



## The Istanbul Convention and its monitoring mechanism GREVIO



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## Introduction

- Statistics
- Brief overview of the IC and GREVIO
- Ratification of the Convention by the EU
- Chapters V and VI of the Convention (substantive law and procedural aspects). Main gaps detected by GREVIO in the states parties in the implementation of the provisions of the convention



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## What are the statistics?

According to the Fundamental Rights Agency (FRA) 2014 survey, in 28 EU member states (including the UK):

- 1 in 3 women has experienced physical and/or sexual violence, 22 % have experienced physical or sexual violence by a partner
- 11 % of women have experienced some form of sexual violence, 5 % of have been raped
- 1 in 2 women has been sexually harassed
- Only 14% reported the most serious incident of intimate partner violence to the police

**Violence against women is a structural and global phenomenon that knows no social, economic or national boundaries.**



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## Characteristics of the Convention

❖ Defined by the United Nations as the “gold standard” of legislation on gender-based violence, the Convention is the first treaty to provide a legally binding definition of violence against women as:

- ✓ a violation of human rights and a form of discrimination against women
  - ✓ a manifestation of historically unequal power relations between women and men - identifying gender inequality as its root cause
- ❖ It establishes a comprehensive set of legally binding obligations, aimed at ensuring a comprehensive response to all forms of violence against women, including domestic violence

**Holistic approach based on 4 pillars (4Ps):**

- Prevention
- Protection of victims
- Prosecution
- Co-ordinated Policies

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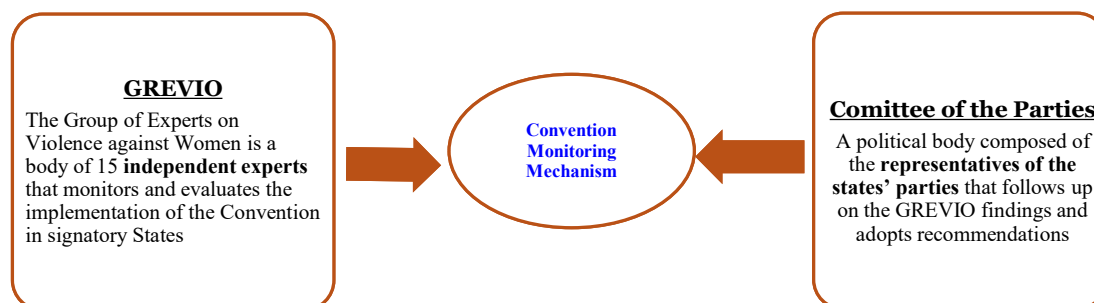
## EU Ratification

- The Convention entered into force for the EU on 1 October 2023, bringing the number of parties to **38 (39 with Latvia)**.
- The two decisions of the EU Council formalising the ratification specify that the ratification concerns only the matters of **exclusive competence of the Union**, namely:
  - the institutions and public administration of the Union
  - issues relating to judicial cooperation in criminal matters, asylum and non-refoulement
- GREVIO will discuss the implications of this ratification and determine the scope of its evaluation



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## Monitoring mechanism of the Istanbul Convention: a two-pillar system



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## Baseline evaluation reports of GREVIO

GREVIO conducts monitoring based on various sources:

- ❖ Information received from state authorities in response to baseline questionnaire;
- ❖ NGO reports commenting on information provided by states;
- ❖ Reports from other international/regional institutions such as EIGE, CEDAW etc.
- ❖ And information obtained in situ by the GREVIO delegation and its Secretariat during evaluation visits, during which intensive discussions are organised with authorities, NGOs and support services.



This information is taken into account and forms the basis for the preparation of a preliminary state baseline assessment report which:

- analyses the level of implementation by the state of almost all of the provisions of the convention;
- detects gaps;
- makes recommendations on how to improve the situation.



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## GREVIO's new thematic evaluation round "Building trust by delivering support, protection and justice"

Article 68 paragraph 3 of the IC provides that the evaluations subsequent to the baseline evaluation shall be divided into rounds.

For each round, GREVIO selects the specific provisions on which the thematic evaluation procedure will be based and sends a questionnaire to the states parties.

GREVIO's new thematic reports cover a selection of articles (19 articles) on prevention, protection, criminal prosecution and integrated policies and have as their common thread the need to «building victims' trust in the system by delivering support, protection and justice» .



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## Article 31 – Child custody, visitation rights and safety Chapter V

In determining custody and visitation rights of minors, incidents of domestic violence and violence against women must be taken into consideration

It must be ensured that the exercise of visitation or child custody rights does not compromise the rights and safety of the victim or children.

### GREVIO has detected various shortcomings in the application of Article 31 by States:

- In several states, laws do not include a legal obligation to take incidents of violence against women into account when deciding on custody and visitation rights;
- If there is a legal obligation, it is often not enforced;
- In most states, priority tends to be given to the presumed best interests of the child, which is believed to be that of maintaining contact with both parents at all costs, regardless of the violence he or she has witnessed;
- The position of the IC and GREVIO is that although it is necessary to balance the different rights at stake and the child has the right to maintain his ties with both parents as enshrined in Article 9, paragraph 3, of the United Nations Convention on the Rights of the Child, this same convention indicates that exposure to domestic violence – as a victim or witness – requires that exceptions be made;
- Lack of communication channels between civil and criminal jurisdictions and other bodies to check whether there are pending criminal cases/convictions against the father when making custody and visitation decisions;
- Lack of training of magistrates and technical consultants on the dynamics of violence against women and its consequences on children, who often assimilate episodes of violence to conflict situations.

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## Article 31 – Child custody, visitation rights and safety Chapter V

The concept of «parental alienation syndrome»

- Reports from victims of domestic violence are often ignored/discredited based on scientifically unfounded concepts such as “parental alienation syndrome”.
  - This concept is invoked to blame mothers for their children's reluctance to meet the violent father and in various cases leads to the limitation/revocation of the victim's parental rights for being «uncooperative»
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- **GREVIO has already underlined that this concept has no scientific basis;**
  - **it is used to divert attention from domestic violence and not address the risks to the safety of women and children;**
  - **It is a good sign that certain national courts, such as the Italian Court of Cassation recognize the illegitimacy of this concept.**

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## Article 31 – Child custody, visitation rights and safety Chapter V

### Mandatory mediation

#### Other shortcomings noted by GREVIO in the application of Article 31:

- In several states evaluated by GREVIO, before proceeding with separation, the parties are forced to undergo mediation (by law or in practice), including in cases of domestic violence
- This procedure can be decisive in determining custody and visitation rights
- Victims are particularly vulnerable due to the power imbalance typical of domestic violence cases, which risks compromising the victim's ability to negotiate and reach an acceptable agreement that guarantees, among other things, the safety of the children and the mother
- Article 48 IC prohibits the mandatory use of alternative dispute resolution procedures, including mediation and conciliation, in relation to all forms of violence against women.

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## Criminal law (Chapter V)

The following acts must be criminalised (even if attempted):

- **physical violence**
- **psychological violence**
- **sexual violence**, including rape
- **stalking**
- **forced marriage**
- **female genital mutilation (FGM)**
- **forced abortion and sterilisation**
- **sexual harassment** (criminal or other sanctions)



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## Sexual violence, including rape (Article 36)

### Definitions

1. The Parties shall adopt legislative or other measures necessary to criminally prosecute those responsible for the following intentional conduct:
  - a. sexual acts performed on a person without her/his consent;
  - b. forcing another person to perform non-consensual sexual acts with a third party.
2. Consent must be given voluntarily, as a free manifestation of the person's will, and must be assessed taking into account the situation and context.
3. The Parties shall take legislative and other measures to ensure that the provisions of paragraph 1 also apply to acts committed against the former or current spouse or partner, as recognized by national law.

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## Sexual violence, including rape (Article 36)

- ❖ Article 36 does not require proof of the use of violence or threats by the perpetrator, nor proof of physical or verbal resistance by the victim.
- ❖ This position is in line with the ruling of the European Court of Human Rights, in the historic *M.C. v. Bulgaria*, which established that:

*“...while in practice it may sometimes be difficult to prove lack of consent in the absence of “direct” proof of rape, such as traces of violence or direct witnesses, the authorities must nevertheless explore all the facts and decide on the basis of an assessment of all the surrounding circumstances. The investigation and its conclusions must be centred on the issue of non-consent.”*
- ❖ A rigid approach to the prosecution of sexual crimes, such as requiring evidence of physical resistance in all circumstances, risks leaving some types of rape unpunished and thus jeopardizing the effective protection of the individual's sexual autonomy.

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## Sexual violence, including rape (Article 36)

### Explanatory Report to the Convention, § 192

- ❖ Article 36, paragraph 2 establishes that the prosecution of sexual offenses must be based on an evaluation of the evidence that takes into account the context, so as to establish, on a case-by-case basis, whether the victim freely consented to the sexual act or not (consent can be revoked at any time).
- ❖ The assessment must recognize the wide range of behavioral responses to sexual violence that exist such as:
  - fight
  - flight
  - immobility/disassociation/freezing

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## Four categories of legislation

(see the thematic  
section of the 4th  
General Report on  
GREVIO's activities)

- 1) States that criminalize rape/sexual assault based on definitions based on the use of violence/coercion/threats.
  - Albania, Bosnia and Herzegovina, Estonia, France, Italy and the Netherlands
- 2) States that penalize it on the basis of two types of parallel provisions: a provision requiring the use of force and a provision requiring the element of absence of consent (based on the "no means no" model). The former often carries a harsher prison sentence than the latter.
  - Georgia, Norway, Serbia
- 3) States that have adopted the "No means No" model, centered on the lack of consensus.
  - Austria, Germany (more and more states are switching to this definition)
- 4) States that have adopted the "Yes means Yes" model – in which participation in a sexual act must be voluntary and can be revoked at any time. Passivity cannot be considered an expression of consent.
  - Belgium, Iceland, Malta, Slovenia, Sweden

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## Observations on the “Yes means Yes” model

the affirmative consent approach is the one most in line with the spirit of the convention.

1. Investigations should not be suspended due to the absence of evidence of use of force/violence or corroborating evidence of the victim's vulnerability.
2. Allows for the criminalization of new phenomena of non-consensual sexual acts, such as the non-consensual removal of condoms during sexual intercourse (stealthing) and drug-facilitated sexual violence. The aforementioned practices transform consensual sex into non-consensual sex because they imply a violation of trust and a denial of sexual autonomy.
3. A study on the consequences of the reform implemented in Sweden towards the “Yes means Yes” model has identified a series of practical advantages:
  - the number of complaints, prosecutions and convictions has increased (conviction rate increased by 75%) – more complaints proceed to court.
  - New types of cases are now coming to the courts, such as “surprise rape” and situations where the victim remained passive during the sexual act.
  - A dramatic broadening of the types of evidence that is adduced/used in proceedings that result in a conviction (such as a recording of the event, 911 calls, a confession, or eyewitness testimony)
  - An increase in convictions in which the only evidence used was the testimony of a person to whom the injured person had confided.
  - Greater awareness in society of the importance of consent in sexual relationships and the introduction of these concepts also in school curricula.

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## CHAPTER VI

Investigation, prosecution, procedural law and protective measures (Articles 49 and 50 IC)

- **Article 49** Requires Parties to ensure that investigations and prosecutions of cases of violence against women:
  - take place **without undue delay**
  - are conducted effectively and **reflect an understanding of gender-based violence.**
- **Article 50** requires law enforcement agencies to react promptly and adequately in cases of violence against women by offering victims **immediate protection** and **engaging in the prevention of violence**, for example by using protective measures and effective collection of evidence.
- GREVIO reports focus on the application of Article 50 at key stages of the criminal process: reporting and investigation, prosecution and sentencing.

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## Articles 49 and 50 of the IC – Shortcomings observed by GREVIO

- ✓ Most of the investigations initiated by the police concern cases of domestic violence and/or rape, sexual violence - little attention is paid to other forms of gender violence;
- ✓ Insufficient initial and ongoing training of law enforcement officers, prosecutors and magistrates (often on a voluntary and non-systematic basis);
- ✓ Excessive weight is given to the victim's testimony as the main evidence/insufficient collection of other evidence;
- ✓ Orders to attend a domestic violence/sexual assault perpetrators programmes are rarely included in sentences as a means to reduce recidivism.



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## Articles 49 and 50 of the IC – Excessive weight given to the victim's testimony as main evidence

- ✓ The importance of proactively and rigorously gathering all relevant evidence beyond the victim's statement.
- ✓ This is essential to ensure effective prosecution of crimes of violence against women, as required by Article 55 of the Convention, particularly when the victim withdraws her complaint or does not wish to testify.
- ✓ Evidence collection should systematically include:
  - Documentation of injuries (with the victim's consent);
  - Crime scene photographs,
  - Collecting DNA samples
  - Statements from neighbors and any other potential witnesses;
  - Messages or other evidence on digital/electronic media.



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## Articles 49 and 50 of the IC- lack of understanding of the gendered nature and the specifics of violence against women

Lack of gendered understanding of the specifics of violence against women by law enforcement agencies, prosecutors and judges. Result:

- ✓ Delays or failure to launch investigations by law enforcement agencies/prosecutors following a report of a form of violence against women;
- ✓ Low number of convictions and high levels of impunity;
- ✓ Frequent use of suspended or conditional sentences;
- ✓ Use of alternative sanctions or protective orders that do not impose criminal liability on offenders;
- ✓ Application of low sanctions;
- ✓ Failure to apply aggravating circumstances provided for by law where they are justified;
- ✓ Inappropriate use of mitigating circumstances.

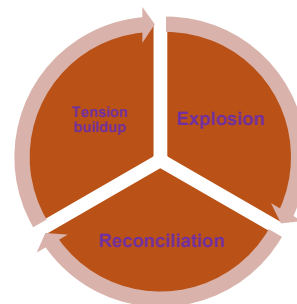
One of the key measures to address these shortcomings is to systematically introduce **mandatory** initial and ongoing training for law enforcement officers, prosecutors and judges on an understanding of the gendered nature and the specifics of violence against women.



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## Articles 49 and 50 of the IC Training for an effective response to domestic violence

- ✓ Domestic violence has a cyclical nature, recurs over time and has a tendency to increase.
- ✓ Scientific research shows that it mainly develops in a cycle composed of three phases
  - The "honeymoon" phase is often followed by the victim's forgiveness of the offender and, if he or she has filed a complaint against him, the withdrawal of the complaint.
  - Consecutive cycles of violence are generally the norm with increasing frequency, intensity and danger over time. Factors such as financial dependence, migrant status, disability, age etc. They can aggravate the abuse and impact the victim's ability to report it.
- ✓ Requesting separation/divorce is one of the factors that can lead to the escalation of domestic violence against the woman and her children.



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## Articles 49 and 50 of the IC

### Training for an effective response to domestic violence

- ✓ Studies show that leaving an abusive relationship in these circumstances takes time;
- ✓ Most victims leave the abusive relationship and then return several times before finally deciding to end it;
- ✓ Several factors contribute to this dynamic:
  - fear of retaliation against the victim or her children;
  - social expectations about what is “best” for children;
  - the hope that the partner will change;
  - economic dependence (etc)
- ✓ This explains why victims often do not immediately report the violence or delay doing so or "forgive" their violent partner.



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## Articles 49 and 50 of the IC

### Training for an effective response to sexual violence

- ✓ It is essential that training for law enforcement, prosecutors and magistrates explains the effects of trauma on a victim of sexual violence/rape and the statements they make.
- ✓ E.g. Investigating authorities often adopt interview techniques that presume the untruthfulness of the statement if it is not detailed, if there are gaps or inconsistencies, etc.
- ✓ In these cases, the investigation is often abandoned.
- ✓ In reality, some responses to trauma can change what people pay attention to and therefore the type of memories a victim has.
- ✓ In these cases, memory is often not linear and the victims' memories focus on sensory perceptions.
- ✓ Because of the trauma, victims often file complaints many years later.



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## Risk Assessment – Article 51

▪the obligation to ensure that all competent authorities - not just law enforcement agencies - evaluate and develop effectively and according to a case-by-case approach, a plan to manage risks related to the safety of victims, according to standardised procedures and collaborating with each other.

- Risk assessment must be carried out **systematically in all cases** of violence against women;
- The procedures should be standardized (SARA, MARAC model etc.);
- The risk assessment procedure must be repeated in all phases of the criminal procedure because the risk can change/increase;
- It must converge information from all the relevant institutions/actors and not be based only on the information available to the police (need for cooperation/coordination).

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## Risk Assessment – Article 51

### Risk factors to take into consideration

#### **Risk factors indicative of a high risk, which therefore must be taken into consideration systematically:**

- the victim's request for a separation or the breakdown of the relationship.
- previous acts of violence.
- the prior issuing of a protective measure, such as an emergency barring or restraining order.
- threats to take away their children.
- acts of sexual violence.
- death threats to the victim and her children.
- A red flag of particular importance is if the offender has access to a firearm;
- GREVIO has more recently identified the need to include **non-fatal strangulation** as a key risk factor in the risk assessment.

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Thank you for your attention!

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