

STUDY

Requested by the FEMM committee



# Violence against Women

## Psychological violence and coercive control



Policy Department for Citizens' Rights and Constitutional Affairs  
Directorate-General for Internal Policies  
PE 650.336- April 2020



EN



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### **Abstract**

This study, commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the FEMM Committee, explores whether psychological violence against women is criminalised in select EU Member States, how data is collected regarding this particular form of gender based violence and, in close relation to this, whether custody and visiting rights of perpetrators are affected.

This document was requested by the European Parliament's Committee on Citizens' Rights and Constitutional Affairs.

## **AUTHORS**

Petra JENEY, European Institution of Public Administration, in collaboration with Clara COTRONEO, Igor DIZDAREVIC, Virgil-Ivan CUCU, Tomasz KRAMER, Juan Diego RAMÍREZ-CÁRDENAS DÍAZ, Roberta RIBEIRO OERTEL, European Institution of Public Administration

## **ADMINISTRATOR RESPONSIBLE**

Martina SCHONARD

## **EDITORIAL ASSISTANT**

Sandrina MARCUZZO

## **LINGUISTIC VERSIONS**

Original: EN

## **ABOUT THE EDITOR**

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To contact the Policy Department or to subscribe for updates, please write to:

Policy Department for Citizens' Rights and Constitutional Affairs

European Parliament

B-1047 Brussels

Email: [poldep-citizens@europarl.europa.eu](mailto:poldep-citizens@europarl.europa.eu)

Manuscript completed in March 2020

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## LIST OF ABBREVIATIONS

<b>BGB</b>	Bürgerliches Gesetzbuch (German Civil Code)
<b>CEDAW</b>	Convention on the Elimination of all Forms of Discrimination against Women
<b>CEDAW Committee</b>	Committee on the Elimination of Discrimination against Women
<b>CoE</b>	Council of Europe
<b>EIGE</b>	European Institute for Gender Equality
<b>Eurostat</b>	the statistical office of the European Union
<b>ESS</b>	European Statistical System
<b>EU</b>	European Union
<b>EU MS</b>	European Union Member State
<b>FMG</b>	female genital mutilation
<b>FRA</b>	European Union Agency for Fundamental Rights
<b>GewSchG</b>	Gesetz zum zivilrechtlichen Schutz vor Gewalttaten und Nachstellungen
<b>GBV</b>	gender-based violence
<b>GREVIO</b>	Group of Experts on Action against Violence against Women and Domestic Violence under the CoE Istanbul Convention
<b>ICCS</b>	International classification of crimes for statistical purposes
<b>ICT</b>	information and communication technology
<b>IPV</b>	intimate partner violence
<b>StGB</b>	Strafgesetzbuch
<b>SDG</b>	Sustainable Development Goals
<b>UN</b>	United Nations

<b>UNGA</b>	United Nations General Assembly
<b>UN-CTS</b>	United Nations surveys on crime trends and the operations of criminal justice systems
<b>UNCRC</b>	UN Convention on the Rights of the Child
<b>Unicef</b>	United Nations Children's Fund
<b>UNODC</b>	United Nations Office on Drugs and Crime
<b>VAW</b>	violence against women
<b>WHO</b>	World Health Organisation

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## EXECUTIVE SUMMARY

### Background

Intimate partner violence is one of the most common forms of violence against women and encompasses physical, sexual, and psychological abuse and also controlling behaviours by an intimate partner. Intimate partner violence occurs in all settings and among all socioeconomic, religious and cultural groups.

The present in depth-analysis seeks to contribute to a better comprehension of psychological violence against women in the context of intimate partner violence by addressing the following issues.

Firstly, the study maps out whether psychological violence against women is criminalised in the ten reviewed EU Member States, whether efforts are being made to that end in those countries where it is not and whether there is political and public debate on the subject.

Secondly, the analysis provides a survey of data collection practices of EU Member States to assess whether data is available in relation to psychological violence and, if not, what the major obstacles to effective data collection are.

Thirdly, the analysis provides a comparative account of EU Member States' legislation of the custody and visit rights of a parent accused or convicted as a perpetrator of violence against women.

Specifically, the analysis will focus on whether custody and visit rights can be limited in the case of violence against women; whether a limitation of custody and visit rights can be later modulated and whether interim measures are available to limit custody and visit rights before a final decision is rendered.

The content of this paper is based on existing available data, studies and analysis from numerous sources and documents from national and international institutions. Most extensive use, however, is made of the monitoring work of the independent expert body under the Council of Europe Convention on preventing and combating violence against women and domestic violence, known as the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO). This includes reports submitted by signatory parties of the Convention to GREVIO on the implementation of the Council of Europe Convention on preventing and combating violence against women and domestic violence, GREVIO's first baseline evaluation reports and also the shadow and parallel NGO reports where these were available and relevant.

In addition, the European Institute of Gender Equality (EIGE) has been collecting data and information and providing analyses regarding many aspects of violence against women regarding EU Member States. In particular, EIGE has carried a very detailed work assessing the data collection methodology used by EU Member States. In this context they have delivered country specific recommendations and developed generic indicators to support the collection of reliable and coherent data in EU Member States. This work by EIGE is cited and referred to in detail throughout this study.

## Aim

### **The aim of this Study is to:**

- Describe the obligation under the Council of Europe Convention on preventing and combating violence against women and domestic violence to criminalise psychological violence as a form of violence against women.
- Assess to what extent EU Member States have criminalised psychological violence as a form of violence against women in fulfilling their obligation under the Council of Europe Convention on preventing and combating violence against women and domestic violence.
- Provide a survey of data collection practices of EU Member States to assess whether data is available in relation to psychological violence against women and identify the major obstacles to data collection.
- Provide a comparative analysis of EU Member States legislation to determine whether the custody and visit rights of the parent who is a perpetrator of violence against women can be limited, or later modulated and whether interim measures are available to limit custody and visit rights before a final decision is rendered.

## 1. GENERAL INFORMATION

### KEY FINDINGS

Psychological violence has long been acknowledged as a specific form of violence against women.

International legal instruments and structures under the auspices of the United Nations all consider psychological violence as a specific form of violence against women.

The 2011 Council of Europe Istanbul Convention provides a detailed definition of psychological violence as a form of violence against women for the purposes of criminalisation.

### 1.1. Legal instruments available on the UN, EU and the Council of Europe level

There have been continuous efforts at the international and national level to ensure the defence of women's fundamental rights in case of violence. To that end, various forms of violence against women (VAW) have been defined for both legal and for statistical purposes. The overview of international instruments clearly reveals the gradual broadening of the definition of VAW and with this the effort to criminalize various aspects of such conduct. It can also be observed that international instruments capture VAW as a particular type of human rights violation and treat it as a special form gender based discrimination. It is from this premise that they prescribe the obligation for states to prevent and combat VAW.

At the international level it was under the auspices of the United Nations that to step up the protection of women's rights and to prevent and prohibit violence against women began. The first milestone was adoption of the **Convention on the Elimination of all Forms of Discrimination against Women** (CEDAW) in 1979.<sup>1</sup> CEDAW confined itself solely to the context of discrimination and did not provide any notion of VAW, let alone prescribe criminalization of any of its forms. However, the Committee established under the CEDAW soon after its inception began to follow a practice which emphasized that discrimination as prohibited under the Convention encompasses gender based violence and that states are not only liable to respect this notion but are also responsible to protect their citizens from such actions committed by private persons. Hence, the Committee implicitly interpreted the CEDAW as prescribing the elimination of violence against women.<sup>2</sup>

The next step at the international level was the adoption of the **Declaration on the Elimination of all Forms of Violence against Women (1993 UN Declaration)** by the UN general Assembly<sup>3</sup> This represents the first international instrument ever to solely concern itself with violence against women, albeit in a non-binding fashion. The 1993 UN Declaration stated that violence against women means "any act of gender based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty,

<sup>1</sup> Adopted by the UN General Assembly resolution 34/180 of 18 December 1979 and opened for accession.

<sup>2</sup> General Recommendation No 19 of 1998 of the CEDAW committee.

<sup>3</sup> Proclaimed by General Assembly resolution 48/104 of 20 December 1993

whether occurring in public or in private life". The declaration goes on to state that VAW is to be understood to encompass, but is not limited to:

"( a ) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;

( b ) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;

( c ) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs."<sup>4</sup>

While the 1993 UN Declaration clearly made a significant leap in coining and defining VAW, as a UN Resolution without any binding nature it could only recommend to states to "[d]evelop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence."<sup>5</sup> It's important to underline that **the 1993 UN Declaration's definition of VAW and description of forms of VAW already made reference to psychological violence and called for its sanctioning including criminalization.**

In 1995 the Fourth World Conference on Women in Beijing and its **Beijing Declaration and Platform for Action** included the elimination of all forms of violence against women among its twelve strategic objectives. Building on the 1993 UN Declaration and verbatim adopting its terms, the Beijing Declaration goes further and describes additional forms of violence against women including, but not limited to: violation of the human rights of women in situations of armed conflict, in particular murder, systematic rape, sexual slavery, forced pregnancy, forced sterilization and forced abortion, coercive/forced use of contraceptives, female infanticide and prenatal sex selection. The Beijing Declaration also urged States to "enact and/or reinforce penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs done to women and girls who are subjected to any form of violence, whether in the home, the workplace, the community or society."<sup>6</sup> In the same vein as the 1993 UN Declaration, the **Beijing Declaration and Platform for Action also included psychological violence as a form of VAW and urged States to take legal measures, including penal measures, to work towards its elimination.**

While neither the 1993 UN Declaration nor the Beijing Declaration are binding instruments both of them are of global nature, and since their adoption they have continuously influenced the work of the UN permanent structures dedicated to addressing the general cause of the advancement of women's rights, including the elimination of violence against women.<sup>7</sup> Other UN specialized agencies such as

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<sup>4</sup> 1993 UN Declaration on the Elimination of all Forms of Violence against Women

<sup>5</sup> Article 4(d) 1993 UN GA Resolution

<sup>6</sup> Beijing Declaration and Platform for Action Beijing to 15 September 1995 124 (c) endorsed by the UN General Assembly A/50/PV.86 8 Dec. 1995

<sup>7</sup> Appointment of Special Rapporteur on violence against women (UN Commission on Human Rights) by the adoption of resolution 1994/45 in 1994. UN Division for the Advancement of Women (UNDAW) Commission on the Status of Women (CSW) in 2013, Secretary-General's UNiT Campaign UN Trust Fund to End Violence against Women.

the WHO<sup>8</sup> the UNODC<sup>9</sup> and UNICEF all consider psychological violence as a specific form of VAW, with the WHO employing the widest definition.

The 1993 UN Declaration and the Beijing Declaration also heavily influenced the **2015 UN Sustainable Development Goals and the 2030 Agenda for Sustainable Development (SDG)**, which also include a reference to violence against women. More specifically Goal 5 of the SDGs is to achieve gender equality and to empower all women and girls and that includes the elimination of all forms of discrimination and violence against women.<sup>10</sup>

In Europe it is the **2011 Council of Europe Convention on preventing and combatting violence against women and domestic violence (CoE Istanbul Convention)**<sup>11</sup> which serves as the blueprint for defining the various forms of VAW. Building on the global developments paved by the UN, the CoE Istanbul Convention is today the most progressive binding international instrument on the subject. The CoE Istanbul Convention is of particular importance to the EU Member States, all of them have signed the Convention and the EU itself has acceded to it as well.<sup>12</sup> The CoE Istanbul Convention defines "**violence against women**" (VAW) as: "a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life".<sup>13</sup>

The CoE Istanbul Convention **VAW definition is gender based** as encompasses "violence which is directed against a person because of that person's gender or one that disproportionately affects persons of a particular gender".<sup>14</sup>

The CoE Istanbul Convention, following course with the above mentioned UN documents, refers to VAW as a phenomenon which may materialize in various forms, and encompasses any act whether of physical, sexual or psychological in nature. In addition, it innovatively adds acts causing economic harm or suffering to women to the definition of VAW and captures not only acts actually perpetrated but also threats of such acts and coercion as well. The CoE Istanbul Convention, the first European instrument of its kind,<sup>15</sup> instead of simply enumerating the various forms of violence against women, provides detailed definitions to certain particular forms of violence. This is of a particular importance since the exact aim of the CoE Istanbul Convention is to prevent and prosecute VAW and that can be carried out effectively only if the underlying reprehensible conducts are properly defined and differentiated for the purposes of criminalisation. To that end the CoE Istanbul Convention introduces a repository of definitions in relation to various forms of VAW and most importantly makes a distinction between

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<sup>8</sup> WHO reference number: WHO/RHR/19.16 The WHO has put forward the most comprehensive definition of IPV that refers to physical, sexual and emotional abuse and controlling behaviours by an intimate partner and provides examples of the types of indicators for each element. WHO, *Understanding and addressing violence against women, Intimate partner violence*, 2012.

<sup>9</sup> HANDBOOK ON EFFECTIVE PROSECUTION RESPONSES TO VIOLENCE AGAINST WOMEN AND GIRLS CRIMINAL JUSTICE HANDBOOK SERIES UNITED NATIONS New York, 2014

<sup>10</sup> A/RES/70/1 GA Resolution on Transforming our world: the 2030 Agenda for Sustainable Development

<sup>11</sup> The Convention on preventing and combating violence against women and domestic violence was adopted by the Member States of the Council of Europe and other signatories on 11 May 2011 (2011 CETS No 210) (hereinafter the CoE Istanbul Convention). It was opened for signature on 11 May 2011 on the occasion of the 121st Session of the Committee of Ministers in Istanbul. Following its 10th ratification by Andorra on 22 April 2014, it entered into force on 1 August 2014.

<sup>12</sup> As of 28/03/2020 the following EU MSs have signed and ratified the Istanbul Convention: AT, BE, CY, DK, EE, FI, FR, DE, ELL, ES, IRL, IT, LUX, MT, NL, PL, PT, RO, SE, SL. The following MSs have only signed, but yet to ratify the Istanbul Convention: BG, CZ, HU, LT, LV, SK. The EU has also acceded to the Istanbul Convention on 13/06/2017,

<sup>13</sup> Article 3a Council of Europe Convention on preventing and combatting violence against women and domestic violence (Istanbul Convention) 2011 CETS 210.

<sup>14</sup> EIGE, Strategic Framework on violence against women 2015-2015, 2015, p.3.

<sup>15</sup> The other very significant regional instrument on the matter is the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, known as the Convention of Belém do Pará, adopted in 1994.

violence that occurs within a family/domestic unit in intimate/partner/spousal relationships and other forms of violence where this particular context is not required as a defining feature.

The criminalized forms of VAW under the CoE Istanbul Convention can be categorized based on whether they occur in a **domestic/intimate partner context** or are self-standing and the material elements of crime do not require this objective element to be present. The other possible way of categorizing the prosecuted forms of VAW under the CoE Istanbul Convention is whether or not perpetration requires some form of direct **physical act towards the victim**, with psychological violence falling in the category of non-physical acts.

The CoE Istanbul Convention defines a number of other types of **violent acts against women** for the purposes of persecution which do not or do not necessarily occur within the domestic or intimate partnership context. These **include sexual violence,<sup>16</sup> including rape, physical violence, psychological violence, stalking, sexual harassment, forced marriage, female genital mutilation, forced abortion and forced sterilization.**

As noted above, the CoE Istanbul Convention criminalises forms violence against women which do not or do not necessarily involve physical acts. These include psychological violence, stalking and sexual harassment.

Table 1: VAW in the CoE Istanbul Convention

General broad definition of VAW	Occurs in the context of domestic violence	Occurs outside the context of domestic violence	Requirement of criminalization	Aiding and abetting is criminalized	Attempt is criminalized
Rape Article 36	Yes	Yes	Yes, if non-consensual	Yes	Yes
Sexual violence Article 36	Yes	Yes	Yes, if non-consensual	Yes	Yes
Physical violence Article 35	Yes	Yes	Yes, if intentional	Yes	yes
Psychological violence Article 33	Yes	No	Yes, if intentional and seriously impairs the other's psychological integrity	Yes	No
Stalking Article 34	Yes	Yes	Yes, if repeated intentional conduct causes fear for safety	Yes	No
Sexual harassment Article 40	No	Yes	Yes, or other legal sanction	No	No

<sup>16</sup> The CoE Istanbul Convention does not include a definition of sexual violence. However, article 36 lists a great number of conducts to be characterised as sexual violence such as rape or sexual assault and requires that Parties to the Convention also criminalise the above-mentioned acts when committed by current or previous partners or spouses.

General broad definition of VAW	Occurs in the context of domestic violence	Occurs outside the context of domestic violence	Requirement of criminalization	Aiding and abetting is criminalized	Attempt is criminalized
Forced marriage Article 37	n/a	Yes	Yes, if intentional	Yes	Yes
Female Genital Mutilation Article 38	n/a	Yes	Yes	Yes	Yes
Forced abortion Article 39	Yes	Yes	Yes, if intentional	Yes	Yes
Forced Sterilization Article 39	Yes	Yes	Yes, if intentional	Yes	Yes

Source: CoE Istanbul Convention.

There is one particular form of violence against women, which the CoE Istanbul Convention deliberately does not deal with, namely **trafficking of human beings**, which increasingly affects women and girl children. It was decided to exclude trafficking of human beings from the scope of the CoE Istanbul Convention as this conduct has been already dealt with in other Council of Europe conventions, in particular the Convention on Action against Trafficking in Human Beings (CETS No. 197) and the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201).<sup>17</sup>

Despite the fact the violence against women has been on the political agenda of the European Union for a long time and that all Member States, the European Parliament,<sup>18</sup> the Council of Ministers<sup>19</sup> and

<sup>17</sup> CoE Istanbul Convention, Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence Istanbul, 11.V.2011 para 154

<sup>18</sup> The European Parliament being the most vocal about stepping up efforts to combat violence against women. Since 1999 the EP has adopted a number of resolutions on the subject. The first resolution was of 11 June 1989 on violence against women, followed by Resolution on elimination of violence against women of 26 November 2009, Resolution of 5 April 2011 on priorities and outline of a new EU policy framework to fight violence against women, Resolution of 14 June 2012 on ending female genital mutilation, Resolution of 6 February 2013 on the 57th session on the United Nations CSW: Resolution of 25 February 2014. Resolution of 9 June 2015. In January 2014, the Committee on Women's Rights and Gender Equality adopted a **report with recommendations for the Commission** on violence against women (the so called Parvanova report). European Parliament, Resolution of 25 February 2014 with recommendations to the Commission on combating Violence against Women, 2013/2004(INI); European Parliament, Resolution of 9 June 2015 on the EU Strategy for equality between women and men post 2015, 2014/2152(INI); European Parliament, Resolution of 24 November 2016 on the EU accession to the Istanbul Convention on preventing and combating violence against women, 2016/2966(RSP); European Parliament, Resolution of 14 March 2017 on equality between women and men in the European Union in 2014-2015, 2016/2249 (INI); European Parliament, Resolution of 12 September 2017 on EU conclusion of the Istanbul Convention, 2016/0062(NLE), 2016/0062(NLE); European Parliament, Resolution of 11 September 2018 on measures to prevent and combat mobbing and sexual harassment at workplace, in public spaces, and political life in the EU, 2018/2055(INI); European Parliament Resolution of 19 April 2018 on the implementation of Directive 2011/99/EU on the European Protection Order, 2016/2329(INI); European Parliament, Resolution of 30 May 2018 on the implementation of Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, 2016/2328(INI); European Parliament, Resolution of 16 January 2019 on the situation of fundamental rights in the European Union in 2017, 2018/2103(INI); European Parliament, Resolution of 13 February 2019 on experiencing a backlash in women's rights and gender equality in the EU, 2018/2684(RSP).

<sup>19</sup> The Council of Ministers has adopted conclusions on several occasions in 2010, 2012, 2014. In 2008, the Council adopted **EU guidelines on violence against women and girls** and combating all forms of discrimination against them

the European Commission<sup>20</sup> have pledged combat it, to this day there is **no general EU legal instrument directly providing for the criminalization of the violence against women.**

The legal basis to adopt a legal measure which would criminalize violence against women in general, or certain particular forms of VAW, is problematic given the limitations of the legal base offered by Articles 82-83 TFEU. Despite the fact that Member States have committed themselves, in **Declaration no. 19 on article 8 TFEU**, to combat all kinds of domestic violence and to take the necessary acts to prevent and prosecute these acts, this has not been complemented with a proper legal base to adopt criminal law instruments under the current treaty regime. The issue related to the identification of the proper legal base of any EU legal act on criminalizing violence against women has been explored elsewhere.<sup>21</sup> Here it suffices to note that Article 82 is confined to judicial cooperation issues in relation to criminal matters and selected issues in relation to criminal procedures. In addition, Article 83 provides an explicit legal basis for the harmonization of substantive criminal law rules of EU Member States only in relation to a fixed circle of particularly serious crimes with a cross border dimension, which does not include any of the forms of violence against women. **EU legislation has so far tackled various aspects of violence against women in a range of EU legislative acts but as said no comprehensive legislation on the subject has yet been adopted.**

With respect to criminalization the only instruments adapted so far which criminalizes one very specific aspect of VAW is **Directive 2011/36/EU** on preventing and combatting trafficking in human beings and protecting its victims.<sup>22</sup> This Directive criminalizes trafficking of human beings a very specific form of VAW and includes a number of corresponding victim protection tools. With respect to victims of VAW the entire repository of EU victim's protection legislation is applicable. The most general of these are the A more general legal instrument which is nevertheless very important for victims of VAW is **Directive 2012/29/EU** (The Victims' Directive) on common minimum standards on the rights, support and protection of victims.<sup>23</sup> The Victims' Directive prescribes to Member States to support the victim and/or their family members, to protect the victim, to give victims the right to be informed about the prosecution of the perpetrator. The Victims' Directive specifically provides protection and support for women who have become victim of violence against women and for THB victims as well.<sup>24</sup> THB victims receive further support under **Directive 2004/81/EC** under which treatment and temporary residence permit is offered for THB victims.<sup>25</sup> T

With respect to judicial cooperation tools the EU has adopted two instruments **Directive 2011/99/EU (criminal European Protection Order)**<sup>26</sup> and **Regulation (EU) No 606/2013 (civil European Protection Order)**<sup>27</sup> which allow judicial authorities to issue orders to enable competent authorities in

<sup>20</sup> The prevention of gender based violence has been part of the Strategy for Equality between Women and Men 2010-2015In December 2015, the Commission published a staff working document on the In 2010, the European Commission adopted a Women's Charter, in November 2013, the Commission adopted a communication on eliminating female genital mutilation (FGM). The Commission has also adopted the EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016. strategic engagement for gender equality 2016-2019, The 2020-2025 Gender Equality Strategy

<sup>21</sup> Celeste Montoya, International Initiative and Domestic Reforms: European Union Efforts to Combat Violence Against Women, Politics and Gender, no.5 2009, p.332

<sup>22</sup> Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA

<sup>23</sup> Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA

<sup>24</sup> Article 9 and 22 Ibid.

<sup>25</sup> Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities

<sup>26</sup> Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order

<sup>27</sup> Regulation (EU) No 606/2013 of the European Parliament and of the Council of 12 June 2013 on mutual recognition of protection measures in civil matters

another EU Member States to continue the protection on their territory of person. The criminal European Protection Order encompasses the recognition of protection order of persons whose life, physical or psychological integrity, dignity, personal liberty or sexual integrity may be endangered by a criminal act or an alleged criminal act by another person. The civil European Protection Order covers protection orders regarding persons who's physical or psychological integrity may be at risk. While both mutual recognition instruments specifically aim to protect persons from gender based violence, including for example stalking or indirect coercion,<sup>28</sup> these notions however are not defied at a European Union level. The two mutual recognition instruments build on existing national criminal law offences on the basis of which national protection orders can be issued and do not prescribe the modification of these. aim to protect persons from gender based violence, including for example stalking or indirect coercion,<sup>26</sup> these notions however are not defied at a European Union level. The two mutual recognition instruments build on existing national criminal law offences on the basis of which national protection orders can be issued and do not prescribe the modification of these.

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<sup>28</sup> Ibid. Recital 9 and Recital 6. respectively.

## 2. CRIMINALISATION OF COERCIVE CONTROL AND PSYCHOLOGICAL VIOLENCE AGAINST WOMEN IN THE EU MEMBER STATES

### KEY FINDINGS

In most of the reviewed EU Member States psychological violence falls within the scope of domestic violence or intimate partner violence.

In most of the reviewed EU Member States psychological violence is criminalised as a form of domestic violence.

The legislative solutions of the reviewed EU Member States show a great diversity regarding psychological violence as an independent criminal offence, separate from domestic violence or intimate partner violence

### 2.1. Coercive control and psychological violence against women under the CoE Istanbul Convention

As noted above the CoE Istanbul Convention criminalises certain forms of violence against women which do not or do not necessarily involve direct physical acts. The CoE Istanbul Convention does not use the term coercive control and for the purpose of this study the two terms of coercive control and psychological violence will be considered as being identical, where preference is made to the latter. The criminalization of psychological violence against women is provided for under the CoE Istanbul Convention in three ways.

First in the context of domestic violence, where the comprehensive definition of domestic violence given by the CoE Istanbul Convention includes psychological violence.

Second, psychological violence is also defined as a self-standing offence to be criminalized.

The third is stalking as a specific form of psychological violence that is also criminalized.

#### 2.1.1. Domestic violence

As **domestic violence** is undoubtedly the most common form of violence against women the CoE Istanbul Convention specifically defines this term broadly. The term is understood as any and all "acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim."<sup>29</sup> The CoE definition of domestic violence essentially includes two dimensions: **intimate-partner violence (IPV)** between current or former spouses or partners and **inter-generational violence**, which typically occurs between parents and children. By defining domestic violence in such a way the CoE Istanbul Convention departs from the more limited understanding of domestic violence committed within a marital relationship and opens up the definition to include violence taking place between intimate partners (i.e. not formally married couples) and also violence taking place between formal spouses and partners i.e. after the relationship has

<sup>29</sup> Article 3b CoE Istanbul Convention.

ended. Domestic violence as intimate-partner violence includes physical, sexual, psychological or economic violence between current or former spouses as well as current or former partners.

It must be underlined that in order to have an exact picture of violence between current or former partners, many stakeholders, and chiefly the EIGE, promote the separation of the two dimensions of domestic violence, namely inter-generational violence and intimate partner violence, at least for data collection purposes. Hence the term of **intimate partner violence** will be used in this study as well, to break down the broader notion of domestic violence and exclude intergenerational violence as much as possible, despite the fact that in many EU Member States the broader notion is used and the above distinction is not made even for statistical purposes.

The **CoE Istanbul Convention provides for the criminalization of domestic violence** in two ways. Firstly, it builds on the broad definition of domestic violence and singles out three particular form of violent acts that maybe perpetrated in the domestic/IPV context – namely **physical, sexual and psychological violence** - that are further defined for the specific purposes of criminalization. The criminalization of these forms of violence is not limited to the domestic/IPV context however. Secondly, the CoE Istanbul Convention qualifies the offence if it is committed against the current or former spouse or partner and prescribes to States to consider this as an **aggravating circumstance** for the determination of the sentence in relation to the offences.

It is also worth noting that the European Court of Human Rights in the *Buturuga v Romania* case<sup>30</sup> found the respondent state to be violating the European Convention on Human Rights by failing to fulfil its positive obligation under the ECHR to launch a criminal investigation for domestic violence after a complaint was made by the applicant. In the Court's view "*both in domestic and international law, the phenomenon of domestic violence is not perceived to be limited to acts of physical violence but includes, among other things, psychological violence or harassment.*"

### **2.1.2. Psychological violence**

**Psychological violence** is criminalized as a self-standing form of VAW under the CoE Istanbul Convention, and at the same time it is closely linked to domestic violence as a particular context in which this form of violence may specifically occur. The criminally sanctioned form of psychological violence is an intentional offence "seriously impairing a person's psychological integrity through coercion or threats".<sup>31</sup> The definition of 'intentional' is left to national laws, but all the material elements of the crime require intentional conduct. According to the Explanatory Report attached to the CoE Istanbul Convention, while serious impairment is not defined, the use of coercion and threats must be involved to attain this level of harm.<sup>32</sup> Also, this conduct must be comprised of more than one single event and must reflect an abusive pattern of behaviour occurring over time. One important limitation of the criminalization effort of the Convention is that signatory parties may reserve the right to provide for non-criminal sanctions, instead of criminal sanctions in relation to psychological violence.<sup>33</sup> The rationale behind allowing for such reservation was to allow flexibility for legal systems providing non-criminal sanctions yet at the same time preserve the principle of criminalisation of psychological violence in the Convention.

<sup>30</sup> no 56867/15 judgment from 11 February 2020, French version only <http://hudoc.echr.coe.int/enq?i=001-200842>

<sup>31</sup> Article 33 CoE Istanbul Convention.

<sup>32</sup> CoE Istanbul Convention, Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence Istanbul, 11.V.2011 para 181.

<sup>33</sup> Pursuant to Article 78, paragraph 3, of the CoE Istanbul convention the following EU Member States made such a declaration: RO. <https://www.coe.int/en/web/conventions/search-on-treaties/-/conventions/treaty/210/declarations>

### 2.1.3. Stalking

The CoE Istanbul Convention also criminalises **stalking**, which can be understood as a specific form of psychological violence, also involving a pattern of significant incidents of harassing and/or threatening behaviours. According to the Convention for the purposes of criminalization stalking is an intentional conduct of “repeatedly engaging in threatening conduct directed at another person, causing her or him to fear for her or his safety”.<sup>34</sup> The threatening behaviour may consist of physical acts such as repeatedly following another person, engaging in unwanted communication with another person or psychological acts such as letting another person know that he or she is being observed but also damaging personal property and leaving subtle traces. According to the Explanatory Report the definition also encompass **cyberstalking**, where the victim is followed in the virtual world (chat rooms, social network platforms, etc.).<sup>35</sup> Engaging in unwanted communication also includes the pursuit of any active contact with the victim through any available means of communication, including modern communication tools and ICTs and including the spreading in untruthful information online about the victim. As in the case of psychological violence, signatory parties to the Convention may reserve the right to apply non-criminal sanctions regarding stalking.<sup>36</sup>

### 2.1.4. Sexual harassment

Regarding **sexual harassment**, the CoE Istanbul Convention builds on EU's Equal Opportunities Directive<sup>37</sup> and defines sexual harassment in line with the EU instrument as covering “any form of unwanted verbal, non-verbal or physical conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment”.<sup>38</sup> However the CoE Istanbul Convention goes further than EU instrument in two very important aspects. Firstly it does not see harassment merely in the context of discrimination but in a wider context of abuse of power, promise of reward or threat of reprisal, which is not limited to the fields of employment.<sup>39</sup> Also the CoE Istanbul Convention requires state parties to subject sexual harassment to criminal or other legal sanctions. It is important to emphasize however that sexual harassment is a specific self-standing form of VAW the material elements of this conduct are manifold. Three main forms of behaviour are encompassed, verbal, non-verbal or physical conduct, which need to be of a sexual nature and unwanted by the victim. Since sexual harassment goes beyond the domestic/intimate partner context this study merely takes into account as a form of psychological violence but does not analyse the respective legislative provisions of the reviewed EU Member States.

## 2.2. Assessment of the criminalisation of coercive control and psychological violence against women in the Member States of the European Union

As was demonstrated above EU Member States are bound by the CoE Istanbul Convention to criminalize psychological violence as a form of VAW. While the EU itself also a party to the Convention, thereby replicating Convention obligations in EU law as well, at the time of writing the EU does not

<sup>34</sup> Article 34.

<sup>35</sup> CoE Istanbul Convention, Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence Istanbul, 11.V.2011 para 181.

<sup>36</sup> Pursuant to Article 78, paragraph 3, of the CoE Istanbul convention the following EU Member States made such a declaration: DK.

<https://www.coe.int/en/web/conventions/search-on-treaties/-/conventions/treaty/210/declarations>

<sup>37</sup> Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation Article 2

<sup>38</sup> CoE Istanbul Convention Article 40

<sup>39</sup> CoE Istanbul Convention, Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence Istanbul, 11.V.2011 para 209.

prescribe the criminalisation of any further or other forms of VAW which would go beyond the Convention. For this reason, the discussion below focuses primarily on the extent to which the obligation to criminalize psychological violence under the Istanbul Convention have been complied with by the reviewed EU Member States. For ease of navigation and in order to provide the reader with a user friendly overview, the analyses of the reviewed EU Member States is divided into two parts. The first part below provides a synthesis of how psychological violence has been criminalised in the reviewed EU Member States. The discussion will consider which EU Member States criminalise psychological violence as a form of domestic violence as such and which EU Member States have separate notions of intimate partner violence that can also provide for the criminalisation of psychological violence. It will be shown what other gender neutral criminal offences independent from the domestic/intimate partner context are employed to encompass the notion of psychological violence. The criminalisation of stalking will be also taken into consideration.

In Annex I attached to the present a detailed country-by-country account is made on the above issues, namely, whether in-depth analysis domestic and or intimate violence is criminalised, whether psychological violence is criminalised separately, whether stalking is criminalised, who are considered as family members and/or partners for the purposes of domestic violence/intimate partner violence, and whether the domestic/intimate partner context is an aggravating circumstance in case of other criminal offences. To frame the discussion of the above issues a general overview of national legislation in relation to violence against women and a brief assessment is also provided.

**Most of the reviewed EU Member States include psychological violence as a component of domestic violence/intimate partner violence, and only a few of them have a separate offence of psychological violence in which the victim-perpetrator relationship is recorded.** Except for Finland and Germany, all the reviewed EU Member States – Cyprus, France, Greece, Italy, Portugal, Poland, Romania and Spain - criminalise domestic violence or specifically intimate partner violence. In the EU Member States making recourse to **domestic violence or specifically intimate partner violence**, psychological violence is enumerated as a specific form of violence covered within that notion. This is the case in Cyprus, Greece, France, Italy, Poland, Portugal and Romania.<sup>40</sup> Among the countries employing the concept of domestic violence only a few make the distinction between inter-generational and intimate partner violence.<sup>41</sup> In Spain there is a separate notion for intimate partner violence, whereas in Cyprus, Greece, France, Italy, Poland, Portugal, Romania there is no differentiation made and the generic term of domestic violence is used.

In most of the reviewed EU Member States **psychological violence** falls within the scope of intimate partner or domestic violence and is identified as psychological or mental violence, mistreatment or harassment. This is the case in Cyprus, France, Italy, Poland, Portugal and Romania. In Greece it is only the act of threat which may denote a form of psychological violence in the domestic context. It is only Spain where there is a full-fledged definition of psychological violence in the intimate partner context.<sup>42</sup> The term coercive control is not used to denote the psychological aspect of domestic violence or intimate partner violence in any of the reviewed EU Member States.

<sup>40</sup> See the corresponding analysis in Annex I.

<sup>41</sup> Notably Sweden and Spain, in the remaining EU Member States intimate partner violence is either a specific form of domestic violence or even if it is a separate criminal offence there is a reference to the domestic context or criminalised under a different offence if domestic violence is not an offence itself. See Gender Based Violence - Understanding intimate partner violence in the EU: the role of data EIGE 2019, p17.

<sup>42</sup> See the detailed analysis of the Spanish legislative instruments in Annex I.

In all the reviewed EU Member States **separate criminal offences**, outside the VAW context, are also available to capture the notion of psychological violence. There is a wide repository of criminal offences which all encompass the notion of psychological violence, including: coercion, harassment, menace, verbal abuse, insult, humiliation, neglect, isolation, acts of jealousy, slander and defamation. EU Member States variously use these criminal offences but they are independent from and lack the context of domestic/intimate partner violence and are not gender-sensitive.

It is only Finland and Germany where there is no legal definition of either of domestic violence or intimate partner violence. In Finland, other criminal offences are used to sanction acts committed in the domestic/intimate partner context. Regarding psychological violence, Finland reported the availability of menace and coercion as offences criminalised in domestic law, which was considered by GREVIO as a regulatory arrangement not in compliance with the requirement of the CoE Istanbul Convention to criminalise psychological violence as a form of violence against.<sup>43</sup> In Germany the situation is somewhat different as there is a legislative act on protection against violence, which irrespective of the domestic/intimate partner context provides protection for the victims of psychological violence and for the prosecution of the offender, yet under separate criminal law offences.<sup>44</sup>

The legislative solutions of the reviewed EU Member States show a great diversity regarding **psychological violence** as an independent criminal offence separate from domestic/intimate partner violence. In Cyprus legislation is still pending on this matter. In Finland, Germany, Greece, Poland, Portugal and Romania there is no separate criminal offence for psychological violence as a form of violence against women. In Finland menace and coercion are the criminal offences that can be applied.<sup>45</sup> In Germany the Government identified coercion and threatening commission of serious criminal offence as the criminal offences which are available to criminalise psychological violence.<sup>46</sup> In Poland mistreatment of persons can be made recourse to in psychological violence cases but legislative changes are under way.<sup>47</sup> In Portugal threat and coercion are the gender neutral criminal offences that can be applied.<sup>48</sup> In Romania the broad notion of harassment is used, however Romania reserved the right to provide for non-criminal sanctions, instead of criminal sanctions, for psychological violence as defined in Article 33 of the CoE Istanbul Convention for the period between 2016 to 2021, subject to renewal.<sup>49</sup> In Spain besides the very detailed legislative provisions specifically criminalising psychological violence against intimate partners, the separate criminal law offences of threat and coercion are also available.<sup>50</sup>

Committing any other crime against a current or former spouse is an **aggravating circumstance** in France, Italy Spain.

**Stalking** is a separate crime in all the reviewed EU Member States with the exception of Cyprus and Romania. In Cyprus there is currently pending legislation on the matter. In the following EU Member States stalking is criminalised Finland, France, Germany, Greece, Italy, Poland, Portugal and Spain. The Romanian Government reported harassment to cover the notion of stalking, but as noted above it has reserved the right to provide for non-criminal sanctions at least until 2021.

<sup>43</sup> See the detailed analysis of the Finnish legislative instruments in Annex I.

<sup>44</sup> See the detailed analysis of the German legislative instruments in Annex I.

<sup>45</sup> See the detailed analysis of the Finnish legislative instruments in Annex I.

<sup>46</sup> Ibid.

<sup>47</sup> See the detailed analysis of the Polish legislative instruments in Annex I.

<sup>48</sup> See the detailed analysis of the Portuguese legislative instruments in Annex I.

<sup>49</sup> See the See the detailed analysis of the Romanian legislative instruments in Annex I.

<sup>50</sup> See the detailed analysis of the Spanish legislative instruments in Annex I.

Table 2: Criminalisation of coercive control/psychological violence as a form of VAW

	Domestic violence/IPV including psychological violence	Psychological violence	Stalking
Cyprus	Yes	No	No
Finland	No	No, coercion and menace, non-VAW related general criminal offence are applicable	Yes
France	Yes	Yes	Yes
Germany	No	Yes through coercion and threat to commit a criminal act	Yes
Greece	Yes	No, through "threat" as a non-VAW related general criminal offence is applicable, domestic violence includes threat	Yes
Italy	Yes	No, through coercion as a non-VAW related general criminal offence is applicable, or ill-treatment of family member	Yes
Poland	Yes	No	Yes
Portugal	Yes	No, through domestic violence which includes mental abuse or threat as a non-VAW related general criminal offence is applicable	Yes
Romania	Yes	No	No
Spain	Yes	Yes	Yes

There are significant differences among the reviewed EU Member States regarding who are considered as **family members** within the notion of domestic violence or, alternatively, if intimate partner violence is used who is recognised as a partner to that end. In all the reviewed the EU Member States employing the concept of domestic violence or intimate partner violence, spouses (husband, wife, registered partner) are recognised as family members within the concept of domestic violence or partners within the context of intimate partner violence. In eight of the ten reviewed EU Member States former spouses are recognised as family members within the concept of domestic violence or as partners within the context of intimate partner violence. From this point onwards there is great variation as to whom else is recognised under the notion of 'family member' for the purposes of domestic violence or 'partner' for the purposes of intimate violence encompasses. Regulatory solutions include: partner and former partners, boyfriends, person/partner living together and stable and lasting relationships. In aligning

their respective legislative instruments to that of the CoE Istanbul Convention a number of the reviewed EU Member States – France Greece Italy, Poland and Romania – widened the concept of family member for the purposes of domestic violence. In Cyprus there are legislative amendments under way to that end.<sup>51</sup>

Table 3: Persons recognised as a family member for the purposes of domestic violence and/or partner for the purposes of intimate partner violence in the EU Member States

	Spouse	Former spouse	Partner	Former partner	Boy-friend	Partner/person living together	Stable and lasting relationship
EU Member State	DE, EL, ES, FR, IT, CY, PL, PT, RO,	DE, EL, ES, FR, IT, CY, PT, RO,	DE, ES, FR, PT,	DE, ES, FR, PT	ES, PT,	CY, DE, EL, ES, FR, PL, RO,	ES, PT
Total	9	8	4	4	2	16	4

Source: Glossary of definitions of rape, femicide and intimate partner violence EIGE 2017 p44 but corrected on the basis of legislative developments since 2017

In most of the reviewed EU Member States – CY, DE, ELL, ES, FI, FR, IT, PT, PL, RO - the ratification process of the CoE Istanbul Convention triggered genuine legislative steps and the introduction of previously non-existing legal institutions. In Finland, France, Germany, Greece, Italy, Portugal, Spain and Romania the legislative steps have already been completed, while in others - Cyprus and Poland - this is still pending. At the same time, political and public debate ensued in a number of EU Member States regarding the most sensitive issues related to violence against women (Cyprus, Greece, Poland). Chief among these was the criminal law definition of rape and in particular the CoE Istanbul Convention's requirement that the material elements of the crime should not require the victim to show resistance and, more generally, the "no means no" approach to rape whereby all non-consensual sexual acts shall be regarded as rape or sexual assault (Greece, Italy, Spain). These debates, and in certain countries demonstrations, were only partially triggered by the ratification of the CoE Istanbul Convention. Concrete criminal acts, the handling of such criminal offences by the police and judgments rendered by courts provoked manifestations in some countries (Cyprus, Greece, Spain).

<sup>51</sup> See the detailed analysis of the Cypriot legislative instruments in Annex I.

### 3. DATA COLLECTION CHAPTER IN THE EU MEMBER STATES

#### KEY FINDINGS

Data collection in relation to psychological violence against women is hampered for a number of reasons in the reviewed EU Member States. These include the differing terminology used to denote psychological violence, the various criminal offences applied, the different units of measurements used for statistical purposes, the principal offence rule, diverging rules and practices regarding reporting and underreporting.

The currently available data collected by the police and justice sectors do not give a clear picture of the scale of domestic and intimate partner violence within and across the reviewed EU Member States

High or medium data availability characterises half of the reviewed EU Member States, whereas no data or no useful data is available from the other half of the reviewed countries regarding psychological violence against women

#### 3.1. General issues in relation to data collection

While reliable, systematic and comparable data would be crucial to the in-depth understanding of the phenomenon of violence against women and psychological violence/coercive control in particular, adequate data collection is difficult for a number of reasons. Although a number of international and European regulatory frameworks prescribe data collection and despite the continuous efforts of the European Institute for Gender Equality (EIGE) working with EU Member States to collect relevant data there is a lack of comparable data in the EU today.

The predominant reason for this difficulty is that **EU Member States use various terms and definitions for legal and statistical purposes in describing the phenomenon of violence against women**, which in itself encompasses various forms of violence as explained in the previous Chapter above. Given that psychological violence/coercive control against women is variously regarded as a self-standing crime or a specific form of domestic/intimate partner violence or seen to fall within the more general, non-gendered forms of criminal offences in the EU Member States available and comparable data is even more scarce in this field. Therefore, the comprehensiveness of administrative data on psychological violence/coercive control, either as forms of domestic/intimate partner violence against women or as a self-standing crime, also depends on the extent to which a country entrusted with administrative data collection reflects on all of the forms of intimate partner violence against women in legal or statistical definitions. The variety of legal definitions found across Member States and the different offences used to criminalise specific forms of intimate partner violence highlight the need for harmonisation of crime classifications.<sup>52</sup>

According to EIGE, besides the differences in the various definitions in relation to VAW in the EU Member States, there is one particular difficulty which arises regarding the data collection on psychological violence which makes it harder to capture through administrative statistics. In most EU Member States the criminal justice system, understandably, seeks to sanction the more serious crimes, and this rationale is also reflected in data collection systems. When it comes to data collection this is

<sup>52</sup> The difficulty of terminology and corresponding criminal offences in the EU Member States is analysed in Chapter II.

often called as the “**principal offence rule**”. The rule means that only the most severe offence (often measured on the basis of the penalty foreseen) is recorded in cases where multiple offences are committed at the same time by the same perpetrator. The implication of this on domestic violence/intimate partner violence data collection is that some forms of violence, i.e. psychological violence, may not be recorded if it is committed at the same time with other incidents that are considered to be more severe. Consequently, for data collection purposes it is important to clearly indicate how multiple offences in the case of the same VAW are recorded.

Thus, if multiple offences are committed at the same time, the **less serious crimes are subsumed by the more serious ones and may go unrecorded** when it comes to data administering. If, for example, an incident of assault is accompanied by some form of psychological violence, it will only be recorded as assault, with the psychological dimension disregarded. Hence, according to EIGE, it is safe to assume that in the majority of EU Member States the data on psychological violence is restricted to cases of psychological abuse where other forms of VAW, such as physical or sexual violence, are absent. This means that these statistics on psychological violence reflect only the tip of the iceberg.<sup>53</sup>

In addition to this, the availability of data depends largely **to what extent the respective national system prescribes and encourages reporting and recording**. Moreover the comprehensiveness and reliability of data also depends on the **capacity of authorities**, chiefly the police officers entrusted with administrative data collection, to identify the manifestations of psychological violence/coercive control in a domestic/ intimate partner violence scenario and to be able to make the subtle distinctions among the various forms of VAW.<sup>54</sup> It is therefore crucial for representatives of the police and justice sectors to have an understanding of the gendered nature of the phenomenon and how violence against women in general, and psychological violence/intimate partner violence against women in particular, is an expression of gender inequalities and power imbalances between women and men.

The other general structural difficulty regarding data collection in relation to VAW is the phenomenon of **underreporting**. It is to overcome this difficulty that national survey-based data collection is particularly encouraged by the CoE Istanbul Convention. Population-based surveys can provide more general sociologically oriented insights into the prevalence, nature, determinants and consequences of all forms of violence against women. Surveys are important sources of information about victims of violence, for most victims do not seek assistance from the authorities and are therefore not included in statistics generated by administrative reporting. Surveys are the only way of obtaining representative information about the majority of victims of violence who do not seek help. They can also provide reliable data on victims’ experiences of violence, on the reasons for not reporting, on the services received, as well as victims’ opinions of and attitudes towards such violence. Surveys are also the only reliable way to see if the rate of violence against women is going up or down. Since changes in the rate of those seeking assistance from the authorities may reflect changes in both the willingness of victims to approach the authorities and of authorities to record those seeking help, rather than change in the underlying “real” rate of violence.<sup>55</sup>

EIGE uses a widely cited figure indicating how a holistic understanding of intimate partner violence can be approached through the following layers of available data sources.<sup>56</sup> Official statistics shall be

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<sup>53</sup> Police and justice sector data on intimate partner violence against women in the European Union, EIGE 2019, p17

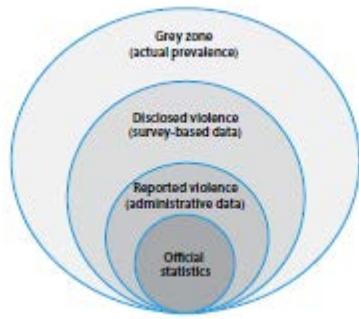
<sup>54</sup> Gender Based Violence - Understanding intimate partner violence in the EU: the role of data EIGE 2019, p8

<sup>55</sup> Ensuring Data Collection and Research on Violence Against Women and Domestic Violence: Article 11 of the Istanbul Convention - A collection of papers on the Council of Europe Convention on preventing and combating violence against women and domestic violence Prepared by: Sylvia Walby, 2016, Council of Europe, p17

<sup>56</sup> Gender Based Violence - Understanding intimate partner violence in the EU: the role of data EIGE 2019, p8.

complemented with reported violence and disclosed violence, and at the same time the presence of an unquantified 'grey zone' representing the real prevalence and incidence of intimate partner violence must also be factored in. Reported violence, or administrative data, are collected by agencies and bodies that interact with victims and/or perpetrators, in principle the police and justice sectors are based on incidents yet due to the high degree of under-reporting of intimate partner violence, these represent only a fraction of the real extent of the phenomenon.

Figure 1: EIGE – Data sources on intimate partner violence



As noted above the EIGE continuously works for the improvement of the availability of comparable and adequate data on this field. In doing so EIGE has proposed the use of the term 'intimate partner violence' (IPV) for statistical purposes to capture the violence against women which occurs among current or former spouses and partners whether they share the same residence or not in order to differentiate and separate this form of VAW from other aspects of domestic violence.<sup>57</sup> This definition is fully in line with the CoE Istanbul Convention as it includes physical, sexual, psychological and economic violence. Given the various elements encompassed by the definition insofar as IPV is characterised by a continuum of violent attacks rather than describing one single offence, EIGE has developed 13 indicators to refine data collection so as to yield more precise data.<sup>58</sup> One of these indicators relevant to this study is to exactly measure the annual number of women (aged 18 and over) victims of psychological intimate partner violence committed by men (aged 18 and over) as recorded by police (Indicator no 5).<sup>59</sup>

### **3.1.1. The EU, UN and CoE regulatory regime regarding data collection**

#### **a. Eurostat and UNODC crime data**

Eurostat is responsible for coordinating and collecting crime and criminal justice data from countries in the European Statistical System (ESS).<sup>60</sup> Under the current European statistical programme<sup>61</sup> the work on crime statistics was one of the priorities for 2018, with a particular emphasis on gender-based violence. The programme focused on the collection of crime and justice data, including data on victims of violent crime broken down by sex. It is also expected that the data collection will be extended to the

<sup>57</sup> Glossary of definitions of rape, femicide and intimate partner violence EIGE 2017 p44.

<sup>58</sup> Police and justice sector data on intimate partner violence against women in the European Union, EIGE 2019, p9

<sup>59</sup> Police and justice sector data on intimate partner violence against women in the European Union, EIGE 2019, p9 and 17

<sup>60</sup> EU, EFTA and candidate countries.

<sup>61</sup> Regulation (EU) 2017/1951 of the European Parliament and of the Council of 25 October 2017 amending Regulation (EU) No 99/2013 on the European statistical programme 2013-17, by extending it to 2020

different stages of law enforcement proceedings with disaggregation by relevant demographic characteristics.<sup>62</sup>

Eurostat has cooperated closely with the United Nations Office on Drugs and Crime (UNODC) in joint statistical data collection on crime and criminal justice to make the process more efficient. They have developed the International Classification of Crime for Statistical Purposes (ICCS) as a common framework to group all kinds of criminal offences.<sup>63</sup> The purpose of the ICSS is to strengthen comparability and consistency of crime data and to improve analytical capabilities at national, regional and international levels..

The offence categories are broken down by the sex of the victim and the sex of the perpetrator. The victim–perpetrator relationship can be used to develop standardised indicators based on ICCS codes, which qualify the offence as violence in a close relationship if the victim–perpetrator relationship is specified. However, the specific mapping tool indicating which ICCS codes should be taken into account to calculate indicators on gender-based or intimate partner violence has yet to be developed. There is no specific category in ICSS regarding intimate partner violence against women.<sup>64</sup>

Based on the United Nations surveys on crime trends and the operations of criminal justice systems (UN-CTS), Eurostat collects additional data for specific areas of interest to the European Commission. The data collection systems of UN-CTS and Eurostat are continually updated and revised, ensuring consistency of data over time.

### **b. CoE Istanbul Convention**

As noted above the Istanbul Convention is the most robust international legal instrument which prescribes the obligation to State Parties to implement data collection measures. The CoE Istanbul Convention specifically prescribes both administrative<sup>65</sup> and survey based<sup>66</sup> data collection to be carried out regularly and publicly on all forms of violence falling within its scope, including psychological violence. According to this State Parties shall collect disaggregated relevant statistical data on incidences and conviction rates, and analyse and disseminate the data collected. Article 10 sets forth the obligation to State Parties to designate a body responsible for the coordination of data collection. The Explanatory report of the Istanbul Convention specifies that relevant statistical data may include administrative data collected from statistics compiled from law enforcement agencies, or recorded by judicial authorities, including public prosecutors.<sup>67</sup> Public authorities will need to establish data systems that go beyond their own internal recording needs to show if there has been an improvement or a decline in the effectiveness of prevention, protection and prosecution measures and policies. The minimum data categories required are number(s) of victims and perpetrators

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<sup>62</sup> Commission Decision of 19 December 2017 on the adoption of the work programme and financing decision for 2018 for the implementation of the European statistical programme 2013- 202; Annex 2.

<sup>63</sup> EU guidelines for the International Classification of Crime for Statistical Purposes — ICCS, Publications Office of the European Union, Luxembourg.

<sup>64</sup> Monitoring EU crime policies using the International Classification of Crime for Statistical Purposes (ICCS), Publications Office of the European Union, Luxembourg,p25.

<sup>65</sup> Administrative data are a set of units and statistical information derived from an administrative source Eurostat's Concepts and Definition Database, SDMX Metadata Common Vocabulary 2009. Administrative data are accumulated by government departments and agencies, and collected through the reporting and recording procedures of institutions such as police, prosecutors' offices or the courts. Information is primarily collected for administrative purposes, such as registration, record keeping and monitoring, usually during the delivery of a service. Terminology and indicators for data collection: Rape, femicide and intimate partner violence, EIGE Report 2017 p16.

<sup>66</sup> Surveys of the general population enable information to be gathered about the many victims who do not report to or use public services as well as those that do.

<sup>67</sup> CoE Istanbul Convention, Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence Istanbul, 11.V.2011 para 74-75.

disaggregated by sex, age, type of violence, relationship between victim and perpetrator and geographical location, as well as other factors deemed relevant by state parties. Recorded data should also contain information on conviction rates for perpetrators of all forms of violence covered by the scope of the convention, including the number of protection orders issued.<sup>68</sup>

### **c. ECRIS**

European Criminal Records Information System (ECRIS) was established in 2012<sup>69</sup> and it connects centralised and decentralised information from national criminal databases. The information on convictions is exchanged between all Member States in a uniform, fast and compatible way, which provides judges and prosecutors with easy access to comprehensive information on the criminal history of the persons concerned. In this way the possibility for offenders to escape convictions by moving from one Member State to another is eliminated. The information is extracted from national criminal records, in particular information concerning the legal classification of the offence leading to the conviction, the content of the conviction and the sex and nationality of the person concerned.

### **d. Victims' Rights Directive**

Article 28 of the EU 2012/29/EU Victims' Rights Directive<sup>70</sup> prescribes to Member States to communicate available data showing how victims have accessed the rights set out in the Directive. The scope of the data to be collected is specified in recital 64 of the Directive with the basic units being the number of and type of reported crimes and the number, age and gender of the victims. The gender of victims is an essential variable recording data on gender-based violence including intimate partner violence. The European Parliament's Draft Report on the implementation of the Directive suggested further specifications for collecting data from the justice sector, including the number of cases that are investigated and how many people are prosecuted or sentenced.<sup>71</sup> While all of the Member States have officially transposed the Victims' Rights Directive, national legislations very rarely refer to data collection and rather deal with data requirements through administrative then legislative measures.

### **e. European Protection Order Directive**

Under Article 22 of the Directive 2011/99/EU on the European protection order (EPOD),<sup>72</sup> Member States must communicate to the Commission relevant data related to the application of national procedures, at least on the number of European protection orders requested, issued and/or recognized. The European Parliament called upon Member States to improve the implementation of the EPOD, as the first implementation report revealed a very low figures on reporting.<sup>73</sup>

<sup>68</sup> Ibid. 76.

<sup>69</sup> Council Framework Decision 2008/675 on taking account of previous convictions in new criminal proceedings against the same person.

<sup>70</sup> Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA OJ L 315, 14.11.2012, p. 57–73

<sup>71</sup> Draft report on the implementation of Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, (2016/2328(INI)), available at

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+COMPARL+PE-618.057+02+DOC+PDF+V0//EN&language=EN>

<sup>72</sup> Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order OJ L 338, 21.12.2011, p. 2–18

<sup>73</sup> Report on the implementation of Directive 2011/99/EU on the European Protection Order, (2016/2329(INI)), available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A8-2018-0065+0+DOC+PDF+V0//EN>

### 3.2. Data collection in the police and justice sector in the EU Member States regarding violence of women

In the majority of the Member States police and judicial authorities are entrusted with data collection. Nine Member States have a **dedicated body that coordinates administrative data collection on violence against women**,<sup>74</sup> while in the remaining Member States various authorities are charged with the collection and publication of data using different classifications and disaggregation. The authorities in most Member States use a similar coding systems to record the relevant incidents,<sup>75</sup> yet data collection practices and technology systems differ, sometimes even within one Member State.<sup>76</sup>

Another critical aspect of data collection which affects data comprehensiveness and comparability is related to the **units of measurement**, such as 'victims', 'perpetrators' (or 'suspects'/'accused'; 'offenders') and 'offence/case'- which cannot be used in<sup>77</sup> interchangeably, as they record different aspects of a crime.

Ten Member States apply the '**principal offence rule**' in relation to recording incidents of intimate partner violence.<sup>78</sup> In most Member States the repetitive nature of domestic/intimate partner violence will be recoded as two or more offences,<sup>79</sup> whereas in five Member States similar offences are only counted once.<sup>80</sup> The remaining countries apply other counting rules in serial offences of the same type, depending for example on the time between the offences, the number of proceedings initiated and other circumstances.<sup>81</sup>

In 25 Member States, data on the victims' sex is collected when an incident of domestic violence or intimate partner violence is reported to the police.<sup>82</sup> However, it is often not possible to cross-reference data on the sex of the victim with data on the sex of the perpetrator, hindering the possibility of identifying male intimate partner violence against women.<sup>83</sup>

The data recorded does not enable the identification of the type of relationship between the victim and the perpetrator. In eight Member States the recording of the relationship is limited to some general categories (e.g. family member; acquaintance; related; unknown) and it is not possible to identify cases in which the perpetrator and the victim have or have had an intimate partner relationship.<sup>84</sup>

According to EIGE data collection in relation to domestic/intimate partner violence against women in the justice sector is even more limited in the EU Member States. Units of measurement vary between Member States and between the different institutions, for example courts and prosecutorial services, within the same Member States. The stage at which data are collected within the justice sector is

<sup>74</sup> IE, ES, FR, HR, IT, LU, MT, AT, PT, cited from Understanding intimate partner violence in the EU: the role of data, EIGE 2019, p18

<sup>75</sup> Except for CZ, DK, EE, FR, HU, PL, SI, SK, FI, SE. cited from Understanding intimate partner violence in the EU: the role of data, EIGE 2019, p18

<sup>76</sup> ie in Germany or Belgium. cited from Understanding intimate partner violence in the EU: the role of data, EIGE 2019, p18

<sup>77</sup> cited from Understanding intimate partner violence in the EU: the role of data, EIGE 2019, p19

<sup>78</sup> BG, DE, FR, HR, CY, MT, NL, PT, SK, cited from Understanding intimate partner violence in the EU: the role of data, EIGE 2019, p19

<sup>79</sup> BE, BG, DK, EL, HR, IT, LV, LT, HU, MT, NL, AT, PL, RO, SI, FI, SE. Crime and Criminal justice database. Intentional homicide victims by victim-offender relationship and sex — number and rate for the relevant sex group [crim\_hom\_vrel] Eurostat (2018)b,

<sup>80</sup> CZ, ES, LU, PT, SK Crime and Criminal justice database. Intentional homicide victims by victim-offender relationship and sex — number and rate for the relevant sex group [crim\_hom\_vrel],

<sup>81</sup> DE, EE, IE, FR, Crime and Criminal justice database. Intentional homicide victims by victim-offender relationship and sex — number and rate for the relevant sex group [crim\_hom\_vrel] Eurostat (2018),

<sup>82</sup> CZ, DK, DE, EE, IE, EL, ES, FR, HR, IT, LV, LT, LU, HU, MT, NL, AT, PL, PT, RO, SI, SK, FI, SE. No such collection is made in BG, BE, CY cited from Understanding intimate partner violence in the EU: the role of data, EIGE 2019, p20

<sup>83</sup> cited from Understanding intimate partner violence in the EU: the role of data, EIGE 2019, p20

<sup>84</sup> BE, BG, EL, CY, LU, MT, AT, PL. cited from Understanding intimate partner violence in the EU: the role of data, EIGE 2019, p20

another variable across Member States. In 16 Member States, the data are processed after the appeal,<sup>85</sup> while in nine other EU Member States data is recorded before the appeal,<sup>86</sup> and no information is available from two EU Member States regarding when data is collected.<sup>87</sup>

Data collection in the justice sector generally focuses on the perpetrator and little or no information is individually recorded about the victim. Data on the sex of the victim for some stages of the criminal justice process are available from the justice sector in eight Member States whereas in the remaining Member States information on the victims is insufficient.<sup>88</sup> Fifteen Member States record some information on the relationship between the victim and the perpetrator for specific stages of the criminal proceedings.<sup>89</sup> Only four EU Member States have data on the number of men prosecuted for incidents related to domestic/intimate partner violence against women,<sup>90</sup> and three EU Member States have data on men sentenced for crimes related to domestic/intimate partner violence against women.<sup>91</sup>

Courts in general focus on the number of cases and procedures in order to assess their performance and do not systematically collect data on victims. Hence, courts' services lack information on victims and their relation to the perpetrator.<sup>92</sup>

Prosecution orders are issued by different entities in the EU Member States, belonging to either to the administrative strata or the criminal justice system or the civil justice system. Hence comparable information on protection orders across the EU is also very limited.

Only a handful of EU Member States are able to provide data on the number of protection orders with the necessary breakdowns to reveal an exact number of protection orders that have been applied for or granted to women victims of intimate partner violence.<sup>93</sup>

EIGE notes that the "lack of a unified system to record data on intimate partner violence collected by the different institutions of the judiciary is the main limitation to populating the indicators developed",<sup>94</sup> and the scarcity of statistical data and the poor recoding procedures in the justice sector just further adds to the problem.

### **3.3. Assessment of data collection in the police and justice sector regarding violence of women in the reviewed EU Member States**

According to EIGE the currently available data collected by the police and justice sectors do not give a clear picture of the scale of domestic/intimate partner violence within and across Member States.<sup>95</sup> The

<sup>85</sup> BE, BG, CZ, DK, DE, EE, IE, FR, HR, IT, LV, HU, MT, AT, PL, SI. cited from Understanding intimate partner violence in the EU: the role of data, EIGE 2019, p23

<sup>86</sup> ES, CY, LT, NL, PT, RO, SK, FI, SE, cited from Understanding intimate partner violence in the EU: the role of data, EIGE 2019, p23

<sup>87</sup> ELL and LU Eurostat (2018b), Crime and Criminal justice database. Intentional homicide victims by victim-offender relationship and sex — number and rate for the relevant sex group [crim\_hom\_vrel]

<sup>88</sup> CZ, ES, HR, HU, RO, SK, cited from Understanding intimate partner violence in the EU: the role of data, EIGE 2019, p23

<sup>89</sup> BE (no sex of the victim), CZ, EL (under domestic violence), ES, HR, LU (no information on the victim), HU, PL (under the 'family indicator'), AT (limited to 'inside and outside the family'), PT (only 'domestic violence'), RO, SI, SK, UK (EW, SC) (no information on the victim). cited from Understanding intimate partner violence in the EU: the role of data, EIGE 2019, p23

<sup>90</sup> CZ, ES, HR, HU. cited from Understanding intimate partner violence in the EU: the role of data, EIGE 2019, p23

<sup>91</sup> CZ, ES, SK cited from Understanding intimate partner violence in the EU: the role of data, EIGE 2019, p23

<sup>92</sup> Police and justice sector data on intimate partner violence against women in the European Union, EIGE 2019, p25.

<sup>93</sup> CZ, EE (only manual search), LU, HU PT, RO (limited to incidents taking place in the family), ES (the data vary by sources). Partial data is available from DE, HR and FI and no statistical data on protection orders have been identified in DK, EL, CY, MT, NL, SK. cited from Understanding intimate partner violence in the EU: the role of data, EIGE 2019, p23

<sup>94</sup> Understanding intimate partner violence in the EU: the role of data, EIGE 2019, p23

<sup>95</sup> Ibid p24

comparability and quality of available data is limited for the reasons explained above in Section 3.1. These include the various definitions of the criminal offences in Member States' legislation to denote the phenomenon of intimate partner violence; limited cooperation and coordination between the police and justice sectors within Member States; lack of detailed information recorded on the victim; insufficient recording of the relationship between the victim and the perpetrator. In addition, methodological rules, such as the stage of the proceedings where data recording occurs, the units of measurement and the counting rules also vary considerably.<sup>96</sup>

According to EIGE relevant **data is available from the police sector** in Germany, Finland France and Romania with the necessary breakdowns and sufficient detail to populate its indicators established to support data collection in the field of intimate partner violence. Some data is available from Portugal but it still lacks important breakdowns. In the case of Cyprus, Greece, Spain, Italy and Poland here is no data available or the data available from the police sector is not useful.<sup>97</sup>

According to EIGE comprehensive **data is available from the justice sector** in Spain to populate the indicators established to support data collection in the field of intimate partner violence. In Greece, Italy and Portugal some data is available but it lacks important breakdowns. In the case of Germany only very general data is available, whereas there is no data available from Cyprus, France or Poland. In Romania some data is collected but it is not publicly available.<sup>98</sup>

With regard to **indicator number 5 on psychological violence established by EIGE**,<sup>99</sup> which relates to the annual number of women victims aged 18 and over of psychological violence, it is only Germany, Finland and Romania which can populate this indicator.<sup>100</sup> Proxy data is available in France and Portugal.<sup>101</sup> In Portugal there is statistical data, grouped as 'psychological violence', which cannot be considered complete, whereas France cannot provide data on victims of psychological violence separately from other types instances of domestic violence.<sup>102</sup> No data is available from Cyprus, Greece, Italy, Spain or Poland.<sup>103</sup> With regard to psychological violence, administrative data collection is limited and data to identify women victims of intimate partner psychological violence is only available in nine of the 27 Member States.<sup>104</sup>

The collected data on psychological violence against women in an intimate partner context will only partially cover all the instances of psychological violence. This is because in most of the reviewed EU Member States psychological violence is also criminalized under other criminal offences, such as coercion or menace, or it is not criminalized at all.

<sup>96</sup> Ibid p23

<sup>97</sup> Ibid p34.

<sup>98</sup> Ibid p36.

<sup>99</sup> Indicator 5. Annual number of women (aged 18 and over) victims of psychological (37) intimate partner violence committed by men (aged 18 and over), as recorded by police See Terminology and indicators for data collection: Rape, femicide and intimate partner violence, EIGE, 2017

<sup>100</sup> Police and justice sector data on intimate partner violence against women in the European Union, EIGE 2019, p25 In all EU this means nine Member States: CZ, DE, HR, LV, LT, HU, RO, SK, FI.

<sup>101</sup> Ibid. In all EU this means nine Member States: FR, LU, MT, AT, PT

<sup>102</sup> Police and justice sector data on intimate partner violence against women in the European Union, EIGE 2019, p17

<sup>103</sup> Ibid. In all EU this means thirteen Member States: BE, BG, DK, EE, IE, EL, ES, IT, CY, NL, PL, SI, SE.

<sup>104</sup> CZ, DE, HR, LV, LT, HU, RO, SK, FI. cited from Understanding intimate partner violence in the EU: the role of data, EIGE 2019, p21

Table 4: Availability of data from the police sector to populate EIGE indicator 5 on the annual number of women victims aged 18 or over of psychological violence

	Annual number of women (aged 18 and over) victims of psychological intimate partner violence committed by men (aged 18 and over), as recorded by police.
<b>Low availability</b> - No data is available or existing data is not sufficient to populate the indicator due to considerable lack of detail and necessary breakdowns, such as no information on the sex of the victim	CY, ELL, ES, IT, PL,
<b>Medium availability</b> - Some data is available but it lacks important breakdowns, such as the exact relationship between the victim and the perpetrator	FR, PT
<b>High availability</b> - Data is available with necessary breakdowns	DE, FI, RO

Source: Based on EIGE country factsheets collected in 2017, <https://eige.europa.eu/gender-based-violence/data-collection>

According to EIGE's analysis on the data collection in the EU Member States regarding the women victims aged 18 or over of psychological violence data with the necessary breakdowns are available from Germany, Finland and Romania. Some data from Portugal and France are available, but may yet lack important breakdowns. No data or no useful data is available from Cyprus, Greece, Italy, Poland and Spain.<sup>105</sup> This means that while these countries do collect some data, in Spain there is widespread data collection, yet the collected data is not sufficient to populate EIGE's indicator on psychological violence against women over 18.

Table 5: Components available to populate the EIGE indicator on the annual number of women victims aged 18 or over of psychological violence

MS	Scope/offence	Counting units – victims	Sex of victims	Sex of perpetrator	Cross reference of the sex of the victim and the perpetrator	Relationship
CY	Group offence	No	yes	yes	no	No
DE	Group offence	Yes	yes	yes	yes	Yes
ELL	Group offence	No	yes	yes	yes	No

<sup>105</sup> Police and justice sector data on intimate partner violence against women in the European Union, EIGE 2019, p42

MS	Scope/offence	Counting units – victims	Sex of victims	Sex of perpetrator	Cross reference of the sex of the victim and the perpetrator	Relationship
ES	Within intimate violence, coercion	No	yes	yes	yes	Yes
FI	Stalking, coercion, menace	Yes	yes	yes	yes	Yes
FR	Within domestic violence	Yes	yes	yes	no	Yes
IT	Domestic violence (threatening behavior)	Yes	yes	yes	no	No
PL	Within domestic violence	No	yes	yes	no	No
PT	Psychological violence	Yes	no	yes	no	no
RO	Within domestic violence	yes	yes	yes	no	yes

Source: Police and justice sector data on intimate partner violence against women in the European Union, EIGE 2019, p42

## 4. CUSTODY AND VISTING RIGHTS

### KEY FINDINGS

In all the reviewed EU Member State legislation the general family law provisions allow revoking or limiting parental responsibility rights, the limits and modalities of which are to be decided by courts, enjoying broad discretionary powers.

It is only a minority of the reviewed EU Member States – where there is a specific legislative provision which makes it compulsory to take into account the violent behaviour of the parent as a circumstance in deciding on parental responsibility issue.

Protection orders are available in all the reviewed EU Member States which are issued as interim measures to protect the victim of intimate partner violence, yet their scope in most EU Member States will not automatically cover common children who themselves are not direct victims.

### 4.1. The effect of gender violence on custody and visiting rights

#### 4.1.1. UN Legal framework

In order to appreciate the complexity of the effects of gender based violence on the custody and visiting rights a number of considerations need to be taken into account. On the legal domain international and national human rights instrument prescribe the rights of the child and the overarching obligation of the States to serve the best interest of the child which is reflected in the UN Convention on the Rights of the Child (UNCRC).<sup>106</sup> With regard to parental responsibility issues,<sup>107</sup> such as custody<sup>108</sup> and visiting rights,<sup>109</sup> the UNCRC provides for both the child's right to maintain his or her relationship with both parents<sup>110</sup> on the one hand, and also the child's right to be protected "from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child".<sup>111</sup> The balance between these two competing rights enjoyed by the child must be struck with a view to serve the best interest of the child, which is the overarching principle enshrined by UNCRC. At the same time however parents' right to maintain family ties with the child is also recognized as a human right, formulated as the right to family life, sometimes also conceptualized as the right to private life and privacy. According to this, the parent shall enjoy custody or visiting rights regarding the child, even if custody is shared, or sole custody was awarded to the other parent.

It is against this backdrop that in intimate partner violence cases where the perpetrator and the victim have a common child the competing rights of the child to be protected from the violence and the

<sup>106</sup> Convention on the Rights of the Child adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989

<sup>107</sup> Parental responsibility is the term used by international and EU legal instruments the denote all the rights and duties relating to the person or the property of a child which are given to a natural or legal person by a decision, by operation of law or by an agreement having legal effect, including rights of custody and rights of access.

<sup>108</sup> In international and EU legal instruments rights of custody' includes rights and duties relating to the care of the person of a child and in particular the right to determine the place of residence of a child;

<sup>109</sup> In international and EU legal instruments visiting or access rights, sometimes also referred to as contact rights mean rights of access to a child, including the right to take a child to a place other than his or her habitual residence for a limited period of time.

<sup>110</sup> Article 9 paragraph (3) UNCRC

<sup>111</sup> Article 19 UNCRC.

violent parent's custody and visiting rights need to be very carefully balanced and intervention shall be made if necessary.

Empirical research has identified a number of phenomena particularly present when parental responsibility issues are to be decided in intimate partner violence cases. Firstly, while abuse of children is a clear and widely used factor in determining custody arrangements, the **dangers of joint custody and visitation arrangements in situations of intimate partner violence, when violence is committed against the other parent and not the child, are far from being resolved.**<sup>112</sup> As a matter of fact, if joint custody and visiting rights are awarded to the violent parent that will force the victim to remain in the geographical proximity of the perpetrator and maintain contacts with the perpetrator. In such cases the failure to restrict custody or unsupervised visiting rights may result in tragic consequences both for other parent and children when underlying conflict among the parents is severe. This was shockingly highlighted in the *Jessica Lenahan (Gonzales) v. the United States* case.<sup>113</sup> In this case Inter-American Commission of Human Rights (IACtHR) concluded on the international responsibility of the respondent State, since its agents failed to ensure compliance with the protection measure granted to Ms. Lenahan and failed to protect the rights of the children who were abducted and murdered by their father. In a similar fashion CEDAW Committee in the *Gonzalez v. Spain* case<sup>114</sup> found that, by allowing unsupervised visits without giving sufficient consideration to the background of domestic violence, the Spanish authorities had failed to fulfil their due diligence obligations under the CEDAW Convention. According to the CEDAW Committee it was the consequence of this failure that the abusive father murdered his daughter and then took his own life during an unsupervised visit. Hence the oversight of intimate partner violence among the parents pose a risk and may have direct bearing on the safety of common children, even if initially not being targets of violence. It is for this reason that intimate partner violence must be a consideration when parental responsibility decisions are rendered regarding a perpetrator of intimate partner violence, especially with a view to the exercise of custody and visitation rights.

Secondly, research has also demonstrated that in high conflict custody litigation, which involve multiple serious conflicting allegations of intimate partner violence, where child abuse and/or substance abuse is also present, it is very difficult for judicial authorities to substantiate claims. The impact of this on women is that their allegations regarding gender based violence and domestic violence may be dismissed, resulting in custody or visitation decisions that expose them and their children to ongoing danger.<sup>115</sup> In close connection to this, protection mechanisms against violence often turn against the victims themselves and expose them to **secondary victimisation** by restricting the exercise of their parental rights i.e. by institutionalizing children. This risk is particularly high for some victims (particularly those victims whose situation has not yet been decided by a judge or other authority; for example, victims who have left home with their children to escape an emergency situation of violence). However, it does not spare any victims and may result in a transfer of the child's residence to the abuser or a placement of the children with social services.

Lastly, the recourse to the phenomenon of the "**parental alienation syndrome**" also works to the detriment of victims of intimate partner violence. Although the notion lacks universal clinical or

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<sup>112</sup> i.e. Raday, F. 2019. "Gender Equality and Women's Rights in the Context of Child Custody and Maintenance: An International and Comparative Analysis." UN Women Discussion Paper Series No. 30. New York: UN Women, p15

<sup>113</sup> The Inter-American Commission on Human Rights (IACtHR) Case No. 12.626 Lenahan et Al. v. the United States: [www.oas.org/en/iachr/decisions/2011/USPU12626EN.doc](http://www.oas.org/en/iachr/decisions/2011/USPU12626EN.doc)

<sup>114</sup> <https://www.ohchr.org/EN/HRBodies/CEDAW/Pages/JurisprudenceSession58.aspx>

<sup>115</sup> Jaffe, P., J. Johnston, C. Cooks and N. Bala. 2008. "Custody Disputes Involving Allegations of Domestic Violence: Towards a Differentiated Approach to Parenting Plans." Family Court Review 46, no. 3: 500-522.

scientific definition, it is generally referred to the presumption that a child's fear or rejection of one parent (typically the non-custodial parent), stems from the malevolent influence of the preferred (typically custodial) parent. In the context of intimate partner violence, the reference to parental alienation syndrome gave rise to a tendency to put into question victims' parental skills and to dismiss their word and to underestimate the violence to which children are exposed. It is for that reasons that experts raise serious concerns to making recourse to this phenomenon as it could be misused if applied without taking into consideration incidents of violence against women and that the exercise of any visitation or custody rights does not jeopardize the rights and safety of the victim or children.<sup>116</sup> It is argued that accusations of parental alienation by abusive fathers against mothers must be considered as a continuation of power and control by state agencies and actors, including those deciding on child custody, leading often to the denial of child custody to the mother and grant it to a father accused of domestic violence in a manner that totally disregards the possible risks for the child.<sup>117</sup>

The overarching concern in relation to the ignorance of intimate partner violence against women in determining child custody cases is well reflected in the specific call made on 31 Mat 2019 by a Platform of a great number of United Nations and regional independent mechanisms on violence against women and women's rights.<sup>118</sup> The Platform underlined that 'patterns of discriminatory gender bias and harmful gender stereotypes against women in ignoring intimate partner violence against women in the determination of child custody can result in serious risks to the children and thus must be considered to ensure and grant their effective protection'.<sup>119</sup> In conclusion, the Platform reiterated in its call that, in determination of custody and visitation rights of children, violence against women must be taken into account in all custody cases and that perpetrators' rights or claims during and after judicial proceedings, including with respect to property, privacy, child custody, access, contact and visitation, should be determined in the light of women's and children's human rights to life and physical, sexual and psychological integrity, and guided by the principle of the best interests of the child.

CEDAW's General Recommendation No. 35<sup>120</sup> issues in 2017 on gender-based violence against women, also affirms that "perpetrators or alleged perpetrators' rights or claims during and after judicial proceedings, including with respect to property, privacy, child custody, access, contact and visitation, should be determined in the light of women's and children's human rights to life and physical, sexual and psychological integrity, and guided by the principle of the best interests of the child".

The UN Handbook on Legislation on Violence<sup>121</sup> against Women recommends that, in the context of protection order proceedings, legislation should include the following provisions concerning child custody and visitation rights:

- Presumption against award of custody to the perpetrator;
- Presumption against unsupervised visitation by the perpetrator;

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<sup>116</sup>Raday, F. 2019. "Gender Equality and Women's Rights in the Context of Child Custody and Maintenance: An International and Comparative Analysis." UN Women Discussion Paper Series No. 30. New York: UN Women, p18

<sup>117</sup> See also GREVIO's Baseline Evaluation Reports and shadow and parallel NGO reports submitted to GREVIO's evaluation.

<sup>118</sup> Declaration on "Intimate partner violence against women is an essential factor in the determination of child custody" made by the UN Special Rapporteur on Violence against Women, Chairperson of the CEDAW, Chair of the United Nations Working Group on Discrimination against Women in Law and Practice, President of the GREVIO, Rapporteur on the Rights of Women at the Inter-American Commission on Human Rights, Special Rapporteur on the rights of women in Africa and the President of Committee of Experts of the Follow-up Mechanism to the Belém do Pará Convention

<sup>119</sup> Ibid p1.

<sup>120</sup> on gender-based violence against women, updating general recommendation No. 19

<sup>121</sup> "502 UN Handbook for Legislation on Violence against Women, above note 413, page 49.

- Requirement that, prior to supervised visitation being granted, the perpetrator must show that at least three months has passed since the most recent act of violence, that he has stopped using any form of violence, and that he is participating in a treatment programme for perpetrators;
- No visitation rights are to be granted against the will of the child.

#### **4.1.2. CoE Istanbul Convention**

Understanding the gravity of the risk that intimate violence perpetrators may pose to common children with the victim Article 31 of CoE Istanbul Convention prescribes a number of obligations to the State parties. The CoE Istanbul Convention is the only legally binding instruments that has an explicit provision on child custody in intimate violence situations. The CoE Istanbul Convention imposes an obligation on the parties “to take all the necessary legislative or other measures to ensure that, in the determination of custody and visitation rights of children, incidents of violence” covered by the Convention shall be taken into account. The Convention also demands from State Parties to ensure that the rights and safety of the victim or the children are not jeopardised by the exercise of any visitation or custody rights.

In essence these obligations aim to ensure that judicial authorities of the State Parties do not issue orders in relation to custody and visiting rights without taking into account incidents of violence covered by the scope of this Convention, including psychological violence. Contact orders issued by the judiciary govern the contact between children and their parents and other persons having family ties with children. The Convention demands that when such contact orders are issued in addition to other factors, incidents of violence against the non-abusive caretaker must be taken into account. It goes even without saying that violence against the child itself must be taken into account when decisions on custody and the extent of visitation rights or contact are taken.

The issue is complex however, and this is acknowledged by the second paragraph of the Article 31 on guaranteeing the rights and safety of victims and witnesses while taking into account the parental rights of the perpetrator. It is fairly common in cases of domestic violence, that issues regarding common children are often the only ties that remain between victim and perpetrator. In this vain as the Explanatory report to the Convention also admits “For many victims and their children, complying with contact orders can present a serious safety risk because it often means meeting the perpetrator face-to-face. Hence, this paragraph lays out the obligation to ensure that victims and their children remain safe from any further harm”.<sup>122</sup>

#### **4.2. Assessment of EU Member States regarding the effect of violence against women on the perpetrators' custody and visiting rights**

On the basis of the above the present analysis seeks to provide a comparative analysis of the most relevant legislative provisions of the reviewed EU Member States regarding the following issues: (i) if and how custody and visiting rights are limited in the legislations of Member States in the case of violence against women; (ii) if the limitation of custody and visiting rights can be established before the final decision of the judge/court (as an interim measure) and finally; (iii) if the limitation of custody and visiting rights can be modulated by the judge's decision (i.e. forbidding the perpetrator to take certain decisions about his children but allowing him to take others).

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<sup>122</sup> CoE Istanbul Convention, Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence Istanbul, 11.V.2011 para 176

The discussion of the above questions is divided into two parts. Below the synthesis of the comparative evaluation of the reviewed EU Member States is presented, whereas Annex III provides a country-by-country discussion of the respective legislative provisions of the reviewed EU Member States.

In all the reviewed EU Member State legislation in **general family law provisions allow for the revoking or limiting of parental responsibility rights**. The limits and modalities of the application of these provisions is decided by courts, which enjoy broad discretionary powers in this regard. In most of the reviewed EU Member States the law prescribes the specific circumstances in which such measures are to be considered by the court. These, however, generally revolve around protecting the child's safety and development from risk or the inability of the parent to exercise parental care as it is seen in Cyprus, Finland, Germany, Greece, Italy, Poland and Romania. Since the legislative provisions tend to be broadly formulated there is ample possibility for the courts to take into account the violent behaviour of the parent, but this remains within **judicial discretion**. There are varying reports as to the extent to which courts actually consider intimate partner violence among the parents in making custody or visitation decisions in a number of EU Member States. It is clear that in some EU Member States, like in Germany, Greece and Poland, courts have accommodated the consideration of intimate partner violence as a circumstance to be taken account in parental responsibility decisions or non-binding administrative practices have been established as in France. In other EU Member States courts, namely in Finland and Italy are clearly reported to overlook the violent behaviour of one partner towards the other when custody matters are at stake. It seems that in Cyprus court practices are not analysed from this perspective at all and accounts remain at the anecdotal level. It is only in a minority of the reviewed EU Member States – namely France and Spain – where there is a specific legislative provision which makes it compulsory to take into account the violent behaviour of the parent as a circumstance in deciding on parental responsibility issue. If violent behaviour is present than it is only in the Spanish system where the court is prohibited to allow the exercise of parental responsibility rights.

In a few EU Member States **criminal conviction** of the parent will entail the revocation or limitation of parental responsibility, varying between automatic consequences if the offence was against the child, like in Spain, or allowing discretion for the courts to take into consideration various circumstances, either provided by law or generated in case law, such as in Cyprus, Germany and Portugal.

Interestingly, the otherwise welcome approach in the family law of a number of EU Member States to award **joint custody** creates a serious obstacle in intimate partner violence cases. The default rule in family law to allocate joint custody is regarded as a contemporary, gender neutral and equality oriented approach in divorce and separation cases. This is underpinned by the consideration that it is the joint exercise of rights and duties stemming from parental responsibility which allows the child to have a genuine relationship with both parents and ensures that parents equally take part in the upbringing of the child. In intimate partner violence cases it seems that the default rule of joint custody prevails in making decisions regarding custody and visitation, irrespectively of the violent behaviour of one parent as it is in the case of France, Greece, Italy and Portugal. The Italian judicial practice being reported as especially disadvantageous to the parental responsibility rights of mothers being victims of intimate partner violence. The Spanish legislative solution is in stark contrast with this general approach as it strictly rules out any arrangement of shared custody in case of gender or domestic violence.

**Lack of cooperation between the different strands of the judiciary and with other government services** has also been reported in France, Italy, Portugal and Romania as a reoccurring structural problem. The simple fact that parental responsibility matters are decided by civil/family law courts

while domestic/intimate partner violence cases fall within the competence of criminal courts creates the problem of parallel and separate proceedings. The coordination between judicial and administrative procedures taken by the social services can also be problematic. Improper alignment of separate procedures creates the situation whereby it is impossible for judges to reflect on other procedure and the findings made there.

The reviewed EU Member States' legislation reveal that in cases where sole custody is awarded to the victim parent the limits and modalities of the **visiting right** of the other parent seems to be more affected by intimate partner violence as exemplified by France. This is especially true in case of interim measures taking the form of protection orders as the Cypriot example show.<sup>123</sup>

In some of the reviewed EU Member States special arrangements **for the limited exercise of the visiting rights** exists when contact with the child is supervised and takes place in a secure environment. Reports of such arrangements, however, remain mixed. In France this experience seems to be encouraging while accounts point out that in Finland such arrangements, if used without reflection, simply put before the access right of the parent to the safety and well-being of the children.

**Protection orders** are available in all the reviewed EU Member States. These are issued as interim measures to protect the victim of intimate partner violence, yet their scope in most EU Member States will not automatically cover common children who themselves are not direct victims, like in Finland Greece and Portugal. One option for the court is to extend the scope of the protection order to cover children as in Cyprus and Poland. Should children be the victims of domestic violence, restraining orders are automatic in most of the reviewed EU Member States, as is the case in Cyprus and Poland. In Finland for example, this immediately triggers the suspension of custody and visiting rights. There is a variation among the reviewed EU Member States on whether the restraining orders are issued *ex officio* as in Spain, or upon the application of the victim or any social service agency like in Finland or Germany.

Table 6: Limitation of custody and visiting rights of perpetrators of violence against women in the EU Member States

	Basis: legislation or jurisprudence	Custody and visit rights can be limited in case of VAW	Limitation of custody and visit rights can be established before final court decision on VAW	Limitation of custody and visit rights can be modulated
Cyprus	Only general legislation	No specific legislation, courts have discretion	Yes, civil and criminal protection orders are available	Yes
Finland	Only general legislation	Yes, but no specific legislation	No	Yes
France	Specific legislation, but court discretion	Specific legislation, but court discretion	Yes	Yes

<sup>123</sup> See the detailed analysis on how the custody and visiting rights of parents are affected by instances of domestic violence in Cyprus, Annex III.

	Basis: legislation or jurisprudence	Custody and visit rights can be limited in case of VAW	Limitation of custody and visit rights can be established before final court decision on VAW	Limitation of custody and visit rights can be modulated
Germany	Specific legislation	Specific legislation	Yes	Yes
Greece	General legislation	General legislation interpreted through case law	Yes	Yes
Italy	General legislation	General legislation interpreted through case law	Yes	Yes
Poland	General legislation	Yes, but no specific legislation	Yes	Yes
Portugal	No specific legislation provisions	Yes, but this is not an obligation	No	Yes
Romania	Specific legislation provisions	Yes, but this is not a strict obligation	No	Yes
Spain	Specific legislative provisions makes it compulsory	Yes, its obligatory to suspend/modify	Yes	Yes

Source: Author's compilation.

## 5. EPILOGUE – COVID 19<sup>124</sup>

The social and personal tragedies caused by the COVID 19 pandemic are countless, but the indirect consequences of the lockdown can also be detrimental. Staying at home on a mandatory basis is fertile ground for domestic violence where seclusion with the potential aggressor not only increases the risk of abuse, but also hampers access to assistance and protection services.

The United Nations and<sup>125</sup> the European Union,<sup>126</sup> together with NGOs<sup>127</sup> working on the field, have made various calls for States to step-up and increase their efforts in combatting domestic violence during the COVID 19 lockdown.

While domestic violence has increased across Europe, most notably in France, Poland and Cyprus, what experts fear the most is that victims are unable to even report incidents due to the confinement. In order to ensure that women can access help and assistance in emergency situations of intimate partner violence irrespective of the lockdowns, a number of targeted measures have been put in place in various EU Member States.

In France,<sup>128</sup> where domestic violence cases are reported to have increased by 30%, temporary support centres have been set-up outside supermarkets. Guidelines have also been given to pharmacists to whom women come for help so enable them to advise domestic abuse victims and code words have been introduced to signal the need for help. The government has also committed itself to set-up a fund of 200,000 euros to pay for overnight stays in hotels and shelters for victims who decide to leave their partners during the lockdown period.

In Italy, ActionAid, a global NGO fighting against domestic violence has put in place a special fund '#Closed4women'<sup>129</sup> to respond to the increase in the episodes of violence against women during the lockdown. The 40,000 euro fund is aimed at supporting centres addressing violence against women. However it has also been reported that centres assisting women against violence are receiving less phone calls, some reports mention a drop by 50%, and that the '1552' help line, which is aimed at assisting women victims of violence and stalking, is also receiving less phone calls. Social services and NGOs are emphasising that these figures suggest that women do not have a safe space to make phone calls for help from since they must stay at home with their partners. In effect, the lockdown is silencing domestic abuse. To remedy this, help groups and the authorities have tried to establish other forms of contact, including messaging services like WhatsApp, and Italian police have in recent days adapted an app to report domestic violence by sending messages or pictures. It was also reported that a prosecutor in Trento, Northern Italy, has ruled that in situations of domestic violence the abuser must leave the family home and not the victim.<sup>130</sup>

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<sup>124</sup> While writing this study the COVID 19 pandemic broke out, having a direct impact on intimate violence against women and domestic violence. While official statistics and accounts of the effects of the mandatory confinement on domestic abuse are not yet available, a short summary is offered based on the available news reports.

<sup>125</sup> <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25749&LangID=E>

<sup>126</sup> <https://www.europarl.europa.eu/committees/en/covid-19-stopping-the-rise-in-domestic-v/product-details/20200408CAN54361>

<sup>127</sup> <https://www.frauenrat.de/dossier-covid-19-aus-geschlechterperspektive/>

<sup>128</sup> [https://www.npr.org/sections/coronavirus-live-updates/2020/03/31/824720162/france-announces-plan-to-aid-domestic-abuse-victims-during-coronavirus-crisis?utm\\_id=1587539896395](https://www.npr.org/sections/coronavirus-live-updates/2020/03/31/824720162/france-announces-plan-to-aid-domestic-abuse-victims-during-coronavirus-crisis?utm_id=1587539896395)

<sup>129</sup> <https://www.actionaid.it/informati/notizie/closed4women>

<sup>130</sup> <https://www.theguardian.com/society/2020/mar/28/lockdowns-world-rise-domestic-violence>

In Spain, 18 women have been killed by their partners and ex-partners since the beginning of 2020, and 2 since introduction of the State of Emergency against COVID 19 on the 14 March, with one new incident still being investigated.<sup>131</sup>

The Spanish Ministry of Equality was very quick in adopting a practical information guide on how to obtain assistance in case of violence episodes during the period of forced cohabitation.<sup>132</sup> The new measures include reinforcement of telephone and digital applications. A specific smart phone application has been created, called ALERTCOPS, which women are invited to download so it can be quickly used in emergency situations. Most importantly, the app will immediately signal an alert to the police and provide the location of the victim. It is of enormous importance that the Spanish Government continues to emphasize that women that abandoning the domicile due to domestic violence in order to look for assistance are not breaching the strict restrictions on free movement and will not be sanctioned. In Spain shelter and accommodation centres are still open and operative during the state of emergency, since they are regarded as essential services. Hence, women victims of domestic violence can still count on being hosted there when living in their domiciles is no longer possible. Another interesting initiative to afford protection to women during COVID19 is the so-called 'Máscara 19' (Mask 19) initiative. According to this a woman seeking assistance can go to any pharmacy and ask for a "mascara 19" (mask 19). All personnel at the pharmacies will know that these are code words and will immediately call the police and keep the woman in the establishment until assistance arrives. It should be noted that this Mask 19 initiative is not only for victims of domestic violence but also of sexual aggression.

In Portugal the instances of domestic violence have not increased during the COVID 19 confinement, at least for the time being. In fact the National Republic Guard (GNR) of Portugal registered 938 complaints for domestic violence in March - which represents a decrease of 26% of cases when compared to March 2019. Despite this, this GNR has intensified contacts with the identified victims, in order to promote, if necessary, an adjustment of the victim protection measures. The GNR has repeatedly reiterated to the public that domestic violence is a crime that triggers public prosecution, hence anyone can report it, and that the use of the Electronic Complaint System<sup>133</sup> should be privileged.<sup>134</sup>

In Poland the Commissioner for Human Rights has appealed to the Minister of Family, Labor and Social Policy and to the Police Commander-in-Chief to ensure the proper functioning of the support system for victims of domestic violence.<sup>135</sup> This call was prompted by numerous reports revealing the increased incidents of domestic violence and that victims have nowhere to go as public services are closed. As in other EU Member States, in Poland the restrictions on freedom of movement and the introduction of compulsory quarantine put women experiencing domestic violence in an extremely difficult situation. One NGO has reported of an increase of 30% of domestic violence episodes.<sup>136</sup>

Here are the main points (edited google translate):

In Romania, neither public authorities nor civil society organisations have published statistical data regarding violence against women during the pandemic isolation. News reports, however, talk about

<sup>131</sup> Delegación del gobierno contra la violencia de género.

<sup>132</sup> "Guía de actuación para mujeres que estén sufriendo violencia de género en situación de permanencia domiciliaria derivada del estado de alarma por COVID-19" <http://www.violenciagenero.igualdad.gob.es/informacionUtil/covid19/GuiaVictimasVG Covid19.pdf>

<sup>133</sup> <https://queixaselectronicas.mai.gov.pt/>

<sup>134</sup> <https://observador.pt/2020/04/08/covid-19-devido-a-quarentena-violencia-domestica-aumentou-50-no-mes-de-marco/>

<sup>135</sup> <https://www.rpo.gov.pl/pl/content/osoby-doswiadcza-jace-przemoc-owej-domowej-znalazly-sie-w-sytuacji-zagrozenia-zycia>

<sup>136</sup> <http://www.uni-europa.org/2020/04/20/women-and-their-unions-are-battling-a-double-crisis-covid-19-and-domestic-violence/>

the increase of domestic violence in the days of lockdown.<sup>137</sup> Only few opinions and concerns were expressed in some publications listed below. Yet authorities are aware of the fact that the permanent presence of the aggressor at home do block victims' attempts to escape or to make a complaint to the police.

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<sup>137</sup> <https://www.mediafax.ro/social/victime-le-izolarii-in-bucuresti-a-crescut-numarul-cazurilor-de-violenta-domestica-19040545> and <https://evz.ro/violenta-domestica-creste-ingrijorator-in-perioada-de-autoizolare-tot-mai-multe-femei-sunt-agresate.html>

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## ANNEX I

### Cyprus

#### a. General aspects

Cyprus ratified the CoE Istanbul Convention on 10 November 2017 and it entered into force on 1 March 2018.<sup>138</sup> The specific implementing legislation, however, is still pending before the House of Representatives. Cyprus has various laws combatting VAW, resting on the general provision set forth the Constitution.<sup>139</sup> The laws in place range from non-discrimination in the workplace, criminalization of different forms of violence against women in the Penal Code and domestic violence, to a law on the prevention and combating of trafficking in human beings.<sup>140</sup> Despite the criminalization of different forms of violence against women under various laws, up until recently there was no comprehensive law developed specifically for combatting VAW in Cyprus. Therefore, a critical gender perspective often remained missing from legislation and certain forms of violence against women in some cases remained un-penalized and unmonitored.

In 2019 the Ministry of Justice and Public Order drafted a **bill to criminalise all forms of violence against women and girls**, which is currently at the Legal Service of the Republic for legal vetting.<sup>141</sup> The bill covers gaps identified in the legislative framework of Cyprus and complies fully with the extensive provisions of the CoE Istanbul Convention, ratified by the Republic in 2017. According to the Government the bill will bring positive changes in the field and demonstrate that no form of violence against women and girls is tolerated anymore.<sup>142</sup> Cyprus will be evaluated under the monitoring mechanism of the CoE Istanbul Convention triggered by GREVIO in 2020-21.<sup>143</sup>

#### b. Domestic violence/Intimate partner violence

Domestic violence is criminalized under the Violence in the Family Law of 2000 and 2004<sup>144</sup> and is recognised only within the context of violence in the family. According to Violence in the Family Law violence in the family means "(a)ny act, omission or behaviour which causes physical, sexual or mental injury to any member of the family by another member of the family and includes violence used for the purpose of having sexual intercourse without the consent of the victim as well as of restricting its freedom".<sup>145</sup> Member of the family means: a husband and wife who have been legally married, whether the marriage still exists or not, or are cohabiting partners; the parents of the cohabiting spouses; the children and/or grandchildren of cohabiting partners and their parents or any person residing with the aforementioned persons. Violence between homosexual couples is not recognised, nor is violence between partners who do not cohabit. Article 4 (1) of the Law states that should such violence occur in the family, Courts by default may consider them as serious and apply strict sanctions.<sup>146</sup> Hence, in Cyprus intimate partner violence is recognised within the context of violence in the family (domestic

<sup>138</sup> Law 14(111)2017

<sup>139</sup> Equality between men and women is included in Article 28(1) of the Constitution prohibiting any direct or indirect discrimination against any person on the ground of – among others – sex (Article 28(2))

<sup>140</sup> Trafficking of women for reasons of sexual or labour exploitation are criminalized under the Law N° 60(I) of 2014 on the Prevention, Fighting against Trafficking in and Exploitation of Human Beings and Protection of Victims

<sup>141</sup> At the time of writing the bill has not been adopted by the House of Representatives.

<sup>142</sup> CYPRUS CONTRIBUTION Nicosia, 9 December 2019 in response to the Letter from the Special Rapporteur on violence against women, its causes and consequences, 5 November 2019.

<sup>143</sup> <https://www.coe.int/en/web/istanbul-convention/timetable>

<sup>144</sup> The Violence in the Family (Prevention and Protection of Victims) Law 119(I) of 2000 and 212(I) of 2004

<sup>145</sup> Glossary of definitions of rape, femicide and intimate partner violence EIGE 2017 p36

<sup>146</sup> The Violence in the Family (Prevention and Protection of Victims) Law 119(I) of 2000 and 212(I) of 2004

violence). Article 3 (on prevention and protection of victims) covers some aspects of intimate partner violence but its scope is so broad that it extends to intergenerational violence between parents and children or elderly family members. Even though the legal definition of a 'member of the family' can include both current and former partners, its scope does not recognise relationships between those who have never shared a residence.

### c. Psychological violence

The current legal definition of domestic violence includes different forms of violence, including physical, sexual and psychological. However, it excludes economic violence and thus falls short in comparison to the full definition of intimate partner violence outlined in the Istanbul Convention. Two related laws, one on the criminalisation of violence against women and a second on the criminalisation of harassment and stalking of women, are still pending in Parliament.<sup>147</sup> According to the Government the proposed bill will encompass those forms of violence against women enumerated by the CoE Istanbul Convention, including psychological violence, which so far have not been criminalized in Cyprus.

### d. Stalking

Two related laws, one on the criminalisation of violence against women and a second on the criminalisation of harassment and stalking of women, are still pending at the House of representatives.<sup>148</sup> According to the Government the proposed bill will encompass those forms of violence against women, including stalking, enumerated by the CoE Istanbul Convention, which so far has not been criminalized in Cyprus. The Government is particularly promoting the enactment of the newly drafted bill on stalking and harassment for a more holistic approach and implementation of the Istanbul Convention.<sup>149</sup>

### e. Assessment

The Government of Cyprus has tabled two legislative bills, one of violence against women and one on harassment and stalking, and pledged at a number of international fora to keep pressing for their adoption by the House of Representatives. According to the Government's declaration the proposals covers all forms of violence against women and girls as these are included in the Istanbul Convention and sets out proportionate, deterrent and effective sanctions.<sup>150</sup>

Today there is a genuine political and societal debate on the issue of domestic violence and of violence against women more broadly. Rather than the adoption of the Istanbul Convention it was two recent criminal acts that revealed the inadequate responses of law enforcement and criminal justice system in Cyprus and which triggered a nationwide debate and demonstration over violence against women.<sup>151</sup>

<sup>147</sup> CYPRUS CONTRIBUTION Nicosia, 9 December 2019 in response to the Letter from the Special Rapporteur on violence against women, its causes and consequences, 5 November 2019.

<sup>148</sup> Ibid.

<sup>149</sup> National Report on the Twenty-fifth anniversary of the Fourth World Conference on Women and adoption of the Beijing Declaration and Platform for Action (1995)-Beijing+25 14-Jun-19

<sup>150</sup> CYPRUS CONTRIBUTION Nicosia, 9 December 2019 in response to the Letter from the Special Rapporteur on violence against women, its causes and consequences, 5 November 2019.

<sup>151</sup> <https://cyprus-mail.com/2020/03/06/women-down-tools-for-one-hour-to-call-for-equality-video/>. The two criminal cases are the serial killer Nikos Metaxas sentenced for life for killing seven persons. The row of criticism of how the police have handled the investigation led to Minister of Justice to resign on 2 May 2019 <https://www.politico.eu/article/cyprus-justice-minister-resigns-amid-serial-killer-protests/>. The other case that shook public opinion related to a young British women who was on 8 January 2020 received a suspended sentence for tying

## Finland

### a. General aspects

The CoE Istanbul Convention entered into force in Finland in 1 August 2015. Legislation regarding the ratification and implementation of the Convention is found both in the Constitution<sup>152</sup> and in other legislation.<sup>153</sup> The Government proposal (155/2014 ps) on the ratification of the CoE Istanbul Convention made the required amendments to Finnish law. It contains a detailed discussion on the relationship of the provisions of the Convention and Finnish national legislation where national law shall be interpreted taking into account human rights and the Convention, the provisions of which are regarded as law in Finland (act 375/2015). Violence against women is governed by the general provisions of the Criminal Code,<sup>154</sup> the wording of which is gender-neutral and applied to both men and women with no distinction. Violence against women has, however, been paid a lot of attention in the travaux préparatoires of the act, so that specific legislation can be considered gender-sensitive.<sup>155</sup>

Finland was evaluated under the monitoring mechanism of the CoE Istanbul Convention triggered by GREVIO in 2019 and in general received a positive evaluation for compliance with the Convention.<sup>156</sup>

### b. Criminalisation of domestic violence/intimate partner violence

The Istanbul Convention entered into force in 2015. In Finland there is no specific criminalization of domestic violence or intimate partner violence. Acts covered by the CoE Istanbul Convention's definition of domestic violence are criminalised under a repository of offences under the Finnish Criminal Code: coercion into sexual act, assault, negligent bodily injury, menace and coercion.<sup>157</sup>

The domestic/intimate partner context is not explicitly recognized as an aggravating circumstance in the Finnish Criminal Code. It has to be underlined, however, that the Code is worded in general terms when it comes to sentencing and leaves considerable freedom for the courts to issue sentences with regard to the determination of sentences. The domestic/intimate partner context required by Article 46 CoE Istanbul Convention is taken into account as an aggravating circumstance either through the general provision relating to the determination of a sentence (Criminal Code chapter 6, section 4) or through general or specific grounds for its determination. According to the Government Baseline Report this arrangement allows judicial practice to give specific consideration and weigh should the offence been committed within a domestic/intimate partner context.

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about being raped. [https://www.bbc.com/news/uk-51027877?intlink\\_from\\_url=https://www.bbc.co.uk/news/topics/c15dw2ee9x9t/cyprus-rape-case&link\\_location=live-reporting-story](https://www.bbc.com/news/uk-51027877?intlink_from_url=https://www.bbc.co.uk/news/topics/c15dw2ee9x9t/cyprus-rape-case&link_location=live-reporting-story).

<sup>152</sup> Section 6 of the Constitution of Finland provides for equality and the prohibition of discrimination, section 7 of the Constitution provides for everyone's right to life and personal liberty, integrity and security and section 22 of the Constitution, the public authorities shall guarantee the observance of basic and human rights.

<sup>153</sup> Chiefly the Criminal Code (39/1889), the Tort Liability Act (412/1974), the Act on Compensation for Crime Damage (1204/2005), the Act on Restraining Orders (898/1998), the Code of Judicial Procedure, the Criminal Procedure Act (389/1997), the Criminal Investigation Act (805/2011), the Act on Child Custody and Right of Access (361/1983), the Marriage Act (234/1929), the Act on Equality between Women and Men (609/1986) and the Non-discrimination Act (1325/2014).

<sup>154</sup> Criminal code, Chapter 21: Sections 5 and 10, Chapter 20: Sections 4 and 5. Section 6 of the chapter criminalizes aggravated assault, and section 7, criminalizes petty assault.

<sup>155</sup> For example, government proposal 78/2010 ps; government proposal 19/2013 ps; government proposal 155/2014 ps. Information based on Baseline report by the Government of Finland on measures giving effect to the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence April 2018 p63

<sup>156</sup> Committee of the Parties Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) Recommendation on the implementation of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence by Finland IC-CP/Inf(2020)3

<sup>157</sup> Chapter 20 section 4 coercion into sexual act section 5, Chapter 21 Section 5 assault section negligent bodily injury Chapter 25 section 7 menace and section 8 coercion

GREVIO's First Baseline Evaluation Report, however, does not consider this as an adequate implementation of the corresponding provisions of the CoE Istanbul Convention.<sup>158</sup> Relying on reports received from stakeholders the Evaluation makes the point that in Finnish judicial practice, violent crimes committed by strangers is generally considered more reprehensible than those committed by persons knowing the victim. The NGO Parallel Report,<sup>159</sup> supporting GREVIO's monitoring work, also claims that Finland should make it an explicit aggravating circumstance if an offence is committed against a former or current spouse or partner, member of family, or a person cohabiting with the victim to fully comply with the CoE Istanbul Convention's requirements.

### c. Criminalisation of psychological violence

In Finland **psychological violence/coercive control as a form of VAW** is not explicitly criminalized. Coercion, menace and non-physical violence are in general criminalized through the all-encompassing provisions on offences of violence in chapters 21 and 25 of the Criminal Code. Chapter 21 encompasses physical violence but applies to psychological violence as well. According to this a person who employs physical violence on another or, without such violence, injures the health of another or renders another unconscious or into a comparable condition is sentenced for assault.<sup>160</sup> The government proposal concerning offences of violence (94/1993 ps) notes that the provision on assault "is expressly meant to be interpreted so that health can be wilfully hurt or pain can also be caused in ways other than by fists or knives and that such acts are comparable to traditionally meant violence".<sup>161</sup>

According to the Finnish Government since the CoE Istanbul Convention's definition on psychological violence in Article 33 also relates to an act that is carried out through coercion or threats, in this way coercion referred to in chapter 25, section 8 of the Criminal Code or menace referred to in section 7 can also be applied for the offence described by the Convention.<sup>162</sup>

The First Baseline Evaluation Report adopted by GREVIO<sup>163</sup> observed that the current form of criminalization of psychological violence in Finland does encompass some forms of psychological abuse that are frequently experienced in domestic violence situations. The offences of assault, coercion and menace as they are described in the Finnish Criminal Code cover single incidents, hence are not capable to cover a course of conduct which encompasses psychological violence as defined in Article 33 of the CoE Istanbul Convention. The Evaluation Report also noted that under Finnish criminal law the said offences (assault, coercion and menace) all set very high thresholds for the conduct to be considered as a criminal behaviour, therefore do not encompass lower intensity conducts which consist of several incidents and may also form part of the pattern of abuse in domestic violence. The overall finding of the Evaluation Report is that the currently existing criminal offences in the Finnish Criminal Code do not correspond to all acts that seriously impair the psychological integrity of a person as required by Article 33 of the CoE Istanbul Convention. The NGO Parallel Report also voiced the exact

<sup>158</sup> GREVIO's (Baseline) Evaluation Report 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 (Istanbul Convention) FINLAND GREVIO/Inf(2019)9 p47

<sup>159</sup> GREVIO's (Baseline) Evaluation Report 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 (Istanbul Convention) FINLAND GREVIO/Inf(2019)9 p18

<sup>160</sup> Under chapter 21, section 5 of the Criminal Code

<sup>161</sup> Baseline report by the Government of Finland on measures giving effect to the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence April 2018 p67

<sup>162</sup> See government proposal 155/2014 ps, p. 49—50

<sup>163</sup> GREVIO's (Baseline) Evaluation Report 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 (Istanbul Convention) FINLAND GREVIO/Inf(2019)9 p42-43

same concern regarding the non-explicit criminalization of psychological violence in Finland. According to the NGO Parallel Report the provision on assault is applied extremely rarely.<sup>164</sup>

#### **d. Stalking**

In order to fully comply with the CoE Istanbul Convention's definition of stalking the Finnish Criminal Code was modified in 2014 and a new specific crime was introduced.<sup>165</sup> Chapter 25, section 7a of the Criminal Code sets forth a provision that a person who repeatedly threatens, observes, contacts or in a comparable manner unjustifiably stalks another so that this is conducive towards instilling fear or anxiety is sentenced for stalking", the offence being sanctioned either by a fine or imprisonment between 14 days and 2 years.<sup>166</sup> While the 2019 GREVIO Evaluation Report praises Finland for introducing the specific crime it had to echo the concern voiced by civil society and lawyers that the *travaux préparatoire* submitted by the Government for the new offence make stalking conditional to the victim's expressing that the acts are unwanted.<sup>167</sup> No matter that the offence as described in the Criminal Code does not require the expression of the unwanted nature of the act as a material element of the crime, the *travaux préparatoire* lead to a practice in which law enforcement places too big of a relevance on the victim's behaviour. According to this only such acts are regarded to qualify as stalking when the victim expressly communicated that the act is unwanted. The Evaluation Report cites surveys conducted between 2014-2016 finding law enforcement practices minimizing suspect's behaviour, underreporting and judicial practice following the course set by law endowment, but also takes note of emerging judicial interpretation remedying this practice.<sup>168</sup> The Report recommends that Finland simply revert to the wording of the Criminal Code and revise the *travaux préparatoire*.<sup>169</sup>

#### **e. Assessment**

In Finland there have been numerous past and current initiatives taken for the prevention and combating of violence against women and a long history in promoting the equality between women and men which has been acknowledged and praised by the Committee of Parties of the CoE Istanbul Convention. Finland's commitment is well reflected in various national action plans and policy documents, most recently the Action Plan for the Istanbul Convention (2018-2021), and various concrete measures taken by the Government including the increase of the funding allocated to and the provision of services for all women victims of violence, the setting up of sexual violence referral centres (SERI), the amendments to the Act on State Compensation to Providers of Shelter Services in order to ensure the funding of domestic violence shelters through compensation by the central government, the creation and funding of the national telephone helpline on domestic violence and violence against women (Nollalinja) and to include gender related risks factors of persecution in asylum cases.<sup>170</sup>

In acknowledging all these efforts GREVIO still recommends Finland to take concrete measures to investigate, prosecute and punish effectively acts of psychological violence by making full use of the

<sup>164</sup> NGO Parallel Report on the implementation of the Istanbul Convention in Finland May 2018 p16.

<sup>165</sup> Government proposal 155/2014 ps, p. 50.).

<sup>166</sup> Ibid 73.

<sup>167</sup> GREVIO's (Baseline) Evaluation Report 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 (Istanbul Convention) FINLAND GREVIO/Inf(2019)9 p42

<sup>168</sup> Ibid p43

<sup>169</sup> Ibid p43

<sup>170</sup> Committee of the Parties Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) Recommendation on the implementation of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence by Finland IC-CP/Inf(2020)3 Adopted on 30 January 2020 3 IC-CP/Inf(2020)3 Finland

available provisions in the Finnish Criminal Code. To effectively criminalise all acts that seriously impair the psychological integrity of a person as required by Article 33, and in doing so consider introducing a new provision that would better fit the Istanbul Convention's framework.<sup>171</sup>

Regarding the criminalization of stalking GREVIO encourages Finland to revise the existing guidance to ensure that the offence of stalking as enshrined in the Finnish Criminal Code does not require that the acts are made against the victim's will and to ensure that continual stalking represents an aggravated form of stalking.<sup>172</sup>

## France

### a. General Aspects

Article 1, paragraph 1, of the 1958 Constitution states that France "shall ensure the equality before the law of all citizens without distinction as to origin, race or religion". Equality between women and men is therefore not explicitly affirmed as such in the text of the 1958 Constitution, which regarding this specific issue refers back to the Preamble of the 1946 Constitution. This states that "the law guarantees women equal rights with men in all fields". In order to remedy this the wording of the 1958 Constitution was amended in 2018. The new provision now reads that the principle of equality before the law "without distinction of sex".

Since 2010 there has been a true national mobilisation by the French authorities in the fight against violence against women, which has been called a "great national cause".<sup>173</sup> Legislative provisions have gradually addressed the various forms of violence against women making it possible to considerably strengthen the legal framework for preventing and punishing violence. Legislative efforts have been accompanied by a succession of five consecutive three-year interdepartmental plans since 2005. Several measures have been implemented over the past decade to promote substantive equality between women and men. These include measures to promote an integrated approach to equality issues and to mobilise all ministries around both specific measures and gender-sensitive policies.<sup>174</sup> France signed the CoE Istanbul Convention on 11 May 2011, the day it was opened for signature, and ratified it on 4 July 2014. It entered into force on 1 November 2014.

France was evaluated under the monitoring mechanism of the CoE Istanbul Convention triggered by GREVIO in 2019 and in general received a positive evaluation for compliance with the Convention.<sup>175</sup>

### b. Domestic violence/intimate partner violence

In France, the various legal texts and inter-ministerial plans to combat violence against women use varying terms.<sup>176</sup> Nonetheless French laws that exclusively target "violence against women" or "inequalities between women and men" recall in their explanatory statement that such violence and

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<sup>171</sup> GREVIO's (Baseline) Evaluation Report 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 (Istanbul Convention) FINLAND GREVIO/Inf(2019)9 p422

<sup>172</sup> Ibid p43

<sup>173</sup> Committee of the Parties Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) Recommendation on the implementation of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence by Finland IC-CP/Inf(2020)3 p11

<sup>174</sup> Ibid.

<sup>175</sup> Committee of the Parties Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) Recommendation on the implementation of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence by Finland IC-CP/Inf(2020)3

<sup>176</sup> These include terms such as "domestic violence", "violence specifically against women", "violence within couples", "violence against women", "gender violence", "gender-based violence" or "gender-based and sexual violence".

inequalities are based on gender.<sup>177</sup> In line with previous inter-ministerial action plans to combat VAW, the 5th interministerial plan on combating all forms of violence against women clearly recognises that “the persistence of such violence is intolerable not only because it violates women’s rights and dignity, but also because it is the first obstacle to real equality between women and men. This observation calls for a relentless commitment on the part of the state and all the actors involved in this policy.”<sup>178</sup>

GREVIO noted with satisfaction that French legislation on aggravating circumstances has made several advances – the most recent being the law of 3 August 2018 – so that most of the circumstances listed in Article 46 of the CoE Istanbul Convention can be taken into account when determining sentences for offences covered by the Convention.<sup>179</sup>

### c. Psychological violence

French law applies the concept of intimate partner violence<sup>180</sup> covers all types of violence including the broad category of psychological violence composed of notions such as harassment, be it online or in public spaces, insults, threats. Psychological violence has been criminalised as a “*délit*”<sup>181</sup> and punishable criminally since 2004. In the French Criminal Code, psychological violence is covered by a general provision,<sup>182</sup> as well as by two provisions specific to domestic violence relating respectively to moral harassment in private life between spouses, partners, cohabitants or ex-partners<sup>183</sup> and harassment outside a marital relationship<sup>184</sup>. These provisions also make it possible to initiate criminal proceedings in the event of conduct characteristic of the “harassment” offence provided for in Article 34 of the convention.

When it comes to psychological violence, the new Law No.2018-703 of 3 August 2018<sup>185</sup> has created a new misdemeanor (*contravention*) in the Criminal Code for cases of sexist insults (*outrage sexiste*) which essentially follows the pattern of the offense (*délit*) of sexual harassment.<sup>186</sup> The sexist insult is punishable under the Criminal Code by fines which can increase in case of aggravating circumstances (if the insult is addressed to a minor, if it happens in public transport, etc). The new Law also established in article 222-33 of the Criminal Code a reinforced system of fighting against new forms of violence online and in the social media. It is meant to cover cyber harassment, amongst other things.<sup>187</sup> It also created a new offense (*délit*) of sexual voyeurism. This corresponds to the use of any means to have a glimpse (*apercevoir*) at the intimate parts of the body of a person who has hidden them and modified article 132-80 of the Criminal Code from someone who resides or cohabits with the victim to someone who does not cohabit with the victim.<sup>188</sup> In other words, one of the recommendations previously made

<sup>177</sup> For example, the explanatory memorandum to the Act of 4 August 2014 on substantive equality between women and men underlines at length the importance of social constructions in inequalities between women and men or the recent Law No. 2018-703 of 3 August 2018 strengthening the fight against sexual and gender-based violence.

<sup>178</sup> GREVIO’s (Baseline) Evaluation Report 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 (Istanbul Convention) FRANCE GREVIO/Inf(2019)16 France

<sup>179</sup> Ibid p54.

<sup>180</sup> The French would rather use as a broad category the concept of “domestic violence” which would then indeed cover both physical and psychological violence

<sup>181</sup> The French have a classification of criminal offenses ranging from least important to most important, which is difficult to translate into English: contravention (misdemeanor), délit (offense), crime (crime). The translated terms in parenthesis are the author’s proposal.

<sup>182</sup> Article 222-14-3),

<sup>183</sup> (Article 222-33-2-1)

<sup>184</sup> (Article 222-33-2-2).

<sup>185</sup> La loi n° 2018-703 du 3 août 2018, renforçant la lutte contre les violences sexuelles et sexistes

<sup>186</sup> Article 621-1 of the Criminal Code

<sup>187</sup> Note that already in 2016 a new article 226-2-1 was introduced in the criminal code to specifically tackle the issue of revenge porn.

<sup>188</sup> The legal provision now reads in French: « Dans les cas respectivement prévus par la loi ou le règlement, les peines encourues pour un crime, un délit ou une contravention sont aggravées lorsque l’infraction est commise par le conjoint, le concubin ou le partenaire lié à la victime par un pacte civil de solidarité, y compris lorsqu’ils ne cohabitent pas. » (the part modified by the law of 03.08.2017 is underlined).

of the EIGE<sup>189</sup> has been followed-up and the legal provision on aggravating circumstances have been extended to non-cohabiting partners. Law No.2018-703 of 3 August 2018 also introduced a new form of an offence relating to group cyberbullying.

#### **d. Stalking**

Stalking is captured by the French Criminal Code as moral harassment. According to this "Harassing one's spouse, or partner under a civil solidarity pact, or cohabitating partner, through repeated comments or behaviour with the object or effect of a deterioration in their living conditions resulting in deterioration of their physical or mental health is punishable by three years' imprisonment and a 45,000€ fine when these acts caused total incapacity for work less than or equal to eight days or did not lead to any incapacity for work and five years' imprisonment and 75 € 000 fine when they caused total incapacity for work greater than eight days or were committed while a minor was present and attended. The same penalties are incurred when this offense is committed by a former spouse or former partner of the victim, or a former partner linked to the latter by a civil solidarity pact."<sup>190</sup>

#### **e. Assessment**

France received an overall good evaluation under the GREVIO evaluation and the Committee of the Parties generally praised France for taking a series of actions and in general making a national mobilisation in the fight against violence against women including legislative and operational steps. The latter including in particular measures taken by law enforcement agencies to improve the way they relate to victims, the creation of the "Family Protection Brigades", the conclusion of the "complaint" protocol between various Ministries and the launch of an online reporting platform for sexual and sexist violence.

Regarding psychological violence GREVIO only encouraged France to ensure the effective application of all criminal provisions relating to psychological violence.

## **Germany**

#### **a. General aspects**

In Germany the Basic Law guarantees gender equality and the constitutional prohibition of sex discrimination, these are specified by the Federal Equality Act at the level of statutory legislation.

Germany ratified the CoE Istanbul Convention on 12 October 2017 and the Convention entered into force as German law on the federal level on 1 February 2018.<sup>191</sup> Under the German Constitutional regime, the full conformity of German law with the CoE Istanbul Convention had to be put in place before ratification, which slowed down the process considerably. One of the central issues causing controversy related to Article 36 of the Convention that triggered the amendment of the legal definition of rape and sexual assault within the German Penal Code. The German Penal Code required not only lack of consent but also coercion by violence or severe threat or the deliberate exploitation of an especially vulnerable situation. This was said to be outside compliance with the CoE Istanbul Convention, which states that engaging in non-consensual acts of a sexual nature with a person constitutes sexual violence and a criminal offence without further requirements. Ultimately the

<sup>189</sup> FRANCE Recommendations to improve data collection on intimate partner violence by the police and justice sectors, EIGE 2018, p2.

<sup>190</sup> Article 222-33-2-1 of the French Criminal Code

<sup>191</sup> Parliamentary information on the ratification and (unequivocal) adoption by parliament is available under <https://www.bundestag.de/dokumente/textarchiv/2017/kw22-de-haeusliche-gewalt-507528>, and the draft of the Act on the 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence (as adopted by Parliament and including the ministerial memorandum): <http://dip21.bundestag.de/dip21/btd/18/120/1812037.pdf>.

amendments to the Penal Code to implement Article 36 of the Istanbul Convention were passed by the Bundestag with an overwhelming majority.<sup>192</sup>

Under Article 78 of the Istanbul Convention, the German Government declared reservations concerning the residence status, residence permit and the suspension of expulsion procedures for foreign victims of gender-based violence. Despite the fact that such reservations are permitted by the Convention, they arguably diminish the protection for female refugees and migrants who are victims of domestic violence.<sup>193</sup> Germany will be evaluated under the monitoring mechanism of the CoE Istanbul Convention triggered by GREVIO in between 2020 and 2022 and the procedure has not started yet.<sup>194</sup>

### **b. Domestic violence/intimate partner violence**

Domestic violence was criminalized in Greece through various Penal Code offences<sup>195</sup> and Law 3500/2006 on combating domestic violence. According to Law 3500/2006 domestic violence is was the execution of an offence against a family member.<sup>196</sup> The criminal offences in the framework of domestic violence law are the following: domestic physical injury, domestic assault, repeat and threat of rape, abuse in lewdness (lechery), sexual abuse, manslaughter by intention and fatal injury.<sup>197</sup> In the framework of Law 3500/2006, the family is defined widely, which included spouses, former spouses, parents and relatives of the first and second degree by blood or by marriage and through adoption children.

At the eve of ratifying the CoE Istanbul Convention Article 3 of Act 4531/2018 amended Act 3500/2006 on combatting domestic violence bringing important changes with it. Firstly, the concept of 'family' was broadened to comprise the parties to a life partnership and parties to a dissolved life partnership provided by Act 4356/2015.<sup>198</sup> In this way the already quite broad definition of family used for domestic violence by Law 3500/2006 was brought fully in line with the CoE Istanbul Convention. In alignment with Article 3 CoE Istanbul Convention, cohabitation, sharing the same residence as the victim, is no longer a prerequisite for the application of Act 3500/2006 in the case of former spouses. Children common children or children of one of them are also covered. The above changes broadening the definition of family members for the purposes of domestic violence have brought the Greek legislation in line with the Istanbul Convention's notion of domestic violence.

### **c. Psychological violence**

In Greek law, the offense of threat is standardized in article 333 of the Greek Penal Code and equally the offenses of domestic violence and threat in article 7 of Law 3500/2006.

<sup>192</sup> Country report Gender equality How are EU rules transposed into national law? Germany Ulrike Lembke Reporting period 1 January 2018 – 31 December 2018 , 2019 p94.

<sup>193</sup> Reservation handed over by the State Secretary for Foreign Affairs of Germany to the Secretary General of the Council of Europe at the time of signature of the instrument, on 11 May 2011 - Or. Engl., confirmed and completed in a letter from the Federal Minister for Foreign Affairs of Germany, deposited with the instrument of ratification on 12 October 2017 [https://www.coe.int/en/web/conventions/search-on-treaties/-/conventions/treaty/210/declarations\\_Articles\\_59\(2\)\\_and\\_59\(3\)\\_of\\_the\\_Istanbul\\_Convention](https://www.coe.int/en/web/conventions/search-on-treaties/-/conventions/treaty/210/declarations_Articles_59(2)_and_59(3)_of_the_Istanbul_Convention).

<sup>194</sup> <https://www.coe.int/en/web/istanbul-convention/timetable>

<sup>195</sup> Greek Criminal Code Articles 299 and 311

<sup>196</sup> In accordance with Articles 6, 7, 8 and 9 of this act and Articles 299 and 311 of the Criminal Code

<sup>197</sup> Glossary of definitions of rape, femicide and intimate partner violence EIGE 2017

<sup>198</sup> Greece, Act 4356/2015, OJ A 181/24.12.2015

## d. Stalking

Stalking was criminalised for the first time in Greece upon the ratification of the Istanbul Convention which made it necessary to amend the Penal Code in 2018 to include stalking as a criminal offence.<sup>199</sup> The new criminal offence defines stalking as the causing of fear or uneasiness in another person, whom the perpetrator repeatedly follows or watches, in particular by seeking constant contact through a telephone or an electronic device or by repeated visits to her/his family, social or working environment, contrary to the individual's explicitly expressed will. This provision does not presuppose the threat of violence or other illegal act or omission.

## e. Assessment

The legislative package that was passed in the course of 2019 to fully bring Greek law into alignment with the CoE Istanbul Convention provides for a number of new legal institutions and mechanisms to prevent, combat and prosecute violence against women more effectively. The public consultation of the amendment of the Penal Code in the spring of 2019 brought to light again the issue that rape in Greece has been defined in a manner that focuses on resistance and violence rather than lack of consent in the Penal Code (Article 336). After Amnesty International's<sup>200</sup> and other NGOs' denunciation and public demonstrations<sup>201</sup> and debate the Government redefined the material elements of the offence of rape to clearly recognize lack of consent as a material element of the offence.

It remains to be seen how the new Act will be applied in practice. The alignment of the Penal Code, of Act 3500/2006 and of the other national legislative acts with the CoE Istanbul Convention was long overdue. In addition to this the fact that provisions of Act 3500/2006 had remained outside of the Penal Code (and the other relevant Codes), creates legal uncertainty and difficulties in implementation.<sup>202</sup> The inadequacy and ineffectiveness of the pre-existing legislation (i.e. mainly Act 3500/2006 on domestic violence), the need for adequate structures and systematic data collection and the persistence of gender stereotypes which lie at the heart of violence against women have been constantly stressed by women's NGOs.<sup>203</sup>

## Italy

### a. General aspects

Three major developments of note occurred the Italian Legislature/Parliamentary term XVII (15 March 2013 - 22 March 2018):

- a) In June 2013, the Italian Parliament ratified the Istanbul Convention.
- b) In the same year, the Italian Parliament approved the anti-femicide decree law (Decree Law No 93/2013) which criminalized the killing of women motivated by their gender, or by the fact that they did not conform to a socially constructed role.
- c) In July 2015, the Italian Parliament approved an Action Plan Against Gender Violence and Sexual Abuse.

<sup>199</sup> Law 3500/2006 on combating domestic violence Article 2 Act 4531/2018

<sup>200</sup> <https://www.amnesty.org/download/Documents/EUR2500952019ENGLISH.PDF>

<sup>201</sup> <https://www.thenationalherald.com/270206/more-people-taking-beatings-across-greece-domestic-violence-up/>

<sup>202</sup> See the Gender Equality Law country report for Greece 2017, written by Sophia Koukoulis-Spiropoulos and updated by Panagiota Petroglou, paragraph 10.1.

<sup>203</sup> Ibid.

Over the past ten years, Italy has taken a series of measures to define and punish crimes against women in the domestic context. In 1996, Law No. 66/199 Against Sexual Violence marks a break from previous legislation on the matter in that it finally defines sexual violence as a crime against the person, rather than violence against public morals and decency. Article 609bis defines sexual assault as the use of violence, threats, or abuse of authority to force the victim to perform or submit to sexual acts.

An impetus for the Italian government's commitment to address gender and domestic violence came from the *Talpis v. Italy* case (41237/14).<sup>204</sup> The European Court of Human Rights found Italy in violation of the Istanbul Convention's positive obligations for states to prevent and protect women from domestic violence. In addition, further incentive to reform the legislative system came from the worrying rise in the phenomenon. Between 2016 and 2020, the issue of violence against women, domestic violence and gender equality has been newly addressed by the Italian Parliament. Italian Parliament instituted the Committee of enquiry on femicide and any form of gender-based violence in 2018 (Commissione monocamerale di inchiestasul femminicidio e su ogni forma di violenza di genere). The crime of 'femicide' has been introduced in the Italian Penal Code in 2013. The objectives of the Commission of enquiry include: (i) investigate the phenomenon of violence against women in Italy; (ii) monitor the implementation of the CoE Istanbul Convention; (iii) evaluate capacity and propose legislative and other interventions.<sup>205</sup> Also a new legislative measures on violence against women was approved. In response to the high rate of violence against women, the Italian Senate approved Law No 69 2019, also known as 'red code', in 2019.<sup>206</sup> The red code brings two main changes to Italian legislation on the matter, namely:

- i) it **toughens penalties for existing crimes relating to violence against women** and domestic violence, particularly for perpetrators of crimes of violence, sexual violence and stalking;
- ii) it introduces **new crimes relating to violence against women, domestic violence and intimate partner violence**, by criminalizing forced marriages, acid attacks, revenge porn and violation of removal orders.

## b. Domestic violence/intimate partner violence

Domestic violence has been sanctioned in Italy since 2001,<sup>207</sup> and was criminalised first in Article 572 of the Criminal Code which originally provided for the maltreatment of a member of the family only. Today after respective amendments, taking place in 2009, 2012 and recently by the Red Code the title of which reads as "Il-treatment in the family members and partners" (Maltrattamenti contro familiari e conviventi). According to the new law anyone who mistreats a person of the family or cohabiting partner, or a person subject to his authority or entrusted to him for reasons of education, instruction, care, supervision or custody, or for the exercise of a profession or an art, is punished with imprisonment for three to seven years. As stated above the amendments of the Red Code toughens the Penal Code<sup>208</sup> which result in the longer penalty for perpetrators of domestic and intimate-partner violence. The Red Code also amends the Italian Penal Code by toughening the punishment for the mistreatment of violence against family members, cohabitants and anyone who lives under the perpetrator's authority

<sup>204</sup> Andrei Talpis's wife had repeatedly reported the husband to the law enforcement authorities for domestic violence. During the last episode of violence, Talpis hit to death their son while he tried to protect his mother. The European Court of Human Rights accused Italy to have failed to protect mother and son, thus not respecting the Istanbul Convention.

<sup>205</sup> [http://www.senato.it/app/bgt/showdoc/17/SommComm/0/01066513/index.html?part=doc\\_dc](http://www.senato.it/app/bgt/showdoc/17/SommComm/0/01066513/index.html?part=doc_dc)

<sup>206</sup> <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2019:69>

<sup>207</sup> [Act No. 154/2001 on Measures against Violence in Family Relations](#)

<sup>208</sup> <http://www.penale.it/page.asp?mode=1&IDPag=1327>

for reason of education, instruction, care, oversight, custody or of a profession or art. Moreover, the penalty can be increased by half when done in the presence of, or against a pregnant woman, a minor or a person who is disabled.

The domestic/intimate partner context is an aggravating circumstance for sexual crimes since the entry into force of Decree Law No93/2013 amending the Penal Code. According to this if a sexually violent offence is committed against a pregnant woman, the spouse, including if separated or divorced, or against a person who is related to the perpetrator or has been linked to him in the past by affective relationship, regardless of cohabitation, these will have to be considered as aggravating circumstances.<sup>209</sup>

According to GREVIO's baseline Evaluation Report<sup>210</sup> the problem regarding the application of this criminal offence arises from the fact that in judicial practice systematic nature of the violent conduct is required and also that the criminal intent to cause physical and/or psychological harm to the victim and/or violating her dignity. Ill-treatment is therefore categorised as a crime of habitual nature and is subject to *ex officio* prosecution. In case where the systematic nature of the violent conduct cannot be proven, the perpetrator might be held to account under such other crimes such as battery,<sup>211</sup> bodily harm<sup>212</sup> and threat<sup>213</sup> which are prosecutable *ex parte* and may fall within the jurisdiction of lower courts (justice of the peace).

GREVIO's baseline Evaluation Report also sites a number of researches with alarming findings indicating that courts set aside the qualification of offensive conduct as ill-treatment in cases where: (1) the repetitive violent conduct took place during a short lapse of time; (2) the violence reported occurred at the end of a relationship and was not preceded by any complaint, thus being ascribed to an occasional "state of anger"; and, more commonly; (3) the victim was not found to be reduced to a state of passive submission because of the violence, hence had the capacity to "tolerate/resists" ill-treatment. It is on that basis that "GREVIO strongly encourages the Italian authorities to ensure an application of the legal provisions on the offence of ill-treatment in the family which is sensitive to the gendered nature of domestic violence against women and is not hampered by stereotyped views of women and their experience of violence."<sup>214</sup>

### **c. Psychological violence**

Psychological violence against women is not criminalized as such in the Italian Penal Code. Provisions do exist in the Penal Code for victims of psychological violence. Art 572 of the Italian Criminal Code criminalizes the mistreatment of a family member or a person under the perpetrator's authority or entrusted to his/her care. Art 610 criminalizes those who use violence to coerce someone else into doing, omitting or accepting something, but does not define explicitly mention or define 'psychological' in the context of violence. The crime of abuse does not provide for separate types of prosecution by physical/psychological/economic violence, and also includes non-gender based violence and violence that takes place in the fields of work and school sports.

<sup>209</sup> Article 609-ter of the Italian Criminal Code, numbers 5, 5-ter and 5-quater).

<sup>210</sup> GREVIO's (Baseline) Evaluation Report 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 (Istanbul Convention) ITALY GREVIO/Inf(2019)18 Italy

<sup>211</sup> Article 581 of the Italian Criminal Code

<sup>212</sup> Article 582 of the Italian Criminal Code

<sup>213</sup> Article 612 of the Italian Criminal Code

<sup>214</sup> GREVIO's (Baseline) Evaluation Report 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 (Istanbul Convention) ITALY GREVIO/Inf(2019)18 Italy p14.

## **d. Stalking**

Italy passed an Anti-stalking law in 2009 (Law No. 38/2009 On Urgent Measures Regarding Sexual Violence), defining and introducing the crime of stalking for the first time in the Italian Criminal Code (Art 612 bis). Accordingly, stalking entails the repeated use of threats or harassing behaviours that produce in the stalked person a state of fear or anxiety about their own personal safety or about the safety of a person to whom they are sentimentally linked. As a result of stalking, victims can no longer live their normal life. Stalking can be punished with a penalty of one to six years of imprisonment and the penalty can be increased if committed in presence of, or to the detriment of a pregnant woman, a minor or a person with disability. As we shall see later, law 69/2019, also known as code red law increases the penalty for stalkers from 5 to 7.5 years.

## **e. Assessment**

The Red Code strengthens the Italian legislative framework against domestic and gender-based violence. However, the bill has been proposed by the ruling party, rejected by the opposition and received with criticism by non-governmental organizations and feminist groups.<sup>215</sup> Criticisms centre around the following points.<sup>216</sup> Firstly, the new set of legislation does not address the root causes of violence against women and domestic violence. The Italian Democratic Party (PD), which opposed the bill, commented that it represents a 'missed opportunity' to take a comprehensive approach and needs substantial amendments that take into account the cultural, structural and systemic causes of violence against women. In addition, according to the PD, the bill does not provide extra financial support for addressing the phenomenon.<sup>217</sup> Another set of criticism comes from women's groups and NGO representatives which pointed out the downside of speeding up court hearings for those who report violence against women. Accordingly, magistrates should hear the offended person only when they are ready. In addition, police and court hearings should be victim-centred, allowing for the woman to tell their story without being further victimized. The main problems concern the fact that women might not be believed<sup>218</sup> or that they might be asked to repeat the same story several times, whereas if police and the carabinieri are prepared to take once and that the same report should be sufficient for the purposes of the investigation.<sup>219</sup>

## **Poland**

### **a. General Aspects**

The Constitution of the Republic of Poland (Konstytucja Rzeczypospolitej Polskiej) of 2 April 1997 plays an essential role in the legal framework on gender equality in Poland. It contains general equality and anti-discrimination clauses, as well as a guarantee for equality between men and women.<sup>220</sup> Poland

<sup>215</sup> <http://www.deputatipd.it/blog/codice-rosso-occasione-mancata>

<sup>216</sup> [http://www.stopvaw.org/italy\\_contested\\_red\\_code\\_dv\\_legislation\\_passes\\_through\\_senate](http://www.stopvaw.org/italy_contested_red_code_dv_legislation_passes_through_senate)

<sup>217</sup>

[http://www.xinhuanet.com/english/2019-07/20/c\\_138241719.htm](http://www.xinhuanet.com/english/2019-07/20/c_138241719.htm) <https://www.europeaninterest.eu/article/violence-women-italy-grevio-calls-preventive-measures/>

<sup>218</sup> This concern is confirmed by a national survey which has found that 10,3% of Italians believe that some accusations of sexual violence are false.

<sup>219</sup> <https://www.thelocal.it/20190718/code-red-italy-passes-new-domestic-violence-law>

<sup>220</sup> JoL 1997 No. 78 Item 483.

ratified the CoE Istanbul Convention by the Law of 6 February 2015,<sup>221</sup> with several reservations and declarations,<sup>222</sup> which entered into force in 7 April 2015.

### **b. Domestic violence**

In principle, the two main legislative acts applicable in the field are the Penal code of 1997 (as amended); and the Act on prevention of violence within a family of 29 July 2005 (as amended). Regarding the Penal code the criminal offence on mistreatment of close persons is the most relevant in the context of criminalizing domestic violence.<sup>223</sup>, which states that:

'(1): 1. Whoever mentally or physically mistreats a person close to him, or another person being in a permanent or temporary state of dependence to the perpetrator, a minor or a person who is vulnerable because of his mental or physical condition shall be subject to the penalty of deprivation of liberty for a term of between 3 months and 5 years.'

The Act on counteracting family violence<sup>224</sup> is the most important piece of legislation aimed at the elimination of this form of gender-based violence. This law provided for a broad definition of family violence, the special 'blue card procedure' according to which police and other agencies can intervene in relation to family violence incidents. The measures provided for in the Law on counteracting family violence are generally in compliance with the obligations under the CoE Istanbul Convention. However, this law does not include a gender perspective, nor a definition of economic violence and still lacks certain legal solutions (e.g. emergency barring orders (Article 52)). In addition, it has to be noted that this Law only refers to family violence. With regard to other, more specific forms of gender-based violence, the general provisions of the Penal Code and Code of Criminal Procedure have to be applied.<sup>225</sup>

### **c. Psychological violence**

As shown above the Polish Penal Code defines mistreatment of close persons with reference to physical or psychological violence. This means that the recommendations of EIGE<sup>226</sup> to subdivide this article into subparagraphs to cover separately physical violence and psychological violence were not translated into legislative amendments.

The two above mentioned acts are connected by virtue of Art. 2(1) of the Act on prevention of violence within a family which defines 'family members' by reference to articles 115 para 11 of the Penal Code. This provides a definition of 'closest person': "*The closest person is the spouse, ascendant, descendant, siblings, relative in the same line or degree, the person in relation to the adoption and their spouse, as well as the person living together.*"

Contrary to one of the EIGE recommendation, the above mentioned definition still does not cover current or former partners who do/did not share a residence. However, hypothetically the partner is a spouse (husband or wife), he/she is covered by the definition of "closest person/family member" even if they do not share the residence, rendering the EIGE recommendation imprecise (if not redundant).

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<sup>221</sup> JoL 2015 Item 398.

<sup>222</sup> Confining certain compensation to Polish citizens only, and limiting the jurisdiction to be exercised under the Convention aspects of the CoE Istanbul Convention on

<sup>223</sup> Article 207 of the Polish Penal Code.

<sup>224</sup> Cconsolidated text JoL 2015, Item 1390

<sup>225</sup> POLAND Recommendations to improve data collection on intimate partner violence by the police and justice sectors, EIGE 2018 p2-3

<sup>226</sup> Ibid.

It is also worth noting that EIGE (and other international documents)<sup>227</sup> use an imprecise translation of the latter act by speaking of 'Act on the Prevention of Domestic Violence'. This deserves to be highlighted for reasons far more important than linguistic or semantic precision. The title of the legislative act may certainly influence the interpretation of the provisions contained therein. Clearly, an Act on prevention of violence within a family may seemingly have a narrower scope than a hypothetical act on prevention of domestic violence. The latter would more likely cover acts of violence committed also by perpetrators who otherwise are not considered as family members.

The Ministry of Family, Labour and Social Policy proposed to amend the said act in late 2018 and sent to the draft to intra-service consultations on 31 December 2020.<sup>228</sup> It proposed to change the title to the Act on domestic violence, however the proposed substantive amendments sparked controversy. An example of a criticized amendment was to narrow down the scope of the term "violence within a family" to repeated acts of (or omission to act leading to) violence. It meant that one-off acts of violence would not be covered by the said Act. Media and civil society scrutiny forced the Prime Minister to send the legislative proposal back to the Ministry for further consultations to eliminate controversial provisions on the 1 February 2020.<sup>229</sup> Finally, the proposal was withdrawn and thus the Act kept its original name (to be reiterated: Act on prevention of violence within a family) and the definition of "violence within a family" (including one-off offences). Later amendments passed in February 2019 were limited to legal implementation of the GDPR. This draft represented such a huge step backwards in the protection of victims of gender-based violence that.<sup>230</sup>

The purpose of the draft act is to introduce into the legal order a set of comprehensive solutions (including amendments to the code of civil procedure, infractions code etc.) that provide effective instruments of legal protection for victims suffering from domestic violence. Essentially, the envisaged legal tool is an immediate isolation of the victim from the perpetrator. According to the explanatory memorandum attached to the draft law, the source of inspiration for the projected solutions is the Austrian legal framework.

#### **d. Stalking**

Stalking is criminalised under Polish law through the Penal Code in Article 190a §1 since 2011.<sup>231</sup> The provision states that "[w]ho, by means of stalking another person or persons who are close to her, causes in this person a justified sense of threat or significantly violates her privacy, is liable to a penalty of the deprivation of freedom for up to three years. If the consequences of an act determined in § 1 or 2 is the injured person's attempt to commit suicide, the perpetrator is liable to a penalty of the restriction of freedom from one year to ten years". This crime is prosecuted only at the victim's request.<sup>232</sup> The definition is in line with the CoE Istanbul Convention.

<sup>227</sup> POEMS MAPPING THE LEGISLATION AND ASSESSING THE IMPACT OF PROTECTION ORDERS IN THE EUROPEAN MEMBER STATES (POEMS) NATIONAL REPORT POLAND by Sławomir Buczma 2014

<sup>228</sup> Currently (as of 2 March 2020), a proposal (document no UD536: <https://legislacja.rcl.gov.pl/projekt/12322070>) initiated on 27 June 2019 by the Ministry of Justice - for an amendment of the Act on prevention of violence within a family of 2005 is subject to inter-service consultations within the Council of Ministers.

<sup>229</sup> Country report Gender equality How are EU rules transposed into national law? Poland Eleonora Zielińska in cooperation with Anna Cybulko Reporting period 1 January 2018 – 31 December 2018 p126.

<sup>230</sup><http://wyborcza.pl/7,75398,24327192,ministerstwo-rodziny-projekt-ustawy-o-przemocy-w-rodziniezostal.html>,  
<https://www.tvn24.pl/wiadomosci-z-kraju,3/jednorazowa-przemoc-nie-bylaby-przemocaprojekt-nowelizacji-ustawy-o-przemocy-w-rodzinie,896663.html>, <http://wyborcza.pl/7,75398,24344225,morawiecki-zdymisjonowal-wiceminister-odpowiedzialna-zaprojekt.html>.

<sup>231</sup> Law of 25 February 2011, JoL No. 72, item 381

<sup>232</sup> Article 190a §3.

## e. Assessment

Despite the fact that Poland has ratified the CoE Istanbul Convention there are alarming developments regarding the perception of the Convention and the Government's commitment regarding the attainment of the objectives of the Convention. The ratification of the Istanbul Convention has been preceded by a long-lasting debate, where the major controversy was caused by the key concepts of the Convention such as: the reference to violence against women; the reference to gender discrimination; the structural character of violence against women (motive 9 of the Preamble) and the obligations deriving from Article 12 of the CoE Istanbul Convention, in particular, the obligation to eliminate harmful gender stereotypes. All this culminated in publishing and then withdrawing the draft law proposing the amendments to the Law of 2005 on family violence discussed above.

## Portugal

### a. General Aspects

Article 13 of the Constitution of the Portuguese Republic (principle of equality) establishes that all citizens have the same social dignity and are equal before the law (paragraph 1) and no one can be privileged, favoured, prejudiced, deprived of any right or exempted from any duty for reasons of ancestry, sex, race, language, territory of origin, religion, political or ideological beliefs, education, economic situation, social circumstances or sexual orientation (paragraph 2).

Since 1991 specific legislation addressing women victims of violence is in force – Law Nr. 61/91 of 13 August, and regarding victims legislation concerning domestic violence, Law Nr. 112/2009, 16 September, Law Nr. 104/2009, 14 September and Law Nr. 130/2015, 4 September (which includes the Victim's Statute in its annex). Portugal ratified the CoE Istanbul Convention on 5 February 2013 which entered into force on 1 August 2014.

Portugal was evaluated under the monitoring mechanism of the CoE Istanbul Convention triggered by GREVIO in 2019 and in general received a positive evaluation for compliance with the Convention.<sup>233</sup>

### b. Domestic violence

Domestic violence has been criminalised in Portugal since 2007. Under Article 152 of the Penal Code, "whoever, in a repetitive manner or not, imposes physical or mental abuses, including bodily punishments, deprivations of liberty and sexual offences to the spouse or ex-spouse; to a person of another or of the same sex with whom the agent maintains or has maintained a relationship equal to a relationship of spouses, even if without cohabitation; to a progenitor of common descendant in the first degree; or to a person particularly undefended, due to age, deficiency, disease, pregnancy or economic dependency, who cohabitates with him, is punished with a sentence of imprisonment from one to five years".<sup>234</sup> The same Article provides a higher sentencing threshold if the above offence is committed against a person who cohabitates with the offender (1-5 years) but there is no indication that the fact that the offence resulted in severe psychological harm for the victim (Article 46 h of the convention) can be invoked to increase a prison term.

<sup>233</sup> Committee of the Parties Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) Recommendation on the implementation of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence by Portugal IC-CP/Inf(2019)

<sup>234</sup> Report submitted by Portugal pursuant to Article 68, paragraph 1 of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Baseline Report) Received by GREVIO on 8 September 2017 GREVIO/Inf(2017)10 Published on 8 September 2017 p50-51

### c. Psychological violence

Domestic violence as defined in Article 152 provides for "mental abuse" as discussed above. In addition, Article 153 of the Penal Code criminalizes threat when it states: "Whoever threatens another person with the commission of a crime against life, bodily integrity, personal freedom, sexual liberty and self-determination or property of considerable value, in an adequate way to cause him fear or worry or to impair his liberty of determination, is punished with sentence of imprisonment for not more than one year or with fine penalty for not more than 120 days." Article 154 of the Penal Code criminalizes coercion as "Whoever, by means of violence or threat with an appreciable harm, constrains another person to an action or omission or to bear an activity, is punished with sentence of imprisonment for not more than three years or with fine penalty."<sup>235</sup>

### d. Stalking

Article 154-A of the Penal Code criminalizes stalking. According to this provision "Any person who repeatedly persecutes or harasses another person, by any means, directly or indirectly, in a manner that is likely to cause him fear or disquiet or jeopardize his freedom of determination, shall be punished by imprisonment for up to 3 years or a fine, if a more severe penalty does not fit him under another legal provision."<sup>236</sup>

### e. Assessment

On the basis of GREVIO's Evaluation Report the Committee of the Parties<sup>237</sup> praised Portugal for the comprehensive, integrated and co-ordinated policies to tackle certain forms of violence against women and the efforts to build recognition of the prevalence of violence against women. Regarding the criminalisation of the various forms of violence the only recommendation which was made to Portugal was the need to include economic violence as a form of VAW and to ensure that the offence of domestic violence is effectively prosecuted, including, where applicable, through the cumulative application of the criminal provisions related to several concurrent offences, and that sentencing adequately reflects whether the violence qualifies as domestic violence.<sup>238</sup>

## Romania

### a. General Aspects

The Romanian Constitution enshrines the general principle of equality in Art. 4, paragraph 2 "Romania is the common and indivisible homeland of all its citizens, regardless of race, nationality, ethnic origin, language, religion, sex, opinion of political belonging, wealth or social origin". And in Article 16 para. (1) Equality in rights: "Citizens are equal before the law and public authorities, without privileges and without discrimination". Romania has ratified the CoE Istanbul Convention in 25 March 2016, by Law 30/2016,<sup>239</sup> and the instrument of ratification was deposited with the Council of Europe in May 2016, the Convention entered into force in Romania on 1 September 2016.

<sup>235</sup> Ibid

<sup>236</sup> Ibid.

<sup>237</sup> Committee of the Parties Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) Recommendation on the implementation of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence by Portugal IC-CP/Inf(2019)3 Published on 28 January 2019

<sup>238</sup> GREVIO's (Baseline) Evaluation Report 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 (Istanbul Convention) PORTUGAL Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) GREVIO/Inf(2018)16 p 12.

<sup>239</sup> - Law no. 174/2018, amending and supplementing Law 217/2003 for preventing and combating family violence and Law no. 178/2018 amending and supplementing Law 202/2002 on equal opportunities and treatment between women and men (regulating the concept of gender-based violence).

Romania, however, made a number of reservations and declarations to the CoE Istanbul Convention in relation to the compensation scheme, the jurisdictional provisions and ex officio investigations, prosecution of minor offences and autonomous residence status to victims.<sup>240</sup> Also, Romania reserved the right to provide for non-criminal sanctions, instead of criminal sanctions, for the behaviours referred to in Articles 33 (psychological violence) and 34 (stalking). The period of validity of the reservations is from 01 September 2016 to 01 September 2021, subject to renewal according to Article 79 of the Convention.<sup>241</sup> All these reservations and declarations weaken the teeth of the Convention both regarding the protection of the victims and giving the tools available for law enforcement. The GREVIO evaluation of Romania is under way, with the Romanian Government having submitted its report on 6 February 2020 and the process foreseen to be completed by 2021.<sup>242</sup>

### **b. Domestic violence**

In essence it was Law 174/2018 which introduced a comprehensive definition of domestic violence. This included: explicitly excluding any reason to justify domestic violence such as custom, culture, religion, tradition or honour; a legal mandate for authorities to collect data on domestic violence; detailing the legal framework for establishing services for victims of domestic violence; detailed competence of police officers to collect evidence of domestic violence; and the mandate of the social services team that carries out an emergency intervention in a case of domestic violence.<sup>243</sup>

Domestic violence is defined by the Law 2017/2003 amended by Law no. 174/2018 in art. 3: "*For the purposes of this Law, domestic violence means any intentional inaction or action of physical, sexual, psychological, economic, social or spiritual violence that occurs in the family or domestic environment or between spouses or former spouses, and between current or former partners, regardless of whether the abuser lives or lived with the victim.*"

Law no.217/2003 amended by Law 174/2018 in article 4 paragraph 1 defines the following forms of domestic violence: a) verbal, b) psychological, c) physical, d) sexual, e) economic, f) social and g) spiritual. The Romanian Criminal Code criminalizes physical domestic violence in article 199 which refers exclusively to physical acts: injuries, battery, murder or physical violence committed against family members.<sup>244</sup>

### **c. Psychological violence**

Within the Law 217/2003, psychological violence includes in the definition not only the sphere of art. 33 of the Convention, but also harassment, as defined by Article 34 of the Convention: "*Art. 4 lit. b): psychological violence - imposing personal will or control, provoking states of tension and mental suffering in any way and by any means, by verbal threat or in any other way, blackmail, demonstrative violence on objects and animals, ostentatious display of weapons, neglect, control of personal life, acts of jealousy, coercion of any kind, lawless pursuit, supervision of the home, workplace or other places frequented by the victim, making phone calls or other types of communications by means of transmission. at a distance, which by frequency, content or moment they are issued, creates fears, as well as other actions with similar effect;*"

<sup>240</sup> In relation to Article 30, paragraph 2; Article 44, paragraphs 1.e, 3 and 4; Article 55, paragraph 1, in respect of Article 35 regarding minor offences; Article 59. <https://www.coe.int/en/web/conventions/search-on-treaties/-/conventions/treaty/210/declarations>

<sup>241</sup> Reservation contained in the instrument of ratification deposited on 23 May 2016: <https://www.coe.int/en/web/conventions/search-on-treaties/-/conventions/treaty/210/declarations> *Articles 59(2) and 59(3) of the Istanbul Convention*

<sup>242</sup> <https://www.coe.int/en/web/istanbul-convention/timetable>

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<sup>244</sup> Report submitted by Romania pursuant to Article 68, paragraph 1 of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Baseline Report) Received by GREVIO on 6 February 2020 GREVIO/Inf(2020)5 Published on 10 February 2020. P3-4

There are no specific criminal law provisions criminalising **psychological violence** against women, as such. However, several Criminal Code provisions are applicable in this respect such as the articles: 203 on leaving a person in difficulty helplessly; 191 no determination or easing of suicide; 204 on preventing aid; 205 on illegal depravation of liberty; 206 on threat; 207 on blackmail; 208 on harassment; 226 on privacy violation; 378 on family abandonment for lack of payment of the alimony.

Law 286/2009 on the Criminal Code provides the possibility to take into account the vulnerability of the victim due to age health, impairment or other reasons as an aggravating circumstance (Article 77). Battery and other acts of violence are punished more severely when committed against a family member.<sup>245</sup>

#### **d. Stalking**

The Romanian Government in its Report to GREVIO explains that Article 34 of the CoE Istanbul Convention on stalking is implemented under harassment in Romanian law under the modified provisions of the Criminal Code Art. 208, where harassment is: (1) The act of the one who repeatedly pursues, without law or without a legitimate interest, a person or supervises his / her house, place of work or other places frequented by it, thus causing a state of fear, is punished with imprisonment from 3 to 6 months or with a fine. (2) Making telephone calls or communications by means of distance transmission, which, by frequency or content, causes a person a fear, is punished by imprisonment from one month to 3 months or by fine, if the deed does not constitute a more serious crime. (3) The criminal action is initiated on the preliminary complaint of the injured person. However, Romania reserved the right to provide for non-criminal sanctions, instead of criminal sanctions, for stalking as defined by Article 34 of the CoE Istanbul Convention.

#### **e. Assessment**

The societal debate taking place on this topic focuses on the prevalence of domestic violence in Romania and the ineffectiveness of State's measures of protection for victims of domestic violence. This is especially in cases where the authorities know about the history of violence against women who are later killed by their aggressors.<sup>246</sup> Also the enforcement of the provisions of the new legislation criminalizing domestic violence is said to be considerably weakened by the ineffective temporary protection order regime and its insufficient application by the authorities.<sup>247</sup>

### **Spain**

#### **a. General Aspects**

The Spanish legal system started to already take note 20 years ago of the effect of violence within the family inflicted on women, who suffered disproportionately from this, which public authorities could not ignore. As a consequence, and anticipating the entry into force of the Istanbul Convention, Spain adopted in 2004 the "Ley Orgánica 1/2004, de 28 de Diciembre, de Medidas de Protección Integral contra la Violencia de Género" (The Organic Act 1/2004 of 28 December, on Integrated Protection Measures against Gender Violence) which enshrines and guarantees a series of rights (information, legal aid, social assistance, employment and economic rights, etc.) and complementary forms of

<sup>245</sup> Ibid p42-43

<sup>246</sup> DOR, Sandu, O. (2019) Soluții împotriva violenței: ordinul de protecție (Solutions against violence: protection order), 16.03.2019, available at: [www.decatorevista.ro/solutii-impotriva-violentei-ordinul-deprotectie](http://www.decatorevista.ro/solutii-impotriva-violentei-ordinul-deprotectie). Cited by Country report Gender equality How are EU rules transposed into national law? Romania Iustina Ionescu Reporting period 1 January 2018 – 31 December 2018 p52

<sup>247</sup> Ibid p53

protection (institutional, civil, criminal and judicial) for all women who are or who have been victims of gender-based violence in relation with their partner or ex-partner. The Law received an honourable mention in 2014 in the Future Policy Award (given by the World Future Council) as one of the best pieces of legislation on violence against women.<sup>248</sup> Law 26/2015, of 28 July 2015 extended the protection system on gender-based violence to children.<sup>249</sup> On 28 September 2017 the Spanish Parliament adopted a document reflecting an agreement among the majority view of the political parties with parliamentary representation to work together in the fight against gender-based violence. The document contained 200 concrete measures, to be implemented mostly by the Government, the Autonomous Communities and local authorities over the next five years.<sup>250</sup> The Government approved a Royal Decree Law, in 2018, whose main points were the following: the mechanisms for the accreditation of victims were expanded; this law was modified so that the assistance women receive is compatible with other assistance; measures were included so that the children of victims do not need the permission of the abuser or murderer to receive psychological treatment; the victim was allowed to appear as a private petitioner at any stage of the procedure. The evaluation of the measures adopted to apply the pact against gender-based violence shows they are diverse and have a strong political component.<sup>251</sup>

Spain signed the CoE Istanbul Convention on 11 May 2011 and ratified in 2014 through publication in the Official State Gazette (Boletín Oficial del Estado) on 6 June, coming into force on 1 August of the same year. The Spanish Government has submitted its report for the purposes of GREVIO's evaluation process on the 18 February 2019, the process is to be completed by 2020.<sup>252</sup>

## b. Domestic violence

The different forms of violence exercised against women and considered in the CoE Istanbul Convention, are classified as crimes in Spain under Criminal law.

The preliminary title of the Organic Act 1/2004 sets out its purpose and guiding principles. Its Article 1 states as follows:

"1. The purpose of this Act is to combat the violence exercised against women by their present or former spouse or by men with whom they maintain or have maintained analogous affective relations, with or without cohabitation, as an expression of discrimination, the situation of inequality and the power relations prevailing between sexes.

2. (...)

3. The gender violence to which this Act refers encompasses all acts of physical and psychological violence, including offences against sexual liberty, threats, coercion and the arbitrary deprivation of violence."

Therefore, the Organic Act, whose title speaks broadly about 'violencia de género' (Gender Violence) in fact refers to and deals with the phenomenon of Intimate Partner Violence. It defines this in an almost identical manner to the CoE Istanbul Convention, in terms of the notion of intimate partner, the

<sup>248</sup> World Future Council, Future Policy Award 2014: Ending Violence Against Women & Girls, [www.worldfuturecouncil.org/p/2014-ending-violence-against-women/](http://www.worldfuturecouncil.org/p/2014-ending-violence-against-women/).

<sup>249</sup> Spain, Law 26/2015, of 28 July 2015, that modifies the protection system for children and adolescents, [www.boe.es/buscar/pdf/2015/BOE-A-2015-8470-consolidado.pdf](http://www.boe.es/buscar/pdf/2015/BOE-A-2015-8470-consolidado.pdf).

<sup>250</sup> I Derecho (2017), 'El Congreso aprueba el Pacto de Estado Contra la Violencia de Género' (Congress approves the State Pact Against Gender Violence), [www.elderecho.com/actualidad/Congreso-apruebaPacto-Estado-Violencia-Genero\\_0\\_1140375145.html](http://www.elderecho.com/actualidad/Congreso-apruebaPacto-Estado-Violencia-Genero_0_1140375145.html)

<sup>251</sup> Spain, Royal Decree Law 9/2018 of 3 August 2018 on Urgent Measures for the Development of the State Agreement against Gender-Based Violence, [www.boe.es/diario\\_boe/txt.php?id=BOE-A-2018-11135](http://www.boe.es/diario_boe/txt.php?id=BOE-A-2018-11135).

<sup>252</sup> [https://www.coe.int/en/web/istanbul-convention/timetable](http://www.coe.int/en/web/istanbul-convention/timetable)

components of this violence (the Spanish definition includes both psychological control and coercion; nevertheless, it does not include economic violence) and the context of the intimate partner relation (with or without cohabitation).

In the Spanish context, Domestic Violence ("Violencia doméstica") is regulated in Article 173,2 of the Criminal Code (including intimate partner violence against men or women<sup>253</sup>, between same sex couples, and violence within the family context whether the victim is a man or woman). The current wording is the result of a modification inserted in the original version of the Code (of 1995) by Organic Act 1/2015 of 30 March (one of the various objectives of this Act was to reinforce the protection already foreseen by the Code to the victims of these types of violence in conformity with the requirements of the Istanbul Convention). It reads as follows:

"Whoever habitually uses physical and mental violence against the person who is or has been his spouse or the person who is or has been bound to him by a similar emotional relation, even without cohabitation, or against descendants, ascendants or biological, adopted or fostered siblings, against that person or the spouse or cohabitating partner, or against minors or the incapacitated whom live with him or who are subject to the parental rights, guardianship, care, fostership or safekeeping of the spouse or cohabitating partner, or against a person protected by any other relation by which that person is a member of the core family unit, as well as against persons who, due to their special vulnerability are subject to custody or safekeeping in public or private centers, shall be punished with a sentence of imprisonment of 6 months to 3 years'(...), without prejudice to the penalties that may be relevant for the felonies or misdemeanors in which the acts of physical and mental violence have been materialized."

Continuous progress has regarding the administrative implementation and enforcement of this public policy. Indeed, given its multi-disciplinary and integrated nature, the multi-level administrative structure of the Spanish territorial model and the number of actors involved (government and civil society), a broad number inter-institutional protocols, instructions and other instruments need to be adopted at national and local level. The fundamentals of this coordinated approach are established by "Pacto de Estado contra la violencia de género" (State pact against Gender Violence) which was adopted unanimously by the Spanish Parliament in September 2017<sup>254</sup>.

Finally, as recently as 2 March 2020, the Ministry of Equality presented a draft for an Organic Act on Integrated Guarantees on Sexual Freedom ("Ley Orgánica de Garantía Integral de la Libertad Sexual"). Even if the issues of concern regulated by this future Act<sup>255</sup> are outside the scope of this study the presentation of this preliminary project is worth mentioning as it incarnates the most recent regulatory effort undertaken by Spanish authorities to comply with the demands of the Istanbul Convention to ensure that all types of violence against women are appropriately criminalized and punished. Indeed, this future Organic Act does not only follow an integrated rationale, as promoted by Istanbul, but also (and this would be its key feature) establishes that regulation of sexual crimes must be done on the basis of the non-consensual nature of the act, and not considering other elements. As a result, the

<sup>253</sup> When the victim of intimate partner violence is a man, this offence is criminalised under domestic violence. When it is a woman, it will be so under gender violence law.

<sup>254</sup> The pact foresees the adoption of a number of measures, the implementation of actions and the award of public funds in order to enhance social awareness and prevention, improve institutional response, increase the effectiveness of the help, support and protection of victims, better the training of public agents, etc. The application of these measures is carried out by the Government through its Delegation for Gender-based violence, attached to the Ministry of Equality, ensuring coordination with other Ministries and the relevant administrative departments of the Autonomous Communities.

<sup>255</sup> It is still has to firstly go through further intra-governmental scrutiny and be subject to the opinion of the State Council so that it becomes a formal law project. Then, it will be the object of parliamentary discussion before it becomes formally a binding law.

current distinction between the crimes of sexual assault<sup>256</sup> (Article 178, Criminal Code) and sexual abuse<sup>257</sup> depending the existence of violence and coercion or not will disappear. Indeed, if the current wording of the Act is adopted, any act of a sexual nature without the unequivocal and consent of the victim will be regarded, at least, as sexual assault.

### c. Psychological violence

Concerning how acts of psychological violence against women (either domestic or intimate) are criminalized in the Spanish legal system, the Criminal Code establishes two offences:

- Threats (Art. 171.4 of the Criminal Code) (added by Organic Act 1/2004)

**Threats** are classified as an offence under articles 169 et seq. of the Criminal Code, punishable with prison sentences between one year and five years for the most serious cases. As regards violence against women and domestic violence, threats are considered under article 171.4 of the Criminal Code "*Whoever lightly intimidates his wife or former wife, or woman with whom he has been bound by a similar emotional relation even without cohabiting, shall be punished with a sentence of imprisonment of six months to one year, or community service from thirty-one to eighty days and, in all cases, deprivation of the right to own and carry weapons from a year and a day to three years, as well as, when the Judge or Court of Law sees it fit in the interest of the minor or person with disability requiring special protection, special barring from exercise of parental authority, guardianship, care, safekeeping or fostering for up to five years. The same punishment shall be imposed on whoever lightly intimidates an especially vulnerable person who lives with the offender.*"<sup>258</sup>

- Coercion (Article 172.2 of the Criminal Code) (modified by Organic Act 1/2015)

**Coercion** is considered under articles 172 et seq. of the Criminal Code, imposing prison sentences from six months to three years in more serious cases, with special consideration of the content of article 172.2: "*Whoever lightly coerces his wife or former wife, or woman with whom he has been bound by a similar emotional relation even without cohabiting, shall be punished with a sentence of imprisonment of six months to one year, or community service from thirty-one to eighty days and, in all cases, deprivation of the right to own and carry weapons from a year and a day to three years, as well as, when the Judge or Court of Law sees it fit in the interest of the minor or person with disability requiring special protection, special barring from exercise of parental authority, guardianship, care, safekeeping or fostering for up to five years. The same punishment shall be imposed on whoever lightly coerces an especially vulnerable person who lives with the offender. The punishment shall be imposed in the upper scale when the offence is committed in the presence of minors or takes place in the common dwelling or in the dwelling of the victim, or is committed in breach of a punishment of those set forth in Article 48 of this Code or a precautionary or security measure of the same kind.*

*Notwithstanding what is set forth in the preceding paragraphs, the Judge or Court of Law may, giving the reasons in the judgement, in view of the personal circumstance of the offender and those arising when the offence was committed, impose a punishment one degree lower.*"<sup>259</sup>

<sup>256</sup> Article 178, Spanish Criminal Code

<sup>257</sup> Article 181, Spanish Criminal Code

<sup>258</sup> Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) Report submitted by Spain pursuant to Article 68, paragraph 1 of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Baseline Report) Received by GREVIO on 18 February 2019 GREVIO/Inf(2019)5 Published on 19 February 2019 p46

<sup>259</sup> Ibid p47

#### **d. Stalking**

Stalking is an offence, considered under article 172 of the Criminal Code, was introduced in the reform of the Organic Law 1/2015 of 30 March, and is regulated under the following terms:

*"1. Whoever harasses a person repeatedly and insistently, without any legitimate authorisation to do so, with the following acts, thereby altering significantly their daily life, shall be punished with a prison sentence of between three months and two years, or a fine of six to twenty-four months:*

- 1. Surveillance, persecution or desire for physical proximity.*
- 2. Establishing or trying to establish contact with them through any media or through third persons.*
- 3. Improper use of personal details, acquisition of products, goods or services, or putting third parties in contact with them.*
- 4. Offences against their freedoms or property, or against the freedoms or property of another person close to them.*

*If the person is especially vulnerable because of their age, condition or situation, a prison sentence of six months to two years shall be imposed.*

*2. When the victim is one of the persons referred to in section 2 of article 173, a prison sentence of one to two years, or community service of sixty to one hundred and twenty days shall be imposed. In this case, it is not necessary to bring the action referred to in section 4 of this article.*

*3. The punishments foreseen in this article shall be imposed regardless of those that may apply to the offences resulting from the stalking acts.*

*4. The facts described in this article shall only be prosecuted when reported by the person who is their victim or their legal representative."<sup>260</sup>*

#### **e. Assessment**

Mainstream political parties in Spain are all committed to combat and prosecute gender based violence. It is only the Vox party which advocates for a repeal of the legislation against gender violence because it considers that gender-based violence does not exist but only domestic violence. While the legislative environment in relation to domestic violence, intimate partner violence and the various forms of gender-based violence and victim protection is very progressive and forward looking in Spain, there is still one area of criticism concerning the limited protection granted to those victimised by gender-based violence where the perpetrator is not the partner or ex-partner. The issue has been raised in relation to the concept of rape, in particular, where there is a lack of express consent by the victim. This issue painfully arose in the context if a judgement of the Provincial Court of Navarre of 20 April 2018 which interpreted the Spanish Criminal Code to mean that sexual relations without mutual consent cannot be considered rape but qualifies as sexual abuse in cases where express and clear violence and intimidation is absent.<sup>261</sup> This judgement prompted a public outcry as it implicitly considered the responsibility for the assault to rest with the woman unless she showed clear and express opposition, even if that meant forcing her to put her life at risk. It was for this reason that some political parties - the Socialist Party and Podemos party - have requested a reform of the Criminal Code in this respect. The modification would clarify that all sexual assault without the consent of the victim must be considered rape, whereas only those sexual acts are considered as rape which have been perpetrated with violence or intimidation.<sup>262</sup>

<sup>260</sup> Ibid

<sup>261</sup> Judgement of the provincial Court of Navarre of 20 April 2018 number 38/2018, <https://cdn.20m.es/adj/2018/04/26/3934.pdf>.

<sup>262</sup> Country report Gender equality How are EU rules transposed into national law? Spain Amparo Ballester Reporting period 1 January 2018 – 31 December 2018 2019 p68.

## ANNEX II

### Data collection in the police and justice sector regarding violence against women in the EU Member States

The below discussion of the 10 EU Member State's data collection in the police and justice sector regarding violence against women is primarily based on the European Institute of Gender Equality's country factsheets. These factsheets summarize the administrative data collection process in each EU Member State and data availability as of 2017. On that basis country-specific recommendations were developed in 2018 with specific actions suggested for the improvement of administrative data collection on intimate partner violence.<sup>263</sup> The discussion of the data collection practices of the reviewed EU Member States are structured in the following way: (1) what data is collected by the police; (2) what data is collected by the judiciary/prosecutorial services; (3) EIGE's recommendations for improvement; (4) data collection regarding psychological violence. Where appropriate concrete statistics will be cited.

#### Cyprus

In Cyprus **data collected by the police** includes the age and sex of both the victim and perpetrator and the relationship between them, the number of reported incidents of domestic violence and the number of male perpetrators. For domestic/intimate partner violence-related offences, information on the following is collected: homicide, intimate partner violence (domestic violence) and rape. Data is collected on psychological violence committed within the context of domestic violence, yet intimate partner violence data is not separated. Psychological violence accounted for approx. 33,81% of all the recorded incidents of domestic violence, with numbers 2014- 308, 2015 -345, 2016 – 281, 2017 – 253 and 288 in 2018.<sup>264</sup> Between 2014-2018 63,87 % of the victims of domestic violence were women and 9,74% were girls under 18 years of age while 75,99% of the perpetrators were men and 0.73% were boys under 18.<sup>265</sup> The national statistics office (Statistical Service of Cyprus — CYSTAT) receives data from the police and uses the same coding system.

According to EIGE<sup>266</sup> **data collection infrastructure within the justice sector** is not unified and judicial authorities do not collect data on intimate partner violence, but do so regarding other forms of violence (e.g. sexual violence); however the relationship between the victim and the perpetrator is not recorded. Domestic violence is not recorded as a separate category of criminal offence in judicial data collection. Data collection infrastructure in the justice sector is not harmonised and no judicial authority collects data on intimate partner violence. The overall result of this is that intimate partner violence and domestic violence are not statistically represented.<sup>267</sup>

**In 2018 EIGE made a number of recommendations to Cyprus to improve data collection in the police and justice sector.**<sup>268</sup> The most important of these being to enhance the legal regulatory framework on data collection of intimate partner violence, to develop guidelines for data collection,

<sup>263</sup> Outcomes per EU Member States are found at <https://eige.europa.eu/gender-based-violence/data-collection>

<sup>264</sup> Criminality Statistic Data - Domestic Violence - Reported Incidents of Domestic Violence by Type (2014-2018) <http://www.police.gov.cy/police/police.nsf>All/CA506C9C79BC69ADC22583D10015E865?OpenDocument>

<sup>265</sup> Criminality Statistic Data - Domestic Violence - Reported Incidents of Domestic Violence by Type (2014-2018) Ibid.

<sup>266</sup> Data collection on intimate partner violence by the police and justice sectors - Cyprus, 2017.

<sup>267</sup> Ibid.

<sup>268</sup> CYPRUS Recommendations to improve data collection on intimate partner violence by the police and justice sectors. 2018.

standardise data collection infrastructure at the judicial level, develop a unitary recording method to assist in the collation of data between the police and justice sectors, improve data collection from the police sector through the systematic recording of the relationship between the victim and the perpetrator.

Regarding data collected along the **EIGE indicator on psychological violence** the recommendations specify that the current administrative data collected by the Cypriot police includes the number of women victims of domestic violence, including cases of psychological intimate partner violence. This data, however, does not break down the sex of the victim and does not specify the relationship between the victim and the perpetrator in a domestic violence context.

## Finland

**Law enforcement** agencies collect data in the police information system (PATJA) on the basis of the 6-digit code of the offence as set out in the Finnish Criminal Code (chapter number, section and subsection). This allows criminal acts to be distinguished from attempted acts and the basic offence distinguished from the aggravated offence. Sex, age and type of violence can be recorded, but important characteristics such as the relationship of the perpetrator to the victim cannot. As a result of the data collection by the Finnish police data is available on female victims of intimate partner violence. For offences classified as involving domestic violence, the following breakdowns are collected by the police: the victim or complainant's and the suspect's sex and age, however the relationship between the complainant and the suspect is not recorded. Statistics Finland (StatFin) produces relationship data for cases of intimate partner violence on the basis of register data. The data is recorded in the *Poliisiasiantietojärjestelmä* or Data System for Police Matters (PATJA) using specific codes that are based on the 6-digit criminal code. StatFin coordinates data collection and publication, also in the area of intimate partner violence. The police independently publishes statistics on different forms of criminality and safety.<sup>269</sup>

**The Case Management System of Criminal Matters** (Sakari), in use by prosecutors and district courts, operates on the same coding system. Courts of appeal and the Supreme Court of Finland use a different data-collection system called Riku (Decisions in Criminal Matters Application). In the justice sector, however, the data collection application allows for the collection of data on the victims, but this is not a compulsory field and is not usually collected. The following data are collected by the justice sector: crime nomenclature, date of the crime, birth date and sex of the suspect/convicted person and no data is collected on the victim–perpetrator relationship.<sup>270</sup>

The prosecutor, district courts, courts of appeal and the Supreme Court record data in various databases including Sakari (Case Management System of Criminal Matters) and Riku (Decisions in Criminal Matters Application). The Sakari database uses the same specific codes as the police in PATJA to record data.<sup>271</sup>

With the exception of stalking, the different forms of violence against women may give rise to criminal investigations and prosecution under a wide variety of general criminal offences. Where such offences have taken place in a domestic setting, they are tagged by the recording officer as "domestic violence". Internal guidelines request such recording where the suspected perpetrator has an emotionally close relationship with the victim, irrespective of where the act was committed and whether they reside

<sup>269</sup> GREVIO Baseline Evaluation Report Finland GREVIO/Inf(2019)9 Finland p17

<sup>270</sup> GREVIO Baseline Evaluation Report Finland GREVIO/Inf(2019)9 Finland p43

<sup>271</sup> GREVIO Baseline Evaluation Report Finland GREVIO/Inf(2019)9 Finland p43

together or not. Standard categories such as "spouse", "live-in partner" and "former spouse" etc do not exist, which would explain the absence of any police routine to establish the relationship of the perpetrator to the victim. Instead, information on their civil/family status and residence is retrieved manually on the basis of the civil registry kept by Statistics Finland. GREVIO noted that this practice offers ample room for inaccuracy, as the relationship status and place of residence might change throughout the course of the year, rendering the registry less up to date than is necessary for this purpose.<sup>272</sup>

According to StatFin,<sup>273</sup> there were 9,900 victims of domestic violence and intimate partner violence offences reported to the authorities in 2018, which is 3.6% more than in the previous year. In domestic violence and intimate partner violence directed at adults, one-half took place between married or cohabiting couples. Of adult victims, 76.5% were women. Of all victims, 24.4% were minors. In all, 37.5% of domestic violence and intimate partner violence recorded in 2018 was violence between married or cohabiting couples, which is 1.4 percentage points higher than in 2017. The share has been decreasing from 2009, when it was 44.7%. In 2018, one-sixth of domestic violence and intimate partner violence took place between former married or cohabiting couples. In slightly over 80% of cases of violence between married or cohabiting couples and former married or cohabiting couples the victim was a woman. Violence between married or cohabiting couples and former married or cohabiting couples increased by close on 200 cases (3.8 per cent) from the previous year.<sup>274</sup>

**According to GREVIO's First Baseline Evaluation while there is a wealth of statistical data being collected in Finland, there are many factors that prevent the emergence of a detailed picture of the different forms of violence against women in relation to women's victimization.**<sup>275</sup> In addition to this the regular public updates on domestic violence and intimate partner violence provided by Statistics Finland are not presented in a way that would highlight the gendered nature of such violence. According to the evaluators much more must be done to expose the fact that in 80% of cases of intimate partner violence the violence is perpetrated by a man against a woman – and that 90% of all aggravated assaults and attempted homicides of women were carried out by men. Data collection on restraining orders does not seem to require the systematic registering of the relationship between the perpetrator and the protected person.

## France

In France, MIPROF<sup>276</sup> has the role of national observatory on violence against women and unites the statistical services of different ministries together with statistical and research institutions.

**Law enforcement** agencies record data relating to all incidents of violence that they detect or that come to their knowledge following a complaint by the victim, a report, or a situation of *flagrante delicto*. The data are collected for each of the offences of violence defined under the French Criminal Code and are supplemented by information provided at the time of registration of the proceedings, which includes the relationship between the victim and the offender. The new information system allows the

<sup>272</sup> GREVIO Baseline Evaluation Report Finland GREVIO/Inf(2019)9 Finland p43

<sup>273</sup> Victims of domestic violence and intimate partner violence 2009 to 2018 [https://www.stat.fi/til/rpk/2018/15/rpk\\_2018\\_15\\_2019-06-06\\_tie\\_001\\_en.html](https://www.stat.fi/til/rpk/2018/15/rpk_2018_15_2019-06-06_tie_001_en.html)

<sup>274</sup> Ibid.

<sup>275</sup> 17 GREVIO/Inf(2019)9 p16.

<sup>276</sup> Inter-ministerial Mission for the Protection of Women against Violence and the Fight against Trafficking in Human Beings (MIPROF), a body created in 2013 under the auspices of the Secretariat of State for Equality between Women and Men and the Fight against Discrimination

disaggregation of data according to the type of violence, the sex and age of the victim and the perpetrator, their relationship and the geographical location of the crime.<sup>277</sup>

**Data collection by the Ministry of Justice** is mainly organised around the Decision-Making Information System (DIS), which makes it possible to monitor the handling of criminal cases from the moment a file is opened with the public prosecutor, and the National Criminal Record (NCJ), which compiles all decisions to convict. Since November 2017, these data are summarised by the National Observatory on Violence against Women. Data are differentiated based on the different offences as defined in the French Criminal Code. However, the categories of offences used to compile law enforcement statistics do not correspond to those of the judiciary. GREVIO reports methodological incompatibilities between data collection by law enforcement and the justice sector which make it difficult to monitor statistically the procedural flow of the various legal proceedings.<sup>278</sup> Since 2016, the ministerial statistical services of internal security and justice having been working to link the International classification of crimes for statistical purposes (ICSS) with the usual categories of law, NATINF (NATure d'Infraraction) and French statistics.<sup>279</sup>

**GREVIO generally praised data collection on VAW in France and acknowledges very positively the various steps that have been made over the years to ensure comprehensive and adequate data collection.** GREVIO however identified two major shortcomings in relation to data collection in France. Firstly, there is a lack of gender-disaggregated data, both on perpetrators and victims, although steps are being taken to remedy this.<sup>280</sup> Secondly, the use of different nomenclature to collect data on the activity of public prosecutors and data on convictions. For these reasons GREVIO made a number of recommendations to France to further improve data collection, including to harmonise the categories of offences used for law enforcement and judicial statistics in order to ensure a reconstitution of the criminal chain. It also recommended ensuring the disaggregation of data collected by the judicial services according to the sex and age of the victim and perpetrator, as well as the nature of their relationship.<sup>281</sup> The law of 03.08.2017 widens the access to the national record of perpetrators of sexual offences. It is an automated file under the authority of the Ministry of Justice and the control of a designated magistrate, created in 2005, listing all the perpetrators of sexual or violent offenses.<sup>282</sup> The law of 03.08.2017 now gives access to the présidents d'établissements publics de coopération intercommunale.

According to the nomenclature established for the purposes of the High Council for Equality (HCE), 183,186 people were recorded in 2018 as victims of a sexist crime or misdemeanour in the procedures seized by the police and the national gendarmerie. In the overwhelming majority of cases (87%), the victim is a woman and 91% of the perpetrators were men. Altogether 68% of these crimes were committed within the marital context and 32% of sexual offenses outside the conjugal context. In 2018 harassment by the spouse counted for 6% of the total number of the above crimes affecting 9886 women, who accounted for 89% of the victims.<sup>283</sup>

<sup>277</sup> GREVIO Baseline Evaluation GREVIO/Inf(2019)16 p 26

<sup>278</sup> Ibid.

<sup>279</sup> Ibid.

<sup>280</sup> Ibid.

<sup>281</sup> GREVIO Baseline Evaluation GREVIO/Inf(2019)16 p27

<sup>282</sup> Ibid.

<sup>283</sup> Les victimes du sexism en France Approche croisée sur 2018 à partir des procédures enregistrées par les forces de sécurité et l'enquête Cadre de vie et sécurité Interstats Analyse n°25 - Mars 2020

## Germany

The **collection of police crime statistics at federal level** is regulated under the law on the federal criminal police office. Cooperation between the federal government and the federal states in criminal police matters<sup>284</sup> and data collection in the justice sector is regulated under the law on statistics for federal government purposes,<sup>285</sup> for prosecution statistics,<sup>286</sup> and for statistics on criminal proceedings<sup>287</sup> in the justice sector.<sup>288</sup> The police record the age and the sex of the victim and the relationship between the parties for incidents reported to the police that are related to physical, sexual, psychological and economic intimate partner violence.

Regarding data collection by the police, according to EIGE detailed relationship information is missing for some offences that might fall under economic and psychological violence (e.g. insult and violation of the obligation to pay alimony). Data is recorded by the police using a specific code list, namely the police crime statistics code (PKS-Schlüssel), which is based on the Criminal Code.<sup>289</sup> The incident is assigned a special code to indicate it took place between intimate partners. Intimate partners are captured using several categories such as current/former spouse/registered partner/partner of non-marital cohabitation. Police data is published by the Federal Criminal Police Office. **Detailed breakdowns by sex of victims and by the victim–perpetrator relationship are published as one of the general overview tables of police crime statistics.**<sup>290</sup>

In Germany **public prosecutors and courts** do not collect data on the sex and age of the victim and on the victim–perpetrator relationship for offences related to intimate partner violence. Data from the courts focuses on the cases terminated by the courts at different levels and on convicted persons. Data is recorded by the courts at different levels (local courts, district courts, higher federal courts/ courts of appeal) and the Public Prosecutor's Office using the articles/offences in the Criminal Code. Justice data is published by the Federal Statistical Office of Germany (the FSO) and is based on recorded data provided by the courts, prisons and the Public Prosecutor's Offices of the federal states. The FSO publishes data on convictions categorised by articles/offences in the Criminal Code and data on cases ruled by the different courts and on investigation procedures terminated by the public prosecutors categorised by groups of offences.<sup>291</sup>

On that basis EIGE has recommended to Germany to explore the possibility of gathering crime data from the justice sector broken down by victim sex and victim–perpetrator relationship (in order to account for intimate partner violence cases) and also to include femicide (rape/sexual coercion with deadly consequences and negligent bodily harm) in the national understanding of intimate partner

<sup>284</sup> Gesetz über das Bundeskriminalamt und die Zusammenarbeit des Bundes und der Länder in kriminalpolizeilichen Angelegenheiten (§ 2 Abs. 6 Ziff. 2), as confirmed by replies to questionnaire sent to Federal Criminal Police Office, received on 18 April 2017

<sup>285</sup> There is no legal basis at national level covering prosecution statistics, however the processing of the results of the federal states by the NSO is regulated under the abovementioned law, Gesetz über die Statistik für Bundeszwecke.

<sup>286</sup> 'Prosecution 2014 (Strafverfolgung 2014)', Justice (Rechtspflege) Vol. 10, No 3, 2016, Federal Statistical Office (Statistisches Bundesamt), p. 5, <https://www.destatis.de/DE/Publikationen/Thematisch/>

Rechtspflege/Strafverfolgung/Vollzug/Strafverfolgung2100300147004.pdf?\_\_blob=publicationFile).

<sup>287</sup> Criminal courts (Strafgerichte) 2015', Justice (Rechtspflege) Vol. 10, No 2.3, 2017, Federal Statistical Office (Statistisches Bundesamt), p. 4, <https://www.destatis.de/DE/Publikationen/Thematisch/>

Rechtspflege/GerichtePersonal/Strafgerichte2100230167004.pdf?\_\_blob=publicationFile).

<sup>288</sup> Federal Criminal Police Office (Bundeskriminalamt) Police Crime Statistics -- Federal Republic of Germany -- Historical development -- 2016 (Polizeiliche Kriminalstatistik -- Bundesrepublik Deutschland -- Geschichtliche Entwicklung -- Stand: 2016), 2016, p. 4,

<https://www.bka.de/DE/AktuelleInformationen/StatistikenLagebilder/PolizeilicheKriminalstatistik/PKS2016/pks2016.html>.

<sup>289</sup> Data collection on intimate partner violence by the police and justice sectors, Germany 2018, p2

<sup>290</sup> Ibid.

<sup>291</sup> Ibid.

violence and in all relevant reports. According to EIGE, Germany should take steps to ensure the recording by justice services of the victim–perpetrator relationship and victim information for intimate partner violence offences.<sup>292</sup>

According to a nationwide survey taken in 2004 some 25% of women between 16 and 85 years of age have experienced violence within a relationship. It showed that one in four women in Germany experienced domestic violence at least once in their lifetime (physical, sexual, economic, psychological, emotional, social) committed by former or actual partner. 40% of women have experienced physical or sexual violence and 42% of women have experienced psychological violence. If one differentiates according to the severity of the violence, two thirds of the women affected by domestic violence have suffered serious or very serious physical and/or sexual violence and one third minor to moderate physical violence.<sup>293</sup> According to this survey, violence takes place in all social classes and different ethnic groups. The risk is particularly high for women in phases of separation.

According to the results of a representative study published by the European Union Agency for Fundamental Rights on the extent of violence against women in Europe in 2014, violence against women in Germany continues to be extremely widespread.<sup>294</sup> Some 22% of women polled between 18 and 74 years of age have experienced physical and/or sexual violence within a relationship. Another alarming result of the EU study is that two thirds of the female victims do not go to the police and also that they do not seek assistance from any other organization.<sup>295</sup>

The Federal Criminal Police Office (Bundeskriminalamt) in its Police Crime Statistics report that in 2018 there were 66 8871 coercion suspects, 103 260 threat suspects and 18 960 suspects of stalking out of which 84% were men. Crime statistics report that the total number of victims of stalking was 17 674, out of which 14 195 were women. Out of 31 945 persons affected by other forms of coercion (other than road traffic) 14 536 were women and out of 100 481 victims of threat 44 397 were women. There were 9 234 cases of rape/sexual coercion and sexual assault, out of which 115 were attempts. Of these, 98.7% of the perpetrators were male. Altogether 93% of the victims of crimes against sexual self-determination were women, which also shows a 22.4% increase from 2017, which can be linked with the amendments of the criminal law on sexual offences.<sup>296</sup>

## Greece

In Greece **data is collected by the police** with the following breakdowns: number of victims of domestic violence by sex; number of homicides; number of rapes and number of sexual assaults. The units available are number of victims and offences.<sup>297</sup> Data is collected on both the victim and the perpetrator, but the relationship between them is not systematically recorded and only data on the perpetrator is processed statistically. This includes their nationality, sex and age — though only for rape and homicide offences. Data on victims is available upon official request.<sup>298</sup> Police use legal definitions in the Penal Code and the law on domestic violence to collect data on the victim and the perpetrator.

<sup>292</sup> GERMANY Recommendations to improve data collection on intimate partner violence by the police and justice sectors, EIGE 2018.

<sup>293</sup> Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (2004), Health, well-being and personal safety of women in Germany: A representative survey of violence against women in Germany – summary of the central research results, Berlin, Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, p. 9.

<sup>294</sup> Violence against women: an EU-wide survey Main results, EU Fundamental Rights Agency 2014.

<sup>295</sup> Ibid.

<sup>296</sup> Bundeskriminalamt Police Crime Statistics Federal Republic of Germany Report 2018 V 1.0

[https://www.bka.de/SharedDocs/Downloads/EN/Publications/PoliceCrimeStatistics/2018/pks2018\\_englisch.html?nn=113788](https://www.bka.de/SharedDocs/Downloads/EN/Publications/PoliceCrimeStatistics/2018/pks2018_englisch.html?nn=113788)

<sup>297</sup> Data collection on intimate partner violence by the police and justice sectors Greece, EIGE 2017, p1

<sup>298</sup> Ibid.

Legal definitions in the Penal Code are used to collect data on homicide, rape and intimate partner violence-related crimes. Intimate partner violence, rape and homicide data is recorded when the offence is first reported to the police as input statistics and taken from a report prepared by police officials. Data is published by the police and the National Statistics Office (NSO), where the latter is based on data recorded and provided by the police.<sup>299</sup>

According to EIGE's assessment the database of the public prosecutor on domestic violence does not have the capacity to provide general statistics. **Data collected by the judiciary** relating to intimate partner violence — and made publicly available — concerns the offence and the criminal sentence. Since information is not collected on the sex of the victim, it is not possible to verify the nature of the relationship between the victim and the perpetrator.<sup>300</sup> The justice sector uses legal definitions in the Penal Code and the law on domestic violence to record data. Two main bodies are responsible for data management: the Justice and Public Order Statistics Section of the NSO's Social Statistics Division and the public prosecutor. The former compiles raw data sent by the Ministry of Justice. The public prosecutor provides data collected by the Public Prosecutors of Domestic Violence Office on the judicial proceedings of domestic violence cases. Data is published by the NSO and based on data recorded by the public prosecutor on prosecuted crimes and the courts on convicted crimes.<sup>301</sup>

In 2018 EIGE made a number of recommendations to Greece.<sup>302</sup> First among these was to develop a legal or policy framework on data collection and guidelines on how to improve the recording of intimate partner violence incidents including methodology. EIGE also recommended to Greece to unify the data recording system used in the justice sector by adopting a standardised electronic data recording system.<sup>303</sup> Within this effort police and justice data recording systems must be harmonized and some form of coordinating body needs to be established. One important component of this exercise would be to make data public.<sup>304</sup>

At a more technical level EIGE recommended to improve the data collected at the police level on the victim, as at the moment it is not possible to disaggregate this data by age. Hence, it is not possible to determine if the numbers relating to women victims of domestic violence concern all female victims (all age groups) or only those who are 18 and over.<sup>305</sup> Data collected at the justice level records information on the perpetrator, but no information on the victim. Consequently, it is currently not possible to cross-check the relationship between victims and perpetrators in cases of intimate partner violence recorded in the justice sector. Currently, the victim–perpetrator relationship is not systematically recorded by the police, and no information on this relationship is available from the justice sector (as no information on the sex of the victim is recorded).<sup>306</sup>

**Specifically regarding incidents of domestic violence are not recorded based on the specific forms of violence which constitute it. Therefore, data on physical, psychological and economic intimate partner violence is currently not available.** Nevertheless, it can be assumed that this data can indeed be obtained, as the police uses offences listed in the Criminal Code to record incidents of

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<sup>299</sup> Data collection on intimate partner violence by the police and justice sectors Greece, EIGE 2017. p1

<sup>300</sup> Data collection on intimate partner violence by the police and justice sectors Greece, EIGE 2017. p2

<sup>301</sup> Ibid.

<sup>302</sup> GREECE Recommendations to improve data collection on intimate partner violence by the police and justice sectors, EIGE 2018.

<sup>303</sup> Ibid p 2.

<sup>304</sup> Ibid p 2.

<sup>305</sup> Ibid. p4.

<sup>306</sup> Ibid.

violence. Reports of domestic abuse in Greece rose 34.5 percent between 2014 and 2018, reaching 4,722 from 3,512, and women represented 66.3 percent of the victims.<sup>307</sup>

## Italy

In Italy **data is available for domestic violence, which includes intimate partner violence**. Information on the relationship between victim and perpetrator is statistically recorded only for the crimes of homicide and stalking.<sup>308</sup> The following units are available: reported offences; number of offences to be prosecuted; and number of victims. The data is recorded using a classification based on the Criminal Code and transferred from the Sistema di Indagine (SDI) database into a data warehouse where it is aggregated, homogenised and preserved in anonymous form. The National Institute of Statistics publishes statistics and annual reports based on the data provided by the SDI database. The Department of Public Security of the Ministry of the Interior also publishes statistics.<sup>309</sup>

Data focuses mostly on the criminal proceedings. Information on the victims and the relationship between the victim and the perpetrator is available in the files kept at the registries of the courts and prosecution offices. However, this data is not statistically processed. Data from the justice sector on intimate partner violence is limited to homicide and stalking.<sup>310</sup>

There is an **integrated system used by the prosecution and courts**. The following information is processed for statistical purposes: the pre-trial phase is statistically processed by the Ministry of Justice; the beginning of the criminal prosecutions is statistically processed by the National Institute of Statistics.<sup>311</sup>

In 2018 EIGE recommended that data collection should aim at being integrated across the police and justice services and the other sectors involved.<sup>312</sup> Data collection varies from one administration to another, resulting in a lack of coordination and comparability of data.<sup>313</sup> At the technical level it was recommended to take steps to ensure the relationship between the victim and the perpetrator is recorded for offences related to intimate partner violence by the police and justice sectors.<sup>314</sup> Currently, police officers collect information on victims and the relationship between the victim and the perpetrator each time a crime is reported (e.g. whether the offence is committed by the partner/ex-partner/spouse, etc.). However, this information is not statistically processed. It would therefore need to be extracted from the reports in order to be used. Similarly, in the justice sector, data on victims and the relationship between the victim and the perpetrator can be found in the (paper) criminal files kept at the registries of the courts and prosecution offices.<sup>315</sup>

**Specifically regarding psychological violence EIGE noted that data is available in Italy regarding the annual number of women** (aged 18 and over) victims of psychological intimate partner violence committed by men (aged 18 and over), as recorded by police with respect to female victims of threats (Article 612), stalking (Article 612 bis), harassment (Article 660), insults (Article 594), and defamation (Article 595). There is a lack of information, however, on the relationship between the victim and the

<sup>307</sup> <http://www.ekathimerini.com/246802/article/ekathimerini/news/violence-against-women-rising-police-says>

<sup>308</sup> Data collection on intimate partner violence by the police and justice sectors Greece, EIGE 2017. p 2

<sup>309</sup> Ibid.

<sup>310</sup> Ibid.

<sup>311</sup> Ibid.

<sup>312</sup> ITALY Recommendations to improve data collection on intimate partner violence by the police and justice sectors EIGE 2018,

<sup>313</sup> Ibid 2

<sup>314</sup> Ibid 3

<sup>315</sup> Ibid

perpetrator. On that basis it was recommended to Italy to be able to populate this indicator as developed by EIGE with the annual numbers of women victims for the offences mentioned above committed by a current/former spouse or partner, once introduced in the electronic system.<sup>316</sup>

According to a report by the Italian State Police, the number of female victims of violence has increased from 68% in 2016 to 71% in 2019.<sup>317</sup> According to a 2019 report by the Italian State Police, 80.2% of women victims of violence in Italy are Italian and 19.8% are non-Italian citizens.<sup>318</sup> In cases of femicide specifically, 34% of victims between January and August 2019 were Italian citizens, 22% were not Italian citizens. According to a 2019 report by the Italian State Police, 82% of perpetrators are familiar to the victim and in 60% of prosecution cases, the victim indicated the ex partner as the perpetrator. The 74% of perpetrators are of Italian nationality and 26% are non Italian citizens.<sup>319</sup> In femicide cases specifically, in 48% of cases the perpetrator is the partner, in 25% a family member, 12% an acquaintance, 8% the ex partner, 5% a person unfamiliar to the victim.

## Poland

In 2016 a 'Crime related to domestic violence' category was implemented in Poland and in crime **statistics the sex and age of the victim and the perpetrator and their family relationship are recorded**. The **national police records** data in the National System of Police Information. Data is recorded using a code list with legal definitions (homicide, rape and domestic violence). Data input accuracy depends on the officer involved, which means it is not always complete or reliable. Regarding the so-called Blue Card interventions,<sup>320</sup> physical, psychological, sexual and economic violence can be specified.<sup>321</sup> Actually the introduction of the Blue Card procedure enhances data collection however police Blue Card statistics cover only police-initiated procedures (i.e. 76 % of all Blue Card procedures). Thus, 24% of procedures not initiated by police are not included in police data. Data is published on the Police Commander in Chief's Office's website. In reports on Blue Card procedures and on the implementation of the national programme for the prevention of domestic violence 2014-2020, selected data is published.<sup>322</sup>

The **Ministry of Justice collects data** on the four forms of violence against women and on domestic violence court cases. Data is collected with the following breakdowns: the sex and age of the victim and the perpetrator and the relationship between them. The relationship can be defined as 'family' only, which prevents identifying intimate partners. Intimate partner violence is often considered as 'abuse', which leads to an over representation of abuse cases and an 'over-recording' of intimate partner violence.<sup>323</sup> Data is recorded by using a code list with applicable legal definitions (homicide, rape and domestic violence).

**EIGE in 2018 characterised the Polish statistical data collection as making considerable developments on domestic violence**, particularly with the adoption of the national programme for the prevention of domestic violence for 2014-2020.<sup>324</sup> Progress also has been made with regard to sex

<sup>316</sup> ITALY Recommendations to improve data collection on intimate partner violence by the police and justice sectors EIGE 2018, p 5

<sup>317</sup> <https://www.osservatoriодiritti.it/wp-content/uploads/2019/11/violenza-sulle-donne4.pdf>

<sup>318</sup> <https://www.osservatoriодiritti.it/wp-content/uploads/2019/11/violenza-sullex-donne4.pdf>

<sup>319</sup> <https://www.osservatoriодiritti.it/wp-content/uploads/2019/11/violenza-sullex-donne4.pdf>

<sup>320</sup> Blue card procedure/intervention is a special procedure in Poland which defines a set of measures to deal with complaints of domestic violence, including remedial responses and cooperation with non-police entities. Implementing the "Blue Card" procedures standardized the Police reactions on received notification of a family violence.

<sup>321</sup> Data collection on intimate partner violence by the police and justice sectors Poland, EIGE 2017. p 2

<sup>322</sup> Ibid.

<sup>323</sup> Ibid.

<sup>324</sup> The Act of 29 July 2005 on Counteracting Domestic Violence obliges the Council of Ministers to develop and adopt such a programme.

disaggregation across the data gathered by the police, the prosecutor's offices and the courts. A 'family' indicator has been introduced, which details the relationship between persons involved in reported criminal offences, and offences that can qualify as domestic violence have been widened to include intimate partner violence.<sup>325</sup> EIGE still recommended that intimate partner violence be recognised as a distinct form of domestic violence in both the Penal Code and the Act on the Prevention of Domestic Violence in order to most accurately gather statistics on the prevalence of intimate partner violence and specify the distinct types of violence that constitute intimate partner violence and these should comprise a common list that is used across the police and justice sectors when recording data on intimate partner violence.<sup>326</sup> To that end the amendment of article 207 of the Penal Code would be necessary to separate physical and psychological ill-treatment of someone in the context of an ongoing, unchanging relationship of dependency. **Up until this does not take place statistical representation of these distinct forms of violence remains impossible.**

Data in relation to the Blue card procedures show that in 2019 there have been altogether 88 032 victims of violence, out of which 65 196 were women, 10676 were men and 12 161 were minors. The total number of persons suspected of violence stood at 74 910, out of which 68148 were men, 6 448 were women and 314 were minors.<sup>327</sup> Statistics' Poland reports<sup>328</sup> show that a certain fluctuation in the total number of domestic violence and rape victims between 2013 and 2018.<sup>329</sup> Public Opinion Research Centre's report provides survey-based information based on interviews with a representative group of 968 randomly selected adults. The report takes interest in both physical violence and other forms of aggression related to psychological violence. It admits the difficulty in estimating the scale of these phenomena as respondents find it hard to admit to being either a perpetrator or a victim. Thus, it concludes that the presented figures (for instance 12.5% of woman declared to have been hit by a partner in long-term relationship) shall be treated as "a tip of the iceberg".<sup>330</sup>

## Portugal

GREVIO's primary observation in relation to data collection in Portugal, **is scarce or nonexistent, partly owing to the lack of disaggregation based on the sex of the victim.** This observation holds despite that most stakeholders already engage in the collection of data on domestic violence with a gendered perspective allowing for cases of domestic violence against women to emerge data on other forms of violence.<sup>331</sup>

The collection of data on complaints recorded by the two **law-enforcement agencies** in Portugal, namely the Republican National Guard (GNR) and the Public Security Police (PSP), is the responsibility of the General Secretariat of the Ministry of Home Affairs (SGMAI).<sup>332</sup> Data are collected based on the offences set out in the PCC and are published by the Cabinet of the General Secretary of the Internal

<sup>325</sup> POLAND Recommendations to improve data collection on intimate partner violence by the police and justice sectors EIGE 2018, p 2

<sup>326</sup> p 3

<sup>327</sup> [http://statystyka.policja.pl/st/wybrane-statystyki/przemoc-w-rodzinie/\\_50863,Przemoc-w-rodzinie.html](http://statystyka.policja.pl/st/wybrane-statystyki/przemoc-w-rodzinie/_50863,Przemoc-w-rodzinie.html)

<sup>328</sup> <https://stat.gov.pl/obszary-tematyczne/wymiar-sprawiedliwosci/wymiar-sprawiedliwosci/ofiary-qwaltu-i-przemocy-domowej,1,1.html#>

<sup>329</sup> Domestic violence figures range between 22461 in 2013, 23195 in 2014, 19237 in 2014, 196622 in 2016, 21163 in 2017 and 20572 in 2018 of which approximately 80% are women.<sup>329</sup> In case of rape victims the annual number fluctuates between 1403 in 2013 and 1415 in 2018 (81358 in 2014, 1263 in 2015, 1476 in 2016 and 1348 in 2018) where approximately 90% of the victims are women. Female victims 1288 in 2013 1249 in 2014 1168 in 2015 11371 in 2016 1240 in 2017 1305 in 2018.

<sup>330</sup> "Communication of Research: Violence and conflicts at homes" no 48/2019 published in April 2019 [https://www.cbos.pl/SPISKOM.POL/2019/K\\_048\\_19.PDF](https://www.cbos.pl/SPISKOM.POL/2019/K_048_19.PDF)

<sup>331</sup> GREVIO/Inf(2018)16 PORTUGAL 9 p23

<sup>332</sup> Annual monitoring report on domestic violence – includes detailed police and justice data. The three recent Reports are available in the following link: <https://www.sq.mai.gov.pt/Paginas/Pesquisa.aspx?k=relatorio%20anual%20violencia>

Security System in the Annual Report of Internal Security (RASI).<sup>333</sup> In the absence of generalised links between such data and data from criminal courts, attrition rates regarding such crimes are not determined. GREVIO was not provided with any such data nor with evidence that they are disaggregated based on criteria such as age, sex and relationship of the perpetrator to the victim, which would allow for assessing the prevalence of gender-based violence against women.<sup>334</sup>

**Data collection regarding domestic violence has been standardised since the introduction, in 2006, of a standard form for recording the offence.** The form compiles information regarding the age and sex of the victim and of the offender, their relationship – including any form of economic dependency – the presence (if any) of children at the scene of the crime, the use of firearms to commit the crime, any addictive behaviour of the perpetrator, medical treatment of the victim and a risk assessment.<sup>335</sup> Data collection on domestic violence cases has been further systematized following the 2015 amendment to Law No. 112/2009, which introduced an obligation to collate data from law-enforcement bodies and the judiciary so as to reconstruct the entire criminal proceedings chain, from the filing of the complaint to the delivery of the judgment.<sup>336</sup>

The shadow NGO report submitted to GREVIO also highlights a number of problems in relation to data collection concerning violence against women Portugal. According to this there is simply no integrated model for gathering data on VAW. The shadow report also claims that diverging definitions on violence against women and a gender-blind methodology in collecting and analysing data constrain the process accuracy. It has been underlined too that Data Protection Law is very restrictive on the type of data that can be collected, thus impairing statistical information.<sup>337</sup> For instance, sexual orientation and gender identity is considered sensitive data and therefore impossible to be collected. This in turn means that there are no surveys being conducted, on the national level, that include personal characteristics of the respondents.<sup>338</sup>

In 2018, 26 432 domestic violence reports were registered by the Security Forces (FS), 11 913 by the GNR (45%) and 14 519 (55%) by the Portuguese Security Police, which corresponded to a slight decrease compared to 2017 (-1.2%; - 314 participations). In about 31% of the cases registered by the PSP, the occurrences were witnessed by minors. Physical violence was present in 66% of situations, psychological in 76.5%, sexual in 1.9%, economic in 6.8% and social in 13.2%. About 40% of the situations had consequences for the victim 19 "minor injuries" and in 59% of the cases the absence of injuries was recorded. In less than 1% of cases it was indicated that the resulting injuries were serious.<sup>339</sup>

## Romania

In Romania **police collect data** concerning the age and the sex of the victim and the perpetrator, as well as their relationship. The types of relationship constituting intimate partnerships are current and former spouses and cohabiting partners. Non-cohabiting partners are not included in police data. Incidents of intimate partner violence between former cohabiting partners are also not reported. Data is recorded by the police according to the articles of the Criminal Code and then cross-tabulated as a

<sup>333</sup> GREVIO/Inf(2018)16 PORTUGAL 9 p24

<sup>334</sup> Ibid

<sup>335</sup> Ibid

<sup>336</sup> Ibid

<sup>337</sup> THE COUNCIL OF EUROPE CONVENTION ON PREVENTING AND COMBATING VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE NGO SHADOW REPORT TO GREVIO Portugal 7 October 2017 p 18

<sup>338</sup> Ibid.

<sup>339</sup> Violência Doméstica Relatório Anual de Monitorização SGMAI Secretaria Geral Ministério da Administração Interna, Maio de 2019 p21.

form of violence between family members. The police inspectorate uses a standardised national methodology of collecting data. The process is fully automated and the software is operated by specialised personnel.<sup>340</sup>

The National Statistical Office (NSO) is the body that publishes official crime statistics on a regular basis. Yet according to EIGE currently the National Statistics Office (NSO) does not provide statistics on intimate partner violence, female victims of ‘family violence’, or rape. **While administrative data compiled by the police and the courts exists, it is not compiled or published by the NSO.**<sup>341</sup> It is for this reason that EIGE recommended to Romania to improve the compilation and production of statistics based on the data recorded by the police and justice sectors.<sup>342</sup>

The age and sex of the perpetrator, age category and sex of the victim are recorded. The relationship between the victim and the perpetrator is recorded if the violence takes place between former or current spouses.<sup>343</sup> The **General Prosecutor’s Office records** data on perpetrators, crimes and victims. The data is categorised according to the articles of the Criminal Code, similarly to the recording system of the police.<sup>344</sup> The data collection process is fully automated and recorded in the electronic court record information system database. Courts also use the same codes as the police and the General Prosecutor’s Office in identifying offences and crimes as stipulated in the Criminal Code. **No periodical statistics are published by the courts or by the other entities of the justice system. This data can be obtained through a formal request.**<sup>345</sup>

EIGE made a number of technical recommendations to Romania in relation to the administrative reporting in relation to: issue guidelines to ensure systematic recording of family violence and rape by the police, flagging family violence for incidents of economic violence as well, improve the data recording system by further developing well-defined relationship categories for intimate partner violence.<sup>346</sup>

In 2019 a number of 33 946 women were victims of physical violence, 51 of them being murdered. Romania had a Strategy to combat domestic violence for 2013-2017, together with a gender equality strategy. A new Strategy and Action Plan on promoting equal opportunities between women and men and preventing and combating domestic violence was established for the period 2018-2021.<sup>347</sup> Its objectives are: strengthening the legal framework in the field of preventing and combating domestic violence; developing appropriate measures to support and protect victims; prevention of domestic violence and its recurrence, as well as sexual violence; monitoring and evaluation.

## Spain

In Spain the **Government Delegation for Gender-based Violence (DGVG)** is the focal point for data collection. It collects data from administrative sources, carries out studies and surveys based on

<sup>340</sup> Data collection on intimate partner violence by the police and justice sectors, EIGE 2017 p2

<sup>341</sup> ROMANIA Recommendations to improve data collection on intimate partner violence by the police and justice sectors, EIGE 2018 p4-5.Ibid

<sup>342</sup> Data collection on intimate partner violence by the police and justice sectors, EIGE 2017 p2

<sup>343</sup> Ibid

<sup>344</sup> Ibid

<sup>345</sup> Ibid

<sup>346</sup> ROMANIA Recommendations to improve data collection on intimate partner violence by the police and justice sectors, EIGE 2018 p4-5.

<sup>347</sup> Governmental Decision 365/2018

**representative population samples, publishes and promotes the extracted data.**<sup>348</sup> The DGVG obtains the following data directly from administrative sources:

- Fatalities caused by gender violence,<sup>349</sup> 016-Telephone Service,<sup>350</sup> beneficiaries of financial support,<sup>351</sup> remote monitoring system for restraining orders and other measures in cases of gender violence<sup>352</sup>. The DGVG also publishes administrative data related with violence against women drawn from statistics prepared by other institutions and organizations.<sup>353</sup>

The **National Statistics Institute** (*Instituto Nacional de Estadística*: INE),<sup>354</sup> the INE prepares the **Statistics on Domestic Violence and Gender Violence** (EVDVG) from the data registered, in relation with cases in process and final verdicts, by the courts dealing with this area, in the Central Records Office for the protection of victims of domestic violence and gender violence in the terms of Organic Law 1/2004 (in relation with partners or ex-partners), which is property of the Ministry of Justice. **The EVDVG data is broken down by sex, age, type of violence (domestic or gender-based, and the type or types of crimes committed in both cases), and the relationship between the victim and the accused.**

**The judiciary collects data through the General Council of the Judiciary** (*Consejo General del Poder Judicial*: CGPJ), which gathers data from the different judicial bodies through a quarterly statistical bulletin. The data collected in the Gender Violence Courts are related with the definitions on gender violence in the terms of Organic Law 1/2004 (partners or ex-partners). Apart from this other judicial bodies collect data as well such as the, Criminal Courts, Provincial Courts, Minor Courts, First Instance and Instruction Courts and Instruction Courts (with jurisdiction for cases of gender violence), these also include cases of domestic violence as well as gender violence. The statistical bulletins issued by these judicial bodies all include specific data on domestic violence and gender based violence.<sup>355</sup>

**There are also qualitative annual studies carried out on the victims of domestic and gender violence at the hands of their partners or ex-partners, as well as minors at the hands of their parents and other women murdered because of their gender.** The description of each case includes: age, relationship, nationality and other factors in vulnerability.<sup>356</sup>

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<sup>348</sup> Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) Report submitted by Spain pursuant to Article 68, paragraph 1 of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Baseline Report) Received by GREVIO on 18 February 2019 GREVIO/Inf(2019)5 Published on 19 February 2019 p14

<sup>349</sup> The data is broken down by geographical area social and demographic status of the victim and aggressor (age groups, country of birth, relations between victim-aggressor, cohabitation status), the existence of previous complaints, the employment status of victim and aggressor, disability of the victim, suicide of the aggressor and the number of children and children under legal age

<sup>350</sup> offering information and legal advice on questions of gender-based violence information about relevant calls, calls which are not relevant and the length of the relationship between victim and aggressor. Data is broken down by geography and the type of person who makes the call - Users of the Telephone Service for Attention and Protection of Victims of Gender Violence (ATENPRO): data is collected on the number of users who are active on this service, those who have been registered or taken off the register. The information is broken down by social and demographic status (age groups, origins of the victim and aggressor by continent and country, type of relationship between victim and aggressor, cohabitation)

<sup>351</sup> as contained in article 27 of the Law on Integrated Protection Measures against Gender Violence 1/2004

<sup>352</sup> data related with the use of instruments with suitable technology to guarantee compliance of the restraining orders set by the courts and immediately verify any breach of the same. This data is broken down by Autonomous Community and province where the victim resides. Information is also provided about the social and demographic status of the victim and aggressor with an electronic device (age groups, Spanish or other nationality)

<sup>353</sup> DGVG data is published through: the Statistics Portal (digital application available for citizens and professionals); the Monthly statistics bulletin; the Annual statistics bulletin; the Annual report by the State Observatory on Violence against Women; the statistical files on fatalities caused by gender violence. All this information, as well as the publications, are available at:

<http://www.violenciagenero.igualdad.mpr.gob.es/violenciaEnCifras/home.htm>

<sup>354</sup> [http://www.ine.es/dyngs/INEbase/es/operacion.htm?c=Estadistica\\_C&cid=1254736176866&menu=ultiDatos&idp=1254735573206](http://www.ine.es/dyngs/INEbase/es/operacion.htm?c=Estadistica_C&cid=1254736176866&menu=ultiDatos&idp=1254735573206)

<sup>355</sup> <http://www.poderjudiciales/cgpi/es/Temas/Estadistica-Judicial/Estudios-e- Informes/Violencia-sobre-la-Mujer/>

<sup>356</sup> <http://www.poderjudiciales/cgpi/es/Temas/Violencia-domestica-y-degenero/Actividad-del-Observatorio/Informes-de-violencia-domestica/>

The **Ministry of the Interior** collects all data related with women victims and minors in their care, and the data related with the aggressor. This system also monitors each and every one of the gender violence cases assigned to the State Security Forces so that the Agents entrusted with each of the victims can carry out “police risk assessment” and “police risk evolution assessment” that are then filed in the victims’ case histories to allow them to be subject to complete monitoring.

The National Police collect data through the Offices for Citizen Complaints and Support (*Oficinas de Denuncias y Atención al Ciudadano*: ODAC) All the information is centralised and processed by the National Police Statistics Service. The information included in the complaints, statements and reports is registered in the HIPEST National Police statistics and are normally broken down by sex, age, type of crime, relationship with the victim, location and province, as well as other significant details.

According to the report of the Consejo General del Poder Judicial<sup>357</sup> the total number criminal offences related to domestic violence in Spain mounted to 178.916 in 2019. Out of total number 51.6% were Injury and ill-treatment based on Article 153 of the Criminal code on bodily harm including mental harm, 13,6% Injury and Ill Treatment based on Article 173 of the Criminal code On torture and other felonies against moral integrity including gender based psychological violence, 6.7% crime against freedom, 4,1%ilnjury and ill treatment caused against wife/spouse, partner, even if not cohabitating based on Article 148 of the Criminal Code and 2,0% against moral integrity.

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<sup>357</sup><http://www.poderjudicial.es/cgpi/es/Temas/Violencia-domestica-y-de-genero/Actividad-del-Observatorio/Datos-estadisticos/La-violencia-sobre-la-mujer-en-la-estadistica-judicial---Anual-2019>

## ANNEX III

### Custody and visiting rights of perpetrators of violence against women in the EU Member States

#### Cyprus

Under the Cypriot Parents and Children relations Law of 1990 the court may order any appropriate measure if the father or the mother violate the duties imposed on them for the exercise of the care of the person of the child or the administration of his property, or if they exercise such duty improperly. The measure is taken at the request of the other parent or the Director of the Social Welfare Services so requires. Parental responsibility can be taken away wholly or in part.<sup>358</sup>

The Court may, on the application by one or both of the parents or the Director of the Social Welfare Services, adjust its decision to the new circumstances by revoking or amending the same decision if the circumstances have changed since the date of issue of the decision of the Court concerning parental responsibility.<sup>359</sup>

According to the same law following an application made by the other parent or the Director of the Social Welfare Services, the Court may, by evaluating the circumstances, remove the exercise of parental responsibility from any parent if that parent was convicted for an offence concerning the life, health or morals of the child.<sup>360</sup>

In case of divorce, separation or marriage annulment it is for the courts decide over parental responsibility where they shall take into consideration the bonds of the child with his parents and brothers, as well as any agreements of the parents concerning the care and the administration of the property of the child. The interest of the child shall always be a primary consideration.<sup>361</sup> Under Cypriot law one parent can apply to obtain from the Family law courts exclusive custody of a child in order to protect him/her from the other parent.<sup>362</sup> Similarly, the Director of Social services could apply to the family Court for exclusive custody of a child or children and also apply to the Criminal Court for an order to bar the offender/s from contacting them in any way.

The parent with whom the child does not reside reserves the right of personal communication with him. Visitation rights may be decided by the agreement between the parties/parents or by a court order. In case of disagreement as to the exercise of the right of personal communication is concerned, the Court shall decide.<sup>363</sup> If the court concludes that the parents will be cooperative, it may not proceed to issue court order with a detailed visitation schedule. If parents are not cooperative, the court will proceed to issue a detailed schedule including the days and times of pick up and return, and holiday and vacation schedules.<sup>364</sup>

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<sup>358</sup> Article 18.THE PARENTS AND CHILDREN RELATIONS LAWS 1990 TO 2008 (English translation and consolidation) Office of the Law Commissioner Nicosia, November, 2011

<sup>359</sup> Ibid Article 20.

<sup>360</sup> Ibid Article 21.

<sup>361</sup> Ibid Article 14(3)

<sup>362</sup> Art. 18 of the Domestic Violence Law of 1990.

<sup>363</sup> Ibid Article 17

<sup>364</sup> Reports on court practice are hardly available. Andreas Kapardis MAPPING THE LEGISLATION AND ASSESSING THE IMPACT OF PROTECTION ORDERS IN THE EUROPEAN MEMBER STATES (POEMS) NATIONAL REPORT CYPRUS

A temporary **protection order** (termed in the legislation '*temporary exclusion of a suspect order*') can be imposed during or after the criminal proceeding initiated against the suspect of domestic violence at the written request on oath of a family member, or the police or the prosecutor or the Attorney General or a Family Counsellor or another person acting on their behalf. This type of criminal protection order is only available in the criminal Courts for victims of a list of domestic violence offences. A victim, however, can also apply to the Family Court in order to protect him/herself from victimization and ask for an eviction order.<sup>365</sup> Civil and criminal law protection orders can be issued independent from other legal proceedings. In practice, however, it turns out that a short-term criminal law protection order often coincides with criminal proceedings, because normally the event triggers the report by the victim or someone else to the police who, in turn, investigate the reported offence. There are no formal legal requirements for the wording of protection orders. In practice, judges hand down detailed protection order decisions, specifying which behaviour is prohibited.<sup>366</sup>

If the offender has visitation rights, a protection order that only applies to the partner takes these rights into account by listing the prohibitions so that it does not violate visitation rights or in a way that still allows for contact with the children to a certain degree. Hence, if a father is barred from contacting his separated wife or ex-wife but has visitation rights, the protection order includes a prohibition to that effect while, at the same time, specifying a way by which he can communicate indirectly with her through a third party (e.g., through her lawyer or a social worker) regarding visitation arrangements as far as his children are concerned.<sup>367</sup> If the protection order is extended to the children, it can supersede visitation rights in very serious domestic violence cases such as those involving sexual abuse of children. In less serious cases, the protection order may include supervised contact with the children. If children are not the direct victims of domestic violence and the application to the Court does not concern their own protection from the offender (e.g., when the victim is the partner), children are not automatically included in the protection order.

**Under Cypriot law besides the general rules there is no specific legislative provision that intimate partner violence or violence against women shall be taken into account as a circumstance when custody and visiting rights are awarded.** The general legal provisions are broadly formulated in relation to the revocation, and reestablishment of the exercise of parental responsibility, but they rather evolve around circumstances related to the child and not the violent background of the parent. Parental responsibility decisions can be modulated later on the basis of a general provision, but irrespective of VAW. Criminal and civil law Protection Orders are both available to limit the parental responsibility rights of the violent parent even in case where there is no final judgment, yet common children are not automatically included if the order is addressed to the victim parent.

## Finland

As a point of departure, the Finnish Act on Child Custody and Right of Access (361/1983) proclaims is the best interests of the child as the guiding principle in all decisions on custody and right of access.<sup>368</sup> In agreements reached mutually by parents in meetings with social services, the best interests of the child are ensured by the municipal child supervisor and all agreements require confirmation by the

<sup>365</sup> Reports on court practice are hardly available. Andreas Kapardis MAPPING THE LEGISLATION AND ASSESSING THE IMPACT OF PROTECTION ORDERS IN THE EUROPEAN MEMBER STATES (POEMS) NATIONAL REPORT CYPRUS p9. 2014

<sup>366</sup> Ibid p9.

<sup>367</sup> Ibid p12

<sup>368</sup> Chapter 1, Section 9 (4).

Social Welfare Board. A guidebook<sup>369</sup> on mapping and intervening in domestic violence is available to social workers, in particular child supervisors, in order to understand the impact on children of witnessing violence among parents. In those cases where parents cannot agree, custody decisions are referred to the district court which issues order(s) on contact and visiting rights.<sup>370</sup> As part of a comprehensive assessment of the situation, incidents of violence in the family must be considered. A range of measures exist to facilitate contact, such as supervised exchanges from one parent to another or supported and supervised visitation schemes, where social workers attend meetings between the non-residential parent and the child.

Act no 352/2019 extensively amended the related sections of the Act on Child Custody and Right of Access. According to the Government<sup>371</sup> the new provisions put a major emphasis on the full compliance with Article 31 of the COE Istanbul Convention since Finnish judicial practice was criticized by both GREVIO's Baseline Evaluation Report<sup>372</sup> and NGO's<sup>373</sup> indicating judges do not always consider violence by one parent against another as a reason to restrict the violent parent's access to the child. Research also revealed that that in practice the position of children during separation and in post-separation parenting is overlooked, in particular in cases where intimate partner violence has preceded the separation. Moreover, it was also suggested custody and visitation decisions and their enforcement are frequently used by domestic abusers to continue the preservation tactics of power and control.<sup>374</sup> CEDAW<sup>375</sup> raised concerns, shared by women's support services,<sup>376</sup> regarding the measures in place in Finland to ensure that domestic violence is given due consideration in child custody decisions and called upon the Government

While the 2019 amendments to the Act on Child Custody and Right of Access does make a number of changes in relation to the custody and visiting rights, **the requirement to take gender-based violence against women into account in the determination of custody is still absent**. Violence is only mentioned in a part concerning the general purpose of custody, where it is said that the child must be protected from violence. Sections concerning determination of custody and visitation rights are mainly carrying out the parents' duty for cooperation.<sup>377</sup>

Notwithstanding GREVIO's concerns regarding allowing supervised or supported visitation despite confirmed reports of violence this arrangement still features as the central modality to ensure protection of children.<sup>378</sup> According to the new amendments children who have experienced or witnessed violence by the non-resident parent, are supervised or supported during visitation as a tool to manage the risks and fear a child may be exposed to during visitation, but it may be suspended in an exceptional situation. While it is understandable that different interests need to be balanced,

<sup>369</sup> The National Institute for Health and Welfare published for the child supervisors a guidebook on mapping and intervening in intimate partner violence in 2013.

<sup>370</sup> Chapter 1, Section 9.

<sup>371</sup> Baseline report by the Government of Finland on measures giving effect to the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence April 2018 p66.

<sup>372</sup> GREVIO's (Baseline) Evaluation Report 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 (Istanbul Convention) FINLAND GREVIO/Inf(2019)9 p39

<sup>373</sup> NGO Parallel Report on the implementation of the Istanbul Convention in Finland May 2018 p16-17. See also WAVE FEMPOWER GOOD practices for the implementation of the Istanbul Convention 1|2018 No. 29 p11

<sup>374</sup> MARAK procedure. M. Piispa and M. October, Vaikuttava työkalu toistuvaan parisuhdeväkivaltaan puuttumiseen [Efficient tool for intervention in repeated partner violence] , 2017, available at [www.julkari.fi/handle/10024/134851](http://www.julkari.fi/handle/10024/134851). Cited by GREVIO GREVIO's (Baseline) Evaluation Report p39

<sup>375</sup> CEDAW/C/69/D/103/2016, paragraph 10.

<sup>376</sup> NGO Parallel Report on the implementation of the Istanbul Convention in Finland May 2018 p16-17. See also WAVE FEMPOWER GOOD practices for the implementation of the Istanbul Convention 1|2018 No. 29 p16

<sup>377</sup> See also WAVE FEMPOWER GOOD practices for the implementation of the Istanbul Convention 1|2018 No. 29 p11-12

<sup>378</sup> Ibid.p7

GREVIO underlined specifically the need to ensure that the rights of access of parents to their children are not put before the child's physical, emotional and psychological safety and well-being.<sup>379</sup> The Act as it stands now does not specifically articulate that violence committed against the other parent with whom the perpetrator has common children shall be taken compulsorily in deciding/modifying the custody/visiting rights of the perpetrator. No reference is made whether this is applicable to those who are as yet only suspects of gender based violence.

The child or the parent or both may be protected by means of a basic **restraining order**, a temporary restraining order, a barring order or a temporary barring order or an extended one. All of them are imposed to protect the child and take preference over access rights. Hence the person on whom the restraining order is imposed may not meet the child during the validity of the order. However, a restraining order imposed on the parent with the access right to protect the other parent does not, as such, prevent the confirmation of an access right or the implementation of a confirmed access right. It is possible to request that the meetings are arranged under supervision or at a certain place.<sup>380</sup> NGO's observe however, that restraining orders in Finland do not have a bearing on the abuser's right of access to their child unless the order has been specifically issued to protect the child.<sup>381</sup>

## France

There are several mechanisms in France which ensure that the interests and safety of the child is given priority in court decisions on parental authority and its exercise in the event of domestic violence. First, the legal provisions allow for the total or partial withdrawal of parental authority as a child-protection measure.<sup>382</sup> **This withdrawal may be pronounced by a criminal judge when one parent is convicted of violence committed against the other parent.** Alternatively, independently of any criminal conviction, a civil judge (normally the *Juge aux Affaires Familiale*) can decide that the visit takes place in public space or in the presence of a third person if there is a danger for one of the parents or for the child during the exercise of the right to visit. Furthermore, it is possible for the judge to decide on limitations of the parental authority, or actually withdrawal of the parental authority in cases "when the child witnesses pressure or violence, of a physical or psychological nature, exerted by one of the parents on the other, [which] clearly endangers the child's safety, health or morality".<sup>383</sup> Hence the question whether to limit or withdraw the custody rights of the violent partner is made possible by law yet essentially is the discretion of the courts.

In the event of disagreement on the exercise of parental authority, the law also allows for the exclusive exercise of parental authority to be attributed to the victim parent in view of "pressure or violence, of a physical or psychological nature, exerted by one parent on the other".<sup>384</sup> Should a protection order be issued the judge has competence to rule on the modalities of the exercise of parental rights, and may assign the exclusive exercise of parental authority to the victim on a temporary basis.<sup>385</sup> In order to promote co-ordination between civil and criminal proceedings, it is provided further that the judge

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<sup>379</sup> GREVIO's (Baseline) Evaluation Report 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 (Istanbul Convention) FINLAND GREVIO/Inf(2019)9 p40

<sup>380</sup> Ibid.

<sup>381</sup> NGO Parallel Report on the implementation of the Istanbul Convention in Finland May 2018 p16-17. See also WAVE FEMPOWER GOOD practices for the implementation of the Istanbul Convention 1|2018 No. 29 p21

<sup>382</sup> Articles 221-5-5-5 and 222-48-2 of the Criminal Code.

<sup>383</sup> Article 378-1 of the Civil Code

<sup>384</sup> Article 373-2-11 of the Civil Code

<sup>385</sup> Article 515-11 of the Civil Code.

who issues a protection order because of violence likely to endanger one or more children must inform the prosecutor without delay.

Despite the enhanced regulatory solutions GREVIO's Baseline Evaluation based on field research and interviews<sup>386</sup> reveal that the aforementioned legislative provisions are rarely applied, due to the lack of co-ordination between civil justice and criminal justice. In fact, revoking the parental authority of the perpetrator remains exceptional, even in the event of a final criminal conviction, despite the persistence of the danger to the other parent and child. Especially the joint exercise of parental authority, in particular in the form of alternate residence, is generally maintained, disregarding the tendency that violent parents exploit parental authority in order to maintain their control and influence over their ex-spouse and children. The seriousness of the problem is also underlined by the fact that 25 children were killed in situations of violence between intimate partners in 2016.<sup>387</sup>

There are so-called mediated meeting places in France where visiting rights can be exercised on the one hand yet the protection of children from the increased risk of post-separation violence is secured. GREVIO's Baseline Evaluation noted that these centers still need to be better prepared to be able to intervene in the event of violence.<sup>388</sup>

There is a specific instrument in France, called "**measure of accompaniment under protection**" which aims to prevent the father's violence against the mother by providing for the child to be accompanied by an adult other than a family member during the exercise of visitation rights. This measure is currently being tested with a view to make it available in the entire country.<sup>389</sup>

It is reported that specific amendments of the relevant legal provisions are underway to enable criminal and civil courts to suspend or adapt the exercise of parental authority in the event of intimate partner violence, for instance by lifting the right of custody and visitation and authorising the mother to take unilateral decisions, in particular in medical and school matters, while continuing to receive alimony.<sup>390</sup> In this vain a new circular was published in May 2019,<sup>391</sup> which calls prosecutors to take into account the situation of children exposed to intimate partner violence, as soon as they are identified, and throughout the entire procedure by ordering investigative and, where appropriate, protective measures, and by systematically seeking to apply the aggravating circumstance which applies in case a child witnesses intimate partner violence.

## Germany

In Germany courts must intervene upon their own motion and regulate parental responsibility in order to avoid the child being exposed to danger. The legal basis for this is found in German Civil Code.<sup>392</sup> This provision authorises the family court to take all measures necessary to prevent the jeopardising of the physical, mental or moral welfare of the child as a result of the abusive exercise of parental responsibility, neglect of the child, parents' failure through no fault of their own, or of a third party's behavior. In court proceedings, the family court is required to take the measures that are necessary to

<sup>386</sup> GREVIO's (Baseline) Evaluation Report 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 (Istanbul Convention) FRANCE GREVIO/Inf(2019)16 France p52 citing, Better protect and support child co-victims of domestic violence, Recommendations of the working group convened by the Regional Observatory of Violence against Women, Centre Hubertine Auclert, March 2017

<sup>387</sup> Ibid p53.

<sup>388</sup> Ibid p53.

<sup>389</sup> Ibid p53.

<sup>390</sup> Ibid p53-54

<sup>391</sup> Circular on improving the treatment of domestic violence and the protection of victims of 9 May 2019.

<sup>392</sup> German Civil Code (BGB) § 1666.

avert a danger to the child's best interest. The spectrum of possible measures ranges here from warnings, orders and prohibitions, such as a prohibition on contact, to the removal of the right to determine the child's place of residence or of parental custody.

**Eviction of a violent parent** or third party, e.g. a partner of the mother, from the dwelling is also possible if the danger cannot be countered in another way.<sup>393</sup> In addition, the youth welfare office is to be informed of a decision that has been taken in proceedings on allocation of the dwelling under the Act on Protection against Violence<sup>394</sup> if a child lives in the dwelling. In this way, the youth welfare office is informed that a dwelling has been allocated and can then offer those involved advice and support e.g. in implementing contact rights. Accordingly, changes to the arrangements of parental responsibility can be made to the extent that they seem suitable and necessary to avert the danger. In this context, the court may withdraw responsibility from one parent, either in part or in full, as a result of which the other parent will then exercise sole responsibility.<sup>395</sup> Furthermore, the court may withdraw parental responsibility from both parents in part<sup>396</sup> and subsequently appoint a curator for the child.<sup>397</sup> Finally, the court has the option to withdraw all parental responsibilities from both parents<sup>398</sup> and to appoint a guardian for the child.<sup>399</sup> It can be assumed that a child's best interests are in jeopardy if the child is exposed to a present danger to such an extent that it can be predicted with reasonable certainty that he or she will be considerably damaged in his or her further development.<sup>400</sup> In this context, the court must also, under the **aspect of jeopardy to the child's best interests by a third party's behavior, take into account any violence between the partners within the family.**<sup>401</sup> Given the principle of proportionality, parental responsibility will only be withdrawn from a parent in extreme cases.

It has been observed that German judicial practice, violence within a relationship still plays a fairly minor role with regard to court decisions on parental responsibility, including custody and visiting rights.<sup>402</sup> However, the **Federal Constitutional Court**<sup>403</sup> explicitly ruled that if the child's father has been sentenced with final and binding effect as a result of substantial acts of violence against the child's mother, resulting in substantial psychological problems for the mother, joint parental responsibility cannot be considered a possibility due to the lack of viable social relations between the parents. It is only when joint responsibility is not in the child's best interests that the question as to which parent is to be attributed sole responsibility arises.

In the child protection proceedings, courts shall consider issuing a **temporary injunction** without delay; in case of acute danger to a child's wellbeing, this injunction may be issued without previously hearing the parties concerned. Persons, groups and staff of institutions who are aware of the risk to children from domestic violence can initiate court proceedings of this kind, as can the child affected itself, with the help of a third person if necessary. In conflict and emergency situations, children and young people have a right to counselling from the youth welfare office without their parents finding out. In protection against violence proceedings, the competent youth welfare office should be heard by the court if children live in the household concerned. The youth welfare office is always to be

<sup>393</sup> BGB § 1666 (3) no. 3, 1666a (1) of the German Civil Code

<sup>394</sup> Act on Protection against Violence (Gesetz zum zivilrechtlichen Schutz vor Gewalttaten und Nachstellungen) (Gewaltschutzgesetz – GewSchG) adopted in 2011 modified several times.

<sup>395</sup> BGB § 1680 para. 1 and 3

<sup>396</sup> BGB § 1666 a para. 2

<sup>397</sup> BGB § 1909 para. 1 .

<sup>398</sup> BGB § 1666 a para. 2

<sup>399</sup> BGB § 1773 para. 1

<sup>400</sup> BGH 14.07.1956, FamRZ 1956, 350, 351; BayObLG 03.12.1976, FamRZ 1977, 473.

<sup>401</sup> U. DIEDERICHSEN, in: PALANDT, Bürgerliches Gesetzbuch, 64th Edition, Munich: Beck, 2005, § 1666 No. 33

<sup>402</sup> Dethloff 2005: 321 Dethloff, N. 2005."Parental Rights and Responsibilities in Germany." Family Law Quarterly 39, no. 2: 315-337. Grafe, Bianca & Hagemann-White, Carol: Working Paper on Intervention Against Domestic Violence in Germany, from the research project "Cultural Encounters in Intervention Against Violence" (CEINAV), January 2015. [www.londonmet.ac.uk/ceinav](http://www.londonmet.ac.uk/ceinav)

<sup>403</sup> BVerfG 18.12.2003, FamRZ 2004, 354,

involved in child protection proceedings. This is intended to ensure that if necessary the youth welfare office can still influence the injunction or decision to be taken in the children's interest. The court can also appoint a *guardian ad litem* for the child, whose task is to determine the child's interests and to represent them in the proceedings.

Despite the above, comprehensive legislative framework which is present in Germany, women organisations<sup>404</sup> still report that authorities and courts do not sufficiently adequately impact the effects of so-called intimate partner violence on children. The strategic use of the perpetrator's right to get around to force contact with the ex-partner is not sufficiently taken into account. The CEDAW committee also called for explicit and appropriate consideration of the previous patterns of violence and relationships as well as the vulnerability of affected women when determining child welfare in handling procedures in 2018.<sup>405</sup> In this regard German practice still needs improvement and it must be examined to what extent legal regulations can remedy this problem or a change in the practice of the authorities in applying the law is needed.

**Protection Orders** (civil,<sup>406</sup> criminal,<sup>407</sup> administrative<sup>408</sup>) that only apply to the partner can take the offender's visiting/custody rights into account by formulating the prohibitions so that they do not affect or allow contact with the children with limitations (e.g. delivery of the children by another person, visiting under supervision of another person [mostly youth welfare service]) and only rarely by suspension of the visiting rights. If the Protection Order is also extended to the children, it can suspend visitation rights for a certain time or stop them totally as well as the custody rights<sup>409</sup> (§ 1666 BGB). It has been reported that the main problems of Protection Order that if there is any chance to appease the conflict, judges try to make an arrangement instead of a decision in spite of losing the criminal protection if there is no judicial decree.<sup>410</sup> In criminal procedure offenders often lose their visitation rights for the critical time.

## Greece

Regarding parental responsibility the point of departure in Greek family law<sup>411</sup> is that the prerequisite for the attribution of joint parental responsibilities is the consent of both parents after divorce or marriage annulment. The court will only attribute joint parental responsibilities to the parents if they

<sup>404</sup> Stellungnahme zur effektiven Umsetzung des Übereinkommens des Europarats zur Verhütung und Bekämpfung von Gewalt gegen Frauen und häuslicher Gewalt (Istanbul-Konvention) in Deutschland Stellungnahme vom 29.01.2018 <https://www.djb.de/verein/Kom-u-AS/K6/st18-02/>

<sup>405</sup> CEDAW, Communication No. 47/2012, 18 July 2014, CEDAW/C/58/D/47/2012.

<sup>406</sup> Civil Protection Orders enable the family courts to impose various POs in an accelerated procedure (interim injunction) within 1 to 3 days. This procedure is officially an interim procedure, but in practice it is very seldom followed up by substantial proceedings. The outcome of the interim proceedings is usually final. Children are not automatically included in a civil Protection Orders (§§ 1,2 GewSchG, 49-57 Code of family court and voluntary jurisdiction (FamFG). Protection Orders can also be based on Protection against Violence Act (GewSchG) in combination with the code of family court and voluntary jurisdiction (FamFG). The applicant has to request to extend the order for children in a separate civil procedure

<sup>407</sup> The Criminal Protection Orders are instructions which relate to the victim's residence and prohibit contact with the victim. Criminal Protection Orders can be imposed as conditions to a suspended prison sentence and as conditions to an early release from prison after having served an entire prison sentence or after preventive detention. They can also be imposed as security measures (supervision of conduct order, § 68 b StGB, in cases of high dangerousness without limitation in time § 68 c II StGB). Criminal Protection Orders are not automatically extended to children. Like Civil Protection Orders, Criminal Protection Orders have to explicitly state that they extend to the children as well. §§ 56 c II, 57 III StGB) § 68 b StGB, in cases

<sup>408</sup> The administrative barring order automatically extends to the children if they are living in the family home. Administrative Protection Orders are issued by the police acts of the 16 federal states, which do not differ essentially.

<sup>409</sup> BGB § 1666 BGB.

<sup>410</sup> § 4 GewSchG

<sup>411</sup> Based primarily on the Greek Civil Code

both agree to this, and, at the same time, if they determine the location of the child's residence<sup>412</sup> It is within this framework that a parent's violent behaviour towards the other parent is a factor to be taken into account by the acting court.

Permanent measures in relation to custody rights in the context of civil procedures consist of **termination of parental rights** from one or both parents and the custody's assignment to another family member, or to an appropriate institution.<sup>413</sup>

The Civil Code governs the consequences of **defective exercise of parental care**<sup>414</sup>. Exercise is considered defective if the father or the mother violate the duties imposed on them by their function to take care of the person of the child or exercise abusively such. In such cases the courts may take away partly or whole the exercise of parental care from the parent(s) and entrust it either on the other parent or on a third person or an institution.<sup>415</sup> Case law interpreted this article of the Civil Code in a way that should a parent abuse his rights (e.g. by maltreating the child),<sup>416</sup> violate his duties (e.g. by neglecting the child),<sup>417</sup> or is not in a position to be able to carry out this task (e.g. because of a mental illness),<sup>418</sup> the court may deprive him of the exercise of parental care. Regarding a parent's violent behaviour towards the other parent, when this behaviour is not directly aimed at the child, may imply an insufficient exercise of parental care if it has a detrimental effect on the child itself.<sup>419</sup>

The Greek Civil Code provides that the **court may only take away the exercise of parental care from the parent in its entirety if all other available measures are insufficient, or do not suffice** in order to prevent any danger to the physical, mental or psychological health of the child (*ultimum remedium*).<sup>420</sup>

According Greek Civil Code a parent **forfeits parental care** when he/she has been finally sentenced to a term of imprisonment for at least one month for a fraudulent offence against the child, or because of any offence against the child's life or health. This is an automatic consequence of the conviction, so there is no need for a special provision in the relevant court decision. Under these circumstances, the court may also discharge the parent from the parental care of all his/her children.<sup>421</sup>

The **right of contact** is distinct from parental responsibilities under Greek law. Hence, the discharge of parental responsibilities does not necessarily lead to the exclusion of the right to contact the child. Nevertheless, the court will regulate the exercise of the right of contact under according to the Civil Code.<sup>422</sup> In doing so, the reasons as to why the parent does not have parental responsibilities will be of importance. Particularly in the case where the parent has forfeited his responsibilities because of an

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<sup>412</sup> Greek Civil Code Article. 1513 para. 1

<sup>413</sup> Greek Civil Code Articles 1532, 1533, 1537)

<sup>414</sup> Greek Civil Code Article 1532.

<sup>415</sup> The child institutional abuse: current knowledge and practices Greece report 2017 p16-17

<sup>416</sup> Decisions of the Single Judge District Court of Thessaliniki: 954/1990, Armenopoulos Vol. 45 (1991), p. 449 and 229/1991, Armenopoulos Vol. 46 (1992), p. 20. Cited by Achilles G. Koutsouradis Parental Responsibilities - NATIONAL REPORT: GREECE p26

<sup>417</sup> Single Judge District Court of Athens 17182/1997, Elliniki Dikaiosini Vol. 41 (2000), p. 204, Court of Appeals of Athens, 871/1970, Armenopoulos Vol. 24 (1970), p. 884. Cited by Achilles G. Koutsouradis Parental Responsibilities - NATIONAL REPORT: GREECE p26.

<sup>418</sup> Court of Appeals of Thessaloniki 276/2000, Armenopoulos Vol. 54 (2000), p. 1385 Cited by Achilles G. Koutsouradis Parental Responsibilities - NATIONAL REPORT: GREECE p26

<sup>419</sup> Single Judge District Court of Thessaloniki 165/1992, Armenopoulos Vol. 46 (1992), p. 632 Cited by Achilles G. Koutsouradis Parental Responsibilities - NATIONAL REPORT: GREECE p26

<sup>420</sup> Greek Civil Code Article 1533 para. 1

<sup>421</sup> Greek Civil Code Article 1537

<sup>422</sup> Greek Civil Code Article 1520 para. 3

offence against the child, contact with the child should rather be exceptional. The main guideline to decide this issue is the best interests of the child.<sup>423</sup>

If a parent has forfeited the parental responsibility, he/she cannot regain it. However, if it was the court which discharged the parent from the exercise of parental responsibilities, it may revoke or amend the relevant decision, in view of a change of circumstances, provided that any of the parents, the close relatives, or the public prosecutor request this.<sup>424</sup>

At the same time, there is the possibility for the court to order **interim measures** in cases of emergency or to avoid imminent risk in the context of domestic violence. Greek courts can issue a variety of protection orders affecting custody or visiting rights measures. Where appropriate, barring orders<sup>425</sup> can be imposed on the regulation of the relations between spouses or between parents and children, including the temporary custody of the children and the contact details on communication with children.<sup>426</sup> Therein are included the removal of the perpetrator from the victim's home and the prohibition to approach all settings related to the victim. A temporary order can be issued from the same court while filing the request in cases where an immediate court action is needed<sup>427</sup>

In case of intimate partner violence the so-called domestic violence related protection orders<sup>428</sup> are issued, but children are only included in such protection orders if the victim specifically seeks for their inclusion. If children are covered by the scope of the order, then visiting rights are regulated and previous custody/visitation rights are reviewed. It is reported that in practice visitation rights are always considered when domestic violence related protection orders are issued and judge can influence the contents of the protection order and can decide on an exception in the protection order for visitation.<sup>429</sup>

Temporary measures can be employed during the civil procedure when the perpetrator is one or both of the parents or caregivers, even when the case has not yet been referred to the penal procedure. According to Civil Code<sup>430</sup> in case of emergency, where the child's physical or mental health is at risk, every appropriate action can take place. A social inquiry by the social service of the municipality the child is residing is initially carried out to investigate the circumstances at the child's home.

**Under Greek law besides the general provisions there is no specific legislative provisions that intimate partner violence or violence against women shall be taken into account as a circumstance when custody and visiting rights are awarded.** The general legal provisions are broadly formulated in relation to the termination, revocation and forfeiture of parental responsibility. Court practice suggests that a parent's violent behaviour towards the other parent. may imply an

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<sup>423</sup> Single Judge District Court of Thessaloniki 165/1992, Armenopoulos Vol. 46 (1992), p. 632 Cited by Achilles G. Koutsouradis Parental Responsibilities - NATIONAL REPORT: GREECE p27

<sup>424</sup> Greek Civil Code Article 1536 Greek

<sup>425</sup> Greek Civil Procedure Code Article 57 (part 1) defines that 'if someone's personality is violated, he/she has the right to demand to stop that violation and not to be repeated in the future'. This is a generic law, which protects the individual from any violation of the personality, protecting the substantive right, but without defining certain measures of protection (PO).

<sup>426</sup> Greek Civil Procedure Code Article 735.

<sup>427</sup> Greek Civil Procedure Code Article 691 paras 2 and 4).

<sup>428</sup> There are specific legal provisions on the protection of family violence victims (article 735 part b of the Civil Procedure Code, which was added by the article 15 of the Law on Confronting Family Violence, law 3500/2006). These protection orders are: 1. the removal of the accused from the family residence, 2. the resettlement of the accused, 3. The Ban Order to the accused to approximate certain spaces as the residence, the workplace, other relatives' residences, school places of the children and the host houses (shelters for victims).

<sup>429</sup> Marleen Ploum Protection Orders and Visitation rights: A Source of Conflict or Peaceful Coexistence? An explorative study into the combination of protection orders and custodial and visitation rights in the Netherlands. p24

<sup>430</sup> Greek Civil Code Article 1532 para 3.

insufficient exercise of parental care triggering the limitation of parental responsibility. A range of protection measures are available affecting custody and visiting rights

## Italy

When deciding on child custody, in divorce or separation cases that follow situations of domestic violence, intimate-partner violence or violence against women in the family context, Italian judges are bound to the general principle of 'joint legal custody'. The principle of 'joint legal custody' was approved by the Italian Parliament in 2006 and as enacted by Law 54. It states that, in case of divorce or separation, the child has the right to establish a lasting and balanced relation with both parents.

One of the major unaddressed gaps of the Italian legislative system is that it **does not specifically and systematically addresses child custody procedures in divorce and separation cases which follow domestic and/or gender violence against the child's mother**. In evaluating Italy's performance against the provisions of the Istanbul Convention,<sup>431</sup> with a view to the determination of the rights of custody and visitation, GREVIO concludes 'there is no express obligation under applicable laws for statutory agencies to ensure that, in the determination of custody and visitation rights, incidents of violence covered by the scope of the convention are taken into account, as required by Article 31, paragraph 1, of the convention'.

While the principle of joint legal custody is a fundamental principle, there are a number of exceptions that Italian judges can use to protect children and their mothers from further victimization. Such provisions can be found in custody regime as regulated in Italian Law by Law No. 54/2006, Law No. 219/2012 and Legislative Decree No. 154/2013. Relevant to the matter under discussion here are:

- a) Art 337c of the Italian Civil Code, under which the judge can grant **sole custody** to one parent exclusively, by a reasoned decision, when joint custody does not meet the best interest of the child. In such cases, one parent exercises full custody, but any decision on the child's greatest interest must still be made jointly by both parents - unless otherwise provided by particularly serious circumstances, including for instances of violent or abusive behaviour.
- b) Under Art 330 of the Italian Civil Code, the **judge can revoke parental rights if the parent has neglected or violated its parental duties**.<sup>432</sup>

Though these provisions are available, they represent exceptions and the principle of joint custody still prevails, including in cases where the mother has been victim of violence by her husband or partner. In fact, sole custody is an exception for the Italian system. The most common cases in which sole custody is granted are: (i) if one parent is considered a threat to the child's physical, psychological or financial wellbeing; (ii) deemed unable to, or uninterested in the care of the child; (iii) if one parent belittles the other parent in front of the child or (iv) if disagreement between parents is such that it could affect the child's development.<sup>433</sup>

*De facto*, sole custody is rarely used or discussed in the context of divorces or separations following violence against the mother. In 89% of divorce and separation cases, Italian judges opted for joint custody between the two parents, while exclusive custody was conferred to mothers in 8.9% of cases. Reports published by NGOs and High Judiciary Council in May 2018 confirm that rarely these provisions

<sup>431</sup> GREVIO's (Baseline) Evaluation Report 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 (Istanbul Convention) ITALY GREVIO/Inf(2019)1 p59.

<sup>432</sup> <https://www.brocardi.it/codice-civile/libro-primo/titolo-ix/capo-i/art330.html?q=330+cc&area=codici>

<sup>433</sup> [https://e-justice.europa.eu/content\\_parental\\_responsibility-302-it-en.do?init=true&member=1](https://e-justice.europa.eu/content_parental_responsibility-302-it-en.do?init=true&member=1)

are applied in order to protect children who have been witnesses of violence against their mothers. From the data collected, it emerges that Italian tribunals do not systematically take into consideration whether a woman has been victim of domestic violence when determining child custody. On the contrary, in some cases judges force women to negotiate and find an agreement with their aggressor when determining visit and custody of children.<sup>434</sup>

Such court decisions might be due to the fact that there is no explicit legislation on the adjudication of custody and visit rights for separation and divorce cases following domestic violence. A series of legal experts, professionals in assistance centres and NGO representatives have already reported to GREVIO the reality of court judgements, when fathers obtain joint custody after the separation despite the fact that they have been accused of violence against the mother before the termination of the relationship. One reason used by Italian courts for ignoring cases of violence against women when adjudicating child custody is that, according to judges, the fact that the father has been violent to the mother is not sufficient to conclude that he would not be able to exercise his duties as a father.<sup>435</sup> In other words, the father's violent behaviour is deemed irrelevant to the judgement on whether he could be a good father.

Based on empirical evidence and ample research the GREVIO report found particularly alarming the prevalence of the phenomenon of parental alienation, on the basis of the widespread practice of civil courts to consider woman raising the issue of domestic violence as a reason for not attending the meetings and not agreeing to custody or visitation, as being the "uncooperative" parent and therefore an "unfit mother". The negative consequences for victims vary: they range from subjecting victims to mandatory therapeutic treatment or training sessions to enhance their parental skills and include limiting and/or depriving them of their parental rights.<sup>436</sup>

One step forward for facilitating the acquisition of information relevant to the adjudication of child custody is Law Decree No. 93/2013 which introduced the **duty of the prosecuting authority to inform juvenile courts of any pending criminal proceeding involving a crime of ill-treatment, aggravated sexual violence and/or stalking committed against a child or by the parent of a child against the other parent**. Nevertheless, the provision is not systematically used to adjudicate child custody.

## Poland

Presently, parental responsibility matters are set out in the Family and Guardianship Code<sup>437</sup> and procedural law provisions in the Civil Procedure Code<sup>438</sup> in Poland. At the moment of writing there is a pending proposal,<sup>439</sup> which was initiated on 27 June 2019 by the Ministry of Justice, for an amendment of the Act on prevention of violence within a family of 2005 is subject to inter-service consultations within the Council of Ministers. In essence it provides for an enhanced interim measure built on the basis of art 11 of the Act on prevention of violence within a family (new art 11a) allowing for issuance of a judicial order for immediate leave of the flat by the perpetrator of violence (the project introduces important amendments to the Code of Civil Procedure in that respect). Incidentally, the reform – in

<sup>434</sup> <https://www.agenpress.it/2020/01/13/violenza-donne-strasburgo-italia-cambi-custodia-minori-non-tiene-conto-delle-vittime/>

<sup>435</sup> GREVIO's (Baseline) Evaluation Report 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 (Istanbul Convention) ITALY GREVIO/Inf(2019)1 p60

<sup>436</sup> Report on the procedures of the civil court and the juvenile court concerning the custody of children in cases of domestic violence p17 submitted to Italy's GREVIO's (Baseline) Evaluation Report 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

<sup>437</sup> Statute of 25.02.1964,

<sup>438</sup> Statute of 17th November 1964

<sup>439</sup> Document no UD536: <https://legislacja.rcl.gov.pl/projekt/12322070>

accordance with the recommendations of the EIGE<sup>440</sup> – covers not only family members, but also other persons (incl. partners) committing violence who do not constantly share the flat with the victim. It explicitly covers family members who have already left the flat of the victim. It should be pointed out, that the described projected provisions are still subject to decision making process within the Council of Ministers, have not been forwarded to the national parliament, and thus, there is no guarantee they will be adopted and become legally binding.

According to the general principle, the competent authority is always obliged to act in accordance with the child's best interests and aim to safeguard the child's wellbeing. While acting to achieve those goals the court may take the facts discussed into consideration, such as the parents' will, their behaviour towards each other, violent behaviour in particular. **Yet the violent behaviour of the parents will not have direct legal significance in attributing joint parental responsibility to the parents.** The authority is obliged to safeguard the child's best interests and wellbeing. To achieve those goals, it may take the described facts into consideration, such as the parent's violent behaviour towards the other parent but they do not have legal significance.

There are differences in the way Polish law handles the suspension of the parental authority,<sup>441</sup> its limitation<sup>442</sup> and deprivation.<sup>443</sup>

Firstly, the court may rule on the **suspension of parental authority** if there is a temporary obstacle to its exercise and when the obstacle ceases the court is to revoke the suspension.

The second case of the **limitation of the parental authority** is, as described in Art. 109 Polish Family and Guardianship Code, a danger posed to the child's wellbeing which requires the court to issue specific orders; in particular:

- to prescribe a specific behaviour and establish a control mechanism in that respect;
- specify which activities cannot be performed by the parents without court authorization,
- place the minor with an institution responsible for children's custody or with a foster family or a child-care institution.

Polish law emphasises that a prerequisite for limitation of parental authority is a danger posed to the child's wellbeing; in this situation, the court does not require a parent's guilt and the act is not of a repressive nature.<sup>444</sup>

The prerequisite for depriving one or both parents of parental authority is: permanent obstacle in its exercise of parental authority,<sup>445</sup> abuse or neglect According to the Supreme Court substantial danger to the child's wellbeing induced by a parent may justify depriving the parent of parental authority without first limiting it.<sup>446</sup>

**Hence discharge the holder(s) of his/her/their parental responsibilities for reasons of intimate partner violence is not explicitly identified in Polish law, and more generic provisions allow ample room for the courts to take into account a parent's violent behaviour towards the other parent in deciding over parental responsibility.**

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<sup>440</sup> Recommendations to improve data collection on intimate partner violence by the police and justice sectors, Poland 2018. EIGE. P3

<sup>441</sup> Article. 110 Polish Family and Guardianship Code

<sup>442</sup> Articles 107 and 109 Polish Family and Guardianship Code

<sup>443</sup> Articles 110 paragraph and 109 Polish Family and Guardianship Code

<sup>444</sup> Supreme Court judgment of 13.09.2000, II CKN 1141/00.

<sup>445</sup> Supreme Court judgment of 02.07.2000, II CKN 960/00.

<sup>446</sup> Supreme Court judgment of 11.01.2000, I CKN 1072/99

As a rule, parents should have the right to personal contact with their child in this situation. If the child's best interests so require, the family **court may prohibit the parents deprived of parental authority to contact the child in person.**<sup>447</sup> Should the ground which led to deprivation of parental authority cease to exist, the family court may return parental authority.<sup>448</sup>

Regarding **protection orders** providing safety in emergency situations Polish law allows for a number of measures. In the context of criminal law the protection order imposed relate only to the person specified in its content. It does not include other persons, hence the children who are not the victims of intimate partner violence are not included. However, there is special procedure in place granting protection to children. According to Article 12a of the Domestic Violence Act, if there is a justifiable concern for safety of life, health regarding a child a representative of social welfare may decide on provisional separation a child from a wrongdoer and placing a child in a step family or in a custodial institution. As a consequence, the parental court should be informed and special procedure should be commenced which may lead to restriction or prohibition of contacts with a child following the Family and Guardianship Code.

Measures are also available to protect children irrespective of the criminal proceedings.<sup>449</sup> More importantly, protection orders can be issued under the Polish Family and Guardianship Code as well to eliminate misconduct of the custody exercised by one of the parents in relation to a child. Parental powers may be subject to surveillance of a probation officer if imposed by the court if the interests of child have been endangered by one of the parents<sup>450</sup>, contact rights with the child may be restricted such as to meet a child in a specified place, to contact a child under specific conditions.<sup>451</sup>

In case the maintenance of contacts with one of the parents may infringe the interests of a child, the court may prohibit completely contacts with the child.<sup>452</sup>

## Portugal

The relevant legislative provisions in Portuguese law in relation to parental responsibility rights including custody and visiting rights and the limitation of these in case of domestic violence are the:

- Law Nr. 147/99, 1st September - Law of protection of children and youth people in danger
- Article 1913 and 1915 of the Civil Code on Inhibition of right Inhibition of the exercise of parental responsibilities
- Article 52 of Law no 141/2015, 8th September - General Regime of the Civil Tutelary
- Process - Legitimacy and grounds of inhibition

The legislative provisions read together **prescribe intervention for the promotion of the rights and protection of children** when parents, legal guardians or guardians endanger their safety and provide for the disqualification of the parent from exercise of parental responsibilities in case of criminal conviction. The total or partial inhibition of the exercise of parental responsibilities may be requested

<sup>447</sup> Article. 113 paragraph 1 Polish Family and Guardianship Code).

<sup>448</sup> Article 111 paragraph 2 Polish Family and Guardianship Code).

<sup>449</sup> Article 11a of the Domestic Violence Act

<sup>450</sup> Article 109 paragraph 2 point 3 of the Family and Guardianship Code

<sup>451</sup> Article 113 paragraph 2 of the Family and Guardianship Code

<sup>452</sup> Article 113 paragraph 2 of the Family and Guardianship Code.

by the Public Prosecution Service or by any relative of the minor or a person to whom the minor is de facto or de jure entrusted in case of the parent's culpability.

In its Baseline Evaluation GREVIO<sup>453</sup> states that the implementation of Article 31, paragraph 1, has been hindered by the lack of co-ordination between criminal courts, where cases of domestic violence are tried, and family courts, which determine the exercise of parental responsibility. Portuguese legislature passed a law in 2017<sup>454</sup> requiring the public prosecutors in both courts to liaise so as to enable the urgent settlement of parental responsibilities in order enhance the coordination between the respective judicial of co-ordination. The new law explicitly acknowledges that the joint exercise of parental responsibilities can be contrary to the best interest of the child when:

- 1) a coercive measure or an accessory penalty is applied to the perpetrator prohibiting contact between parents; and/or
- 2) it would expose to serious danger the rights and security of the victims of domestic violence.<sup>455</sup>

**The new law however, does not create an obligation for family judges to act upon the information communicated by the prosecutor in the criminal case but leaves them the discretion to do so.** This eventually leads to decisions on visitation and parental responsibility which still ignore issues of domestic violence.<sup>456</sup> The situation is even more severe in those cases where there are no parallel criminal proceedings or where such proceedings are suspended prior to a determination of whether the alleged violence took place and family courts do not carry out their own investigations about allegations of domestic violence. Hence **in the absence of a criminal conviction for domestic violence, state authorities are under no duty to consider the impact of the violence either against the other parent or against common children and may treat domestic violence as merely part of a parental/partner conflict.**

NGOs working on the field argue that even with the new amendments of the Civil Code the joint custody within the context of domestic violence is still a possibility and a frequent reality, even when there is a restricted order or a condemnation on domestic violence. The law makes a reference to the possibility of not implement joint custody when domestic violence is present but does not hinder to rule for joint custody when the judge considers joint custody to be in the best interests of the child.<sup>457</sup>

NGO's also claim that in Portugal the **overriding approach to custody and visiting rights is that both parents have the right of having regular contacts with their children**, as this serves the "superior child interest" which is applied to the detriment of fundamental right to live in safety and free of violence.<sup>458</sup> Court decisions translating the above considerations into concrete custody and visiting right decision not only place children in situations of great vulnerability and conflict, as consequently

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<sup>453</sup> GREVIO's (Baseline) Evaluation Report 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 (Istanbul Convention) PORTUGAL Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) GREVIO/Inf(2018)16 p 46

<sup>454</sup> Article 1906-A of the Civil Code introduced by the Law 24/2017, 24 of May

<sup>455</sup> GREVIO's (Baseline) Evaluation Report 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 (Istanbul Convention) PORTUGAL Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) GREVIO/Inf(2018)16 p 46

<sup>456</sup> GREVIO's (Baseline) Evaluation Report 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 (Istanbul Convention) PORTUGAL Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) GREVIO/Inf(2018)16 p 46-47.

<sup>457</sup> THE COUNCIL OF EUROPE CONVENTION ON PREVENTING AND COMBATING VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE NGO SHADOW REPORT TO GREVIO Portugal 7 October 2017 p 31

<sup>458</sup> Ibid. p33

also the mother victim of domestic violence, for such decisions are rendered without any evaluation of the impact of these decisions. It is also argued that the judicial system uses parental alienation and the syndrome of parental alienation theory to render decisions against mothers.

It is for the above reasons that GREVIO<sup>459</sup> and other stakeholders have permanently urged to take the necessary measures, including legislative ones, to ensure that family courts are under the duty to consider all issues related to violence against women when determining custody and visitation rights and to assess whether such violence would warrant restricting custody and visitation rights.

## Romania

With respect to the deprivation of parental rights two categories of provisions are concurrently applicable on the basis of civil law and criminal law. Civil law provisions encompass the Family Code, the Civil Code, as well as in Law No 50 No 272/2004 on the protection and promotion of the rights of the child. **The deprivation of parental rights does not lead to the loss of the parental rights, per se, but only to the loss of the exercise of those rights.** In other words, the deprived parent of parental rights remains the holder of the rights which make up parental authority in respect of his child, only that, as a result of the commission of limiting acts provided for by law, the exercise of those rights is restricted (either temporarily or permanently). The deprivation of parental rights, is in fact any measure concerning the exercise of parental authority is revocable when the causes justifying the adoption of such measure disappeared. However, if the reasons for the adoption of the revocation decision are perpetuated, with no improvement in them being improved over time, the measure may become permanent.<sup>460</sup>

In the context of a criminal sentencing **complementary penalties** can be established against the perpetrator such as: prohibition of parental rights,<sup>461</sup> respectively of the right to be guardian or curator,<sup>462</sup> prohibiting communication with the victim or her family members or approaching these persons.<sup>463</sup>

If a protection order is issued in the context of criminal law, children are not automatically included in the protection. The protection order prescribes the prohibition to return to the family home, but does not provide for the limitation or suspension of visiting or contacting children or even contacting the victim taking care of the children.

**Interim measures** can be taken, through the Provisional Protection Order, through the Judicial Protection Order, provided by art. 22/4 and 23 of Law no. 217/2003. This implies the temporary evacuation of the aggressor from the common house, regardless of whether he is the owner of the property right; reintegration of the victim and, as the case may be, of the children in the common house; obliging the aggressor to keep a minimum distance to the victim or other to the family members it.<sup>464</sup> Nevertheless, the temporary protection order only became enforceable at the end of 2018, when

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<sup>459</sup> GREVIO's (Baseline) Evaluation Report 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 (Istanbul Convention) PORTUGAL Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) GREVIO/Inf(2018)16 p47

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<sup>461</sup> Article 66 paragraph (1) lit. e) Criminal Code

<sup>462</sup> Article 66 paragraph (1) lit. f) Criminal Code

<sup>463</sup> Article 66 paragraph (1) lit. i) Criminal Code

<sup>464</sup> Report submitted by Romania pursuant to Article 68, paragraph 1 of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Baseline Report) Received by GREVIO on 6 February 2020 GREVIO/Inf(2020)5 Published on 10 February 2020, p41

the Ministry of Internal Affairs (Ministerul de Interne) and the Ministry of Labour and Social Justice (Ministerul Muncii și Justiției Sociale) adopted a joint order No.146/2578/2018 establishing the details of the procedure for intervening in a case of domestic violence and cooperating with other competent authorities, evaluating the risks, gathering evidence, issuing a temporary protection order and implementing the temporary protection order.<sup>465</sup> At the same time, the Order contains very few provisions about the enforcement of the temporary protection order, despite having this amongst its areas of regulation. Indeed, the Order stipulates the procedure for evicting the aggressor, taking away fire arms and ammunition and reintegrating the victim and her children. However, except for informing the aggressor about the consequences of the breach of a temporary protection order, there are no practical measures that police officers should take to make sure that the temporary protection order is respected (such as periodic contact with the victim and the aggressor or electronic surveillance systems). Without such measures, the effectiveness of the legal protection of victims of domestic violence is still problematic in Romania. For example, Order No.146/2578/2018 does not mention the electronic surveillance system in the list of measures that can be issued in the temporary protection order, despite this being stipulated by Law No.217/2003 regarding the prevention and combating of violence in the family, Article 22<sup>4</sup>.(d); such surveillance systems have not been implemented in Romania yet.

## Spain

As regards the procedures to ensure that incidents of violence against women are taken into account when assigning custody and establishing visiting rights for minors, the principle of the best interest of the child is defined in article 2 of Organic Law 8/2015 of 22 July, modifying the system for the protection of children and adolescents is the all-encompassing principle that inspires Spanish legislation. The legislative environment which regulate how judicial bodies must take into account incidents of violence against women when determining which parent shall be assigned guardianship and custody of the children and, where relevant, visiting rights are the following.<sup>466</sup>

Firstly, the Article 94 of the Civil Code establishes that "*The parent who does not live with their children who are minors or incapacitated shall be entitled to visit them, communicate with them and have them in their company. The judge shall determine the time, manner and place to exercise this right, which may be limited or suspended in the event that serious circumstances should advise this or of serious and repeated breaches of the duties imposed by the judicial resolution.*"<sup>467</sup>

Secondly, this is complemented with Article 92.7 of the Civil Code which states that "*No joint custody shall be granted when either parent should be subject to criminal proceedings as a result of an attempt against the life, physical integrity, freedom, moral integrity or sexual freedoms of the other spouse or of the children that live with both of them. Neither shall it apply where the Judge should observe, from the parties' allegations and the evidence provided, that there is well-founded circumstantial evidence of domestic violence.*"<sup>468</sup> **This legislative provision entails that for a judicial tribunal it is impossible to establish**

<sup>465</sup> Ibid.p41.

<sup>466</sup> Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) Report submitted by Spain pursuant to Article 68, paragraph 1 of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Baseline Report) Received by GREVIO on 18 February 2019 GREVIO/Inf(2019)5 Published on 19 February 2019 p44, see also POEMS - Mapping the Legislation and Assessing the Impact of Protection Orders in the EU Member States national report on Spain 2013 p30-31.

<sup>467</sup> Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) Report submitted by Spain pursuant to Article 68, paragraph 1 of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Baseline Report) Received by GREVIO on 18 February 2019 GREVIO/Inf(2019)5 Published on 19 February 2019 p44

<sup>468</sup> Ibid

**a system of shared custody when criminal proceedings are under way in cases of gender or domestic violence, or when there are indications that it exists even when no criminal proceedings have been started.** Thirdly Articles 61.2, 65 and 66 of Law 1/2004 of 28 December, on Integrated Protection Measures against Gender Violence jointly **require the judge to rule in all cases related to gender violence to consider adopting precautionary measures for the safety of the children.** Article 65 of the said instrument enables the acting judge to suspend the alleged perpetrator of acts of gender violence from exercising parental authority, guardianship or custody, fostering, wardship, trusteeship or de facto guardianship over the children that are their dependents. In cases where suspension is not imposed, the Judge can still rule on the manner in which parental authority and, where relevant, guardianship and custody of the children may be exercised, adopting any measures necessary to ensure the safety, integrity and recovery of the children and the woman, and monitor developments regularly. Finally, Article 66 of the Act empowers the **acting judge to order the suspension of the visiting rights/time/relations and communications of the person accused of gender violence with their dependent children.** Should the parties not consent to this the acting judge must rule on how the person accused of gender violence may exercise his/her visiting rights and communications with the children, and adopt protective measures necessary to ensure their safety, integrity and recovery and can monitor developments regularly.<sup>469</sup>

**All the above procedures are strengthened with various criminal law provisions.** Article 544 ter of the Law of Criminal Proceedings, states that in criminal proceedings on domestic violence the acting judge must in all cases, if not requested by the parties then ex officio, consider the adoption of civil measures in the form of protection orders, including the regimes of guardianship and custody, visits, communication, if depending minors or persons with limited legal capacity cohabit with the victim. In this vain the judge should also establish the arrangement considered appropriate to preserve minors or persons with limited legal capacity cohabit with the victim from danger and prevent them from being harmed.<sup>470</sup>

These provisions are complemented with Article 544 quinque of the Law of Criminal Proceedings which regulates the protection measures for minors that the Judge can adopt in the framework of criminal proceedings without the need for a protection order such as the suspension or modification of the parental authority, wardship, trusteeship, de facto guardianship or fostering. For protection and/or support for the minor the judge may suspend or modify the existing visiting arrangements or communications with the parent who does not cohabit or other relative, when this is considered necessary to guarantee the protection of the minor or the person with altered legal capacity.

The protection of children is further ensured by Article 55 of the Criminal Code which sets forth a s that in all the cases where custodial sentences of ten years or more are imposed, the acting court may "*order special barring from the exercise of parental authority, guardianship, care, safekeeping or fostering, or the deprivation of parental authority, when these rights have a direct relation to the felony committed. This relationship must be specifically determined in the judgement.*"<sup>471</sup>

As regards the procedures to ensure that women victims and their children are protected from harm in the exercise of visiting rights, foreseen by Article 31 paragraph (2) p the CoE Istanbul Convention Spanish law **ensures that visiting rights have been arranged with a view that there has been an incident of violence.** Article 66 of Organic Law 1/2004 makes it compulsory for the courts to rule on

<sup>469</sup> Ibid.

<sup>470</sup> Ibid p45

<sup>471</sup> Ibid

how the visiting rights and communications between the minors and the person accused of gender violence shall be carried out, and to adopt the measures necessary to ensure the safety, integrity and recovery as well as regular monitoring of developments. This is especially facilitated in practice by the system of Family Meeting Points where children can be dropped off and picked up without the parents making contact and the also the possibility to have the exercise of the visiting rights supervised by a professional of the Meeting Point.<sup>472</sup>

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<sup>472</sup> Ibid p46.

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This study, commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the FEMM Committee, explores whether psychological violence against women is criminalised in select EU Member States, how data is collected regarding this particular form of gender based violence and, in close relation to this, whether custody and visiting rights of perpetrators are affected.

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PE 650.336

Print ISBN 978-92-846-6494-8 | doi:10.2861/654593 | QA-04-20-182-EN-C  
PDF ISBN 978-92-846-6495-5 | doi:10.2861/64249 | QA-04-20-182-EN-N