights Special Rapporteur on the Rights of Women in Africa (A SRWHR) and the Inter-American Commission on Human Rights Rapporteur on the Rights of Women (IA RWHR).

EDVAW was launched in 2017 by the UN Special Rapporteur on violence against women (Dubravka Šimonović) as an initiative that aims at applying holistic and integrated policies in order to combat gender-based violence against women and upholding the right of women to live a life free from violence. The goal of this platform is to identify global

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<sup>81</sup> GENDER EQUALITY COMMISSION (GEC) DRAFT Comments of the Gender Equality Commission on GREVIO's draft General Recommendation on the digital dimension of violence against women

<sup>82</sup> GENDER EQUALITY COMMISSION (GEC) DRAFT Comments of the Gender Equality Commission on GREVIO's draft General Recommendation on the digital dimension of violence against women



challenges and to elaborate on solutions to them. It also seeks to strengthen institutional links in order to create harmonised strategies and to undertake joint action with the objective of improving the implementation of the existing international legal and policy framework on violence and discrimination against women. Such action includes joint statements, organization of high-level panels during the Commission on the Status of Women (CSW) as well as EDVAW's documents on global women's rights, such as Beijing Declaration and Platform for Action.

GREVIO takes an active part in the EDVAW Platform's work by sharing its insights and experiences in monitoring the implementation of the Istanbul Convention. By exchanging views and experiences directly with other regional and global monitoring mechanisms, GREVIO fosters synergies and identifies challenges in the protection of women's rights, in particular in the area of preventing and combating violence.<sup>83</sup> Through this collaboration and exchange of information several joint statements have been issued by the members of the Platform such as:

- Joint statement International Day for the Elimination of Violence against Women - End the global epidemic of femicide (\*NiUnaMenos) and support women speaking up against violence against women (\*MeToo)
- Statement of the Platform of independent United Nations and regional expert mechanisms on violence against women and women's rights. Violence and harassment against women and girls in the world of work is a human rights violation, say independent human rights mechanisms on violence against women and women's rights
- Urgent action needed to end pandemic of gender-based violence, say women's rights experts - press release/statement
- Joint call of the EDVAW Platform on the UN Commission on the Status of Women to use women's human rights instruments and expert mechanisms to accelerate the implementation of the Beijing Platform for Action

In May 2019, GREVIO also hosted the conference "Women's Rights at the Crossroads: strengthening international cooperation to close the gap between legal frameworks and their implementation". The conference focused on the monitoring mechanisms of the treaties on women's rights and mainly on the pushbacks of those mechanisms, as well as on what is yet to be done in order to combat gender-based violence which persists in society. It was also stressed the significance of the complete implementation of global and regional treaties on women's rights and violence against women.<sup>84</sup>

#### **VII.d) Cooperation between GREVIO and European Court of Human Rights (ECtHR)**

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<sup>83</sup> p 61, SECOND GENERAL REPORT ON GREVIO'S ACTIVITIES covering the period from June 2019 to December 2020

<sup>84</sup> Mandate of the Special Rapporteur on Violence against Women, its Causes and Consequences, Women's rights at the Crossroads: strengthening international cooperation to close the gap between legal frameworks and their implementation Council of Europe, Strasbourg 24 May 2019 Opening speech by the Special Rapporteur on violence against women, Dubravka Šimonović

States can also be examined about the measures they take in order to combat violence against women by the European Court of Human Rights (ECtHR). The ECtHR uses Istanbul Convention as a major instrument in order to interpret and determine states' positive obligations to prevent and prosecute violence against women under Article 2 (the right to life), Article 3 (the prohibition of torture), Article 8 (the right to respect for private and family life) and Article 14 (the prohibition of discrimination) of the European Convention on Human Rights (ECHR).

One of the most significant cases that shed light on states' specific obligations as to the protection of women from gender-based violence was the *Opuz v. Turkey* case (2009). The ECtHR ruled that Turkey violated Article 2, Article 3, and Article 14 of ECHR, since it failed to protect the victim and her mother from attacks perpetrated by the husband. Critically, the *Opuz* decision has been a landmark decision, because it contributed significantly to the elaboration of the Istanbul Convention on combatting violence against women and domestic violence. According to the ruling of the ECtHR, taking into consideration the principle that states have a positive obligation to protect at-risk individuals from violations of the rights enshrined in the ECHR, the authorities failed to take "special measures consonant with the gravity of the situation" in order to protect the victim and her family from the perpetrator. Additionally, the Court recognized for first time that "the State's failure to protect women against domestic violence infringes their right to equal protection, and as a result, amounts to a form of discrimination under Article 14 of the ECHR". The Court's judgment also interpreted the states' due diligence obligation as an obligation to pursue criminal proceedings in cases of alleged domestic violence, and to make such proceedings effective.<sup>85</sup>

In view of the necessity of interaction between the Istanbul Convention and the European Convention on Human Rights, GREVIO has taken the initiative to communicate and cooperate with judges of the ECtHR. A first effort of building up a cooperation was the exchange of views with the judge of the ECtHR Işıl Karakaş (Turkey) that took place at its 12th meeting. The judge underlined that violence against women is a violation of human rights and confirmed that the due diligence obligation of states requires the establishment of an effective prosecutorial system. Moreover, she stressed the importance of the *Opuz* case and she also referred to cases that addressed issues of child custody and gender stereotypes.<sup>86</sup> Among the decisions of GREVIO's 12th meeting was to hold further exchange of views with judges from the European Court of Human Rights concerning its jurisprudence on violence against women and domestic violence and other issues of common interest.<sup>87</sup>

## **VII.e) GREVIO's intervention before the European Court of Human Rights**

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<sup>85</sup>Tarik Abdel-Monem, *Opuz v. Turkey: Europe's Landmark Judgment on Violence against Women*, Available at <https://www.corteidh.or.cr/tablas/r23564.pdf>

<sup>86</sup> p.46, 1st GENERAL REPORT ON GREVIO'S ACTIVITIES Group of Experts on Action against Violence against Women and Domestic Violence Council of Europe covering the period from June 2015 to May 2019

<sup>87</sup> Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), Strasbourg, 13 October 201, List of decisions adopted at the 12th meeting (Strasbourg, 9 – 13 October 2017), GREVIO/Inf(2017)LD12

The Strasbourg Court decides cases based on a prudent consideration of the legal materials before it, meaning primarily, its precedents, the general principles contained in those precedents, the views of the domestic courts, as well as international and comparative materials which are relevant to the case at issue. The majority of cases are decided on precedent and general principles, while virtually all cases are decided on the basis of a combination of all four. The third party interventions focus exactly on supplying legal assistance on specialized fields (in GREVIO's case, in the field of gender-based violence), given that the Court cannot be aware of all of the legislative and other materials that may have a bearing on the outcome of each case.

GREVIO has the possibility to intervene in the proceedings of the ECtHR in order to provide a comprehensive interpretation of the provisions of Istanbul Convention and to clarify the content of the legal obligations enshrined in it. Specifically, the written observations shall provide an objective presentation of the applicable standards of the respective provisions of the Convention, as they have been interpreted by GREVIO during the monitoring procedure as well as, where it is appropriate, of other relevant international instruments and policy documents referring to women's rights or violence against women, without commenting on the facts or merits of the case. In this way, they can also provide great assistance in determining whether a Contracting State enjoys a broad or narrow margin of appreciation in a particular policy area. The intervention may also include scientific information, for instance, "brandeis briefs" setting out statistics and other studies which show a particular policy or practice that amounts to indirect discrimination.<sup>88</sup> Finally, GREVIO's interventions in the ECtHR's proceedings enhance even more the cooperation between these two bodies, when due weight is given to the observations submitted.

In order to make the best use of this capacity, GREVIO exercised for the first time its right to set up a special working group according to Rule 46 of its Rules of Procedure. Specifically, at its 19th meeting (from 14 to 15 November 2019), GREVIO set up the *Working Group on third-party interventions before the European Court of Human Rights (GREVIO-GT-TPI)*. GREVIO-GT-TPI is composed of two members of GREVIO, appointed by GREVIO, who have an in-depth knowledge and professional experience in the field of human rights litigation and/or other relevant experience in a legal profession. The duties which the GREVIO-GT-TPI carries out are the following. First of all, it seeks information about applications lodged before the Court, which have to do with gender-based violence or touch upon any issue that falls within the scope of the Istanbul Convention, such as discrimination against women. Afterwards, it assesses whether GREVIO should request the right to submit written observations in the respective proceedings. To this end, it takes into account (a) to what extent the case at issue will contribute to the development of jurisprudence that will reinforce the standards of the Istanbul Convention (b) whether the intervention will help the Court to reach a decision and whether it will have a bearing on the final decision (c) whether or not consolidated case-law of the Court applies to the case at

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<sup>88</sup> see, for instance, D.H. and others v. the Czech Republic, on placing Roma in special schools

issue.<sup>89</sup> After elaborating on the aforementioned issues, GREVIO-GT-TPI prepares a reasoned request for submitting written observations and once the request is approved, it prepares a draft of written observations which submits to GREVIO for approval. Finally, it follows up on the cases to which the intervention was made, it assesses the interventions' impact and it regularly reports back to GREVIO in relation thereto.

On 21 January 2020, GREVIO submitted, for the first time since its inception, written observations to the ECtHR regarding Kurt v. Austria. This case concerned the murder of an eight-year-old boy by his father after previous allegations by the mother who was victim of domestic violence. GREVIO, firstly, stressed the importance of applying a gendered understanding of domestic violence in order to ensure the effective investigation, prosecution and protection of victims. Following, it highlighted the necessity of recognising the risks that children face in the context of domestic violence. According to GREVIO, the availability of emergency barring and protection orders for the children of the family in which the perpetrator was exercising violence, as well as the use of preventive detention are indispensable in order to safeguard children's physical and psychological integrity. In this connection, GREVIO drew the Court's attention to the fact that deficiencies regarding the protection of children victims and witnesses from their abusive parents have been frequently commented in GREVIO's evaluation reports.



### **VIII. Interstate and Individual Complaint Procedure: would they increase the effectiveness of the monitoring system?**

Before the European Court of Human Rights states are examined as to whether they comply with the provisions of ECHR, using Istanbul Convention as a guideline in the determination of Contracting States' responsibilities in cases of violence against women,<sup>90</sup> in

<sup>89</sup> p.15, SECOND GENERAL REPORT ON GREVIO'S ACTIVITIES Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), Council of Europe, covering the period from June 2019 to December 2020

<sup>90</sup> Volodina v Russia (2019) para 60; Kurt v Austria (2019) para 47; Bălșan v Romania (2017) para 79; Talpis v Italy (2017) para 129; Halime Kılıç v Turkey (2016) paras 114-115; MG v Turkey (2016) paras 93, 94 and 106

a way that complements and evolves the interpretation of ECHR. The jurisprudence of the Court in cases of gender-based violence has taken into consideration the Istanbul Convention for the interpretation of the rights enshrined in ECHR. However, neither does the ECtHR interpret the Istanbul Convention as such (and it would not be competent to do so), nor are those interpretations given by the monitoring body established by it (GREVIO).

It could be also said that it is to our surprise the Istanbul Convention does not provide yet for an individual or an interstate complaint procedure, in spite of the pioneer mechanisms it has introduced (such as the cooperation with national parliaments). Probably the drafters of the Convention did not want to incorporate such procedures in the body of the Convention in order to avoid possible discouragement of states from ratifying it. The possibility of providing for those procedures by an optional protocol, though, is an issue that seems to have been taken into consideration by the Council of Europe. Notably, according to the previous president of GREVIO, Feride Acar, the Council of Europe is likely to create an individual complaint mechanism through an optional protocol, which will be similar to that of CEDAW.<sup>91</sup> Probably, it would be also a good idea to establish an interstate complaint procedure, as it is provided for in the optional protocol of CEDAW, as well as in other human rights conventions, such as the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Rights of Persons with Disabilities.

In reflection of the individual complaint procedure of CEDAW, the provisions of the optional protocol of the Istanbul Convention may stipulate that any individual subject to the jurisdiction of a State Party who (a) claims to be a victim of a violation of the Convention and (b) has exhausted all available domestic remedies, is entitled to file a complaint with GREVIO. After confidential examination of the complaint, non-binding decisions may be issued and made public. Those decisions can declare the complaint either inadmissible (if formal requirements are not met) or admissible, and once it is considered admissible GREVIO shall issue an opinion on the merits (determining whether a violation of the complainant's rights has taken place).

In addition to the individual complaint procedure, another additional protocol to the Istanbul Convention could establish an interstate complaint procedure. Under this procedure a State Party would be entitled to submit a complaint to GREVIO claiming that another State Party is not fulfilling its obligations under the Convention. This procedure is based on the principle that every state party to a human rights treaty has a legal interest in the fulfilment of the obligations of every other state party. The aforementioned concept is enshrined in the general comment No. 31 of the Human Rights Committee on the nature of the general legal obligations imposed on States Parties to the International Covenant on Civil and Political Rights (ICCPR). According to this viewpoint, drawing attention to possible breaches of human rights treaties and calling on states to act in compliance with their obligations should be considered as a reflection of a legitimate community interest.

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<sup>91</sup> Interview with Feride Acar, Interviewee Gizem Guney, Ankara, 2017

The possibility of submitting complaints can foster the monitoring procedure of the Convention, provided that whichever breach of the Convention occurs within the territory of a State Party, could be brought to GREVIO's attention. In this way, individuals would obtain an international "layer" of protection, in addition to the European (European Court of Human Rights) and the national one (national courts). Moreover, States Parties would not be evaluated only when the date to submit their report comes, but they would be under a continuous "threat" of being found in noncompliance with their legal commitments and, consequently, being exposed to international criticism for this reason.<sup>92</sup> In conclusion, individuals and States Parties would be practically authorized to act as watchdogs for the compliance with the Convention by all States Parties.

What is more, it is through individual complaints that human rights are given a concrete meaning, as human rights treaties' provisions find their direct application to specific cases of a person's real-life situation. Decisions upon individual complaints can also serve for the interpretation of human rights treaties by states and non-governmental organizations (NGOs). Moreover, as regards the Istanbul Convention, with the establishment of complaints procedures, the provisions of the Convention would get to be interpreted by GREVIO, and not by another judiciary body, as it happens when it is invoked before the European Court of Human Rights, or before national courts and domestic judiciaries.<sup>93</sup>

Finally, the mere existence of those procedures can play a preventive role. If states know that another State Party to the Convention or an individual can submit a complaint against them with a decision upon it becoming public, they will be less likely to proceed to relevant breaches. This could actually serve as an incentive for States Parties' compliance, provided that no state enjoys receiving public criticism regarding the human rights' situation within its territory.<sup>94</sup>

Passing to examine the flaws and the indeficiencies of the complaint procedures, first and foremost, the final decisions are not legally binding and enforceable. Thus, there is no real effect over the States Parties, other than shaming them by proclaiming those states as culpable of violating human rights. Another weak aspect is that the individual complaint procedure lacks coercive and punitive remedies for the victims. The whole mechanism of complaints, primarily, relies upon the belief that governments will faithfully enforce the treaties' standards within their own domestic systems and provide sufficient domestic remedies in order to redress violations.<sup>95</sup> Nevertheless, it has been observed that the difficulties, which the procedure implies, do not discourage individuals from submitting individual complaints and holding states accountable for their actions (or omissions) before the relevant treaty body.

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<sup>92</sup> Yuval Shany, 2021, *Assessing the Effectiveness of International Courts: A Goal-Based Approach*, 106 Am. J. Int'l L. 225, p. 270

<sup>93</sup> Kwong-Leung Tang, 2000, *The Leadership Role of International Law in Enforcing Women's Rights: The Optional Protocol to the Women's Convention*, 8 Gender & Dev. 65, p. 67-68.

<sup>94</sup> Scott Leckie, 1988, *The Inter-State Complaint Procedure in International Human Rights Law: Hopeful Prospects or Wishful Thinking?*, *Human Rights Quarterly*, Vol. 10, No. 2, pp. 249-303

<sup>95</sup> Donolo, Douglas, 2006, *Human Rights Enforcement in the Twenty-First Century*, 35 Ga. J. Int'l & Comp. L., p. 5, Available at: <https://digitalcommons.law.uga.edu/gjicl/vol35/iss1/2>

The aforementioned lack of enforcement in combination with the high cost that submitting a complaint requires may discourage individuals from resorting to this legal tool. Logistical factors may also discourage states from initiating interstate complaint procedures given that their submission requires intensive legal research and fact-finding, the garnering of sufficient parliamentary and administrative support and continuous involvement in the procedure, including oral hearings, written submissions, diplomatic contact with the state complained against, and monitoring activities after the case.<sup>96</sup>

Furthermore, as to the interstate complaint procedure it cannot be said with certainty that it has always been used by states properly. It has been observed that states hesitate to initiate interstate complaint procedures due to political and economic considerations. The state against which the procedure is initiated considers it a hostile action or even a humiliation and, as a result, the political and economic relations between the two states are disrupted. The possibility of a procedure being triggered due to political reasons exists, but even in this case, it may result in the determination that the receiving state was in noncompliance with its legal obligations. The problem arises when states do not initiate the procedure, even though they are aware of violations committed in another State Party, just because it would run against their political interests, and not so much when there is a political motivation behind the initiation of the interstate complaint procedure. At the end of the day, human rights are political matters and not entitlements founded on principles independent of political whims.<sup>97</sup> However, in case that a state does not want to harm its relations with another, it will not make use of the procedure because, unfortunately, political and economic interests continue to define states' action regarding human rights issues. This lack of political will on the part of the states, in combination with pressure by interest groups seeking to prevent utilization of the procedure can restrain importantly this way of addressing human rights violations.

To sum up, notwithstanding the shortcomings of both complaint procedures, such as the obstacles that may arise for states or individuals when it comes to submitting the complaint or the lack of enforceability, their establishment by an optional protocol to the Istanbul Convention would “upgrade” the monitoring system as a whole and it would also keep states on alert about implementing appropriately and effectively the obligations assumed. It is of paramount importance to take into consideration the fact that if the complaint procedures had not been provided for in any human right treaty, many human rights violations would not have come to the attention of the international community.

#### **IX. ECtHR and GREVIO: complementary or contradictory in addressing violence against women?**

*If GREVIO obtains the functions of receiving individual complaints, what will happen in case of conflict between a GREVIO's decision and ECtHR's case-law?*

Taking into consideration the fact that the Istanbul Convention's provisions are far

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<sup>96</sup> Scott Leckie, 1988, *The Inter-State Complaint Procedure in International Human Rights Law: Hopeful Prospects or Wishful Thinking?*, *Human Rights Quarterly*, Vol. 10, No. 2, pp. 249-303

<sup>97</sup> Scott Leckie, 1988, *The Inter-State Complaint Procedure in International Human Rights Law: Hopeful Prospects or Wishful Thinking?*, *Human Rights Quarterly*, Vol. 10, No. 2, pp. 249-303

more comprehensive and fully-fledged regarding states' obligation to take actions in order to combat gender-based violence than the gender-neutral provisions of ECHR, GREVIO may demand from states to take measures that go well beyond the scope of the ECHR. In such a case, the question that arises, when a state is a party of both the ECHR and the Istanbul Convention, is which of the two prevails.

Article 71 of the Istanbul Convention regulates its relation with other international treaties and instruments as follows: the first paragraph of the article provides that obligations arising from other international instruments that regulate similar matters shall not be affected, while the second paragraph provides that States Parties may conclude agreements regarding matters dealt with in the Convention “for purposes of supplementing or strengthening its provisions or facilitating the application of the principles embodied in it”. Given that the meaning of the provision is somehow obscure, it is necessary to resort to the [explanatory report to the Convention](#) in order to shed light on it. According to [the explanatory report to the Convention](#), Article 71 ensures that the Convention harmoniously coexists with other treaties that deal with matters which the Convention also covers. However, pursuant to the explanatory report, Article 71 also indicates the overall aim of this Convention, which is to assure the highest level of protection of victims from violence against women and domestic violence. Therefore, whatever “agreement” provides the “higher protection”, regardless of whether it is included in the Istanbul Convention or in any other instrument, should prevail. This interpretation is in line with the victim-centered and gender-sensitive approach of the Convention, according to which the best interests of victims are prioritised.

Moreover, if we consider that ECHR constitutes *lex generalis* as to violence against women, while the Istanbul Convention constitutes *lex specialis*, the second one and the interpretation of GREVIO prevail according to the principle “*lex specialis derogat legi generali*”.

Coming to the conclusion that the Istanbul Convention prevails over the ECHR, a major issue that arises is the fact that the extensive positive obligations enshrined in the Istanbul Convention would go well beyond the scope of the ECHR, which predominantly regulates negative obligations of states. As to this matter, a distinction between the obligations, which require financial sources and those that do not, would be useful. For example, broadening the legal definition of violence against women does not entail any costs for states. Obligations like this should be considered by the ECtHR as a threshold under which states should not fall. Moreover, the positive obligations that imply financial costs, such as establishing prevention programs and rape crisis centres, could be considered by the ECtHR as a part of the [due diligence](#) obligation, in order to expand the negative rights' framework of the ECHR.<sup>98</sup>

As a conclusion, the functions of GREVIO and the ECtHR are complementary. The

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<sup>98</sup>Gizem Guney, 2020, *The Group of Experts under the Istanbul Convention on Preventing and Combating Violence against Women and Domestic Violence and the ECtHR: Complementary or Contradictory Tools?*[online] EJIL:Talk! Available at: <https://www.ejiltalk.org/the-group-of-experts-under-the-istanbul-convention-on-preventing-and-combating-violence-against-women-and-domestic-violence-and-the-ecthr-complementary-or-contradictory-tools/>



existence both of rulings upon individual complaints and upon relative cases of the ECtHR would offer a more comprehensive and fully-fledged mechanism for the protection of women, as States Parties to both conventions would be officially urged by two judicial organs to act in full compliance with the Istanbul Convention and to effectively protect women and girls from gender-based violence.



## **X. Persisting obstacles in the elimination of violence against women**

### **X.a) Reservations of States Parties**

According to international public law, a reservation to a certain provision of an international treaty excludes its legal effect, and as a result, the state that made it is not monitored about whether it complies with this specific provision. That's why, reservations may erode the effectiveness of the Convention, by detracting from the integrity of the instrument.

The issue of the admissibility of reservations to international human right treaties (one of which is the Istanbul Convention) is not addressed sufficiently at the level of international law. Even though Article 19 of the Vienna Convention on the Law of Treaties provides that a state may not formulate a reservation which is incompatible with the object and purpose of the treaty, it is not specified neither who decides upon incompatibility nor certain criteria in order to assess whether a reservation is compatible or not. Moreover, according to Article 20 of the VCLT states are allowed to attach reservations to their ratification, on condition that no state party objects to them, without requiring the express approval of the rest of states.

Certain international treaties that are based on reciprocity, by their nature do not allow reservations, e.g., treaties of territorial delimitation, treaties of peace, of disarmament, or treaties affecting a final settlement of an international dispute. It can be supported that the same doctrine applies to human rights treaties as well, since states do not have personal

interests stemming from them, but only one common interest: the accomplishment of those high purposes which are the *raison d'être* of the conventions. It is beyond doubt that human rights conventions are rendered void in case that far-reaching reservations are made, just as happened in the case of the Convention on the Elimination of All Forms of Discrimination against Women, when Libya reserved its rights to not apply the Convention where its provisions conflicted with sharia law.<sup>99</sup>

Particularly, as regards the international conventions which do not establish jurisdiction of any court, such as the Istanbul Convention, the possibility of making reservations endangers seriously their purpose. The absence of review of the legality of reservations by a judicial body, in combination with the lack of states' incentives to object, allow penetrating and disturbing reservations to go unchallenged.<sup>100</sup> For this reason, the drafters of the Istanbul Convention limited to certain provisions the possibility of submitting a reservation:

- ▶ Article 30 (2) related to state compensation;
- ▶ Article 44 (1.e), (3) and (4) concerning jurisdiction;
- ▶ Article 55 (1) regarding *ex parte* and *ex officio* proceedings and with respect to minor offences only;
- ▶ Article 58 regarding the statute of limitation with respect to the offences of Articles 37 (forced marriage), 38 (female genital mutilation) and 39 (forced abortion and forced sterilisation);
- ▶ Article 59 on the right of migrant victims of gender-based violence to an autonomous residence status.

Moreover, the Convention indirectly encourages States Parties to withdraw from the reservations made, by subjecting them to a limited period of validity (five years from the entry into force of the Convention for the State Party) and to a system of compulsory renewal. Before this renewal or upon request, states are also obliged to provide GREVIO with an explanation justifying why they need the continuance of the reservations at issue. However, even if the justification is not sufficient, clear enough or reasonable, there are no legal consequences in this respect and, as a result, states can keep being exempted from one or more of the Convention's provisions. Due to the lack of incentives to proceed to a full engagement, a big number of States Parties have submitted reservations to certain provisions.

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<sup>99</sup> United Nations, Multilateral Treaties Deposited with the Secretary-General: Convention for the Elimination of All Forms of Discrimination against Women at 1 May 2004; Liesbeth Lijnzaad, *Reservations to UN Human Rights Treaties: Ratify and Ruin?* (1995) 324, 348

<sup>100</sup> Rosalyn Higgins, 1989, *Human Rights: Some Questions of Integrity*, *Modern Law Review* 1, 12. See also Human Rights Committee, General Comment 24: Issues Relating to Reservations Made upon Ratification or Accession to the Covenant or Optional Protocols thereto, or in Relation to Declarations under Article 41 of the Covenant, as contained in Report of the Human Rights Committee, UN GAOR, 50th sess, Annex V, UN Doc A/50/40 (1999) ('General Comment 24')

In particular, Armenia, Cyprus, Monaco, Romania, Slovenia, Germany and Malta have made reservations as to Article 59 on the right of migrant victims to an autonomous residence status. Particularly, Germany has reserved the right not to apply Article 59 paragraph 2, which concerns the suspension of expulsion proceedings and the renewable residence permits, while Malta has reserved the right to keep applying its own law instead of Article 59 in cases of victims of violence with dependent status. Switzerland has also reserved the right not to apply Article 59 or to apply it only under specific conditions. Finally, Poland, Latvia and Lithuania have declared that they will apply the Convention in accordance with the principles and the provisions of their Constitutions. Such reservations (that were formed actually as interpretative declarations), are of a very abstract and indeterminate scope, as they do not define the extent to which the aforementioned states accepted the obligations stemming from the Convention. Taking into consideration the gravity of the widespread violence against women across Europe and all over the world, as well as the heated debate that preceded the ratification of the Convention by those three countries, their reservations should be regarded as incompatible with the object and the purpose of the Convention. However, there is no judicial body in place to decide upon the legality of given reservations, which keep producing their legal effects and muddying the water about Poland's Latvia's and Lithuania's legal obligations.

Finally, to draw one important conclusion, the only way to achieve the full implementation of the Convention is for states to agree on being bound by the totality of its provisions with no exception. Towards this direction and after a proposal of the European Commission, the European Union signed the Istanbul Convention in 2017, based on decisions of the Council of the EU on articles related to asylum, refugees and refoulement, and cooperation in criminal matters. EU Parliament has called on several occasions EU Member States to ratify the Convention and their parliaments to be fully engaged in the Convention's monitoring procedure. It also welcomed the Commission's intention to propose measures in 2021 in order to achieve the Convention's objectives, even though some Member States continue to block its ratification.

### **X.b) Denunciation of the Convention**

The most radical way in which a State Party to the Convention can stop being monitored about whether it makes steps towards the elimination of violence against women and the achievement of equality between genders is by denouncing it. In this way, it terminates its participation in the Convention and, consequently, it disengages from any obligation enshrined in it.

According to Article 80, States Parties may denounce the Istanbul Convention simply by means of a notification addressed to the Secretary General of the Council of Europe. The denunciation can occur at any time and it becomes effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the Secretary General. This means that there must be an official notification (i.e. that a Presidential Decision cannot suffice) and there is a three-month period before such a notification comes into effect. The mechanism of exiting the Convention is really

simplified, leaving to the discretion of the states the option of stopping being bound by it, without having to expose any reasons or explanations on why they do so, and without having to follow long-lasting and cumbersome procedures.

On the one hand, this denunciation clause reduces uncertainty about leaving the Convention and thus, encourages its ratification by a larger number of states in comparison to more complicated denunciation clauses or the absence of them. States feel a certain “safety”, “freedom” or “flexibility” knowing that keeping being bound by the Convention is upon them and whenever and for any reason they are not able or they do not want to comply with the obligations stemming from it, they are free to exit. It may also enable states to negotiate further or broader commitments than in case that the possibility of unilateral exit did not exist.

On the other hand, although the benefits of such an exit clause may be considerable, the easy-denunciation system also creates ex post costs that may impede the future achievement of the goals of the Convention. For example, it gives states the possibility to overuse the exit clause, by evoking it whenever economic, political or other pressures make compliance costly or inconvenient. It could be also supported that due to the importance of the Istanbul Convention, as the only fully-fledged international convention that aims to the combatment of gender-based violence, exit opportunities should be eliminated or restricted so as to deter the possibility of states denouncing and leaving women unprotected all of sudden and without justification.

In conclusion, the denunciation clause of the Istanbul Convention encourages states to ratify it and, consequently, to undertake the obligation to ameliorate the situation of womens’ safety and well-being in their territory. Nevertheless, at the same time, it also facilitates, to a great extent, the easy exit of states. Therefore, this exit system may entail bigger willingness of states to ratify the Convention, but it may also bring about sudden and unjustified withdrawals. By now, even though its ratification by multiple states has been achieved, Turkey and Poland have announced their withdrawal from it, exposing women to gender-based violence and to gender stereotypes’ oppression.

### ***The impact of the criticism towards states’ withdrawal: Poland and Turkey***

An element that can prevent states from denouncing a human rights treaty, are the reputational consequences that such a political action may entail. The political salience of the denunciation of the Istanbul Convention is great, given that the elimination of gender-based violence is a goal embraced by the international community as a whole. Consequently, the denunciation of the Convention is politically momentous and attracts great attention from government officials, news media, and academic commentators. Moreover, the fact that the professed motivation of the states that withdrew has always been extremely provocative and unreasonable increases the criticism towards their action. For instance, the Turkish Presidency’s Directorate of Communications issued a statement saying that the Istanbul

Convention was "hijacked" by people "attempting to normalise homosexuality".<sup>101</sup> As to Poland, when announcing its intention to withdraw, it claimed that the Convention does not respect religion and promotes controversial ideologies about gender. Obviously, government officials that evoke the possibility of withdrawing from the Convention have been based on false assumptions or deliberate misinterpretations of the Istanbul Convention about its core aims and social implications. Those announcements have provoked the massive reaction of the international community, which exercised severe criticism towards the withdrawal from the Convention.

What's more, the denunciation of the Istanbul Convention by a Presidential Decree and not by an official notification, as it happened on March 20th of 2021 by the Turkey's President, is not in conformity with the Vienna Convention on the Law of Treaties. Specifically, the Vienna Convention on the Law of Treaties (VCLT) does not provide for an exclusive withdrawal or termination mechanism of treaties. According to Article 54, a state party may withdraw from a treaty following the procedure set out in its relative provisions. As far as the Istanbul Convention is concerned, as it has been already mentioned, a State Party can denounce it through a notification addressed to the Secretary-General of the Council of Europe. Therefore, for the termination of the bindingness of the Convention for Turkey, it is necessary to denounce it according to the aforementioned procedure, otherwise the country keeps being bound by it.

Even though a presidential decree cannot make effective the denunciation of the Convention, such a political action raises concerns about the situation of women in Europe, which will probably worsen, as the goal of a gender-equal world will become even more far-fetched. In anticipation of no stringent action, the perpetrators will get a free hand in committing crimes and, as a result, violence against women will escalate. In view of such a negative development in the field of women's rights, the Secretary General of the Council of Europe Marija Pejčinović Burić expressed her deep concern and regret about the presidential decision, and she also characterized the withdrawal as a huge setback to the efforts made, given that it compromises the protection of women both in Turkey and across Europe.

International amnesty has also expressed its preoccupation and disappointment, given that Turkey's denunciation will put millions of women and girls at greater risk of violence and it will also go down in history as the first time that a Council of Europe member has withdrawn from an international human rights convention. Amnesty International Secretary-General, Agnès Callamard, said in a statement that "Turkey [has] turned its back on the gold standard for the safety of women and girls. The withdrawal sends a reckless and dangerous message to perpetrators who abuse, maim and kill: that they can carry on doing so with impunity."<sup>102</sup>

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<sup>101</sup> Alex MacDonald, 2021, *Turkey's withdrawal from women's rights treaty sparks domestic backlash* [online], Middle East Eye , Available at <https://www.middleeasteye.net/fr/actu-et-enquetes/turquie-retrait-convention-istanbul-violences-femmes-lgbt>

<sup>102</sup> Amnesty International, 2021, *Turkey's withdrawal from the Istanbul Convention rallies the fight for women's rights across the world* [online], Available at

In addition, UN women's rights Committee urged Turkey to reconsider withdrawal from the Istanbul Convention and the UN Committee on the Elimination of Discrimination against Women reiterated its deep disappointment and concern about this decision. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW Convention), to which Turkey is a party, comprehensively protects women's rights, including their right to be free from discrimination and to be protected from gender-based violence. In the general recommendation No. 19 (1992) on violence against women, the Committee firmly established gender-based violence as a form of discrimination against women prohibited by the CEDAW Convention. In its general recommendation No. 35 (2017), updating general recommendation No 19, it recalled that the *opinio juris* and states' practice suggest that the prohibition of gender-based violence has evolved into a principle of customary international law. Moreover, adherence to regional human rights instruments, which reinforces the rights enshrined in the CEDAW Convention, is an important element of States Parties' implementation of their obligations under the CEDAW Convention. Given that Istanbul Convention is the unique regional instrument and the most detailed international standard for the protection against gender-based violence, the withdrawal from this Convention, runs against the obligations that Turkey has assumed under CEDAW as to taking all measures possible in order to eliminate all forms of discrimination against women. What's more, by disengaging from its international commitments on the elimination of violence against women, Turkey violates peremptory norms of international law (*jus cogens*) such as prohibition of torture, femicide and other grave forms of violence, as well as it fails to guarantee substantive equality and non-discrimination.

As to the actual situation in Turkey, reports about the implementation of the Istanbul Convention and of relevant national legislation raise concerns about the actual status of women and girls. And on top of that, protection of women and girls from gender-based violence gets even more hollowed by Turkey's decision to withdraw. Actually, data from various civil societies' actors show that the actual situation of women in Turkey is deplorable. For example, according to the "We Will Stop Femicide" group, 189 women were murdered in 2021 in Turkey, and 409 last year, including dozens who were found dead under suspicious circumstances. Therefore, it is evident that Turkey's denunciation constitutes a deliberately retrogressive measure that reduces the scope of protection of women's rights and it is inconsistent with the due diligence obligation both under the CEDAW and under *jus cogens*.<sup>103</sup> Moreover, national, European and international associations of the women's movement, united within the Feminist Collective for the Generation Equality Forum (Beijing + 25), expressed their solidarity with the associations of Turkish women who fight for their lives and the protection of their fundamental rights. These associations also denounced the inadmissible regression in women's rights as a result of Turkey's decision to leave the most protective

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<https://www.amnesty.org/en/latest/news/2021/07/turkeys-withdrawal-from-the-istanbul-convention-rallies-the-fight-for-womens-rights-across-the-world-2/>

<sup>103</sup>UN Committee on the Elimination of Discrimination against Women, 2021, *Turkey's withdrawal from the Istanbul Convention: A retrogressive step back in the protection of women's human rights enshrined in the CEDAW Convention - Turkey*

Treaty of the Council of Europe. Apart from UN Committees, non-governmental organizations, and feminists associations, Turkish women's rights activists, lawyers and political figures, are struggling to stop their country from pulling out. For example, numerous complaints were filed with the Council of State (Turkey's highest administrative court), which has not yet ruled on the matter and, as it is supported by the Turkey's Women's Platform for Equality, this court's refusal runs counter to the rule of law.<sup>104</sup>

As far as the announcement of Poland is concerned, the Polish government in 2020 announced its intention to pull out of the Istanbul Convention provoking important reactions worldwide. The Secretary General of the Council of Europe, Marija Pejčinović Burić, stated that “Leaving the Istanbul Convention would be highly regrettable and a major step backwards in the protection of women against violence in Europe”, while the Council of Europe Congress Spokesperson on Gender Equality referred to “retrogressive tendencies” in several countries of the Council of Europe and described efforts to withdraw or resist ratification as “worrying” and “a serious setback for women’s rights”.<sup>105</sup> Additionally, Amnesty International has underlined that withdrawal from the Convention would be a “profound contempt for the rights of women, girls and LGBTI people”.<sup>106</sup>

Despite the severe criticism that the announcement of withdrawal entailed, Turkey did not hesitate to go ahead with exiting the Convention and disengaging from the obligations enshrined in it, letting victims fall between the cracks. Since political pressure has been proven incapable of discouraging states from proceeding with the withdrawal, a different kind of action is required in order to face the increasingly growing opposition to the Convention. **With a view to dispel any misconceptions and legal arguments used against the Convention, in 2020 on the UN International Day for the Elimination of Violence against Women (25 November), the Council of Europe published a new Question-and-Answer brochure.**<sup>107</sup> This brochure highlights the goals of the Istanbul Convention, as well as its added value, which consists in engaging States Parties into adopting a zero-tolerance approach to violence against women. It also explains that in order to adequately prevent, protect and prosecute violence against women, it is necessary to deal with its main root cause: inequality between women and men. That’s why it is indispensable to dismantle prejudices and stereotypes that underestimate women both in the private and public sphere. Gender roles and stereotypes reproduce unwanted and harmful practices and contribute to making violence

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<sup>104</sup>Burcu Karakas, 2021, *Turkey to pull out of Istanbul Convention on violence against women* [online], dw, Available at

<https://www.dw.com/en/turkey-to-pull-out-of-istanbul-convention-on-violence-against-women/a-58114681>

<sup>105</sup>Council Of Europe ,2020, *Poland should not withdraw from the Istanbul Convention, says Secretary General* [online], Available

at:<https://www.coe.int/en/web/istanbul-convention/-/poland-should-not-withdraw-from-the-istanbul-convention-says-secretary-general>

<sup>106</sup> Amnesty International,2020, *While tackling COVID-19 Europe is being stalked by a shadow pandemic: Domestic violence*[online], Available at:

<https://www.amnesty.org/en/latest/news/2020/07/while-tackling-covid-19-europe-is-being-stalked-by-a-shadow-pandemic-domestic-violence/>

<sup>107</sup> The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention): Questions and answers.

against women acceptable. This social acceptance of gender-based violence makes it even more difficult for women to disclose abusive experiences, since they may face suspicion or victim-blaming if they do so. That's the reason why the Convention needs to have a gender-centered approach.

To sum up, the publication of this brochure is of paramount importance, as it clears away any thought of “hidden agenda”, and points out the Convention’s real objectives. This kind of institutional action has been considered by the Council of Europe as the most appropriate way of addressing the opposition to the Convention. Constructive dialogues and campaigns about the basic principles and the fundamental rights that this important legal instrument stands for, are crucial in order to clarify any misconceptions or misunderstandings and to dispel misinformation around the Convention. Getting straight that the core-aim of the Convention is the protection of women’s right to live free from violence, will hopefully convince even “the most conservative states” about the significance of participating in this huge effort.



## **XI. Conclusions:**

The Istanbul Convention has constituted a benchmark at an international level by expanding the international framework on gender equality and the combatment of gender-based violence. Ten years after its opening for signature, many significant steps have been registered, provided that the 47 states that have ratified the Convention have reinforced their national legislation regarding violence against women. For instance, many countries have changed the legal definition of rape, by defining it as performance of sexual acts without consent without requiring use of violence or threats from the part of the perpetrator. Moreover, various acts that were not considered as criminally punishable, such as stalking, have now been criminalized thanks to the Convention. Another benefit that has been gained is



the establishment of institutions and structures that rescue and assist victims, such as the 24/7 hotlines.

Nevertheless, there are a lot of deficiencies which must be corrected by states both at a legislative and a social level in order to fully achieve the goals of the Convention. Apart from that, the Convention has not been ratified by the totality of states members of the Council of Europe, while Turkey withdrew from the Convention and Poland has also seemed to move towards the same direction. In addition, the Istanbul Convention as an international human right treaty is mostly restricted to monitoring states' compliance through dialogue, condemnation and moral sanctions. Since it does not establish an enforcing mechanism, it has limited effect over the states. However, the Convention has introduced pioneer mechanisms in order to maximize the transparency and effectiveness of the monitoring procedure. One of them is the relationship that GREVIO holds with the National Parliaments and the Parliamentary Assembly of the Council of Europe. The two pillars of the monitoring procedure (GREVIO and the Committee of Parties) have also adopted "good practices" for the same reason, possibly drawing inspiration from UN's General Assembly Resolution 68/268 on strengthening the treaty body system, such as the adoption of short, focused and concrete recommendations, the independence and impartiality of their members, as well as the enhancement of the accessibility to their public meetings by live webcasting and video archives.

However, there is a long way to go until full compliance with the Convention. To this end, two tools would contribute significantly, according to this study. Firstly, the launching of campaigns that dispel misconceptions around the Convention in order to both prevent the withdrawal of States Parties and to encourage even more states to ratificate it, and secondly the establishment of an individual and an interstate complaint procedure with a view to achieving a constant monitoring of states' compliance with the Convention and to obtain ad hoc interpretations of its provisions.

Finally, to perceive the eminence of the Istanbul Convention we have to take into consideration the fact that it aims at bringing about a radical change of the structure of the society. Gender-based violence has its roots very deeply in the structure of the society and stems from stereotypes that have been reproducing for several years unwanted and harmful practices and contributing to making violence against women acceptable. That's why the process of its eradication is so tough and strenuous. The only way to guarantee the right of women to live free of violence is through the achievement of gender equality and the adoption of policies and practices that debunk gender stereotypes and empower women. In this context states shall oppose any attempt to: confine women and men to traditional roles, limit women's educational and professional development, or justify and maintain the patriarchal and sexist attitudes that impede the advancement of gender equality.<sup>108</sup>

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<sup>108</sup>Simone Santi , 2021, *10 things you need to know about the Istanbul Convention on violence against women* [online], Lifegate , Available at <https://www.lifegate.com/istanbul-convention-10-years>

*“They are strong*

*They are the rock.*

*They are important.*

*Let's love them.*

*Let's respect them*

*Let's honor them.*

*Let's appreciate them.*

*Let's protect them.*

*Let's support them.*

*Let's save them.*

*Let's listen to them.*

*Let's believe them.*

*Let's be there for them.*

*They are our children, our sisters, our girlfriends, our friends, our wives, our mothers, our grandmothers, our colleagues, our neighbors. They don't need to prove themselves or to explain themselves to anyone. They need to be who they are. Phenomenal women.*

*To all the women out there .”*

*— De philosopher DJ Kyos*



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