

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)
SPAIN

Group of Experts
on Action against Violence against Women
and Domestic Violence (GREVIO)

GREVIO/Inf(2020)19

Adopted by GREVIO on 13 October 2020

Published on xx November 2020

Secretariat of the monitoring mechanism of the Council of Europe Convention
on Preventing and Combating Violence against Women and Domestic Violence
Council of Europe
F-67075 Strasbourg Cedex
France

www.coe.int/conventionviolence

Contents

| | |
|--|-----------|
| Foreword | 5 |
| Executive summary | 7 |
| Introduction | 10 |
| I.Purposes, definitions, equality and non-discrimination, general obligations | 11 |
| A.General principles of the convention..... | 11 |
| B.Scope of application of the convention (Article 2)..... | 12 |
| C.Definitions (Article 3)..... | 13 |
| D.Fundamental rights, equality and non-discrimination (Article 4)..... | 14 |
| A.1.Gender equality and non-discrimination..... | 14 |
| A.1.Intersectional discrimination..... | 15 |
| E.State obligations and due diligence (Article 5)..... | 17 |
| II.Integrated policies and data collection | 19 |
| A.Comprehensive and co-ordinated policies (Article 7)..... | 19 |
| B.Financial resources (Article 8)..... | 20 |
| C.Non-governmental organisations and civil society (Article 9)..... | 22 |
| D.Co-ordinating body (Article 10)..... | 23 |
| E.Data collection and research (Article 11)..... | 24 |
| A.1.Administrative data collection..... | 24 |
| A.2.Population-based surveys..... | 26 |
| A.3.Research..... | 27 |
| III.Prevention | 29 |
| A.General obligations (Article 12)..... | 29 |
| B.Awareness raising (Article 13)..... | 30 |
| C.Education (Article 14)..... | 31 |
| D.Training of professionals (Article 15)..... | 33 |
| E.Preventive intervention and treatment programmes (Article 16)..... | 35 |
| 1.Programmes for perpetrators of domestic violence..... | 35 |
| 2.Programmes for sex offenders..... | 37 |
| F.Participation of the private sector and the media (Article 17)..... | 38 |
| IV.Protection and support | 42 |
| A.General obligations (Article 18)..... | 42 |
| B.Information (Article 19)..... | 43 |
| C.General support services (Article 20)..... | 44 |
| 1.Social services..... | 44 |
| 2.Health-care services..... | 45 |
| D.Assistance in individual/collective complaints (Article 21)..... | 46 |
| E.Specialist support services (Article 22)..... | 46 |
| F.Shelters (Article 23)..... | 47 |
| G.Telephone helplines (Article 24)..... | 48 |
| H.Support for victims of sexual violence (Article 25)..... | 49 |
| I.Protection and support for child witnesses (Article 26)..... | 50 |
| J.Reporting by professionals (Article 28)..... | 51 |
| V.Substantive law | 53 |
| A.Civil law..... | 53 |
| 1.Civil remedies against the state – ensuring due diligence (Article 29)..... | 53 |
| 2.Compensation (Article 30)..... | 54 |
| 3.Custody and visitation rights and safety (Article 31)..... | 55 |
| B.Criminal law..... | 58 |
| A.1.Domestic violence, including psychological violence (Articles 33 and 35)..... | 58 |
| A.1.Stalking (Article 34)..... | 59 |
| A.2.Sexual violence, including rape (Article 36)..... | 60 |

| | |
|--|-----------|
| A.3.Forced marriage (Article 37)..... | 61 |
| A.4.Female genital mutilation (Article 38)..... | 62 |
| A.5.Forced abortion and forced sterilisation (Article 39)..... | 63 |
| A.6.Sexual harassment (Article 40)..... | 64 |
| A.7.Prohibition of mandatory alternative dispute resolution processes or sentencing (Article 48)..... | 64 |
| VI.Investigation, prosecution, procedural law and protective measures..... | 66 |
| A.Immediate response, prevention and protection (Article 50)..... | 66 |
| A.1.Reporting to and investigations by law-enforcement agencies..... | 66 |
| A.2.Conviction rates..... | 67 |
| B.Risk assessment and risk management (Article 51)..... | 69 |
| C.Emergency barring and protection orders (Articles 52 and 53)..... | 70 |
| D.Victim support in legal proceedings (Article 55, paragraph 2)..... | 73 |
| E.Legal aid (Article 57)..... | 73 |
| II.Migration and asylum..... | 75 |
| A.Residence status (Article 59)..... | 75 |
| B.Gender-based asylum claims (Article 60)..... | 76 |
| A.2.Gender-sensitive asylum determination procedure..... | 76 |
| A.3.Accommodation..... | 79 |
| C.Non-refoulement (Article 61)..... | 80 |
| III.Concluding remarks..... | 81 |
| A p p e n d i x | I |
| List of proposals and suggestions by GREVIO..... | 82 |
| A p p e n d i x | II |
| List of the national authorities, other public bodies, non-governmental organisations and civil society organisations with which GREVIO held consultations..... | 94 |

Foreword

The Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) is an independent human rights monitoring body mandated to monitor the implementation of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210, “the Istanbul Convention”) by the parties to the convention. It is composed of 15 independent and impartial experts appointed on the basis of their recognised expertise in the fields of human rights, gender equality, violence against women and/or assistance to and protection of victims.

GREVIO’s statutory activities include country-by-country monitoring of the Istanbul Convention (evaluation procedure), the initiation of inquiries into specific circumstances within a party to the convention (inquiry procedure) and the adoption of general recommendations on themes and concepts of the convention.

This report is the fruit of the first (baseline) evaluation procedure carried out in respect of Spain. It covers the Istanbul Convention in its entirety¹ and thus assesses the level of compliance of Spanish legislation and practice in all areas covered by the convention. In light of the scope of the convention – as set out in its Article 2, paragraph 1 – the baseline evaluation focuses on measures taken in relation to “all forms of violence against women, including domestic violence, which affects women disproportionately”. Hence, the term “victim” used throughout this report is to be understood as referring to a woman or girl victim.

Based on this assessment, the report proposes measures to strengthen the implementation of the convention. In proposing such measures, GREVIO has adopted the use of different verbs which correspond to different levels of urgency, noting that all of them are important. These are, in order of priority, “urges”, “strongly encourages”, “encourages” and “invites”. GREVIO uses the verb “urges” where it considers that immediate action is required to bring the party’s legislation or policy into compliance with the Istanbul Convention, or to ensure its implementation. “Strongly encourages” is used where GREVIO has noted shortcomings that need to be remedied in the near future in order to ensure comprehensive implementation of the convention. A third level of urgency is indicated by the use of the verb “encourages”, which is used for shortcomings that require attention though possibly at a later stage. Lastly, the verb “invites” points to small gaps in implementation that the party is requested to consider closing or to proposals made to provide guidance in the implementation process.

The first (baseline) evaluation procedure is made up of several steps, each of which allows GREVIO to obtain critical information upon which to base its report. It is carried out as a process of confidential dialogue with the aim of offering country-specific proposals and suggestions for improvement developed within the national context of the party under review. These include the following:

- ! submission, by the party, of a report drawn up on the basis of GREVIO’s baseline questionnaire (the state report);
- ! an evaluation visit to the party under review to meet with governmental and non-governmental representatives working in this field;
- ! comments by the party on GREVIO’s draft report;
- ! publication of GREVIO’s report after its adoption together with any comments received from the party.

¹ □ With the exception of Chapter VIII of the convention, which GREVIO considered as less relevant in assessing the national situation in each contracting party.

In addition, GREVIO also collects additional information from various other sources, including non-governmental organisations (NGOs), other members of civil society, national human rights institutions and Council of Europe bodies (Parliamentary Assembly, Human Rights Commissioner and other pertinent bodies), as well as other international treaty bodies. Within the framework of the evaluation of Spain, GREVIO received written contributions from the Spanish Istanbul Shadow Platform, signed by 252 civil society organisations, as a Joint Shadow Report on FGM by the End FGM Network, Medicos del Mundo, Save a girl – Save a generation and UNAF (Union of Family Associations).

The state report and the written contributions submitted by civil society have been made public and are available on the official website of the Istanbul Convention.

The analysis, suggestions and proposals contained in this first baseline evaluation report were drawn up under the exclusive responsibility of GREVIO. It covers the situation up until March 2020. Developments since that date are neither covered in the analysis nor taken into account in the conclusions and proposals therein.

According to the convention, national parliaments shall receive this report from the national authorities (Article 70, paragraph 2). GREVIO requests the national authorities to translate this report into their official national language(s) and to ensure that it is widely disseminated, not only to the relevant state institutions at all levels (national, regional and local), in particular to the government, the ministries and the judiciary, but also to NGOs and other civil society organisations that work in the field of violence against women.

Executive summary

This report provides an assessment of the measures of implementation taken by the Spanish authorities with regard to all aspects of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (hereafter “the convention”).

This assessment has been carried out by the Council of Europe Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), an independent human rights monitoring body mandated to monitor the implementation of the convention. GREVIO’s findings are based on the information obtained during the various steps of the first (baseline) evaluation procedure set out in Article 68 of the convention. These include written reports (a state report submitted by the Spanish authorities and additional information submitted by NGOs) as well as a 6-day evaluation visit to Spain. A list of the bodies and entities which GREVIO had exchanges with can be found in Appendix II.

The report highlights the Spanish authorities’ solid agenda of policy setting in the area of preventing and combating violence against women as well as their pioneering role in developing a progressive legal framework in relation to intimate partner violence. With the adoption of the Organic Law 1/2004 on Integrated Protection Measures against Gender Violence, Spain took an exemplary approach to conceptualising intimate partner violence services. The law brought about significant change to the response to women victims of intimate partner violence in Spain, fully incorporating a victim-centred approach and being mindful of the gendered nature of intimate partner violence. It envisages a range of measures in support and protection of victims to be offered in an integrated manner and on the basis of multi-agency co-operation among law-enforcement agencies, specialist courts on violence against women, health services and any entities providing legal counselling to women. In addition, a recent large-scale increase of funding in services for victims of violence demonstrates that preventing and combating violence against women is still high on the agenda.

Efforts to collect relevant statistical information and ensure its swift publication for maximum transparency must also be highlighted, in particular in view of population-based surveys. The macro survey on violence against women, conducted every four years and recently developed to encompass most forms of violence covered by the convention as well as data on women who face intersectional discrimination provides extremely useful information.

Spanish authorities fully recognise the role that both the private sector and the media can play in preventing and combating all forms of violence against women. Specific workplace-related measures were adopted for victims of intimate partner violence, enabling them to adapt their professional obligations to their personal situation, showing how important flexible employment arrangements are for working women who are breaking free from abusive relationships. In addition, numerous laws and policies exist that require and encourage the involvement of private companies in the economic empowerment of women victims of violence, but also in awareness-raising campaigns. Regarding the media, several laws set out specific rules for coverage of gender-based violence, and institutions have played a major role in monitoring portrayals of women and content related to violence against women.

In a country characterised by high levels of regional and local autonomy such as Spain, great regional variations however exist in the implementation of the convention. Despite various co-ordination measures taken by the Spanish authorities, comparable levels of protection and support for the different forms of gender-based violence that women may experience are not guaranteed everywhere. This is particularly the case for non-intimate partner forms of violence. Very few autonomous communities offer specialist services for victims of sexual assault and rape, and still fewer specialist support services, if at all, exist for women at risk of or experiencing forced marriage, FGM, stalking and forced sterilisation/abortion.

Most efforts to address violence against women in Spain have indeed centred on intimate partner violence, leaving other forms of violence against women covered by the convention less addressed in Spanish law and policy. In the absence of comprehensive and holistic policies to address such forms of violence, varying regional responses give rise to differing institutional practices that do not consistently offer a victim-centred and multi-agency approach. This is particularly pronounced in ensuring interaction between all relevant professionals, including regarding the provision of medical and forensic services to victims of sexual violence. Data collection, awareness-raising and trainings of professionals on non-intimate partner forms of violence also appear to be limited.

The Criminal Code has undergone, and continues to undergo, revision to align it with the requirements of the Istanbul Convention. However, in relation to proceedings for sexual assault and rape, several factors that impact negatively on the experiences of women victims with the criminal justice sector were identified. The length of procedures, the exclusion of the use of forensic evidence collected without the order of a judge, as well as the very high threshold for proving rape in court may easily result in the revictimisation of victims and contribute to low conviction rates.

Despite the availability of legal measures to ensure the safety of women and children victims of domestic violence, deficiencies in their implementation result in shared custody and extensive visiting rights being granted to convicted perpetrators, and visiting arrangements frequently ordered or maintained despite evidence of violence and abuse provided by children themselves or professionals. Staff at family meeting points as well as judges often seem to misjudge situations of abuse or to be unaware of the gendered dynamics of intimate partner violence, as well as the impact on children of witnessing the abuse of their mothers and the use of custody and visitation regimes by violent fathers to continue the abuse.

Another area of concern is the power accorded to judges by Spanish law to authorise the sterilisation of persons who are legally incapacitated. The current use of this procedure seems to be particularly problematic with regard to women with disabilities incapacitated and subsequently sterilised on the basis of judicial authorisation. In view of the far-ranging implications of sterilisation, more must be done to ensure that the reproductive rights of women with disabilities are respected by offering them the full range of birth control options without resorting to invasive and permanent measures such as sterilisation. There is also a need to ensure that women who undergo consensual sterilisation can make their decision on the basis of sufficient and accessible information.

Women asylum seekers' access to a gender-sensitive asylum procedure face several barriers. Accelerated procedures, as well as inadequate reception and interview conditions do not create an environment of trust and support that is necessary for sharing sensitive information and disclosing experiences of violence. Women and girls' experiences of violence, as well as their specific vulnerabilities and needs resulting from traumatising experiences thus remain largely unaddressed. In addition, high evidentiary thresholds for cases of sexual and domestic violence, such as requiring previous reports of violence made by asylum seekers to their national authorities, prove to be insensitive to country-specific reasons that might prevent victims from doing so.

While GREVIO welcomes Spain's ratification of the Istanbul Convention and the efforts taken in its implementation, it has identified a number of priority issues requiring further action by the Spanish authorities to comply fully with the convention's provisions. Drawing from the above and in addition thereto, these relate to the need to:

- ! Strengthen measures to prevent and combat violence that affects women exposed to intersectional discrimination, integrating their perspective into policies, and improving their awareness about their rights and existing support services, as well as the accessibility thereof.
- ! Ensure adequate allocation of resources and use thereof by regional authorities, as well as develop funding systems that enable women's NGOs to play an active role in the provision of support services.

- ! Strengthen training efforts for professionals such as law-enforcement officers, health-care workers and teachers, and evaluate the different trainings available to the judiciary with a view to improving their impact.
- ! Improve the provision of support services, in particular by taking effective measures to ensure sufficient shelter provision in all autonomous communities and their accessibility for all women victims of violence, broadening the national helpline's scope to all forms of violence covered by the convention, and ensuring the provision of age-appropriate psychological counselling for child witnesses of violence.
- ! Reinforce the legal framework on psychological violence, stalking, sexual violence, sexual harassment and female genital mutilation to align with the convention's requirements and ensure appropriate implementation of and sanctions for these offences, including through improving the capacity of law-enforcement authorities' to respond promptly and appropriately.
- ! Ensure victims' safety by ensuring that protection orders are duly issued by the judiciary and respected by perpetrators.

Furthermore, GREVIO has identified a number of additional areas in which improvements are required in order to comply fully with the obligations of the convention. These relate, among others, to ensuring a wider implementation of all perpetrator programmes and their evaluation, in close co-operation with women's specialist support services. Efforts must also be stepped up to ensure the effective enforcement of the due diligence obligation and the implementation of civil and disciplinary measures to hold state officials accountable for failure to comply with this obligation, as well as make sure that victims receive due compensation for damages suffered as a result of violence. Measures aiming to the *de jure* and *de facto* access to legal aid for victims of all forms of violence covered by the convention should also be adopted. Lastly, steps must be taken to review the evidential threshold for the granting of temporary residence permit for migrant women victims of violence.

Introduction

Spain signed the Istanbul Convention on 11 May 2011, ratified it on 10 April 2014 and was among the first states parties in which it entered into force on 1 August 2014.

The Istanbul Convention is the most far-reaching international treaty to tackle violence against women and domestic violence. Its comprehensive set of provisions spans far-ranging preventive and protective measures as well as a number of obligations to ensure an adequate criminal justice response to such serious violations of human rights. It covers new ground by asking that root causes of violence against women (such as gender stereotyping, traditions harmful to women and general manifestations of gender inequality) be addressed.

The convention sets up a monitoring mechanism to assess the level of implementation by its parties. This monitoring mechanism consists of two pillars: the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), an independent expert body, and the Committee of the Parties, a political body composed of official representatives of the Parties to the Convention.

In accordance with Article 68 of the convention, GREVIO initiated the baseline evaluation in respect of Spain by letter and transmission of its questionnaire on 18 September 2018. The order of reporting to GREVIO is based on a combination of regional groupings and order of ratification. The Spanish authorities subsequently submitted their state report on 18 February 2019 – the deadline set by GREVIO. Following a preliminary examination of the Spanish state report, GREVIO carried out an evaluation visit to Spain, which took place from 25 September to 2 October 2019. The delegation was composed of:

- ! Biljana Branković, Member of GREVIO
- ! Rachel Eapen Paul, Member of GREVIO
- ! Liz Kelly, Professor, United Kingdom
- ! Javier Truchero, Expert, Spain
- ! Johanna Nelles, Administrator at the Secretariat of the monitoring mechanism of the Istanbul Convention
- ! Carmela Apostol, Administrator at the Secretariat of the monitoring mechanism of the Istanbul Convention

During the evaluation visit, the delegation met with a wide range of governmental and non-governmental representatives working in the area of preventing and combating violence against women. A list of the national authorities, non-governmental organisations and others met is set out in Appendix II of this report. GREVIO is grateful for the valuable information provided by all of them.

The evaluation visit was prepared in close co-operation with Pilar Vilaplana García, from the Government Delegation on Gender Violence of the Ministry of Health, Social Services and Equality, who was appointed as contact person for the evaluation by GREVIO. GREVIO wishes to extend its gratitude for the co-operation and support provided throughout the entire evaluation procedure, and for the constructive approach adopted by the Spanish authorities.

As a first baseline evaluation, GREVIO has looked into the measures of implementation taken by the Spanish authorities with regard to all aspects of the convention. For the sake of brevity, this report prioritises some provisions over others. While it addresses all chapters of the convention (except Chapter VIII), it does not present detailed assessments and conclusions on every provision in each of these.

I. Purposes, definitions, equality and non-discrimination, general obligations

A. General principles of the convention

1. Chapter I of the Istanbul Convention sets out general principles that apply to all the substantive articles contained in Chapters II to VII. These include, among others, that it is a fundamental human right for everyone, particularly women, to live a life free from violence in both the public and the private sphere, that the convention must be implemented without discrimination on any ground and that the potential for, and effects of, multiple forms of discrimination should be borne in mind. They also spell out that a gender perspective must be integrated into the implementation of the convention and the evaluation of its impact.

2. The Spanish authorities have long pursued a solid agenda of policy setting in the area of preventing and combating violence against women. GREVIO commends their pioneering role in developing a progressive legal framework in relation to intimate partner violence that was put in place as early as 2004. This legislative framework is widely considered a paradigm shift in how intimate partner violence is viewed, addressed and prevented, and has served as inspiration for other European countries. It is thus with satisfaction that GREVIO notes the adoption of Organic Law 1/2004 on Integrated Protection Measures against Gender Violence, which fully recognises the gendered nature of intimate partner violence and strongly emphasises the need to empower women, in terms of both preventing and breaking free from such violence, including through developing measures to empower women economically and helping them to start independent lives, which the convention highlights as crucial. It is one of the few examples of legislation in Europe that specifically addresses men's violence against their female intimate partners, past or present, and that offers a wide array of legal and socio-economic rights to their victims. It is also an example of legal innovation because it introduces, for the first time, specialist violence against women courts with joint jurisdiction over all civil and criminal law matters related to intimate partner violence and ensuing family law issues. The aim is to settle all related legal issues in one court in order to reduce the level of secondary victimisation and trauma for victims.

3. Several additional laws, action plans and strategies, at both the national and regional level, are contributing to the considerable progress in Spain towards building a legislative, policy and institutional framework to prevent and combat violence against women – much of which predates the entry into force of the Istanbul Convention. GREVIO is mindful of the leading role played by the Spanish authorities in developing the Istanbul Convention and their strong support for this international treaty, at both national and international level. In this context, GREVIO commends the Spanish authorities for their efforts in laying out a five-year road map, in the form of the State Pact on Gender-based Violence, towards greater implementation of the Istanbul Convention by identifying a total of 481 individual measures. Implementation of this important document has, however, faced challenges, which are addressed in more detail elsewhere in this report.

4. From the above, and as confirmed in a wide range of additional information reviewed for this report, the political will to implement the Istanbul Convention to the fullest clearly transpires. The suggestions and proposals outlined in this report are thus intended to guide the Spanish authorities towards a more comprehensive approach towards implementing the full range of provisions of the convention, in particular in relation to forms of violence against women that are currently less addressed in Spanish law and policy.

B. Scope of application of the convention (Article 2)

5. In light of the scope of the Istanbul Convention set out in its Article 2, paragraph 1, the first baseline evaluation focuses on measures taken in relation to all forms of violence against women, including domestic violence, which affects women disproportionately. In accordance with the definition provided in Article 3, indent a, the term “violence against women” used throughout the questionnaire and throughout this report refers to 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 whereas, in accordance with the definition given in Article 3, indent b, the expression domestic violence is to be understood as referring to 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.

6. Chapter V of the convention specifies further the forms of violence against women that are to be criminalised (or, where applicable, otherwise sanctioned). These are psychological violence, stalking, physical violence, sexual violence, including rape, forced marriage, female genital mutilation, forced abortion, forced sterilisation and sexual harassment.

7. Most efforts to address violence against women in Spain have centred on intimate partner violence. Organic Law 1/2004 on Integrated Protection Measures against Gender-based Violence has set the agenda in this field and offers a comprehensive and multidisciplinary approach to the prevention of intimate partner violence and the establishment of a co-ordinated institutional response to it. The term coined by this piece of legislation and widely used is “gender violence”, which denotes violence perpetrated by men against women with whom they have or have had an intimate relationship. For the purpose of this report, the term “gender violence” as it appears in Spanish policy documents will be referred to as “intimate partner violence” or “domestic violence”. GREVIO commends the Spanish authorities for the strong gendered perspective that this law enshrines and the many years of awareness raising that has resulted in high levels of social awareness of intimate partner violence against women as a gendered phenomenon.

8. The “National Strategy for the Eradication of Violence against Women” (2013-2016) and the more recent State Pact on Gender-based Violence also contain an array of measures to improve institutional responses to and support for victims of intimate partner violence, thus running parallel to the implementation of Organic Law 1/2004. While the State Pact reflects the political consensus to cover forms of violence against women apart from domestic violence, GREVIO notes with concern that these policy documents only dedicate a limited number of measures to the additional forms of violence against women as covered by the Istanbul Convention. In both documents, they form part of separate objectives that address forms of violence against women “other than” intimate partner violence.² GREVIO is concerned that this reduces in importance the need to prevent and combat sexual violence, sexual harassment, forced marriage, FGM and forced a b o r t i o n / s t e r i l i s a t i o n . It is important to acknowledge the continuum of violence, which, *inter alia*, reflects the interconnectedness between different experiences of violence, and to understand their joint roots. From this understanding flows the need to develop specific, comprehensive policy measures in the framework of national action plans that are tailored to the specific needs of victims experiencing different forms of violence. During the evaluation visit, various stakeholders brought to GREVIO’s attention problems in the implementation of the State Pact, which are partly due to the high number of measures (481), their complexity and the spread of relevant competences across a wide variety of bodies, including central, regional and local governments. According to information shared with GREVIO, the challenges seem to stem from insufficient planning on how measures should be implemented, lack of prioritisation and limited accountability for funding made available by central government. It would thus be advisable to review the current level of implementation, assess the impact achieved so far and adjust its future implementation accordingly.

² □ See “Objective 4: Visibility and attention to other forms of violence against women” in the National Strategy and “Axis 8: Visibility and attention to other forms of violence against women” in the State Pact.

9. The Spanish authorities acknowledge that more must be done to address equally *all* forms of violence covered by the Istanbul Convention, which GREVIO welcomes. GREVIO notes with appreciation that all forms of violence are criminalised as required by the convention (see Chapter V), but emphasises that any criminal justice response must be supplemented with carefully planned policies, including, for example, measures aimed at protecting and supporting victims of various forms of violence. It is thus of central importance to initiate a process of mainstreaming the concepts and underlying premises of the Istanbul Convention, in particular the notion that all forms of violence against women are a cause and consequence of women's inequality with men, into all laws, policies and programmes that address the different forms of violence against women. This requires the rigorous implementation not only of the gendered approach as prescribed by the Istanbul Convention and already visible in Spanish policy but also that of its holistic implementation through comprehensive and co-ordinated policies in relation to *all* forms of violence against women (see Chapter II).

10. **GREVIO recalls that Article 2, paragraph 1, of the Istanbul Convention affirms the notion that all forms of violence against women, and not only intimate partner violence, which affects women disproportionately. GREVIO thus strongly encourages the Spanish authorities to enhance the implementation of the Istanbul Convention in relation to forms of violence currently less addressed by Spanish legislation, policies and programmes, including by adopting a holistic approach to the prevention, protection and prosecution of such forms of violence. This is of particular importance in relation to sexual violence, sexual harassment, forced marriage, female genital mutilation and forced abortion/forced sterilisation. GREVIO also strongly encourages the Spanish authorities, in co-operation with women's NGOs and independent experts, to make use of the existing mechanisms for the monitoring and evaluation of state policies to review the implementation of the State Pact, analyse the impact of measures that have been implemented so far and plan the next steps, based on a set of predefined indicators to measure progress.**

C. Definitions (Article 3)

11. Article 3 of the Istanbul Convention sets out key definitions of concepts that are fundamental to its implementation. "Violence against women" refers to "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 ... whether occurring in public or in private life". The definition of "gender-based violence against women" offered in paragraph *d* of Article 3 seeks to ensure more clarity regarding the nature of the violence covered by explaining that this is "violence that is directed against a woman because she is a woman or that affects women disproportionately". Hence, the violence addressed by the Istanbul Convention differs from other types of violence in that the victim's gender is the primary motive. It is violence that is perpetrated against a woman that is both the cause and the result of unequal power relations based on perceived differences between women and men that lead to women's subordinate status in the public and private spheres.

12. In Spain, the central piece of legislation in the area of domestic violence, Organic Law 1/2004 on Integrated Protection Measures against Gender Violence, offers a definition of domestic violence against women that is generally in line with that of Article 3*b* of the convention – with the small caveat that it does not cover economic violence. No comparable piece of legislation exists at the central level that defines, and covers, forms of violence against women other than domestic – or intimate partner violence. GREVIO recognises, however, that these forms of violence are criminalised, prosecuted and to some extent otherwise addressed (for example, through protocols for health professionals in relation to FGM).

13. Resulting from the sharing of legislative competences in the area of preventing and combating violence against women, legislation passed at the regional level sets out additional, and more extensive, regulatory frameworks. GREVIO notes with appreciation that 14 of the 17 autonomous regions have adopted legislation that offers comprehensive support and protection to victims of many forms of violence against women and have thus moved beyond the narrow conceptualisation of the central law, Organic Act 1/2004 on Integrated Protection Measures against

Gender-based Violence. All seem to pursue a distinctly gendered approach in addressing the different forms of violence against women, which GREVIO welcomes.

14. The coexistence of a national definition limited to intimate partner violence against women and that of 17 different regional definitions, many of which significantly enlarge the scope of action of statutory agencies, has led to a situation where some autonomous communities seem to more easily comply with the definition of violence against women as set out in Article 3a of the Istanbul Convention while others do not. It is unclear to what extent efforts have been made following the entry into force of the Istanbul Convention in Spain to harmonise definitions and approaches between the central level and the regions as well as across the different autonomous regions, for example through the sectoral conferences (see Chapter II). GREVIO is thus concerned that the wide variety of definitions is resulting in a fragmented approach towards the implementation of the Istanbul Convention.

15. Moreover, GREVIO is concerned about recent attempts to call into question the distinctly gendered approach to intimate partner violence in Spain and attempts to diminish its implementation in practice.³ With the ratification of the Istanbul Convention, the Spanish authorities at all levels of government have committed not only to the implementation of its individual provisions but to its fundamental principles and definitions. These include recognition of the fact that “violence that is directed against a woman because she is a woman or that affects women *d i s p r o p o r t i o n a t e l y*” (Article 3d) and that violence against women is both a cause and a consequence of women’s inequality with men, of which intimate partner violence is a particularly striking form. Bearing in mind that, for more than 15 years, Spain has been setting the agenda by recognising the gendered nature of intimate partner violence and addressing its harmful impact on victims, it is even more important to preserve this important legacy. It is thus of vital importance to guard against any attempts to reverse the progress made in terms of social awareness and support for women victims of violence at the hands of male partners.

16. **GREVIO strongly encourages the Spanish authorities to ensure that legislation and administrative regulations, including protocols, at national level and in all autonomous communities conform fully to the definitions contained in Article 3 of the Istanbul Convention in order to harmonise its implementation.**

D. Fundamental rights, equality and non-discrimination (Article 4)

A.1. Gender equality and non-discrimination

17. Achieving full gender equality in law and in practice is a policy goal that the Spanish authorities clearly subscribe to. The Spanish Constitution prohibits discrimination on the grounds of sex (Section 14). Constitutional Act 3/2007 for Effective Equality between Women and Men further develops the notion of equality between women and men by setting policy goals and measures for public administrations in a wide range of fields, for example in education, culture, health, employment and the media. Pioneering legislation such as Organic Act 1/2004, which squarely frames intimate partner violence against women as an issue of their equality with men, has propelled Spain to take a leading role in addressing this significant manifestation of gender inequality and violation of women’s human rights.

³ □ Publicly available material shows statements and action by local and regional politicians that question the gendered approach to intimate partner violence, which Organic Act 1/2004 is rooted in. They seem to favour rhetoric in support of the notion of “family violence”, which masks the male-to-female power dynamics of intimate partner violence. See, for example: www.elmundo.es/espana/2019/11/25/5ddc4dc621efa00e648b4621.html; https://elpais.com/sociedad/2019/11/22/actualidad/1574456273_625239.html; www.rtve.es/noticias/20191125/protesta-mujeres-contravox-durante-acto-del-dia-contra-violencia-genero-ayuntamiento-madrid/1992516.shtml; www.voxespana.es/noticias/comunicado-de-vox-sobre-la-mal-llamada-violencia-de-genero-20180717.

A.1. Intersectional discrimination

18. Article 4, paragraph 3, of the convention requires parties to secure the implementation of their undertakings under the convention without any discrimination. This provision provides an open-ended list of grounds of discrimination that draws on that of Article 14 of the European Convention on Human Rights as well as the list contained in its Protocol No. 12⁴ and, in addition, includes the grounds of gender, sexual orientation, gender identity, age, state of health, disability, marital status, and migrant or refugee status or other status. This obligation stems from the realisation that discrimination of certain groups of women, for example at the hands of law-enforcement agencies, the judiciary or service providers, is still widespread.⁵

19. GREVIO welcomes the recognition afforded by the Spanish authorities to the importance of addressing the situation of women exposed to or at risk of intersectional discrimination, which one of the four objectives of the National Strategy for the Eradication of Violence against Women (2013-2016) specifically sought to address. Furthermore, GREVIO notes with satisfaction that the comprehensive protection, including the right to legal aid and socio-economic benefits, offered by Organic Law 1/2004 is available irrespective of a woman's migration status in Spain and that it is, in principle, possible for irregular migrant women in Spain to file a complaint for intimate partner violence and to apply for a protection order.⁶

20. However, a number of barriers exist for women seeking help from the authorities for intimate partner violence, and particularly so for help in relation to forms of violence that are not covered by Organic Law 1/2004, in particular sexual violence. First and foremost, GREVIO notes with concern that migrant women make up nearly 33% of all women murdered by their partners or ex-partners since 2003, although they only constitute less than 10% of the population.⁷ This is of even greater concern in view of the fact that foreign women more readily than Spanish women turn to the police and courts for protection, as the data show.⁸ This raises questions as to whether possible institutional bias against immigrant women victims exist, and whether some of those who were killed by their partner could have been saved had the institutional response been more swift and adequate. Research found that migrant women victims of intimate partner violence, in spite of their significant capacity for resilience, faced greater barriers to exercising their rights than Spanish women, as well as greater barriers to employment, housing, education of children, social resources and economic benefits.⁹ Moreover, the fact that many migrant women are unaware of the recent change in legislation that allows recognition as a victim of intimate partner violence without the granting of a protection order or an official document issued by the prosecutor's office (see Chapter VI) means that illegal migrant women who fear being disbelieved or who are unable to sufficiently prove the violence will not seek help from the authorities. Their risk of facing deportation after being denied a protection order is simply too high. Barriers to service provision for migrant women victims of intimate partner violence have also been identified in research. These include the lack of

⁴ □ The discrimination grounds in question include sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

⁵ □ See paragraphs 52-54 of the Explanatory Report.

⁶ □ Organic Act 4/2000 on the rights and freedoms of foreigners in Spain and their social integration was modified by Organic Act 2/2009, enabling all women, including irregular migrant women in Spain, to benefit from the provisions of Organic Law 1/2004.

⁷ □ According to official data, out of the 872 women murdered by the partners or ex-partners between 2003 and 2016, 581 were Spanish (69.7%) while the rest were foreign women (30.3%). Source: the Annual Report of the State Observatory of Violence on Women for the year 2016 (in Spanish only), published in 2019, available at www.violenciagenero.igualdad.mpr.gob.es/violenciaEnCifras/estudios/colecciones/estudio/Libro27_X_Informe2016.htm.

⁸ □ According to the Macro-Survey on Gender Violence 2019, commissioned by the Government Delegation for Gender Violence, 28.6% of foreign women compared to 20% of Spanish women reported intimate partner violence. See p. 275, Chapter 22.1.6 of the survey results.

⁹ □ See: Martínez-Roman M-A., Vives-Cases C. and Perez-Belda C., "Immigrant Women Suffering from IPV in Spain: The Perspectives of Experienced Social Workers", in *Affilia: Journal of Women and Social Work*, 2017, Vol. 32(2) pp. 202-216.

sufficient human and financial resources to ensure adequate services adapted to the specific and often very complex situation of migrant women, practical access to these resources – especially in rural areas – and their effectiveness, as many professionals are not trained in service provision to migrant women and co-ordination with more specialist services may be lacking.¹⁰

21. Moreover, many migrant women, in particular those on temporary work schemes for fruit-pickers living in rural areas in Spain, as well as asylum-seeking women in reception facilities in Ceuta and Melilla, among others, face particular difficulties in accessing vital services, including health services, in relation to experiences of sexual violence. The high socio-economic vulnerability of many live-in carers and domestic workers, many of whom are in an irregular situation, expose them to forms of violence such as sexual harassment and sexual violence. GREVIO is concerned by the absence of approaches to enable these women to realise their right to a life free from violence.

22. Concerns have also been raised that measures and programmes currently in place to prevent and combat violence against women do not sufficiently take into consideration the particular situation of women with disabilities.¹¹ Their disability seems to continue to stand in the way of specialist support for experiences of violence, including rape. A lack of training in and awareness of the particular dependencies and the intersections between disability and gender, as well as the absence of standardised protocols, seems to prompt inadequate responses by professionals, including inappropriate referrals (to disability support services rather than specialist services for victims of violence). Physical access barriers to essential services such as law enforcement, judicial buildings and domestic violence shelters still exist. In this regard, GREVIO welcomes the Strategic Plan 2017-2020, which seeks to ensure that specific attention is paid by the Civil Guard (Guardia Civil) to individuals made vulnerable by specific circumstances. In implementation of this plan, easy-to-read materials exist, including information on the personalised plan for the protection of victims of intimate partner violence. Moreover, information on victims' rights is made available in sign language, subtitles and voice-over. However, GREVIO notes the vital importance to strive to develop more integrated policies and approaches towards violence against women and girls with disabilities, including intellectual and psychosocial disabilities. GREVIO thus notes with satisfaction that the State Pact seeks to respond to some of the above concerns and calls for integrated policies and approaches to be promptly implemented. GREVIO also notes with satisfaction that specific expertise in interventions in support of victims of intimate partner violence with disabilities has already been developed in certain regions of Spain.¹²

23. Similar difficulties exist in relation to the particular situation of Roma women in Spain. Their reluctance to turn to law enforcement or social services after experiencing gender-based violence is pronounced, and it is unclear whether any specific measures are being taken to encourage reporting and to establish trust in the authorities among this population group. Although barriers to accessing primary health-care services are significantly lower, the responses offered in relation to Roma women experiencing intimate partner violence frequently lack cultural sensitivity and specific knowledge of the specificities of women's role, their constraints and dependencies in Roma communities.¹³ While GREVIO welcomes the specific reference in the National Roma Integration Strategy (2012-2020) to the need to study how intimate partner violence affects Roma women, and

¹⁰ □ Briones-Vozmediano E., La Parra D. and Vives-Cases C. (2015), "Barriers and facilitators to effective coverage of Intimate Partner Violence services for migrant women in Spain", *Health Expectations: An International Journal of Public Participation in Health Care & Health Policy*, 18(6), pp. 2994-3006. <http://doi.org/http://dx.doi.org/10.1111/hex.12283>.

¹¹ □ See Concluding Observations on the combined second and third periodic report of Spain to the Committee on the Rights of Persons with Disabilities, CRPD/C/ESP/CO/2-3, April 2019; as well as information shared with GREVIO during the evaluation visit and the submission to GREVIO by the CERMI Women's Foundation (FCM), p. 12.

¹² □ See for example "Recommendations for Intervention Regarding Women of Functional Diversity who are Victims of Violence" published in 2017 and guidelines on interventions developed by Emakunde, Basque Country, in collaboration with civil society actors active in the field of the rights of persons with disabilities.

¹³ □ Vives-Cases C., Goicolea I., Hernandez A., Sanz-Barbero B., Davó-Blanes C. and La Parra-Casado D. (2017), "Priorities and strategies for improving Roma women's access to primary health care services in cases of intimate partner violence", *International Journal for Equity in Health*, Volume 16, 2017.

the need to roll out specific preventive measures, it is unclear whether this has led to any tangible results, such as knowledge of Roma women's experiences of domestic or sexual violence and forced and early marriage, their prevalence rates and help-seeking behaviour. GREVIO considers that policies addressing intersectional discrimination against women should be able to draw on research and data illustrating the prevalence of all forms of violence among these groups of women and they should reflect the knowledge and position of women's organisations representing their interests and defending their rights.

24. **GREVIO strongly encourages the Spanish authorities to:**

- a. **strengthen measures to prevent and combat violence that affects women who are or might be exposed to intersectional discrimination, including women with disabilities, women belonging to minority groups, including Roma women, migrant and asylum-seeking women, LGBTI women, elderly women, women in prostitution and women who abuse substances;**
- b. **integrate the perspective of such women into the design, implementation, monitoring and evaluation of policies for preventing and combating violence against women, by supporting, funding and closely co-operating with women's NGOs representing them;**
- c. **raise the awareness of victims belonging to these groups of women about their rights to protection and support services;**
- d. **develop and improve accessibility to protection and support services for these groups of women;**
- e. **support research and add specific indicators in data collection pertaining to violence against women that relate to women and girls who are or might be exposed to intersectional discrimination.**

E. State obligations and due diligence (Article 5)

25. Article 5 of the convention enshrines the overarching principle of due diligence: states parties are under the obligation to organise their response to all forms of violence covered by the scope of the convention in a way that allows relevant authorities to diligently prevent, investigate, punish and provide reparation for such acts of violence, as well as to provide protection for victims. It is not an obligation of result, but an obligation of means. Failure to meet this obligation incurs state responsibility for an act otherwise solely attributed to a non-state actor. The realisation of the full potential of the due diligence standard relies on the ability of state institutions to invest in equally strong terms in all the required actions of prevention, investigation, punishment, reparation and protection, starting from the duty to transform patriarchal gender structures and values that perpetuate and entrench violence against women.¹⁴

26. With the introduction of Organic Law 1/2004 on Integrated Protection Measures on Gender-based Violence, Spain has shown full *de jure* recognition of the principle of due diligence in as far as intimate partner violence against women is concerned, which GREVIO welcomes. GREVIO recalls, however, that this recognition is less developed in relation to other forms of violence, in particular sexual violence, but also forced sterilisation and abortion, sexual harassment and forced marriage and FGM. These forms of violence against women are mainly responded to by way of criminal law, with much less focus on the need to engage in prevention, protection and reparation.

27. GREVIO welcomes the high level of awareness of the implications of the due diligence principle as expressed by many public officials, including law-enforcement officials, judges and other stakeholders that GREVIO met with during the evaluation visit. However, GREVIO is concerned that the *de facto* application of the due diligence principle is much less pronounced. Difficulties persist with the full implementation of Organic Law 1/2004 on Integrated Protection Measures on Gender-based Violence, and these are addressed throughout this report. The Spanish authorities did not provide data or other information on the number of administrative

¹⁴ □ "The due diligence standard as a tool for the elimination of violence against women", UN Special Rapporteur on violence against women, its causes and consequences, E/CN.4/2006/61, January 2006.

resolutions or judicial cases against state officials for failure to take preventive or protective measures in line with this law. It thus seems that public officials seem to be rarely held accountable for failure to meet their due diligence obligation. This is most acute in the context of custody and visitation rights for abusive fathers and the non-granting of protection orders, in many cases leading to fatal results.

28. GREVIO notes with grave concern that some high-profile cases, such as the case of Ángela González Carreño, epitomise the failure of the Spanish authorities to hear the safety concerns of women victims of intimate partner violence and their children as well as the absence of real and effective measures to complain or claim reparation.¹⁵ There is an urgent need to draw lessons from these and any other cases and take measures to prevent such state failures, in particular by reducing the level of institutional gender bias and discriminatory and stereotypical views of women who report any form of violence against women as manipulative or not credible.¹⁶

29. GREVIO strongly encourages the Spanish authorities to ensure the effective enforcement of the due diligence obligation to diligently prevent, investigate, punish and provide reparation for victims of any of the forms of violence covered by the Istanbul Convention and without discrimination on the basis of any of the grounds listed in Article 4, paragraph 3, of the Istanbul Convention.

¹⁵ □ See the case of Ángela González Carreño, Supreme Court of Spain, sentence 1263/2018, and brought before the UN CEDAW Committee, which found a violation of the CEDAW Convention for having allowed unsupervised visits of the abusive father to his two daughters, without giving sufficient consideration to the background of domestic violence. The CEDAW judgment (CEDAW/C/58/D/47/2012) did not prompt any steps by the authorities to recognise their failure to act in her case. It was only after the decision of the Supreme Court that steps towards the reparation of damages for the loss of her daughters were taken. See also the case of Itziar Pratz.

¹⁶ □ See also the concerns raised by the Working Group on the issue of discrimination against women in law and in practice in its report on Spain, 17 June 2015, A/HRC/29/Add.3, paragraph 72.

II. Integrated policies and data collection

30. Chapter II of the Istanbul Convention sets out the core requirement for a holistic response to violence against women: the need for state-wide effective, comprehensive and co-ordinated policies sustained by the necessary institutional, financial and organisational structures.

A. Comprehensive and co-ordinated policies (Article 7)

31. In Spain, the central framework in the area of violence against women is provided by Organic Law 1/2004 on Integrated Protection Measures against Gender-based Violence, which is complemented by the more recent State Pact on Gender-based Violence. Adopted in September 2017, this pact reflects a broad political agreement to reinforce the protection of women from violence and to adopt a wider definition of violence against women. It consists of measures listed in two reports adopted by the Spanish Congress, which reflect a thorough analysis of the Spanish response to violence against women with a view to moving towards a more comprehensive approach to all forms of violence on the basis of the Istanbul Convention. As a result, some of the measures touch upon rape and sexual assault as well as other forms of violence that women experience beyond intimate partner violence (see above). Action around its implementation is beginning to take shape, with central ministries and regional administrations moving towards its implementation. In addition, GREVIO notes with satisfaction that Spanish diplomatic services are encouraged, by the Ministry of Foreign Affairs, to act in support of Spanish women who experience violence abroad.

32. More than 15 years after the adoption of Organic Law 1/2004, GREVIO notes with satisfaction that intimate partner violence is one form of violence against women that is being responded to on the basis of a comprehensive and co-ordinated approach that requires wide-ranging action to be taken in the area of prevention, protection and prosecution and on the basis of multi-agency co-operation. It fully incorporates a victim-centred approach and is mindful of the gendered nature of intimate partner violence and, as a central framework, it is thus fully in compliance with the Istanbul Convention.

33. Competences in the area of preventing and combating violence against women in Spain are, however, shared between central and regional/local governments. As a result of the wide regional autonomy, this central framework is complemented by a range of regional laws, programmes and measures, with great degrees of variation in their approach, their scope and the level of funding allocated to its implementation. GREVIO recognises that decentralised policy making allows for the specificities and needs of autonomous regions to be taken into account but stresses the need to ensure that the standards of the convention are applied equally throughout the country. During the evaluation, GREVIO visited four regions of Spain,¹⁷ and was not in a position to comprehensively assess the quality of implementation of central and regional laws/policies across 17 autonomous regions. It appears, however, that in some regions, the comprehensive approach to prevention, protection and prosecution set out in Organic Law 1/2004 is thus applied to a wide range of experiences of violence, while in other regions it is limited to intimate partner violence. While GREVIO welcomes the different mechanisms set up to ensure co-ordination and co-operation between the central level of government and the autonomous regions, as well as across the regions, GREVIO notes with concern that regional legislation and approaches seem to be neither aligned with the central framework, Organic Law 1/2004, nor with the standards of the Istanbul Convention, but instead seem to represent a mix of the two.

¹⁷ □ These include the Region of Madrid, the Basque Country, Andalusia and Castilla La Mancha.

34. In view of the differences in approaches taken by the different autonomous regions it is difficult to assess to what extent a holistic response to all forms of violence against women is offered across Spain. NGOs and specialist women's organisations have conveyed their concern to GREVIO that varying regional regulations and policies give rise to differing institutional practices that do not consistently offer the type of victim-centred and multi-agency approach in relation to all forms of violence as mandated by the convention.¹⁸ Besides pointing to weaknesses in the monitoring and evaluation functions of the national co-ordinating body¹⁹ and raising a possible issue of discrimination,²⁰ GREVIO considers that this matter calls for devising stronger interaction and exchange between the national and regional/local levels of governance and embedding these mechanisms in the co-ordinating body's structures and/or working methods. Such mechanisms should furthermore make room for opportunities to discuss lessons learned and exchange best practices developed at the regional/local level and allow for the involvement of women's NGOs and independent experts. Moreover, GREVIO points to the need to mainstream measures of prevention, protection and prosecution of violence against women into broader strategies and policies that target particular communities or groups of people, such as strategies on the social inclusion of Roma.²¹

35. GREVIO urges the Spanish authorities at all levels of government, in particular the regional level to ensure that legislation and administrative regulations conform fully to the principles of the Istanbul Convention and to ensure a state-wide effective, comprehensive and co-ordinated set of policies to prevent and combat all forms of violence covered by the Istanbul Convention. To this end, GREVIO urges the Spanish authorities to:

- a. **conduct independent comparative analyses of the existing regional legislation and policies on violence against women, with a particular focus on identifying promising practices that can be recommended throughout Spain, and promote such endeavours at both national and regional levels;**
- b. **devise and implement comprehensive and holistic policies to address violence against women in all its forms and manifestations, including in particular sexual violence, sexual harassment, forced marriage, and forced sterilisation and abortion, as well as crimes against women committed in the name of so-called honour.**

B. Financial resources (Article 8)

36. In Spain, government funding for activities to prevent and combat violence against women is made available at both the national and regional levels. While austerity measures had led to substantive cuts in budgets and services for victims of violence against women in the past, GREVIO welcomes the recent large-scale increase of funding in this area.²² This indicates a will to prevent and combat violence and to place it high on the political agenda. As regards the general state administration, ministerial departments allocated the sum of €340 million in 2017, mainly for awareness-raising activities, research, prevention campaigns and the telephone helpline 016. GREVIO welcomes the fact that the Budget Act for 2018 included an additional €200 million to finance measures to be taken under the State Pact against Gender-based Violence.

¹⁸ □ Information obtained during the evaluation visit to Spain.

¹⁹ □ See considerations developed below in this report with respect to the evaluation functions of the national co-ordinating body.

²⁰ □ According to the Spanish Constitution, the central state holds exclusive competence in the regulation of the basic conditions guaranteeing the equality of all Spaniards in the exercise of their rights and in the fulfilment of their constitutional duties (Article 149.1.1 CE).

²¹ □ The 2012-2020 National Strategy for the Social Inclusion of the Gypsy Population does not include measures to address the exposure of Roma women to violence.

²² □ State report submitted to GREVIO, p. 8.

37. Concerning funding at the regional level, funds are transferred each year from the central level to the autonomous communities to ensure service provision under Organic Act 1/2004 on Integrated Protection Measures against Gender Violence. To this end, €6 million were transferred in 2016 to fund social assistance services, the drawing up of personalised plans for victims of domestic violence and the implementation of the Common Proposal for the improvement of institutional co-ordination. In 2017, this sum rose to €10 million and included €2 million specifically dedicated to supporting victims of sexual violence, which GREVIO welcomes.

38. GREVIO notes with satisfaction the above information on the overall level of government spending. It is unclear, however, whether the transfer of funding to the autonomous communities is being utilised to ensure a more even implementation of the Istanbul Convention in the regions (for example, by setting priorities or indicating urgent action) and how accountability for its use is ensured. The allocation of funding plays a decisive role in ensuring equal access to services for all women victims of all forms of violence. Measures must be taken to close the gaps in service provision that exist in many regions in Spain (see Chapter IV Protection and Support) and accountability for the adequate use of public funding plays an important role to ensure this. This is of particular relevance in view of the additional funding made available to implement the State Pact. GREVIO is concerned by examples of the use of these additional funds for projects and activities that are not within the prioritised areas are starting to emerge.²³ Recalling and welcoming the fact that the State Pact reflects a national consensus regarding future action to combat violence against women, GREVIO is of the opinion that it should guide any funding decisions at all levels, including regional and local levels. The findings contained in this report should also be taken into account in such decisions in order to ensure adequate prioritisation. Thus, mechanisms of co-operation between central and regional governments must be used to define regional-level priorities for action, within the limits envisaged by the State Pact and its goals, thus acknowledging that specific needs of regional populations are taken into account (and regional autonomy respected) while at the same time ensuring that the use of funds is not left entirely to the discretion of regional authorities (for example, since the even distribution of protection services is a priority, funding for protection services cannot be used for awareness raising).

39. Another concern that presents itself is the funding of specialist support services through public tendering procedures. GREVIO notes that such procedures tend to favour the lowest bidder, sometimes resulting in public contracts being attributed to private companies not specialised in support services for victims of violence. Even though efforts are made to ensure sufficient levels of specialisation among the staff, concerns have been shared with GREVIO about the deterioration of working conditions in support services run by private companies. In some regions, this issue has been solved by regulating on service provision by non-profit entities (Basque Country), which GREVIO welcomes. From civil society representatives operating in other regions of the country, however, GREVIO has received more worrying information regarding their precarious working and funding conditions.²⁴ In an effort to address this issue, a reform to the public tendering law now allows public procurement procedures to require bidders to base their service provision on a gendered approach, but this reform has yet to develop its full potential. GREVIO points to the need to ensure that all providers of services for victims of violence against women operate on and respect essential minimum standards that have been developed and refined by the women's movement and have been comprehensively reviewed in Council of Europe publications.²⁵ In addition, GREVIO recalls that optimal support and assistance for victims, catered to their specific needs, is best ensured by specialist and experienced staff with in-depth knowledge of gender-based violence (see below).

40. In this regard, GREVIO notes that public procurement procedures with a value equal to or greater than €139 000 are regulated by Law 9/2017 on Public Sector Contracts transposing into Spanish law the EU Directives 2014/23/EU and 2014/24/EU, GREVIO. For some specific contracts

²³ □ Information shared with GREVIO during its evaluation visit to Spain.

²⁴ □ Information obtained during the evaluation visit to Spain.

²⁵ □ *Combating Violence against Women: Minimum Standards for Support Services*, Kelly L. and Dubois L., Council of Europe (2008), and *Ensuring Data Collection and Research on Violence against Women: Article 11 of the Istanbul Convention*, Council of Europe, 2016.

relating to the provision of services for victims of intimate partner violence criteria other than the financial proposal can be established. GREVIO welcomes that some regions of Spain have established the practice of putting first a bidder's professional and technical experience and rating the financial proposal at only 30% of the bid. It would be important to ensure such practices throughout all regions of Spain to ensure that public procurement rules do not only favour the lowest bidder for the provision of support services for women victims of violence but ensure the continuity of high-quality specialist expertise on the basis of acceptable conditions for staff.

41. **GREVIO strongly encourages the Spanish authorities at all levels of government, in particular the regional and local level, to:**

a.i.a. **to set incentives or otherwise encourage all relevant actors to place due emphasis on the professional and technical experience in procurement procedures for services for victims of the different forms of violence against women covered by the Istanbul Convention**

a.i.b. **explore ways in which to increase the accountability of regional authorities for the use of funding transferred from the central level;**

a.i.c. **ensure that priorities for action at the regional level are aligned with the measures set out in the State Pact and harmonised with the principles of the Istanbul Convention with a view to closing gaps in service provision and in the overall implementation of the provisions of the Istanbul Convention.**

C. Non-governmental organisations and civil society (Article 9)

42. The vibrant feminist and women's rights movement in Spain plays an important role in setting the agenda on issues such as violence against women and has been instrumental in supporting women victims across the country. Numerous advocacy NGOs exist, often with a specific focus on groups of women at risk of multiple forms of discrimination, such as women with disabilities, women in rural areas or women from migrant communities. Their specific expertise and in-depth knowledge of the issues faced by their clientele, including when seeking support for experiences of gender-based violence, offers vast potential to refine responses to such violence to ensure they reflect the needs of all women in Spain. This potential must be tapped into at national, regional and local level in the design and implementation of policies on violence against women.

43. In addition to advocacy, several women's organisations, small and large, provide specialist services in support of victims of domestic violence, rape, sexual harassment, stalking and, to a lesser extent, FGM and forced marriage. Over the years, they have built up solid expertise firmly rooted in feminist and victim-centred principles.

44. It is with concern, however, that GREVIO notes the growing sentiment among women's NGOs that public procurement procedures and less and less involvement in political processes are reducing their ability to contribute to and improve the protection of women from violence in Spain.²⁶ Annual tendering procedures in which small women's NGOs compete with profit-oriented organisational entities that surpass them in terms of size and capacity to tender are not conducive to ensuring that their specific expertise is maintained and developed (see above).

45. While GREVIO acknowledges the discretion given by the Istanbul Convention to states parties to organise the provision of support services for victims of violence, it recalls that Article 9 requires recognition, encouragement and support of the work of relevant NGOs working in the field of combating violence against women. This includes the establishment of effective co-operation with these organisations. The outsourcing of service provision must therefore ensure an independent role for women's NGOs in providing or running services such as counselling, shelter accommodation and advocacy in a manner that creates an empowering environment. Project-based funding that does not cover all running costs and annual tendering procedures that require NGOs to undercut their own prices each time do not create the type of framework that allows for continuity in the provision of quality services.

²⁶ □ Information obtained during the evaluation visit to Spain.

46. Moreover, the need to develop more comprehensive policies and service provision for forms of violence currently insufficiently addressed in Spain, in particular sexual violence, forced marriage and FGM (see Chapter IV, Section G), will require the involvement of all of society, including those of specialist women's NGOs. It is essential for grass-roots and community-based NGOs, in particular those representing migrant women, women with disabilities and other specific groups of women, to be included in the design and implementation of measures to respond to all forms of violence – at all territorial levels. For example, community-based NGOs have a vital role to play in the prevention of forms of violence such as forced marriage and FGM. Many of these and others are currently heavily underfunded, preventing the expansion of their service scope and jeopardising their sustainability. Ensuring a comprehensive approach to preventing and combating all forms of violence against women covered by the Istanbul Convention on the basis of co-operation with specialist NGOs will thus require the assessment of the available funding streams and the overall funding levels for NGOs. The aim must be to involve a wide variety of NGOs as partners to cater to the needs of women for experiences of violence that are currently unmet. This, in turn, requires adequate funding systems and levels that ensure continuity and quality service provision across all of Spain, relying on principles of service provision set out in Article 18, paragraph 3, of the convention and minimum standards such as the need to respect confidentiality and the autonomy of victims, among other things.²⁷

47. **GREVIO strongly encourages the Spanish authorities to:**

- a. **develop funding systems and ensure funding levels that enable specialist women's NGOs to play an active role in the provision of support services for women victims of all forms of violence and across all regions of Spain;**
- b. **establish or reinforce at all territorial levels, in particular the local and regional level, recognition of the expertise of independent women's organisations, including community-based and grass-roots NGOs and those representing specific groups of women such as migrant women, women with disabilities, women in rural areas and Roma woman, in order to incorporate their opinions and experiences into the design of policies and measures to prevent and combat all forms of violence against women, in particular those currently less addressed.**

D. Co-ordinating body (Article 10)

48. In Spain, Organic Law 1/2004 on Integrated Protection Measures against Gender Violence provides for the creation of two main administrative bodies: the Government Delegation for Gender-based Violence and the State Observatory on Violence against Women, which are now both attached to the Ministry of the Presidency, Relations with Parliament and Equality.

49. The Government Delegation for Gender-based Violence serves as the national governmental body responsible for co-ordinating and implementing policies on violence against women. This includes carrying out prevention and information campaigns, promoting co-ordination and collaboration between relevant services, as well as with autonomous communities and civil society organisations, preparing and disseminating reports, studies and research, and establishing and updating a system for the collection, analysis and publication of data on violence against women. The State Observatory on Violence against Women is a specialist body that includes national, regional and local administrations as well as civil society organisations.²⁸ Its main functions include handling institutional collaboration, collecting data, evaluating the impact of policies and measures, and preparing reports, studies and proposals for action for preventing and combating violence against women.

²⁷ □ See footnote 24.

²⁸ □ In more detail, the Observatory is composed of representatives of the general state administration, autonomous communities, the Spanish Federation of Municipal and Provincial Authorities, the State's Prosecutor's Office, the General Council of the Judiciary, and civil society organisations, as well as experts in the field of gender-based violence.

50. Co-ordination and implementation of national policies on violence against women is further attained through the meetings of the Sectoral Conference on Equality. Convened by the Ministry of Equality, these conferences are held two or three times a year and gather representatives of the general state administration and their counterparts in the autonomous communities, aiming to ensure political co-ordination between all levels and across the whole territory. The Interministerial Committee on Equality between Men and Women is a body that ensures co-operation across the different ministries at central government level.

51. Noting the importance of co-ordination in a country characterised by high levels of regional and local autonomy such as Spain,²⁹ GREVIO welcomes the above measures to ensure such co-ordination. GREVIO notes with particular satisfaction that over time the mandate of the Government Delegation for Gender-based Violence has been aligned more closely with the scope of the Istanbul Convention and now covers all forms of violence against women. Moreover, GREVIO welcomes that it has been assigned a separate annual budget of nearly €32 million (the figure for 2017) and 39 dedicated staff, although regrettably not all positions seem to be filled.

52. Yet, it emerges from GREVIO's assessment that great regional variations persist in the implementation of the Istanbul Convention. Comparable levels of protection and support for the different forms of gender-based violence that women may experience are not guaranteed everywhere. Moreover, in the absence of a full assessment of legislation and practice at regional level, the full extent of the regional variations in how victims of rape, sexual harassment, forced marriage, FGM and domestic violence are responded to by law enforcement, social services and specialist support services is unknown.

53. With a view to ensuring a more even level of implementation of the Istanbul Convention across all regions, GREVIO strongly encourages the Spanish authorities to:

- a. **reinforce the co-ordination between national and decentralised governmental structures and enhance the ability of the Government Delegation for Gender-based Violence to ensure the design of national and regional legislative and policy frameworks that allow for full compliance with the Istanbul Convention;**
- b. **take measures towards the effective monitoring and evaluation of laws and policies on violence against women at regional level with a view to identifying and addressing gaps in the prevention of violence, protection of victims and prosecution of perpetrators;**
- c. **ensure that monitoring and evaluation of policies, both at national and regional levels, is based on predefined indicators established to measure success.**

E. Data collection and research (Article 11)

54. Preventing and combating violence against women and domestic violence requires evidence-based policy making. The collection of systematic and comparable data from all relevant administrative sources is crucial in this regard, as is information on the prevalence of all forms of violence against women.

A.1. Administrative data collection

55. A wealth of statistical data is being collected in Spain, much of the data being centralised through the Government Delegation for Gender-based Violence with a view to informing the design and/or adjustment of policies and measures in this field. This entity also ensures, through monthly and annual statistical bulletins, the publication of data on important elements such as the number of women killed by their current or former partners, data on the compliance with protection orders,

²⁹ □ The institutional framework for addressing violence against women at regional and local level is examined earlier in this report in connection with the analysis of measures taken in Spain to ensure comprehensive and co-ordinated policies that comply with the standards of Article 7 of the convention.

the number of calls made to the national helpline, the number of beneficiaries of financial support under Organic Law 1/2004 and much more.³⁰

56. GREVIO commends the Spanish authorities for the important role that the Government Delegation for Gender-based Violence plays in collecting relevant statistical information and ensuring its swift publication for maximum transparency and the overall recognition of the importance of data for policy making and legislation to prevent and combat violence against women. However, GREVIO notes that the system devised so far is limited to data on intimate partner violence as it is closely linked to monitoring the implementation of Organic Law 1/2004 and does not cover data on any of the additional forms of violence addressed by the Istanbul Convention. Moreover, GREVIO notes that data on investigations and convictions do not feed into the Government Delegation for Gender-based Violence but are collected separately, mainly for internal use by the General Council of the Judiciary and the Ministry of Interior.

57. Bearing in mind the need for data collection to apply to all forms of violence covered by the Istanbul Convention, GREVIO strongly encourages the Spanish authorities to ensure that efforts made by the Government Delegation for Gender-based Violence to collect and publish data extend to *all* forms of violence against women as covered by the Istanbul Convention, in particular sexual violence, forced marriage and FGM.

a. **Law-enforcement agencies and the criminal justice sector**

58. The Ministry of Interior compiles and publishes monthly data on the number of cases of intimate partner violence against women entered by law-enforcement agencies and other public institutions into the Integrated Monitoring System for cases of Gender Violence (VioGen).³¹ These cases are then classified by the level of risk assessed by Spanish standardised risk-assessment tools (Police Risk Assessment (VPR) and Police Assessment of Risk Evolution (VPER)) and disaggregated by geographical location. The National Police in Spain also collect data on reported crime on the basis of statements, memos, minutes and reports made to the Offices for Citizen Complaints and Support or the dedicated Family and Women's Units or Family Support Services, depending on the case. All information is centralised and processed by the National Police Statistics Service and is disaggregated by sex, age, type of crime, relationship with the victim, location and province, as well as other significant details. Data collected by the Civil Guard are disaggregated in a similar manner. However, these data are not systematically made available to the public.

59. The General Council of the Judiciary (Consejo General del Poder Judicial, hereinafter CGPJ) collects data on cases of intimate partner violence at all stages of the procedure before general criminal courts and the specialist violence against women courts (for more details see Chapter VI). Much of it is regularly published in specific bulletins, including the number of charges brought and dropped, the number of protection orders requested, granted and denied, the types of procedures initiated and their outcome.³² Most data are disaggregated by age, sex, relationship of the perpetrator to the victim, and type of intimate partner violence (including physical, psychological, sexual and honour-related violence) and geographical location (such as autonomous community), which GREVIO welcomes.

60. The CGPJ also collects data on the amount of civil cases brought to the specialist violence against women courts, including in relation to divorce, child custody and visitation rights.³³ However, these data are limited in scope as they provide no information on their outcome nor how these proceedings have taken into account the history of domestic violence.

³⁰ □ The information is available at www.violenciagenero.igualdad.mpr.gob.es/violenciaEnCifras/home.htm.

³¹ □ The monthly statistical reports are available at: www.interior.gob.es/ca/web/servicios-al-ciudadano/violencia-contra-la-mujer/estadisticas.

³² □ See, for example: General Council of the Judiciary (2018) Annual report on gender-based violence 2018 (in Spanish),

³³ □ Ibid., p. 13.

61. Data collection efforts in relation to forms of violence against women apart from intimate partner violence, notably on rape and sexual violence, are much less developed. Indeed, the only data on sexual violence publicly available are the number of crimes against sexual freedom, including rape and other sex offences as recorded by law-enforcement agencies.³⁴ GREVIO is concerned that these data are not disaggregated by age, sex and the relationship between the perpetrator and the victim and that information on the number of complaints lodged and criminal proceedings opened are not included.³⁵

62. Data on honour-related violence are equally scarce and seem to be only collected in the context of intimate partner violence. GREVIO thus welcomes the stated intention of the State Pact to introduce a legal obligation to collect statistical data in relation to forms of violence apart from intimate partner violence and to reach an agreement with the National Commission for Judicial Statistics to modify existing statistical bulletins accordingly (measures no. 167 and 180).

63. GREVIO encourages the Spanish authorities to swiftly implement measure no. 167 and measure no. 180 of the State Pact on Gender-based Violence as adopted by the Congress of Deputies in order to ensure the comprehensive collection of disaggregated data in relation to all forms of violence as covered by the Istanbul Convention. Furthermore, GREVIO strongly encourages the Spanish authorities to take measures to collect data on all forms of violence against women and at all stages of the criminal justice process (from reporting, to investigating to the opening of criminal proceedings and their outcomes), disaggregated by sex, age, type of violence and the relationship of the perpetrator to the victim. GREVIO also strongly encourages the Spanish authorities to expand the data collected by the CGPJ on divorce and child custody decisions in order to assess how Spanish courts ensure the safety of women and children affected by domestic violence in that context.

b. **Health-care sector**

64. The Commission Against Gender Violence of the National Health System Interterritorial Council issues every year a report on gender-based violence. The report presents data on gender violence cases detected and registered within the National Health System, whether in primary health care, hospital care services or emergency services, through reports of injuries or clinical records. It provides data on the number of cases, type of abuse (physical, sexual, psychological), duration of abuse, relationship between the victim and the perpetrator, age of the victim, nationality of the victim, employment situation of the victim and the numbers of pregnant victims.

65. While GREVIO welcomes this initiative to gather information on cases of gender-based violence recorded within the National Health System, a number of issues arise regarding the collection of data. It seems it falls short of systematisation and comparability, as annual reports indicate a lack of data submitted by autonomous communities on some indicators, indicators not filled in in some medical files or injury reports, or differences between autonomous communities' information systems. Furthermore, disaggregated data on all different forms of violence against women covered by the convention are not available.

66. GREVIO encourages the Spanish authorities to take measures to improve the systematic and comparable collection of data by the health-care sector throughout the country, on all forms of violence against women covered by the Istanbul Convention.

A.2. Population-based surveys

³⁴ □ See, for example, the last annual report of the Ministry of Interior for the year 2018, available at www.interior.gob.es/documents/642317/1204854/Anuario+Estad%C3%ADstico+del+Ministerio+del+Interior+2018/5a35fad7-5386-44fb-83ae-9b14e678cc4a.

³⁵ □ Amnesty International (2018), "Now it is time that you believe me. A system that questions and leaves victims unprotected" (in Spanish), p. 19, available at <https://doc.es.amnesty.org/ms-opac/recordmedia/1@000030392/object/39260/raw>.

67. Several population-based surveys exist in Spain on the prevalence of different forms of violence against women and attitudes towards such violence. For example, the Government Delegation for Gender-based Violence has carried out the “Survey on Social Perceptions of Gender Violence” (2014), the “Survey on Social Perceptions of Gender Violence among Adolescents and the Young” (2014) and the “Survey on Social Perception of Sexual Violence” (2018).

68. In addition, a macro-survey on violence against women is conducted every four years by the Government Delegation for Gender-based Violence. The latest survey was published in September 2020 on the basis of a sample of 9 568 women aged 16 and over, representing the female population residing in Spain. The questionnaire covers different types of violence: intimate partner violence (including physical, sexual, psychological, and economic violence), non-partner physical and sexual violence, sexual harassment and stalking. For all forms of violence, the survey examines the prevalence of violence throughout the lifetime as well as within the last 4 years and the 12 months prior to the interview. As regards intimate partner violence, questions cover the physical, psychological and work-related consequences of violence, children witnesses of violence, whether victims have filed a complaint, received any kind of support and were satisfied about it, talked about the violence in their social environment, and ended a relationship due to violence. As regards non-partner sexual violence, the survey examines the prevalence of such violence during childhood, the sex of the perpetrator, the frequency of the violence, the place where it happened, physical, psychological and work-related consequences of the violence, whether victims have filed a complaint, received any kind of support and were satisfied about it. In addition, it offers an insight into the prevalence of violence among women aged 16 to 24 and over 65, women born abroad, women with a certified disability of 33% or more, and women living in small municipalities.

69. GREVIO welcomes the successive development of the survey, with the inclusion of questions on non-partner physical and sexual violence in 2015, followed by the increase of questions related to non-partner sexual violence as well as the addition of questions on sexual harassment and stalking in 2019. GREVIO also appreciates the specific indication of prevalence of all forms of violence covered by the survey among women aged 16 to 24 and over 65, women born abroad, women with disabilities and women living in small municipalities. Analysing the prevalence of all forms of violence among groups of women who face intersectional discrimination is indeed crucial to shed some light on the particular difficulties they are confronted with and is an essential component of effective policy making (see Chapter I, Section D.2). GREVIO notes however that the survey still does not provide information on forced marriage and FGM. In this respect, GREVIO emphasises that the aim of Article 11, paragraph 2, is to assess the prevalence of all forms of violence against women covered by the Istanbul Convention through regular surveys.

70. GREVIO invites the Spanish authorities to carry out surveys on *all* forms of violence against women covered by the Istanbul Convention, including dedicated surveys on forms of violence such as female genital mutilation and forced marriage. Moreover, GREVIO encourages the Spanish authorities to ensure that any survey results, in particular those pointing to differences across different groups of women regarding their exposure to violence, are used to ensure evidence-based policy making.

A.3. Research

71. Numerous studies and research exist in Spain on different forms of violence against women. A wide variety of academic publishing and research is available on different aspects of gender-based violence, in particular intimate partner violence. GREVIO notes with satisfaction that the Government Delegation for Gender-based Violence regularly supports research projects and commissions studies on women’s victimisation, help-seeking and vulnerability to violence against women. In a more recent step, it set up an award for a doctoral thesis in the area of violence against women in order to encourage academic research in this field. In addition, the State Observatory on Violence against Women ensures information gathering and research on many aspects related to violence against women in Spain, in particular the number of women killed by current or former intimate partners. GREVIO welcomes this initiative.

72. GREVIO welcomes the solid recognition of the need for research as a foundation for evidence-based policy making, which the above represents. It notes with satisfaction that the studies commissioned more recently seek to elucidate the specific exposure to intimate partner violence of women with disabilities, women in rural areas and women over the age of 65. Moreover, GREVIO welcomes the thorough analysis of all murders of women in the context of intimate partner violence in Spain since 2003 and is hopeful that this will offer a solid basis for future improvements in the protection system in Spain.

73. However, GREVIO notes that the research commissioned by the Government Delegation for Gender-based Violence focuses predominantly on domestic violence and only briefly touches upon other forms of violence against women. For instance, there is little research that explores the reasons for the low reporting rates for sexual violence and rape from a non-partner or for the secondary victimisation of women by the criminal justice sector. Also, very little research exists on the level of conviction rates for the different forms of violence against women, which would be necessary in order to explore possible deficiencies in the criminal justice sector. Moreover, no comprehensive research has been commissioned to elucidate issues of intersectional discrimination and other factors faced by migrant and ethnic minority women that present barriers to seeking and receiving help from statutory agencies and social services.

74. GREVIO encourages the Spanish authorities to step up efforts to support research into manifestations of violence against women that are not currently explored, in particular by setting research priorities in relation to sexual violence, forced marriage, FGM and forced sterilisation, and the effects on children of witnessing domestic violence.

III. Prevention

75. This chapter contains a number of general and more specific obligations in the area of prevention. These include early preventive measures such as changing the social and cultural patterns of behaviour of women and men, eradicating prejudices and gender stereotypes, and measures to involve all of society, including men and boys, in achieving gender equality and the prevention of violence against women. It also includes more specific preventive measures such as awareness raising and campaigning, ensuring the adequate training of all professionals, education in schools and other settings, and, last but not least, measures such as perpetrator programmes to prevent further victimisation.

A. General obligations (Article 12)

76. The introduction of Organic Act 1/2004 on Integrated Protection Measures against Gender Violence in 2004 was preceded by wide public debate on intimate partner violence in Spain. It has generally helped to bring this issue into the public realm. One of the novel features of this law is to ensure large-scale awareness-raising initiatives, including through community-based and intercultural approaches, with the stated aim of introducing into society new values that are based on respect for basic rights and liberties and the equality of men and women, and on the exercise of tolerance and freedom as part of the democratic principles of coexistence, viewed within the context of gender relations (Article 3).

77. Recalling that the implementation of the due diligence standard should not be limited to responding to cases of violence when they occur, but includes the duty of states to transform patriarchal gender structures and values that perpetuate violence against women,³⁶ GREVIO commends the Spanish authorities for this early recognition of the need to foster, on a large scale, change in behavioural patterns and societal norms that condone and normalise male violence against women in intimate relationships. It welcomes the general level of awareness of intimate partner violence and its consequences on individuals and society at large and the zero-tolerance approach expressed by many professionals and individuals.

78. However, and as stated throughout this report, GREVIO is concerned that this strong recognition of the need to change attitudes towards one form of violence against women – intimate partner violence – finds less of an expression in relation to the other forms of violence against women covered by the Istanbul Convention. GREVIO recalls that all forms of violence against women are rooted in the belief of male superiority over women and girls. The driving motivation behind rape and sexual assault, stalking, FGM, forced marriage and forced abortion/sterilisation is power and control over a woman – her body, her mind, her economic situation, her sexuality or her reproductive functions. Societal values, masculinities and traditions that condone or normalise such power and control must therefore be deconstructed in all pockets of society and beyond the realm of intimate relationships.

79. This is of particular urgency in relation to rape and sexual assault. In view of several highly publicised gang rapes of young women and girls in recent years, GREVIO is concerned by the attitudes towards women expressed by some of the perpetrators, their modus operandi and their objectification of women.³⁷ The stark increase in the number of gang rapes more generally, and their peak during the summer months, is alarming,³⁸ as is the fact that more and more cases concern either underage victims or underage perpetrators.³⁹ GREVIO welcomes that the

³⁶ □ Ertürk Y. (2006), “Integration of the human rights of women and the gender perspective: Violence against women. The due diligence standard as a tool for the elimination of violence against women”, Report of the UN Special Rapporteur on violence against women, its causes and consequences, E/CN.4/2006/61.

³⁷ □ See, for example, the case of “La Manada” and the “Arandina” case, both of which came to trial in 2019.

³⁸ □ According to information collected by Geoviolencia Sexual, a project of feminicidio.net, the number of gang rapes in Spain has risen from 18 in 2016 to 63 in 2019. See <https://geoviolenciasexual.com>.

³⁹ □ According to the Prosecutor’s Office, the number of criminal proceedings initiated in relation to sex offences has risen by 23.2% in 2017. In its report to the Spanish Government, the Attorney General refers to the number of sex

authorities' awareness of this development is beginning to translate into preventive measures that challenge men's sense of entitlement to women's bodies by offering, among others, adequate sex education based on the notion of respect for the sexual autonomy of all women and men, girls and boys.⁴⁰ Initial steps towards ensuring the safety of women and girls during the summer festival season have also been taken, although they seem to focus on women and girls as potential victims rather than men and boys as potential perpetrators. On-going efforts to promote and implement the Council of Europe Recommendation CM/Rec(2019)1 of the Committee of Ministers to member States on preventing and combating sexism are aimed to further reduce sexist and harmful gender stereotypes in Spain, which GREVIO welcomes.

80. GREVIO encourages the Spanish authorities to maintain and develop, where necessary, efforts to engage society at large, in particular men and boys, through community-based preventive programmes, campaigns and other measures in efforts to prevent and combat the different forms of violence against women, including by developing the notion of respect for sexual autonomy and consent, awareness of sexual harassment and technology-facilitated or online violence against women.

B. Awareness raising (Article 13)

81. In line with the obligation set out in Article 3 of Organic Act 1/2004 on Integrated Protection Measures against Gender Violence, large-scale public-awareness campaigns on intimate partner violence have been carried out since 2004. Although government expenditure has varied considerably throughout the years, it has been significant throughout, ranging between €1.3 and 8 million annually.⁴¹ While many would agree that social awareness of men's intimate partner violence against women ("gender violence") has subsequently increased, research shows that it is not perceived as a major issue in Spain. According to the monthly barometer "Perception of the main problems in Spain" issued by the Centre for Sociolegal Research of the Spanish National Research Council (CIS), intimate partner violence against women ranks very low and with no correlation to the level of expenditure on public-awareness campaigns.⁴²

82. While GREVIO notes with appreciation the steady commitment of the Spanish authorities, in particular the Government Delegation on Gender-based Violence, to prevent gender-based violence through awareness raising, it points to the need to focus their preventive efforts on other, long-term and community-based preventive measures, in particular those that deconstruct notions of women's inferiority and teach healthy gender relations to the next generation (see below).

83. Moreover, GREVIO notes with concern that the existing focus on intimate partner violence has resulted in very low levels of awareness raising of forms of violence against women such as FGM, forced marriage, sexual harassment and sexual violence.⁴³ Some efforts are made at the level of the autonomous communities, which GREVIO appreciates, in particular with a view to reaching out to young perpetrators around issues such as technology-facilitated abuse and control,

offences, including gang rapes, involving minors below the age of 14 as "disturbing and troubling". See Report to the Government of Spain, presented at the beginning of the judicial year 2018 by the State Attorney General, available at www.elconfidencialdigital.com/media/elconfidencialdigital/files/2019/06/28/MEMFIS18.pdf.

⁴⁰ □ See for example the campaign run in 2019 by the Government Delegation for Gender-based Violence which focussed on sexual consent and was targeted specifically at a male audience.

⁴¹ □ Cepeda I., "Fighting Prejudice: Campaigns on Gender Violence in Spain", *Journal of International Women's Studies*, Volume 19, Issue 6, 2018, Table 2: Government expenditure on publicity against violence against women (2007-2015).

⁴² □ Ibid., pp. 22-26. According to the monthly barometer "Perception of the main problems in Spain" issued by the Centre for Sociolegal Research of the Spanish National Research Council (CIS), intimate partner violence against women ranks very low and with no correlation to the level of expenditure on public-awareness campaigns.

⁴³ □ In 2018, a campaign against sexual violence was launched by the Government Delegation for Gender-based Violence, under the hashtag #SomosUna ("We are one"), as well as a campaign targeting teenagers using the hashtag #Puesnolohagas ("So don't do it").

especially the installing of spyware and sextortion.⁴⁴ Civil society-run campaigns and awareness-raising efforts also exist, notably on digital violence in relationships, which aim at enabling young people to identify and put an end to early indications of abuse such as the controlling use of mobile devices or social media.⁴⁵ Some also address sexual violence among teenagers, which is promising.⁴⁶

84. However, they appear limited in scope and geographic reach and vary widely in terms of their focus, funding and overall effectiveness. The picture that emerges is thus one of fragmentation. More efforts must be made to ensure that awareness-raising efforts address all forms of violence in a systematic manner across all regions of Spain.

85. GREVIO strongly encourages the Spanish authorities to further develop their awareness-raising efforts on violence against women and to roll it out to include all forms of violence covered by the Istanbul Convention, in particular sexual violence and digital violence, including by engaging in partnerships with the relevant women's specialist support services, community-based grass-roots organisations and the media.

C. Education (Article 14)

86. Attitudes, convictions and behavioural patterns are shaped very early in life. Educational establishments therefore have an important role to play in promoting equality between women and men and human rights. Article 14 therefore requires the design of teaching material that promotes equality between women and men, non-stereotyped gender roles, mutual respect, non-violent conflict resolution in interpersonal relationships, and the right to personal integrity and that addresses gender-based violence against women.

87. In Spain, although the competence regarding education falls to the autonomous communities, Organic Act 8/2013 for the Improvement of the Quality of Education establishes a common education framework. This law foresees the development in school of values that promote effective equality between men and women as well as the prevention of gender-based violence as a guiding principle (Article 2*l*). In that respect, one of the objectives of primary education is to develop pupils' attitudes towards violence, prejudices and sexist stereotypes (Article 17*m*), while secondary education ought to develop pupils' skills to reject discriminatory stereotypes (Article 23*c*). The duty of the education system to instil values of respect for women and equality between men and women is also laid down in Organic Act 1/2004 on Integrated Protection Measures against Gender Violence, which contains a chapter on education (Chapter I) and provides that, throughout their schooling, students will develop their skills and ability to peacefully resolve conflicts and defend equality between men and women (Article 4).

88. While welcoming the existence of this legal framework, GREVIO notes that its potential has not translated into the teaching material on the topics identified in Article 14 of the convention becoming part of the formal curricula within the compulsory education system. The course "Ethical Values", which pupils can attend instead of the course "Religion" during secondary education, appears to include content on gender equality and gender-based violence, but data are missing to assess the proportion of pupils enrolled in this course as well as its impact. GREVIO notes that with "Ethical Values" being an elective course, it will not reach all pupils during secondary

⁴⁴ □ As explained in the report of the UN Special Rapporteur on violence against women on digital violence, paragraph 16, "sextortion" refers to the use of ICT to blackmail a victim; in such cases, the perpetrator threatens to release intimate pictures of the victim in order to extort additional explicit photos, videos, sexual acts or sex from the victim. The report also discusses the use of different terminology ("cyberviolence", "digital violence", "online violence") and suggests using the term "ICT-facilitated violence against women" as the most inclusive term, or "online violence" as a more user-friendly term. See "Report of the Special Rapporteur on violence against women, its causes and consequences, on online violence against women and girls from a human rights-based perspective", 14 June 2018.

⁴⁵ □ See, for example, the campaign entitled "Ten types of digital gender violence", run by Pantallas Amigas Association in 2017 and supported by Twitter Spain.

⁴⁶ □ Example taken from the Autonomous Region of Extremadura, Spanish State Report to GREVIO, p. 83.

schooling. Teaching material promoting gender equality, mutual respect in interpersonal relationships and non-violence varies among autonomous communities, some of them adopting plans for action on equality in schools, providing specific courses or workshops on gender-based violence, or organising prevention campaigns in schools. Further, as initial and in-service training of educators and school staff falls within the competence of regional authorities, variations exist both in terms of the number of teachers trained and the length/type of training offered, making it difficult to assess to what extent teachers across Spain are, in practice, equipped with the skills to teach the above subjects. GREVIO welcomes, however, the obligation placed on educational administrations to transversally introduce “the learning of prevention and peaceful resolution of conflicts in all areas of personal, family and social life, and of the values that sustain democracy and human rights, including the prevention of intimate partner violence”.

89. In terms of educational material, Organic Act 1/2004 on Integrated Protection Measures against Gender-based Violence provides that education authorities shall ensure that sexist and discriminatory stereotypes are removed from all educational material (Article 6), which GREVIO welcomes. In addition, prevention materials on gender-based violence targeted at educational settings and teenagers were made available by the Office of the Government Delegate for Gender-based Violence, such as a comic book about an abusive relationship between teenagers, informative flyers and short films with a guide to enable teachers to talk about the first signs of abuse in a relationship. The use of this material seems to be monitored at the regional level, although its impact is unclear.

90. Regarding sex education, GREVIO notes that is not part of the formal curricula. It would appear that when touched upon during other courses, the focus is placed on biological aspects of sexuality, rather than on the notion of consent, mutual respect and the impact of gender stereotypes on relationships. Concerns have been shared with GREVIO that the absence of sexual education in school causes young people to turn to content of a sexual nature available online and elsewhere, which, in many instances, perpetuates sexist behaviour and gender stereotypes. GREVIO is aware that a reform of sexual education in Spain is currently underway and is hopeful that it will duly incorporate these notions.

91. Teachers play a crucial role in identifying children who may be victims of violence. In that respect, GREVIO welcomes the legal obligation of education authorities to ensure that teaching staff receive training on knowledge and techniques to undertake the early detection of violence within the family (Organic Act 1/2004, Article 7c). In addition, some regional authorities are actively tapping into the potential that schools offer in terms of identifying children victims of gender-based violence, including girls at risk of undergoing FGM,⁴⁷ which GREVIO also welcomes.

92. Welcoming the favourable legal framework that makes gender equality one of the objectives of the education system, GREVIO invites the Spanish authorities to continue the varied efforts undertaken to ensure that pupils are equipped with knowledge and skills in relation to the topics identified in Article 14 of the Istanbul Convention.

⁴⁷ □ See, for example, the Andalusian Protocol for Healthcare Action in case of Gender Violence, which aims to ensure that all professionals in contact with a minor victim of gender-based violence or a girl at risk of FGM, including teachers, act in a co-ordinated manner. Available at: www.juntadeandalucia.es/export/drupaljda/salud_5af95874e02ad_protocolo_violencia_genero.pdf, p. 66 and p. 106.

D. Training of professionals (Article 15)

93. The standard set by the convention in its Article 15 is that of systematic initial and in-service training of the relevant professionals who deal with victims or perpetrators of all acts of violence. The training that is required must cover the prevention and detection of such violence, equality between women and men, the needs and rights of victims and the prevention of secondary victimisation. The questionnaire drawn up by GREVIO lists, in the table appended to it, the professional groups that GREVIO considers relevant and in need of such training.⁴⁸ GREVIO welcomes the fact that in Spain, Organic Law 3/2007 for Effective Equality between Women and Men foresees that the government administration and public bodies shall run training courses on equal treatment between women and men and on the prevention of intimate partner violence for all their employees, but notes with concern that the information obtained during the evaluation visit reveals differences in the levels of training that members of the various relevant professions undergo in practice.

94. One group of professionals that GREVIO notes receives varied training is the judiciary. For example, the Judicial School provides several initial training courses with content on violence against women to trainee judges. GREVIO also notes that the Organic Law on the Judiciary, amended by Organic Law 5/2018, now provides that all selection tests for admission and promotion within the judiciary or the state prosecutor's office shall incorporate study of the principle of equality between women and men and of measures designed to combat violence against women - and the application of those measures within the field of judicial function, as well as study of how to interpret and apply the law with a gender perspective (Article 310). While welcoming the fact that in 2019 both the training at the Judicial School and the syllabus approved for the selection tests included topics such as gender stereotypes, protection measures, intimate partner violence, sexual harassment and FGM, GREVIO notes that training on sexual violence is only recently being intensified. More and more efforts are being made to train prosecutors and other civil servants, but training on related post-traumatic stress disorder and its effect on testifying in court does not seem to be routinely offered to judges. Moreover, the level of training offered to forensic doctors who play a vital role in documenting evidence of rape and sexual assault in a non-intrusive and sensitive manner differs significantly, with some autonomous communities offering none at all.⁴⁹

95. Regarding in-service training, the Directorate General for the Public Justice Service organised in 2018 and 2019 multi-disciplinary workshops on gender-based violence, gathering various professionals related to the administration of justice such as prosecutors, lawyers, forensic doctors, psychologists and social workers as well as staff from Victim Support Offices. These workshops aim to increase professionals' knowledge on the legal framework and the different support services available, as well as raise awareness through direct testimonies of gender-based violence victims. They cover a wide range of subjects such as sexual violence; female genital mutilation; forced marriage; secondary victimisation; and minors, women with disabilities, migrant women, elderly women and transgender or transsexual women who are victims of sexual violence. GREVIO welcomes such training initiatives and their potential to improve training on sexual violence while reinforcing exchange of knowledge among various stakeholders.

96. Regarding the professional training for judges, online courses on intimate partner violence are offered. GREVIO welcomes the announcement to make the online course on violence against women and domestic violence developed by the Council of Europe HELP Programme (Human Rights Education for Legal Professionals) mandatory for all incoming judges. In addition, Organic Law 5/2018 makes the successful participation in training on gender bias and stereotypes a condition for specialisation in this area (Article 312). While welcoming this important legal solution, GREVIO notes with concern, however, that for those judges who do not wish to serve on specialist violence against women courts, in-service training on violence against women remains optional.

⁴⁸ □ These are, at a minimum, police and other law-enforcement officials, prosecutors, judges, social workers, medical doctors, nurses and midwives, psychologists (in particular counsellors and psychotherapists), immigration and asylum officials, educational staff and school administrators, journalists and other media professionals, servicemen and women.

⁴⁹ □ Amnesty International, Spain (2018), "It is time for you to believe me". A system that questions and leaves victims unprotected (Spanish only). Executive summary in English, p. 4.

97. Additional training is mandatory for members of the judiciary who work in courts for criminal matters specialising in intimate partner violence or in criminal or civil sections specialising therein (Article 310). This group of judges is under the obligation, prior to starting their assignment, to take part in specific training on violence against women, combining training days in court and individual study online. Judges who operate in courts with non-exclusive jurisdiction over violence against women are also offered the chance to take part in these courses. GREVIO notes with concern, however, that despite the emphasis in law on training of the judiciary, judicial outcomes, even from the specialist violence against women courts, show that misunderstandings of the patterns and dynamics of abuse, gender bias and failure to protect victims in cases of custody arrangements are still prevalent.

98. **While recognising that training for the judiciary is legally mandated, GREVIO strongly encourages the Spanish authorities to evaluate the different training available to the judiciary in order to improve its impact. GREVIO urges the authorities to ensure that the available training addresses all forms of violence against women covered by the Istanbul Convention, in particular sexual violence, as well as the psychological dynamics of intimate partner violence, post-separation violence, the effects of violence on child victims and witnesses, and the prevention of secondary victimisation.**

99. As for the different medical professions, efforts are made to ensure that all receive training on the Common Protocol for a Healthcare Response to Gender Violence, which recognises intimate partner violence as a public health issue and sets out standardised interventions in relation to this form of violence. GREVIO welcomes the stated will of the Spanish authorities to continuously improve the quality of medical interventions and support in respect of women who are exposed to intimate partner violence and notes that 80% of all initial training programmes for nurses contain modules on gender-based violence.⁵⁰ It is unclear, however, to what extent these training programmes cover more than intimate partner violence and why the remaining 20% do not teach about gender-based violence.

100. At the same time, GREVIO notes the concerns flagged by research that not all health professionals in Spain receive training on intimate partner violence and that, consequently, reluctance to address this in a co-ordinated and sensitive, including culturally sensitive, manner persists among health professionals. This particularly affects Roma women in Spain (Kale/Spanish Gypsies), who are more likely to seek help from primary health-care services than from police or social services. Many Roma women however find that the responses offered do not correspond to their needs, predominantly because of a lack of a relationship of trust with health professionals, their lack of training on intimate partner violence and the intersection between Roma women's heightened vulnerabilities and specific cultural circumstances.⁵¹

101. Law-enforcement officers receive training both at the entry level and while in service. For example, all incoming Civil Guard officers receive training on gender-based violence, and an additional 54 annually receive training in order to specialise in this area. National police may enrol in a 30-hour online training course, which around 10 000 officers have recently done according to the authorities. In addition, 405 officers have completed a 90-day face-to-face course. Law-enforcement officers also receive training on gender equality - in general and within the Civil Guard ranks – through courses at the Civil Guard Academy, online courses or annual Equality Days. From the information provided it is unclear what percentage of police officers are thus trained on gender equality as well as the different manifestations of violence against women, including their digital dimension, and whether the available training is mandatory or optional.

⁵⁰ □ Maquibar A., Estalella I., Vives-Cases C., Hurtig A-K. and Goicolea I., "Analysing training in gender-based violence for undergraduate nursing students in Spain: A mixed-methods study", 2018.

⁵¹ □ Vives-Cases C., Goicolea I., Hernandez A., Sanz-Barbero B., Davó-Blanes C. and La Parra-Casado D. (2017), "Priorities and strategies for improving Roma women's access to primary health care services in cases of intimate partner violence", *International Journal for Equity in Health*, Volume 16, 2017.

102. In a move to ensure higher levels of tertiary education on violence against women, many universities across Spain have introduced graduate programmes specifically dedicated to the study of violence against women, which GREVIO welcomes.⁵² Bachelor degrees, including law degrees, do not, however, require the study of the different forms of violence against women nor equality between women and men. While GREVIO notes with satisfaction that the different bar associations across Spain offer duty rosters of lawyers specialised in Organic Act 1/2004 on Integrated Protection Measures against Gender-based Violence, GREVIO is concerned that there is no comparable system nor degree of specialisation in relation to sexual violence among lawyers in Spain.

103. While it is difficult to assess in a comprehensive manner the level and quality of training of the vast number of professionals relevant to the implementation of the Istanbul Convention in its entirety, GREVIO welcomes the fact that particular efforts are being made by the central Spanish authorities in co-operation with the Spanish Federation of Municipal and Provincial Authorities (FEMP) to ensure that local government employees in rural areas, in particular towns with fewer than 20 000 inhabitants, benefit from online training on intimate partner violence.⁵³

104. GREVIO encourages the Spanish authorities to strengthen training efforts for professional groups such as law-enforcement officers, nurses and other medical professions, and teachers throughout the country, in particular by incorporating mandatory initial and in-service learning modules on the different forms of violence against women, including their digital dimension, the detection of such violence, secondary victimisation and equality between women and men.

E. Preventive intervention and treatment programmes (Article 16)

1. Programmes for perpetrators of domestic violence

105. In Spain, various voluntary and compulsory domestic violence perpetrator programmes exist. The General Secretariat of Penitentiary Institutions (SGPI) of the Ministry of Interior is in charge of the implementation of two custodial and non-custodial programmes dedicated to male perpetrators of intimate partner violence against women. These programmes apply to the whole territory except Catalonia, which retains its autonomous competence in the penitentiary sphere. Moreover, other voluntary community programmes are directly run by civil society organisations outside of the penitentiary and judicial systems.

106. Article 42 of Organic Law 1/2004 on Integrated Measures against Gender Violence contains the legal basis for the Penitentiary Administration to provide programmes for anyone sentenced for intimate partner violence against women. These voluntary programmes were initiated in the early 2000s and were harmonised to become the programme called “PRIA” in 2010. PRIA is executed by the SGPI’s Division of Treatment and Prison Management and was run in 49 custodial centres in 2017.⁵⁴ Divided into 25 group sessions over a period of six months, it offers cognitive-behavioural intervention from a gender perspective coupled with a risk-assessment procedure. In 2018, it was attended by nearly 500 of the 3 940 men convicted for intimate partner violence against women.⁵⁵ Professionals of the Division of Treatment and Prison Management are expected to encourage inmates’ participation through day-to day interaction and to create

⁵² □ See, for example, the Master’s Degree in Law and Gender Violence offered by the University of Valencia, the interdisciplinary Master’s Programme in Gender Violence: prevention and intervention by various professional fields, offered by Complutense University of Madrid and the postgraduate programme on male violence (“violencias machistas”) offered by the Autonomous University of Barcelona.

⁵³ □ Spanish State Report to GREVIO, p. 98, additional information to Annex 3.

⁵⁴ □ See the Spanish state report to GREVIO.

⁵⁵ □ Europapress, “Unos 9.000 condenados por violencia de género cursaron programas de reeducación en 2018, en torno al 30% de los penados”, Madrid, 2019, available at <http://www.europapress.es/epsocial/igualdad/noticia-9000-condenados-violencia-genero-cursaron-programas-reeducacion-2018-torno-30-penados-20190811130800.html>.

individual pathways to attendance – a seemingly efficient approach resulting in voluntary enrolment of the majority of inmates.⁵⁶ In 2010, concerns were raised over the elevated dropout rates, as one third of inmates enrolled in PRIA programmes did not complete them then.⁵⁷ Voluntary dropout, prison release and prison transfer were given as the main reasons for non-completion. According to the authorities, the effectiveness of these programmes has increased in more recent times. GREVIO recalls that maximising programme completion is one element that can foster effective intervention.⁵⁸ This can be achieved through more careful initial screening procedures to assess motivational factors as well as activities encouraging men's attendance and willingness to take responsibility for their violent acts. Furthermore, GREVIO emphasises the need to evaluate the effectiveness of such programmes.

107. In addition to programmes in custodial settings, the court-mandated perpetrator programme PRIA-MA was developed in 2010 as a form of alternative sentencing. It is run through collaboration agreements between the SGPI's Punishment and Alternative Measures Management Service and NGOs or social services (see below). This 10-month programme includes both group and individual sessions based on a socio-cognitive and a gender-sensitive approach and contains a risk-assessment procedure. In 2015, it was updated to include a more transversal gender perspective. With regard to recidivism, a study has demonstrated that only 6.8% of participants in PRIA-MA reoffended in the five years following the end of the programme.⁵⁹ However, GREVIO notes that less than one third of perpetrators of intimate partner violence sentenced to an alternative to prison were ordered by a judge to attend PRIA-MA, while the vast majority were sentenced to some form of community service.⁶⁰ While this may also require perpetrators to participate in re-education programmes, including in sex education programmes, which GREVIO welcomes, it is unknown to what extent perpetrators of the different forms of violence covered by the Istanbul Convention are court-ordered to attend such re-education programmes.

108. Moreover, GREVIO notes that from 2010 to 2019, 28 collaboration agreements were signed between SPGI and civil society organisations to ensure the implementation of PRIA-MA programmes, either by the social services of the different penitentiary institutions and/or civil society organisations directly. These include agreements with (women's) NGOs, faith-based organisations and universities, operating on a wide variety of principles and mandates. The specific selection criteria applied by SPGI remain unclear. GREVIO thus recalls that these programmes require trained facilitators who understand the gendered nature of domestic violence and possess the skills to deal with a wide variety of perpetrators.

109. GREVIO notes with satisfaction that in order to ensure the homogenous implementation of programmes across the different regions, the Alternative Sanction and Measures Committee composed of relevant actors running PRIA-MA has been set up. However, disparities remain among the different regions concerning the number of perpetrators attending PRIA-MA.⁶¹ The State Pact against Gender Violence (Measure 127) seems to intend to address these by calling for the expansion of gender-sensitive programmes for perpetrators of domestic violence, the improvement of co-operation among relevant judicial and penitentiary entities, and the need to reinforce training for professionals running these programmes.

⁵⁶ □ General Secretariat of Penitentiary Institutions (2010), *The gender offender in prison. Study of personal and criminological characteristics and intervention in the penitentiary environment* (available in Spanish only). Madrid: Ministry of Interior, available at www.interior.gob.es/web/archivos-y-documentacion/documentacion-y-publicaciones/publicaciones-descargables/instituciones-penitenciarias.

⁵⁷ □ Ibid.

⁵⁸ □ Domestic and sexual violence perpetrator programmes: Article 16 of the Istanbul Convention, Council of Europe, Strasbourg, 2014, available at <https://rm.coe.int/168046e1f2.v>.

⁵⁹ □ Pérez Ramírez M., Giménez-Salinas A. and Juan Espinosa M. (2018), "Reincidencia de los agresores de pareja en Penas y Medidas Alternativas", *Revista de estudios penitenciarios*, no. 261, pp. 49-79.

⁶⁰ □ In 2018, of the 29 120 perpetrators of intimate partner violence, only 9 110 were ordered by a judge to attend PRIA-MA.

⁶¹ □ See the Spanish state report to GREVIO, Annex 5.

110. Additional programmes exist, such as the court-ordered programme ENCUENTRO, which is part of an alternative sentencing regime for domestic violence offences, such as intergenerational violence and domestic violence committed by a woman, including same-sex partner violence against LGBTI women. Moreover, the voluntary custodial programme PICOVI is dedicated to people convicted of any violent behaviour, including domestic violence. Very few community-based programmes for perpetrators of domestic violence exist that would allow abusive men to participate on a voluntary basis. The reasons therefore seem to be mainly financial, with little funding made available for this type of preventive work.⁶²

111. Finally, GREVIO notes with concern that very few of the above programmes seem to incorporate the notion of ensuring the safety of, support for and the human rights of victims as a primary concern, nor do they seem to be implemented in close co-ordination with specialist women's support services, as required by Article 16, paragraph 3, of the Istanbul Convention.⁶³

112. Welcoming the varied types of domestic violence perpetrator programmes in existence in Spain GREVIO strongly encourages the Spanish authorities to work towards greater compliance with Article 16, paragraph 3, of the Istanbul Convention by ensuring a wider implementation of all custodial and non-custodial domestic violence perpetrator programmes, in close co-operation with women's specialist support services, and by ensuring the evaluation of all programmes in use in line with standard methodological rules in order to assess their impact.

2. Programmes for sex offenders

113. In Spain, the Sexual Assault Control Programme (PCAS), set up in 2006, serves as both a custodial and non-custodial programme for perpetrators of sexual violence against women and children. According to the Spanish authorities, in 2017, 441 male inmates and 267 men convicted of alternative sentences attended the PCAS. This programme is based on a socio-cognitive approach, encouraging sex offenders to take responsibility for their actions and aiming to reduce recidivism. It also includes a risk-assessment procedure. The duration of the programme varies from six months to two years, depending on the estimated risk of reoffending. Research has found that the recidivism rate of sex offenders attending PCAS was around 4%.⁶⁴ The current PCAS includes a gender perspective only in one of its modules dealing with "cognitive distortion". GREVIO recalls the need to ensure that programmes for sex offenders comply with identified best practices embedded in a gendered understanding of violence against women. GREVIO thus welcomes the setting up of a working group mandated to mainstream a gender perspective into all modules of the Sexual Assault Control Programme.⁶⁵

114. At regional and local levels, other programmes for sex offenders have been established. In the Community of Madrid, the Programme of Educational and Therapeutic Treatment for Juvenile Sex Offenders was set up to favour the reintegration of juvenile sex offenders. In Barcelona, the pilot programme "Circle of Support and Accountability" aims to avoid recidivism among recently released sex offenders through a multi-agency approach. It consists of a group of volunteers under professional supervision who support the social reintegration of sex offenders. The programme allows for exchange of information between relevant agencies such as law enforcement and health services.⁶⁶

⁶² □ Work with perpetrators, European Network, National Report Spain 2016, p. 4.

⁶³ □ Ibid., p. 7.

⁶⁴ □ Redondo S. and Mangot A. (2017), "Génesis delictiva y tratamiento de los agresores sexuales: una revisión científica", *Revista Electronica de Ciencias Crimnológicas*, no.2, available at www.ehu.es/ojs/index.php/eguzkiloire/article/view/18132/0.

⁶⁵ □ The Spanish state report to GREVIO, p. 26.

⁶⁶ □ Redondo S. and Mangot A. (2017), "Génesis delictiva y tratamiento de los agresores sexuales: una revisión científica", *Revista Electronica de Ciencias Crimnológicas*, no.2, available at www.ehu.es/ojs/index.php/eguzkiloire/article/view/18132/0.

115. GREVIO encourages the Spanish authorities to pursue their efforts to introduce a gender perspective throughout all modules of the Sexual Assault Control Programme and to ensure a common approach to the implementation of all programmes in accordance with the principles of the Istanbul Convention and recognised good practices.

F. Participation of the private sector and the media (Article 17)

116. In Spain, numerous laws and policies exist that require and encourage the involvement of private companies not only in campaigns to raise awareness of different forms of violence against women but also in the economic empowerment of women victims of violence, in particular intimate partner violence.

117. GREVIO commends the Spanish authorities for their strong recognition early on of the role that both the private sector and the media can play in preventing and combating all forms of violence against women. It welcomes the specific workplace-related measures for victims of intimate partner violence as set out in Articles 21 and 22 of Organic Law 1/2004 on Integrated Protection Measures against Gender-based Violence. By enabling them to adapt their professional obligations to their personal situation, allowing their absence from work, changing their workplace, their temporary suspension of employment with reserve of post or the termination of employment contracts, an example is set to show just how important flexible employment arrangements are for working women who are breaking free from abusive relationships.

118. Similar employment-related measures in support of victims of domestic violence exist in the public sector. GREVIO notes with satisfaction that since 2015 a procedure has been in place allowing for mobility of civil servants in public administration who are victims of intimate partner violence.⁶⁷

119. Reinforcing the role of the private sector in preventing and combating intimate partner violence, the National Strategy for the Eradication of Violence against Women (2013-2016) identified significant roles for unions and employers in combating violence. The State Pact envisages further the promotion of employment and social integration of victims of intimate partner violence, which GREVIO welcomes (measure 128 of the State Pact). GREVIO also welcomes the decision of the Spanish authorities to include in the composition of the State Observatory on Violence against Women two business associations and the two largest trade unions. Moreover, several initiatives set up by the Government Delegation for Gender-based Violence seek to involve businesses in awareness-raising campaigns and to adopt inclusive employment policies for women victims of intimate partner violence.⁶⁸

120. GREVIO notes with regret, however, that implementing the above seems to be a challenging task. Women's access to employment-related measures and the economic benefits available under Organic Law 1/2004 remain difficult (see Chapter IV, Section C on General Support Services Article 20). Different interpretations of the requirements set out in Article 23 of the Organic Law have resulted in diverging practices, and data on the overall use of the different measures are limited. While the Public Service of State Employment (SEPE) seems to collect data on the overall number of women who have benefited from the employment-related measures, they are not broken down by individual measure. This prevents reliable conclusions to be drawn regarding the practical relevance of the above workplace-related measures to victims of intimate partner violence. What the data do indicate is that certain measures, such as government subsidies for employment contracts for victims of intimate partner violence, are rarely made use of, meaning this measure has yet to live up to its potential.⁶⁹ Without rigorous monitoring and

⁶⁷ □ Resolution of 25 November 2015 by the Secretary of State for Public Administration.

⁶⁸ □ One example is the initiative called "Companies for a society free of gender violence", which was started in 2012 and ran until 2017, engaging 129 public and private companies from different business sectors. As a result of this initiative, 1848 women entered the labour market in 2019.

⁶⁹ □ While the number of women who benefited from employment contracts given out on the basis of the subsidised employment scheme for victims of intimate partner violence seems to be rising steadily (from 836 in 2015 to 1381 in

evaluation, the reasons for the underuse of the available measures will remain obscure, with little prospect of addressing them in the near future.

121. Beyond the more specific measures in support of victims of domestic violence, GREVIO notes with satisfaction the adoption of legal provisions that place companies with more than 50 employees under the obligation to design a plan for gender equality.⁷⁰

122. As regards sexual harassment and harassment on the grounds of sex in the workplace, GREVIO notes with satisfaction that Law 3/2007 for Effective Equality between Women and Men contains preventive measures (Article 48) as much as obligations on companies to set up specific reporting and complaint procedures. GREVIO welcomes the specific reference to the role of workers' representatives, required by law to raise awareness among all employees of sexual harassment and to report any such incidents. Furthermore, GREVIO welcomes the fact that a reference manual has been made available by the Spanish authorities to serve as guidance and inspiration for companies to draw up protocols for action and the prevention of sexual harassment.⁷¹

123. GREVIO notes with concern, however, that there are no available official statistics on the number of workplace harassment cases or data to indicate that this law has contributed to encouraging victims to speak out to employers and take action against this type of violence.

124. While recognising that reporting and complaint mechanisms have been introduced by law and largely put in place, GREVIO encourages the Spanish authorities to collect data on the number of women victims of sexual harassment at work, complaints filed by the victims and the outcome of such complaints.

125. As regards the involvement of the media, several laws set out specific rules for media coverage of women and reporting on gender-based violence. These include Organic Law 1/2004 on Integrated Protection measures against Gender-based Violence, Law 3/2007 on effective equality for women and men and the General Audio-visual Law (Law 7/2010)⁷².

126. Law 1/2004 and Law 3/2007 prohibit advertising material that uses the image of women in a degrading or discriminatory manner and seeks to reinforce an image of women that respects their dignity and equality (Articles 10 and 41 respectively). Article 12 of Law 1/2004 provides for a complaint mechanism to ensure the withdrawal or rectification of sexist and harmful content in the media. Institutions and associations working for equality between women and men, including the Government Delegation on Gender-based Violence and The Women's Institute, may lodge legal action for the withdrawal of advertisements deemed illegal.

127. GREVIO notes with particular satisfaction the long-standing role which the Women's Image Observatory (OIM) has played in monitoring and calling out sexist portrayals of women in the media and in advertising. Set up in 1994 under the Women's Institute, it ensures the promotion of a balanced, non-stereotypical image of women by monitoring the content of the media and advertising directly and through complaints from the general public in order to identify sexist or discriminatory treatment of women. It has the power to request the amendment or removal of the most stereotypical or denigrating advertising campaigns against women.

2018), their overall number seems small compared to the high number of victims, in particular the large share of migrant women who are often in difficult socio-economic circumstances.

⁷⁰ □ See articles 45-47 of Law 3/2007.

⁷¹ □ Reference manual for creating protocols for action and prevention against sexual harassment and sexually motivated harassment at work, available at www.igualdadেনlaempresa.es.

⁷² □ Law 7/2010 establishes a legal framework for the audiovisual sector and set out specific measures to promote gender equality and to avoid gender discrimination in mass media and advertising content (see especially Articles 4.2 and 18.1).

128. In addition to the above and the adoption of legal measures to ensure equality between women and men not only in the state-owned media but also in the privately owned media,⁷³ an Observatory on Equality in the Spanish Radio and Television Corporation (Observatorio de Igualdad en la Corporación RTVE) was set up in 2017. It monitors the existence and application of ethical codes that promote equality and prevent violence against women in the activity of the RTVE Corporation and ensures that the content broadcast on any of the media of the RTVE Corporation do not justify, trivialise or incite violence against women. It also collaborates in institutional campaigns aimed at promoting equality between men and women and eradicating violence against women.

73

□ See Articles 36-39 of Law 3/2007.

129. It is with regret that GREVIO notes that despite the above efforts, many of which may serve as promising examples, there are still reports on incidents of rape and domestic violence that place the blame on victims and that advertising still boosts stereotypes and relegates women to fashion, cosmetics and hygiene, as sexualised objects.⁷⁴ Despite long-standing efforts to portray women in non-stereotypical and non-sexist ways, the OIM continues to receive high numbers of complaints and made 221 requests for the removal of sexist, discriminatory or degrading media or advertisement content in 2016 and 2017.

130. GREVIO encourages the Spanish authorities to step up efforts to curb the sensationalist approach pursued by some broadcasters and media outlets in covering gender-based violence and in presenting the image of women in a plural and non-stereotyped manner, in particular by training journalists on the different forms of violence against women and gender-based violence and how to report on them.

IV. Protection and support

131. Chapter IV of the Istanbul Convention aims at ensuring a multifaceted, professional and victim-oriented support structure for any woman who has experienced any of the forms of violence covered by the convention.

A. General obligations (Article 18)

132. In line with the general multi-agency and comprehensive approach promoted by the Istanbul Convention, Article 18, paragraph 2, requires parties to ensure that there are appropriate mechanisms in place that provide for effective co-operation among the judiciary, public prosecutors, law-enforcement agencies, local and regional authorities and NGOs. This requires the establishment of structures, such as round tables, case conferences or agreed protocols, that enable a number of professionals to co-operate on individual cases in a standardised manner. According to the Istanbul Convention, such co-operation must be based on a gendered understanding of violence against women and domestic violence and focus on the human rights and safety of the victim. Specialist women's support services play an important role in guaranteeing that the rights of victims are safeguarded in multi-agency co-operation.

133. The adoption of Organic Law 1/2004 on Integrated Protection Measures against Gender Violence brought about significant change to the response to women victims of intimate partner violence in Spain, which GREVIO welcomes. This law envisages a range of measures in support and protection of intimate partner violence victims to be offered in an integrated manner and on the basis of multi-agency co-operation among law-enforcement agencies, specialist courts on violence against women, health services and any entities providing legal counselling to women (Article 19). It specifically requires specialist knowledge and effective service delivery, for example by offering these services in the same facility ("one-stop shop") and also includes longer-term economic empowerment measures. GREVIO welcomes this exemplary approach to conceptualising intimate partner violence services, which is in line with and yet predates the Istanbul Convention. It notes, however, that the aim of the Istanbul Convention is to ensure the availability of such integrated and co-ordinated approaches to service provision in relation to all forms of violence it covers. This would include forms of violence such as sexual violence, sexual harassment, stalking, forced marriage, FGM and forced abortion/forced sterilisation.

134. GREVIO is thus concerned that efforts to set up comprehensive support services and multi-agency co-operation in Spain have concentrated exclusively on one form of violence covered by the Istanbul Convention to the detriment of other forms of violence. It is in particular in relation to sexual violence, forced marriage and female genital mutilation that the lack of co-ordinated mechanisms to provide for effective co-operation between all relevant state agencies in protecting and supporting victims is particularly pronounced (see below). Moreover, GREVIO was informed about considerable variations in the quality and availability of service provision across the different regions.⁷⁵ In order to close the existing gaps related to a multi-agency approach and service provision, GREVIO points to the need for national guidelines/standards in this area, to be drawn up in co-operation with women's NGOs experienced in the provision of services.

135. Another concern that arises in relation to the provision of services on the basis of Organic Law 1/2004 on Integrated Protection Measures against Gender Violence is how women victims qualify for such services. In 2018, a legislative amendment to Article 23 of Organic Law 1/2004 was introduced to ensure that women's access to the employment rights and social security benefits set out in its Chapter II no longer hinges entirely on the issuance of a protection order. In practice, differences seem to exist in the implementation of this amendment. According to information provided to GREVIO by experts and women's NGOs, in some parts of Spain, women's access to domestic violence shelters will depend on official recognition of her as a victim of intimate partner violence, with women's access barred to such shelters where protection orders are denied. In other regions, it is mainly women's access to social and economic rights and financial

⁷⁵

□ Information provided to GREVIO during the evaluation visit.

benefits that will require official recognition as a victim of domestic violence – with access to shelters handled on a needs basis.

136. GREVIO welcomes the Spanish authorities' efforts in levelling out the difference in implementation of Article 23 of Organic Law 1/2004, which is set out in points 62 and 63 of the State Pact, and is hopeful that a more flexible regime to establish women's eligibility will be introduced swiftly and reduce the existing barriers to seeking help.

137. GREVIO urges the Spanish authorities to set up multi-agency co-operation structures among the relevant statutory and other agencies in relation to sexual violence, sexual harassment, stalking, forced marriage, FGM and forced abortion/sterilisation, as required by Article 18, paragraph 2 of the Istanbul Convention, and to ensure their approach to service provision is based on a gendered understanding and other principles on which support and protection services should be based, such as being aimed at empowerment and avoiding secondary victimisation (Article 18, paragraph 3). To this end, GREVIO strongly encourages the authorities to develop national guidelines/standards in this area in co-operation with women's NGOs experienced in the provision of services.

B. Information (Article 19)

138. The right to information for women victims of domestic violence is enshrined in Article 18 of Organic Law 1/2004 on Integrated Protection Measures against Gender Violence. GREVIO welcomes this specific legal obligation placed on statutory agencies and other public authorities to offer women victims comprehensive information and advice adapted to their specific personal circumstances, including on any protective measures and support services that are available to them. GREVIO notes with satisfaction that efforts are required, by law, to ensure that women with disabilities who experience domestic violence receive such information in a format that is accessible to them. However, GREVIO notes with concern that NGOs representing women with disabilities stress that this is rarely ensured in practice, as responsible public entities are not sufficiently trained and equipped to do so.

139. Moreover, Law 4/2015 on the Statute of Victims of Crime sets out the right of all victims of crime to receive timely and adequate information adapted to the nature of the crime suffered. This comprises information on available support services, how to press charges and where to obtain legal representation and counselling. GREVIO welcomes the agreement signed between the Ministry of Justice and the Spanish State Confederation of Deaf Persons to improve the experience of deaf people with the justice administration system. Most information for victims of crime is offered by the Victim Support Offices set up at the level of the autonomous communities – where they have accepted responsibility for matters of criminal justice. Women's NGOs brought to GREVIO's attention, however, that staff members in such offices do not apply a gendered approach to violence against women. In addition to women with disabilities, other groups, such as migrant women who do not speak Spanish, experience barriers to the realisation of the right to information, primarily due to insufficient interpretation services. Language and other barriers also seem to affect asylum-seeking women, who rarely approach specialist services for women victims of violence.

140. GREVIO encourages the Spanish authorities to strengthen efforts to provide information to victims of all forms of violence against women in a format and language they understand.

C. General support services (Article 20)

1. Social services

141. As specified in Article 148.1.20 of the Spanish Constitution and as accepted by the respective Statutes of Autonomy, social service provision is the responsibility of the autonomous communities and thus characterised by high levels of local autonomy. Article 19 of Organic Law 1/2004 on Integrated Protection Measures against Gender Violence sets out extensive obligations for the autonomous communities to provide integrated social assistance for victims of intimate partner violence – through general and specialist support services. These obligations include the provision of care, crisis support and emergency accommodation on the basis of urgent action, specialist approaches and multi-agency co-operation. The type of services to be made available to victims of intimate partner violence include, among others, timely information, psychological assistance, social assistance, financial assistance, social security benefits and employment assistance, including support on training and professional upskilling. Several measures seek to ensure women's economic empowerment, such as the specific employment programmes for women victims of intimate partner violence (see Chapter III, Section F, Participation of the private sector and the media, Article 17) as well as single payments for the duration of six months for those without a job or with earnings below the minimum wage (Article 27 of Organic Act 1/2004). GREVIO commends the Spanish authorities for enshrining in law the right to such comprehensive support – as required by Article 20 of the Istanbul Convention.

142. Whether or not these extensive services are offered to victims of domestic violence only or are extended to victims who experienced or are at risk of sexual violence, forced marriage, FGM, forced sterilisation/abortion and sexual harassment, as required by the convention, however, seems to be determined by the legislation in place at regional level. Some autonomous communities have extended this scope to some extent, while others seem to conform to the scope of central legislation.

143. As a result, the types of violence against women that social services in the different autonomous communities are mandated and equipped to respond to vary significantly – as does the degree of specialisation, training and knowledge acquired by social services staff on forms of violence against women apart from intimate partner violence. While some seem to have developed protocols and interventions in relation to intimate partner violence only, including on the basis of multi-agency co-operation, social services in other regions seem to also aim at offering adequate responses to forms of violence such as rape and female genital mutilation.⁷⁶ Many offer legal and psychological counselling, including also for children who have witnessed violence, as well as financial assistance, housing, education and assistance in finding employment.

144. GREVIO is thus concerned that the comprehensive approach developed by social services to protecting and supporting victims of intimate partner violence is not sufficiently applied to the additional forms of violence against women covered by the Istanbul Convention. The prevailing focus on intimate partner violence may in fact stand in the way of ensuring, in a sufficiently uniform manner across all regions in Spain, the provision of support and protection to women experiencing forms of violence other than intimate partner violence. While GREVIO recognises the difficulties that lie in ensuring the even provision of services throughout a decentralised country with 17 autonomous regions and communities, it recalls that, in line with international law, central authorities are responsible for the implementation of the Istanbul Convention, regardless of the territorial organisation of the country.

145. At the same time, GREVIO is concerned that the level of service provision by municipal social services had significantly declined following the decision in 2013 to remove from the municipalities any competences in the area of gender-based violence. While GREVIO welcomes the fact that these competences have since been reinstated and that funds have been made available by the central authorities to increase levels of provision, the effect of the downscaling of services is still noticeable in terms of loss of expertise and continuity in service provision.

76

□ Annex 1. Information about Autonomous Communities and Cities with Statutes of Autonomy; state report submitted by the Government of Spain.

146. **GREVIO strongly encourages the Spanish authorities to take effective measures to ensure women’s access to general support services more evenly across the country by reducing regional disparities in the level and quality of service provision.**

2. Health-care services

147. Public health-care services play an important role in the prevention of violence and in the provision of medical and other support, including referrals to specialist counselling services. In Spain, the National Health System’s Interterritorial Council set up a Commission on Gender Violence mandated to improve the public health sector’s response to intimate partner violence. Since 2007, a Common Protocol for a Healthcare Response to Gender Violence has been in existence, laying out procedures and guidelines for health professionals in dealing with women who have experienced physical, sexual or psychological violence. The protocol provides tools to health professionals to detect victims of violence, to avoid secondary victimisation, to document acts of violence, to develop a safety plan and to refer victims to relevant services.

148. In addition, routine inquiries on the basis of a publicly available questionnaire have been introduced to ensure women exposed to domestic violence are identified by nurses, general practitioners and social workers within the health sector. Moreover, some autonomous communities have introduced standardised screening systems for all women who seek medical help – irrespective of the reason. By adding questions on the family situation and whether there are any issues to be addressed, medical professionals are instructed to identify women who are subjected to intimate partner violence. GREVIO welcomes this initiative to promote a proactive role for health professionals, which can significantly enhance the detection of women victims of intimate partner violence and, if implemented adequately, be the first step towards safety.

149. GREVIO notes, however, that despite the above, many health-care professionals fail to identify and respond to victims of intimate partner violence, in particular in rural areas in Spain. Concerns have also been raised about the quality of injury reports for use by courts drawn up by health-care professionals documenting intimate partner violence. Standardised forms exist for all forms of injuries, leaving little room for health-care teams to document the specificities of intimate partner violence. At the same time, the workload of many health-care professionals does not leave sufficient time for report writing. The limited training on this seems to add to the desirability of their quality.

150. Another form of violence specifically addressed by a health protocol is FGM. The Common Protocol for Healthcare Response on FGM adopted in 2015 sets out guidelines for health professionals to detect women and girls at risk of or who have already undergone FGM with a view to providing medical support and setting in motion preventive measures. Experts in this area seem to consider the preventive measures set out in the common protocol too narrow as they focus mainly on the health sector rather than offering an integrated approach to FGM. Some autonomous communities have introduced more integrated protocols, linking up the health sector and other actors, including parents who are asked to sign a “commitment” to not perform FGM on their daughters when travelling to their country of origin. Mandatory health checks by paediatricians before and after form part of this approach.⁷⁷ However, not all doctors seem to be aware of the existing protocols.

151. While GREVIO acknowledges that many regions in Spain have issued guidelines or protocols for health professionals to set out standardised approaches to victims of sexual violence,⁷⁸ it is concerned by the absence of a national protocol dedicated specifically to this form of violence. The lack of a clear common protocol has caused stark contrast in terms of the quality of care and procedures applied. Existing guidelines indeed do not seem to ensure interaction between all relevant professionals, leading to different procedures in particular regarding the

⁷⁷

□ Submission to GREVIO by the End FGM European Network, Save a Girl Save a Generation, UNAF and Medicos del Mundo, p. 5.

⁷⁸

□ An overview of protocols for medical professionals at the level of autonomous communities is provided in the submission to GREVIO by the Spanish Istanbul Convention Platform, page 13.

collection of forensic evidence. Public health services in some regions, such as the Autonomous Community of Madrid, provide medical support if there are injuries that need to be treated, but no examinations are provided to preserve evidence for a future criminal complaint. The level of co-ordination and co-operation between law-enforcement agencies and medical and forensic examiners also seems to vary and many women find themselves sent to various places before having their needs addressed, requiring them to spend hours after the rape without the opportunity to wash, change, sleep or otherwise recover. GREVIO recalls that a co-ordinated response among all stakeholders is key to the provision of holistic support for victims.

152. GREVIO urges the Spanish authorities to set out a co-ordinated and comprehensive approach to the provision of medical and forensic services to victims of rape and sexual assault that links in law enforcement and other relevant statutory agencies and medical professionals trained to meet the needs of these victims in a sensitive and trauma-informed manner. Moreover, GREVIO strongly encourages the Spanish authorities to take measures, including through specialist training, to ensure a proactive role for medical professionals in detecting intimate partner violence and to raise the quality of injury reports to ensure their usefulness in criminal proceedings.

D. Assistance in individual/collective complaints (Article 21)

153. Article 21 of the Istanbul Convention sets out the obligation of states parties to ensure that victims have information on and access to applicable regional and international complaint mechanisms, depending on which mechanisms have been ratified. In the case of Spain, these include the European Court of Human Rights, the CEDAW Committee and the European Social Charter. The provision aims at promoting the availability of sensitive and knowledgeable assistance to victims in presenting such complaints, which may be provided by the state, bar associations, relevant NGOs or other bodies.⁷⁹ According to women's organisations and legal professionals, information and assistance of this sort available to victims in Spain is mostly at the initiative of civil society and that more could be done by the authorities to enhance victims' access to these mechanisms.

154. GREVIO invites the Spanish authorities to step up their efforts to ensure victims have information on and access to applicable regional and international complaint mechanisms.

E. Specialist support services (Article 22)

155. The aim of specialist support is to ensure the complex task of empowering victims through optimal support and assistance catered to their specific needs. Much of this is best ensured by feminist women's organisations and by support services provided, for example, by local authorities with specialist and experienced staff with in-depth knowledge of gender-based violence against women. It is important to ensure that these services are sufficiently spread throughout the country and are accessible to all victims. Moreover, these services and their staff need to be able to address the different types of violence covered by the scope of the Istanbul Convention and to provide support to all groups of victims, including hard-to-reach groups.

156. GREVIO commends the Spanish authorities for the network of specialist and integrated support services for intimate partner violence set up throughout the regions. Beyond domestic violence services, however, very little specialist expertise seems to exist in support of victims of any of the additional forms of violence covered by the Istanbul Convention. Very few autonomous communities offer specialist services for victims of rape (see below), and still fewer specialist support services, if at all, exist for women at risk of or experiencing forced marriage, FGM, stalking and forced sterilisation/abortion.⁸⁰ Local authorities do not seem to invest in such services. Much-

⁷⁹

□ Explanatory report to the convention, paragraph 130.

⁸⁰

□ An overview of support services offered by the different Autonomous Communities is available at

needed counselling and long-term psychological support and trauma care are thus unavailable for many of the forms of violence covered by the Istanbul Convention.

157. GREVIO thus emphasises the need to map, at regional level, the existence of specialist services beyond those developed for domestic violence, which should take into account the requirements established by the Istanbul Convention for the provision of specialist services, in particular those set out in Article 18 of the convention. GREVIO draws the Spanish authorities' attention to the fact that the Council of Europe has developed a methodology and tools to establish inventories and to chart the various support services available for women who are victims of the diverse forms of violence covered by the convention, which can help any future mapping efforts.⁸¹

158. Recalling the importance of women-to-women specialist support and counselling for any experiences of violence covered by the Istanbul Convention, GREVIO urges the Spanish authorities to provide or arrange for adequate specialist women's support services with a gendered approach in all autonomous communities and for all forms of violence covered by the Istanbul Convention. The aim should be to ensure the provision of immediate, medium- and long-term support by involving and tapping into the long-standing expertise built up by women's specialist support services in civil society.

159. In addition, GREVIO strongly encourages the Spanish authorities to take measures to promote, in all autonomous communities, a comprehensive mapping of existing specialist support services for rape and sexual violence, stalking, sexual harassment, forced marriage, FGM and forced abortion and forced sterilisation with a view to filling, on a needs basis, the gaps in service provision.

F. Shelters (Article 23)

160. Shelters for victims of domestic violence fall within the competence of the autonomous communities of Spain. In addition, there are some, albeit few, that are locally or privately run. A difference is made between crisis centres, which provide up to 15 days of accommodation and assistance in a situation of immediate need, and shelter houses, which offer medium- to long-term accommodation (up to one year) in facilities with specialist staff to provide information, psychological support, legal assistance and other support for victims. GREVIO notes with satisfaction that the description/guidance offered by the Government Delegation on Gender Violence points to the need to ensure that shelter houses be adapted to the needs of women above the age of 65, women who are of foreign origin, women with disabilities and girls under the age of 18. GREVIO also welcomes the referral protocol that is in place to ensure the swift referral of women in need of emergency accommodation and shelter places within and across the different autonomous communities/regions where local shelters are filled to capacity.

161. All autonomous communities offer at least one crisis centre and one shelter house, but GREVIO notes with concern that the number of places per capita differs strongly from one to another. In 2017, there were a total of 1 689 places available in shelter houses,⁸² which clearly falls short of the per capita ratio of one family place⁸³ per 10 000 head of population as established in the Explanatory Report to the Istanbul Convention.⁸⁴

www.violenciagenero.igualdad.mpr.gob.es/violenciaEnCifras/Recursos_Autonomicos/Informacion_Descriptiva/home.htm.

81

□ “Mapping support services for victims of violence against women in line with the Istanbul Convention standards – Methodology and tools”, L. Kelly, Strasbourg, December 2018.

82

□ See the Spanish state report to GREVIO, Annex 4, page 102.

83

□ A family place refers to a place that accommodates one woman with her children based on the average number of children per family within the Council of Europe member state. This is, therefore, more than a single “bed space”.

84

□ Paragraph 135 of the Explanatory Report to the Istanbul Convention.

162. Moreover, varying regional practices in terms of admitting victims to shelters have been reported (see Section A, General obligations, Article 18), obliging women to file a police report in some and creating uncertainty about the procedure in others. It has been brought to GREVIO's attention that for women who report domestic violence to the police, a chain of protective and supportive measures will be set in motion and referrals to shelters and other support services are swift. Those, however, who do not turn to the police – and this is particularly the case for women with disabilities who may experience serious practical barriers in reaching out to the police – experience heightened difficulties in accessing the available services, including shelters. Women in rural areas without easy access to public or private transport, for example, may find it difficult to access a police station, and where they do, they may be discouraged by the fact that there is no anonymity. Women substance abusers or women in prostitution may not turn to police for other reasons, and migrant women may not do so for reasons to do with their status in the country. GREVIO is concerned that, in practice, reluctance to turn to the police may result in reduced levels of access to shelters. GREVIO is also concerned by information that women with disabilities who are victims of domestic violence are frequently admitted to disability care homes rather than domestic violence shelters.

163. The consequences of the different funding levels for specialist services in terms of their impact on the financial stability of women's NGOs and on the continuity of service provision are examined earlier in this report in relation to Article 8 of the convention.

164. **GREVIO strongly encourages the Spanish authorities to take effective measures to:**

- a.* **promote a level of shelter provision in all autonomous communities that conforms to the standard set in the Explanatory Report to the Istanbul Convention of one family place per 10 000 head of population;**
- b.* **improve the access to shelters for women with disabilities, women in rural areas, women over the age of 65, girls, women substance abusers, women in prostitution, and migrant women.**

G. Telephone helplines (Article 24)

165. In 2007 a national telephone helpline (016) was set up, offering support and counselling, including legal counselling, in connection with intimate partner violence as defined by Organic Act 1/2004 on Integrated Protection Measures against Gender Violence. It operates 24/7, ensures full anonymity and confidentiality, and is available in 52 languages (15 spoken by counselling staff and an additional 38 through a remote translation service). Access for callers with disabilities is ensured through visual interpretation services, textphone and an online chat forum (www.telesor.es). GREVIO commends the Spanish authorities for their efforts in making this helpline so widely accessible.

166. Regional helplines also exist and have, in some cases, predated the introduction of 016. All regional numbers seem to be linked up with the national helpline 016 to ensure that any calls made to 016 in the regions will be instantly transferred to the regional helpline to enable callers to benefit from regional expertise and referrals to regional specialist support services. Where calls concern a situation of immediate danger, law-enforcement agencies can be alerted instantly. A helpline dedicated to intimate partner violence (ATENPRO) has been in existence since 2005. GREVIO acknowledges that confidentiality, as a general principle of services, may be breached when there is a need to protect the life and safety of a victim (or others, such as children), but has not received information on the rules regulating such situations by 016 helpline staff.

167. GREVIO welcomes the efforts made to ensure the national helpline's accessibility for all and notes with appreciation that, on average, it receives more than 70 000 calls per year. It notes that efforts are underway to expand the remit of this helpline in order to ensure that advice and referrals can be offered in relation to forms of violence as required by the Istanbul Convention, such as forced marriage, FGM, sexual violence, sexual harassment, stalking or forced sterilisation. GREVIO also recalls that expanding the scope of the helpline would require adequate specialist

expertise and training on *all* forms of violence covered by the convention, in order to ensure that the service meets the specific needs of victims of various forms of violence.

168. Moreover, GREVIO notes that – as with other vital services for the protection and support of victims of violence against women – this helpline is subject to tendering conditions that seem to jeopardise the quality of the services offered because of the constant lowering of the costs. Despite formal requirements for adequate training for staff members, these tendering procedures seem to create less favourable working conditions, resulting in job dissatisfaction and a high turnover of staff.

169. **GREVIO strongly encourages the Spanish authorities to expedite the broadening of the national helpline’s scope to ensure counselling and referrals in relation to all forms of violence covered by the Istanbul Convention by trained staff.**

H. Support for victims of sexual violence (Article 25)

170. In Spain, sexual violence referral and rape crisis centres exist in some large cities, mainly provincial capitals, and may be offered in hospital settings or by specialist services such as the CIMASCAM in Madrid and AMUVI in Andalusia. Their numbers are, however, not nearly sufficient to ensure the provision of medical and forensic examination, trauma support and counselling of victims throughout the country. Of the 17 autonomous communities, only seven report the existence of a specialist service for victims of sexual assault and rape, leaving large parts of Spain and in particular rural areas under-served.⁸⁵ Rape crisis centres that operate on the basis of providing forensics and counselling and trauma support for victims are rarer still. These disparities seem to be linked to differences in regional laws and policies, including whether or not sexual violence is covered by the latter. In this context, GREVIO reiterates its point (see the section on health services) that there is no common (national-level) protocol on sexual violence, which would comprehensively address this issue.

171. GREVIO acknowledges that the autonomous communities may also arrange for counselling to be provided by services dedicated to intimate partner violence (“gender violence”) set up within the framework of Organic Law 1/2004, which greatly increases the number of counselling services available to rape victims across Spain. However, adding sexual violence into contracts for service providers originally mandated to support victims of intimate partner violence does not allow for the different dynamics of these two types of violence, and the specific needs of victims to be adequately addressed. Sexual violence counselling and support is often taken up some time after the violence and involves longer-term engagement to deal with the legacies and harm of violence, whereas intimate partner violence often requires crisis-led immediate protection. Research has shown that where support services for intimate partner violence and sexual violence are combined, services for intimate partner violence take priority because of the immediate nature of the crisis.⁸⁶ Moreover, adding sexual violence services to existing domestic violence counselling will not address the apparent need to offer victims of rape immediate medical care and trauma support combined with forensic examinations needed for prosecution where victims decide to press charges. The information provided to GREVIO suggests that too many victims of rape are asked to manoeuvre in a system that is not based on multi-agency co-operation and standardised referrals and that, as a result, does not offer easy access to forensics, immediate medical care, trauma support or therapy and, where so desired, the possibility to file a complaint. This is particularly worrisome in light of the fact that where victims turn to hospitals first, their stored forensic evidence may be dismissed in court because its storage was not ordered by a judge (see Chapter VI, Investigations and prosecution). GREVIO is concerned by the high potential for re-traumatisation as a result of the above.

85

□ Amnesty International, Spain (2018), “It is time for you to believe me. A system that questions and leaves victims unprotected”, (in Spanish), Executive summary in English, p. 5.

86

□ Fry D. (2007), “A room of our own: sexual assault survivors evaluate services – a research report from the New York City Alliance Against Sexual Assault”, New York City Alliance Against Sexual Assault, New York.

172. GREVIO thus welcomes the fact that the City of Madrid has recently opened the first 24/7 rape crisis centre in Spain. The high level of use that is made of the few existing specialist services offering holistic care clearly demonstrates the need for such services.⁸⁷ Where they also include legal representation and counselling throughout the entire duration of legal proceedings, they fill a vital need and provide the type of holistic care that is necessary for victims.

173. In this context, the information provided in the state report regarding the financial support of the central government to the autonomous communities to support regional efforts to provide specialist support services is thus promising. It is unclear, however, whether this additional funding is leading to an increase in sexual violence support services at regional level.

174. GREVIO urges the Spanish authorities to take measures to establish a sufficient number of rape crisis or sexual violence referral centres accessible to victims of rape and/or sexual violence, which meet all their needs in the short, medium and long term and include immediate medical care, high-quality forensic examinations, psychological and legal support, and referral to specialist organisations, as well as to develop a protocol that would comprehensively address this form of violence and support a holistic response to the needs of victims. A victim's access to the different support services should not depend on her willingness to lodge a complaint.

I. Protection and support for child witnesses (Article 26)

175. The obligation set out in this article is to ensure that whenever children have witnessed domestic violence, rape, sexual harassment or other forms of violence covered by the convention, the services provided to direct victims are also equipped to address the needs and rights of any children who were present. While this is most relevant to domestic violence cases, it is important to bear in mind that other forms of violence may also be witnessed by children.

176. Research has shown that children who witness one parent's assaults on another in the home often develop emotional problems, cognitive functioning disorders and accept attitudes around violence that need to be addressed in the long term.⁸⁸ It is thus of crucial importance to ensure their access to psychological counselling and therapy as soon as they come to the attention of the authorities. The 2019 Macro-Survey on Violence against Women in Spain showed that 60.6% of women who experienced at least one episode of domestic violence in their lifetime did so in front of their children.⁸⁹ In many cases, the children were direct victims of the violence (51.7%).

177. In Spain, since the adoption of Organic Law 8/2015 revising Organic Law 1/2004 on Integrated Protection Measures against Gender Violence, children are included in the scope of holistic support and protection offered by this law if they are underage or under the guardianship or custody of women who are victims of intimate partner violence. GREVIO commends this official recognition of children's victimisation in the context of witnessing intimate partner violence. It also welcomes a recent change to Article 156 of the Civil Code removing the requirement of both parents' consent for psychological counselling and support for common children.⁹⁰ The abusive parent can thus no longer prevent his children from attending much-needed counselling sessions – a frequent obstacle to children receiving psychological support. However, concerns were shared with GREVIO that in practice, abusive parents still need to be informed of any counselling offered to their children, leaving women and the children themselves in fear of retaliation if they do opt for

⁸⁷

□ According to data provided by CIMASCAM, a total of 600 active clients are currently being supported. The number of new requests for help is growing, not least because of greater public awareness resulting from campaigns such as the #me too and #I believe you campaigns.

⁸⁸

□ "Problems associated with children's witnessing of domestic violence", Jeffrey L. Edleson, VAW Net, available at http://vawnet.org/sites/default/files/materials/files/2016-09/AR_Witness.pdf.

⁸⁹

□ Macro-Survey on Violence against Women, 2019, p. 96-97; published by the Government Delegation on Gender-based Violence.

⁹⁰

□ Royal Decree – law 9/2018 of 3 August 2018.

counselling. It may also endanger their safety, in particular where visitation rights have been granted. This may offset any positive effect intended by this legislative change.

178. Psychological counselling and support are, in principle, available both for children residing within and outside of domestic violence shelters, and state funding is provided for such services, which GREVIO welcomes. Psychological support is also available to children who have lost their mothers to domestic violence (femicide). Agreement seems to exist, however, that the level of provision is not nearly sufficient to meet the demand, especially in rural areas.⁹¹ The level of available funding may also vary greatly from region to region. Moreover, the tendering procedures that these services are subjected to on an annual basis (see above) are causing a turnover in psychologists that is impacting on the children's ability to develop trust and heal.

179. GREVIO strongly encourages the Spanish authorities to ensure the provision of age-appropriate psychological counselling for child witnesses of all forms of violence covered by the Istanbul Convention throughout the country and in conditions that ensure continuity and quality.

J. Reporting by professionals (Article 28)

180. Spanish legislation envisages reporting obligations for professionals who may, in the course of their work, come into contact with victims of violence. The Criminal Procedure Law requires those who learn of some public offence by virtue of their profession (including medical professions) to immediately report it to the Public Prosecutor's Office, the competent court, the examining magistrate, or to the nearest police officer or public servant, if it were a flagrant crime (Article 262). Failure to report is punishable by a fine (Article 259). In addition, Organic Act 1/2004 on Integrated Protection Measures against Gender Violence requires protocols on health action to refer explicitly to the relations with the Administration of Justice, for cases in which there exists verified or well-founded suspicion of physical or psychological damage arising from assault or abuse (Article 32).

181. The Common Protocol for a Healthcare Response to Gender Violence complies with this legal imperative by foreseeing the notification of a case to the legal authority through issuing grievous bodily harm and medical reports, informing the victim about this communication and recording it on the victim's medical history file. Intervention plans set out in the protocol for victims of intimate partner violence, whether in extreme danger or not, include the issue of such reports in due course. In addition, in case of medical treatment following a sexual assault in the context of intimate partner violence, the protocol requires health-care personnel to immediately inform (by phone) the police to request the intervention of forensic doctors.

182. Mandatory reporting seems to constitute a barrier preventing some women from seeking medical care for experiences of intimate partner violence and other forms of violence. While noting that the Common Protocol for a Healthcare Response to Gender Violence recognises the importance of respecting the patient's decisions and the commitment to confidentiality of health-care personnel, GREVIO recalls that extensive reporting obligations for health-care staff do raise issues around victim autonomy, even if the Public Prosecution Office will assess and analyse the situation carefully once a report has been made. A fundamental element of the doctor-patient relationship is that of confidentiality, and health-care professionals are generally required to respect patient confidentiality. This is based on the notion that individuals should not be prevented from seeking medical treatment for fear of a disclosure of his or her condition to a third party. A confidential relationship is a prerequisite for providing patients with a correct diagnosis and the best possible medical care. This is even more important for victims of domestic violence, rape, sexual violence or other forms of violence covered by the convention. At the same time, health-care staff, in particular general practitioners, especially those in rural areas, play an important role in identifying victims of domestic violence (who often have fewer opportunities to turn to other services) and may very well be the only professionals to know about a woman suffering from abuse.

91

□ Information provided to GREVIO during its evaluation visit.

183. The obligation entailed by Article 28 of the Istanbul Convention is thus carefully worded in order to allow health-care staff, where they have reasonable grounds to believe that a serious act of violence has been committed and that further serious acts of such violence are to be expected, to report their suspicion to the competent authorities without a risk of sanction for breaching their professional duty of confidentiality. The Explanatory Report explicitly states that this provision does not impose an obligation on such professionals to report.⁹²

184. GREVIO encourages the Spanish authorities to ensure that the duty to report imposed on professionals is tempered by full and sensitive information being provided to the victim to allow her to make an informed decision herself and maintain autonomy, while also ensuring the safety of all, especially minors.

V. Substantive law

185. Chapter V of the Istanbul Convention covers a range of provisions related to substantive law, in the area of both civil and criminal law. Their aim is to help create, in all parties to the convention, the necessary legislative framework to prevent violence against women, protect them from further victimisation and to ensure robust intervention and prosecution by law-enforcement agencies. In the interest of prioritisation, this section of the report addresses several but not all provisions of Chapter V of the convention.

A. Civil law

1. Civil remedies against the state – ensuring due diligence (Article 29)

186. A core aim of the convention is to end impunity for acts of violence against women. This not only requires that individual perpetrators be held accountable through criminal law and other measures, but also that legal avenues be available to challenge and address any failure of state actors to comply with their due diligence obligation to prevent, investigate and punish acts of violence (Article 5, paragraph 2, of the convention). These exist in Spain on the basis of different legislation, including the Spanish Constitution (Articles 53.2, 121 and 106), Law 29/1998 regulating the Contentious-Administrative Jurisdiction and Law 40/2015 on the Legal Regime for the Public Sector. The main requirements for legal action against a wrongful decision by the authorities or a state actor are (i) actual, quantifiable damage; (ii) damage resulting from the functioning of a public service; (iii) no intervention by the interested party nor force majeure. According to information gathered by GREVIO, these provisions are rarely applied to investigate the responsibility of the judiciary or other statutory agencies for their negligence in cases of violence against women, in particular in intimate partner violence cases, including cases that led to fatal outcomes (see Chapter I, Article 5). On a conceptual level, GREVIO recalls that states have the obligation not only to take legislative measures but also any other measure necessary to exercise due diligence – i.e. to diligently carry out their duties related to prevention, prosecution and protection – while it is left to the internal law of the state party to decide what kind of negligent behaviour is actionable.

187. GREVIO thus notes the recent steps taken by the General Council of the Judiciary – in compliance with Measure 106 of the State Pact – to improve, through specialist training for the Citizen Services Unit, the handling of complaints related to the administration of justice in intimate partner violence by the judiciary. Data provided by the authorities for 2019 show that of the 208 complaints processed, almost half concerned dissatisfaction with a court ruling, and 13 led to preliminary investigations. In 10 cases, a report from the judge was requested, and in 22 cases the complaint was transferred to judicial administration. GREVIO takes note of the fact that for any breaches of police protocols, disciplinary action will also be taken. In the absence of data on such disciplinary action it is not possible to assess if this is a viable means of ensuring accountability for the failure to protect women and children from violence. GREVIO notes that Measure 106 of the State Pact may be promising but has not reached its full potential; in line with this measure, statutory agencies, apart from the judiciary, could initiate actions with the aim of promoting a wider use of complaint mechanisms by victims regarding “possible institutional or judicial irregularities or anomalies”.⁹³

188. In view of the above, GREVIO welcomes the own-initiative investigations made systematically by the Spanish Ombudsperson (Defensor del Pueblo) in all cases of intimate partner violence that concern the murder of women, or of their children. Their investigations shed light on particularly poor responses in individual cases and resolutions are issued to remedy structural shortcomings, of which 75% have been accepted and implemented by the relevant authorities.

93

□ Measure 106 from the State Pact reads as follows, “Publicise the available channels and promote the use thereof to facilitate the submission of complaints by female victims of gender violence and by professionals regarding possible institutional or judicial irregularities or anomalies, such that they are investigated and the victim is informed of the situation of the complaint files and, if they are closed, of the reason for this and, where applicable, the appropriate measures are adopted.”

189. **GREVIO strongly encourages the Spanish authorities to continue and expand the existing efforts to review the regime of civil and disciplinary measures available to hold different state officials accountable for failure to comply with the obligation to diligently prevent, investigate and punish acts of violence covered by the Istanbul Convention and to protect victims, as well as to investigate and examine any barriers to their use and to take practical measures such as training and awareness raising among the judiciary and other professionals in order to enable women victims of violence to make practical use of the existing legal remedies, including in the context of wrongful decisions in the administration of justice. Progress in this area needs to be measured by collecting data on the number of complaints by victims and their outcomes.**

2. Compensation (Article 30)

190. In Spain, compensation for criminal acts suffered can be claimed from the perpetrators either during criminal proceedings or by instituting civil proceedings after the criminal proceedings have been concluded. Criminal convictions usually include compensation to the victim and financial redress for victims is an essential part of the state's response to violence against women. Perpetrators are thus regularly ordered to pay compensation for criminal acts inflicted upon the victim.

191. However, GREVIO notes with concern a number of barriers that stand in the way of women victims of violence receiving compensation in practice. These barriers seem to persist particularly strongly in relation to cases of sexual violence. A recent study found that more than one third of victims of sexual violence (37.7%) do not receive any compensation from the convicted perpetrator, and where they do receive compensation it is rarely in full.⁹⁴ The average payment is only 25% of the total amount and takes five years. GREVIO regrets that official data on the number of perpetrators ordered to pay compensation per type of offence do not exist.

192. The reasons for such low payments include the low use that is made of measures offered by the Criminal Procedural Code to secure assets to ensure payments after conviction. Declarations of insolvency that perpetrators may make without any investigations ordered by the court may also stand in the way of compensation. The payment of compensation is more likely in cases where the sentence is a fine, since a fine can only be paid once the compensation has been fully reimbursed to the victim. Similarly, where the suspension of a prison sentence is conditional on the payment of the compensation ordered, payments are made in full. GREVIO notes with concern the practice of small instalments (often as low as 10 euros) triggering privileges in prison such as temporary leave.

193. If compensation cannot be obtained from the perpetrator, Law 35/1995 offers a subsidiary compensation regime for victims of “violent crimes” and “crimes against sexual freedom”. It applies only to serious offences resulting in serious physical or psychological harm or death, and proof of permanent incapacity with a degree of disability of at least 33%, or a temporary incapacity of more than six months is required. This sets the threshold very high, and GREVIO notes with concern that the procedure to obtain state compensation is perceived as cumbersome. A forensic examination report must document the level of harm and a prosecutor’s report is required to confirm the facts. Applications must be submitted within one year of the criminal act – unless criminal proceedings have been instituted. Specific provisions aim to ensure payment of therapy and psychological counselling for victims of sex offences who suffer psychologically, which GREVIO welcomes as an important step in rendering such help accessible to women in Spain. However, GREVIO notes with concern the low number of applications made, and that only 15% are granted.⁹⁵ Long delays in the processing of applications lead to significant waiting periods for psychological counselling and therapy, which is of concern in a country where alternative, free services for victims of sexual violence are extremely rare.

194. **GREVIO strongly encourages the Spanish authorities to take measures to:**

⁹⁴

□ Soletto H. and Grané A. (2019), *La reparación económica a las víctimas en el sistema de justicia (Financial reparation of victims by the justice system)*, Dykinson.

⁹⁵

□ Ibid.

- a. **ensure that compensation orders are promptly complied with by perpetrators of any of the forms of violence covered by the Istanbul Convention;**
- b. **facilitate victims' access to state compensation within a reasonable time as required by Article 30, paragraph 3, and in a manner that is adequate as required by Article 30, paragraph 2, of the Istanbul Convention.**

3. Custody and visitation rights and safety (Article 31)

195. The Spanish legal system offers judges a wide range of possibilities to suspend, limit or otherwise regulate the exercise of parental rights of parents who have been abusive towards their spouses or children. The criminal offences most relevant to intimate partner and intergenerational domestic violence described below (Articles 171, 172 and 173) all allow judges to bar perpetrators from exercising their parental rights as part of a criminal sentence, as does Article 55 for perpetrators ordered to serve a custodial sentence of 10 years or more – irrespective of the nature of the offence. Article 544 *ter* and *quinquies* of the Criminal Procedural Code regulate the modalities for the suspension or limitation of parental authority as a (pretrial) protective measure.

196. In addition, Organic Act 1/2004 on Comprehensive Protection Measures on Gender-based Violence offers judges in proceedings under this law to suspend parental authority, guardianship or custody of alleged perpetrators of intimate partner violence (Article 65). Article 66 of this law allows judges to suspend or regulate visiting rights of alleged perpetrators. Moreover, civil law prohibits joint custody where a parent is subject to criminal proceedings for domestic violence (Article 92, paragraph 7, of the Spanish Civil Code) and visitation rights may be limited or suspended where serious circumstances warrant this (Article 94 of the Civil Code).

197. GREVIO notes with satisfaction the above measures but regrets their limited use in practice. Criminal judges seem particularly reluctant to suspend or limit parental rights, both in pretrial rulings and in final sentences.

198. Data provided by the General Council of the Judiciary show that in 2017 the suspension of visiting rights of the (alleged) perpetrator accounted for only 2.9% of the pretrial measures taken in cases of intimate partner violence, while the full suspension of custody and/or guardianship accounted for 4.8%.⁹⁶ In 2016, these figures amounted to 5.7% and 8.4% respectively. Similarly, suspending parental rights as part of an accessory punishment (Articles 46, 56 and 57 of the Criminal Code) occurs even less frequently: in only 1% of the cases in 2018, according to the National Institute of Statistics.

199. Moreover, numerous concerns have been shared with GREVIO regarding the fact that civil courts, and at times specialist violence against women courts, rarely apply available legal measures to ensure the safety of women and children by limiting or suspending custody and visitation rights in divorce/separation cases. Shared custody and extensive visiting rights are often granted to convicted perpetrators, although Spanish civil law bans shared custody in cases where a parent is subject to criminal proceedings for domestic violence. Visiting rights and arrangements are frequently ordered or maintained despite evidence of violence and abuse provided by children themselves or professionals.

200. GREVIO notes with grave concern the persistent assumption among judges, and some professionals within family services, that children who express fear of their father because they were witness to the abuse of their mother have been manipulated by their mothers. In court, only children over the age of 12 are heard, and their concerns are frequently dismissed or not investigated. Advocates for the rights of children witness to intimate partner violence informed GREVIO about numerous cases in which children's rights to express their opinion and participate in decisions relevant to their lives (as defined in the United Nations Convention on the Rights of the Child) are not properly respected in courts. Research⁹⁷ identified too many court resolutions that withdraw custody or visiting rights from women victims of intimate partner violence after not

⁹⁶

⁹⁷ Criminal pretrial measures include protection orders and precautionary measures. See the section below on protection orders for further details.

complying with visitation orders, since courts considered this to amount to mothers' negative influence on the relationship between the child and the perpetrator. GREVIO also notes with concern that the official dictionary of the Royal Academy of Medicine includes parental alienation syndrome (as a form of child abuse) and hopes that its current review will lead to the exclusion of this concept, as announced by the Academy.⁹⁸ This notion of parental alienation allows intimate partner violence and the resulting safety risks for women and children to remain unaddressed, leading to harmful consequences, including death.⁹⁹ GREVIO recalls some worrisome data: in 2017 alone, eight children were murdered in cases of intimate partner violence against their mothers in Spain, while from 2013 to 2018, a total 194 children were orphaned as a result of intimate partner violence against their mothers.¹⁰⁰

201. In this context, GREVIO welcomes the guidelines issued by the General Council of the Judiciary to all judges in Spain, drawing their attention to the lack of scientific basis for concepts such as "parental alienation", which is reiterated in Measure 129 of the State Pact, but notes that this has not led to a change in judicial practice throughout the country. GREVIO stresses the need for civil courts to investigate all reports of violence and abuse, either by liaising with criminal courts whenever criminal proceedings are pending against the father of the victim's children, or by proactively seeking information from other bodies, including, but not limited to, law enforcement, health, education and specialist women's support services. GREVIO recalls that intimate partner violence is an essential factor in the determination of child custody and efforts must be made to ensure it is recognised as such – instead of dismissing crucial information on the basis of outdated concepts of manipulation and alienation.¹⁰¹

202. Family meeting points exist to ensure supervised visitation or to facilitate compliance with visitation regimes, for example by mothers who are under a protection order decided on by judges. This includes families where violent incidents went undetected or were not considered serious enough to bar visitation. GREVIO notes the many concerns raised over the level of staffing, quality of interventions and the general ability of these meeting points to guarantee the physical and psychological safety of children (and their mothers) and to recognise and/or address signs of violence or its long-term impact on children. Not all professionals are sufficiently trained to handle visits by children to fathers who have been abusive, and to reflect any impacts in the reports they draw up. Neither is there a general obligation to inform the judicial authorities when they detect children who are exposed to parental physical and psychological abuses during a visit.

203. While GREVIO acknowledges that family meeting points fall within the competence of the regions and that their funding and staffing situation may vary, it notes with concern that these services are frequently contracted out to entities that do not place a gendered perspective of intimate partner violence at their centre. This seems to result in practices that overlook the gendered dynamics of intimate partner violence and result in mothers having their custody rights withdrawn on the basis of reports by family meeting points because they have been considered to be unco-operative. In this vein, the national and regional ombudspersons have recommended that professionals within the family meeting points should receive systematic training on intimate partner violence against women and should have the duty to report children at risk of parental abuse during a visit, that co-ordinating mechanisms should be established between the family

97

□ Reyes Cano P. (2018), [Menores y violencia de género: nuevos paradigmas](#), Universidad de Granada (in Spanish).

98

□ El diario.es (2019), [La Real Academia de Medicina incluye el síndrome de alienación parental como maltrato infantil a pesar de rechazo de las instituciones científicas](#) (in Spanish).

99

□ See the statement dated December 2017 from the European Association for Psychotherapy (EAP) warning that the concepts of "parent alienation syndrome" (PAS) and "parental alienation" (PA) are unsuitable for use in any psychotherapeutic practice. This statement from the EAP, which consists of 128 organisations of psychotherapists from 41 European countries, serves as a guideline for psychotherapists across Europe.

100

□ See the shadow report of the Spanish Istanbul Convention Platform, pages 21 and 23. Data collection on the number of children orphaned began in 2013.

101

□ See the statement dated 31 May 2019 of the Platform of United Nations and regional independent mechanisms on violence against women and women's rights, <https://rm.coe.int/final-statement-vaw-and-custody/168094d880>.

meeting points and women's support services, and that national and regional authorities should closely monitor the functioning of these family meeting points.¹⁰²

204. Concerning re-assessment of visitation regimes, GREVIO was informed that when a court order specifies that family meeting points must supervise visits, reports of incidents shall be drawn-up by the competent meeting point and communicated to the court. On the basis of these reports, a reassessment of the suitability of the visiting regime can be undertaken. It is however unclear to GREVIO to what extent this mechanism is used in practice. In addition, in view of the observations above, GREVIO reiterates its concern about the quality of such reports and their reception. It is thus all the more important to ensure that all relevant professionals, in particular judges, are enabled through initial and in-service training, to understand the impact on children of witnessing the abuse of their mothers, and that abusive fathers use custody and visitation regimes to continue the abuse. More knowledge of the interconnectedness between custody and post-separation abuse would greatly help to ensure that the available legal avenues to prevent harmful visitation arrangements are applied.

205. In view of the above, GREVIO notes with satisfaction that three regions in Spain have opted to reduce the margin of discretion of judges and have established, as a rule, the deprivation of parental rights for convicted perpetrators of intimate partner violence and domestic violence.¹⁰³

206. **GREVIO urges the Spanish authorities to take the necessary measures, including through legislative amendments and providing training, to:**

- a. **limit the margin of discretion of criminal and civil judges when deciding on custody and visitation rights for convicted perpetrators of intimate partner violence, those awaiting trial and in cases where the level of evidence collected confirms the abuse of either the child or the mother;**
- b. **update guidelines for judges on the implementation of Organic Act 1/2004 on Comprehensive Measures against Gender Violence with the aim of improving judges' proactive role in identifying and documenting the impact of witnessing violence on children, including by actively seeking information from women's support services, law enforcement and family meeting points and/or by considering including children in protection orders;**
- c. **improve co-ordination and co-operation between courts and services that assist women victims of violence and their children (women's specialist services, social protection and health services, family meeting points, etc.);**
- d. **ensure that all relevant professionals, in particular judges and staff at family services and family meeting points, are trained to recognise that witnessing violence against a mother jeopardises the best interest of the child;**
- e. **improve the funding and staffing situation of family meeting points to enable them to offer quality interventions that aim to accompany single-parent families in the aftermath of abuse, including by documenting evidence of abuse or the harmful effects of (supervised) visits with the abusive parent;**
- f. **ensure that all family meeting points operate on principles and values that are in line with a gendered understanding of violence against women and the principles of the Istanbul Convention, in particular that of the empowerment of women, and that regional authorities monitor their work, preferably relying on independent entities;**
- g. **ensure that family meeting points have a general duty to report to the courts the information about children at risk of abuse and uphold that duty, so that courts can review or reconsider their decisions on visitation, if needed.**

¹⁰²

□ See the Declaration of the Spanish Ombudsmen on supporting women and minor victims of gender violence (available in Spanish only), 33rd Coordination Day of the Ombudsmen, October 2018, available at www.defensordelpueblo.es/noticias/jornadas-coordinacion-defensores/. See the Recommendation of the Spanish National Ombudsman on the need for a Common protocol on family meeting points, December 2019, available at www.defensordelpueblo.es/resoluciones/_protocolo-comun-sobre-los-puntos-de-encuentro-familiar-dependientes-de-las-comunidades-autonomas/.

¹⁰³

□ The Basque Country, Aragon and Navarra have introduced legislation that allows such a step either for convicted perpetrators (Basque Country) or convicted perpetrators, as well as those awaiting trial and cases where sufficient evidence has been collected – irrespective of criminal proceedings instituted (Aragon and Navarra).

B. Criminal law

207. With the introduction of Organic Law 1/2004 on Integrated Protection Measures against Gender-based Violence, a range of specific offences were introduced into the Criminal Code, aiming to capture the wide range of behaviours that typically form part of intimate partner violence, including varying degrees of physical and mental harm. In 2015, an additional set of specific offences were adopted, largely aligning the Spanish Criminal Code with the requirements of the Istanbul Convention, which GREVIO notes with satisfaction.

A.1. Domestic violence, including psychological violence (Articles 33 and 35)

208. In Spain, several specific offences exist to cover the different manifestations of psychological violence in intimate relationships: intimidation and threats, including light intimidation (Article 171, paragraphs 4 and 5), coercion, including light coercion (Article 172, paragraph 2) and mental damage or other harm inflicted without necessarily causing an injury (Article 153). In addition, Article 173, paragraph 2, criminalises physical and mental violence against a member of the domestic unit.

209. GREVIO welcomes these specific offences and notes with satisfaction that the first three, intimidation, coercion and mental damage/harm without injury, are gender specific and thus apply to intimate partner violence against women. By contrast, Article 173 covers physical and mental violence in the domestic unit and seeks to capture the repeat nature of such abuse by requiring the “habitual use of violence”, either in the form of spousal abuse or intergenerational domestic violence. All ensure heightened sentences where these offences have been committed in the presence of a child, which GREVIO welcomes. GREVIO notes that most cases of intimate partner violence are prosecuted under Article 153 and Article 173. Case law has clarified the element of the relationship required by these offences. In this regard, the Supreme Court issued a resolution in 2018 stating that any act of violence perpetrated by a man against a woman during an intimate relationship as a couple constitutes an act of power and superiority over women, regardless of their motivation or intent, thus qualifying it as gender-based violence.¹⁰⁴ While welcoming the latter, GREVIO notes that in the absence of data on the implementation of these offences, it is difficult to verify whether psychological violence in all its manifestations is prosecuted and punished, as the convention requires.

210. According to the Macro-Survey 2019, 27% of women aged 16 or over living in Spain have experienced psychological violence by an intimate partner at some point in their life.¹⁰⁵ During the State Pact hearings, it was also noted that, according to data from the national 016 helpline, the number of women who asked for help on the grounds of psychological violence has increased. NGOs informed GREVIO that this form of violence is often unrecognised by courts, while convictions are extremely rare. The issue is exacerbated by the increasing digital dimension of intimate partner violence, whereby strategies of control and manipulation are employed not only in the physical world, but also in the online sphere. GREVIO welcomes the specific offence of “discovery and revelation of secrets” (Article 197), which criminalises the breach of privacy online and in telecommunication. With the 2015 reform of the Criminal Code, Article 197, paragraph 7, now specifically criminalises the dissemination, disclosure or transfer to third parties of any images or videos depicting a person in an intimate or naked/nude condition, harming this person’s intimacy. In other words, it codifies the online dissemination of intimate images or materials without the consent of the person depicted. This offence is punished by a custodial sentence ranging from three months to one year. The innovation of Article 197, paragraph 7, lies in the fact that it criminalises the dissemination of materials even though they may have been initially obtained with consent but disseminated without consent of the person concerned – a more and more frequent form of “retaliation” against women who separate from their (abusive) partners or boyfriends.

¹⁰⁴

□ Supreme Court Resolution no. 677/2018, of 20 December 2018.

¹⁰⁵

□ Macro-Survey on Violence against Women 2019, p. 46.

211. It is unclear, however, to what extent the above provisions are being used in relation to abusive partners or ex-partners who install spyware or other devices to control, manipulate or otherwise breach the privacy of their victims. Data from the Ministry of Interior show that from 2012 to 2017 there were 6 771 cases of online coercion and intimidation, indicating a stark increase in 2017.¹⁰⁶

212. Physical abuse in a relationship would fall under the criminal offences of homicide (Articles 138 to 145), injuries (Articles 147 to 156 *ter*) and ill-treatment (Articles 153, see above). GREVIO welcomes the fact that inflicting grievous bodily harm (Article 147) on a former or current wife or partner, with or without co-habitation, carries a higher sentence. Heightened sentences also apply to victims that are incapacitated or particularly vulnerable and live with the abuser, which would seem to apply to women with disabilities. GREVIO recognises and appreciates the efforts made by the Spanish authorities to collect data on the number of women killed by male partners, but the authorities did not share information with GREVIO on the effectiveness of prosecution and punishment of perpetrators, and how the available data are used to guide policy making that could be focused on the prevention of such murders in the future.

213. **GREVIO strongly encourages the Spanish authorities to:**

- a. **increase awareness, including through training, among judges, law-enforcement agencies and legal professionals, of the gendered nature and consequences of psychological violence as one of the most prevalent forms of violence against women in Spain, and to review the implementation in judicial practice of the existing criminal offences on psychological violence, including the ones that intend to capture its online dimension, in order to ensure that the available provisions are effectively used to investigate, prosecute and punish all its manifestations. The latter also applies to provisions on physical violence;**
- b. **take measures to improve the collection of data on the number of court cases of psychological violence against women, including its online dimension; and**
- c. **place a stronger emphasis on evidence-based policy making by making use of the analysis of cases of intimate partner violence resulting in the death of the victim with the aim of preventing such cases in the future.**

A.1. Stalking (Article 34)

214. The Spanish offence of stalking (Article 172 of the Criminal Code) criminalises a wide range of repeated and insistent behaviour with the aim of physically approaching the victim, communicating with the victim using any available means, stealing personal information or engaging in any other activity considered analogous to the aforementioned behaviour. This behaviour may or may not cause fear or distress but needs to provoke significant disturbance of the victims' lives. Since 2015, such behaviour through the use of digital technologies ("cyberstalking") has been criminalised (Article 172 *ter*). In a context where women are increasingly targeted online, GREVIO welcomes that Spain was among the first European countries to explicitly criminalise stalking perpetrated through digital means of communication.

215. GREVIO welcomes the fact that aggravating circumstances are considered to apply when the abuser and the victim are partners, ex-partners or close relatives. GREVIO notes the importance of ensuring that stalking in the presence of children may also aggravate the sentence as required by Article 46*d* of the Istanbul Convention to account for the serious psychological harm that post-separation stalking causes children.¹⁰⁷

216. Of concern, however, is the fact that the offence of stalking requires that the victim significantly alters her daily routine because of stalking. As a result, victims are asked to prove that the insistent and repeated threatening behaviour of the stalker has caused them a serious

¹⁰⁶

□ <https://estadisticasdecriminalidad.ses.mir.es/jaxiPx/Datos.htm?path=/Datos5//10/&file=05003.px>.

¹⁰⁷

□ For the effect on children see Anna Nikupeteri, "Stalked lives: Finnish women's emotional experiences of post-separation stalking", *Nordic Social Work Research*, 2016, Vol. 7, No. 1. pp. 6-17.

alteration of their daily routine, effectively reversing the burden of proof by focusing on the behaviour of the victim rather than that of the perpetrator.¹⁰⁸ Moreover, the level of seriousness that seems to be required in judicial practice appears to be very high. GREVIO is aware that legislative amendments are underway to remove the notion of alteration of the daily routine and is hopeful that such changes will allow to focus on the behaviour of the perpetrator engaging in a threatening conduct.

217. In the absence of statistical data on the number of prosecutions or convictions for stalking, it is difficult to assess the practical relevance and implementation of this new offence.

218. GREVIO strongly encourages the Spanish authorities to review the level of seriousness required for behaviour to qualify as stalking under Article 172 of the Spanish Criminal Code. In order to ensure the effective implementation of the stalking offence, GREVIO encourages the Spanish authorities to introduce specialist preventive operational measures to avoid reoffending, in particular in relation to post-separation stalking, such as the possibility to apply for a protection order and to employ a system of electronic bracelets. GREVIO further encourages the Spanish authorities to take measures to improve the collection of data on the number of cases of stalking, including its online dimension, with a view to building the capacity of all legal professionals to handle this offence.

A.2. Sexual violence, including rape (Article 36)

219. The Spanish Criminal Code distinguishes between two main forms of sexual offence: sexual assault, including rape, and sexual abuse, also including penetration. Sexual assault (Articles 178 and 180) constitutes a serious crime that requires violence or intimidation to be qualified as such. Sexual abuse (Articles 181 and 182) is a less serious criminal offence, where the absence of the victim's consent is the qualifying element. Valid consent is precluded where the act is perpetrated against unconscious persons or persons with a mental disorder or committed by overcoming the victim's will through the use of drugs or similar substances (Article 181, paragraph 2). The sentencing range differs between the two, and penetration without consent can lead to a prison term of four to 10 years.

220. GREVIO notes that the application of the two offences by the judiciary in Spain, notably at the level of first-instance courts, has caused widespread public indignation and illustrates an improper understanding of the use of force and intimidation and the reactions this may trigger in victims of rape (for example, fright, freeze, etc.).¹⁰⁹ Research on the neurobiology of sexual trauma, conducted on victims of rape, shows that "freezing" (so-called "tonic immobility") is a common reaction by victims associated with subsequent post-traumatic stress disorder (PTSD) and severe depression.¹¹⁰ GREVIO therefore welcomes the Supreme Court of Spain's clarification in a resolution that now serves as guidance to lower courts that the Spanish offence of rape may apply not only to cases in which physical violence is used, but where other factors clearly indicate that the victim did not consent, such as intimidation. It expressly stated the need for a context-sensitive interpretation of the situation a rape victim finds herself in.

221. However, GREVIO regrets that, according to legal experts, regional courts still qualify cases where the victim does not consent, but does not resist either, as sexual abuse instead of

¹⁰⁸

□ First judgment on stalking, delivered by the Supreme Court on 8 May 2017 – STS 324/2017, 8 de Mayo de 2017 <https://supremo.vlex.es/vid/678937741>.

¹⁰⁹

□ A recent example is the "Wolfpack" case (La Manada) in which a gang-rape perpetrated by five men on an 18-year-old girl was qualified by the Regional Court of Navarra as sexual abuse (on the ground that there was no proof of either violence or intimidation) instead of sexual assault. This decision was subsequently overturned by the Supreme Court, which declared that the facts fell within the definition of rape because footage of the incident showed an "intimidating" atmosphere that compelled the woman to submit to the perpetrators.

¹¹⁰

□ Research studies show that a substantial number of victims do not resist the perpetrator in any way: tonic immobility is described as an involuntary, temporary state of motor inhibition in response to situations involving intense fear. In various studies, significant immobility was reported by 37% to 52% of sexual assault victims. See Moller A., Sondergaard H. P. and Helstrom L (2017), "Tonic immobility during sexual assault – a common reaction predicting post-traumatic stress disorder and severe depression", *Acta Obstetrica et Gynecologica Scandinavica*, 2017; 96: pp. 932-938.

rape, even where the surrounding circumstances clearly demonstrate intimidation. GREVIO further regrets that numerous judicial decisions seem to reproduce stereotypes or apply excessively formalistic interpretations to diminish the criminal liability of the perpetrator or even to blame the victim. More specific training on sexual violence for legal professionals (see Chapter III) would be required to ensure that all sexual acts without the consent of the victim are prosecuted and subsequently punished. Such training should be preferably supplemented with guidelines for judges and other legal professionals on evidentiary requirements for proving sexual violence that are aligned with the Istanbul Convention and the case law of the European Court of Human Rights.

222. In this context, GREVIO welcomes the ongoing legislative efforts that would further clarify the notion that rape is sex without consent by removing the current two offences of rape and the offence of sexual abuse. GREVIO is hopeful that the introduction of a new offence in their stead will send the message that rape is rape and that any sexual act performed on another person without his or her freely given consent amounts to sexual violence, in accordance with Article 36 of the Istanbul Convention. Where the circumstances of the act are particularly violent, abusive and traumatising, aggravating circumstances should be applied to ensure a sanction commensurate with the gravity of the act.

223. GREVIO recalls that survey findings may be also seen as an incentive for legislative changes or, possibly, for the need to increase victims' trust in institutions: the 2019 Macro Survey shows that sexual violence is severely under-reported – only 8% of the women victims of non-partner sexual violence reported it.¹¹¹

224. GREVIO encourages the Spanish authorities to pursue the amendments to the Criminal Code with a view to ensuring the existence of an offence of rape firmly rooted in the lack of consent that is operational in practice and effectively applied by law-enforcement agencies, prosecution services and the judiciary. The aim must be to ensure appropriate sanctions for all acts of a sexual nature without the consent of the victim, including in the absence of resistance by the victim and where the circumstances of the case preclude valid consent. For this purpose, GREVIO strongly encourages the Spanish authorities to introduce training and guidelines for all those in the criminal justice system to ensure an understanding of rape and sexual violence as offences based on the absence of consent, not the use of force.

A.3. Forced marriage (Article 37)

225. GREVIO welcomes the introduction into the Criminal Code of forced marriage as an independent criminal offence in 2015.¹¹² However, GREVIO notes that the interpretation given to Article 172 *bis* with regard to the extent of the “seriousness” of the intimidation might lead to legal uncertainty and leave out of its scope any form of intimidation that, although not “serious”, could be sufficient to coerce the victim.

226. In the Spanish Criminal Code forced marriage also qualifies as a human trafficking offence under Article 177 *bis*, as amended in 2015, which expressly foresees forced marriage as one of the purposes of exploitation resulting from trafficking.¹¹³ GREVIO recognises the potential overlap between forced marriage and trafficking in human beings. Forced marriage may be linked to sexual exploitation or labour exploitation. It should also, however, be a stand-alone offence. Article 177

¹¹¹

□ Macro-Survey on Violence against Women 2019, p. 167.

¹¹²

□ Pursuant to Article 172 *bis* of the Spanish Criminal Code, forced marriage occurs when anyone “with serious intimidation or violence coerces another person to marry”.

¹¹³

□ The amended Article 177 *bis* of the Criminal Code reads as follows: “Whoever recruits, transports, transfers, harbours, receives or houses a person, be it on Spanish territory, from Spain, in transit or to Spain, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of abuse of power or of a position of vulnerability, or by giving or receiving payments or benefits to achieve the consent of a person having control over another person, for any of the following purposes: forced labour or services, including slavery or practices similar to slavery, servitude or begging, sexual exploitation, including pornography, the exploitation to commit criminal activities, the removal of organs, or forced marriage, will be punished with imprisonment of five to eight years for the crime of trafficking in human beings.”

bis of the Spanish Criminal Code allows cases of forced marriage that are strongly linked to exploitation to be captured as such by initiating prosecution as a case of trafficking in human beings.

227. In view of two criminal code provisions covering forced marriage, however, GREVIO stresses the need for conceptual clarity and an operational distinction between them. It notes that according to the Spanish case law, trafficking with the purpose of concluding a forced marriage is punishable based on the sole intention, without the necessity of the conclusion of a forced marriage as a result. If, in addition to the act of trafficking itself, a forced marriage has been concluded, 172*bis* then also applies as a separate offence. GREVIO emphasises the importance of thorough investigations into each individual case to fully assess the circumstances of the case and the purposes for which women and girls have been forced to marry.

228. In the absence of official data on the use of the above offences, it is impossible to assess to what extent criminal law responses are made use of in Spain. From publicly available sources it appears that only a few cases of forced marriage have been identified so far.¹¹⁴

229. As stated earlier in this report, more efforts must be made to recognise and address this form of violence in co-operation with community-based organisations and entities, and through training and awareness raising among professionals. These assessments apply to FGM as well (see the next section). Addressing this phenomenon should not be restricted to criminal justice responses. In the absence of services to support or assist victims of forced marriage, reporting will remain low. GREVIO is also of the opinion that protective measures should be applicable to this form of violence. Further, GREVIO notes with concern that one of the very few studies on the topic explains the “silencing” of forced marriages in Spain by the social perception of it as being a phenomenon that only happens sporadically in some regions, and, at the same time, in very restricted ethnic groups, thus being a problem isolated from Spanish society.¹¹⁵ The study, however, expressly states that a globalised multicultural world requires that forced marriage should be taken seriously as an existing threat.¹¹⁶

230. GREVIO strongly encourages the Spanish authorities to take legislative and other appropriate actions to make protective measures applicable to victims of this form of violence and women/girls at risk and to ensure that relevant legal professionals are trained in establishing an operational distinction between forced marriage and trafficking in human beings on a case-by-case basis, so that implementation of this new offence is consolidated.

A.4. Female genital mutilation (Article 38)

231. Article 149, paragraph 2, of the Spanish Criminal Code covers the act of inflicting on another person a mutilation of the genitals in any form. Aiding and abetting the commission of FGM is covered by Articles 28 and 29 of the Spanish Criminal Code. GREVIO notes, however, that these provisions would not cover the act of inciting, coercing and procuring as required by Article 38*b* and *c* of the Istanbul Convention. These two sub-paragraphs require the criminalisation of behaviour that involves the intentional exertion of influence or coercion on a girl who herself does not harbour the intention of undergoing FGM. They seek to ensure that criminal liability incurs, for example, where relatives or community members incite, coerce or procure a girl to undergo FGM but do not take an active part in ensuring the procedure is carried out. This conduct differs from that of aiding and abetting both in terms of the constituent elements of the crime and the scope of

¹¹⁴

□ According to the Report concerning the implementation of the Convention on Action against Trafficking in Human Beings by Spain, Second Evaluation Report, there were four cases of trafficking for forced marriage in 2016 – p. 7, paragraph 14.

¹¹⁵

□ “No acepto” (I don’t accept). Report drawn up by the Federación de Mujeres Progresistas together with other NGOs such as ACCEM, Doctors of the World, Save the Children and UNICEF, among others. Available in Spanish at: <https://fmujeresprogresistas.org/wp-content/uploads/2018/03/NO-ACEPTO.-Aproximaci%C3%B3n-a-los-matrimonios-forzados-en-Espa%C3%B1a-INFORME.pdf>.

¹¹⁶

□ “Enforced Marriages in Spain: Brief Reference to Regional Regulations and Action Protocols Adopted in the Community of Catalunya”, Encarnacion Abad Arenas, Department of Civil Law, National University of Distance Education, Madrid, Spain, *International Journal of Law and Society*, Volume 2, Issue 3, September 2019, pp. 47-53.

intent. The obligation to criminalise the act of aiding and abetting FGM is set out in Article 41 of the Istanbul Convention and establishes criminal responsibility for someone who aids or abets another person in the commission of any of the acts set out in Article 38a (the excision, infibulation or any other mutilation of a woman's labia majora, labia minora or clitoris). It would require the actual commission of FGM, whereas the act of coercing or procuring an adult woman (Article 38b) or inciting, coercing or procuring a girl (Article 38b) involves behaviour that is below the threshold of aiding and abetting and irrespective of the final commission of the act of excision, infibulation or any other mutilation.

232. Furthermore, GREVIO notes that very few cases of FGM are reported to the authorities. Parents convicted for the genital mutilation of their girls lose their parental rights as ancillary punishment to imprisonment, and the girls are subsequently taken into care, resulting in reluctance to disclose.

233. While some efforts are being made by the health sector to identify women and girls who have undergone the procedure or who are at risk, and measures are taken to ensure the physical integrity of girls travelling to their family's country of origin, awareness of this practice is only slowly emerging. GREVIO is concerned that the estimated figures of "girls at risk of FGM" may be calculated in a prejudiced manner, by simply numbering *all* girls originating from countries where FGM is practised, thus stigmatising large parts of the African communities in Spain.

234. GREVIO encourages the Spanish authorities to criminalise the intentional conduct of coercing or procuring a woman to undergo female genital mutilation and the intentional conduct of inciting, coercing or procuring a girl to undergo the act as set out in Article 38b and c of the Istanbul Convention.

A.5. Forced abortion and forced sterilisation (Article 39)

235. Article 144 of the Spanish Criminal Code criminalises the act of performing an abortion on a woman without her consent or when her consent is obtained through violence, intimidation or deceit. Article 156 of the Criminal Code, on the other hand, prohibits the sterilisation without the valid, free, conscious and specifically expressed consent of the person concerned.

236. Of great concern to GREVIO is the power accorded to judges by Article 156, paragraph 2, to authorise the sterilisation of persons who are legally incapacitated. While GREVIO notes that legal guardians may no longer authorise the sterilisation of a woman or girl with disabilities, and that judges may only authorise such acts where "exceptional circumstances apply in which there is a serious conflict of legally protected rights" and that their sterilisation must be seen as "a measure to protect the greater interest of the person in question", GREVIO points to the risk this presents to women's reproductive rights. Concerns have been expressed over the lack of transparency of the current procedure for legal incapacitation, which seems to result in higher levels of women with disabilities legally incapacitated and subsequently sterilised on the basis of judicial authorisation compared to men with disabilities.¹¹⁷ GREVIO is concerned that procedures for legal incapacitation may be initiated with a view to authorising the sterilisation of women with disabilities. In view of the far-ranging implications of sterilisation, more must be done to ensure that the reproductive rights of women with disabilities are respected by offering them the full range of birth control options without resorting to invasive and permanent measures such as sterilisation. This would require training for all professionals involved (medical and legal professionals) in order to challenge assumptions that sterilisation is in the best interest of the woman concerned. In this context, GREVIO stresses the importance of ensuring that the existing safeguards are applied in line with the standards set out in the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine (ETS. No. 164).¹¹⁸

¹¹⁷

□ Information provided by women's disability rights groups to GREVIO during the evaluation visit.

¹¹⁸

□ Explanatory Report to the Istanbul Convention, paragraph 205.

237. GREVIO thus notes the need for an increase in awareness of the potential risk to women's reproductive rights that the judicial authorisation bears for women with disabilities and calls for amendments to the existing procedure that would ensure the full respect for women's right to self-determination. In this vein, GREVIO notes that the Spanish Senate has introduced a draft law amending the Criminal Code with the aim of eradicating forced or non-consensual sterilisation of people with disabilities who are legally incapacitated.¹¹⁹ This draft law proposes to repeal Article 156, paragraph 2, and the termination of all judicial proceedings initiated in this framework. Moreover, it emphasises the need to ensure the full and informed consent of women with disabilities who undergo consensual sterilisation. Indeed, it stresses that people with disabilities who need human, material and technological support shall receive sufficient information in accessible formats to ensure that their decision is free, voluntary, thoughtful and informed.

238. GREVIO urges the Spanish authorities to ensure that in any procedures authorising the sterilisation of legally incapacitated women, less invasive birth control options are considered with due regard to the best interest and self-determination of the women concerned. GREVIO encourages the Spanish authorities to pursue their efforts to ensure that women with disabilities who undergo consensual sterilisation can make their decision on the basis of sufficient information designed in a disability-accessible manner, which is presented to them by professionals who are trained on gender and disability issues.

A.6. Sexual harassment (Article 40)

239. The offence of sexual harassment defined in Article 40 of the Istanbul Convention encompasses any unwanted behaviour of a sexual nature that affects or might affect the dignity of a person. Sexual harassment is neither limited to the workplace nor to the family and can occur in multiple contexts. GREVIO welcomes the fact that Spanish legislation contains a criminal offence of sexual harassment as well as a specific administrative offence related to the workplace.

240. GREVIO notes however that the definition of sexual harassment provided for under Article 184 of the Criminal Code limits sexual harassment to the workplace, a teaching environment or business context and is thus more restricted in scope than the definition of the convention. Moreover, the conduct described in Article 184 limits its scope to the requesting of favours of a sexual nature, which must be objectively and seriously intimidating, hostile or humiliating, while that of the Istanbul Convention refers to any unwanted behaviour of a sexual nature.

241. GREVIO strongly encourages the Spanish authorities to align the definition of sexual harassment in the Spanish Criminal Code with that set out in Article 40 of the Istanbul Convention by widening its scope to ensure its applicability in all spheres of life – public and private – and by removing any requirements of objective and serious intimidation, hostility or humiliation.

A.7. Prohibition of mandatory alternative dispute resolution processes or sentencing (Article 48)

242. In Spain, family mediation is regulated by Law 5/2012 of 6 July 2012, which transposes into Spanish law Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008, on certain aspects of mediation in civil and commercial matters. It is generally a voluntary process, although the first mediation session may be ordered by a judge.

243. GREVIO notes with satisfaction that Article 44, paragraph 5, of Organic Law 1/2004 expressly prohibits mediation in cases of intimate partner violence that come before a specialist violence against women court. Moreover, Measure 116 of the State Pact seeks to reinforce the absolute prohibition against mediation in cases of intimate partner violence in legislation and protocols that are to be adopted or reviewed, suggesting that this is not currently the case. In this

119

¹¹⁹ Spanish Senate, Draft Law amending the Criminal Code in order to eradicate the forced or non-consensual sterilisation of people with disabilities legally incapacitated. XIV Legislature, draft law no. 622/000002, January 2020, available at: www.senado.es/web/actividadparlamentaria/iniciativas/detalleiniciativa/index.html;jsessionid=1SpTp3ydCcBBM8xJknNnvxnTZrTCDDvd2vt0HRg3Zvqr6JCTcJ2!286704065?legis=14&id1=622&id2=000002#Comision4.

context, GREVIO points to the risk that mediation in family law may be proposed in divorce proceedings in cases in which women did not previously disclose their experiences of intimate partner violence. With many mediation professionals untrained to recognise signs of violence, risk factors and the widespread tendency to perceive intimate partner violence as a “family conflict”, the results of the mediation process may not adequately reflect the safety concerns and protection needs of all family members.¹²⁰ According to the authorities, however, cases must be referred to the specialist violence against women courts where incidents of violence are disclosed during mediation processes and an assessment must always take place before proposing mediation. In this context, GREVIO points to the worrying information that in some autonomous communities, the practice of mediators seems to be to disregard any events prior to the mediation process. For women victims of intimate partner violence who have until that point not disclosed their experiences, this effectively bars them from signalling abusive behaviour that happened in the past and that may have ramifications for the mediation process. This results in the unfortunate situation where prior experiences of abuse do not surface, and no framework exists to ensure that it can be addressed.¹²¹

120

□ “Gender violence and mediation in Spain: between a legal ban and professionals’ uncertainty”, Gloria Casas Vila, *SociologieS*, 2016, available at: <http://journals.openedition.org/sociologies/5808>.

121

□ Report of the Ombudsperson, available at: www.defensordelpueblo.es/wp-content/uploads/2018/10/declaracion_defensorias_violencia_genero.pdf.

VI. Investigation, prosecution, procedural law and protective measures

244. Full accountability for all acts of violence against women requires an adequate response from law-enforcement agencies and the criminal justice sector. Chapter VI of the Istanbul Convention establishes a set of measures to ensure criminal investigations, prosecutions and convictions of the various forms of violence covered therein.

A. Immediate response, prevention and protection (Article 50)

A.1. Reporting to and investigations by law-enforcement agencies

245. Spanish law-enforcement agencies are instructed and trained to respond promptly to incidents of intimate partner violence, and Organic Law 1/2004 on Integrated Protection Measures on Gender-based Violence requires a high degree of specialisation, which GREVIO appreciates. As a result, the Family and Women's Care Units (UFAM) of the National Police Force and the Women Child Teams (EMUME) of the Civil Guard (Guardia Civil) operate as specialist units throughout the country. Autonomous police forces such as Ertzaintza (Basque Country) or Mosos d'Esquadra (Catalonia) also have their own specialist units.

246. Law-enforcement agencies operate under the 2005 Action Protocol for law-enforcement agencies and their co-ordination with the judicial bodies for the protection of victims of domestic and gender-based violence (thus, intergenerational and intimate partner violence are included). This protocol includes state-of-the-art measures to protect victims of intimate partner violence and avoid revictimisation. However, the protocol centres investigation on the victim and the perpetrator and, as a result, their statements, especially the victim's, become crucial. It does not seem to highlight the need to investigate and identify additional elements of abuse, in particular abuse perpetrated through digital means such as the threat of or the sharing of images without consent, or stalking through spyware or other technical devices.

247. In this context, GREVIO reiterates that one way of overcoming the over-reliance on the victims' statements would be to proactively seek other sources of evidence, such as documenting injuries (with the consent of the victim), taking photographs of the scene, taking DNA samples, making enquiries with neighbours and any other possible witnesses. It thus welcomes the latest instructions made by the Secretary of State for Security to police officers, emphasizing their obligation to obtain all the necessary information from any source, including witnesses, technical and medical reports, and police inquiries.

248. Despite the high degree of specialisation of law-enforcement agencies in the area of intimate partner violence, and established procedures to prevent revictimisation, GREVIO notes with concern that many victims do not report it. According to the Macro Survey on Violence against Women 2019,¹²² 21.5% of the women residing in Spain, aged 16 years or over, have suffered at least once in their lifetime physical violence by a partner or a non-partner. Many women, in particular women in rural areas and women with disabilities, do not report such violence.¹²³ For women with disabilities, in particular those that are legally incapacitated but also those with intellectual or developmental disabilities, psychosocial disability or deaf blindness, many barriers still persist, and many women depend on their abusers for transport, communication with the outside world and all aspects of daily life.¹²⁴ Where they do report, law-enforcement officers do not

¹²²

□ Available at <https://violenciagenero.igualdad.gob.es/violenciaEnCifras/macroencuesta2015/home.htm>. An executive summary is available in English.

¹²³

□ Around 140 000 cases of intimate partner violence are reported annually. On the basis of the prevalence data from the Macro Survey, it is estimated that around 600 to 700 000 women in Spain are subjected to such violence every year. Source: Miguel Lorente, University of Granada and Congressional hearings for the creation of the State Pact.

¹²⁴

□ According to a report by CERMI (Fundacion Cermi Mujeres, 2016: 61), 75.8% of women with disabilities do not

always seem to adapt their investigation techniques to the needs of women with disabilities, which may easily result in them being perceived as lacking credibility. Women living in rural areas face similar dependencies and interlocking problems, as police stations may be difficult to get to and reporting intimate partner violence in small and tight-knit communities may be hindered by women's fear of stigma, retaliation and social ostracism. In this context,

249. Moreover, GREVIO notes with concern that the degree of specialisation in the police response to intimate partner violence is not matched in relation to any other form of violence covered by the Istanbul Convention. While GREVIO recognises that there are pockets of excellence in some police districts, there is ample evidence of police responses to victims of sexual violence that discourage reporting – because their credibility is questioned, gender stereotypes play out in the questioning or because the timing of their complaint is used against them. In some regions of Spain, women are required to report a rape or sexual assault in order to access medical assistance and forensic examinations. This, too, is of concern to GREVIO, as women's access to support services should be available irrespective of their willingness to report (Article 18, paragraph 4, of the Istanbul Convention).

250. GREVIO strongly encourages the Spanish authorities to equip all relevant law-enforcement authorities with the resources, knowledge and powers to respond promptly and appropriately to all forms of violence covered by the Istanbul Convention, in particular in relation to sexual violence, forced marriage and stalking, while paying due regard to the digital dimension of intimate partner violence and post-separation abuse. GREVIO strongly encourages the authorities to promote effective and proactive law-enforcement investigations, including the gathering of evidence other than the victim's statement, such as documenting injuries, interviewing witnesses, taking photos or DNA samples.

A.2. Conviction rates

251. GREVIO notes with satisfaction that since 2004 special courts for cases involving violence against women and special units within the Prosecutor's Office have been set up in all judicial districts to provide a holistic legal response to male intimate partner violence against women. These courts investigate all criminal cases of such violence and also rule on misdemeanours. They also decide on the adoption of protection orders and have jurisdiction over related civil issues, such as custody and parental rights or divorce. Judges sitting in these courts, as well as prosecutors and court clerks, undergo special training. Courts are aided by services such as Legal Medicine Institutes, psychological-social teams and Victim Support Offices. These services may be operated by the national or regional administration, depending on whether the region has accepted competences for matters of justice. Both the quality and quantity of these services differ widely across the country.

252. GREVIO commends the Spanish authorities for the setting up of a specialist judicial branch to ensure criminal justice for intimate partner violence while at the same time solving related legal issues. It notes the high number of intimate partner violence cases processed in these courts annually.¹²⁵ Data collection on these cases presents significant challenges, as many cases are recorded several times and subsequently merged or dealt with in summary proceedings. GREVIO recalls that a suitable manner to calculate conviction rates would be to collate data from law-enforcement agencies and the judiciary so as to reconstruct the entire criminal proceedings chain, from the filing of the complaint by the victim to the delivery of final judgment. According to the authorities, the number of dismissals in the specialist courts is very low, ranging from 2.5% in 2016 to 2.3% in 2018. However, GREVIO notes that an additional 27% of cases result in a temporary stay of procedure, which effectively results in around one third of all cases coming to an end without a conviction. Many cases of intimate partner violence are dealt with by urgent proceedings and 21.2% terminate with plea bargains. GREVIO reiterates its concern that a large share of domestic abusers are sentenced to alternatives to prison but are not ordered to attend a perpetrator programme (see Chapter III, Section E). Once cases reach the trial stage, conviction

report experiences of violence at the hands of their current or former partner.

¹²⁵

□ According to data provided by the General Council of the Judiciary, around 200 000 cases are processed annually, mainly in the form of urgent proceedings, investigative summary proceedings, preliminary proceedings, summary proceedings and proceedings for minor offences.

rates are high for intimate partner violence but vary across the different types of courts. While provincial courts convict domestic abusers in around 81% of cases, criminal courts do so only in 55.3% of cases. This latter figure compares to an overall conviction rate for all offences in criminal courts of almost 78% and is thus significantly lower. The reasons therefore are unknown but may have to do with the lack of specialisation and the over-reliance on the victim's testimony – some victims may even make use of their right not to testify (Article 416 of the Criminal Procedural Code of Spain).

253. GREVIO notes with concern that many legal professionals and experts consider Article 416 (dispensation) of the Criminal Procedural Code of Spain and its interpretation by the Supreme Court to stand in the way of convictions. This provision exempts women victims from testifying against the alleged perpetrator under certain conditions, and if invoked, is interpreted to bar all other evidence derived from the victim's statement (such as medical reports and witness statements). GREVIO draws attention to the fact that women victims of intimate partner violence are asked to testify or retell their story at many different times in the procedure (before the police, at the medical check and for the documentation of evidence, in the hearing for protection orders and before the investigative judge). From the point of view of victims, the final testimony in court upon which convictions often hinge is the last in a series of many. GREVIO thus points to the need to explore or develop procedural options that would either reduce the number of times women are asked to testify/state their experiences of violence or that allow their recording for use in court, so that the absence of testifying in court does not influence the admissibility of evidence nor the outcome of the trial.

254. As regards criminal proceedings for sexual assault and rape, GREVIO identified several factors that may impact negatively on the experiences of women victims with the criminal justice sector in Spain. First, the length of proceedings is significant. While the initial investigation after the case has been sent to court must be concluded within six months, an additional 18 months can be granted where more evidence or additional investigations are ordered. Second, the use of forensic evidence in court is barred where it was collected without the order of a judge because women self-refer to a sexual assault referral centre first rather than report to police. This is in clear opposition to the aims pursued by the Istanbul Convention by ensuring that forensic evidence and other services can be provided to victims of rape to secure evidence for a trial at a later stage. Third, forensic evaluation units that assist with reports to courts do not always apply a gender perspective to their work and hence may discourage women and girls from going through the process. In the absence of forensic evidence, criminal proceedings centre on the statement of the victim, and high thresholds seem to apply as regards their credibility. For a victim of rape to be considered credible, no contradictions may emerge between the first statement (to police) and the last (in court). Furthermore, her statement must be corroborated by complementary evidence and, lastly, the court must establish that she has no underlying motivation to accuse someone. GREVIO is gravely concerned that this allows gender stereotypes and rape myths to have a bearing on the assessment. Furthermore, it offers ample room for the revictimisation of victims of rape and may easily represent a traumatising experience from the point of view of victims. This is in clear contrast to one of the key aims of the Istanbul Convention, the prevention of revictimisation, and mechanisms must be put in place to safeguard against this.

255. GREVIO strongly encourages the Spanish authorities to raise the quality and gender perspective of the work of forensic evaluation units in relation to all cases in which they issue reports to courts, in particular related to criminal offences of rape and sexual assault, as well as intimate partner violence.

256. Moreover, GREVIO urges the Spanish authorities to explore mechanisms and procedures, including through legal amendments, that would remove the centrality of the victim's statement in criminal proceedings in cases of intimate partner violence and sexual violence.

257. GREVIO urges the Spanish authorities to swiftly identify and address any/all legislative and procedural factors that contribute to the very high threshold for proving rape in court, while paying due regard to the principle of avoiding re-traumatisation of victims during investigation and judicial processes.

B. Risk assessment and risk management (Article 51)

258. Concern for the victim's safety must lie at the heart of any intervention in cases of all forms of violence covered by the Istanbul Convention. Article 51 thus establishes the obligation to ensure that all relevant authorities, not just law enforcement, effectively assess and devise a plan to manage the safety risks a particular victim faces on a case-by-case basis, according to standardised procedures and in co-operation with each other.

259. In Spain, the Integrated Monitoring System for cases of Gender Violence (VioGen) represents the central risk-assessment and risk-management tool in use by law-enforcement agencies.¹²⁶ Following an initial assessment of victims of intimate partner violence, protection measures will be taken according to the identified level of risk and changes to the situation are continuously monitored in order to adjust the level of risk. Changes are shared with the relevant prosecution services and courts within 24 hours.

260. GREVIO notes with satisfaction the standardised and professional handling of this risk-assessment tool and the efforts made in using the benefits of artificial intelligence in predicting risks. While this tool clearly stands out, several concerns have been raised with GREVIO, which, if addressed, may allow it to increase its potential. First, GREVIO notes that the electronic assessment tool is fed exclusively with information collected by law-enforcement agencies, often mainly on the basis of information provided by the woman concerned. There is no mechanism to consider information obtained by other relevant actors, such as the judiciary, women's specialist services or family meeting points, in a standardised and timely manner, although this may significantly change the assessment of the risk. GREVIO stresses that good practice suggests a joining of forces of various bodies to assess risks and plan multi-agency responses and to involve women's support services whose main aim is to empower victims and represent their needs and interests. Second, there are no mechanisms to ensure that judges act on the risk assessment carried out by law-enforcement agencies. For example, very high risks of physical violence, including lethal attacks, do not always prompt the ordering of pretrial detention, leaving law enforcement to manage the serious risk to women through police protection. In this context, GREVIO notes the positive examples of police forces that successfully ensure women's safety.¹²⁷ GREVIO, however, notes with serious concern that only 11% of women murdered in recent years by their current or former spouses or partners across Spain had been assessed as high-risk cases, while 34.7% of all women killed in 2016 had reported violence to the police. GREVIO points to the urgent need to assess the reasons why the high level of risk remains undetected in some cases. In this context it is essential to strengthen the knowledge base of all professionals around the links between manifestations of coercive control (as the key factor to rely on), death threats and the increase in risk that separation represents. It would be equally important to put this into context with the type and frequency of breaches of protection orders. GREVIO notes the fact that both the General Council of the Judiciary and the Government Delegation on Gender-Based Violence analyse profiles of victims and perpetrators with the aim of establishing additional risk factors.

261. Separate risk assessments are carried out by the judiciary, and forensic evaluations may be requested by judges. This, however, seems to represent a lengthy procedure that is not always pursued because most cases of intimate partner violence are handled by urgent procedure in order to obtain fast results. Moreover, not all regions of Spain dispose of forensic evaluation units, and in the day-to-day judicial practice, most decisions to issue protection orders are taken on the basis of the statements of both sides and the police risk assessment only.

262. GREVIO notes with satisfaction that, in 2019, all cases in which victims of intimate partner violence had children were studied, and that 30% of these were considered to be in a vulnerable

¹²⁶

□ For a detailed overview of the VioGen System in English, please see www.interior.gob.es/documents/642012/1626283/articulo+violencia+de+genero/fd0e7095-c821-472c-a9bd-5e6cbe816b3d.

¹²⁷

□ During its evaluation visit to Spain, GREVIO was informed by the Basque police that, since 2011, no woman under police protection for intimate partner violence has been killed.

situation. This is an important step to understand the level of risk that such a situation may pose also to children. GREVIO further notes the recent change of the VioGen System to include children in its risk assessment. Two procedures are foreseen: one for minors in a situation of vulnerability for whom an additional forensic assessment is requested from the judiciary, and one for minors at risk which generates automatic diligence by the VioGen System.

263. With a view to increasing the accuracy of risk assessments in cases of intimate partner violence, GREVIO strongly encourages the Spanish authorities to build on the expertise of law-enforcement agencies to carry out risk assessment by introducing information sharing on the basis of multi-agency co-operation, including the involvement of women’s specialist services, while ensuring the human rights and safety of the individual victim.

C. Emergency barring and protection orders (Articles 52 and 53)

264. Protection orders for victims of all forms of domestic violence have been in existence in Spain since 2003, which GREVIO welcomes. The Criminal Procedural Code (Article 544 *bis - ter*) allows investigating judges to order a wide range of precautionary measures when investigating crimes of unlawful killing, bodily harm, sex offences and offences against the right to one’s image. These include bans on contact, communication and residence with the victim and are mainly civil law measures issued on the basis of Article 544 *bis*. These measures can be ordered *ex officio* or upon a request by a legitimate party (such as the victims or their family members). For victims of intimate partner violence, Article 173 of the Criminal Code offers protection orders, which includes civil and criminal law measures, and which are to be issued within 72 hours. Moreover, the specialist violence against women courts operate a round-the-clock system that allows protection orders to be issued. Protection measures seem to involve children as long as they are with their mother.¹²⁸ It is unclear, however, whether contact bans apply to children specifically, including while at school.

265. In terms of ensuring compliance with protection orders, GREVIO commends the significant efforts made by the relevant Spanish authorities to monitor the movement of domestic abusers. An electronic monitoring tool operating as a GPS tracking device monitors the distance between both perpetrator and victim. A warning is activated if the perpetrator moves into a restricted area, approaches the victim or attempts to tamper with the electronic bracelet. This is a useful way of giving real meaning to the protection order and of helping women to feel safer. GREVIO also notes with satisfaction that the type of breaches of protection orders and their frequency are analysed and factored into the ongoing risk assessment, but note that a significant percentage of women killed by their partners or ex-partners were considered as low-risk cases by the VioGen, which raises the question of whether breaches are taken “too lightly”.

266. Despite the above, an assessment of the scope and legal requirements for such orders and their practical implementation reveals a number of shortcomings. First, the available protection orders, including the precautionary measures, do not qualify as an emergency barring order as required by Article 52 of the Istanbul Convention. This provision sets out the obligation to ensure that a perpetrator of domestic violence may be ordered to vacate the residence of the victim or person at risk in situations of immediate danger. The term “immediate danger” refers to any situation of domestic violence in which harm is imminent or has already materialised and is likely to happen again.¹²⁹ The aim of this provision is to provide safety for victims of domestic violence without forcing them to hurriedly seek safety in a shelter or elsewhere. Emergency barring orders are to serve as a tool for law-enforcement agencies or criminal justice actors to react to a situation of immediate danger without lengthy procedures. Although the round-the-clock service offered by the specialist violence against women courts offers the possibility for protection orders to be issued in response to an immediate danger, many protection orders taken in the form of precautionary

¹²⁸

□ Civil measures may include determination of visiting, communication and custody arrangements, payment of child support, and any other child protection measure to avoid danger or harm.

¹²⁹

□ Explanatory Report to the Istanbul Convention, paragraph 265.

measures as part of the investigation will take up to 72 hours to be issued. Even though a provisional detention of the perpetrator may be ordered by a judge at the request of a prosecutor or the victim in case of an immediate risk, for most victims, the wait and the uncertainty regarding the outcome may present too much of a safety risk and they will prefer to relocate to a domestic violence shelter. The aim of the Istanbul Convention, however, is to allow women and children to remain safe in their own home.

267. Moreover, GREVIO notes with concern that a substantial number of protection orders applied for are denied. Specialist violence against women courts seem to grant protection orders in around two thirds of cases. In 2017, a total of 38 501 applications for such orders were made, while 26 044 were granted (67.64%). GREVIO notes stark differences in the rate of rejection. While courts in Madrid or Barcelona grant only 50% of the requested orders, courts in La Rioja and Valencia grant about 90%. The reasons for these differences remain unclear to GREVIO and must be investigated and subsequently addressed. This is particularly important in order to ensure protection for all women at risk, including irregular migrant women. While GREVIO welcomes the fact that Organic Law 4/2000 on the Rights and Freedoms of Foreigners in Spain and their Social Integration offers irregular migrant women the opportunity to request a protection order, their low rate of issue – especially in Madrid and Barcelona – significantly raises the stakes. Where protection orders are denied, a deportation order will follow.

268. GREVIO fully recognises the importance of the need to ensure that protection orders can be adopted by a judge *ex officio*, since this may be seen as an indicator that the judiciary is discharging its due diligence to protect victims. The same can be said for granting prosecutors the power to apply for civil law measures if children are involved. However, GREVIO regrets that no data exist to illustrate how often judges and prosecutors do so.

269. Protection orders are frequently breached by perpetrators, which represents another relevant challenge, having in mind that the violation of the orders is considered one of the factors associated with a high risk of death. According to the authorities, there are legal means to impose sanctions against perpetrators who violate such orders,¹³⁰ including provisional imprisonment. However, GREVIO notes that there were 11 570 violations in 2016, and 15 432 in 2017. When data on breaches are compared to the total number of orders issued, almost every second order was violated in 2016, and in 2017 the percentage of violations was even higher – 59%. By contrast, no information is provided on the number and type of sanctions imposed as a result of violations, including imprisonment.

270. In addition, the question might be raised regarding the initial 30-day validity of civil law protection orders. If the victims or their legal representatives initiate a family law procedure, they may be extended for another 30 days until the court decides to modify or cancel them. Having in mind that victims' recovery and attempts to (re)build an independent life takes time, it is important, as good practice shows,¹³¹ to allow protection orders to last for a "sufficient period of time" and that complementary longer-term measures are available (including, but not limited to, shelters, economic empowerment and counselling aimed at addressing the consequences of trauma) to ensure that no "gap" in protection arises. More could be therefore done in Spain to achieve continuity of protection and complementarity between protection orders (once they expire) and ways to assist women to achieve long-term empowerment and recovery. GREVIO appreciates that Spain, with the adoption of its landmark Organic Law 1/2004 on Integrated Protection Measures on intimate partner violence, has introduced a comprehensive approach to protection, including measures aimed at longer-term empowerment, including economic empowerment. It is important to pursue such efforts to achieve continuity in protection and complementarity between protection orders (once they expire) and other measures related to the three "pillars" of the convention: prevention, protection and prosecution.

¹³⁰

□ As specified in the state report, page 58, for a perpetrator who breaches a protection order, it is possible to: a) impose more restrictive precautionary measures, in accordance with Articles 544 *bis* and 505 of the Law of Criminal Proceedings, including provisional imprisonment; b) impose a penalty for a breach of sentence in accordance with Article 468.2 and 3 of the Criminal Code.

¹³¹

□ See Logar R. and Niemi J. (2017), *Emergency barring orders in situations of domestic violence: Article 52 of the Istanbul Convention*, Council of Europe, Strasbourg.

271. **GREVIO strongly encourages the Spanish authorities to review the reasons for the significant rates of rejecting the applications for protection orders, as well as for the high numbers of violations of protection orders by perpetrators, and to apply legislative and policy measures to address these challenges in relation to all acts of violence to which these orders are applicable. Measures to be considered may include, for example, reacting diligently to violation of protection orders, especially by effectively enforcing the sanction of provisional imprisonment in situations of high risk. Progress in this area should be monitored and analysed relying on a set of predefined indicators.**

D. Victim support in legal proceedings (Article 55, paragraph 2)

272. With a view to empowering victims and to encouraging them to go through with criminal proceedings, paragraph 2 of Article 55 requires parties to ensure that victims' organisations, specifically trained domestic violence counsellors or other types of support/advocacy services, may assist and support victims during investigations and judicial proceedings. GREVIO notes with satisfaction that in Spain a network of Victim Support Offices (VAO) has been set up with the specific aim of providing comprehensive, co-ordinated and specialist assistance to victims of crime and to respond to their specific legal, psychological and social needs. They are conceived as entities that empower victims of crime, minimise the effects of primary victimisation and prevent secondary victimisation. Operating with a multi-agency and victim-centred approach, the assistance consists of four phases: reception-guidance, information, intervention and follow-up. Within the intervention phase, the VAO provides legal and psychological counselling and draws up individual plans for support. Reports on the individual situation of a victim of crime are then drawn up and transmitted by the competent judicial or prosecutorial authority for the adoption of protection measures. They also assist victims in applying for compensation mechanisms.

E. Legal aid (Article 57)

273. For victims of intimate partner violence, free legal aid is available under Organic Act 1/2004 on Integrated Protection Measures against Gender-based Violence. Article 20 enables their legal representation prior to the formal act of pressing charges and in all administrative procedures that ensue as a direct or indirect result of the violence. GREVIO welcomes this provision and notes with satisfaction that it requires bar associations to set up a system of duty lawyers specialising in this area.

274. Victims of any of the other forms of violence against women may obtain legal aid under the Statute of Victims (Article 16) and under Law 1/1996 on Free Legal Assistance (Article 3), if they earn less than twice the minimum income in Spain.

275. While GREVIO welcomes the general availability of legal aid, in particular the early access of women victims of intimate partner violence to specialist and free legal representation, it notes with concern that the same conditions do not apply to women who have experienced any other form of violence. Consequently, women victims of sexual violence or other forms of violence are only entitled to free legal aid once the legal proceedings are initiated and only if they meet the income requirements. This difference in treatment may particularly impact victims of rape and sexual assault. The destabilising and traumatic nature of sexual violence and rape requires swift professional support, starting at the very beginning of any formal investigation or administrative procedure to this end. While some of this support seems to be provided by the Victim Support Office, GREVIO notes the need to enable victims of rape to be assisted by victim support lawyers or legal aid lawyers from the moment of their first statement. This is all the more important in view of a criminal justice system that places a heightened focus on the statement of the victim to which strict credibility requirements apply (see Chapter VI, Section A.1.2 Conviction rates). While GREVIO recognises the need for criminal justice systems to corroborate and assess the veracity and credibility of statements made by the victim, research shows that many women who experience rape and subsequent PTSD often only partially recollect events. It is frequent for rape victims to recall details of the event after the initial statement has been made to police, which is then often perceived as not being credible.

276. Moreover, GREVIO notes with concern that the quality and availability of free legal aid for victims of intimate partner violence under Organic Law 1/2004 varies greatly as this service depends on the competent administration (Ministry of Justice or the regional government). Issues over the availability of duty lawyers seem to arise frequently, especially in rural areas, and victims waive their right to a lawyer at the initial complaint stage in order to avoid a long wait, in particular when they report at night-time.

277. GREVIO strongly encourages the Spanish authorities to ensure that victims of all forms of violence covered by the Istanbul Convention have *de jure* and *de facto* access to legal aid at an early stage of the procedure (at the time of giving their first statement to the police or filing a complaint).

II. Migration and asylum

278. In the area of migration and asylum, the main requirement of the Istanbul Convention is to ensure that residence status laws and asylum procedures do not turn a blind eye to the realities of women living in abusive relationships or who are subjected to sexual violence and exploitation and other forms of gender-based violence. Residence status laws shall provide for the possibility of obtaining autonomous residence permits for women in specific circumstances (Article 59). Asylum procedures, on the other hand, must be gender-sensitive and allow women to disclose their stories in full, and grounds for persecution shall be interpreted in a gender-sensitive manner. This can only be achieved if, in turn, reception procedures and support services for asylum seekers are sensitive to the needs of women victims or those at risk of violence (Article 60).

A. Residence status (Article 59)

279. GREVIO notes with satisfaction that both the Organic Law 4/2000 on the Rights and Freedom of Foreigners in Spain and their Social Integration (LOEX) as well the corresponding Royal Decree (RELOEX) include provisions that are in full compliance with the requirements of Article 59 of the Istanbul Convention.¹³²

280. Women who derive their residence status from their spouses or partners as well as those who are in an irregular situation can turn to the authorities for protection, for example by requesting a protection order, and will, if granted or otherwise recognised as a victim of intimate partner violence under Organic Law 1/2004 on Integrated Protection Measures, be given leave to remain in Spain.¹³³ GREVIO notes with satisfaction that, in principle, this enables migrant women to report and subsequently leave their abusive partners and spouses without fearing expulsion, and irrespective of the duration of the relationship. Moreover, GREVIO welcomes the fact that approval rates for requests for temporary residence on the grounds of exceptional circumstances (such as intimate partner violence) have remained high, varying between 75% and 85% from 2012 to 2016.¹³⁴ While welcoming that the overall number of applications is still rising and that the proportion of permits granted remains significant, GREVIO recalls that prevalence rates of intimate partner violence against women of non-Spanish origin are high¹³⁵, and many of these women will have derived their residence permit from the abuser. In that view, it recalls the importance of informing migrant women victims of intimate partner violence about the possibility of applying for an independent residence permit, for example upon arrival in Spain or through contact with social services. Moreover, GREVIO reiterates its concern regarding the uncertainty that irregular migrant women face when reporting intimate partner violence and subsequently requesting a protection order, taking into account that, for example, the overall rejection rate for protection orders by courts in Barcelona and Madrid is far higher than in other parts of Spain (see Chapter VI, Section C, Emergency barring and protection orders, Articles 52 and 53). According to practitioners in this field, a fear that the protection order will be rejected contributes to a reluctance by many to take such a step.

281. While GREVIO recognises the need to establish evidential criteria for the granting of five-year temporary residence permits for victims of intimate partner violence, it points to the need to set these criteria with a view to the realities of migrant women in Spain. Currently, these require

¹³²

□ Royal Decree 557/2011 of 20 April, passing the Regulation of Organic Law 4/2000 on the Rights and Freedoms of Foreigners in Spain and their Social Integration (RELOEX).

¹³³

□ A detailed overview of the relevant legal provisions is available in the Spanish state report to GREVIO, p. 63.

¹³⁴

□ In 2012, 1 937 foreign women victims of intimate partner violence requested temporary residence, whereas only 921 foreign women in the same situation applied for a temporary residence permit in 2016. See p. 312 of the Annual Report of the State Observatory of Violence on Women for the year 2016 (in Spanish only), published in 2019, available at <https://violenciagenero.igualdad.gob.es/violenciaEnCifras/>.

¹³⁵

□ According to the Macro-Survey 2019, 24.7% of women residing in Spain born abroad have been victims of physical and/or sexual violence from a partner (compared to 12.7% of women born in Spain) and 45.6% have been victims of psychological violence (compared to 29.9% of women born in Spain).

a protection order, an official document from the prosecutor or a conviction of the perpetrator. Reports by other entities such as social services, family meeting points, domestic violence shelters or Victim Support Offices are not recognised. GREVIO welcomes that the 2019 Macro Survey¹³⁶ shows an increase of migrant women approaching general support services compared to the 2015 Macro Survey and recalls the importance of ensuring access to such services for migrant women.

282. With regard to the requirement set out in Article 59, paragraph 4, of the Istanbul Convention, GREVIO notes that Article 59*bis* of the LOEX and Articles 140-146 of the RELOEX allow women victims of forced marriage to obtain a temporary residence and work permit if they are identified as a victim of trafficking for the purpose of forced marriage. However, GREVIO is concerned that defining forced marriage through the lens of human trafficking may not cover all forms of forced marriage and that some victims of forced marriage may not be granted a residence permit on this ground. In addition, it seems to remain unclear for some professionals whether a case of forced marriage should be legally treated as a form of human trafficking or a form of intimate partner violence against women.¹³⁷ Moreover, GREVIO wishes to point out that the granting of such residence permits would require an official recognition as victim through a procedure in Spain, whereas the aim of Article 59, paragraph 4, of the Istanbul Convention is to ensure that women and girls who have lost their residence status in Spain as a result of a forced marriage abroad may return to Spain. It is unclear to what extent the existing provisions of the LOEX and RELOEX cover this type of scenario.

283. **GREVIO strongly encourages the Spanish authorities to:**

- A.a.* **review the evidential thresholds for the granting of temporary residence permits for all categories of migrant women in Spain (EU citizens, citizens of the European Economic Area, third-country citizens and irregular migrant women) with a view to removing those that are excessively high, such as the requirement of a criminal conviction of the abuser;**
- A.b.* **ensure that all victims of forced marriage are granted the right to regain any residence permits lost on account of having been forced into marriage abroad.**

B. Gender-based asylum claims (Article 60)

284. In recent years, Spain has experienced an increase in asylum applications. In 2018, a record 55 749 asylum applications were lodged, 43% by women – a 75% increase compared to 2017. This has caused a number of difficulties in relation to the reception of asylum seekers and case processing, including a significant backlog of pending applications and difficulties in accessing the procedure. GREVIO recognises that some of these are currently being addressed, and that both the human and financial resources of the Office for Asylum and Refugees (OAR) as well as the reception capacities are being increased.

A.2. Gender-sensitive asylum determination procedure

285. The right to asylum is firmly established in Spain – both in Article 13.4 of the Spanish Constitution and in Law 12/2009 regulating the Right to Asylum and Subsidiary Protection (hereinafter the Asylum Law), which is based on European Union law in this area. GREVIO welcomes the fact that Articles 3 and 7 of the Asylum Law specifically recognise persecution on the grounds of gender and sexual orientation. Article 6 of the law specifies that acts of persecution may include acts of physical and psychological violence, as well as acts of sexual violence. Article 46 of the Asylum Law sets out special procedural guarantees and treatment of persons with specific needs, including for victims of physical, psychological, sexual violence and of trafficking. The latter is particularly important, knowing that women during their journey often experience

¹³⁶

□ Macro-Survey on Violence against Women 2019, p. 275.

¹³⁷

□ Barcons Campmajo M. (2018), “Forced Marriages in the Spanish State: a socio-legal analysis from a gender perspective” (available in Spanish only), PhD Thesis, Autonomous University of Barcelona, available at: www.tdx.cat/bitstream/handle/10803/666691/mbc1de1.pdf?sequence=1&isAllowed=y.

sexual violence or sexual exploitation. However, GREVIO notes that in the absence of an implementing decree, this provision has not translated into new approaches in legal and administrative practice.

286. GREVIO welcomes the fact that initial steps have been taken to train staff at the OAR on gender-relation persecution and that guidelines for assessing and processing gender-based asylum claims have recently been introduced. General measures taken to reinforce the asylum procedure in more global terms are also having a beneficial effect.

287. Asylum seekers arrive in Spain either via Spain's international airports, by boat along the Andalusian coast or via Morocco through the Spanish enclaves of Melilla and Ceuta. Different procedures apply according to the entry point.

288. At border entry points, such as international airports, but also in Ceuta and Melilla, asylum applications are subject to an accelerated procedure concluded within four days with the possibility of an administrative appeal. Practitioners in this field have shared their concern that such accelerated procedures are carried out in a manner that effectively prevents women from disclosing experiences of violence. Women and girls' specific needs resulting from traumatising experiences are not screened for and thus remain largely unaddressed. Detention-like conditions or conditions experienced as such by women and girls do not create an environment of trust and support that is necessary for sharing sensitive information. Crucial information is thus easily missed, which GREVIO regrets (although all cases are communicated to the OAR). In this context, GREVIO notes, based on account of NGOs, that women who have suffered FGM, for instance, are extremely reluctant to disclose it, even when they know that the latter can represent grounds for seeking asylum.

289. Moreover, GREVIO notes with concern the persistent allegations that women and men from Sub-Saharan countries are experiencing significant barriers to accessing the border post of Beni-Enzar and subsequently to the ability to request international protection.¹³⁸ As a result, women, children and others with specific protection needs turn more and more frequently to organised crime and other networks in order to enter the enclaves by sea, which only increases their vulnerability. GREVIO points to the need to uphold the right to asylum for all, including women and girls from Sub-Saharan countries who are often fleeing serious gender-based violence and conflict and are thus in dire need of support and protection.

290. For arrivals at sea the ordinary asylum procedure applies, and applications may be lodged after the initial 72-hour clearing period in detention-like conditions in police facilities. GREVIO recognises that the stark increase in sea arrivals in 2018 has caused significant challenges in securing the identification of vulnerable individuals, in particular women and children. Further, GREVIO fully acknowledges that many thousands of such persons have been rescued within Spanish territorial waters.¹³⁹ GREVIO thus welcomes the increased co-operation between the UNHCR and the Spanish authorities, which aims to ensure a more structural approach to vulnerability screenings and subsequent action. More efforts are being made to ensure a more humanitarian approach, including through mandatory health screening, which, in certain parts of Andalusia, is beginning to include some vulnerability screening and the identification of persons with international protection needs. While GREVIO welcomes these developments, they can only be regarded as initial steps towards a more comprehensive approach to the identification of vulnerable women with a view to enabling their protection, support and safety.

138

□ See the report on Spain by the Council of Europe [Secretary General's Special Representative on migration and refugees](#), published 6 September 2018, available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016808d2c31; see also the AIDA Report on Spain, available at: www.asylumineurope.org/reports/country/spain/access-territory-and-push-backs and UN High Commissioner for Refugees (UNHCR), "Supplementary observations by the Office of the United Nations High Commissioner for Refugees in the case of N.D. and N.T. v Spain before the Grand Chamber of the European Court of Human Rights", 5 April 2018, 8675/15 and 8697/15, available at: www.refworld.org/docid/5b92533f4.html; regarding the situation in Melilla, see Informe 2019 de la Comisión Española de Ayuda al Refugiado (CEAR), p. 66, available at www.cear.es/wp-content/uploads/2019/07/INFORME_CEAR_2019.pdf.

139

□ In 2017, a total of 22 103 people arrived by sea, while in 2018 this number had risen to 58 569. Most are rescued within Spanish territorial waters and transferred to the Andalusian coast.

291. However, GREVIO notes with concern that those wishing to apply for international protection are not systematically referred to the asylum system. GREVIO also notes that referral to women's specialist services would be helpful in providing women with a sensitive and trauma-informed setting to disclose their experiences with violence. Good practice from other countries indicates that asylum procedures may be suspended while the case is reviewed by such services. Disembarkation points are not set up to process arrivals in a way that enables their swift access to the asylum procedure, and in a manner that identifies special protection needs and vulnerabilities. Instead, the approach seems to focus on managing migration, and the entry point for all is identification by local police. Upon expressing the intention to apply for asylum, police issue a document to that extent, and appointments must be made for an initial interview, again with police. Long waits for these initial interviews are said to be taking a toll on all asylum applicants, particularly women, and many give up and move on.¹⁴⁰ Moreover, GREVIO is concerned by the information that in some regions in Spain, asylum seekers will only become eligible for safe accommodation (i.e. a dedicated reception facility for asylum seekers) once they have undergone the initial interview.

292. The fact that these initial interviews – a crucial first step in the asylum procedure – are also carried out by police and in police stations, is creating significant barriers for women and girls fleeing gender-based persecution, as many may be fearful of the police (from their experiences with the police in the countries they are fleeing from) or uninformed of the importance of disclosing such information at that point in the procedure. Premises are said to frequently be inadequate for gender-sensitive interviewing as very little privacy is ensured, and not all police are trained to conduct such interviews in a sensitive manner.¹⁴¹ Interpretation services seem to be lacking in quality and gender-sensitivity, resulting in initial interviews with police with interpreters of the opposite sex or who do not have the required level of training. Information provided during the evaluation visit also indicated that sometimes the lack of co-ordination between regions has an impact on asylum-seeking applications.

293. In-depth second interviews are held by the OAR to assess the eligibility of an asylum claim, especially where claims are made on the basis of gender-related persecution. While GREVIO notes that the level of sensitivity to women's specific experiences with and vulnerabilities resulting from gender-based violence is increasing among OAR staff, it is concerned by information that high evidentiary thresholds seem to be applied. For example, women victims of sexual or domestic violence are required to have reported such violence to their national authorities without consideration for country-specific reasons that might prevent them from doing so, including but not limited to the fact that some women have fled countries affected by a conflict or war (Somalia, Iraq and Syria, for example). Further, some women come from countries where FGM is not criminalised, or is widely practised, in spite of being illegal. Also, restrictive interpretations of country-of-origin information seem to be applied, and internal flight alternatives are frequently assumed without an individual assessment of the applicant's profile, her experiences, vulnerabilities and her ability to earn a living.

294. Data on the number of successful applications based on gender-related persecution are not available, making it difficult to assess the success rate for women asylum seekers. Appeals can be brought to the national high court, but do not lead to a stay of execution, meaning deportation orders can be enforced while the appeal is pending. Interim measures may be applied for to allow the applicant to remain in Spain but are rarely granted in practice. In addition, appeals appear costly as they require the support of a lawyer.

295. GREVIO urges the Spanish authorities to take measures, including through legal amendments, to ensure women asylum seekers' swift access to the asylum procedure irrespective of whether they arrive at sea or by land (border crossing points), while at the same time ensuring the gender-sensitivity of the ordinary and accelerated asylum procedure, in particular by:

140

□ Information provided to GREVIO during the evaluation visit.

141

□ Information provided to GREVIO during the evaluation visit.

- A.c. **stepping up the human and financial resources of all those involved in the asylum procedure (police and Office for Asylum and Refugees) to ensure adequate premises, trained staff and quality same-sex interpreters for all relevant languages;**
- A.d. **introducing systematic vulnerability screening for women and girls upon arrival in order to identify international protection needs and make referrals to specialist services with a view to enabling women to disclose experiences of gender-based persecution, as well as to pay due attention to country-specific reasons that might have prevented women from reporting to authorities in their countries of origin the experiences with violence.**

Furthermore, GREVIO encourages the authorities to collect data on the annual numbers of asylum applications based on gender-related persecution, and the numbers of such applications granted and rejected.

A.3. Accommodation

296. Numerous efforts have been made to meet the rising challenge of providing basic accommodation and subsistence to asylum seekers and migrants arriving in or transiting through Spain. While GREVIO welcomes the high level of commitment of individual professionals, it notes with concern that before accessing the asylum system in Spain, many asylum seekers, including women and girls, spend significant periods of time in accommodation that exacerbates experiences of trauma, is not conducive to psychological recovery and stability, and impacts negatively on their ability to disclose experiences of gender-based persecution. Many women and girls spend months in humanitarian-type accommodation – if available at all – that falls short of the necessary specialist and supportive accommodation that women and girl victims of gender-based violence would need. Moreover, GREVIO was informed that unaccompanied children arriving in Spain and accommodated in residential facilities or even in institutions for persons with disabilities had to leave these upon turning 18 years of age, and that many of them end up in prostitution.

297. Once officially registered as seeking asylum, accommodation is made available in a decentralised manner, and efforts are made to ensure small-scale accommodation. According to the authorities, 80% of reception centres are apartments in towns and cities to facilitate integration, which GREVIO welcomes. Collective centres also exist, called Refugee Reception Centres (CAR), and some of these have decades of experience of welcoming asylum seekers. This has led to a range of good practices, such as the provision of adequate medical and psychological support for women who have experienced trauma through rape or other experiences of violence, and forensic evidence is documented and submitted in support of the asylum claim.

298. In the absence of structural vulnerability screening or other measures to identify the specific vulnerabilities and safety needs of individual women, very little emphasis seems to be placed on ensuring adequate, safe and gender-sensitive accommodation. It is in particular the situation in Temporary Reception Centres in Ceuta and Melilla that gives rise to concern, as these centres are designed for short stays by irregular migrants, typically young men. While GREVIO is aware that women and children make up a far smaller percentage of occupants, it nonetheless points to the need to ensure basic reception conditions that enable their safety. Many reports, including those of Spanish Ombudsman, have drawn attention to the adverse conditions that women and children face in these centres, significantly exposing them to risks of sexual violence and exploitation.¹⁴² This is of continuous concern, in particular as stays grow longer in time.

299. GREVIO urges the Spanish authorities to ensure safe and adequate accommodation for all women and girls expressing their intention to seek asylum and ensure their access to specialist NGOs experienced in assisting victims of gender-based violence, either by

142

□ Spanish Ombudsman, Asylum in Spain: International protection and reception system, June 2016, p. 91, available in Spanish at: www.defensordelpueblo.es/wp-content/uploads/2016/07/Asilo_en_Espa%C3%B1a_2016.pdf; Council of Europe [Secretary General's Special Representative on Migration and Refugees](https://www.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016808d2c31), published 6 September 2018, available at https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016808d2c31; Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Spain, Second Evaluation Report by the Group of Experts on Action against Trafficking, GRETA(2018)7, paragraph 96, available at <https://rm.coe.int/greta-2018-7-frg-esp-en/16808b51e0>.

embedding such services in accommodation arrangements or by otherwise ensuring *de facto* access, in order to reduce their risk of further victimisation and re-traumatisation.

C. Non-refoulement (Article 61)

300. Article 61 of the convention entails the obligation under international law for states to respect the principle of *non-refoulement* in relation to victims of gender-based violence who may fear persecution if returned. According to this principle, states shall not expel or return an asylum seeker or refugee to any country where their life or freedom would be threatened. Article 3 of the European Convention of Human Rights also prevents a person being returned to a place where they would be at real risk of being subjected to torture or inhuman or degrading treatment or punishment. The *non-refoulement* principle also includes not prohibiting access to the territory of a country to asylum seekers who have arrived at its borders or who are prevented from accessing its borders.¹⁴³ The obligation to respect the *non-refoulement* principle applies equally to victims of violence against women who are in need of protection, irrespective of the status or residence of the women concerned.¹⁴⁴

301. GREVIO notes that the failure to carry out vulnerability assessments, in particular those in the framework of accelerated procedures, with a view to properly detecting victims of gender-based violence discussed earlier in this report can lead to deportations or returns in violation of the obligation of *non-refoulement*.

302. With a view to reducing the risk of *non-refoulement* for women asylum seekers in Spain, GREVIO urges the Spanish authorities to ensure that vulnerability assessments of asylum-seeking women are carried out in such a manner that allows their identification as victims of violence against women and in need of international protection.

143

□ Explanatory Report to the Istanbul Convention, paragraph 320.

144

□ Ibid., paragraph 322.

III. Concluding remarks

303. Since 2004, Spain has been internationally recognised for its pioneering role in developing a comprehensive approach to intimate partner violence as framed in its landmark law on this form of violence against women, which includes, for example, the introduction of specialist courts to adjudicate on all related legal matters, whether they emanate from the civil or the criminal sphere. The resulting paradigm shift is palpable and any violence that women experience at the hands of their partners is clearly framed as a gendered phenomenon.

304. Since the entry into force of the Istanbul Convention, a range of targeted efforts have been made to expand Spanish policy and legislation to implement this convention in relation to forms of violence against women apart from intimate partner or domestic violence. It is in particular the Criminal Code that has undergone, and continues to undergo, revision to align it with the requirements of the Istanbul Convention. In addition, unprecedented steps have been taken in the form of participatory deliberations culminating in the discussion and adoption by the Spanish parliament of over 400 measures, which together form the State Pact on Gender-based Violence. This five-year road map identifies many shortcomings that, if addressed as planned, will thrust Spain towards fuller compliance with the Istanbul Convention.

305. GREVIO's review of the existing legislation, policy approaches and discourses around the different forms of violence against women in Spain, however, has revealed that prominence is given to intimate partner violence. Forms of violence such as rape and sexual violence, sexual harassment, forced marriage, female genital mutilation and forced sterilisation are less comprehensively addressed in law and policy. As competences in the area of preventing and combating violence against women are shared between the central and regional governments, stark differences exist in terms of the scope of regional legislation, service provision and the funding allocated. While some of the autonomous regions of Spain specifically seek to ensure a comprehensive approach to all forms of violence against women, others do not, resulting in a very mixed picture of the level of prevention, protection and prosecution of all forms of violence as covered by the Istanbul Convention.

306. GREVIO appreciates the overall political will demonstrated by the Spanish authorities to intensify the level of compliance with the Istanbul Convention and their efforts in this respect, as well as Spain's support for this international treaty. With this report, GREVIO thus wishes to support the Spanish authorities and invites them to keep it regularly informed of developments as regards the implementation of the Istanbul Convention. GREVIO looks forward to continuing its fruitful co-operation with the Spanish authorities.

307. With a view to facilitating the implementation of its suggestions and proposals, GREVIO requests that the national authorities translate this report into their official national language(s) and ensure that it is widely disseminated, not only to the relevant state institutions at all levels (national, regional and local), in particular to the government, the ministries and the judiciary, but also to NGOs and other civil society organisations that work in the field of violence against women.

Appendix I

List of proposals and suggestions by GREVIO

I. Purposes, definitions, equality and non-discrimination, general obligations

B. Scope of application of the convention (Article 2)

1. GREVIO recalls that Article 2, paragraph 1, of the Istanbul Convention affirms the notion that all forms of violence against women, and not only intimate partner violence, which affects women disproportionately. GREVIO thus strongly encourages the Spanish authorities to enhance the implementation of the Istanbul Convention in relation to forms of violence currently less addressed by Spanish legislation, policies and programmes, including by adopting a holistic approach to the prevention, protection and prosecution of such forms of violence. This is of particular importance in relation to sexual violence, sexual harassment, forced marriage, female genital mutilation and forced abortion/forced sterilisation. GREVIO also strongly encourages the Spanish authorities, in co-operation with women's NGOs and independent experts, to make use of the existing mechanisms for the monitoring and evaluation of state policies to review the implementation of the State Pact, analyse the impact of measures that have been implemented so far and plan the next steps, based on a set of predefined indicators to measure progress. (paragraph 10)

C. Definitions (Article 3)

2. GREVIO strongly encourages the Spanish authorities to ensure that legislation and administrative regulations, including protocols, at national level and in all autonomous communities conform fully to the definitions contained in Article 3 of the Istanbul Convention in order to harmonise its implementation. (paragraph 16)

D. Fundamental rights, equality and non-discrimination (Article 4)

2. Intersectional discrimination

3. GREVIO strongly encourages the Spanish authorities to: (paragraph 24)

- a. strengthen measures to prevent and combat violence that affects women who are or might be exposed to intersectional discrimination, including women with disabilities, women belonging to minority groups, including Roma women, migrant and asylum-seeking women, LGBTI women, elderly women, women in prostitution and women who abuse substances;
- b. integrate the perspective of such women into the design, implementation, monitoring and evaluation of policies for preventing and combating violence against women, by supporting, funding and closely co-operating with women's NGOs representing them;
- c. raise the awareness of victims belonging to these groups of women about their rights to protection and support services;
- d. develop and improve accessibility to protection and support services for these groups of women;
- e. support research and add specific indicators in data collection pertaining to violence against women that relate to women and girls who are or might be exposed to intersectional discrimination.

E. State obligations and due diligence (Article 5)

4. GREVIO strongly encourages the Spanish authorities to ensure the effective enforcement of the due diligence obligation to diligently prevent, investigate, punish and provide reparation for victims of any of the forms of violence covered by the Istanbul Convention and without discrimination on the basis of any of the grounds listed in Article 4, paragraph 3, of the Istanbul Convention. (paragraph 29)

II. Integrated policies and data collection

A. Comprehensive and co-ordinated policies (Article 7)

5. GREVIO urges the Spanish authorities at all levels of government, in particular the regional level to ensure that legislation and administrative regulations conform fully to the principles of the Istanbul Convention and to ensure a state-wide effective, comprehensive and co-ordinated set of policies to prevent and combat all forms of violence covered by the Istanbul Convention. To this end, GREVIO urges the Spanish authorities to: (paragraph 35)

- a. conduct independent comparative analyses of the existing regional legislation and policies on violence against women, with a particular focus on identifying promising practices that can be recommended throughout Spain, and promote such endeavours at both national and regional levels;
- b. devise and implement comprehensive and holistic policies to address violence against women in all its forms and manifestations, including in particular sexual violence, sexual harassment, forced marriage, and forced sterilisation and abortion, as well as crimes against women committed in the name of so-called honour.

B. Financial resources (Article 8)

6. GREVIO strongly encourages the Spanish authorities at all levels of government, in particular the regional and local level, to: (paragraph 41)

- a. to set incentives or otherwise encourage all relevant actors to place due emphasis on the professional and technical experience in procurement procedures for services for victims of the different forms of violence against women covered by the Istanbul Convention
- b. explore ways in which to increase the accountability of regional authorities for the use of funding transferred from the central level;
- c. ensure that priorities for action at the regional level are aligned with the measures set out in the State Pact and harmonised with the principles of the Istanbul Convention with a view to closing gaps in service provision and in the overall implementation of the provisions of the Istanbul Convention.

C. Non-governmental organisations and civil society (Article 9)

7. GREVIO strongly encourages the Spanish authorities to: (paragraph 47)

- a. develop funding systems and ensure funding levels that enable specialist women's NGOs to play an active role in the provision of support services for women victims of all forms of violence and across all regions of Spain;
- b. establish or reinforce at all territorial levels, in particular the local and regional level, recognition of the expertise of independent women's organisations, including community-based and grass-roots NGOs and those representing specific groups of women such as migrant women, women with disabilities, women in rural areas and Roma women, in order to incorporate their opinions and experiences into the design of policies and measures to prevent and combat all forms of violence against women, in particular those currently less addressed.

D. Co-ordinating body (Article 10)

8. With a view to ensuring a more even level of implementation of the Istanbul Convention across all regions, GREVIO strongly encourages the Spanish authorities to: (paragraph 53)

- a. reinforce the co-ordination between national and decentralised governmental structures and enhance the ability of the Government Delegation for Gender-based Violence to ensure the design of national and regional legislative and policy frameworks that allow for full compliance with the Istanbul Convention;
- b. take measures towards the effective monitoring and evaluation of laws and policies on violence against women at regional level with a view to identifying and addressing gaps in the prevention of violence, protection of victims and prosecution of perpetrators;
- c. ensure that monitoring and evaluation of policies, both at national and regional levels, is based on predefined indicators established to measure success.

E. Data collection and research (Article 11)

1. Administrative data collection

9. Bearing in mind the need for data collection to apply to all forms of violence covered by the Istanbul Convention, GREVIO strongly encourages the Spanish authorities to ensure that efforts made by the Government Delegation for Gender-based Violence to collect and publish data extend to all forms of violence against women as covered by the Istanbul Convention, in particular sexual violence, forced marriage and FGM. (paragraph 57)

a. Law-enforcement agencies and the criminal justice sector

10. GREVIO encourages the Spanish authorities to swiftly implement measure no. 167 and measure no. 180 of the State Pact on Gender-based Violence as adopted by the Congress of Deputies in order to ensure the comprehensive collection of disaggregated data in relation to all forms of violence as covered by the Istanbul Convention. Furthermore, GREVIO strongly encourages the Spanish authorities to take measures to collect data on all forms of violence against women and at all stages of the criminal justice process (from reporting, to investigating to the opening of criminal proceedings and their outcomes), disaggregated by sex, age, type of violence and the relationship of the perpetrator to the victim. GREVIO also strongly encourages the Spanish authorities to expand the data collected by the CGPJ on divorce and child custody decisions in order to assess how Spanish courts ensure the safety of women and children affected by domestic violence in that context. (paragraph 63)

b. Health-care sector

11. GREVIO encourages the Spanish authorities to take measures to improve the systematic and comparable collection of data by the health-care sector throughout the country, on all forms of violence against women covered by the Istanbul Convention. (paragraph 66)

2. Population-based surveys

12. GREVIO invites the Spanish authorities to carry out surveys on all forms of violence against women covered by the Istanbul Convention, including dedicated surveys on forms of violence such as female genital mutilation and forced marriage. Moreover, GREVIO encourages the Spanish authorities to ensure that any survey results, in particular those pointing to differences across different groups of women regarding their exposure to violence, are used to ensure evidence-based policy making. (paragraph 70)

3. Research

13. GREVIO encourages the Spanish authorities to step up efforts to support research into manifestations of violence against women that are not currently explored, in particular by setting research priorities in relation to sexual violence, forced marriage, FGM and forced sterilisation, and the effects on children of witnessing domestic violence. (paragraph 74)

III. Prevention

A. General obligations (Article 12)

14. GREVIO encourages the Spanish authorities to maintain and develop, where necessary, efforts to engage society at large, in particular men and boys, through community-based preventive programmes, campaigns and other measures in efforts to prevent and combat the different forms of violence against women, including by developing the notion of respect for sexual autonomy and consent, awareness of sexual harassment and technology-facilitated or online violence against women. (paragraph 80)

B. Awareness raising (Article 13)

15. GREVIO strongly encourages the Spanish authorities to further develop their awareness-raising efforts on violence against women and to roll it out to include all forms of violence covered by the Istanbul Convention, in particular sexual violence and digital violence, including by engaging in partnerships with the relevant women's specialist support services, community-based grassroots organisations and the media. (paragraph 85)

C. Education (Article 14)

16. Welcoming the favourable legal framework that makes gender equality one of the objectives of the education system, GREVIO invites the Spanish authorities to continue the varied efforts undertaken to ensure that pupils are equipped with knowledge and skills in relation to the topics identified in Article 14 of the Istanbul Convention. (paragraph 92)

D. Training of professionals (Article 15)

17. While recognising that training for the judiciary is legally mandated, GREVIO strongly encourages the Spanish authorities to evaluate the different training available to the judiciary in order to improve its impact. GREVIO urges the authorities to ensure that the available training addresses all forms of violence against women covered by the Istanbul Convention, in particular sexual violence, as well as the psychological dynamics of intimate partner violence, post-separation violence, the effects of violence on child victims and witnesses, and the prevention of secondary victimisation. (paragraph 98)

18. GREVIO encourages the Spanish authorities to strengthen training efforts for professional groups such as law-enforcement officers, nurses and other medical professions, and teachers throughout the country, in particular by incorporating mandatory initial and in-service learning modules on the different forms of violence against women, including their digital dimension, the detection of such violence, secondary victimisation and equality between women and men. (paragraph 104)

E. Preventive intervention and treatment programmes (Article 16)

1. Programmes for perpetrators of domestic violence

19. Welcoming the varied types of domestic violence perpetrator programmes in existence in Spain GREVIO strongly encourages the Spanish authorities to work towards greater compliance

with Article 16, paragraph 3, of the Istanbul Convention by ensuring a wider implementation of all custodial and non-custodial domestic violence perpetrator programmes, in close co-operation with women's specialist support services, and by ensuring the evaluation of all programmes in use in line with standard methodological rules in order to assess their impact. (paragraph 112)

2. Programmes for sex offenders

20. GREVIO encourages the Spanish authorities to pursue their efforts to introduce a gender perspective throughout all modules of the Sexual Assault Control Programme and to ensure a common approach to the implementation of all programmes in accordance with the principles of the Istanbul Convention and recognised good practices. (paragraph 115)

F. Participation of the private sector and the media (Article 17)

21. While recognising that reporting and complaint mechanisms have been introduced by law and largely put in place, GREVIO encourages the Spanish authorities to collect data on the number of women victims of sexual harassment at work, complaints filed by the victims and the outcome of such complaints. (paragraph 124)

22. GREVIO encourages the Spanish authorities to step up efforts to curb the sensationalist approach pursued by some broadcasters and media outlets in covering gender-based violence and in presenting the image of women in a plural and non-stereotyped manner, in particular by training journalists on the different forms of violence against women and gender-based violence and how to report on them. (paragraph 130)

IV. Protection and support

A. General obligations (Article 18)

23. GREVIO urges the Spanish authorities to set up multi-agency co-operation structures among the relevant statutory and other agencies in relation to sexual violence, sexual harassment, stalking, forced marriage, FGM and forced abortion/sterilisation, as required by Article 18, paragraph 2 of the Istanbul Convention, and to ensure their approach to service provision is based on a gendered understanding and other principles on which support and protection services should be based, such as being aimed at empowerment and avoiding secondary victimisation (Article 18, paragraph 3). To this end, GREVIO strongly encourages the authorities to develop national guidelines/standards in this area in co-operation with women's NGOs experienced in the provision of services. (paragraph 137)

B. Information (Article 19)

24. GREVIO encourages the Spanish authorities to strengthen efforts to provide information to victims of all forms of violence against women in a format and language they understand. (paragraph 140)

C. General support services (Article 20)

1. Social services

25. GREVIO strongly encourages the Spanish authorities to take effective measures to ensure women's access to general support services more evenly across the country by reducing regional disparities in the level and quality of service provision. (paragraph 146)

2. Health-care services

26. GREVIO urges the Spanish authorities to a. set out a co-ordinated and comprehensive approach to the provision of medical and forensic services to victims of rape and sexual assault that links in law enforcement and other relevant statutory agencies and medical professionals trained to meet the needs of these victims in a sensitive and trauma-informed manner. Moreover, GREVIO strongly encourages the Spanish authorities to take measures, including through specialist training, to ensure a proactive role for medical professionals in detecting intimate partner violence and to raise the quality of injury reports to ensure their usefulness in criminal proceedings. (paragraph 152)

D. Assistance in individual/collective complaints (Article 21)

27. GREVIO invites the Spanish authorities to step up their efforts to ensure victims have information on and access to applicable regional and international complaint mechanisms. (paragraph 154)

E. Specialist support services (Article 22)

28. Recalling the importance of women-to-women specialist support and counselling for any experiences of violence covered by the Istanbul Convention, GREVIO urges the Spanish authorities to provide or arrange for adequate specialist women's support services with a gendered approach in all autonomous communities and for all forms of violence covered by the Istanbul Convention. The aim should be to ensure the provision of immediate, medium- and long-term support by involving and tapping into the long-standing expertise built up by women's specialist support services in civil society. (paragraph 158)

29. In addition, GREVIO strongly encourages the Spanish authorities to take measures to promote, in all autonomous communities, a comprehensive mapping of existing specialist support services for rape and sexual violence, stalking, sexual harassment, forced marriage, FGM and forced abortion and forced sterilisation with a view to filling, on a needs basis, the gaps in service provision. (paragraph 159)

F. Shelters (Article 23)

30. GREVIO strongly encourages the Spanish authorities to take effective measures to: (paragraph 164)

- a. promote a level of shelter provision in all autonomous communities that conforms to the standard set in the Explanatory Report to the Istanbul Convention of one family place per 10 000 head of population;
- b. improve the access to shelters for women with disabilities, women in rural areas, women over the age of 65, girls, women substance abusers, women in prostitution, and migrant women.

G. Telephone helplines (Article 24)

31. GREVIO strongly encourages the Spanish authorities to expedite the broadening of the national helpline's scope to ensure counselling and referrals in relation to all forms of violence covered by the Istanbul Convention by trained staff. (paragraph 169)

H. Support for victims of sexual violence (Article 25)

32. GREVIO urges the Spanish authorities to take measures to establish a sufficient number of rape crisis or sexual violence referral centres accessible to victims of rape and/or sexual violence, which meet all their needs in the short, medium and long term and include immediate medical care, high-quality forensic examinations, psychological and legal support, and referral to specialist organisations, as well as to develop a protocol that would comprehensively address this form of violence and support a holistic response to the needs of victims. A victim's access to the different support services should not depend on her willingness to lodge a complaint. (paragraph 174)

I. Protection and support for child witnesses (Article 26)

33. GREVIO strongly encourages the Spanish authorities to ensure the provision of age-appropriate psychological counselling for child witnesses of all forms of violence covered by the Istanbul Convention throughout the country and in conditions that ensure continuity and quality. (paragraph 179)

J. Reporting by professionals (Article 28)

34. GREVIO encourages the Spanish authorities to ensure that the duty to report imposed on professionals is tempered by full and sensitive information being provided to the victim to allow her to make an informed decision herself and maintain autonomy, while also ensuring the safety of all, especially minors. (paragraph 184)

V. Substantive law

A. Civil law

1. Civil remedies against the state – ensuring due diligence (Article 29)

35. GREVIO strongly encourages the Spanish authorities to continue and expand the existing efforts to review the regime of civil and disciplinary measures available to hold different state officials accountable for failure to comply with the obligation to diligently prevent, investigate and punish acts of violence covered by the Istanbul Convention and to protect victims, as well as to investigate and examine any barriers to their use and to take practical measures such as training and awareness raising among the judiciary and other professionals in order to enable women victims of violence to make practical use of the existing legal remedies, including in the context of wrongful decisions in the administration of justice. Progress in this area needs to be measured by collecting data on the number of complaints by victims and their outcomes. (paragraph 189)

2. Compensation (Article 30)

36. GREVIO strongly encourages the Spanish authorities to take measures to: (paragraph 194)
- a. ensure that compensation orders are promptly complied with by perpetrators of any of the forms of violence covered by the Istanbul Convention;
 - b. facilitate victims' access to state compensation within a reasonable time as required by Article 30, paragraph 3, and in a manner that is adequate as required by Article 30, paragraph 2, of the Istanbul Convention.

3. Custody and visitation rights and safety (Article 31)

37. GREVIO urges the Spanish authorities to take the necessary measures, including through legislative amendments and providing training, to: (paragraph 206)
- a. limit the margin of discretion of criminal and civil judges when deciding on custody and visitation rights for convicted perpetrators of intimate partner violence, those awaiting trial and in cases where the level of evidence collected confirms the abuse of either the child or the mother;
 - b. update guidelines for judges on the implementation of Organic Act 1/2004 on Comprehensive Measures against Gender Violence with the aim of improving judges' proactive role in identifying and documenting the impact of witnessing violence on children, including by actively seeking information from women's support services, law enforcement and family meeting points and/or by considering including children in protection orders;
 - c. improve co-ordination and co-operation between courts and services that assist women victims of violence and their children (women's specialist services, social protection and health services, family meeting points, etc.);
 - d. ensure that all relevant professionals, in particular judges and staff at family services and family meeting points, are trained to recognise that witnessing violence against a mother jeopardises the best interest of the child;
 - e. improve the funding and staffing situation of family meeting points to enable them to offer quality interventions that aim to accompany single-parent families in the aftermath of abuse, including by documenting evidence of abuse or the harmful effects of (supervised) visits with the abusive parent;
 - f. ensure that all family meeting points operate on principles and values that are in line with a gendered understanding of violence against women and the principles of the Istanbul Convention, in particular that of the empowerment of women, and that regional authorities monitor their work, preferably relying on independent entities;
 - g. ensure that family meeting points have a general duty to report to the courts the information about children at risk of abuse and uphold that duty, so that courts can review or reconsider their decisions on visitation, if needed.

B. Criminal law

1. Domestic violence, including psychological violence (Articles 33 and 35)

38. GREVIO strongly encourages the Spanish authorities to: (paragraph 213)
- a. increase awareness, including through training, among judges, law-enforcement agencies and legal professionals, of the gendered nature and consequences of psychological violence as one of the most prevalent forms of violence against women in Spain, and to review the implementation in judicial practice of the existing criminal offences on psychological violence, including the ones that intend to capture its online dimension, in order to ensure that the available provisions are effectively used to investigate, prosecute and punish all its manifestations. The latter also applies to provisions on physical violence;
 - b. take measures to improve the collection of data on the number of court cases of psychological violence against women, including its online dimension;

- c. place a stronger emphasis on evidence-based policy making by making use of the analysis of cases of intimate partner violence resulting in the death of the victim with the aim of preventing such cases in the future.

2. Stalking (Article 34)

39. GREVIO strongly encourages the Spanish authorities to review the level of seriousness required for behaviour to qualify as stalking under Article 172 of the Spanish Criminal Code. In order to ensure the effective implementation of the stalking offence, GREVIO encourages the Spanish authorities to introduce specialist preventive operational measures to avoid reoffending, in particular in relation to post-separation stalking, such as the possibility to apply for a protection order and to employ a system of electronic bracelets. GREVIO further encourages the Spanish authorities to take measures to improve the collection of data on the number of cases of stalking, including its online dimension, with a view to building the capacity of all legal professionals to handle this offence. (paragraph 218)

3. Sexual violence, including rape (Article 36)

40. GREVIO encourages the Spanish authorities to pursue the amendments to the Criminal Code with a view to ensuring the existence of an offence of rape firmly rooted in the lack of consent that is operational in practice and effectively applied by law-enforcement agencies, prosecution services and the judiciary. The aim must be to ensure appropriate sanctions for all acts of a sexual nature without the consent of the victim, including in the absence of resistance by the victim and where the circumstances of the case preclude valid consent. For this purpose, GREVIO strongly encourages the Spanish authorities to introduce training and guidelines for all those in the criminal justice system to ensure an understanding of rape and sexual violence as offences based on the absence of consent, not the use of force. (paragraph 224)

4. Forced marriage (Article 37)

41. GREVIO strongly encourages the Spanish authorities to take legislative and other appropriate actions to make protective measures applicable to victims of this form of violence and women/girls at risk and to ensure that relevant legal professionals are trained in establishing an operational distinction between forced marriage and trafficking in human beings on a case-by-case basis, so that implementation of this new offence is consolidated. (paragraph 230)

5. Female genital mutilation (Article 38)

42. GREVIO encourages the Spanish authorities to criminalise the intentional conduct of coercing or procuring a woman to undergo female genital mutilation and the intentional conduct of inciting, coercing or procuring a girl to undergo the act as set out in Article 38b and c of the Istanbul Convention. (paragraph 234)

6. Forced abortion and forced sterilisation (Article 39)

43. GREVIO urges the Spanish authorities to ensure that in any procedures authorising the sterilisation of legally incapacitated women, less invasive birth control options are considered with due regard to the best interest and self-determination of the women concerned. GREVIO encourages the Spanish authorities to pursue their efforts to ensure that women with disabilities who undergo consensual sterilisation can make their decision on the basis of sufficient information designed in a disability-accessible manner, which is presented to them by professionals who are trained on gender and disability issues. (paragraph 238)

7. Sexual harassment (Article 40)

44. GREVIO strongly encourages the Spanish authorities to align the definition of sexual harassment in the Spanish Criminal Code with that set out in Article 40 of the Istanbul Convention by widening its scope to ensure its applicability in all spheres of life – public and private – and by removing any requirements of objective and serious intimidation, hostility or humiliation. (paragraph 241)

VI. Investigation, prosecution, procedural law and protective measures

A. Immediate response, prevention and protection (Article 50)

1. Reporting to and investigations by law-enforcement agencies

45. GREVIO strongly encourages the Spanish authorities to equip all relevant law-enforcement authorities with the resources, knowledge and powers to respond promptly and appropriately to all forms of violence covered by the Istanbul Convention, in particular in relation to sexual violence, forced marriage and stalking, while paying due regard to the digital dimension of intimate partner violence and post-separation abuse. GREVIO strongly encourages the authorities to promote effective and proactive law-enforcement investigations, including the gathering of evidence other than the victim's statement, such as documenting injuries, interviewing witnesses, taking photos or DNA samples. (paragraph 250)

2. Conviction rates

46. GREVIO strongly encourages the Spanish authorities to raise the quality and gender perspective of the work of forensic evaluation units in relation to all cases in which they issue reports to courts, in particular related to criminal offences of rape and sexual assault, as well as intimate partner violence. (paragraph 255)

47. Moreover, GREVIO urges the Spanish authorities to explore mechanisms and procedures, including through legal amendments, that would remove the centrality of the victim's statement in criminal proceedings in intimate partner violence and sexual violence. (paragraph 256)

48. GREVIO urges the Spanish authorities to swiftly identify and address any/all legislative and procedural factors that contribute to the very high threshold for proving rape in court, while paying due regard to the principle of avoiding re-traumatisation of victims during investigation and judicial processes. (paragraph 257)

B. Risk assessment and risk management (Article 51)

49. With a view to increasing the accuracy of risk assessments in cases of intimate partner violence, GREVIO strongly encourages the Spanish authorities to build on the expertise of law-enforcement agencies to carry out risk assessment by introducing information sharing on the basis of multi-agency co-operation, including the involvement of women's specialist services, while ensuring the human rights and safety of the individual victim. (paragraph 263)

C. Emergency barring and protection orders (Articles 52 and 53)

50. GREVIO strongly encourages the Spanish authorities to review the reasons for the significant rates of rejecting the applications for protection orders, as well as for the high numbers of violations of protection orders by perpetrators, and to apply legislative and policy measures to address these challenges in relation to all acts of violence to which these orders are applicable.

Measures to be considered may include, for example, reacting diligently to violation of protection orders, especially by effectively enforcing the sanction of provisional imprisonment in situations of high risk. Progress in this area should be monitored and analysed relying on a set of predefined indicators. (paragraph 271)

E. Legal aid (Article 57)

51. GREVIO strongly encourages the Spanish authorities to ensure that victims of all forms of violence covered by the Istanbul Convention have de jure and de facto access to legal aid at an early stage of the procedure (at the time of giving their first statement to the police or filing a complaint). (paragraph 277)

VII. Migration and asylum

A. Residence status (Article 59)

52. GREVIO strongly encourages the Spanish authorities to: (paragraph 283)

- a. review the evidential thresholds for the granting of temporary residence permits for all categories of migrant women in Spain (EU citizens, citizens of the European Economic Area, third-country citizens and irregular migrant women) with a view to removing those that are excessively high, such as the requirement of a criminal conviction of the abuser;
- b. ensure that all victims of forced marriage are granted the right to regain any residence permits lost on account of having been forced into marriage abroad.

B. Gender-based asylum claims (Article 60)

1. Gender-sensitive asylum determination procedure

53. GREVIO urges the Spanish authorities to take measures, including through legal amendments, to ensure women asylum seekers' swift access to the asylum procedure irrespective of whether they arrive at sea or by land (border crossing points), while at the same time ensuring the gender-sensitivity of the ordinary and accelerated asylum procedure, in particular by: (paragraph 295)

- a. stepping up the human and financial resources of all those involved in the asylum procedure (police and Office for Asylum and Refugees) to ensure adequate premises, trained staff and quality same-sex interpreters for all relevant languages;
- b. introducing systematic vulnerability screening for women and girls upon arrival in order to identify international protection needs and make referrals to specialist services with a view to enabling women to disclose experiences of gender-based persecution, as well as to pay due attention to country-specific reasons that might have prevented women from reporting to authorities in their countries of origin the experiences with violence.

Furthermore, GREVIO encourages the authorities to collect data on the annual numbers of asylum applications based on gender-related persecution, and the numbers of such applications granted and rejected.

2. Accommodation

54. GREVIO urges the Spanish authorities to ensure safe and adequate accommodation for all women and girls expressing their intention to seek asylum and ensure their access to specialist NGOs experienced in assisting victims of gender-based violence, either by embedding such services in accommodation arrangements or by otherwise ensuring de facto access, in order to reduce their risk of further victimisation and re-traumatisation. (paragraph 299)

C. *Non-refoulement* (Article 61)

55. With a view to reducing the risk of non-refoulement for women asylum seekers in Spain, GREVIO urges the Spanish authorities to ensure that vulnerability assessments of asylum-seeking women are carried out in such a manner that allows their identification as victims of violence against women and in need of international protection. (paragraph 302)

Appendix II

List of the national authorities, other public bodies, non-governmental organisations and civil society organisations with which GREVIO held consultations

National authorities

- General Council of the Judiciary
- Government Delegation for Gender-based Violence
- Inter-ministerial Commission on Asylum and Refugees (CIAR)
- Ministry of Education and Professional Training (National Statistics Institute)
- Ministry of Employment, Migration and Social Security
- Ministry of Foreign Affairs, European Union and Cooperation
- Ministry of Health, Consumer Affairs and Social Welfare
- Ministry of Interior
- Ministry of Justice
- Ministry of Science, Innovation and Universities
- Ministry of the Economy and Business
- Ministry of the Presidency, Relations with Parliament and Equality
- Office for Asylum and Refugees (OAR)
- Office of the Deputy Prime Minister
- Prosecutor's Office
- Secretary of State for Equality

Regional authorities

- Ertzaintza (Basque Police Headquarters)
- Family and Women's Care Units (UFAM) of the National Police Force in Andalusia and Castilla-La Mancha
- Regional Government of Andalusia
- Regional Government of Castilla-La Mancha
- Regional Government of Madrid
- Regional Government of the Basque Country
- Spanish Federation of Municipal and Provincial Authorities (FEMP)
- Women Child Teams (EMUME) of the Civil Guard in Andalusia and Castilla-La Mancha

Public bodies

- Asylum reception facility, Castilla-La Mancha
- Asylum reception facility (CAR Centre Seville), Andalusia
- Emakunde (Women's Institute Basque Country)
- Inter-institutional Commission to coordinate the assistance of the victims of domestic and sexual violence against women and additional representative
- Ombudsman
- Women's Institute

Non-governmental organisations

- ACCEM (including ACCEM Andalusia)
- AIETI (Association on Research and Expertise on Ibero-American issues)
- Amnesty International
- AMUVI Association
- Andalusia Welcome Network (Andalucía Acoge)
- Aspacia Foundation
- Association Social Action for Equality
- Association of Women Survivors of Gender Violence
- CEDAW Shadow Platform
- CERMI Women's Foundation
- Childbirth is Ours Association (El Parto es Nuestro)
- CIMASCAM (Sexual Violence Support Service run by the Aspacia Foundation)
- Commission for the Investigation of Ill-treatment of Women
- Federation of Progressive Women
- Femicide.net
- Gure Sarea Network of lawyers, Basque Country
- International Rescue (Rescate Internacional)
- Istanbul Convention Shadow Report Platform (La Plataforma para el informe sombra)
- Médicos del Mundo (Doctors of the World)
- Move forward without fear (Association Avanza sin miedo)
- Platform 7N against male violence
- Save a Girl, Save a Generation
- Spanish Commission for Refugees (CEAR, including CEAR Andalusia)
- Spanish Commission Justice and Peace (Comisión General Justicia y Paz)
- Spanish Coordination for the European Women's Lobby (LEM Spain)
- Spanish Red Cross
- Women's Link Worldwide

Academics

- Belén Sanz Barbero
- Helena Soletó
- Laura Nuño
- Lucía Martínez Garay
- Teresa San Segundo