Promising practices of establishing and providing specialist support services for women experiencing sexual violence

A legal and practical overview for women's NGOs and policy makers in the Western Balkans and Turkey

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CSSP Civil Society Strengthening Platform

WAVE WOMEN AGAINST VIOLENCE EUROPE

UN WOMEN

Women against Violence Europe Network (WAVE) is a European-wide network of more than 160 members (including women's NGOs, NGO networks and individual members) in 46 European countries, who are dedicated to addressing and preventing violence against women and girls. Since its foundation in 1994, WAVE has been working to promote and strengthen the human rights of women and children, and to enable women and their children to live free from violence, particularly through building and sustaining a strong European network of specialized support services, experts and survivors.

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1 Biljana Brankovic is also a member of GREVIO. However, she co-authored this paper in her personal capacity as Consultant, not in her official capacity as GREVIO member, so opinions expressed herein could not be attributed to GREVIO as a whole.

* For the European Union, this designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence. For UN Women, references to Kosovo shall be understood to be in the context of UN Security Council Resolution 1244 (1999).

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TABLE OF CONTENTS

I. Introduction

This policy paper was developed as part of the EU/UN Women project "Strengthening the capacities of regional CSOs networks for policy advocacy, knowledge-based expansion and partnership facilitation on sexual violence in the Western Balkans and Turkey," under the EU/UN Women regional programme "Ending violence against women: Implementing norms, changing minds." The programme aims to end gender-based discrimination and violence against women in the Western Balkans and Turkey, encompassing the countries of Albania, Bosnia and Herzegovina, Kosovo, Montenegro, the Republic of North Macedonia, and Serbia.

The **Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (also known as the Istanbul Convention)** highlights, in **Article 25**, that States should provide adequate support to victims of sexual violence and ensure these services are set up and easily accessible to them. As the 2019 Mapping of sexual violence services in the Western Balkans and Turkey Executive Summary[1] highlights, one key regional challenge identified throughout the programme implementation process has been the serious gap in sexual violence services in the region.

Only three out of seven partner countries have identified some sort of specialised sexual violence services, which are often poorly implemented due to a lack of government support and funding. There is furthermore insufficient training and capacity among women's NGOs, service providers, and policy makers on the issue of sexual violence, not enough guiding principles in place for services to support victims of sexual violence, leading to a serious lack of trust by victims to report such crimes.

With a view to addressing the findings of the 2019 Mapping report, the Civil Society Strengthening Platform (CSSP) project organised one capacity building training to promote promising practice standards in supporting victims of sexual violence, amongst women's specialists support services supporting victims of sexual violence, other women's NGOs, and stakeholders such as policymakers. The ultimate aim of the training was to better prepare service providers in effectively supporting victims of sexual violence, and to contribute to the development of the present policy paper.

One important element to be considered is that, in 2021, Turkey withdrew from the Istanbul Convention[2] through a Presidential Decree published on the 20th of March. This, therefore, signifies, that Turkey is no longer obliged to abide by the standards enshrined in the Istanbul Convention, nor has the obligation to set up specialist support services for women victims of sexual violence.

As violence against women and girls has increased to new levels worldwide as a result of the COVID-19 pandemic, it is of great importance to adequately protect women and children from violence, which requires a serious and ongoing political commitment to protecting women from violence, specifically sexual violence. Thus, when addressing the situation of Turkey in this paper, WAVE would still recommend the following standards to be upheld by Turkey when protecting and supporting victims of sexual violence.

The aim of this policy paper is to serve national policy makers and women's NGOs as a learning tool when establishing and providing support services for women and children victims of sexual violence, that can eventually inform a national service provision framework.

The present paper focuses on highlighting promising practices implemented by women's NGOs and other stakeholders when supporting victims of sexual violence, and on establishing a common language when it comes to the specialist services mentioned by the Istanbul Convention, namely: rape crisis and sexual violence referral centres. This paper outlines a process of scaling and learning for women's NGOs and national policy makers in the Western Balkans and Turkey and assesses the need for specialised support of victims of sexual violence, expanding on the principles, concepts, and rationale underlying the rape crisis model.

1 https://cssplatform.org/wp-content/uploads/2019/12/WAVE_SVReport191119_web.pdf

2 https://www.coe.int/en/web/commissioner/-/turkey-s-announced-withdrawal-from-the-istanbul-convention-endangers-women-s-rights

It furthermore covers the importance of prevention work and highlights awareness-raising campaigns in Ireland and Serbia. This paper also builds upon previous analysis and reports undertaken, such as GREVIO Monitoring reports, offering a comprehensive regional analysis on strategic policies, legislation on sexual violence and sexual harassment, data available on reports of sexual violence crimes, protocols, and guidelines that regulate the duty of professionals to report, among others.

This paper relies partly on the experience and standards developed in Ireland, but women's NGOs in the United Kingdom, particularly rape crisis centres, have been providing specialist services primarily to women and girls who have experienced sexual violence for more than 40 years.[3] These services reflect high support standards provided throughout the UK and Ireland, being the culmination of a long process of research, reflection, consultation, and definition, providing a trauma-informed approach to practice and delivery, that is both appropriate to and effective when supporting survivors of all forms of sexual violence.

Methodology and structure of the present paper

The present paper was developed with the help of two international experts, Biljana Brankovic,[4] International Council of Europe Consultant, Serbia, and Clíona Saidléar, Director Rape Crisis Network Ireland. In her capacity, Dr. Clíona Saidléar focused on providing a detailed explanation on specialist support to women victims of sexual violence, tackling the operational elements, principles, concepts and the rationale underlying the rape crisis model in Ireland, based on the experience of Rape Crisis Network Ireland.

Biljana Brankovic, provided input based on a ground analysis of the situation in all seven partners countries, on previous work that has been conducted in the region, such as the 2019 WAVE Mapping Report, but also by women's NGOs in the region. For the purpose of this paper, a **questionnaire** was created and sent to national partners in all seven countries, **to ensure that information/data is collected by national partners based on a unified methodology, and to allow cross-country comparison**. CSSP partners provided detailed information in the form of national reports. The analysis looks at multi-country surveys on prevalence of sexual violence; previous experience of women's NGOs in assisting sexual violence victims; shortcomings in criminal justice response to rape and sexual assault (where available); strategic policies in place regarding the issue of sexual violence, for example any national action plans including or specific on sexual violence; criminalisation of sexual violence and sexual harassment; the issue whether forensic examination or other services can be obtained regardless of victims' willingness to report, among others. Segments of GREVIO reports referring to the issue of sexual violence, if available for particular countries, are also analysed.

The paper furthermore provides recommendations in each chapter based on any promising practices identified in these countries, but also promising practices identified in other countries analysed by GREVIO, such as Denmark (in the area of service provision) and Portugal (in the area of the data collection). The paper ends with 'Final remarks and recommendations', focusing specifically on the need to urgently and adequately establish forms of specialist support services, as recommended by GREVIO in all its monitored countries, to date. ■

3 https://rapecrisis.org.uk/media/2162/rcnss_partners_final.pdf; https://www.solacewomensaid.org/; https://www.womensaid.org.uk/

4 As mentioned above, Biljana Brankovic worked on this project in her own personal capacity, so opinions expressed in the present paper cannot be attributed to GREVIO as a whole.

II. Assessing a potential need for support – how many sexual violence victims in the Western Balkans and Turkey might need specialist support

The most recent findings on the prevalence[5] of violence against women in the Western Balkans (including Albania, Montenegro, North Macedonia, Serbia, Bosnia and Herzegovina, and Kosovo) were obtained in the research survey carried out by Organisation for Security and Co-operation in Europe (OSCE) in 2018, and published in 2019.[6] The research examined violence that women experience, the impact violence has on women and girls, including its lasting consequences, as well as the help-seeking behaviour.

The survey indicated that the lifetime prevalence of sexual violence (experiences of sexual violence since the age of 15) by any partner ranged from 5% in Serbia to 3% in Montenegro and North Macedonia. Findings of qualitative research are particularly worrying: some women in the region feel that they are 'obliged' to have sex within their marriage. Furthermore, a large proportion of women survived sexual harassment - findings on lifetime prevalence of sexual harassment ranged from 42% in Serbia to 28% in Bosnia and Herzegovina. **In order to estimate a NEED for specialist support services for victims of sexual violence, findings related to 12-month prevalence rates can be compared to the number of women in the female population.**

The OSCE-led survey indicates that many women suffer from long-term psychological consequences of sexual violence by non-partner or current partner. Survivors of non-partner sexual violence were more likely to develop symptoms of anxiety (55%) and a general feeling of vulnerability (43%) following their most serious incident, compared with women who were exposed to only physical forms of violence (mentioned by 23% and 20%, respectively). Survivors of such incidents were also more likely than those whose most serious incident did not involve sexual violence to experience difficulties sleeping (36% versus 21%) and panic attacks (29% versus 18%). For survivors of current partner sexual violence, the most serious incident led to difficulties in relationships more often than when the incident was physical only (48%), feelings of vulnerability (37%), and a loss of self-confidence (31%). **These findings should be taken into account when assessing the POTENTIAL NEED for such support services. Such services should be specialised and tailored to meet the needs of sexual abuse survivors. Prevalence data and findings on psychological consequences of sexual violence further seem to imply that women in the Western Balkans might have a greater need for rape crisis centres, rather than for sexual violence referral centres, since the former provides long-term help, counselling, and advocacy for victims who survived sexual violence or sexual harassment recently or in the past.**

⚠ The vast majority of women who experienced physical and/or sexual violence decided not to report the most serious incidents of violence to the police nor any other institution or organisation.

Findings differed depending on the type of perpetrator: following the most serious incidents of physical and/or sexual violence by the current partner, 81% of women did not contact either the police or other institution/ organisation; in case that the violence was

5 The term "**prevalence**" is used to "explain how many, or what proportion (percentage), of the population are affected by a certain phenomenon during a given period of time (usually, lifetime prevalence, or 12-month prevalence). For example, a 10 % prevalence of violence in the past 12 months means that, on average, one in 10 women were victimised once or more often during the 12-month period. Since prevalence counts each victim only once, regardless of whether they have experienced one or more incidents, prevalence of violence does not reflect the intensity of violence or repeat victimisation; it simply measures the number, or proportion, of the population that has experienced violence. When the survey sample is representative of the national (or wider) population, the prevalence measured in the sample can be taken to correspond with the prevalence in the population, within confidence intervals which differ from one survey to another" (See more in: European Union Agency for Fundamental Rights - FRA, 2014).

6 Apart from the region of Western Balkans (Albania, Bosnia and Herzegovina, Montenegro, North Macedonia, Serbia, Kosovo), studies were conducted in two other selected Eastern European countries: Moldova and Ukraine.

inflicted by the previous partner, the percentage was 65%, while when the violence was caused by the non-partner, the percentage was 53%.

The proportion of victims who ask for help from victims' support organisations is negligible (less than 1%), which could be attributed to several reasons, including the fact that specialist support services for victims of sexual violence are not available across the region.

Sexual harassment has even a lower chance to be disclosed to any organisation or institution; in the context of this policy paper, it should be highlighted that nearly half of women did not speak to anyone about the most serious incident of sexual harassment that they experienced, and not a single woman contacted a victim support organisation. These findings further imply a need for awareness-raising actions. Findings also indicate that specialist support services for victims of sexual violence and sexual harassment, once established, should be widely advertised and their operating principles should be clarified and explained to general population of women, having in mind that feelings of shame experienced by victims of sexual violence in the Western Balkans are simply too great. Namely, the finding that should be highlighted in this context is the following: in comparison to women who experienced intimate partner physical violence, **women who noted that the most serious incident involved sexual violence were more likely to say that the reason for non-reporting was shame (38%) and lack of trust – namely, victims of non-partner sexual violence were convinced that 'the police would not do anything' and named the latter as the reason for non-reporting.** Similar trends were identified among victims of sexual harassment.

The finding that **sexual abuse survivors are even less likely to ask for help from the police in comparison to victims of intimate partner physical violence (which has been often confirmed in many research studies in other countries) further clearly implies that procedures regulating the provision of services to victims should not be dependent upon victims' willingness to report to the police** – for example, in recent acts of sexual violence, provision of medical help or forensic examinations should not be made dependent on victim's prior report to the police. On this point, we should be reminded that the Istanbul Convention has an important requirement (Article 18, paragraph 4) that the provision of services shall not depend on the victim's willingness to press charges or testify against any perpetrator.

A significant proportion of women in the Western Balkans can be considered directly affected by the conflict, ranging from 10% in Montenegro to 73% in Kosovo. These findings possibly indicate that victims of war-related rape are 'hidden' among women in this region. Therefore, it can be assumed that, due to long-term psychological consequences of conflict-related violence, some women might need psychological help and support many years after the conflict ended, so the role of rape crisis centres (offering a possibility of long-term help many years after the incident) is important in the Western Balkans.

"History and herstory": Lost expertise or building on the knowledge developed in the past?

The research findings quoted above about the significant proportion of women in the region of Western Balkans being directly affected by the armed conflicts in the past introduce another topic relevant in the context of this policy paper.

⚠ A reminder: War-rape trauma

"The history and herstory of many women's experience show that women can hardly speak about the sexual crimes they were subjected to. Post traumatic women's silences must be understood in the context of the social patriarchal interpretation of rapes that inverts the burden of the shame and responsibility on women who were tortured, instead on rapists. This is misogynist context that Amandine Fulchiron names: perverse patriarchal inversion. As well, women's post rape silences are consequence of a historical discrimination against women that is perpetuated on all levels, by the state laws and regulations, by traditions and cultural rules embodied in family members and finally in our own bodies and psyches. Post traumatic feelings of war rape are similar to feelings

after torture, but there is still that 'little difference'[7] of the sexual dimension in the context of patriarchal inversion, which makes this crime and its consequences like no other."
Lepa Mladjenovic,[8] 2011[9]

In the report on Serbia (2020), GREVIO highlighted the lack of specialist services to victims of sexual violence and pointed out the issue of war-time rape, "In the absence of any psychological counselling and trauma support or any other support for victims of rape, they are entirely alone with their experience. This, GREVIO recalls, still holds true for the many women who endured rape and sexual violence during the wars and who are now residing in Serbia. There is an obligation imposed by the Istanbul Convention to set up holistic services for victims of rape and sexual violence, past and present, which offers a unique opportunity to work towards removing any stigma around experiences of sexual violence and begin a process of collective healing and recovery."

⚠ In the aftermath of wars in the Western Balkans, **some women's NGOs developed significant expertise in supporting victims of war-related rape**. Specialist support for such victims has been developed in Bosnia and Herzegovina, Croatia, Serbia, and Kosovo, and representatives of the international women's movement[10] were involved by offering support, training, and help for women's NGOs in the region to strengthen and improve the capacities and skills to assist war-rape victims. Several specialised organisations were thus established in the region, which has offered long-term psychological counselling, legal counselling, and other types of support to such survivors, for example, Medica from Zenica (BiH), and Vive zene from Tuzla (BiH). The organisations that were established in war times and became experienced in offering help to victims of rape and torture were included in writing manuals and other materials that women's NGOs in the region have widely used in their work. This development, therefore, contributed to capacities of women's NGOs in the region in a more general way, i.e. feminist principles of trauma support became more widely recognised and helped women's NGOs which were not primarily focused on assisting survivors of war rape, but on supporting victims of all forms of VAW.

Consequently, it should be highlighted that **knowledge developed in war times has been integrated into the wider knowledgebase of the women's movement in the entire region of Western Balkans and greatly contributed to capacity development**. Numerous manuals and guidelines in local languages have been developed in the last 30 years.[11] Women's NGOs specialised in supporting survivors of sexual violence, such as Women's Room from Zagreb (Croatia) and Incest Trauma Centre from Belgrade (Serbia) have continued to share their

7 Term used by Alice Schwarzer, German feminist, in her famous book from 1975: *The little difference and its huge consequences* (in: Mladjenovic, 2011).

8 Lepa Mladjenovic, feminist and co-founder of WAVE, is one of the activists in the region who has worked for many years in providing specialist support/counseling to victims of sexual violence, including victims of war rape.

9 Mladjenovic, L. (2011). *Healing is justice*, **https://www.womenngo.org.rs/en/news/480-healing-is-justice**

10 See: Medica Mondiale, **https://www.medicamondiale.org/wer-wir-sind/geschichte.html**

11 Manuals/handbooks/guidelines in local languages (Bosnian-Croatian-Serbian) on providing specialist support to victims of violence, as well as handbooks for victims, were developed and widely shared across the region. Some of these addressed providing support to victims of all forms of violence against women, and some were focused on sexual violence, including war-rape trauma. Examples of older manuals/publications are quoted here: Medica Zenica (1999). Ne živjeti s nasiljem, Medica Zenica - Infoteka, Nenasilna kommunikacija; Ostojić, E., Ružičić, D. (1999). Multidisciplinarni pristup suzbijanju nasilja nad ženama i domaćeg nasilja: Priručnik za pomagače i pomagačice koji rade sa žrtvama i preživjelima nasilja, Medica Zenica - Infoteka; Mladjenović, L. i sar. (1999). Žene za život bez nasilja – priručnik za volonterke SOS telefona. Beograd – Ženska prava, drugo dopunjeno izdanje; Andjukić, B., Belamarić, J., Kolarec, Dj., Mamula, M., Vlahović-Štetić V. (2000). Zagreb: Centar za žene žrtve rata; Centar za žene žrtve rata (2000). Seksualno nasilje. Zagreb: Centar za žene žrtve rata; Matijević-Vrsuljko Lj., Martin M., Tolle N. (2000). Priručnik za zlostavljane žene. Zagreb: Autonomna ženska kuća; Autonomni ženski centar (2001). Pravna vodičica za zlostavljanu ženu. Beograd: AŽC; Andrašek, V. i sar. (2003). Kako izaći iz nasilne veze: priručnik ženama za život bez nasilja. Zagreb: Autonomna ženska kuća; Autonomna ženska kuća (2004). Put iz nasilja: priručnik za otvaranje i vođenje skloništa za žene, prevod WAVE priručnika. Zagreb: Autonomna ženska kuća; Popadić, D., Savić, S., Alempijević, Dj., Otašević, S. (2007). Nasilje nad ženama: moja profesionalna odgovornost – priručnik za praksu u zdravstvenim ustanovama. Beograd: AŽC – Program Žensko zdravlje; Vukasović i sar. (2010). Priručnik za rad na SOS telefonu za (potencijalne) žrtve trgovine ljudima, iskustvo NVO ASTRA. Beograd: ASTRA – Anti-Trafficking Action; Bogavac, Lj. (2006). Moja tajna kao strah, kao sramota, kao bol – studije slučajeva Incest Trauma Centra. Beograd: Incest Trauma Centar; Zore, P., Vukmanić-Rajter, M. (2014). Minimalni standardi – feministički model socijalnih usluga za rad sa ženama žrtvama nasiija. Zagreb: Ženska soba; Mamula, M. i sar. (2010). Organizacije civlinog društva koje pružaju specijalizirane servise ženama žrtvama nasilja kao ključni akteri u procesu demokratizacije društva. Zagreb: Ženska soba.

knowledge and expertise, through trainings and preventive activities.

In recent times, women's NGOs in the region have become focused on providing support to domestic violence victims. Furthermore, the priorities of donors shifted, and much effort and resources have been invested in trainings for professionals in institutions, for example. In addition, states in the region, unfortunately, do not invest funds in specialist support services for (any form of) violence against women, as GREVIO reports on some countries in the region indicate (see, for example, GREVIO report on Montenegro, 2018, GREVIO report on Serbia, 2020). As a result, service-oriented women's NGOs in the region of Western Balkans struggle to survive and often provide services on a voluntary basis.[12] In this context, **some of the invaluable knowledge/expertise developed in war times, as described above, has been 'lost' or became neglected or overlooked.**

Therefore, one of the points that needs to be emphasized in this policy paper is that i**t would be beneficial to utilise previously developed experience and expertise related to sexual violence (as presented above), as well as to 'revive the lost knowledge' and build on it.** This can be done through specialised trainings on sexual violence, capacity-building activities, and networking. As an example, those women's NGOs that became widely experienced in providing support to domestic violence victims can offer specialised trainings, focused only on sexual trauma. To verify an interest for such an endeavour, women's NGOs – national partners in this project were asked: a) Whether women's NGOs in their countries already provide support to sexual abuse victims, and further, b) Whether their particular organisation, and other specialist women's NGOs in their country would be interested in receiving specialised trainings on sexual trauma. National partners replied that their NGO, as well as other women's NGOs in their country, have been focused mostly on supporting domestic violence victims, but also – that they occasionally do support sexual violence survivors as well; however, they further indicated that **generally women's NGOs in their countries do not possess specialised knowledge on sexual trauma and thus would need additional specialised trainings on helping sexual abuse survivors to cope with their trauma.**

To conclude: many women's NGOs in the region are highly experienced in providing specialist services (primarily: to victims of domestic violence), which are based on feminist principles, including a gendered understanding of violence against women (VAW), empowerment, respect for confidentiality, etc. Some of them possess 20 years of experience in specialist service provision. Therefore, **UN agencies and state authorities in the region might consider a possibility to utilise the already-existing expertise and to develop their capacities further, by supporting and/or funding specialised trainings on sexual violence for members of women's NGOs. The expertise of women's NGOs that specifically deal with this issue might be considered and involved in creating and facilitating such trainings.**

#Metoo in the Western Balkans: recent initiatives to share experiences of sexual violence

It should be considered that in the recent period, women in the countries of the former Yugoslavia (Croatia, Bosnia and Herzegovina, Montenegro, Serbia) made attempts to make sexual abuse visible – they organised several initiatives/groups on Facebook; within these groups, private groups have been created, in which women have shared experiences of the abuse and attempted to raise awareness on the issue. **These experiences often include sexual violence that happened years ago and remained unreported to the police or other institutions.**

Such initiatives/groups of this kind include:

- "I didn't ask for it," https://www.facebook.com/NisamTrazila/ (41,600 followers);[13] on their FB page, the following is noted, "After the actress Milena Radulovic accused a distinguished professor and director Miroslav Aleksic for rape, women have connected in the entire region within only several hours. They shared their traumas and sent a message to one another. 'You are not alone' (#NisiSama);"

- "I believe you," https://www.facebook.com/Verujem-Ti-104208968197790/ (1088 followers); "I believe you is the feminist initiative against

12 WAVE (2019). WAVE country report 2019: The situation of women's support services in Europe. Vienna: WAVE.

13 Number of followers for all these FB groups: as of 17 May 2021.

sexual violence which encourages women to believe in themselves and in one another, and asks the society to trust accounts of women who have survived sexual violence;"

- "No means no," https://www.facebook.com/NEznaciNe/ (3277 followers); "FB page for supporting the initiative to integrate into the regular school curriculum, starting from kindergarten and primary school in Serbia, the methods of recognising sexual violence, and reacting to it, as well as of protecting victims."

Facebook groups recently established in the Western Balkans

The recent grass-root initiatives to share experiences of sexual violence on Facebook groups clearly indicate a need to establish centres that would offer specialist support services to victims of sexual violence. The increased willingness of women in the Western Balkans to **SPEAK OUT** indicates a **POTENTIAL NEED** for specialist support services that would be specifically designed to meet the needs of sexual abuse victims, as required by the Istanbul Convention, Article 25. The governments in the region, as well as international actors, should hear the voices of women and girls.

Experiences of sexual violence, which were disclosed to women's NGOs in Western Balkans, or were openly shared in the above-mentioned groups, point out the fact that women who have decided to report violence and initiate legal proceedings encounter numerous obstacles in accessing justice. Accounts provided below testify about such obstacles in accessing justice, but also about the need to have long-term support, provided by specialist women's NGOs.

Examples of how women's NGOs supported victims of sexual violence

M.M., 17 years old girl has been exposed to continuous sexual violence, abuse, and trafficked for sexual exploitation by a family member in a small town in Bosnia and Herzegovina. She ran away from home to another town to hide with other family members, and a family member who allegedly trafficked her reported to the local police that she has been missing. The police tracked her down and she provided testimony about sexual violence and abuse, also identifying all perpetrators involved. She was sheltered in the safe house in Bijeljina, run by the NGO Foundation Lara, but soon after she was reallocated to the safe house in Banja Luka run by the Foundation United Women, due to the high media focus on the case and the fact that media revealed her identity and location.

During the first few months of her stay in the safe house, the legal advisor and safe house coordinator of the Foundation United Women were in contact with the district Prosecutor's Office to follow the investigation and possible indictments against perpetrators and a family member of M.M., who trafficked her. M.M. received psychological counseling, emotional support, as well as legal and medical assistance. To support her recovery from trauma, safe house staff members were accompanying M.M. to visit a child psychiatrist.

Ten months after M.M. came to the safe house in Banja Luka, she received the decision of the District Prosecutor's Office that they will end the further investigation against all alleged perpetrators due to lack of evidence, and those indictments will not be raised. Regardless of the lack of proper response and protection, M.M. succeeded to recover from the trauma with the continuous support of Foundation United Women. She finished secondary school, and enrolled at university in Banja Luka to study, for which she received a small stipend from the local community. M.M. stayed in the safe house Banja Luka for more than two years and received support from the United Women even

after she left the safe house and decided to start an independent life. She remained in contact with staff members of United Women, which provided occasional counselling and assistance, based on need.

Account provided by the national partner in this project, Foundation United Women, Banja Luka, Bosnia d Herzegovina, **http://unitedwomenbl.org/**

ℹ A woman who was sexually assaulted by her boyfriend reported the crime to the police by going to the nearest police station right after the violent incident. Even though it was only a little after midnight, police officers did not take her statement until the morning. After waiting for hours in the police station and thus not being able to even use the toilet facilities because of the fear of losing vital physical evidence, she was taken to a hospital for examination. She was examined by a male doctor, even though the law states that a female doctor should be preferred.

A couple of days later, with the referral of a friend, she called the women's counselling centre of the Foundation for Women's Solidarity. The social worker who conducted the first interview arranged a meeting with one of the volunteering lawyers. During this meeting, she was informed in detail on the preventive and protective measures under Law No: 6284 on the Protection of Family and Prevention of Violence against Women, and the upcoming legal processes. She was not informed of the protective measures in the police station, so with the help of the lawyer in the Foundation for Women's Solidarity, she prepared a petition to request measures such as a restraining order, etc. Since the family of the perpetrator was also repeatedly calling the woman in order to pressure her to withdraw her complaint, the preventive measure of "Not to cause distress to the protected person by means of communication instruments or alternative channels" was also requested against the family members of the perpetrator. Since the volunteering lawyers of the Foundation for Women's Solidarity do not represent applicants, only in exceptional cases that require more extensive support, she was referred to the Bar Association to request for a lawyer to be assigned to her case in accordance with the Turkish Criminal Procedure Code. The assigned lawyer was contacted by the Foundation for Women's Solidarity, with the woman's permission and the lawyer's prior knowledge to continue support. On the day of the first hearing, feminists in Ankara were in front of the courthouse and in the courtroom to show solidarity with the woman.

Account provided by the national partner in this project, Foundation for Women's Solidarity, Ankara, Turkey, **https://kadindayanismavakfi.org.tr/**

ℹ M.B. (15 years old girl) is a victim of sexual violence. The incident took place in the village of Malësia e Madhe in 2020. The girl was forced by her uncle to have sex at home when nobody was there. She did not understand what was happening during this sexual act, even so, she kept it secret after her mother arrived home. Due to the force exerted, the girl had severe bleeding and was immediately taken to the Shkodra Regional Hospital. After the examinations, the parents were informed about the sexual abuse of their daughter. After the local police was called, the Child Protection Unit in the Municipality of Malësi e Madhe took over the treatment in this case, and then referred the girl to the organization Woman to Woman for more specialized services.

- The girl M.B. in a traumatized state and physically crushed was sheltered together with her mother for five days in the emergency shelter "Woman to Woman", receiving all the necessary vital services, including psychological and legal ones.
- The staff of the organization Woman to Woman provided psychological counselling to the girl and her mother during their stay in Shkodra and onwards.

- The staff of the organization Woman to Woman mediated to find a rented apartment in the area of Shkodra, which was paid for a month by the Social Service of the Municipality of Malësi e Madhe.
- The girl is enrolled in a non-public high school in Shkodra (with dormitory) and is provided counselling sessions by the school psychologist.
- Her uncle is serving a prison sentence on charges of sexual abuse with a minor.

Account provided by the national partner in this project, Gender Alliance for Development Centre (GADC), Tirana, Albania, **https://www.gadc.org.al/**

(The interview was taken by "Gruaja te Gruaja", Shkoder, Albania)

The role of prevention:[14] Promising practices from Ireland

Offering appropriate support services and empowering women's voices in the process goes hand in hand with prevention work. **Prevention plays a vital role in changing attitudes of the public at large, including different stakeholders and policymakers, overcoming gender stereotypes and raising awareness on specific issues. As illustrated above, the vast majority of women who experienced sexual violence decided not to report the most serious incidents of violence to the police nor to any other institution or organisation.**[15] Empowering women to seek help and/or protection in these circumstances is an integral part of the role women's NGOs and other state stakeholders have when support victims of sexual violence.

Rape crisis centres (RCCs) in Ireland started as advocacy movements but very quickly found themselves supporting women who had been victimised. As a result, RCCs developed skills such as specialist counselling and accompaniment to facilitate a justice response. When the state began to fund RCCs it was these roles that were funded. The direct service to individuals was what was seen, measured, and valued and this work of RCCs was 'professionalised' in the late 1990s. However, the work to challenge sexism, advocate for cultural change and effect, primary prevention was not formally funded. RCCs maintained the primary prevention aspects of their work as voluntary, additional activity (such as delivering talks to schools), to the now core work of counselling and survivor support. Funding for primary prevention was ad hoc and occasional, for example, funding to produce and disseminate a leaflet in the community. This only began to change in recent years with the state and EU funding, education and advocacy roles within RCCs, and the state taking up a national lead in addressing primary prevention.

The Irish State began to roll out its first national campaign to prevent sexual violence #noexcuses in 2016. 'No Excuses'[16] was a primary prevention campaign challenging harmful cultural norms that support sexual violence such as harmful gender roles, sexism, and sexual harassment. Another example of a secondary awareness-raising campaign in Ireland is the campaign 'Still Here',[17] a secondary prevention campaign during COVID-19 restrictions to raise awareness of helplines and services, asking victims to come forward to seek support or report the crime to the police.

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14 Article 12 Istanbul Convention – General obligations
1. Parties shall take the necessary measures to promote changes in the social and cultural patterns of behaviour of women and men with a view to eradicating prejudices, customs, traditions, and all other practices which are based on the idea of the inferiority of women or on stereotyped roles for women and men;
2. Parties shall take the necessary legislative and other measures to prevent all forms of violence covered by the scope of this Convention by any natural or legal person;
3. Any measures taken pursuant to this chapter shall consider and address the specific needs of persons made vulnerable by particular circumstances and shall place the human rights of all victims at their centre;
4. Parties shall take the necessary measures to encourage all members of society, especially men and boys, to contribute actively to preventing all forms of violence covered by the scope of this Convention;
5. Parties shall ensure that culture, custom, religion, tradition, or so-called "honour" shall not be considered as justification for any acts of violence covered by the scope of this Convention.
6. Parties shall take the necessary measures to promote programmes and activities for the empowerment of women.

15 Ibid, OSCE-led survey 2019

16 **https://www.gov.ie/en/campaigns/no-excuses/?referrer=http://www.gov.ie/noexcuses/**

17 **https://www.stillhere.ie/**

RCCs, having been valued for, funded for, and built capacity on, secondary prevention coupled with little if any capacity building in primary prevention, all too often sought to transfer these skills. However, skills in listening to, centring, and meeting the support needs of individual survivors, when applied to primary prevention, all too often lead to a blindness to culture and a cycle of victim-blaming; Primary prevention, by and large, requires a different skill set to those necessary and valuable in secondary prevention.

Primary prevention focuses on ways to disseminate change across the whole population. Mass media and public awareness campaigns, as with the Irish examples cited above, are obvious ways to achieve this. The other way is to co-opt community-wide infrastructure, education, and employment systems for example. The education system is an obvious and relatively well-developed mean to disseminate primary prevention initiatives. A recent WHO report (2018) sets out best practices for age-appropriate compulsory curriculum sex and relationships education content from 0–18.[18] These community infrastructures can be effective ways to deliver a message (e.g., curriculum content) but this, in itself, is insufficient. Attention must be paid to power and culture within these locations.

For example, an institution's responsibility to support a safe environment for its activity (learning, employment, etc.) must reach beyond simply reporting incidents to the police. They must take an active role in shaping safety within their community.[19] What RCCs tell students in the classroom must match what happens in the corridor. For example, if students are told sexual harassment is wrong, then authorities must ensure are responding appropriately to incidents that occur outside the classroom. ■

18 https://www.who.int/publications/m/item/9789231002595

19 For an example of a whole-of-institution prevention policy for third level education settings, see: https://assets.gov.ie/24925/57c394e-5439149d087ab589d0ff39c92.pdf

III. Establishing a common language: Specialized support services for sexual violence victims

Article 25 of the **Istanbul Convention** mentions two types of specialised services that parties of the treaty should establish to offer better support for victims of sexual violence: rape crisis centres and sexual violence referral centres. It is to emphasize that, according to the Explanatory Report of the convention, State parties to the convention are not obliged to set up both rape crisis centres and sexual violence[20] referral centre types. It is recommended that one such centre should be available per every 200.000 inhabitants and that their geographic spread should make them accessible to victims in rural areas as much as in cities.

The present part looks at establishing a common denominator, identifying the operational elements that typically makeup rape crisis centres and sexual violence referral centres, expanding on the principles, concepts, and rationale underlying the rape crisis model, building on the experience of Rape Crisis Network Ireland.[21] The approach adopted in Ireland, and overall, in the United Kingdom, can be regarded as a **benchmark of promising practice** for other countries in developing service provision for victims of sexual violence.

The Irish model has its roots in second-wave feminism and is similar to the model that has been developed in most of the Anglophone world (UK, USA, Canada, Australia, and New Zealand). Today, the rape crisis sector in Ireland[22] consists of 16 independent Rape Crisis Centres (RCCs) and a national advocacy body (RCNI). Ireland also has 7 sexual violence referral centres (SVRCs) alongside and working in partnership with the rape crisis sector, medical and justice professionals. In Ireland, the movement began in the mid-1970s, and the first two centres were established in 1979. This was a feminist, women-led movement developing a strong feminist analysis of sexual violence causes and responses establishing support for survivors, providing solidarity, and challenging the state.

There have been, and continue to be, practical and ideological challenges for sexual violence services run by women's NGOss in Ireland. Lessons and solutions have been tested over time, working towards a strong shared vision and core set of principles to guide the work of the civil society in an ever-changing context is continuous labour for the feminist sexual violence movement. Before outlining these principles in the following parts, there are three broad themes that have presented challenges for the RCC movement over the past four decades in Ireland. These themes are tensions and perhaps contradictions that require careful consideration and ongoing attention when establishing such support services for victims of sexual violence.

Firstly, RCCs always advocated child sexual abuse as well as adult sexual violence but rarely served children under 14 directly. Specialist children's civil society organisations (CSOs) and services were developed in Ireland alongside RCCs. These are largely not women's organisations or feminist in ethos and so had little in common with RCCs ideologically. However, one of the main RCC services is trauma counselling, and over half of the survivors coming to RCCs for this support are adult survivors of childhood sexual abuse. Therefore, one of the main inputs from survivors to RCCs is about childhood abuse. In addition, RCCs see many teenagers. When the RCNI collated RCCs' figures nationally for the first time in 2013, what was revealed was that the RCC adult services were the largest providers of children's specialist services. This was a surprise. On a practical and infrastructural level questions continually arise as to where RCCs fit. For example, when the State set up a stand-alone Child Protection Agency in 2014, they moved RCC funding to this agency even though RCCs are adult services. There are distinct rights differences between state obligations to children and to adults also which have resulted in tension between survivor autonomy, consent, choice, and child protection

20 Explanatory report to the Istanbul Convention, paragraph 139.

21 **https://www.rcni.ie/**

22 Ireland has a population of approximately 5 million people.

obligations. Recently the Children's, Sexual and Domestic violence CSOs of Ireland have begun to collaborate more closely as they recognise that the response to children (and the mothers, parents, and families they belong to) and their protection has become fragmented and disjointed and is failing as a result.

Secondly, RCCs serve all survivors from 14 upwards and advocate on all forms of sexual violence. While 98% of perpetrators of sexual violence are men, 85% of victims are women and children (male and female) and a further 15% of victims are adult men.[23] Therefore, up to 20% of all survivors of sexual violence who might need RCC services are men. In the beginning, most RCCs served women only. Over the years different models have been tried concerning how adult male survivors might be supported and how wider advocacy on prevention would encompass children including boys. Today all RCCs in Ireland provide services for both female and male survivors. On a practical level, in providing services to all, RCCs have learned how to pay particular attention to both our buildings, how survivors move through them, and how we meet and engage with survivors in order to ensure privacy, confidentially and safety for all survivors accessing a rape crisis centre. It should be noted, that in Ireland, domestic violence services, such as emergency accommodation and safety planning, are separate from RCCs. These separate domestic violence services in Ireland remain largely women only. RCCs, while supporting male survivors, continue to hold a **feminist analysis** of sexual violence, including understanding the misogyny that underpins much of the SV directed against boys and men; RCCs serve men, have a gendered analysis of sexual violence, and remain feminist organisations.

Thirdly, RCCs are advocates and so it is vital to maintain an **independent voice**. RCCs also recognise that collaboration with others, and in particular with the State, is necessary to support survivors, address sexual violence effectively, access justice, protection and affect prevention. RCCs are often dependent and independent simultaneously. This a continual point of tension. For example, States are obligated to deliver services to survivors as a matter of right. Therefore, States must fund RCCs, but once they fund RCCs, do RCCs become statutory controlled? How can CSOs, funded by the State, challenge the State? How much control can, or should, the State exert on a CSO? How are accountability and transparency achieved? How are standards of best practices for survivors ensured outside of State control? The understanding of the relationship, the co-dependency, mutual respect, and separation between the state and the CSOs in Ireland is continually negotiated, sometimes contested, and always evolving.

The following part seeks to describe the distinct models of RCCs and SVRCs developed in Ireland and the guiding principles that have evolved to support and sustain organisations and services that listen to and strive to meet survivors' needs and effective prevention.

Rape Crisis Centres and Sexual Violence Referral Centres

In the Irish model, rape crisis centres and sexual violence referral centres are very different organisations and/or services. The two types of services exist in Ireland and work alongside each other. This paper is primarily focused on RCCs so this section will give a brief description of the services and activities you would typically expect to find in rape crisis centres and sexual violence referral centres in order to distinguish between the RCC model and the SVRC model.[24]

Sexual Violence Referral Centres (SVRC)

SVRCs primarily provide for the **immediate care** of a sexual violence victim. Services will include medical/health, forensic, and psychological care as well as provide for the storage of forensic evidence. Most SVRC services and professionals are part of existing publicly funded health services. SVRCs are used by survivors in the week immediately after an assault, this is when there is still a possibility of gathering forensic evidence. They will also be able to access immediate medical care. SVRCs will also provide follow-up medical care. Increasingly, SVRCs also provide medium-term psychological support.

23 Ireland's prevalence data dates back to a national prevalence survey in 2000 – Sexual Abuse and Violence in Ireland 2002, often referred to as the SAVI report. **https://repository.rcsi.com/articles/report/The_SAVI_report_sexual_abuse_and_violence_in_Ireland/10770797/1**

24 The SVRC model is sometimes referred to as 'the medical model.'

Promising practice includes:

- Medical and nursing staff should be **specially trained** in delivering forensic sexual violence examinations and health care, this training should include trauma, forensics and legal issues;
- **Professional standards** and regulations should be adhered to, for example, medical, nursing, etc;
- Health, justice and advocacy personnel must be guided by a shared understanding of their distinct roles and duties, as well as mutual professional respect. Ideally **shared interagency standards** and protocols should be developed for a SVRC.

In 2018, Ireland has established **national guidelines** to support the work of SVRCs.[25] These shared SVRC national guidelines place the **health care needs of a victim as the primary consideration**. The consent of the victim to a forensic examination must precede forensic examinations and what steps to ensure same. Where a victim is not capable of giving consent (e.g., unconscious or intoxicated) robust ethical protocols are in place before any forensic examination can proceed. Protocols and practice together must ensure that all evidence including physical and forensic evidence is always gathered and stored securely until the criminal proceedings are concluded and the evidence is no longer needed. The SVRC must be capable of storing the forensic evidence and maintaining the chain-of-evidence[26] for a period (6 months – 1 year) to enable victims to have time in order to decide whether to report or not. A survivor advocate, separate from the health and justice parties, must be present to advocate for and provide psychological support to the survivor. In Ireland, this advocate is a rape crisis volunteer trained by RCCs, they are on call 24 hours and the protocols require them to be alerted by the police or the SVRC staff once a survivor accesses a SVRC. Survivors can access the service without having to report the crime to the police.

While SVRCs must be **trauma-informed** and **specialist in sexual violence aftercare**, they do not necessarily need a feminist analysis to deliver a survivor-centred service. Psychological care is often focused on disruptive trauma symptoms as needed by survivors immediately after an assault. They do not necessarily play any role in understanding and challenging the causes of sexual violence.

Rape Crisis Centres (RCC)

RCCs provide a **safe environment for survivors of sexual violence** whenever and however survivors choose to access them. Survivors may come to a RCC immediately after an incident, or 50 years later. Survivors can access through self-referral, or by being referred there by others such as their doctor. RCC services aim to offer supports relevant to all aspects of sexual violence across all life stages. RCCs work to understand sexual violence trauma, impacts and causes to support each survivor at the point at which they engage, to choose how they wish to address the trauma and what supports they need. RCC services are, therefore, '**survivor-led**' and rely on a commitment to listening, adapting, and innovating.

Survivors are offered a range of supports that they may choose to access. All supports are specialised in sexual violence. A RCC typically combines services ranging from helplines, counselling, psychotherapy, advocacy, and accompaniment through legal, to medical processes for survivors. They may also have a group or other forms of engagement, perhaps tailored to minoritized groups in partnership with other CSOs, in order to meet different survivors' needs. RCCs serve survivors of both recent and historical sexual violence, as adults or as children, or a combination. Importantly, RCCs offer **confidentiality**, especially for those not wishing to formally report the crime.

Rape crisis services dedicate a proportion of their capacity to change and prevention. Every survivor using a RCC knows that, in sharing their journey with a RCC, they become part of a movement for change. A RCC commits to transforming their community based on what survivors teach them, by raising awareness, engaging in education, and working with other agencies and professions (e.g., the police, doctors etc) to improve the response to survivors and prevent it from happening to others.

25 https://www.hse.ie/eng/services/publications/healthprotection/sexual-assault-response-team-national-guidelines.pdf

26 In common law jurisdictions a core element of the process is that you must be able to demonstrate the authenticity of any physical evidence and prove that is has not been tampered with in any way - this is referred to as the chain-of-evidence.

RCCs understand that where organisations engage with vulnerable people and ask for their trust, particularly in sexual violence where there is considerable secrecy, organisations must make themselves **transparent and accountable**.

Promising practice in RCCs includes (more details can be found on some of these concepts and practices in the following section of this paper):

- **All staff and volunteer have an understanding of sexual violence and sexual violence trauma;**
- **Staff are specialised in their sexual violence support roles**; **Training** programmes for staff and volunteers could include: helpline training, specialist counselling training, court and police accompaniment training, victim impact statement writing, legal training, SVRC accompaniment training, disclosure training, educators and community empowerment training, survivor empowerment training, child safeguarding training, data collection, privacy and confidentiality practices;[27]
- There are **a variety of services available** that can be tailored to survivors' needs for example: counselling accompaniment, legal information, group therapy, volunteering, etc;
- Survivor empowerment means RCCs **never pressure survivors to take up a service or report to the police b**ut provide them with information, choice, and non-judgemental support;
- Formal supervision and the supportive professional culture within the Rape Crisis Centre aim to protect staff and volunteers from **vicarious trauma**;
- **Survivor dignity and confidentiality** are respected throughout the entire process;
- Any **mandatory reporting obligations are fully explained** in order to allow survivors to make informed choices;
- **Centres build networks with local organisations and services** to ensure the best response to each survivor; RCCs have a role in providing other organisations, who occasionally provide such services, for example, organisations serving people from ethnic minorities or with a disability, general practitioners, lawyers, with survivor feedback, specialist support, and training. For RCCs in Ireland, this started by survivors telling RCC volunteers about challenges they had encountered with local services, for example, the local doctor and the RCC then approaching that doctor or seeking to approach the regional or local network of doctors to engage in dialogue to bring this to their attention. Often RCCs also needed to gain a better understanding of the constraints on the doctor in their role to put the survivor's experience in context and to engage in partnership with the local doctors to improve the survivor experience;
- **Centres network with peer rape crisis centres** to share learning, multiply their voice, develop and raise standards and hold each other accountable; In Ireland, the rape crisis centres came together in 1985 in order to share learning, to be accountable to each other, and to cooperate to create change; This type of actions involved regular meetings of volunteers from the centres; They secured funding in 1999 and employed network staff, in what was to become the RCNI, who were able to develop and draft

27 The RCCs developed specialism in sexual violence through experience. No one else was developing this specialisation at the time. However, with state funding and indeed in moving from a volunteer to a staffed delivery of services, roles became defined and differentiated and specialist counselling in particular needed to be professionalization. This raised the question of what is the qualification, training and accreditation of a specialist sexual violence counsellor and who decides. In Ireland psychotherapists, unlike psychiatrists for example, are not statutorily regularised. Almost 20 years ago RCNI worked with the RCCs to standardise the CSO-led training and the specialisation and to establish a register of those qualified. RCNI negotiated with the Deptartment of Health and agreement was reached around equivalency with related formally accredited roles to recognise the specialists and align them with public sector payscales (the health service report recognising and aligning RCC roles from 2007 is not publicly available). However, RCC staff, though publicly funded are not public servants so pay and conditions alignment has been difficult to maintain in a volatile economic climate. Accreditation remains a challenging area as increasingly the state funders are looking for academically accredited qualifications. In Ireland, as elsewhere, academic institutions are increasingly a for-profit private corporation and behave as such. The process of academic accreditation being increasingly required of community sexual violence specialists requires surrendering CSOs expertise to a for-profit company who are less knowledgeable, who then sell RCC specialisation back to the CSOs sector at a cost. A key challenge is how to maintain the capacity to take what survivors tell RCCs into consideration and set the highest standards for survivors when the academic process strips the community of its sustainable expertise, while satisfying the funder-driven need for accreditation. The alternative is to try to hold onto the expertise in the community at frontline level. RCNI is currently undertaking a clinical specialisation project in order to update sexual violence specialisation. https://www.rcni.ie/counselling-survivors-of-sexual-violence-on-and-off-line/ So far the project has spoken to a 1.000 counsellors and survivors and is due to complete its work in Q4 2021.
Currently RCNI RCC training outlines a number of roles and skills and requires specialist training, regardless of any other professional qualification, for each of those roles. A standard is in place which outlines this training requirement, registration and renewal processes, and ongoing supervision standards for a practicing counsellor. The roll out of this training is unfortunately at present is ad hoc and funding dependent.

standards, formalise networking, put in place a network governance structure, all agreed through a membership charter; Today, the Rape Crisis Network Ireland (RCNI) takes a strong national lead but is still owned and governed by rape crisis centres and works to further the interests of survivors and prevention informed by the survivors engaging with RCCs and elsewhere.

RCCs also understand that where survivors share their experiences, often otherwise hidden, with a professional or organisation, there is a responsibility on the organisation **to listen, learn, and invest in the specialisation**.

In Ireland, RCCs developed, through the RCNI, **shared standards of practice and governance**. RCNI worked with partners internationally also to develop such standards. The latest rape crisis service standards were developed by England and Wales in 2018.[28]

RCCs in Ireland are also committed to **sharing data and knowledge to help break the silence** and create evidence-driven change. RCNI developed a national RCC data system in order to generate national evidence from survivors' collective experience to impact policy-making.[29]

⚠ The Irish model presented above, similar to the model adopted in the United Ktingdom, can be **regarded as promising practice when establishing specialist support services for survivors. This model is based on over 40 years of experience of women's NGOs, specifically addressing the needs and supporting victims of sexual violence. It is important to adapt these models to the local legal and practical context of the Western Balkans and Turkey. Whether establishing rape crisis and/or sexual violence referral centres it is key to distinguish between these two types of services, and develop for each of these services principles and concepts that put the victim at the core of all service provision.** ■

28 https://rapecrisis.org.uk/media/2162/rcnss_partners_final.pdf

29 The programme is outlined here: https://www.rcni.ie/what-we-do/national-data-research/ along with links to the statistical reports and accompanying policy documents.

IV. Principles, concepts, and rationale underlying the **rape crisis model**

The following principles and concepts outline the potential for replicating and scaling that should be considered when developing comprehensive short-term and/or long-term specialist support services for survivors of sexual violence. These approaches have been successfully implemented for decades by the **Rape Crisis Network in Ireland**. Services that seek to adopt and implement such principles, either run by the state or women's NGOs, are encouraged to modify them as appropriate to the national context. By implementing this model of service provision, a relationship of trust with the survivor can be established and her long-term empowerment fostered.

Building trust through the Rape Crisis Centres survivor – centred empowerment model

Sexual violence is a fundamental breach of trust, this breach is not just about the individual perpetrator but often and perhaps invariably extends to family, friends, communities, and agents of the state. Rape crisis centres' core function is to earn the trust of survivors to support their empowerment and rebuilding of trust in others, including state agencies where appropriate.

This is one of the reasons why attention is given to issues of **power** throughout RCC work, including within support and counselling relationships. **Empowering the survivor** involves both the personal empowerment of the survivor in any contact they may have with the RCC, and also the empowerment of the survivor within society. RCCs models non-abusive behaviour and seeks to influence and challenge other stakeholders and support services to model the same behaviour.

⚠ **Confidentiality** is core to RCC work in **building trust**, respecting survivor autonomy, and collaborating in a survivor-led response. Most survivors do not report the crime or access services. This is challenging states in meeting their Istanbul Convention obligations. **Evidence shows that the more a survivor is supported, the more likely they are to formally report and remain with the justice process.** Therefore, supporting confidential (non-statutory) places for survivors is of value to statutory partners. State parties should work to support and maximise the levels of confidentiality RCCs can offer a survivor.[30]

The RCC model of supporting survivors is also trauma-informed. This means that the particular impact the trauma has on a person is understood and shapes the accessibility of services to survivors. For example, it may be that the recall and ability to narrate the incident are impacted by trauma. It may be that the recall is triggering and that a survivors' post-traumatic stress disorder (PTSD) symptoms make it unsafe. Therefore, rape crisis centres look at creating a safe place where survivors can over time, and in perhaps non-linear ways, arrive at clarity for themselves that they feel able to communicate in languages and ways that make sense for them and meet their needs. While at the same time offering them tools to manage and overcome disruptive symptoms of trauma such as insomnia, flashbacks, or anxiety.

The RCC model is always **non-directive and non-judgemental.** It is also survivor-led as RCCs believe that the best responses possible are led by survivors themselves who are best placed to know what they need at any given point.

The intention of RCCs is to return the control that was taken during any experience of sexual violence. This has been described as **the survivor/recovery model**. In the RCC response, the emphasis is on promoting well-being and the focus is on growth rather than symptoms and defects. The survivors' coping strategies are explored in terms of their usefulness.

30 Confidentially is rarely total. Where reporting, for example in child safeguarding or suicide prevention matters, is legally or ethically necessary, careful consideration should be given to transparency with survivors and the impacts on survivors' safety of limitations around confidentiality.

Fundamentally, RCCs have learnt that sexual violence is an act that removed someone's autonomy over their own body. Responses, therefore, must never replicate these conditions but rather should seek to reinstate and reaffirm one's autonomy. S**urvivor consent** must be at the core to all supports and secondary prevention responses to sexual violence. Therefore, in the RCC model, the survivor is an **active agent in their own recovery**. They are not viewed as passive recipients of treatment. They are the experts in their recovery, they must have control and recovery must take place at their own pace.

The **survivor/recovery model** sees traumatic systems as creative responses and adaptations to horrific events. The survivor/recovery model explores how the survivor survived creatively during trauma, or during repeated trauma, and how they creatively survived afterwards given their life situation. It emphasizes the survivors' resources and positive strengths.[31]

The RCC approach emphasizes that support can only be effective within a relationship of **safety, trust, and collaboration**. Collaboration includes trusting in the survivors' ability to heal themselves.

RCCs understand all sexual violence to be an abuse of power and understand **gender inequality** to be the most important determinant of that abuse, whether the victim (or perpetrator) is male or female. This understanding is also reflected in standards highlighted in the Istanbul Convention. RCCs understand sexual violence happens in a social context rather than being purely about individual perpetration. Rape crisis counselling and other services address the victim-blaming and the shame that seeks to individualise responsibility for what is part of a system of oppression. This understanding also means that rape crisis centres must seek to create understanding and change outside the RCC.

The survivor's voice

⚠ Sexual violence is often hidden, and survivors remain silent. **The hidden nature of sexual violence makes it challenging to engage publicly**. However, no survivor has the responsibility to work to create change. Telling their stories can be burdensome and costly. Therefore, RCCs seek to find empowering ways to hear and support survivors' voices safely and appropriately.

The first step is to understand why survivors remain silent. There are good reasons why survivors may choose to stay silent. RCCs never pressure or burden survivors to tell their stories. It is abusive to demand their stories without appreciating these reasons for silence. Survivors are never responsible for the possible future crimes of a perpetrator.

Some **reasons why survivors choose silence** may include:

- Perpetrators may be powerful members of families, communities, workplaces, etc;
- Survivors may have an interest in preserving support structures (such as family) from the disruption of the truth about the harm that was done to them;
- Survivors will understand that families, communities, organisations may have an interest in protecting themselves from acknowledging the harm that happened within their unit;
- Survivors face backlash and risk harm when they speak out for 'causing' disruption (ostracised from a group, have to move from home, lose their job, physical assault, etc.);
- Survivors may be blamed and stigmatised by professionals that should protect and support them or by their families and/or friends;
- Survivors may have witnessed this self-preservation of the institution in action many times prior to being themselves victimised.

31 Herman, Judith Lewis. 1997. *Trauma and recovery*. New York: BasicBooks is still considered the seminal text on domestic and sexual violence trauma.

There are also a set of **myths around how survivors' stories** create change. These myths create pressure on survivors to speak out and often set unattainable expectations. Survivors' stories, contrary to myth, are rarely disruptive. Change tends to happen after significant investment in understanding, naming, gathering evidence, building alliances, and aligning interests, e.g., all the elements of a movement for change. A survivors' story, at a key moment, can become a focal point for change- moment within that change movement, but for every survivor story that becomes that focal point, there are hundreds of survivor testimonials that had no such impact, were ignored and quickly forgotten by all but the survivors themselves. This can be harmful and traumatising to survivors. RCCs pay attention to how survivors make informed choices about speaking out, informed by a realistic understanding of both the potential lifelong impacts for themselves and the possibility of their story having the positive impact they seek.

RCCs understand that:

- Media pressure and interest in 'human interest' led stories, drives demand for survivor testimonials for the purpose of selling media (regardless of the good intentions of those involved);
- Each survivor story is unique and cannot be taken as representative of other survivors' experiences;
- Survivors can be asked to offer insight into the perpetrator's motives and mindsets – this implies the survivor had some control over the perpetrator and therefore carry responsibility and blame - only perpetrators' stories can be a reliable testimony of perpetrators' mindsets;
- An emotional and empathetic response to a survivor's story is not an action and may create no change; Emotion is a poor measure of intervention.

There are ways to **support survivors' voice and empowerment** while **maximising both impact and safety** for survivors. These include:

- Ensure a survivors' story is attached to an 'ask' – what is the action or change being demanded once the audience has engaged; Is it realistic and attainable? Can this 'ask' be aligned with and supported by a sustained campaign for change?
- Supporting survivors to tell their stories anonymously;
- Gathering survivors' data to tell a collective story;
- Conducting prevalence surveys;
- Constructing composite stories (add different survivor's stories together to tell something true but not an individual survivor's story);
- Using survivor quotes anonymously;
- Challenging victim-blaming;
- Challenging myths about sexual violence;
- Ensuring a public criminal justice response that preserves survivor privacy and anonymity; This means that trials are reported on in the media under laws and rules that preserve anonymity for survivors;
- A transparent justice process - that justice agencies gather and publicly release data regularly, quarterly and annual statistics on reported cases, types of offences, detection rate, prosecution rates, charges, pleas, conviction rates, sentencing, probation, and release data.

Guiding principles for victims in the justice system

As highlighted above, survivor engagement is critical to state activity in vindicating survivors' rights. The fact that **only a minority engage is a challenge for the legal system**. It is important to resist seeing this as a problem with survivors and instead ask what stakeholders can change about the system. A **victim-focused justice system** will entail additional resources, but this is justified on the grounds that best evidence is achieved when a survivor actively chooses to engage with the justice system. Victims

stay with the system when they are informed and supported, and the state increases the possibility of higher conviction rates and vindication of survivor rights.

Furthermore, a justice system that is itself the cause of injustice is a failed system. **Therefore, the state must do all that it can to minimise any re-traumatisation**[32] **of the process through maximising survivor dignity, autonomy, and choice within the justice system.**

The Irish criminal justice system is part of the common law adversarial practice. This is different to the criminal justice system more common in continental Europe and elsewhere. The Irish system is shaped by a written Constitution and EU law and Directives, principally the Victims' Rights Directive,[33] which outlines detailed rights to victims of crime. The following Irish principles relating to how best to vindicate survivors' rights may therefore only partially be translated to other jurisdictions.

The following are **guiding principles** developed by RCNI in partnership with Safe Ireland as part of the NGO group working on the implementation of the Department of Justice in Ireland's survivor's journey initiative. These guiding principles have been developed in relation to victims' engaging in the justice system and can be used as a promising practice with the note that they might be partially translatable to order national jurisdictions:

- Respect for the **dignity of every vulnerable witness** should underpin every interaction;
- An **awareness of the centrality of trauma and its effects** should be the norm for all criminal justice professionals as they interact with any vulnerable witness;
- **Autonomy**: as far as possible in the interests of justice, victims' choices should be made known to them and should be facilitated by all professionals, at every stage of the process;
- **Physical protection** (issuing protection measures) for vulnerable witnesses at every stage of criminal proceedings and other processes, including through bail conditions/ remands in custody, emergency barring orders/ protection orders where appropriate, - should be prioritised as far as possible – this should happen as part of the police risk assessment;
- **Any protection needs assessment** should be conducted on a strictly individual basis and should be sensitive enough to pick up unexpected or rare vulnerabilities (e.g. autism) and address them, as far as this can be done;
- **Victims' and other vulnerable witnesses' privacy** should be preserved as far as possible throughout the criminal justice process from the point of reporting all the way through;
- **Any referrals** to other specialist support services and/or state agencies should be both timely and appropriate – and should take account of individual and/or rare vulnerabilities;
- **Accurate and adequate information** about the criminal justice process should be readily accessible (i.e. in plain simple language) and available, where necessary in hard copy as well as online formats, in other languages also where necessary – to all vulnerable witnesses;
- Specific, accurate and adequate **information** should also be accessible and available readily to members of individual minority groups who may have **additional vulnerabilities** e.g. language or cultural differences, citizenship status, trafficking;
- **Contact** for victims with investigating officers should be facilitated and investigating officers should themselves be proactive about keeping in regular contact with them;
- **Delays** at every stage of the criminal justice process should be kept to the minimum possible;
- **Independent sexual violence referral centres, police and court accompaniment** for victims should be provided by women's specialist support services, and other forms of emotional support in relation to the criminal justice process, should be funded, promoted and facilitated, as far as possible;

32 Sometimes referred to as secondary traumatisation or secondary victimisation.

33 https://ec.europa.eu/info/policies/justice-and-fundamental-rights/criminal-justice/protecting-victims-rights/victims-rights-eu_en

- **All such services** should be accessible to members of minority groups of victims;
- **Special measures in court**[34] should be considered and, as far as possible, put into effect whether or not recommended by the police, in appropriate cases, provided this is in the interests of justice and that victim agrees;
- **Effective participation** in the whole of any trial or sentencing hearing should be the norm also for the most **vulnerable groups of witnesses**, e.g., any intermediary should be empowered to assist throughout proceedings if that is what the witness in need of their services, wishes;
- **Independent legal advice** should be made available to all vulnerable victims at least from the moment of the offence to the end of court proceedings and beyond;
- **Effective collaboration with specialist victim support CSOs on both training and operational tasks** such as accommodating victim support should be the norm at both local and national level;
- **Specialisation** in the nature and effects of the traumas of sexual, domestic and gender-based violence should be seen and worked towards, as the norm for police, prosecutors, and judges;
- All training of criminal justice professionals should include **material from specialist women's CSOs and also material addressing unconscious bias professionals might have when supporting women**; Unconscious bias is where cultural myths, often sexist and gendered, will influence assessments and judgement alongside or even despite con
- trary evidence; Training of criminal justice professionals on the nature and effects of trauma and other matters relevant to specific groups of vulnerable witnesses should be resourced adequately and should be regarded as a necessity, not a luxury; The aim is that such matters would become standard curriculum content for all relevant professionals.

⚠ **Putting victims needs at the centre** of all protection and support measures and **establishing a relationship of trust** with the survivor are key elements in creating specialised support services, but also in supporting them throughout the justice system. The hidden nature of sexual violence and the public stigma attached to it make it challenging for victims to disclose their experiences, get appropriate support and/or report the violence. Survivors' consent must be at the core of all services, and they should be viewed as active agents of change in their own recovery. The survivor/recovery model puts the emphasis on survivors' own resources and positive strengths to support them in their process of recovery. An awareness of the centrality of the trauma and survivors' individual needs should be the norm for all support services and criminal justice interactions. ■

34 'Special measures' refers to a range of additional resources and protections they may include for example, video testimony, screens I court rooms, translators and intermediaries.

V. Prosecution of rape in European countries – identifying the shortcomings of victims' access to justice

In order to establish well-structured specialist support services for victims, we should have in mind the four "pillars" of the Convention: **Prevention, Protection, Prosecution** and Integrated **Policies**. State measures across these "Ps" should be consistent and harmonised, rather than inconsistent and contradictory.

Protection of women victims of sexual violence is closely interlinked with prevention work, which furthermore requires far-reaching changes in the attitude of the public at large, overcoming gender stereotypes, and raising awareness. Such work has been illustrated in the above-mentioned chapters.

The purpose of this chapter is to emphasize the importance of effective prosecution of rape cases. Gaps in prosecution highlight an important "social message" – if victims, based on media reports, become aware that perpetrators of sexual violence are not adequately punished, this may have an impact on victims' willingness to report cases of sexual violence. **If reporting rates for sexual violence are low, we should NOT consider that specialist services for victims of sexual violence are not needed.** GREVIO, in one of its baseline evaluations reports, provides the following assessment: "Rape victims' experiences with the criminal justice system indicate deeply ingrained societal attitudes that hamper effective judicial outcomes, which only adds to the reluctance to report. In the absence of any psychological counselling and trauma support or any other support for victims of rape, they are entirely alone with their experience."[35]

GREVIO published baseline evaluation reports on 17 countries so far, which include an extensive analysis of the implementation of the Istanbul Convention. In most of these reports, GREVIO pointed out gaps in the institutional response to cases of violence against women, including sexual violence. GREVIO recurrently highlighted **the need to strengthen the criminal justice response to all forms of violence covered by the Convention**. One good example is the GREVIO Report on Netherlands, GREVIO, 2020,[36] in which it is emphasized that: "one of the convention's major objectives is to put an end to 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 wrongdoing by state actors. If a state agency, institution, or individual official has failed diligently to prevent, investigate, and punish acts of violence (Article 5), victims and/or their relatives must be able to hold them accountable."

The convention requires the **analysis of conviction rates, as one of the indicators of the efficiency of the judicial system**. Article 11 of the convention, paragraph 1, lit. b. states that "State parties should support research in the field of all forms of violence covered by the scope of the convention in order to study its root causes and effects, incidences and conviction rates, as well as efficacy of measures taken to implement the convention." The importance of analysing conviction rates for all forms of violence that should be criminalised in line with the convention (including sexual violence) is highlighted in all reports GREVIO published so far. It should also be emphasized that reports of GREVIO clearly indicate that the application of definitions of sexual violence crimes that are based on the lack of consent (as required by the convention) remains a challenge in court practice in many countries, which adopted such definitions.

The *Handbook on effective prosecution responses to cases of violence against women* (UNODC, 2014),[37]

35 GREVIO report on Montenegro, 2018

36 GREVIO (2020). *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): Netherlands. Strasbourg: Secretariat of the monitoring mechanism of the Council of Europe*

37 United Nations Office for Drugs and Crime (UNODC), Vienna. (2014). *Handbook on effective prosecution responses to violence against women and girls.* New York: United Nations

highlights that, despite increased attention and widespread reform in criminal laws and procedures to eliminate violence against women in recent decades, **conviction rates are static or even declining in some countries**. In the International Violence against Women Survey[38] over 23,000 women in 11 countries[39] across the world were interviewed about their experiences with physical and sexual violence by partners and non-partners since the age of 16. Regarding reporting, it was shown that fewer than 20% of women reported the last incident of violence to the police; women were more likely to report a case of non-partner violence than partner violence, except for three countries. In all researched countries, **physical violence by non-partners was reported at a higher rate than sexual violence**. The likelihood of charges being laid against a perpetrator was between 1 and 7% of all victimisation incidents, while in relation to conviction rates, it was found that the likelihood that cases of partner or non-partner violence will result in a conviction was just 1 to 5% in all studied countries, except one.

In this context, it would be revealing to highlight shortcomings in the judicial response to cases of rape. An example from Spain's GREVIO Monitoring report is provided in the following box.

⚠ Re-traumatisation of victims in a process of proving rape in court: Spain

Spain is famous for its comprehensive law on domestic violence, which was highly commended in many sources, including GREVIO baseline evaluation report on Spain (2020).[40]

However, in this report, GREVIO also analysed problems arising from the definition of rape in Spain's criminal legislation, as follows.

"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.

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.).[41] 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 and severe depression.[42] 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

38 Johnson, H., Ollus, N. and Nevala, S. (2008). *Violence against Women: An International Perspective.* Helsinki: European Institute for Crime Prevention and Control (HEUNI)

39 The countries included in the study were: Australia, Costa Rica, the Czech Republic, Denmark, Greece, Hong Kong, Italy, Mozambique, the Philippines, Poland and Switzerland.

40 GREVIO (2020). *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*. Strasbourg: Secretariat of the monitoring mechanism of the Council of Europe

41 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 (GREVIO report on Spain).

42 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 Obstetricia et Gynecologica Scandinavica*, 2017; 96: pp. 932-938 (ibid.).

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."

GREVIO further noted shortcomings in criminal justice response to rape:

"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 re-victimisation 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 re-victimisation, and mechanisms must be put in place to safeguard against this."

GREVIO thus provided the following recommendations to the Spanish authorities,

"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.

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.

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."

GREVIO further repeatedly noted, with respect to **data-collection on criminal offences** established by the convention, the need to create a system that would allow cases to be adequately tracked through different stages of the criminal justice system. For a proper analysis of conviction rates, **it should be possible to 'track' cases from the moment of reporting to the law enforcement agencies to indictment and beyond – until the final outcome (judgment by the court)**; in other words, to follow individual cases across the various stages of the criminal justice chain: law enforcement – prosecution – courts, and to identify any shortcomings in the criminal justice system.

However, such a system has not been yet established in many countries, including countries in the Western Balkans and Turkey. Such a system would furthermore enable a proper analysis of **attrition**.

GREVIO noted that **attrition rates in domestic violence and rape cases are generally high across Europe**, and efforts must be stepped up to identify their root causes (see, for example, GREVIO report on Sweden, 2019).[43]

The attrition can be defined as a proportion of cases that were reported to institutions but did not result in any legal sanction for the perpetrator, i.e., cases that 'fall out of the system' without being decided by the court. An analysis of this kind can be properly conducted if data collection systems in the police and judiciary allow cases of violence to be adequately 'tracked' across the criminal justice system, as mentioned before. Only in such a manner, it is possible to identify gaps in the implementation of the laws/policies and understand underlying factors that contribute to the shortcomings in institutional/judicial response to violence, for example: whether the police dismissed some reports, whether prosecution dropped (too many) charges, whether courts primarily imposed suspended sentences, etc.

Cross-national research on attrition in rape cases[44] found significant differences across Europe with respect to trends in the reporting and processing of rape cases in the last several decades. Some countries (England, Wales and Scotland, Ireland, Sweden) are examples of a 'classic attrition pattern': increased reporting over a sustained period accompanied by a falling conviction rate. In only three countries (France, Denmark, and Luxembourg), increases in reporting are reflected in increased convictions.

In most Central and Eastern European countries, however, a 'reverse pattern' was found, with reporting and conviction rates in decline. In some countries, the pattern is mostly characterised by a decrease in reporting (examples are Czech Republic, Hungary, Portugal, and Romania).

Another significant finding of this cross-national research is that correlation between high conviction rates and low reporting is found in some countries. Factors that were more common in the low conviction rate samples included: failures in investigation to interview the victim and/or suspect and high rates of victim withdrawal. Conversely, countries (samples in this study) with higher conviction rates had neither of these and had systems where prosecutors took control of the investigation and made most decisions about whether cases proceeded through the justice system. In the context of the present study, the following findings of Lovett and Kelly (2009) should be particularly emphasized. The cases that were discontinued (did not proceed in the justice system) and had several relevant characteristics in common:

a) The closer the assault and the suspect were to stereotypes of rape, the more likely they were to proceed through the system; Whilst 'stranger rape' cases were often discontinued because the suspect was never identified (and in some samples hardly any were), if they were identified these cases were more likely to proceed and result in convictions;

b) Where suspects fitted stereotypes of 'criminals' – having previous contact with the criminal justice system, being non-nationals and/or from an ethnic minority the cases were more likely to proceed;

c) Where there was evidence supporting the account of the victim, especially documented injuries, the case was more likely to proceed.

43 GREVIO (2019). *GREVIO (Baseline) Evaluation Report: Sweden.* Strasbourg: Secretariat of the monitoring mechanism of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence

44 Lovett, J., and Kelly, L. (2009) *Different systems, similar outcomes? Tracking attrition in reported rape cases across Europe, Final research report.* London: Child and Woman Abuse Studies Unit, London Metropolitan University.

⚠ To **conclude**, it would be instructive to assess, through case-law analyses in the future, whether some of the above-described stereotypic patterns are present in the court practice in the region of Western Balkans and Turkey. In this context, **it is crucial to point out another issue: the need to establish or strengthen administrative data collection on cases of rape and other forms of sexual violence, in line with Article 11 of the Istanbul Convention.** This would imply developing data collection models in the police, prosecution and judiciary on reported cases of rape/sexual violence and allow analyses of institutional/judicial response, which could further contribute to policymaking in the future. We should be reminded in this context that the ultimate goal of **Article 11 is: evidence-based policymaking.**

An example of a promising practice from **Portugal** is illustrated below to showcase the need to collect data on police reports and the criminal justice response. GREVIO reports often point out the shortcomings in the criminal justice response and the need to identify those more properly. It would be also useful to quote some **examples of promising practice in the area of data collection** that enabled complex analyses of the criminal justice response to be conducted.

⚠ Promising practice example from Portugal

In 2009, Portugal introduced an obligation (by law) to collect data from law-enforcement (the police and National Guard) and the judiciary to **reconstruct the entire criminal proceedings chain**, from a moment the victim has filed the complaint/report to the police to the delivery of the judgment by the court.[45] **GREVIO, in many of its reports, recommended to numerous countries to do the same.**

The criminal justice sector (courts of first instance) recorded convictions for domestic violence, rape, as well as crimes recently introduced into the Criminal Code of Portugal (forced marriage, stalking, and female genital mutilation). Data are available to the public (on the website of the Justice Statistical Information System).

However, GREVIO noted that very limited data on forms of violence apart from domestic violence were made available during GREVIO's visit to Portugal. In the course of the year 2016, courts of first instance in Portugal recorded 49 convictions for rape, 17 for sexual coercion and 18 cases of sexual abuse of a person incapable of resistance.

Therefore, it can be concluded that **sexual abuse mostly remains invisible to the criminal justice in Portugal:** rape and other similar crimes (sexual coercion) are rarely reported and rarely lead to a conviction.

Evidence-based policymaking is a goal that is hard to reach, but it is worth trying to do so. ■

45 GREVIO (2019d). *GREVIO's (Baseline) Evaluation Report on legislative and other measures giving effect to the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention): Portugal.* Strasbourg: Secretariat of the monitoring mechanism of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence.

VI. Strategic policies: steps towards accountability of the state

Chapter II of the Istanbul Convention (Integrated policies and data collection) sets out the core requirement for a holistic response to violence against women: the need for state-wide, effective, comprehensive and coordinated policies sustained by the necessary institutional, financial and organisational structures.[46] Therefore, one of the essential obligations of the States is to develop clearly defined, targeted policies aimed at combating **all forms of violence covered by the scope of the Convention**. Such policies may take the form of national action plans or other comprehensive policy documents.

Furthermore, the convention is clearly based on a gendered understanding of violence against women. Such an understanding represents one of its over-arching principles. Article 6 of the convention requires state parties to ensure that the gender perspective is applied not only in designing measures aimed at implementing its provisions, but also in evaluating their impact. Obligations defined in Article 6 also extend to all other articles of the convention.[47]

Having in mind the requirements of the convention, countries may take an approach to specifically address all forms of violence against women in a comprehensive national action plan (NAP), or to integrate this subject into a general policy document, such as a NAP on Gender Equality. However, baseline evaluations on the implementation of the Convention by state parties carried out by GREVIO so far indicate an intriguing trend: national action plans in many countries analysed by GREVIO so far often address violence against women in the title of policy documents/NAPs, but are de facto focused on domestic violence exclusively, or primarily.

Albania may be seen as an example of such an approach, as assessed by GREVIO in its report on Albania (2017).[48] GREVIO explained that Albania's response to VAW has widely incorporated a gender-sensitive approach by recognising such violence as gender-based discrimination, linking policies, measures to combat VAW, and measures to promote equality and women's empowerment. Thus, both types of measures tend to be developed under comprehensive strategies and action plans treating VAW and discrimination as a single policy problem. This dual approach is essential in effectively tackling VAW and conforms to the approach taken by the Istanbul Convention in Article 6. Whilst the strategic aims and goals of these policy instruments often target gender-based violence as an umbrella concept encompassing all forms of VAW, their specific outcomes remain however very much focused on domestic violence; other forms of VAW, such as forced marriage, forced abortion, sexual violence including rape, and sexual harassment have not been prioritised in the design and implementation of policies.

Additionally, promising practice in policymaking indicates that **strategic policy documents should be accompanied by mechanisms for effective implementation of policies, including, but not limited to, clear indicators for measuring progress in the fulfilment of strategies' objectives.**

Having these considerations in mind, one **previous comparative/multi-country study on Western Balkans[49] assessed the following:**

1. Whether countries in the Western Balkans[50] have developed strategies that include all forms of violence covered by the scope of the Convention;

46 This requirement is explained in numerous GREVIO reports; see, just as an example, GREVIO report on Turkey, 2018.

47 See: Explanatory report to the Istanbul Convention, paragraph 61.

48 https://rm.coe.int/grevio-first-baseline-report-on-albania/16807688a7

49 Brankovic, B. (2019). Violence against women in Western Balkans – Thematic report. In: Duhacek, D., Brankovic, B., Mirazic, M., *Women's rights in Western Balkans: Study for the FEMM Committee, European Parliament,* pp. 34-74. Brussels: European Parliament, Policy Department for Citizens' Rights and Constitutional Affairs. (in English), Available at European Parliament Website: http://www.europarl.europa.eu/RegData/etudes/STUD/2019/608852/IPOL_STU(2019)608852_EN.pdf

50 Note: The study was focused on countries of Western Balkans, while Turkey was not included in this study (Brankovic, 2019). Therefore, the findings quoted here apply to countries of Western Balkans, but not to Turkey.

2. Whether mechanisms for effective policy-making and policy implementation have been put in place – do NAPs in these countries include: specific objectives, clear indicators for measuring progress in the fulfilment of these objectives, a budget allocated for the implementation, a precise plan how to establish coordination between different implementers, a well-defined monitoring and evaluation plan, and finally, publicly available reports on the implementation. Findings are presented in the table below.

Table: Mechanisms for ensuring well-structured policy-making, and effective implementation of Strategies/National Action Plans in Western Balkans: Assessment of national researchers and/or independent evaluators

Does the Strategy include:	Albania 2016–2020	BiH 2015–2018	Kosovo* 2016–2020	North Macedonia 2018–2023	Montenegro 2016–2020	Serbia[51] 2011–2015
a) Specific objectives	Yes	Yes	Yes	Yes	Yes	Yes
b) Planned measures/ activities	Yes	Yes	Yes	Not available	Yes	Yes
c) Indicators for measuring fulfilment of its objectives	Yes	Yes	Yes	Not available	Yes	Yes
d) List of actors responsible for implementation of each planned activity/measure	Yes	Yes	Yes	Yes	Yes	Yes
e) Specified deadlines for the implementation of each activity/measure	Yes	Yes	No	Not available	Yes	Yes
f) A plan how to ensure coordination between all relevant actors involved in implementation	No	Yes, but it does not work[52]	Yes	No	Yes, but it remains only formal[53]	No
Is any institution indicated as responsible for monitoring/evaluating the implementation?	Yes	Not available	Yes	Not clear	Yes	No
Is any institution obliged to report on the implementation?	Yes	Yes	Yes	Not available	Yes	No
If so, are these reports publicly available?	Yes	Yes	No[54]	Not available	No[55]	No[56]
Are financial resources allocated for the implementation?	Yes	Yes	Yes	No	No	No

Source: Comparative/multi-country study on violence against women in Western Balkans (Brankovic, 2019)

51 Serbia has currently a new strategy focusing on 2021-2025, which was adopted in April 2021.

52 ordination Body for the implementation of the Strategy has not been set up, which is a major setback, so this role was assumed by the structures at the entity level. The Government of RS has not accepted application of the Strategy in the territory of this entity, which challenges its consistent, efficient and coordinated implementation throughout the whole of BiH (Trkulja, 2018; in: Brankovic, 2019).

53 As assessed by Raicevic (2018; in: Brankovic, 2019), the Working group was established in Montenegro in 2011, as the first formal body in charge of coordination and reporting on the Strategy, however, due to very rare meetings and a lack of visibility and results, its role was strictly formal. In May 2017, the Government established the Committee for Coordination, Implementation, Monitoring and Evaluation of Policies and Measures for Preventing and Combating All Forms of Violence. The Committee members are in most cases politically affiliated (the posts in the Committee are not the expert positions that are independent of government mandates), while women's NGOs that provide specialist support services to survivors of VAW are not included in its work; so far, this newly-established Committee remained quite passive (ibid.).

54 In Kosovo, no report on the implementation of the current NAP has been released, but the evaluation report on the previous one was available to public (Krasniqi, 2018; in: Brankovic, 2019).

55 The last publicly available report was published in 2014 (Raicevic, 2018; in: Brankovic, 2019).

56 The final evaluation report, written by an independent expert, is available to public; See: Mamula, M. (2018). R*eview of the National Strategy for Preventing and Combating Violence against Women in Family and in Intimate Partner Relations* (2011-2015). Belgrade: UNDP.

Regarding the scope of the strategies (whether all forms of VAW are covered in the strategies), the **following results were obtained in the above-described previous comparative study on the Western Balkans:**

1. Not all analysed countries had a national action plan that specifically addressed VAW;

2. It is difficult to provide a general assessment of whether such plans tackle all forms of violence covered by the scope of the Convention (if all forms are addressed through specific policies targeting each of them, or are included only in a title); One of the strategies tackles VAW within a more general policy document on gender equality (in Albania), two strategies address domestic violence only (in Montenegro and Kosovo) while BiH and North Macedonia developed strategies for the implementation of the Istanbul Convention; Serbia had the strategy that (in the title) included domestic and intimate partner violence only, but it included a few measures on sexual violence outside the family; This strategy, however, expired in 2015.

As for the **second analysed issue identified in the comparative study in 2019** – whether mechanisms for effective policymaking and policy implementation are applied – the conclusions are as follows:

1. The national strategies in the countries of Western Balkans had one serious weakness: **the lack of a mechanism for ensuring co-ordination of activities of all relevant actors that were included in the implementation**, such as relevant state institutions and civil society organisations. Even when a coordination body/mechanism was established (as was the case in Albania[57], Montenegro and BiH), it was not functional; rather, its role remained only formal; In BiH, the coordination was further complicated due to political reasons: the complexity of the political system, an abundance of laws to be aligned and institutions to be coordinated on different levels of governance presented a major obstacle for the full implementation of the National Framework Strategy;

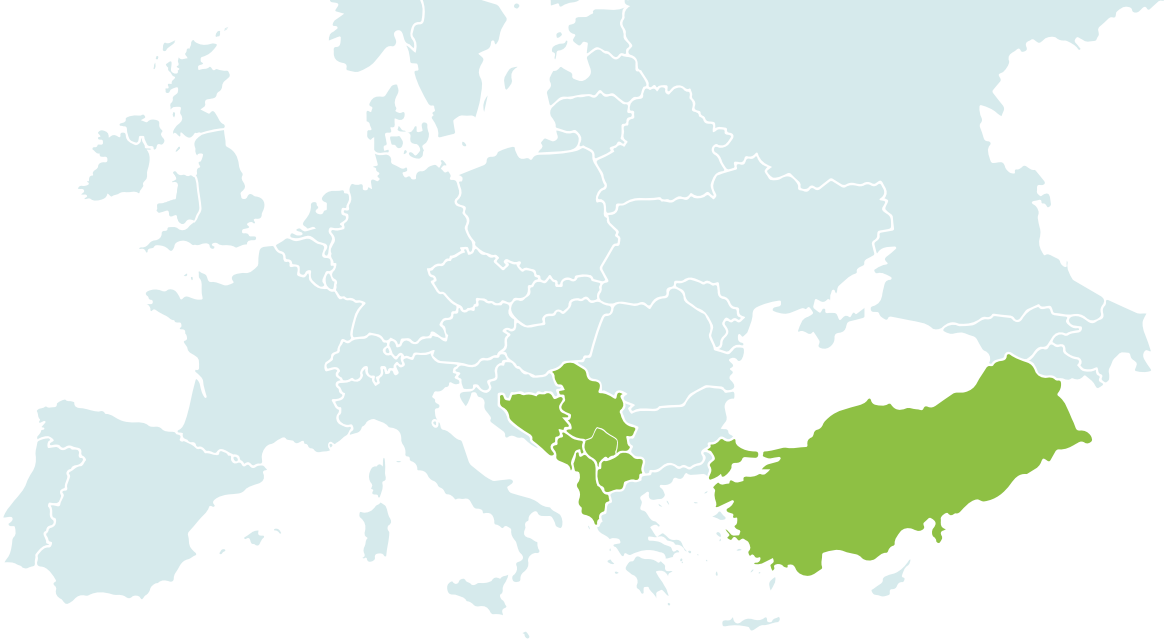
2. **Some NAPs were not supplemented with proper reporting mechanisms, or mechanisms for monitoring and evaluating the implementation;**

3. **NAPs in North Macedonia, Montenegro and Serbia (NAP 2011–2015[58]) did not have a budget allocated for their implementation;** The lack of financial resources for the implementation of policies on VAW can be partially explained by the level of economic development in the region of Western Balkans. Governments often tried to overcome this obstacle by developing a partnership with UN agencies and foreign donors; GREVIO, in its report on Montenegro (2018), for example, identified that no state funds have been committed to the implementation of the Strategy, and also added "Rather, concern has been voiced that it is for this reason that this Strategy has only been partially implemented and that the report on its implementation, drawn up by the Ministry of Labour and Social Welfare and adopted by the government, mainly lists the activities implemented by NGOs and funded by international donors. This would indicate a limited degree of commitment on behalf of the authorities to the implementation of a comprehensive and co-ordinated approach to preventing and combating VAW;"

4. Other crucial aspects of effective policymaking and policy implementation are also missing. **Implementation of NAPs has been faced with difficulties in creating effective mechanisms for monitoring/evaluation, timely reporting and establishing genuine cooperation with NGOs.** Inter-institutional coordination and cooperation with NGOs can be regarded as essential for implementation, but the mechanisms for such cooperation are rather weak.

57 Albania has currently a National Council on Gender Equality, which is an advisory body composed of government and civil society representatives. More information is available here: **https://www2.unwomen.org/-/media/field%20office%20albania/attachments/publications/2020/12/cgeb%20albania_report_1.pdf?la=en&vs=4248**

58 As of April 2018, Serbia has in place the Law on the Planning System of the Republic of Serbia. The law introduces the system of accountability for results and creates the framework for the measurement of work efficiency within public administration. This would imply that future action plans for example, cannot be adopted without budget allocation.



⚠ **As of 2021, countries in Western Balkans and Turkey do not have specific National Action Plans/National Strategies that addresses sexual violence.** As reported by national partners (CSSP partners)[59] in this project, **currently valid national policy documents** (Strategies/NAPs on gender equality or other national policy documents on VAW) **primarily, or exclusively, address domestic/intimate partner violence.** Therefore, it can be concluded that **sexual violence tends to be overlooked in national policies.**

In **BiH**, currently-valid strategy/NAP at the state level refers to domestic violence only, and it does not include any specific measures on sexual violence; the same applies to documents developed at the level of both entities (Federation BiH and Republic of Srpska). In **Kosovo**, the NAP recently expired; its focus was only on domestic violence, and it did not include specific measures addressing sexual violence (a new NAP on domestic violence is in the process of approval).

However, **several measures related to sexual violence exist in current NAPs in Montenegro, North Macedonia, Serbia and Turkey, as well as the draft Strategy in Albania that has not yet been adopted, as of June 2021.**

In **Serbia**, measures related to improvement of services for victims of different forms of gender-based violence is included in the new Strategy on Preventing and Combating Gender-Based Violence against Women and Domestic Violence (2021–2025[60]), i.e. measure 2.4: "Improving specialist services to women victims of gender-based violence against women and domestic violence through defining standards and ensuring availability of services to women from vulnerable groups[61]". It is furthermore noted that this specific measure includes services to victims of sexual violence, in order to "remove the shortcomings that represent obstacles to provision of services in accordance with the Istanbul Convention and recommendations of GREVIO. Specialised referral centres are necessary for a quality support to and protection of sexual violence victims that can be obtained in the same place 24/7, including medical and forensic examination, psychological support and legal advice, which are crucial for the victim, not only in order to gather evidence for judicial proceedings, but to ensure her psychological recovery". Additionally, the strategy includes that there is a need to provide "sufficient and stable budget funding in order to increase the number and quality of specialised services, as well as allocating

59 **https://cssplatform.org/partners**

60 Strategy on Preventing and Combating Gender-Based Violence against Women and Domestic Violence (2021-2025), **https://www.srbija.gov.rs/dokument/45678/strategije-programi-planovi-.php** (in Serbian)

61 The defined indicator for this measure is, inter alia: "2.4.2. The number of established services for victims of sexual violence at the entire territory of Serbia, adapted to the needs of all women with the experience of violence without discrimination, with the provision of free-of-charge forensic documentation" (ibid.)

funding of NGOs that provide specialised services to women with the experience of violence".

In the case of Montenegro and Albania, a tendency to integrate measures related to sexual violence into NAPs might be possibly viewed as a response to GREVIO's recommendations – in its reports on Albania and Montenegro, GREVIO identified the lack of specialist support services to victims of sexual violence and urged these countries to set up rape crisis centres and/or sexual violence referral centres in sufficient numbers, in accordance with Article 25 of the Convention (see, GREVIO report on Albania, 2017; GREVIO report on Montenegro, 2018). Albania has taken steps to implement the latter recommendation of GREVIO – the first centre for sexual violence victims was recently established, i.e., 'Crisis Management Centre for Cases of Sexual Violence', Lilium Centre, in the capital city Tirana. **In the draft strategy**[62] that is currently under development in Albania, as explained by the national partner, **there is a planned measure to "establish four new crisis centres (two for children and two for adults) for survivors of sexual assault." At the moment it is however unclear what type of services (short term/long term) these services will provide.**

In the case of **Montenegro**, it is commendable that this country adopted a NAP, which has several specific measures aimed at supporting and protecting victims of sexual violence, including a measure to establish the first centre for victims. However, **it must be highlighted that, based on the text of the NAP,**[63] **it cannot be concluded whether Montenegro opted for the establishment of a rape crisis centre or sexual violence referral centre (in terms of the Istanbul Convention). In the NAP, the term 'Centre for Victims of Sexual Violence' is used, without further specification of the services that will be provided in such a centre, so it cannot be concluded whether its work would fit the definition of 'rape crisis centre' or 'sexual violence referral centre' (in terms of the Convention).** Similarly, **North Macedonia** adopted the National Action Plan for the implementation of the Istanbul Convention (2018–2023),[64] as described in the report on the implementation of this NAP (National Network against Violence against Women and Domestic Violence, 2020).[65] National partner in this project reported that this NAP has several measures that specifically address legislation on sexual violence and support to victims; however, most of planned amendments have not yet been adopted. There are also other measures related to specialist services, such as "Establishment of Crisis centres for Victims of Sexual Violence (72 hours), and Centre for Victims of Sexual Violence and Rape (shelter)," as well as "Preparation of standards for specialist support services to victims of gender-based violence, including Crisis centre for Victims of Sexual Violence (72 hours), and Centre for Victims of Sexual Violence (Shelter)." North Macedonia already has three centres, which are located in hospital settings. **Again, based on the text of this NAP, it cannot be concluded which types of services should be (are planned to be) established in the country.** ■

62 The Strategy for Gender Equality (2021-2030).

63 The full title of this NAP is as follows: National Plan for the Improvement of Specialist Support services for Victims of Violence in Accordance with the Istanbul Convention for the period 2019-2021.

64 *National Action Plan for the Implementation of the Convention on Preventing and Combating Violence against Women and Domestic Violence in the Republic of Macedonia, 2018-2023,* **https://mtsp.gov.mk/pocetna-ns_article-nacionalniot-plan-za-sproveduvanje-na-konvencijata-za-sprecuvanje-i-borba-protiv-nasilstvoto-vrz-zen.nspx** (in Macedonian).

65 National Network against Violence against Women and Domestic Violence (2020). *Report on Progress of North Macedonia in the Implementation of the NAP for the Implementation of the Istanbul Convention*, **http://www.glasprotivnasilstvo.org.mk/wp-content/uploads/2021/02/NAP-finalen.pdf** (in Macedonian).

VII. Sexual violence in the law

The purpose of the Istanbul Convention in **Article 36** is to criminalise all non-consensual acts of any sexual nature, including rape. The central element of the convention's definition of sexual violence is the **lack of consent** given voluntarily as a result of the person's free will.

To properly understand the norms of the convention in the area of criminalising sexual violence, it is important to take into account considerations provided in the Explanatory Report to the Convention (paragraphs 191–192), in which several relevant issues are highlighted, derived from the caselaw of the European Court of Human Rights, particularly, the judgment in the landmark case M.C. v. Bulgaria (2003):

1) When assessing the constituent elements of offences, state parties have a positive obligation to penalise and effectively prosecute **any non-consensual sexual acts, including in the absence of the physical resistance of the victim and should not apply a rigid approach to the prosecution of sexual offences**, such as requiring proof of physical resistance in all circumstances, since such an approach risks leaving certain types of rape unpunished and thus jeopardising the effective protection of the individual's sexual autonomy;[66]

2) Prosecution of sexual offences, including rape, requires a context-sensitive assessment of the evidence to establish on a **case-by-case basis** whether the victim has freely consented to the sexual act performed. Such an assessment must recognise the wide range of behavioural responses to sexual violence and rape which victims exhibit and shall not be based on assumptions of typical behaviour in such situations. It is equally important to ensure that interpretations of rape legislation and the prosecution of rape cases are not to be influenced by gender stereotypes and myths about male and female sexuality.[67]

⚠ Based on the responses of national partners in this project, and analysis of GREVIO reports on four countries, it can be concluded that in several countries in the Western Balkans and Turkey **definitions of sexual offences in criminal legislation are not harmonised with the convention – they are not based on the lack of freely-given consent, although a notable progress in amending legislation in this respect has been identified in Montenegro and Turkey (as noted in GREVIO reports on these countries), as well as in Kosovo.**

The use of force or threat is still a constituent element of the crime of rape/other sexual offences in Albania, Serbia, North Macedonia, and Bosnia and Herzegovina[68] (relevant criminal law provisions are included in the Annex accompanying the paper). In its reports, **GREVIO identified shortcomings in definitions of sexual violence offences in criminal legislation of Albania (2017) and Serbia (2020)**. It urged Albania to amend its definition of rape of adult women so that it is based on a lack of freely given consent and does not require demonstration of the use of force or resistance. In the case of Serbia, GREVIO urged the authorities to speedily reform the Criminal Code provisions covering sexual violence to be based on the notion of lack of freely given consent and to ensure appropriate sanctions for all sexual acts without the consent of the victim, irrespective of personal characteristics.

Legislative changes would (possibly) contribute to a more effective prosecution. In the judicial practice, force-based definitions tend to lead to require the proof of physical resistance by the victim (no resistance – no rape) and therefore, a low chance of conviction to the perpetrator. **It is therefore recommended to harmonize sexual offences in criminal legislation with the standards of the convention, basing them on the lack of freely-given consent rather than the use of force.** ■

66 Explanatory report to the Convention, paragraph 191

67 Explanatory report to the Convention, paragraph 192

68 As explained before, implementation of the Convention in BiH and North Macedonia has not been yet evaluated by GREVIO. In each country included in this project, it was verified with national partners whether the legislation has been amended upon the evaluation report provided by GREVIO, so in the Annex, the updated information is provided.

VIII. Sexual harassment in the law

The Istanbul Convention, in its Article 40 **sets out the principle that sexual harassment can be subject to criminal or other legal sanctions.** This means[69] that the drafters decided to leave to state parties the possibility to choose the type of consequences the perpetrator would face when committing this specific offence. While generally it is preferable to place these crimes under criminal law, the drafters acknowledged that many national legal systems consider sexual harassment under civil or labour law. Consequently, state parties to the convention may choose to deal with sexual harassment either by their criminal law or by administrative or other legal sanctions, ensuring that the law deals with sexual harassment.[70] **Sexual harassment is neither limited to the workplace nor the family and can occur in multiple contexts**. Accordingly, the context or setting in which it occurs, does not constitute an element of the offence as defined by the convention.

Some countries in the Western Balkans and Turkey criminalised sexual harassment, while others have chosen to address it through labour legislation/laws on gender equality/laws on prohibition of discrimination. **Sexual harassment is defined as a specific criminal offence[71] in Albania, one entity of BiH (Republic of Srpska), Serbia, Turkey, and Kosovo, and it is not criminalised in Montenegro, North Macedonia, one entity of BiH (Federation BiH), as well as in Brcko District of BiH.** However, sexual harassment in the latter countries/entities is addressed in the Labour Law, Law on Gender Equality, etc. Sexual harassment is thus subject to other (non-criminal) sanctions, and/or possibilities for legal protection are provided (compensation for damages can be claimed). Relevant national provisions regarding sexual harassment are included in the Annex.

Unfortunately, no data would illustrate how the provisions on sexual harassment are implemented in practice, so we cannot make any conclusions on the efficiency of legal protection against this (widespread) form of VAW. ■

69 Explanatory report to the Convention, paragraph 207.

70 As further explained in several GREVIO reports (See for example, GREVIO report on Turkey, 2017; GREVIO report on Spain, 2020), the offence of sexual harassment defined in Article 40 of the Convention encompasses any unwanted behaviour of a sexual nature that affects or might affect the dignity of a person.

71 Further, in these countries, offence of sexual harassment is not prosecuted *ex officio* – criminal proceedings with respect to sexual harassment can be carried out only in the form of private prosecution, that is, can be initiated only on the basis of a victim's complaint.

IX. Assessing survivors' needs: the importance of data

A critical aspect of the implementation of the Istanbul Convention is being able to show that a state understands the scale of the problem and the needs of survivors and is also able to demonstrate what measures are in place, if they are being used, and if they are effective to prevent and protect women from violence. According to Article 11 of the Istanbul Convention, states are responsible for collecting disaggregated relevant data at regular intervals on cases of all forms of violence covered by the scope of the Convention. A key challenge is that often data is not gathered, analysed, or published. This silence means poor performance is difficult to name and hold into account and indeed good performance may go unnoticed. Women's NGOs have a role in advocating for better data and evidence.

The following part builds upon the **experience of Rape Crisis Network Ireland** in advocating for better data collection in Ireland and examines different data sets that are needed to build up the complete picture of a survivor's journey, such as population prevalence data, administrative data, and survivors' data.

Population prevalence data is where a survey is conducted of a nationally representative sample of the population. From this survey, it can be stated with confidence the real nature and scale of sexual violence in the whole population. Repeated surveys of this nature over time allows states to measure change, be it positive or negative.

Prevalence studies of this kind are rare. In Ireland, the first (and only) prevalence study was carried out in 2000 by an academic partnership with a rape crisis centre. This was mostly funded by private philanthropy.[72] This report was an incredibly powerful tool as the authority of this evidence was undeniable. Every advocate in Ireland quoted statistics from this study on a regular basis. Today, after 20 years of public lobbying by civil society, and the public pressure generated, the government has agreed to conduct a second prevalence study which will be repeated every ten years. The Irish Central Statistics Office has been tasked with this study.[73]

Administrative data is data gathered by a service in the course of its work, for example the police, the courts, or the rape crisis centre. The type of data collected relates to: what service is delivered, how many people were supported, how many hours of service were delivered, how many staff /volunteers supported the survivors, among others. This data shows who is accessing the service and can tell us something about how well the service is performing. Administrative data can be usefully compared with other administrative and prevalence data to give further insight into the performance of the agencies and support offered. For example, comparing cases of rape reported to the police with prevalence data on rape will show what proportion of rape cases are reported, perhaps only 10%. Comparing cases reported to the police with cases prosecuted will give us the attrition rate. These numbers can then prompt stakeholders to seek to understand what is happening (why are 90% of rape survivors choosing not to report to the police?) and to eventually make changes if necessary.

Women's NGOs, as survivor advocates, often have the most complete understanding of a survivor's many interactions with different agencies. Women's NGOs are often the first point of contact and remain with survivors as they move through medical and justice processes and the aftermath. They are therefore well placed to identify data gaps and silences, and seek to find ways to bring this to the attention of the agency, the government, and the public. Building a complete map of the survivor's journey from the point of incident is a good starting point for CSOs and policy makers to understand what works and what needs attention.

Women's NGOs data is vital but it also needs to relate to different administrative data sets to each other. For example, how do the policing statistics actually relate to the courts' data when the cases in the courts' statistics relate to policing statistics from some time ago, maybe years ago? Are different agencies counting the same things using the same definitions? If not, can this be improved? Advocating and campaigning that as much of this

72 Ibid The SAVI report. https://repository.rcsi.com/articles/report/The_SAVI_report_sexual_abuse_and_violence_in_Ireland/10770797/1

73 https://www.cso.ie/en/surveys/surveysunderdevelopment/sexualviolencesurveysvs/

data as possible is publicly available in statistical format is an important RCC task.

Survivor data: Data gathered by the rape crisis centres (RCCs) in Ireland is also administrative data however, given the nature of RCCs this data is likely unique. This is because the confidential and non-governmental support offered by RCCs means many of the survivors supported by RCCs will never speak to or come to the attention of state agencies. These survivors' data may help to answer the earlier question; why do 90% of rape survivors do not report to the police? These survivors may never tell the police this, but they may tell RCCs. **Therefore, RCC survivor data collection can act as an important feedback mechanism for the state in building an understanding of how their services are being engaged with, or not, by survivors. Importantly, this feedback only exists because RCCs can deliver confidential and trusted services to survivors. State must take care not to compromise this confidentiality and risk destroying this resource.**

For a RCC, to collect such data from survivors it takes resources and staff capacity. The Rape Crisis Network Ireland built a national data collection system, this involves staffing within the RCNI as well as supporting roles, with training provided within each RCC, alongside IT, legal, and academic partnerships. Key elements of this system include:

a. A transparent process of informed consent for survivors to gather their data;[74]

b. A robust process of safeguarding data and confidentiality;

c. A clear commitment on how that data will be used and stored, see RCNI EIGE endorse European best practice survivor data system here;[75]

d. The production of publicly available statistical data that informs the public debate and drives the policy agenda.[76]

Such data collection models, could be replicated furthermore in the Western Balkans and Turkey, by national stakeholders. Women's NGOs in the region can play an important role in this regard, when it comes to collecting survivors' data, if provided with enough funding and staff capacity.

In order to **examine administrative data-collection models in the region** and assess whether these can be used for the purpose of analysing and improving national policies, national partners in this project were asked whether administrative data are available in their countries, including the annual numbers of rape cases/cases of other forms of sexual violence that were reported to the police, as well as the annual numbers of criminal charges, indictments, and convictions for rape/other forms of sexual violence in 2018–2019. **Such data would be crucial for the analysis of institutional/judicial response to sexual violence in Western Balkans and Turkey, and for creating foundations for policymaking in the future.** In the GREVIO Monitoring reports on the four countries in the Western Balkans and Turkey, **GREVIO identified serious shortcomings in the area of administrative data collection on sexual violence** in these countries and recommended, inter alia, introducing harmonised data categories across various sectors (the police, judiciary, healthcare), conducting analysis of conviction rates, and disaggregation by factors envisaged in the convention, such as the sex and age of both victims and perpetrators, as well as their relationship.

In some countries, such as Albania, the Institute for Statistics publishes the annual the report 'Men and Women in Albania', which includes a chapter on judicial data, specifically on violence against women, including sexual offences.[77] However, based on national reports provided by CSSP partners, it is not possible to create a complete picture – some of the above-indicated data are non-existent, and/or are not publicly available (as Article 11 of the Convention requires), or are gathered, but not collated at the national level. As an example, in North Macedonia, national partner reported in this project that data on convictions can be obtained only by sending requests to courts across the country, relying on the Law on Information of Public Importance.

Therefore, in the following text the case of Serbia is presented as an illustration.

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74 https://www.rcni.ie/what-we-do/you-your-data-your-rights/

75 https://www.rcni.ie/what-we-do/national-data-research/

76 https://www.rcni.ie/wp-content/uploads/RCNI-Statistics-2019.pdf

77 The report for Albania for 2020, is available here: burra-dhe-gra-2020.pdf (instat.gov.al)

The case of Serbia

In Serbia, data on cases of sexual violence reported to the police are not publicly available, so it is not possible to assess whether some reports did not result in filing criminal charges. On the other hand, National Statistical Office provides national-level data on criminal charges, indictments, and convictions for all criminal offences (as defined in the Serbian Criminal Code). These data are publicly available on the website of the Statistical Office of the Republic of Serbia.

Previous research studies on the implementation of due diligence standard in Serbia (which represents one of the over-arching principles of the Istanbul Convention) analysed trends with respect to prosecution of all criminal acts related to VAW, including sexual violence in the period of around 20 years (Brankovic, 2013;[78] 2015;[79] 2016[80]), relying on official data on criminal charges and convictions. Regarding the criminal offence of rape, the research showed that **the total annual number of criminal charges has been very low – it ranged from 60 to 170 in the period from 2002 to 2019; even, a noticeable decrease can be identified after 2010, which represents a worrying trend. The total annual number of convictions for rape has been also very low** (See: Graph 1). It should be kept in mind that Serbia has a population of roughly 7 million.[81] In interpreting this data, methodological limitations[82] should be taken into account, as well as the fact that **judicial proceedings for rape last up to four years. Data indicate that there is a lot of room for improvement in the area of Prosecution for rape in Serbia.** With respect to other sexual violence offences, however, a certain increase in criminal charges can be noted (See, Graph 2). ■

78 Brankovic, B. (2013). *News from the Future: the Istanbul Convention and Responsibility of the State for Combating Violence against Women; Operationalisation of Due Diligence Principle. Belgrade:* United Nations Development Programme (UNDP), (in Serbian). Online version is available at: **http://www.sigurnakuca.net/sites/default/files/inline-files/VestiIzBuducnosti.pdf**

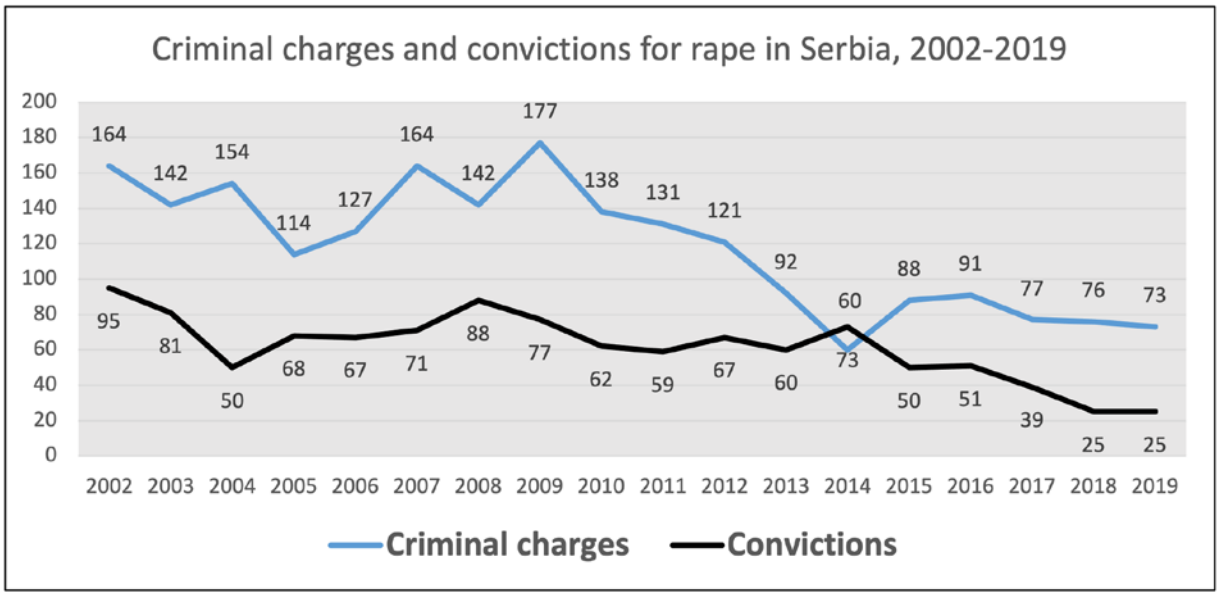
79 Brankovic, B. (2015). *Sexual violence: Emerging from oblivion.* Paper presented at the 1st International Conference on Sexual Violence in Croatia, organized by Women's Room – Centre for Sexual Rights, Committee for Gender Equality of the Government of Croatia, Centre for Education, Counselling and Research, and Committee for Gender Equality of the Croatian Parliament, Zagreb, Croatia, Croatian Parliament, 23 October 2015.

80 Brankovic, B., on behalf of GREVIO (2016). Barriers to women's access to justice – gaps in meeting the requirements of the Istanbul Convention, *Paper presented at the Regional Conference Strengthening Judicial Capacity to Improve Women's Access to Justice, organised by Council of Europe in partnership with the National Institute of Justice of the Republic of Moldova, Chisinau, Moldova*, 24-25 October 2016.

81 Population estimate on 1 January 2020: 6 926 705; Statistical Office of Serbia, **https://www.stat.gov.rs/en-us/oblasti/stanovnistvo/procene-stanovnistva/**.

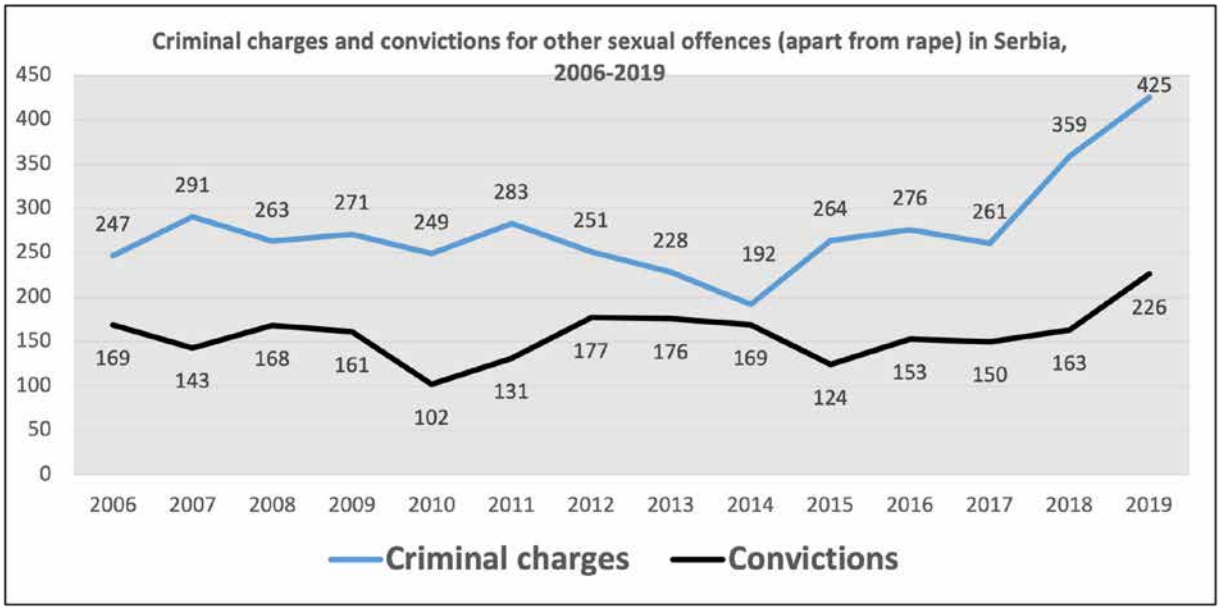
82 The data-gathering models do not allow calculation of conviction rates (as required by the Convention, Article 11); it is not possible to "track" the cases from the moment of recording by the police until the final judgment of the court and thus calculate the proportion of convictions out of the total number of reported cases. It should be further kept in mind that judicial proceedings for rape last long: the research of Judicial Academy, conducted in 2014 (in: Brankovic, 2015) indicated that the length of judicial proceedings for rape in Serbia is: up to four years. This is one of the reasons why the annual number of convictions in a respective year may be higher than a total number of criminal charges in that year. Therefore, we cannot analyse proportion of convictions (out of the total number of criminal charges in a respective year), but data on the annual numbers of criminal charges and convictions are still indicative and show trends in this area.

Graph 1: Criminal charges and convictions for rape (against adult perpetrators) in Serbia for the period 2002–2019



Created using the following sources: annual reports on judicial statistics: Adult perpetrators of crimes – criminal charges, indictments and convictions, 2002-2019, Statistical Office of the Republic of Serbia, in: Brankovic, 2013; 2015; 2016; https://www.stat.gov.rs/en-us/oblasti/pravosudje/

Graph 2: Criminal charges and convictions (against adult perpetrators) for all other sexual offences (apart from rape) in Serbia for the period 2006-2019



Created using the following sources: annual reports on judicial statistics: Adult perpetrators of crimes – criminal charges, indictments and convictions, 2006-2019, Statistical Office of the Republic of Serbia, in: Brankovic, 2013; 2015; 2016; https://www.stat.gov.rs/en-us/oblasti/pravosudje/

X. Support to victims of sexual violence

The traumatic nature of sexual violence, including rape, requires a particularly sensitive response by trained and specialised staff, as victims of this type of violence need immediate medical care and trauma support combined with immediate forensic examinations to collect the evidence needed for prosecution. Furthermore, there is often a great need for psychological counselling and therapy, and as it has been shown throughout the paper, very often even weeks and months after the event occurred.[83]

In the Western Balkans and Turkey, rape crisis centres and/or sexual violence referral centres (in terms of the convention) can be regarded as concepts/models that should yet to be applied in practice. Only recently, several initiatives were undertaken in the region to establish some forms of specialist support to victims of sexual violence as conceptualised in the convention, and it is sometimes difficult to distinguish (based on the description of their work) whether these centres fit the definition of 'rape crisis centre' or 'sexual violence referral centre' (as defined by the convention).

GREVIO Baseline Evaluation Reports

According to the GREVIO reports on **Albania** (2017), **Montenegro** (2018), **Serbia** (2020), and **Turkey** (2018), these four countries do not meet the obligations contained in Article 25 of the convention to set up rape crisis centres and/or sexual violence referral centres. Therefore, GREVIO in its recommendations urged Albania, Serbia, Montenegro, and Turkey to do so. GREVIO identified initiatives in this respect in one country (**Serbia**); just one province (Autonomous Province of Vojvodina in Northern Serbia); as explained by GREVIO in its report on Serbia (2020): "There are no fully established rape crisis or sexual violence referral centres in Serbia. Attempts were made by the Autonomous Province of Vojvodina to introduce more specialist services for women victims of rape and sexual violence within hospital settings. For the duration of the project 'Stop-Protect-Help', all seven districts of Vojvodina offered medical and forensic examinations by trained medical staff combined with legal and psychological counselling through specialist NGOs. This number has now dropped to three (Novi Sad, Kikinda and Zrenjanin) that are kept running because of private donations."[84] The current situation in all these countries will be illustrated in the following parts.

Regarding **Turkey**, GREVIO in its report on this country (**2018**) welcomed the efforts to establish support for child victims of sexual abuse,[85] but also noted a need to set up specialist support for adult victims in the form of rape crisis centres and/or sexual violence referral centres,

"GREVIO commends the authorities' efforts to provide support to child victims of sexual abuse by establishing 31 Child Monitoring Centres (CMCs) in 28 provinces in Turkey. CMCs are specialist units operating in hospital settings and aim to prevent child victims' secondary trauma. Ongoing efforts to extend the coverage of CMCs to all 81 provinces in Turkey should address the causes preventing existing CMCs from providing optimal support to child victims, such as the lack of sufficient specialist medical personnel and procedural obstacles to terminating pregnancies resulting from sexual violence.[86] […] To bridge the current gap in service provision for adult victims of sexual violence, the authorities are currently considering how to replicate the model of CMCs for the purposes of creating sexual violence referral centres or rape crisis centres that match the requirements of Article 25 of the Istanbul Convention."

In the report on **Albania** (2017), GREVIO identified the lack of support prescribed in Article 25,

"There are no rape crisis or sexual violence referral centres in Albania, although, as mentioned prior in this report, medical and forensic examinations are offered in hospitals and other healthcare settings. Other types of support such as trauma support,

83 Explanatory Report of the Istanbul Convention, paragraph 138.

84 GREVIO report on Serbia, 2020

85 As of December 2020, there are 53 child monitoring centres available in Turkey.

86 See page 42 of the shadow report endorsed by the Istanbul Convention Monitoring Platform (ibid.).

counselling for victims, support during court proceedings by woman to woman advocacy are rare."

A similar assessment is provided in the GREVIO report on **Montenegro** (2018), and stigmatisation of sexual violence victims is also highlighted,

"There are no rape crisis or sexual violence referral centres in Montenegro. Upon reporting a rape or any other act of sexual violence to the law enforcement agencies, women are taken to hospital (a general hospital or the Clinical Centre of Montenegro) for a medical and forensic examination. Standard procedure requires a thorough general examination to document injuries and secure forensic evidence for storage until the victim has taken a decision on whether or not to report the incident. Instances of rape seem to be significantly underreported due to the cultural stigma that attaches to victims (see Chapter III)."[87]

Upon identifying the limited lack of support to sexual violence victims in these four countries, GREVIO in its recommendations urged the authorities to set up rape crisis and/or sexual violence referral centres (GREVIO report on Albania, 2017; GREVIO report on Turkey, 2018; GREVIO report on Montenegro, 2018; GREVIO report on Serbia, 2020). It should be noted that the use of the term 'urge' indicates that GREVIO considers this recommendation a 'priority number 1', more specifically, "GREVIO uses the verb 'urge' 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."[88] As an example, in the report on Serbia, GREVIO (2020) provided the following recommendation,

"GREVIO urges the Serbian authorities to set up rape crisis and/or sexual violence referral centres, ensuring a sensitive response by trained and specialist staff, in sufficient numbers, recalling that one such centre should be available for every 200.000 inhabitants and that their geographical spread should make them accessible to victims in rural areas as much as in cities.[89] The gathering of relevant forensic documentation must not be subject to a charge." Very similar recommendations are provided in reports on Albania (2017), Turkey (2018) and Montenegro (2018).

Recent initiatives to develop specialist support for sexual violence victims

Based on the national reports received by CSSP partners, it should be highlighted that **the situation has changed to a certain extent since the time GREVIO published its reports**. Specialist support to victims of sexual violence has been introduced in **Albania** recently in a hospital setting, as a pilot programme.[90] The first so-called 'Crisis Management Centre for Cases of Sexual Violence', named Lilium, was established in the capital city (Tirana). The centre is available 24/7 and it offers social and health services to women, men, and children, provided by a multidisciplinary team of professionals including gynaecologists, paediatricians, psychiatrists, clinical psychologists, social workers, police officers, lawyers, and nurses. Short-term services at the centre are coordinated with other services in the community, to ensure long-term support to survivors, and the centre is funded by the state.[91] As reported by the national partner in this project, "The aim of this centre is to provide integrated services. All health care services, forensic examination, evidence gathering through criminal justice, and psychosocial services are provided at the same place, by professionals. This crisis management centre establishes an immediate contact with the Institute for Forensic Examination, so that it could easily facilitate the forensic examination. The centre also

87 See also *Multi-country study on violence against women support services*, National Report: Montenegro, UN Women report (unpublished), 2016, p.46 (ibid.).

88 Each GREVIO report (see, just as an example, GREVIO report on Serbia, 2020), contains the following explanation.
"GREVIO has adopted the use of different verbs which correspond to different levels of urgency. These are, in order of priority, "urge", "strongly encourage", "encourage" and "invite". GREVIO uses the verb "urge" 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. The verb "strongly encourages" is used where GREVIO has noted shortcomings which need to be remedied in the near future in order to ensure a 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 which the party is requested to consider closing or to proposals made to provide guidance in the implementation process."

89 Explanatory Report to the Convention, paragraph 142.

90 The initiative was supported by UNDP; See: **https://www.al.undp.org/content/albania/en/home/presscenter/articles/2018/albania-sets-up-the-first-center-to-support-victims-of-sexual-vi.html**

91 WAVE (2019). *WAVE country report 2019: The situation of women's support services in Europe.* Vienna: WAVE.

offers free psychological aid and accommodation up to 72 hours to the victims. The minimum set of quality standards has been also published in the Official Gazette, based on which all public or private agencies have to operate in the future."[92]

Furthermore, **North Macedonia** (which has not yet been analysed by GREVIO), established, in 2017, three centres in hospital settings, which, based on the description of their work, seem to fit the definition of 'sexual violence referral centres' (in terms of the Convention). The centres, as explained in WAVE sources and reports of the national partner, provide urgent medical support to women and girls survivors of rape, and are located in gynaecological clinics in three cities: Skopje, Kumanovo, and Tetovo. Apart from the urgent medical help provided by these centres, the coordinator of the Rape Referral centres also notifies the police and public prosecutor about any cases of sexual violence, if the victim gives her consent. These centres are run by the Ministry of Health. Furthermore, one shelter for victims of sexual violence was established in 2018, run by the Ministry of Labour and Social Policy.

In **Montenegro**, the national partner clarified that "the first helpline for survivors of sexual violence was established in 2019, run by women's NGO Montenegrin Women's Lobby; though, it has only project funding, so the work and sustainability of the line are questionable." There is also a plan to establish some form of specialist support for victims of sexual violence in Montenegro. The National Plan for the Improvement of Specialist Support Services for Victims of Violence in Accordance with the Istanbul Convention for the period 2019-2021 includes a measure to "establish a Centre for Victims of Sexual Violence" in 2021, and also to develop guidelines on the work of such a centre, and guidelines for its staff. Based on the text of this National Plan, though, it is not possible to assess whether the centre will be closer to the model of "rape crisis centre" or "sexual violence referral centre," as defined by the convention.

In **Serbia**, as highlighted as well by the GREVIO Baseline report for Serbia and WAVE Mapping Report[93], there were three Centres for Victims of Sexual Violence (CVSV) that have been established in seven districts of the Autonomous Province of Vojvodina, as part of the project "Stop-Care-Cure! Run by the Provincial Secretariat of Health Care in partnership with women's NGO Centre for Support of Women Kikinda. These services provide immediate medical care, forensic practices, and intervention in situations of crisis, in these centres victims are also able to access services such as legal counselling, psychosocial support and psychotherapy. At the time of writing this paper, there are currently four CVSVs in Vojvodina, and negotiations on opening two new ones are ongoing.

In **Turkey**, as mentioned above, Child Monitoring Centres (CMCs) are available in 28 provinces in Turkey. As of December 2020, there are 53 child monitoring centres available. These are specialist units operating in hospital settings, aiming to prevent child victims' secondary trauma. According to the Presidential Decree on the Support of Victims of Crime No. 63, from the 10th June 2020, there is a provision of sexual violence and rape crisis centres, mentioning that such centres are to be established by the Ministry of Health, upon the request of the Ministry of Justice to serve victims of sexual violence. These centres can also be established in Universities.[94] Considering though Turkey's decision, through Presidential Decree on the 20th March 2021, to withdraw from the Istanbul Convention it is important to highlight that Turkey no longer has the obligation to abide by the standards enshrined in the Istanbul Convention.

In **Bosnia and Herzegovina**, however, forms of support to victims of sexual violence have been created long ago, in response to the war-time sexual assaults (as explained earlier, in the section: "History and herstory": Lost expertise or building on the knowledge developed in the past).

The national partner in this project reported that "Vive žene from Tuzla and Medica from Zenica have long term experience in specialized trauma counseling and support to women victims of war-related rape in continuity since their establishment."

92 Interview with representatives of Lilium - Crisis management center for cases of sexual violence, provided by national partner in this project.

93 https://cssplatform.org/wp-content/uploads/2019/10/CSSPWAVE_SVReport190927_web.pdf

94 ARTICLE 9- (1) In terms of the implementation of the fifth and sixth paragraphs of Article 236 of the Criminal Procedure Code, in order to prevent the repeated victimization of sexual crime victims and to ensure that judicial and medical procedures are carried out at once by trained officials in this field. Centres are established by the Ministry of Health, upon the request of the Ministry of Justice, to serve victims. These centres can also be established by universities.

NGOs with years-long experience in providing specialised assistance to sexual abuse survivors also exist in Serbia,[95] and several such organisations were established in **Kosovo**.[96]

⚠ In the context of planning how to create and develop centres for support to victims of sexual violence in the Western Balkans and Turkey, a relevant standard of the convention should be emphasised. The Explanatory Report to the convention elaborates that research shows that **it is good practice to carry out forensic examinations regardless of whether the matter will be reported to the police**, and offer the possibility of having samples taken and stored so that the decision to whether or not to report the rape can be taken at a later date.

An example of promising practice in this area is provided below, based on the GREVIO Report on Denmark (2017).[97]

⚠ Promising practice example from Denmark: providing the same specialist support to victims whether they intend to report the rape or not

The Convention, in its Article 18, paragraph 4, requires that the **provision of services shall not depend on the victim's willingness to press charges or testify against any perpetrator.**

As further explained in the Explanatory Report to the Convention,[98] the purpose of paragraph 4 is to point out a serious grievance that victims often encounter in seeking help and support. Many services, public and private, make their support dependent on the willingness of the victim to press charges or testify against the perpetrator. If, for reasons of fear or emotional turmoil and attachment the victim is unwilling to press charges or refuses to testify in court, he or she will not receive counselling or accommodation. This goes against the principle of empowerment and a human rights-based approach and must be avoided. It is important to note that this provision refers first and foremost to general and specialist support services referred to in Articles 20 and 22 of the Convention – with the exception of legal aid services.

Consequently, this relevant provision of the Convention has significant implications when it comes to providing support services to victims of sexual violence: **the procedure for medical help, forensic examination and psychological support must be the same regardless of the fact whether the victim wants to report the rape to the police or not.**

In its report on Denmark (2017), GREVIO pointed out a promising practice when providing specialist services to adult victims of sexual violence. **The observations of GREVIO should be taken into account in a process of creating and developing appropriate models of specialist support services to victims of sexual violence in Western Balkans and Turkey**; namely, GREVIO noted (paragraphs 121-124),

"In Denmark there are 10 centres for victims of rape and sexual violence which provide crucial medical and forensic services. These are located within hospitals across the country and provide residential and non-residential services to women and girls above the age of 15 who have experienced rape or sexual assault. Victims can seek these services any time after the assault took place, including several years later. For victims of rape and sexual violence below the age of 15 a number of additional centres exist which provide child-friendly services.

The services and counselling offered by these centres include immediate examinations,

95 See: Incest Trauma Centre, Belgrade, **http://incesttraumacentar.org.rs/index.php/o-nama/**

96 See: Medica Gjakova, **https://www.peaceinsight.org/en/organisations/mg/?location=western-balkans&theme**

97 GREVIO (2017). *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): Denmark.* Strasbourg: Secretariat of the monitoring mechanism of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence.

98 Explanatory Report paragraph 121

pregnancy tests, treatment for any injuries as well as screening for infections and sexually transmitted diseases. The forensic examinations include the taking of DNA samples and the careful documentation of other evidence such as bruises and injuries. In addition, reports ('journal') on the case are drawn up by the medical staff at the centres, and these include any information obtained from the victim about the circumstances of the rape/sexual assault.

The procedure for medical and forensic examinations is the same for all victims whether they intend to report the rape or not. There is no involvement of the law enforcement agencies, and the decision to report rests entirely with the victim. Where victims have first turned to the law enforcement agencies, they are often accompanied to the rape centre by an officer who will also draw up a report on the crime. The DNA evidence is stored for up to three months or longer if so requested by the victim. Should a case come to trial, the centre's report may be used as evidence in addition to the DNA, and medical staff may be ordered to testify in court, for which purpose their obligation of confidentiality may be lifted. The rape and sexual violence centres also offer psychological treatment for all acute patients (up to five sessions) and a small number of long-term patients.

GREVIO welcomes this highly professional service for rape victims in Denmark. It notes with satisfaction that some of the centres also engage in research in order to improve the evidence base for policy making. It notes with concern, however, the low number of psychological treatment sessions per victim and the fact that long-term psychological counselling is not systematically available for every victim in need." ■

XI. Protocols or guidelines that regulate duties of professionals and procedures in cases of sexual violence, including rape

Taking into account the above-described relevant standard of the convention that **provision of services should not depend on the victim's willingness to press charges or testify against any perpetrator**,[99] and inspiring promising practice example from GREVIO report on Denmark, specific objectives of this section of the comparative study on Western Balkans and Turkey were:

1. To examine whether these countries have **protocols/guidelines for professionals** that specify duties and responsibilities of professionals in dealing with cases of sexual violence (including the police, health-care workers, social workers, teachers, etc.), as well as regulate institutional response and multi-agency approach;

2. To describe and analyse procedures that apply when a victim reports the rape or other sexual offence to the law enforcement, as well as to explain the possibilities to obtain medical and forensic examination after rape, including to explore if the latter is free of charge. The main intention was to examine **whether the applicable procedures are in line with the provisions of the convention** mentioned above.

⚠ Concerning **existing protocols/guidelines for professionals in dealing with cases of sexual violence**, based on the responses/ reports (provided by CSSP partners), as well as GREVIO reports, the conclusion is that **the existing protocols/guidelines for professionals (the police, judiciary, health-care professionals, social workers, teaching staff, etc.) address domestic violence only (or primarily), while similar instructions related to providing support to sexual violence survivors are absent or insufficiently developed.**

As an example, in the report on **Serbia** (2020), **GREVIO positively assesses** the fact that protocols regulating duties and responsibilities of relevant professional groups (such as the police, social workers, health-care professionals, etc.) have been developed, but notes that these cover domestic violence cases only: "Protocols are limited to domestic violence and no initiatives exist in relation to any of the other forms of violence covered by the Convention." In addition, GREVIO in its report on Serbia welcomes the Special Protocol of the Ministry of Health for the Protection and Treatment of Women Victims of Violence in Serbia, which was adopted in 2010, but notes that the latter document covers physical violence, psychological violence and sexual violence involving the use of force, coercion or physical intimidation, but "leaving out other forms of violence covered by the Istanbul Convention […], such as sexual violence committed without the explicit use of force or threat. In the absence of specialist support services for some forms of violence, in particular sexual violence, an adequate response by medical professionals is vital for a victim's physical and psychological well-being and her prospects of obtaining criminal justice." Furthermore, GREVIO noted that in Serbia measures to develop institutionalised structures (with the aim to strengthen cooperation between statutory agencies) exist for domestic violence, but not for any other forms of violence covered by the Convention, and issued the recommendation in this respect, "GREVIO urges the Serbian authorities to establish similar levels of institutionalised co-operation among statutory agencies and with women's support services run by NGOs in relation to cases of rape and sexual violence, forced marriage, stalking, sexual harassment and other forms of violence covered by the Istanbul Convention."

When analysing the issue of availability of protocols/guidelines for professionals in Serbia, it should be added that **under the project implemented in the Autonomous Province of Vojvodina** (See

99 Article 18, paragraph 4 of the Convention.

section: Support to victims of sexual violence), a guideline[100] was also developed in 2019, which prescribes procedures to medical and other professionals, and explains standards on which service provision should be based. Furthermore, throughout 2020, CVSVs' capacities to provide support to victims of violence against women and girls in light of the pandemic were strengthened through three protocols

1) The first protocol was drafted to ensure mandatory testing for infectious and sexually transmitted diseases in injuries inflicted during sexual violence. After additional adjustments to the text and obtaining approvals from all relevant actors, the acceptance and application of the protocol will be further agreed with each health institution where CVSVs operate separately, in accordance with the safety procedures and security standards related to the COVID-19 pandemic;

2) The second protocol aims to ensure improved coordination of the hospital working groups and groups for coordination and cooperation within the public prosecution office, with a view to ensure the protection of victims of sexual violence in line with the highest ethical and safety standards. The protocol was developed and agreed upon as a result of consultative meetings with representatives of the clinical centre of Vojvodina – Clinic for Gynaecology and Obstetrics in Novi Sad, Higher Public Prosecutor's Office in Nova and the Centre for Support of Women;

3) The third protocol was drafted with primary health care centres and gynaecological ambulances with the purpose to expand the scope of health care institutions involved in providing direct assistance to women victims of sexual violence, and to increase the knowledge and awareness of professionals within the primary health care centres and patients about the work and services provided within the rape crisis centres. Up until now, the Protocol was signed with 19 different primary health centres from the Autonomous Province of Vojvodina.

In cooperation with the Medical Faculty of the University of Novi Sad, Centre for Support of Women developed an e**ducational programme on the role of the health sector in the protection of women victims of violence, accredited by the Health Council of Serbia, and has developed an Online Learning Platform with the aim to improve the knowledge and skills of healthcare professionals to effectively provide health services to women victims of sexual violence**, increase knowledge and skills for collaboration and communication within multisectoral teams, and to improve the knowledge and skills for documenting and recording domestic violence, gender-based violence, and sexual violence. Some 80 health professionals passed the course in the period Jan – May 2021. The programme can be accessed by any health professional from the country and is nation-wide accredited. These developments are promising practices and have the potential to ensure more effective support of women and children experiencing sexual violence, however their effectiveness very much depends on how these protocols are implemented in practice.

Relying on national partners' report, provided for this project, it was also revealed that in one entity of **BiH (Republic of Srpska)**, resource materials[101] were developed, which include instructions to professionals who provide protection and support to victims of different forms of violence, including sexual violence (the police, prosecutors, judges, health professionals).

In **Montenegro**, as reported by the national partner, there is a plan (as specified in the National Action Plan for the Improvement of Specialist Support Services for Victims of Violence in accordance with the Istanbul Convention, 2019–2021) to develop a specific protocol in 2021, which will be entitled: *The Protocol on treatment, prevention, and protection of victims of sexual violence.*

The lack of protocols for health care professionals

100 Todorov, D., Stevkovic, Lj., Veselinovic, I., Josimovic, S. (2019). *Guideline for conduct in cases of sexual violence within sexual violence referral centres in the Autonomous Province of Vojvodina*. Novi Sad: Provincial Secretariat for Health-Care of the Autonomous Province of Vojvodina and Centre for Support to Women, Kikinda (in Serbian).

101 Ministry of Labour and Social Protection of the Republic of Srpska and UNFPA (2015). *Resource Package for Response of Health-Care Providers in Republika Srpska to Gender Based Violence.* Banja Luka: UNFPA, **https://www.vladars.net/sr-SP-Cyrl/Vlada/Ministarstva/MZSZ/Documents/UNFPA%20Resursni%20Paket%20Light%20FINAL2.pdf** (in Bosnian-Croatian-Serbian), and High Judicial and Prosecutorial Council of Bosnia and Herzegovina (2018). *Handbook for Action in Cases of Gender Based and Sexual Violence against Women and Children for the Police, Prosecutors and Judges*, **https://vstv.pravosudje.ba/vstv/faces/docservlet?p_id_doc=48586 (in Bosnian-Croatian-Serbian)**.

is particularly emphasized in GREVIO report on Albania (2017). GREVIO notes that, due to legislative focus on domestic violence, standards for the treatment and care for victims of other forms of VAW do not exist; this leads to shortcomings in medical care. Taking this into account, the recommendation is provided to develop protocols for medical workers regulating their duties in cases of sexual violence.

As mentioned above, the study conducted for the purpose of this policy paper also explored applicable procedures for reporting sexual violence, as well as whether a forensic examination is offered in line with standards defined in the convention and recommended international practice. Based on the analysis of national reports, **it is not possible to make a complete overview** (including a conclusion applicable to all analysed countries) on the existing procedures for reporting rape, as well as on the relevant issue of whether institutions in Western Balkans and Turkey respect the obligation contained in the Article 18, paragraph 4 of the Convention (provision of services should not depend on victim's willingness to press charges or testify against any perpetrator).

Responses of national partners indicate, however, that **legal provisions or prescribed procedures (e.g., by-laws) regulating the work of state agencies are not conformed with the requirement of the Convention to provide, for example, medical and forensic examination to all victims, regardless of their willingness to report the offence. Regulations in respective countries are (mostly) restrictive in this respect – forensic examinations are subject to a request by the law enforcement agency or prosecution office.** Therefore, forensic examination depends on the prior report of the victim to the police or prosecution.

For example, in **North Macedonia**, the national partner describes that "The victim must report the case to the police in order to get an official medical examination; she/he cannot request a medical examination on his/her own - an appropriate team must report on her condition and the injuries from sexual violence." Similarly, in **Montenegro**, national partner reports that "Examinations of victims of sexual violence are performed in primary hospitals and the Clinical Centre of Montenegro. Professionals and the institutions that are recognized as subjects of protection and where victim can approach and report the crime are: police, prosecutors, judges, health professionals. Upon reporting to the police, the victim is referred/accompanied to conduct medical and forensic examination in authorized health institutions, usually gynecologists in primary health care."

The above-described procedures are not in line with the best practice requiring forensic examinations to be carried out by sensitive and skilled practitioners, without delay, regardless of whether the incident will be reported to the authorities. Moreover, the best practice also implies that collecting and storing evidence (such as those obtained by forensic examiners, such as DNA samples, if the latter were taken) should be possible, so that a victim can make a decision at the later stage whether she wants to report the perpetrator or not (See box: Promising practice example from Denmark). Furthermore, in some countries, **an additional problem exists: since the provision of high-quality forensic examinations is limited, victims sometimes must rely on non-specialist forensic examiners, or pay a fee for expert forensic examination.**

In its report on **Serbia** (2020), GREVIO discussed the issue of availability of forensic examination and noted that "Although **rape kits continue to be used in hospitals throughout the Autonomous Province of Vojvodina**, and a protocol exists for the treatment of sexual violence victims, this can be but one element of the services as required by Article 25 of the convention. Moreover, outside of Vojvodina, no specific services for rape victims seem to be provided at all, and victims are required to rely on non-specialist examiners to have their forensic evidence taken, often twice (by law-enforcement agencies and hospitals). Certificates from forensic examiners seem to be subject to a fee, adding a financial burden to an already complex situation and presenting obstacles to women's access to justice." Similarly, in GREVIO report on **Albania** (2017), it is concluded that "The restrictive regulations subjecting forensic examinations to a request by the law enforcement agency or prosecution office are at odds with the best practice requiring forensic examinations to be carried out without delay in case of sexual violence regardless of whether the matter will be reported to the authorities. GREVIO is further informed in this respect that, in part due to the low fee paid for carrying out forensic examinations, victims have at times been required to pay additional amounts in order to receive an examination." Therefore, GREVIO urged the authorities to develop protocols and corresponding training for healthcare

professionals as well as ensuring that forensic examinations are available in line with internationally recognised standards.

On the other hand, comparative study carried out under this project revealed examples of countries in which **regulations *do provide* the possibility to the victims to obtain forensic examination without prior reporting to the police**, but other regulations are also present that add complexity to this issue.

In **Turkey,** as clarified by the national partner, the applicable procedure after rape includes the following: "When a woman reports the rape or other sexual offence to the police/law enforcement, her statement is taken, and with the instruction of the prosecutor, she is accompanied by the police to a hospital for examination. Genital examinations, if conducted without a decision of an authorised judge of prosecutor, are treated as a criminal offence in Turkey (Article 287 of the Turkish Criminal Code).[102] In a criminal case, the woman is taken to the hospital by the police/gendarmerie with the public prosecutor's instruction, and the case is registered as a judicial/criminal case in the hospital. The woman is examined by a forensic expert (and/or a gynaecologist) who records the findings and prepares the report. After a sexual offence, if a woman goes directly to a hospital, then the procedure is for the doctor to notify the authorities, starting with the hospital police. If the woman does not want to report the crime yet, she can ask the doctor to collect and record the evidence, however, a decision of an authorized judge or prosecutor is necessary for a genital examination. There is no information that forensic examination has to be paid by the woman."

In one entity of **BiH (Republic of Srpska),** the situation is as follows. Resource materials (which are mentioned above) for professionals who provide protection and support to victims indicate that "victims of sexual violence should be referred/accompanied to conduct medical and forensic examination in an authorized health institution, usually gynaecologists in primary health care upon reporting the offence to the police, and health professionals are obliged to report suspicion that sexual violence occurred if they identify signs during medical examination of a patient. There is no information that forensic examination has to be paid by the victim. Resource package for health professionals (referred above) indicates that a health professional who provides medical help and carries out the examination is advised not to put pressure on a victim to confirm violence. It is advised that a victim has to give a written consent for examination to be conducted by a health professional, and for disclosure of a data collected. A suggested form for collecting data is provided within resource package. Forensic examination is strictly under control of a public prosecutor, who can accept findings/specialist medical opinion of a doctor. However, if these findings are to be used as evidence within criminal proceedings, a prosecutor is obliged to order their examination by an expert witness, who would be also invited by the court to provide opinion during trial. This rule applies generally to all criminal offences, and not just to offences related to sexual violence."

The need to develop appropriate protocols and guidelines for professionals is even more pressing if we keep in mind the findings of GREVIO with respect to prejudices among professionals.

As GREVIO noted[103], **victims face prejudices by professionals when they try to access criminal justice system, which further deepens their reluctance to report sexual violence:** "Instances of rape seem to be significantly underreported due to the cultural stigma that attaches to victims. Rape victims' experiences with the criminal justice system indicate deeply ingrained societal attitudes that hamper effective judicial outcomes, adding to the reluctance to report. Victims of rape and sexual assault in Montenegro all too often find themselves on their own in a judicial system which does not appear to be particularly gender-sensitive."[104] ■

102 Article 287 of the Turkish Criminal Code (Genital examination) reads as follows,
(1) Where a person conducts a genital examination or dispatches a person for such, without a decision of an authorized judge or prosecutor, shall be sentenced to a penalty of imprisonment for a term of three months to one year.
(2) The provision of the aforementioned paragraph shall not apply for examinations which have been carried out in compliance with the provisions of law or decree which are designed to protect the public from contagious disease.

103 GREVIO Report on Montenegro

104 GREVIO Report on Montenegro

XII. Reporting by professionals

Requirements of the Convention: Article 28 of the convention states that state parties to the convention shall take the necessary measures to ensure that the confidentiality rules imposed by internal law on certain professionals do not constitute an obstacle to the possibility, under appropriate conditions, of their reporting to the competent organisations or authorities if they have reasonable grounds to believe that a serious act of violence covered by the scope of this convention, has been committed and further serious acts of violence are to be expected.

⚠ Reporting by professionals – interpretation of GREVIO

Standards of the convention in this area are explained in more detail in the recent GREVIO report on Malta (2020),[105]

"GREVIO points out that the requirement deriving from Article 28 of the convention is carefully worded so that **when there are reasonable grounds to believe that a serious act of violence has been committed and other such acts can be anticipated, professionals may report their suspicions to the relevant authorities without risking punishment for a breach of their duty of professional secrecy.** This provision **does not impose an obligation to report.** While GREVIO notes that the imposition of reporting obligations on professionals does not run counter to Article 28 of the Istanbul Convention, blanket reporting obligations may raise issues around the provision of victim-centred and gender-sensitive support services. Mandatory reporting may in fact constitute a barrier to seeking help for women victims who do not feel ready to initiate formal procedures and/or fear the consequences of reporting for them or for their children (for example, retaliation from the abuser, financial insecurity, social isolation or the removal of children from their care). Where the authorities have introduced mandatory obligations for professionals, GREVIO notes that these should allow for the **balancing of the victims' protection needs** – including those of her children – **with the respect for the victim's autonomy and empowerment**, and should thus be circumscribed to cases in which there are reasonable grounds to believe that a serious act of violence covered by the scope of the convention has been committed and further serious acts are to be expected. In these cases, reporting may be made subject to certain appropriate conditions such as the consent of the victim, with the exception of some specific cases such as where the victim is a child or is unable to protect her/himself because of disabilities."

GREVIO further quoted paragraph 148 of the Explanatory Report to the Istanbul Convention; while with regard to violence committed against children, GREVIO emphasized that the General comment No. 13 (2011) of the Convention on the Rights of the Child, paragraph 49, provides that "in every country, the reporting of instances, suspicion or risk of violence should, at a minimum, be required by professionals working directly with children."

Having in mind the above considerations, GREVIO (ibid.) provided to Maltese authorities the following recommendation, **"Recalling the principle of women's empowerment mainstreamed throughout the convention, GREVIO strongly encourages the Maltese 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. To this end, GREVIO strongly encourages the Maltese authorities to review the obligation for professionals to report cases of violence against women and their children, other than in situations in which there are reasonable grounds to believe that a serious act of violence covered by the scope of the convention has been committed and further serious acts are to be expected. This may well require**

105 GREVIO (2020). *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): Malta.* Strasbourg: Secretariat of the monitoring mechanism of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence

making the obligation to report contingent upon the prior consent of the victim, unless the victim is a child or is unable to protect her/himself because of disabilities."

Relying on answers/reports of national partners in this project, as well as on reports of GREVIO on Albania (2017), Montenegro (2018), Serbia (2020), and Turkey (2018), it can be concluded that **legal provisions and/or regulations on mandatory reporting by professionals in Western Balkans and Turkey are not based on a balanced approach mentioned above** (See Box: Reporting by professionals – Interpretation of GREVIO) – **there are no safeguards that would ensure an appropriate balance between protecting the victims on one hand, and respecting their autonomy, on the other. Furthermore, laws and/or available regulations stipulate that those professionals, primarily, medical ones, have the strict legal obligation to report the violence, once they discovered it in the course of their daily work.** Non-reporting is treated as a criminal or minor offence.

Strict reporting obligations by professionals may have serious implications in cases of sexual violence and may influence victims' help-seeking behaviour. Health care professionals' obligation to report may present barriers to seeking medical help, as victims may fear mandatory reporting and the initiation of criminal proceedings against their will.

The latter issue is discussed, just as an example, in the GREVIO report to Turkey (2018). GREVIO expressed a view that victims of sexual violence might be afraid to approach state-run specialist services, knowing that staff in such services are under strict obligation to report violence to the police and noted that, therefore, **due to societal attitudes that surround sexual violence, victims should be offered a possibility to turn to women's NGOs that would provide confidential support,**

"GREVIO recalls the considerations developed earlier in this report[106] regarding the need to provide victims with low-threshold support services and to support the activities of specialist women's NGOs, which are best placed to offer services of this kind. Such considerations are of particular relevance with respect to victims of sexual violence who face deeply ingrained societal attitudes dissuading them from reporting violence. […] Moreover, **NGOs offer the advantage of encouraging women to speak out, especially those women who do not wish to file a complaint and who might feel that by approaching a state-run service, they will be compelled to do so, or they will in any case expose the perpetrator to criminal investigation.** Thus, with the aim of building trust on the part of the victim regardless of whether any legal or administrative steps are taken, NGO-run services should not be under strict reporting obligations. Such NGO-run services would bring a decisive added value in particular to the area of sexual violence, a form of violence for which the alarmingly low levels of reporting, despite the high prevalence rates, offer a strong indicator that the threshold to access should be lowered to encourage women to report."[107] ■

106 See considerations developed with respect to Article 9 (Non-governmental organisations and civil society) and Article 22 (Specialist support services; ibid.).

107 See further considerations regarding Article 25 on support for victims of sexual violence (Istanbul Convention).

XIII. The case for the autonomy of women's NGOs[108]

There can be no credible response to sexual violence without the engagement and cooperation of survivors of sexual violence. The formal criminal justice system, with its universally low reporting and conviction figures on sexual violence, struggles for legitimacy under these circumstances. As the state's principal indicator for the activity of vindicating survivor rights, the failure of the criminal justice system to increase convictions is an ever-present challenge. The fundamental and essential building block of all such state activity is s**urvivor engagement in reporting,** through the investigation process, to appearing in court to testify should the case reach that stage. This process can take years and survivors often find the system **too onerous and unsafe to engage with**. If the survivor does not engage, the state loses its core capacity to act.

This challenge of survivor participation in the legal process cannot be successfully met with any attempts to coerce or pressure survivor engagement. The most successful interventions are those that **respect and protect survivor autonomy and consent and build trust by meeting survivor needs**. The state can do much to earn and build trust in terms of its actions and transparency and accountability within its processes. Steps that can be taken in the criminal justice system will be elaborated in the principles of the justice system section below. However, this is a long process, and many survivors will not choose to engage with state structures in the short or medium-term or at all. This has and still is a dilemma for the state.

⚠ **Sexual violence services and women's NGOs exist to serve survivors.** The first duty of women's CSOs is to earn the **trust** of survivors. That relationship of trust and survivor engagement, precisely because they are not the state, is why the state should value and fund the work of women's NGOs. **NGOs as non-state actors play a significant role in supporting the state to meet its obligations by providing the support and responses survivors need and are entitled to, without a need for survivors to make themselves known to the state.** One of the core commitments of services run by women's NGOs make to survivors is that **they will not be pressured or obligated to engage with the state, and the services and supports can be delivered confidentially to them.**

Protecting women's NGOs unique asset of autonomy and independence is therefore a means for the state to meet survivors' needs where it cannot do so directly. The state's funding of women NGOs services to survivors is therefore a way of the state fulfilling its obligations under the Istanbul Convention in ways that it would find impossible otherwise.

The importance of long-term, sustainable funding for women's specialist support services

If new specialist support services should be established to meet the needs of sexual abuse survivors, a question can be raised: how these services will be funded?

⚠ Lack of adequate and sustainable funding for specialist support services to victims (including those services that should be developed to support sexual abuse victims) is an area of concern identified in GREVIO reports but also among women's NGOs in the region.

Funding of service-provision activities is usually project-based and there is little political will and/or local administrative support to ensure the sustainability of projects implemented by women's NGO services. According to GREVIO baseline reports, women's NGOs in Serbia, Albania, and Montenegro are dependent on international donors, which raises

108 Istanbul Convention Article 9: Parties shall recognise, encourage and support, at all levels, the work of relevant non-governmental organisations and of civil society active in combating violence against women and establish effective co-operation with these organisations. Article 18 (4): The provision of services shall not depend on the victim's willingness to press charges or testify against any perpetrator.

issues of the long-term sustainability of NGO-run services. For example, in the GREVIO report on Serbia (2020), GREVIO observed the following, "GREVIO welcomes the readiness of international donors to fund measures and projects to prevent and combat violence against women in Serbia, which is of valuable help. International funding already seems to account for a high share of the expenditure in this area and the process of EU accession offers even more opportunities for financial and technical support. Many activities undertaken are of a project nature, and thus of limited duration. Expertise that is being developed under such schemes is easily lost without the necessary follow-up funding and without the necessary political and local administrative support to accept foreign sponsorship and to ensure continuity at local level."

While recognising great differences in economic power among state parties to the convention, GREVIO notes in the report on Montenegro (2018), that the state is obliged to fund specialist services, including those provided by NGOs. **Ratifying the Istanbul Convention means that states also commit to allocate appropriate financial and human resources for activities in combating violence against women carried out both by public authorities and relevant women's NGOs.**

⚠ **As illustrated above, women's NGOs play a significant role in ensuring that states do meet their obligations under the Istanbul Convention**. Allocating sustainable funding for women's NGOs in the Western Balkans and Turkey eventually leads to the empowerment of survivors and allocating proper support to women victims of sexual violence. Appropriate funding through suitable funding opportunities such as long-term grants based on transparent procurement procedures would ensure sustainable funding levels for women's NGOs that run specialist support services for women victims of sexual violence.[109]

The strong reliance and dedication of women's NGOs specialist support services to ensure quality support to victims of violence is one way of discharging state's obligation to provide services, as required by Chapter IV of the Istanbul Convention.[110] Therefore, necessary and sustainable funding should be provided by national authorities, and the dependency of women's NGOs to international funding should be as limited as possible, to ensure long-term sustainability. If women's NGOs providing specialist services, awareness raising and other activities receive only limited state funding and often depend on short-term project grants,[111] this substantially hinders their capacity to provide effective support to victims of sexual violence. For example, in the report on Turkey, GREVIO pointed out the important role women's NGOs have played in awareness-raising, advocacy and provision of specialist services in Turkey, recommending the need to establish long-term grant schemes: "Turkey's vibrant movement of women's organisations was instrumental in enabling major achievements for women's rights in the country. Through advocacy and intense campaign work, women activists brought to the fore of the public debate in Turkey the issue of violence against women and domestic violence as a matter of public concern. As early as the 1980s, women's organisations were founded and several feminist magazines began to be published, producing a lively debate on women's rights and the role of the state in supporting patriarchal attitudes towards violence against women."

Lastly, in other Baseline evaluation reports, GREVIO recalls that should governments lay down minimum/common standards for NGOs to take part in any tendering procedure, such standards should acknowledge NGOs' specialist and unique know-how and should be closely negotiated with these NGOs in accordance with international norms.[112] **National authorities are strongly encouraged to establish suitable programmes and grants as well as adapted and transparent procurement procedures, to ensure sustainable funding levels for women's NGOs.** ■

109 These recommendations were also issued by GREVIO in the Baseline reports for Montenegro and Serbia.

110 GREVIO Report Albania, 2017

111 See reference made to projects in pages 6 to 9 of the state report, under the heading "Activities with NGOs and other civil society actors – Inter-institutional coordination at national and regional/local levels" (ibid.).

112 See in particular the Council of Europe Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states , under which terms NGOs should, inter alia, not be subject to direction by public authorities, ensure that their management and decision-making bodies are in accordance with their statutes but otherwise be free to pursue their objectives and be consulted during the drafting of primary and secondary legislation that affects their status, financing or spheres of operation (ibid.).

XIV. Final remarks and recommendations

The current paper focuses on offering promising practices identified across the region of Western Balkans and Turkey but also in other European countries such as Ireland, Portugal, Denmark. The paper is to support policy makers and women's NGOs when establishing and running specialist support services for women victims of sexual violence.

As highlighted throughout the paper, it would be essential to **urgently develop specialist support to sexual violence victims in line with Article 25 of the Istanbul Convention across Western Balkans and Turkey where such services are not in place.**

Ensuring a **sensitive response by trained and specialist staff, in sufficient numbers, and recalling that one such centre should be available for every 200.000 inhabitants**, are essential elements to consider when establishing such services. Furthermore, the geographical spread should make them **accessible to victims in rural areas as much as in cities.**

While the convention does not require states to establish both types of centres, rape crisis centres and/or sexual violence referral centres, the analysis provided under this project implies that **responding to the needs of survivors would require offering both immediate, short-term support, medical care, and forensic examination, as well as longer-term counselling (currently, the provision of all mentioned types of support is very limited)**. When assessing the potential need for support, based on the present analysis, in the Western Balkans and Turkey, there might be a greater need for rape crisis centres, rather than sexual violence referral centres, since the former provide long-term help, counselling and advocacy for survivors of sexual violence.

Whether authorities opt to create rape crisis or sexual violence referral centres, it is of **paramount importance that they develop comprehensive immediate, short-term and long-term specialist support for these victims, provided by skilled and experienced staff specially trained in sexual trauma.** Through the analysis of national policy documents, regulations, and practice, it was revealed that there is still insufficient knowledge on the standards of the convention with respect to specialist support to victims, especially, **the distinction between rape crisis centres and sexual violence referral centres.** Recent initiatives in the region to establish much-needed specialist support, more closely resemble a model of sexual violence referral centre than a rape crisis centre. Advocacy and awareness-raising activities, targeting policymakers and the general public, are therefore advised.

There is furthermore a need to establish a **common understanding across the region about principles of work of such centres, including gendered understating of violence against women, respect for confidentiality and survivors' autonomy.** Promising practices from the United Kingdom, Ireland, and Nordic countries can be used, but with a **careful adaption to national socio-cultural contexts.** Having in mind that successful responses in these countries have been achieved through a long journey, 'fast results' and 'a quick fix' to the problems present in Western Balkans and Turkey cannot be expected.

Putting **survivors' needs at the centre of all protection and support measures and establishing a relationship of trust with them** are key elements in creating specialised support services, but also in supporting them throughout the justice system. The hidden nature of sexual violence makes it challenging for victims to engage publicly, get appropriate support or report the violence. Survivors' consent must be at the core of all services, and they should be viewed as active agents of change in their own recovery. **Sexual violence services and women's NGOs exist to serve survivors.** The first duty of women's NGOs is to earn the trust of survivors. That relationship of trust and survivor engagement, precisely because they are not the state, is why the state should value and fund the work of women's NGOs. **Women's NGOs as non-state actors play a significant role in supporting the state to meet its obligations by providing the support and responses survivors need and are entitled to, without a need for survivors to make themselves known to the state.** One of the core commitments women's NGOs make to survivors is that **they will not be pressured or obligated to engage with the state, and the services and supports can be delivered confidentially to them.**

Bearing in mind that in the **aftermath of wars in the Western Balkans, some women's NGOs have gained**

significant knowledge and experience in supporting survivors of war-related rape, it would be recommendable **to build on the previously developed expertise**, which has been partly 'lost', due to focus on domestic violence in state policies across the region. Furthermore, specialised trainings could be organised for women's NGOs that already work in the region, based on principles that are internationally recognised as promising practice. Women's NGOs would definitely need additional trainings and capacity-building so that they can strengthen skills to respond to the complexity of sexual violence trauma. The rationale behind the latter suggestion is not to replicate the same type of support offered to domestic violence victims, but rather to recognize the specificities of sexual trauma through building on, already existing, capacities.

Funding of to-be-established specialist services to sexual violence survivors remains an open issue. Women's NGOs play a significant role in ensuring that states do meet their obligations under the Istanbul Convention. Allocating sustainable funding for women's NGOs in the Western Balkans and Turkey eventually leads to the empowerment of survivors and better support allocated, in accordance with the standards of the Istanbul Convention. **Appropriate funding through suitable funding opportunities such as long-term grants** based on transparent procurement procedures would ensure sustainable funding for women's NGOs running specialist support services for women victims of sexual violence. Assessments of GREVIO indicate poor/insufficient support of states to specialist women's NGO services for victims of different forms of violence covered by the convention, and also, a certain dependency on international donors. Since the post-pandemic crisis would probably affect all countries in the region, **expert assistance and financial support by UN agencies would remain of invaluable importance.**

Policies in the region (e.g., national action plans) are primarily focused on domestic violence, while the issue of sexual violence has been neglected, although recent improvements in this area can be noted, some of which can be regarded as an attempt to implement GREVIO recommendations.

Data collection models necessary for the analysis of the institutional/judicial response to sexual violence are insufficiently developed and should be strengthened, with the aim to create foundations for evidence-based policy making in the future.

Developing the skills of women's NGOs to monitor practices of data-gathering bodies and to use available data for advocacy purposes is highly advisable.

Results of this study, relying on GREVIO reports (where available) and analysis of national reports, further imply that several countries in the region (still) have not adopted standards of the convention with respect to the definition of rape, other sexual violence offences, and sexual harassment in their laws. **Legislative changes would (possibly) contribute to a more effective prosecution.** In the judicial practice, force-based definitions tend to lead to require the proof of physical resistance by the victim (no resistance - no rape) and therefore, a low chance of conviction to the perpetrator. **It is therefore recommended to harmonize sexual offences in criminal legislation with the standards of the convention, basing them on the lack of freely-given consent rather than the use of force.** Advocacy for the implementation of GREVIO recommendations would be useful to achieve such legislative changes.

Significant changes are needed with respect to the development of protocols and guidelines that would specifically address the duties and responsibilities of all relevant professionals in supporting sexual violence victims, as these are rare. If such documents do exists, it is highly advisable to furthermore **examine and review procedures for reporting rape and other forms of sexual violence in the region**.

The need to develop proper protocols and 'tools' for professionals is even more crucial if we have in mind research on attitudes towards sexual violence of the general population and among professionals, which shape perception of what constitutes violence, and contribute to enhancing fear among victims to speak out about their sexual abuse experiences.

It is therefore recommended to **advocate for changes in regulations related to reporting by professionals, as these are mostly based on a strict obligation of professionals to report violence if they discover it in the course of their work.** Furthermore, there is a need **to introduce safeguards that would ensure an appropriate balance between protecting the victims on one hand, and respecting their autonomy, on the other, relying on the standards of the convention and GREVIO's interpretation as highlighted above.** ■

XV. Annex

Part I: Provisions on rape and other forms of sexual violence in criminal codes

ALBANIA

Article 100, Sexual or homosexual relations with minors

(Amended by law no 8733, dated 24.1.2001, Article 15; amended the words in the second and third paragraph by the law no 144, dated 2.5.2013, Article 20)

- Having sexual or homosexual relations with minor children, or with a female minor, who is not sexually matured, shall be punished from seven to fifteen years imprisonment.
- When the sexual or homosexual intercourse was committed in complicity, more than once or by violence, or when the child victim had serious health consequences shall be punished to not less than twenty five years of imprisonment.
- When that offence brought as a consequence the minor's death or suicide, it shall be punished to not less than thirty years or life imprisonment.

Article 101, Violent sexual or homosexual intercourse with a minor who is fourteen to eighteen years old

(Amended by law no 8733, dated 24/01/2001, Article 16)

- Having sexual or homosexual relations by violence with children that are fourteen to eighteen years old, who is sexually matured, shall be punished from five to fifteen years imprisonment.
- When the sexual or homosexual intercourse by violence was done in complicity, more than once, or when the child victim had serious health consequences; this shall be punished from ten to twenty years imprisonment.
- When that offence brought as a consequence the minor's death or suicide, this is sentenced to not less than twenty years imprisonment

Article 102/a, Homosexual activity by use of force with adult males

(Added by Law No. 8733, dated 24.01.2001, article 18; Amended by law 23/2012, dated 01.03.2012, article 10)

- Engagement in homosexual activity by use of force with adult males is punished by imprisonment from three to seven years.
- When the engagement in homosexual activity is done by use of force in complicity, or more than once, or when the victim had serious health consequences; it is punishable by imprisonment from five to ten years.
- When that act resulted in the death or suicide of the victim, it is punished by imprisonment from ten to twenty years.

Article 103, Sexual or homosexual activity with persons who are incapable of resistance

(Amended by Law No. 8733, dated 24.01.2001, article 19)

- Engagement in sexual or homosexual activity by exploiting the physical or mental disability of the aggrieved person, or because of a profound consciousness disorder, is punishable by imprisonment from five to ten years.
- When the engagement in sexual or homosexual intercourse is done in complicity, or more than once, or when the victim had serious health consequences; this is sentenced by imprisonment from seven to fifteen years.
- When that act resulted in the death or suicide of the victim, this is punishable by imprisonment from ten to twenty years.

Article 104, Sexual or homosexual assault by use of weapon

(Amended by Law No. 8733, dated 24.01.2001, article 20)

- Sexual or homosexual intercourse by intimidating the person with the immediate/ instant use of a weapon is punishable by imprisonment from five to fifteen years.

Article 105, Sexual or homosexual activity by abuse of official position

(Amended by Law No. 8733, dated 24.01.2001, article 21)

- Engagement in sexual or homosexual activity by abusing the relations of dependency and job position, is punishable by imprisonment up to three years.

Article 106, Sexual or homosexual activity with consanguine persons and persons in the position of trust

(Amended by Law No. 8733, dated 24.01.2001, article 22)

- Engagement in the act of sexual or homosexual intercourse between parents and children, brother and sister, between brothers, sisters, between consanguine relatives in an ascending line or with persons in the position of trust or adoption, is sentenced by imprisonment up to seven years

Article 107, Sexual or homosexual activity in public places

(Added by Law No.8733, dated 24.01.2001, article 23; Article 107/a is added by Law No. 144, dated 02.05.2013, article 22)

- Engagement in the act of sexual or homosexual intercourse in public places or in places exposed to

the sight of people constitutes criminal contravention and is punishable by a fine or up to one year of imprisonment.

Article 107/a, Sexual violence

- Exercising sexual violence by performing actions of a sexual nature on the body of another person through the use of objects shall constitute a criminal offence and is punishable by imprisonment of from three to seven years.
- When this action is committed with accomplices, against several persons, more than once or against children fourteen to eighteen years of age, it is punishable by imprisonment of from five to fifteen years.
- When this action is committed against a child under fourteen years of age or a child who is not sexually matured, regardless of whether it is committed by use of violence or not, it shall be punishable with no less than twenty years of imprisonment. When this action as a consequence has brought the death or suicide of the victim, it shall be punishable by not less than twenty five years of imprisonment.

Article 108, Immoral acts

(Amended by law no.8733, dated 24.01.2001, article 24; Amended by law no. 23/2012, dated 01.03.2012, article 11; Paragraphs added by law no. 144, dated 02.05.2013, article 23)

- Commitment of immoral acts with minors under the age of fourteen are punishable by imprisonment of from three to seven years.
- The same offence, when committed against a minor who has not reached the age of fourteen, with whom the offender has family relations, shall be punishable by five to ten years of imprisonment.
- Intentional involvement as a witness, in actions of a sexual nature, of a minor who has not reached the age of fourteen, or a minor who is not sexually mature yet, shall constitute a criminal offence and is punishable with one to five years of imprisonment.
- The proposal made by an adult person, by any means or form, to meet with a minor who has not reached the age of fourteen or a minor who is not sexually mature yet, with the aim of committing any of the criminal offences foreseen in this Section or in Section VIII, Chapter II of this Code, shall constitute a criminal offence and is punishable with one to five years of imprisonment.

BOSNIA AND HERZEGOVINA

Provisions on rape and other forms of sexual violence in Criminal Codes and state and entity levels

Article 172, of the Criminal Code of Bosnia and Herzegovina – Crimes against Humanity[1] regulates that

(1) "Whoever, as part of a widespread or systematic attack directed against any civilian population, with knowledge of such an attack perpetrates any of the following acts:...

g) sexual intercourse or an equivalent sexual act (rape), sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or any other form of sexual violence of comparable gravity;...shall be punished by imprisonment for a term not less than ten years or long-term imprisonment.

Provisions on rape at the entity level (Republic of Srpska and Federation BiH), as well as in Brcko District BiH

Article 165 of the Criminal Code of Republic of Srpska – Rape[2]

(1) Whoever compels another person to sexual intercourse or an equivalent sexual act by force or threat of immediate physical attack upon that person or upon someone close to that person, shall be punished by imprisonment for a term of three to ten years.

(2) If the criminal offence under paragraph 1 of this Article is committed against a child over 15 years of age or in a particularly cruel or degrading manner or by more offenders or out of hatred or if the criminal offence results in grievous bodily harm or serious effect on health or pregnancy of the female victim, the offender shall be punished by prison term of between five and fifteen years.

(3) If any criminal offence under paragraphs 1 and 2 of this Article results in the death of the victim, the perpetrator shall be punished by imprisonment term of minimum ten years.

Article 203 of the Criminal Code of Federation of Bosnia and Herzegovina – Rape[3]

(1) Whosoever compels another person to have sexual intercourse with him by force or threat of immediate physical attack upon that person or upon someone close to that person, shall be punished by imprisonment for a term of between one and ten years.

1 https://www.legislationline.org/download/id/8499/file/CC_BiH_am2018_eng.pdf

2 https://www.legislationline.org/download/id/8505/file/CC_RS_am2018_eng.pdf

3 https://www.legislationline.org/download/id/6259/file/Fed-BiH_CC_2003_amended2016_en.pdf

(2) Whosoever commits an offence under paragraph 1 above in an aggravated, cruel or degrading manner, or if at the same time more instances of sexual intercourse or sex acts tantamount to sexual intercourse are performed by more offenders, shall be punished by imprisonment for a term of between three and fifteen years.

(3) If any offence under paragraph 1 above results in grievous bodily injury, a serious effect on health, the death of the victim or pregnancy of the female victim, the offender shall be punished by imprisonment for a minimum term of three years.

(4) The liability to sentence under paragraph 2 above shall apply to whomsoever commits the offence under paragraph 1 above out of hatred.

(5) Whosoever commits the offence under paragraph 1 above against a juvenile, shall be punished by imprisonment for a minimum term of three years.

(6) Whosoever commits any offence under paragraphs 2 to 4 above against a juvenile, shall be punished by imprisonment for a minimum term of five years.

(7) If the offence under paragraph 2 above results in the consequences set out under paragraph 3 above, the offender shall be punished by imprisonment for a minimum term of five years.

Article 200 of the Criminal Code of Brčko District BiH – Rape[4]

(1) A person who compels another person to sexual intercourse or an act equal to sexual intercourse by use of force or by threat of direct attack on life and body of that person, or life and body of somebody close to that person, shall be sentenced to prison from three to ten years.

(2) If the offence referred to in Paragraph 1 of this Article was committed in an extremely brutal or humiliating way, or if several sexual intercourses, or sexual acts equal to them, involving the same victim were committed by several persons, the perpetrator shall be sentenced to prison from three to fifteen years.

(3) If the offence referred to in Paragraph 1 of this Article resulted in death of the raped person, or grievous bodily injury, or serious impairment of health, or pregnancy of the raped person, the perpetrator shall be sentenced to at least three years of prison.

(4) A person who commits the criminal offence referred to in Paragraph 1 of this Article out of hatred, shall be imposed the sentence referred to in Paragraph 2 of this Article.

(5) A person who commits the criminal offence referred to in Paragraph 1 of this Article against a juvenile, shall be sentenced to at least three years of prison.

(6) A person who commits the criminal offences referred to in Paragraphs 2, 3 and 4 of this Article against a juvenile, shall be sentenced to at least five years of prison.

(7) If the criminal offence referred to in Paragraph 2 of this Article resulted in consequences referred to in Paragraph 3 of this Article, the perpetrator shall be sentenced to at least five years of prison.

Other sexual offences at the entity level (Criminal Code of Republic of Srpska):

Article 166, Sexual Extortion

- Whoever compels another person to sexual intercourse or an equivalent sexual act by threat of disclosing some information that would harm his reputation or reputation of someone close to that person or by threat of any other serious harm, shall be punished by imprisonment for a term of between one and eight years.

Article 167, Sexual Intercourse with a Helpless Person

(1) Whoever has had sexual intercourse or an equivalent sexual act with a person, taking advantage of that person's mental disability, mental development disorder, other mental disorder, infirmity or any other condition which makes him/her incapable of resisting, shall be punished by imprisonment for a term of between two to ten years.

(2) If the criminal offence under paragraph 1 of this Article is committed in a particularly cruel or degrading manner or by more offenders or out of hatred or if the criminal offence results in grievous bodily injury or serious effect on health or pregnancy of the helpless female victim, the offender shall be punished by imprisonment for a term of minimum five years.

(3) If any criminal offence under paragraph 1 and 2 of this Article results in the death of the victim, the offender shall be punished by imprisonment for a minimum term of ten years. If any criminal offence under paragraphs 1 and 2 of this Article results in the death of the victim, the perpetrator shall be punished by imprisonment for a minimum term of ten years.

Article 168, Sexual Intercourse by Abuse of Position

- Whoever induces into sexual intercourse or an equivalent sexual act a person who is in a subordinate or dependent position in relation to him, shall be punished by imprisonment for a term of between two and five years.

Article 169, Soliciting to Prostitution

1) Whoever, in order to achieve material gain or other benefits, entices, incites or lures another into prostitution or whoever, in any way, enables turning a person over to another for the exercise of prostitution or whoever, in any way, takes part in organizing or managing prostitution, shall be punished by imprisonment for a term of between six months and five years and a fine.

4 https://www.legislationline.org/download/id/8498/file/CC_BD-BiH_am2018_eng.pdf

(2) If any criminal offence under paragraph 1 of this Article is committed against more persons, the offender shall be punished by imprisonment for a term of between one and eight years and a fine. No account shall be taken of any record of prostitution of any person who has been induced, incited or enticed into prostitution under this Article.

Article 172, Sexual Intercourse with a Child under Fifteen Years of Age

(1) Whoever has sexual intercourse or an equivalent sexual act with a child under fifteen years of age, shall be punished by imprisonment for a term of between two to ten years.

(2) If any criminal offence under paragraph 1 of this Article is committed by a lineal relative up to any degree or by a collateral relative up to the fourth degree of kinship, stepfather, stepmother, adoptive parent, guardian, teacher, physician, priest or any person to whom the child is entrusted for teaching, up-bringing, looking after, care or nursing, the offender shall be punished by imprisonment for a term of between five and fifteen years.

(3) If any criminal offence under paragraph 1 of this Article is committed by use of force or threat or by abuse of mental disability or helplessness of a child or in a particularly cruel or degrading manner or by more offenders or if there is a high disproportion of age of the victim and the offender or if the criminal offence results in grievous bodily injury or a serious effect on health or pregnancy of the female victim, the offender shall be punished by imprisonment for a minimum term of eight years.

(4) If any criminal offence under paragraphs 1, 2 and 3 of this Article results in the death of the child, the offender shall be punished by imprisonment for a minimum term of ten years or long term imprisonment.

(5) The offender who had avoidable misconception about the age of a child under paragraph 1 of this Article shall be punished by imprisonment for a term of between one and five years.

(6) The offender shall not be punished for the criminal offence under paragraph 1 of this Article if there is no significant difference in mental or physical maturity between him and a child.

(7) If another sex act is committed under conditions set forth under paragraphs 1 and 2 of this Article, the offender shall be punished by imprisonment for a term of between six months and five years, and if another sex act is committed under conditions set forth under paragraph 3 of this Article, the offender shall be punished by imprisonment for a term of between one and eight years.

Article 173, Sexual Abuse of a Child over Fifteen Years of Age

(1) A lineal relative up to any degree or a collateral relative up to the fourth degree of kinship, a stepfather, stepmother, adoptive parent, guardian, teacher, physician, priest or other person who has sexual intercourse or an equivalent sexual act with a child over fifteen years of age that is entrusted to him for teaching, up-bringing, looking after, care or nursing, shall be punished by imprisonment for a term of between two and eight years.

(2) The punishment under paragraph 1 of this Article shall be also applied to anyone who has sexual intercourse or an equivalent sexual act with a child over fifteen years of age by using child's psychological immaturity or frivolity or if there is a significant difference in maturity and age between the victim and the offender.

(3) If the offence under paragraph 1 or 2 of this Article is committed by abuse of office against a child who is in any way subordinate to, or dependent on the offender, or by taking advantage of child's mental disorder or infirmity, the offender shall be punished by imprisonment for a term of between two and ten years.

(4) If another sexual act has been committed under conditions set forth in paragraphs 1, 2 and 3 of this Article, the offender shall be punished by imprisonment for a term of between six months and five years.

Article 174, Soliciting a Child to Witness Sexual Acts

(1) Whoever incites a child to witness a rape, sexual intercourse or an equivalent sexual act shall be punished by imprisonment for a term of between six months and five years.

(2) If the offence under paragraph 1 of this Article is committed by use of force or threat or against a child under fifteen years of age, the offender shall be punished by imprisonment for a term of between one and eight years.

Article 175, Abuse of a Child for Pornography

(1) Whoever incites a child to participate in filming child pornography or whoever organizes or enables filming of child pornography shall be punished by imprisonment for a term of between six months and five years.

(2) Whoever, without authorization, films, produces, offers, makes available, distributes, promulgates, imports, exports, obtains for himself or another person, sells, gives, shows or possesses child pornography or knowingly access it by computer network, shall be punished by imprisonment for a term of between one and eight years.

(3) Whoever, by force, threat, deception, fraud, abuse of office or difficult circumstances of a child or abuse of relationship of dependence, forces or incites a child to filming child pornography shall be punished by imprisonment for a term of between two and ten years.

(4) Items used for commission of this offence shall be forfeited and pornographic material resulted from commission of this offence shall be subject to destruction.

(5) The child shall not be punished for production or possession of pornographic material showing him

personally or him and another child if they produced that material by themselves and possess it with the consent of each of them and exclusively for their personal use.

(6) Child pornography is any material that visually or in another way shows a child or realistically presented non-existing child or a face that looks like a child, in a real or simulated (explicit) obvious sexual act or that shows sex organs of children for sexual purposes.

(7) Materials with artistic, medical, or scientific significance shall not be considered pornography in terms of this Article.

Article 176, Abuse of a Child for Pornographic Show

(1) Whoever incites a child to play in pornographic shows shall be punished by imprisonment for a term of between six months and five years.

(2) Whoever, by use of force, threat, deception, fraud, abuse of office or difficult circumstances of a child or abuse of relationship of dependence, forces or incites a child to play in a pornographic show, shall be punished by imprisonment for a term of between two and ten years.

(3) The punishment under paragraph 1 of this Article shall be applied to anyone who watches live pornographic show or through means of communication in case he has known or should or could have known that a child plays in it.

(4) Items used for commission of this offence shall be forfeited and pornographic material resulted from commission of this offence shall be subject to destruction.

Other sexual offences at the entity level (Criminal Code of Federation BiH)

Article 204, Sexual Intercourse with a Helpless Person

(1) Whosoever has had sexual intercourse, or performs sex acts tantamount to sexual intercourse, with a person, taking advantage of that person's mental disability, temporary mental disorder, infirmity or any other condition which makes him/her incapable of resisting, shall be punished by imprisonment for a term of between one and eight years.

(2) Whosoever commits any offence under paragraph 1 above against a person whose incapability to resist, the offender has himself caused, or participated in causing, shall be punished pursuant to Article 203(1) (Rape) of this Code.

(3) Whosoever commits the offence under paragraph 1 above in an aggravated, cruel or degrading manner, or if at the same time more instances of sexual intercourse or sex acts tantamount to sexual intercourse are performed by more offenders, shall be punished by imprisonment for a term of between one and ten years.

(4) Whosoever commits any offence under paragraph 2 above in an aggravated, cruel or degrading manner, or if at the same time more instances of sexual intercourse or sex acts tantamount to sexual intercourse are performed by more offenders, shall be punished pursuant to Article 203(2) of this Code.

(5) If the offence under paragraph 1 above results in grievous bodily injury, a serious effect on health, the death of the victim or pregnancy of the female victim, the offender shall be punished by imprisonment for a term of between one and ten years.

(6) If the offence under paragraphs 3 and 4 above results in the consequences set out in paragraph 5 above, the offender shall be punished by imprisonment for a minimum term of three years.

Article 205, Sexual Intercourse by Abuse of Position

(1) Whosoever induces into sexual intercourse, or sex acts tantamount to sexual intercourse, a person who is in a dependent position in relation to him, due to that person's financial, family, social, health or other circumstances, shall be punished by imprisonment for a term of between three months and three years.

(2) Any instructor, educator, guardian, adoptive parent, step-parent or any other person who, by abuse of his status, has sexual intercourse with a juvenile, shall be punished by imprisonment for a term of between six months and five years.

Article 206, Forced Sexual Intercourse

- Whosoever coerces another person into sexual intercourse, or sex acts tantamount to sexual intercourse, by use of serious threat to cause harm, shall be punished by imprisonment for a term of between six months and five years.

Article 207, Sexual Intercourse with a Child

(1) Whosoever has sexual intercourse, or sex acts tantamount to sexual intercourse, with a child, shall be punished by imprisonment for a term of between one and eight years.

(2) Whosoever has forced sexual intercourse, or sex acts tantamount to sexual intercourse, with a child (Article 203(1) Rape), or a helpless child (Article 204(1) Sexual Intercourse With a Helpless Person), shall be punished by imprisonment for a minimum term of three years.

(3) Whosoever has sexual intercourse, or sex acts tantamount to sexual intercourse, with a child by abuse of his position (Article 205(2) Sexual Intercourse by Abuse of Position), shall be punished by imprisonment for a term of between one and ten years.

(4) Whosoever commits any offence under paragraphs 1 to 3 above in an aggravated, cruel or degrading manner, or if at the same time more instances of sexual intercourse or sex acts tantamount to sexual intercourse are performed by more offenders, shall be punished by imprisonment for a minimum term of five years.

(5) If any offence under paragraphs 1 to 3 above results in grievous bodily injury, a serious effect on health, the death or pregnancy of the female child, the offender shall be punished by imprisonment for not less than five years or to life imprisonment."

Article 210, Enticing into Prostitution

(1) Whoever for profit or other benefit entices, encourages or lures another person to provide sexual services or in some other way enables handing him/her over to another person for the purpose of providing sexual services, or in any way participates in organizing or managing the provision of sexual services, shall be punished by imprisonment for a term between six months and five years.

(2) Whether the person enticed, encouraged or lured into prostitution has already been engaged in prostitution is of no relevance for the existence of a criminal offence.

(3) Any liability to punishment under paragraph 2 above shall apply to anyone who, in order to achieve material gain, has forced or incited a person into prostitution in the manner set out in paragraph 2 above by taking advantage of any hardship or other situation the person may be suffering, including being a foreigner in the country.

(4) Whosoever commits any offence under paragraphs 1 to 3 above against a child or juvenile, shall be punished by imprisonment for a term of between three and fifteen years.

(5) No account shall be taken of any record of prostitution of any person who has been enticed, incited, lured or forced into prostitution under this Article.

Other sexual offences: Criminal Code of Brcko District BiH

Article 201, Sexual Intercourse with Helpless Person

(1) Whoever commits a sexual intercourse, or a sexual act equal to it, against another person by taking the advantage of the person's mental illness, mental disorder, mental retardation, some other serious mental impairment, or some other condition of that person which makes him incapable to oppose, shall be sentenced to prison from two to ten years.

(2) If the offence referred to in Paragraph 1 of this Article was committed against a person whose incapacity to oppose was caused by the perpetrator himself, or if the perpetrator participated in making the person incapable to oppose, the perpetrator shall be sentenced to prison from three to fifteen years.

(3) Whoever commits the criminal offence referred to in Paragraph 1 of this Article in an extremely brutal or humiliating manner, or if the same victim was subject to several sexual intercourses, or equal sexual acts, by several perpetrators, the perpetrator shall be sentenced to prison from three to fifteen years.

(4) Whoever commits the criminal offence referred to in Paragraph 2 of this Article in an extremely brutal or humiliating manner, or if the same victim was subject to several sexual intercourses, or equal sexual acts, by several perpetrators, the perpetrator shall be sentenced to prison from three to fifteen years.

(5) If the criminal offence referred to in Paragraph 1 of this Article resulted in death of the person against whom a sexual intercourse, or a sexual act equal to it, was performed, or in grievous bodily injury, serious impairment of health, or pregnancy of the female, the perpetrator shall be sentenced to prison from for at least five years.

(6) If the criminal offences referred to in Paragraphs 3 and 4 of this Article resulted in consequences stated in Paragraph 5 of this Article, the perpetrator shall be sentenced to at least ten years of prison.

Article 202, Sexual Intercourse through Abuse of Office

(1) A person who abuses office to compel to sexual intercourse, or a sexual act equal to it, another person who is dependent on that person due to financial, family, social, health or some other status or difficult circumstances, shall be sentenced to prison from three months to three years.

(2) A teacher, tutor, parent, adoptive parent, guardian, stepfather, stepmother, or other person who abuses his position and performs a sexual intercourse or an act equal to it, against a juvenile entrusted to him for the purpose of teaching, education, guarding or care, shall be sentenced to prison from six months to five years.

Article 203, Forced Sexual Intercourse

- A person who forces another person to sexual intercourse by use of serious threat of revealing something which would harm the honor or reputation of that person or a person close to him by use of threat of doing some other serious harm, shall be sentenced to prison from six months to five years.

Article 204, Sexual Intercourse with Child

(1) A person who performs sexual intercourse, or a sexual act equal to it, against a child shall be sentenced to prison from two to ten years.

(2) A person who performs a forced sexual intercourse, or a sexual act equal to it, against a child (Rape, Article 200, Paragraph 1), or against a helpless child (Sexual Intercourse with Helpless Person, Article 201, Paragraph 1), shall be sentenced to at least eight years of prison.

(3) A person who commits sexual intercourse, or a sexual act equal to it, against a child through abuse of office (Sexual Intercourse through Abuse of Office, Article 202, Paragraph 2),shall be sentenced to prison from five to fifteen years.

(4) A person who commits the criminal offence referred to in Paragraphs 1 through 3 in an extremely brutal or humiliating manner, or if the same victim was subject to several sexual intercourses, or sexual acts equal to sexual intercourse, by several perpetrators, shall be sentenced to at least eight

years of prison. (5) If the criminal offences referred to in Paragraphs 1 through 3 resulted in death of a child, or a child was severely injured, or his health was severely impaired, or it resulted in pregnancy of a female child, the perpetrator shall be sentenced to at least ten years of prison or a long-term imprisonment.

Article 207, Enticing to Prostitution

(1) Whoever, in order to achieve material gain or other benefits, entices, incites or lures another into prostitution or whoever, in any way, enables turning a person over to another for the exercise of prostitution or whoever, in any way, takes part in organizing or managing prostitution, shall be punished by imprisonment for a term of between six months and five years.

(2) No account shall be taken of any record of prostitution of any person who has been enticed, incited or lured into prostitution under this Article.

Article 208, Abuse of Child or Minor for Pornographic Purposes

(1) A person who abuses a child or a minor for taking photographs, audio-visual material or other material with pornographic contents, or possesses, or imports, or sells, or distributes, or presents such material, or induces such persons to take part in a pornographic performance, shall be sentenced to prison from one to five years.

(2) Items that were intended to be used or were used in committing the criminal offence referred to in Paragraph 1 of this Article shall be confiscated, and the items produced as a result of the criminal offence of Paragraph 1 of this Article shall be confiscated and destroyed.

MONTENEGRO

Article 204, Rape

(1) Anyone who commits non-consensual intercourse or a non-consensual act equated with it, shall be punished by an imprisonment for a term of one to eight years.

(2) Anyone who forces another person to sexual intercourse or an act equal to it by using coercion or by threats to attack the life or body of that or some other person, shall be punished by an imprisonment penalty of two to ten years.

(3)) If a person commits an act referred to in Paragraph 1 and 2 of this Article against somebody under threats of doing something that would harm his/her honour or reputation or by serious threat of some other severe evil, s/he shall be punished by an imprisonment sentence of one to eight years.

(4) If due to acts referred to in Paragraphs 1, 2 and of this Article a severe bodily injury is inflicted on a person, or if the act is made by more persons in an especially cruel manner or in an especially humiliating manner, or to a juvenile, or the consequence of the act is pregnancy, the perpetrator shall be punished by an imprisonment sentence of five to fifteen years.

(5) If due to acts referred to in Paragraphs 1, 2 and 3 of this Article, a person died or the act is done to a child, the perpetrator shall be punished by an imprisonment sentence of ten years at least.

Article 205, Sexual intercourse with a helpless person

(1) Anyone who performs sexual intercourse or an equal act taking advantage of a person's mental illness, mental retardation or other mental disorder, disability or some other state of that person due to which s/he is not capable of resistance, shall be punished by an imprisonment sentence of two to ten years.

(2) If due to acts referred to in Paragraph 1 of this Article a severe bodily injury is inflicted on a disabled person or if the act is committed by more persons or in a specially cruel or humiliating manner or it is done to a juvenile or the act resulted in a pregnancy, the perpetrator shall be punished by an imprisonment sentence of five to fifteen years.

(3) If due to an act referred to in Paragraphs 1 and 2 of this Article a person suffering the act died or it is done to a child, the perpetrator shall be punished by an imprisonment sentence of ten years at least.

Article 206, Sexual intercourse with a child

(1) Anyone who performs sexual intercourse or an equal act with a child shall be punished by an imprisonment sentence of three to twelve years.

(2) If due to an act referred to in Paragraph 1 of this Article a severe bodily injury is inflicted to a person, or the act is performed by more persons or it resulted in pregnancy, the perpetrator shall be punished by an imprisonment sentence of five to fifteen years.

(3) If due to acts referred to in Paragraphs 1 and 2 of this Article a child died, the perpetrator shall be punished by an imprisonment sentence of ten years at least.

(4) The perpetrator of an act referred to in Paragraph 1 f this Article shall not be punished provided that there exists no larger difference between the perpetrator and the child in respect to their mental and physical development.

Article 207, Sexual intercourse by abuse of position

(1) Anyone who by abuse of his/her position induces to sexual intercourse or an equal act a person who is in a subordinate or dependent position to him, shall be punished by an imprisonment sentence of three months to three years.

(2) A teacher, instructor, guardian, adoptive parent, stepfather, stepmother or some other person who by abuse of his/her position or authorities performs sexual intercourse or an equal act with a minor entrusted to him for teaching, education, custody and taking care, shall be punished by an imprisonment sentence of one to ten years.

(3) If an act referred to in Paragraph 1 and 2 of this Article is performed over a child, the perpetrator shall be punished by an imprisonment sentence of three to twelve years.

(4) If an act referred to in Paragraphs 1 to 3 of this Article resulted in pregnancy, the perpetrator shall be punished for an act referred to in Paragraph 1 by an imprisonment sentence of six months to five years, for an act referred to in Paragraph 2 by an imprisonment sentence of two to twelve years, and for an act as of Paragraph 3 by an imprisonment sentence of three to fifteen years.

(5) If due to an act as of Paragraph 3 of this Article a child died, the perpetrator shall be punished by an imprisonment sentence of ten years at least.

NORTH MACEDONIA

Article 186, Rape[5]

(1) Whosoever, by the use of force or threat to directly attack upon the life or body of another or upon the life or body of someone close to that person, forces him to intercourse, shall be sentenced to imprisonment of three to ten years.

(2) If the act referred to in paragraph (1) of this Article is committed against a child who turned 14, the offender shall be sentenced to imprisonment of at least ten years.

(3) If a severe bodily injury, death or any other severe consequences were caused because of the crime referred to in paragraph 1 or the crime was committed by several persons or in an especially cruel and degrading manner or out of hate, the offender shall be sentenced to a minimum imprisonment of four years.

(4) Whosoever forces another to intercourse by a serious threat that he shall disclose something about him or a person close to him, that would harm his honour and reputation, or which would cause some other serious evil, shall be sentenced to imprisonment of six months to five years.

(5) Whosoever in the cases referred to in paragraphs 1, 2 and 3 commits only some other sexual act, shall be sentenced for the crime referred to in paragraph 1 to imprisonment of six months to five years, for the crime in paragraph 2 imprisonment from one to ten years, and for the crime in paragraph 3 imprisonment from three months to three years.

Article 187, Sexual assault of a helpless person

(1) Whosoever commits sexual assault of another, abusing the mental illness, mental disorder, helplessness, mental handicap, or some other condition due to which this person is unable to resist, shall be sentenced to imprisonment of minimum eight years. (2) If the crime referred to in paragraph (1) of this Article is committed against a child who turned 14, the offender shall be sentenced to imprisonment of at least ten years.

(3) If a severe bodily injury, death or any other severe consequence was caused because of the crime referred to in paragraph 1 and paragraph (2), or the crime was committed by several persons, in an especially cruel or degrading manner or out of hate, the offender shall sentenced to imprisonment of minimum ten years or a life imprisonment.

(4) Whosoever in the cases referred to in paragraphs 1 and 2 commits only some other sexual act shall be sentenced for the crime referred to in paragraph 1 to imprisonment of three to five years, and for the crime referred to in paragraph 2 to imprisonment of three to ten years.

Article 188, Sexual assault upon a child who has not turned 14 years of age

(1) Whosoever commits statutory rape or some other sexual act upon a child who has not turned 14 years of age, shall be sentenced to imprisonment of minimum 12 years.

(2) If a severe bodily injury, death or any other severe consequences have been caused because of the crime referred to in paragraph (1) or the crime has been committed by several persons or in an especially cruel and degrading manner or out of hate, the offender shall be sentenced to imprisonment of minimum 15 year or to life imprisonment.

(3) The court shall impose the offender of the crime referred to in paragraph (2) of this Article prohibition to perform profession, activity or duty under the conditions of Article 38-b of this Code.

Article 189, Sexual assault by abuse of position

(1) Whosoever by abusing his position induces another, who is subordinated or dependent, to sexual intercourse or some other sexual act, or with the same intention abuses, intimidates or acts in a way that humiliates the human dignity and the human personality against another, shall be sentenced to imprisonment of minimum five years.

(2) If the crime referred to in paragraph (1) of this Article is committed by a blood relative in direct line or a brother, i.e. sister, teacher, tutor, adoptive parent, guardian, stepfather, stepmother, doctor or another person by abusing their position or by committing family violence commits a statutory rape or other sexual act with a child who has turned 14 years of age and who is entrusted to him/her for education, tutoring, care, shall be sentenced to imprisonment of at least ten years.

(3) The court shall impose the offender of the crime referred to in paragraph (2) prohibition to perform profession, activity or duty under the conditions of Article 38-b of this Code.

5 Official translation into English available at: **https://www.legislationline.org/download/id/8145/file/fYROM_CC_2009_am2018_en.pdf**

Article 190, Gratifying sexual urges in front of another

(1) Whosoever performs a sexual act in front of another, in a public place, shall be fined or sentenced to imprisonment of up to one year.

(2) Whosoever performs a sexual act in front of a child who has turned 14 years of age or who induces a child to perform such an act in front of him or in front of another, shall be sentenced to imprisonment of three to eight years.

(3) Whosoever performs a sexual act in front of a child who has not turned 14 years of age or who induces a child to perform such an act in front of him or in front of another, shall be sentenced to imprisonment of at least four years.

Article 191, Mediation in prostitution

(1) Whosoever recruits, instigates, stimulates or entices another to prostitution, or whosoever in any way participates in handing over a person to someone for the purpose of prostituting, shall be sentenced to imprisonment of five to ten years.

(2) Whosoever because of profit enables another to use sexual services shall be sentenced to imprisonment of three to five years.

(3) Whosoever organizes the commission of the crimes referred to in paragraphs (1) and (2) or commits the crimes while performing family violence shall be sentenced to imprisonment of minimum ten years.

(5) If the crime referred to in this Article is committed by a legal entity, it shall be fined.

(6) The immovables used and the items applied while committing the crime shall be seized.

SERBIA

Article 178, Rape

(1) Whoever forces another to sexual intercourse or an equal act by use of force or threat of direct attack against the body of such or other person, shall be punished with imprisonment from five to twelve years.

(2) If the offence specified in paragraph 1 of this Article is committed under threat of disclosure of information against such person or another that would discredit such person's reputation or honour, or by threat of other grave evil, the offender shall be punished with imprisonment from two to ten years.

(3) If the offence specified in paragraphs 1 and 2 of this Article resulted in grievous bodily harm of the person against whom the offence is committed, or if the offence is committed by more than one person or in a particularly cruel or particularly humiliating manner or against a juvenile or the act resulted in pregnancy, the offender shall be punished with imprisonment from five to fifteen years.

(4) If the offence specified in paragraphs 1 and 2 of this Article results in death of the person against whom it was committed or if committed against a child, the offender shall be punished with imprisonment of minimum ten years or life sentence.

Note: under Serbian Criminal Code (Article 112), a "child" is defined as a person who has not attained 14 years of age, while a "juvenile" as a person who has attained the age of 14, but has not attained the age of 18 years.

Article 179, Sexual Intercourse with a Helpless Person

(1) Whoever has sexual intercourse with another or commits an equal act by taking advantage of such person's mental illness, mental retardation or other mental disorder, disability or some other state of that person due to which the person is incapable of resistance, shall be punished with imprisonment of five to twelve years.

(2) If the helpless persons suffers serious bodily harm due to the offence specified in paragraph 1 of this Article, or the offence has been committed by several persons or in a particularly cruel or humiliating manner, or against a juvenile or if the act resulted in pregnancy, the perpetrator shall be punished with imprisonment of five to fifteen years.

(3) If the offence specified in paragraphs 1 and 2 of this Article results in death of the person against whom it was committed or if committed against a child, the offender shall be punished with imprisonment of minimum ten years or life sentence

Article 180, Sexual Intercourse with a Child

(1) Whoever has sexual intercourse or commits an equal act against a child, shall be punished with imprisonment of five to twelve years.

(2) If the offence specified in paragraph 1 of this Article results in grievous bodily harm of the child against whom the act was committed or if the act is committed by several persons or the act resulted in pregnancy, the offender shall be punished with imprisonment of five to fifteen years.

(3) If death of the child results due to the offence specified in paragraphs 1 and 2 of this Article, the offender shall be punished with imprisonment of minimum ten years or life sentence.

(4) An offender shall not be punished for the offence specified in paragraph 1 of this Article if there is no considerable difference between the offender and the child in respect of their mental and physical development.

Article 181, Sexual Intercourse through Abuse of Position

(1) Whoever by abuse of position induces to sexual intercourse or an equal act a person who is in a subordinate or dependent position, shall be punished with imprisonment of three months to three years.

(2) Teacher, tutor, guardian, adoptive parent, stepfather or other person who through abuse of his position or authority has sexual intercourse or commits an act of equal magnitude a juvenile entrusted to him for learning, tutoring, guardianship or care, shall be punished with imprisonment of one to ten years.

(3) If the offence specified in paragraph 2 of this Article is committed against a child, the offender shall be punished with imprisonment of five to twelve years.

(4) If the offence specified in paragraphs 1 through 3 of this Article resulted in pregnancy, the offender shall be punished for the offence specified in paragraph 1 with imprisonment of six months to five years, and for the offence specified in paragraph 2 with imprisonment of two to twelve years, and for the offence specified in paragraph 3 with imprisonment of five to fifteen years.

(5) If death of the child results due to offence specified in paragraph 3 of this Article, the offender shall be punished with imprisonment of minimum ten years or life sentence.

Article 182, Prohibited Sexual Acts

(1) Whoever under conditions specified in Article 178, paragraphs 1 and 2, Article 179, paragraph 1 and Article 181 paragraphs 1 and 2 here of commits some other sexual act, shall be punished with a fine or imprisonment up to three years.

(2) Whoever under conditions specified in Article 180, paragraph 1 and Article 181 paragraph 3 of this Code commits some other sexual act, shall be punished with imprisonment of six months to five years.

(3) If the offence specified in paragraph 1 and 2 of this Article results in grievous bodily harm of the person against whom the act is committed, or if the act is committed by several persons or in a particularly cruel or degrading manner, the offender shall be punished with imprisonment of two to ten years.

(4) If the offence specified in paragraph 1and 2of this Article results in death of the person against whom the act is committed, the offender shall be punished with imprisonment of minimum five years.

Article 183, Pimping and Procuring

(1) Whoever pimps a minor for sexual intercourse or an equal act or other sexual act, shall be punished with imprisonment of one to eight years and a fine.

(2) Whoever procures a minor for sexual intercourse or an act of equal magnitude or other sexual act, shall be punished with imprisonment of six months to five years and a fine.

Article 184, Mediation in Prostitution

(1) Whoever causes or induces another person to prostitution or participates in handing over a person to another for the purpose of prostitution, or who by means of media or otherwise promotes or advertises prostitution, shall be punished with imprisonment of six months to five years and a fine.

(2) If the offence specified in paragraph 1 of this Article is committed against a minor, the offender shall be punished with imprisonment from one to ten years and a fine.

Article 185, Showing, procuring and possession of Pornographic Material and Juvenile Pornography

(1) Whoever sells, shows or publicly displays or otherwise makes available texts, pictures, audio-visual or other items of pornographic content to a minor or shows to a child a pornographic performance, shall be punished with a fine or imprisonment up to six months.

(2) Whoever uses a minor to produce photographs, audio-visual or other items of pornographic content or for a pornographic show, shall be punished with imprisonment from six months to five years.

(3) If the offence referred to in paragraphs 1 and 2 hereof has been perpetrated against a child, the offender shall be punished with imprisonment of six months to three years for the offence from paragraph 1 and with imprisonment of one year to eight years for the offence from paragraph 2.

(4) Whoever obtains for himself or another, possesses, sells, shows, publicly exhibits or electronically or otherwise makes available pictures, audio-visual or other items of pornographic content by abuse of a juvenile, shall be punished with imprisonment from three months to three years.

(6) Items specified in paragraphs 1 through 4 of this Article shall be confiscated.

Article 185a, Inducing a Child to Attend Sexual Acts

(1) Whoever induces a minor to attend a rape, sexual intercourse, or an act equivalent to it, or some other sexual act shall be punished with imprisonment of one year to eight years.

(2) If the offence referred to in paragraph 1 hereof has been perpetrated using force or threat, the offender shall be punished with imprisonment from two to ten years.

Article 185b, Abuse of Computer Networks and Other Methods of Electronic Communication to Commit Criminal Offences against Sexual Freedom of Minors

(1) Whoever with intent to commit an offence referred to in Article 178, paragraph 4, Article 179, paragraph 3, Article 180, paragraphs 1 and 2, Article 181 paragraphs 2 and 3, Article 182, paragraph 1, Article 183, paragraph 2, Article 184, paragraph 3, Article 185, paragraph 2, and Article 185a herein and using computer networks or other method of electronic communication makes an arrangement to meet with a minor and arrives at the

prearranged meeting place in order to meet with the minor shall be punished with imprisonment of six months to five years and a fine.

(2) Whoever perpetrates the offence referred to in paragraph 1 hereof against a child shall be punished with imprisonment of one year to eight years.

TURKEY

Article 102, Sexual Assault

(Amended on 18 June 2014 – By Article 58 of the Law no. 6545)

(1) Any person who violates the physical integrity of another person, by means of sexual conduct, shall be sentenced to a penalty of imprisonment for a term of five[6] to ten years, upon the complaint of the victim. If the said sexual behaviour ceases at the level of sexual importunity, the term of imprisonment shall be from two years to five years.

(2) Where the act is committed by means of inserting an organ, or other object, into the body, the offender shall be punished with a term of imprisonment no less than twelve years. If the act is committed against the offender's spouse, conducting an investigation and prosecution shall be subject to a complaint by the victim.

(3) Where the offence is committed:

a) against a person who is physically or mentally incapable of defending themselves;

b) by misusing the influence derived from a position in public office or a private working relationship;

c) against a person with whom he has third degree blood relation or kinship, or by stepfather, stepmother, half-sibling, adopter or adopted child,

d) by using weapons or together with the cooperation of more than one person,

e) by using the advantage of environment where people have to live together collectively, the penalties imposed in accordance with paragraphs above shall be increased by half.

(4) Where greater force than is necessary to suppress the resistance of the victim is used during the commission of the offence the offender shall also be sentenced to a penalty for intentional injury in addition.

(5) Where, as a result of the offence, the victim enters a vegetative state, or dies, a penalty of aggravated life imprisonment shall be imposed.

Article 103, Child molestation

(Amended on 18 June 2014 – By Article 59 of the Law no. 6545)

(1) *(New Amendment on 24 November 2016, reorganization of the first and second sentences – Article 13 of Law no. 6763)* Any person who abuses a child sexually is sentenced to an imprisonment from eight years to fifteen years. If the said sexual abuse ceases at the level of sexual importunity, the term of imprisonment shall be from three years to eight years. (New Amendment on 24 November 2016, addition of the third sentence - Article 13 of Law no. 6763) If the child is under the age of twelve, punishment cannot be less than 10 years in case of molestation, and 5 years if the offense ceases at the level of sexual importunity.[7] If offender of the offence ceased at the level of importunity is a child, commencement of an investigation and prosecution depends on the complaint of the victim's parents or guardian. Sexual molestation covers the following acts;

a) All kinds of sexual attempt against children who are under the age of fifteen or against those attained the age of fifteen but lack the ability to understand the legal consequences of such act,

b) Sexual behaviours committed against other children by force, threat, fraud or another reason affecting the willpower.

(2) *(New Amendment on 24 November 2016 - Article 13 of Law no. 6763)* In case of performance of sexual abuse by inserting an organ or instrument into a body, the offender is sentenced to a term of imprisonment no less than sixteen years. If the child is under the age of twelve, the punishment cannot be less than eighteen years.

(3) If the offense is committed;

a) by participation of more than one person in the offense,

b) by using the advantage of the environment where people have to live together collectively,

c) against a person with whom he or she has third degree blood relation or kinship, or by stepfather, stepmother, half-sibling or adopter,

d) by his/her guardian, tutor, instructor, caregiver, custodial parents or by those who provide him/her with health care or are under an obligation to protect, look after or supervise him/her,

e) by undue influence based on public office or employment relationship, the punishment to be imposed according to the above subparagraphs is increased by one half.

(4) In cases where the sexual abuse is conducted against the children identified under subparagraph (a) of the first paragraph by use of force or threat, or against the children identified under

6 As noted by the national partner in this project, in the English translation found on website legislationonline, this was specified as "two to ten years", which is corrected to "five to ten years", after checking from Turkish resources.

7 National partner noted that the amendment of 24 November 2016, which is the addition of the sentence "If the child is under the age of twelve, punishment cannot be less than 10 years in case of molestation, and 5 years if the offense ceases at the level of sexual importunity." was not included in the English translation found on webpage legislationonline. It was added as a correction after checking from Turkish resources.

sub-paragraph (b) therein by use of arms, the punishment to be imposed according to the above paragraphs is increased by one half.

(5) In case of use of force and violence during sexual assault in such a way to result in serious consequences of intentional injury, the offender is additionally punished for intentional injury.

(6) In case of vegetative state or death of a person as a result of the offense, the offender is sentenced to aggravated life imprisonment.

Article 104, Sexual intercourse with between/ with persons not attained the lawful age

(1) Any person who had a sexual intercourse with a child who completed the age of fifteen, without using force, threat and fraud, is sentenced to a term of imprisonment from two years to five years upon filing of a complaint. (By Article 60 of the Law no.6545 of 18 June 2014, the expression of "six months to two years" was replaced with the expression of "two years to five years" in this paragraph.)

(2) *(Abolished by the Constitutional Court's decision of 23 November 2005 with docket no. 2005/103 and decision no. 2005/89; New Amendment: Article 60 of Law no. 6545 of 18 June 2014)* If the offence is committed by a person who is under a restraint of marriage with the victim, the offender is sentenced to a term of imprisonment from ten years to fifteen years without a complaint being filed.

(3) *(Added on 18 June 2014 – By Article 60 of Law no. 6545)* If the offence is committed by a person providing care for a child prior to adopting the child or by a person who is under an obligation to protect, look after or supervise the child under custodial relationship, the offender is sentenced to a punishment under the second paragraph without a complaint being filed.

Article 226 – Obscenity

(1) Any person who:

a) gives to a child obscene written or audio-visual material; or who reads or induces another to read such material to a child or makes a child watch or listen to such material;

b) makes public the content of such material in a place accessible or visible to a child, or who exhibits such material in a visible manner or who reads or talks about such material, or who induces another to read or talk about such material to a child;

c) offers such materials for sale or rent in such a manner as to reveal the content of that material;

d) offers for sale, sells or rents such materials, in any place other than a specified points of sale;

e) gives or distributes such materials along with the sale of other products or services as a free supplement; or

f) advertises such products

shall be sentenced to a penalty of imprisonment for a term of six months to two years and a judicial fine.

(2) Any person who broadcasts or publishes obscene written or audio-visual material or who acts as an intermediary for this purpose shall be sentenced to a penalty of imprisonment for a term of six months to three years and a judicial fine of up to five thousand days.

(3) A person who uses children, simulated images of children or people who look like children in the production of obscene written or audio-visual materials shall be sentenced to a penalty of imprisonment for a term of five to ten years and a judicial fine of up to five thousand days. Any person who conveys such material into the country, who copies or offers for sale such material or who sells, transports, stores, exports, retains possession of such material or offers such material for the use of others shall be sentenced to a penalty of imprisonment for a term of two to five years and a judicial fine of up to five thousand days.

(4) Any person who produces, conveys into the country, offers for sale, sells, transports, stores or offers for the use of others written or audio-visual materials of sexual acts performed with the use of force, animals, a human corpse, or in any other unnatural manner shall be sentenced to a penalty of imprisonment for a term of one to four years and a judicial fine of up to five thousand days.

(5) Any person who broadcasts or publishes the materials described in paragraphs three and four or who acts as an intermediary for this purpose or who ensures children see, hear or read such materials shall be sentenced to a penalty of imprisonment for a term of six to ten years and a judicial fine of up to five thousand days.

(6) Legal entities shall be subject to specific security measures for involvement in these offences.

(7) The provisions of this article shall not apply to academic works. The provisions of this article shall not apply, except for paragraph 3, to artistic or literary works where children are prevented from accessing such.

Article 227 – Prostitution

(1) Any person who encourages a child to become a prostitute, facilitates a child becoming such or supplies or accommodates a child for such purpose, or acts as an intermediary for the prostitution of a child, shall be sentenced to a penalty of imprisonment for a term of four to ten years and judicial fine up to five thousand days. Preparatory acts and activities for commission of this offence shall be punished as a completed offence.

(2) Any person who encourages another to become a prostitute or who facilitates or acts as an intermediary for such or who provides an environment for such purpose shall be sentenced to a penalty of imprisonment for a term of two to four years and a judicial fine up to three thousand days. Earning

a living, totally or partially, from the proceeds of prostitution shall be presumed to be an encouragement to prostitution.

(3) *(Abolished on 6/12/2006 – By Article 45 of the Law no. 5560; New Amendment: Article 18 of Law no. 6763 of 24 November 2016)* A person who gives or distributes products containing images, articles and words prepared for the purpose of facilitating or mediating prostitution shall be punished by imprisonment from one to three years and a judicial fine from two hundred days to two thousand days.

(4) The penalty to be imposed according to the aforementioned paragraphs shall be increased by one half to two folds where a person is encouraged to engage in acts of prostitution or secures an individual to engage in prostitution through the use of threat, violence, deceit, or by taking advantage of another's desperation.

(5) The penalty to be imposed according to aforementioned paragraphs shall be increased by one half where the offence is committed by a spouse, direct-antecedents, direct antecedents-in-law, sibling, adopting parent, guardian, trainer, educator, nurse or any other person responsible for the protection and supervision of a person; or by a public officer or employee who misuses the influence derived from their positions.

(6) The penalty to be imposed according to aforementioned paragraphs shall be increased by one half where the offence is committed within the framework of the activities of a criminal organisation.

(7) Legal entities shall be subject to security measures for involvement in these offences.

(8) Any person who has been forced into prostitution may be given treatment or psychological therapy.

KOSOVO*

Article 227, Rape[8]

1. Whoever subjects another person to a sexual act without such person's consent shall be punished by imprisonment of two (2) to ten (10) years.

2. Whoever subjects another person to a sexual act by threatening to reveal a fact that would seriously harm the honour or reputation of such person or of a person closely connected to such person shall be punished by imprisonment of three (3) to ten (10) years.

3. Whoever subjects another person to a sexual act in one or more of the following circumstances shall be punished by imprisonment of five (5) to ten (10) years:

   3.1. by serious threat or the threat of violence;

   3.2. by threat of an imminent danger to the life or body of such person or of another person; or

   3.3. by exploiting a situation in which the person is unprotected and where his or her security is in danger.

4. When the offense provided for in paragraph 1. or 2. of this Article is committed under one or more of the following circumstances, the perpetrator shall be punished by imprisonment of five (5) to fifteen (15) years:

   4.1 .the offense is preceded, accompanied or followed by an act of torture or inhumane treatment;

   4.2. the perpetrator uses force;

   4.3. the perpetrator causes grievous bodily injury or a serious disturbance to the mental or physical health of the person;

   4.4. the perpetrator uses or threatens to use a weapon or a dangerous instrument;

   4.5. the perpetrator intentionally causes the person to become intoxicated by alcohol, drugs or other substances;

   4.6. the offense is jointly committed by more than one person;

   4.7. the perpetrator knows that the person is exceptionally vulnerable because of age, diminished mental or physical capacity, physical or mental disorder or disability, or pregnancy;

   4.8. the victim is between the ages of sixteen (16) and eighteen (18) years;

   4.9. the perpetrator is the parent, adoptive parent, foster parent, step parent, grandparent, uncle, aunt or sibling of the person or shares a domestic relationship with the victim

   4.10. the perpetrator is a teacher, a religious leader, a health care professional, a person entrusted with such person's upbringing or care or otherwise in a position of authority over the person:

   4.10.1. by abusing his or her control over the financial, family, social, health, employment, educational, religious or other circumstances of such person or a third person;

   4.10.2. where the victim is held in prison, pre-trial detention, a disciplinary centre, has been committed to an educational institution or educational correctional institution, is a patient at a hospital, mental health or rehabilitation facility, a resident of a residential care home or shelter, or is held in or confined to any other place by an order of the court or prosecutor or under a law; or

   4.10.3. by abusing his or her authority or authority over a victim and who is entrusted to the perpetrator for upbringing, education or care.

5. When the offense provided for in paragraph 1., 2., 3. or 4. in this Article results in the death of the victim, the perpetrator shall be punished by imprisonment of not less than ten (10) years or by lifelong imprisonment.

8 Assembly of Kosovo*, Code No.06/L-074, Criminal Code of Kosovo*, 2019, **https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=18413** (in English)

6. When the offense provided for in paragraph 1. or 2. of this Article is committed against a person under the age of sixteen (16) years, the perpetrator shall be punished by imprisonment of five (5) to twenty (20) years.
7. When the offense provided for in paragraph 1. or 2. of this Article is committed against a person under the age of fourteen (14) years, the perpetrator shall be punished by imprisonment of at least ten (10) years.
8. When the offense provided for in paragraph 6. or 7. of this Article is committed under one or more of the circumstances provided for in paragraph 3. or 4. of this Article, the perpetrator shall be punished by imprisonment of at least fifteen (15) years.
9. When the offense provided for in paragraph 6. or 7. of this Article results in the death of the victim, the perpetrator shall be punished by imprisonment of at least twenty (20) years or lifelong imprisonment.

Article 229, Sexual assault

1. Whoever touches a person for a sexual purpose or induces such person to touch the perpetrator or another person for a sexual purpose, without the consent of such person, shall be punished by a fine or by imprisonment of up to one (1) year.
2. Whoever touches another person for a sexual purpose or induces another person to touch the perpetrator or a third person for a sexual purpose in one of more of the following circumstances shall be punished by imprisonment of one (1) to seven (7) years:

   2.1. by serious threat or the threat of violence;

   2.2. by threat of an imminent danger to the life or body of such person or of another person; or

   2.3. by exploiting a situation in which such other person is unprotected and where his or her security is in danger
3. When the offense provided for in paragraph 1. or 2. of this Article is committed under one or more of the following circumstances, the perpetrator shall be punished by imprisonment of three (3) to ten (10) years:

   3.1. the offense is preceded, accompanied or followed by an act of torture or inhumane treatment;

   3.2. the perpetrator uses force;

   3.3. the perpetrator causes grievous bodily injury or serious disturbances to the mental or physical health of the person or the person attempts to commit suicide following the offense;

   3.4. the perpetrator uses or threatens to use a weapon or a dangerous instrument;

   3.5. the perpetrator intentionally causes the person to become intoxicated by alcohol, drugs or other substances;

   3.6. the offense is jointly committed by more than one person;

   3.7. the perpetrator knows that the person is exceptionally vulnerable because of age, diminished mental or physical capacity, physical or mental disorder, disability, or pregnancy;

   3.8.the victim is between the ages of sixteen (16) and eighteen (18) years;

   3.9.the perpetrator is the parent, adoptive parent, foster parent, step parent, grandparent, uncle, aunt or sibling of the person or shares a domestic relationship with the victim

   3.10. the perpetrator is a teacher, a religious leader, a health care professional, a person entrusted with such person's upbringing or care or otherwise in a position of authority over the person:

   3.10.1. by abusing his or her control over the financial, family, social, health, employment, educational, religious or other circumstances of such person or a third person;

   3.10.2. where the victim is held in prison, pre-trial detention, a disciplinary centre, has been committed to an educational institution or educational/correctional institution, is a patient at a hospital, mental health or rehabilitation facility, a resident of a residential care home or shelter, or is held in or confined to any other place by an order of the court or prosecutor or under a Law; or

   3.10.3. by abusing his or her authority or authority over a victim and who is entrusted to the perpetrator for upbringing, education or care.
4. When the offense provided for in paragraph 1. or 2. of this Article results in the death of the victim, the perpetrator shall be punished by imprisonment of not less than ten (10) years or by lifelong imprisonment.
5. When the offense provided for in paragraph 1. of this Article is committed against a person under the age of sixteen (16) years, the perpetrator shall be punished by imprisonment of five (5) to ten (10) years.
6. When the offense provided for in paragraph 1. of this Article is committed against a person under the age of fourteen (14) years, the perpetrator shall be punished by imprisonment of ten (10) to twenty (20) years.
7. When the offense provided for in paragraph 5. or 6. of this Article is committed under one or more of the circumstances provided for in paragraph 2. or 3. of this Article, the perpetrator shall be punished by imprisonment of at least fifteen (15) years.
8. When the offense provided for in paragraph 5. or 6. of this Article results in the death of the victim, the perpetrator shall be punished by imprisonment of not less than fifteen (15) years or by lifelong imprisonment.

Article 230, Degradation of sexual integrity

1. Whoever induces another person to expose the private parts of such person's body, to masturbate or to commit another act that degrades such person's sexual integrity, without the consent of such

person, shall be punished by a fine or by imprisonment of three (3) months to one (1) year.

2. Whoever induces another person to expose the private parts of such person's body, to masturbate or to commit another act that degrades such person's sexual integrity in one of more of the following circumstances shall be punished by imprisonment of one (1) to three (3) years:

   2.1. by serious threat or the threat of violence;

   2.2. by threat of an imminent danger to the life or body of the such person or of another person; or

   2.3. by exploiting a situation in which the person is unprotected and where his or her security is in danger.

3. When the offense provided for in paragraph 1. or 2. of this Article is committed under one or more of the following circumstances, the perpetrator shall be punished by imprisonment of one (1) to ten (10) years:

   3.1. the offense is preceded, accompanied or followed by an act of torture or inhumane treatment;

   3.2. the perpetrator uses force;

   3.3. the perpetrator causes grievous bodily injury or serious disturbances to the mental or physical health of the person or the person attempts to commit suicide following the offense;

   3.4. the perpetrator uses or threatens to use a weapon or a dangerous instrument;

   3.5. the perpetrator intentionally causes the person to become intoxicated by alcohol, drugs or other substances;

   3.6. the offense is jointly committed by more than one person;

   3.7. the perpetrator knows that the person is vulnerable because of age, physical or mental disorder or disability, or pregnancy;

   3.8. the victim is between the ages of sixteen (16) and eighteen (18) years;

   3.9. the perpetrator is the parent, adoptive parent, foster parent, step parent, grandparent, uncle, aunt or sibling of the person or shares a domestic relationship with the victim;

   3.10. the perpetrator is a teacher, a religious leader, a health care professional, a person entrusted with such person's upbringing or care or otherwise in a position of authority over the person:

   3.10.1. by abusing his or her control over the financial, family, social, health, employment, educational, religious or other circumstances of such person or a third person;

   3.10.2. where the victim is held in prison, pre-trial detention, a disciplinary centre, has been committed to an educational institution or educational/correctional institution, is a patient at a hospital, mental health or rehabilitation facility, a resident of a residential care home or shelter, or is held in or confined to any other place by an order of the court or prosecutor or under a Law; or

   3.10.3. by abusing his or her authority or authority over a victim and who is entrusted to the perpetrator for upbringing, education or care.

4. When the offense provided for in paragraph 1. of this Article is committed against a person under the age of sixteen (16) years, the perpetrator shall be punished by imprisonment of one (1) to five (5) years.

5. When the offense provided for in paragraph 1. of this Article is committed against a person under the age of fourteen (14) years, the perpetrator shall be punished by imprisonment of three (3) to eight (8) years.

6. When the offense provided for in paragraph 4. or 5. of this Article is committed under one or more of the circumstances provided for in paragraph 2. or 3. of this Article, the perpetrator shall be punished by imprisonment of at least fifteen (15) years.

7. When the offense provided for in paragraph 5. or 6. of this Article results in the death of the victim, the perpetrator shall be punished by imprisonment of at least fifteen (15) years or by lifelong imprisonment. 8. An attempt to commit the offense provided for in paragraph 1. of this Article shall be punishable.

Article 231, Offering pornographic material to persons under the age of sixteen years

1. Whoever sells, offers to sell, shows or in any other way provides a person under the age of sixteen (16) years with photographs, audio-visual material or other objects with pornographic content or allows such person to attend a live performance with pornographic content or intentionally brings such person to such a performance shall be punished by a fine and imprisonment of three (3) months to three (3) years.

2. The pornographic material from paragraph 1. of this Article shall be confiscated

Article 232, Abuse of children in pornography

1. Whoever produces child pornography or uses or involves a child in making or producing live performances shall be punished by imprisonment of five (5) to fifteen (15) years.

2. Whoever sells, distributes, promotes, displays, transmits, offers or makes available child pornography shall be punished by imprisonment of three (3) to ten (10) years.

3. Whoever procures for himself or herself or for another person or possesses child pornography shall be punished by a fine and by imprisonment of one (1) to five (5) years.

4. An attempt to commit a criminal offense in this Article shall be punishable.

5. For the purpose of this Article "live performance" includes the live exhibition, including by means of information and communication technology, of:

5.1. a child engaged in real or simulated sexually explicit conduct; or

5.2. of the sexual organs of a child for primarily sexual purposes.

Article 233, Inducing sexual acts by false promise of marriage

- Whoever deceptively and falsely promises marriage in order to induce a person who is between the ages of sixteen (16) to eighteen (18) years to engage in a sexual act shall be punished by a fine or imprisonment of up to three (3) years.

Article 234, Facilitating or compelling prostitution

1. Whoever recruits, organizes, assists, holds, hides, or controls another person for the purpose of prostitution shall be punished by a fine and imprisonment of six (6) months to four (4) years.
2. When the offense provided for in paragraph 1. of this Article is committed within a three hundred and fifty (350) meter radius of a school or other locality which is used by children, the perpetrator shall be punished by a fine and imprisonment of one (1) to five (5) years.
3. When the offense provided for in paragraph 1., 2. or 3. of this Article is committed against a person between the ages of sixteen (16) and eighteen (18) years, the perpetrator shall be punished by a fine and imprisonment of two (2) to ten (10) years.
4. When the offense provided for in paragraph 1., 2. or 3. of this Article is committed against a person under the age of sixteen (16) years, the perpetrator shall be punished by a fine and imprisonment of five (5) to twenty (20) years.
5. When the offense provided for in paragraph 1., 2. or 3. of this Article is committed against a person under the age of fourteen (14) years, the perpetrator shall be punished by a fine and imprisonment of at least ten (10) years.

Article 235, Providing premises for prostitution

1. Whoever knowingly provides premises, whether as the owner of the premises, the landlord, the tenant, the occupier or person in charge, to another person for the purpose of prostitution or the facilitation of prostitution shall be punished by a fine and by imprisonment of up to four (4) years.
2. When the offense provided for in paragraph 1. of this Article is committed within a three hundred fifty (350) meter radius of a school or other locality which is used by children, the perpetrator shall be punished by a fine and imprisonment of six (6) months to five (5) years.
3. When the offense provided for in paragraph 1. or 2. of this Article is committed for the purpose of prostitution or the facilitation of prostitution of one or more persons between the ages of sixteen (16) and eighteen (18) years, the perpetrator shall be punished by a fine and imprisonment of one (1) to ten (10) years.
4. When the offense provided for in paragraph 1. or 2. of this Article is committed for the purpose of prostitution or the facilitation of prostitution of one or more persons under the age of sixteen (16) years, the perpetrator shall be punished by a fine and imprisonment of five (5) to twenty (20) years.
5. When the offense provided for in paragraph 1. or 2. of this Article is committed s committed for the purpose of prostitution or the facilitation of prostitution of one or more persons under the age of fourteen (14) years, the perpetrator shall be punished by a fine and imprisonment of at least ten (10) years.
6. For the purpose of this Article, "facilitation of prostitution" includes but is not limited to recruiting, organizing, assisting, controlling, holding or hiding another person for the purpose of prostitution.

Article 236, Sexual relations within the family

1. Whoever engages in a sexual act with a family ascendant or a descendant who has reached the age of eighteen (18) years or a sibling who has reached the age of eighteen (18) years shall be punished by a fine or by imprisonment of three (3) months to three (3) years.
2. A parent, adoptive parent, foster parent, step-parent, grandparent, uncle or aunt who engages in a sexual act with his or her child, foster child, step-child, grandchild, nephew or niece who is between the ages of sixteen (16) and eighteen (18) years shall be punished by imprisonment of at least three (3) years.
3. A parent, adoptive parent, foster parent, step-parent, grandparent, uncle or aunt who engages in a sexual act with his or her child, foster child, step-child, grandchild, nephew or niece who is between the ages of fourteen (14) and sixteen (16) shall be punished by imprisonment of at least five (5) years.
4. A parent, adoptive parent, foster parent, step-parent, grandparent, uncle or aunt who engages in a sexual act with his or her child, foster child, step-child, grandchild, nephew or niece who under the age of fourteen (14) shall be punished by imprisonment of at least ten (10) years.
5. When an older sibling engages in a sexual act with a sibling, adoptive sibling, stepsibling or foster sibling who is between the ages of sixteen (16) and eighteen (18) years, the older sibling shall be punished as provided for in paragraph 2. of this Article.
6. When an older sibling engages in a sexual act with a sibling, adoptive sibling, stepsibling or foster sibling who is between the ages of fourteen (14) and sixteen (16) years, the older sibling shall be punished as provided for in paragraph 3. of this Article.
7. When an older sibling engages in a sexual act with a sibling, adoptive sibling, stepsibling or foster sibling who under the age of fourteen (14) years, the older sibling shall be punished as provided for in paragraph 4. of this Article.

Part II: Provisions on sexual harassment

1) Provisions in countries in which sexual harassment is criminalised

2) Provisions in labour law and other relevant laws: *Law on Protection from Discrimination, Law on Gender Equality, etc.*

Sexual harassment is defined as a specific criminal offence in Albania (Article 108a of the Criminal Code), **one entity of Bosnia and Herzegovina – Republic of Srpska** (Article 170 of the Criminal Code of Republic of Srpska), **Serbia** (Article 182a of the Criminal Code of Serbia), **Turkey** (Article 105 of the Criminal Code of Turkey), and **Kosovo*** (Article 183 of the Criminal Code of Kosovo)*. Sexual harassment is not prosecuted ex officio - criminal proceedings with respect to sexual harassment can be carried out only in the form of private prosecution, that is, can be initiated only on the basis of a victim's complaint.

Sexual harassment is not criminalized in Montenegro, North Macedonia, one entity of Bosnia and Herzegovina (Federation BiH), as well as in Brcko District of BiH. However, sexual harassment in these countries/entities is addressed in Labour Law, Law on Gender Equality, etc. Sexual harassment is thus subject to other (non-criminal) sanctions, and/or possibilities for legal protection are provided (compensation for damages can be claimed).

For example, at the state level in Bosnia and Herzegovina (BiH), sexual harassment is mentioned in Article 5, Paragraph 2 of the Law on Gender Equality of BiH[9], Article 4, Paragraph 2 of the Law on Prohibition of Discrimination of BiH[10], and at the entity level (Federation BiH) in the Paragraph 3, Article 9 of the Labor Law of the Federation of BiH[11], Paragraph 3, Article 24 of the Labour Law of the Republic of Srpska[12], and Paragraph 3, Article 10 of the Labour Law of Brčko District BiH.[13] In Montenegro, sexual harassment is treated as a form of discrimination, in Article 7 of the Law on Prohibition of Discrimination, as well as in Labour Law and the Law on Prohibition of Harassment at Work.

Criminal offence of sexual harassment – definitions in the Criminal Codes of Albania, one entity of Bosnia and Herzegovina (the Republic of Srpska), Serbia, Turkey and Kosovo*

ALBANIA

Article 108/a of the Criminal Code, Sexual harassment
(Article 108/a is added by law no. 144, dated 02.05.2013, article 24)

(1) Commitment of actions of a sexual nature which infringe the dignity of a person, by any means or form, by creating a threatening, hostile, degrading, humiliating or offensive environment, shall constitute a criminal offence and is punishable with one to five years of imprisonment.

(2) When this offence is committed in complicity, against several persons, more than once, or against children, it shall be punishable by three to seven years of imprisonment.

BOSNIA AND HERZEGOVINA

Sexual Harassment is defined as a specific criminal act in one entity of BiH: Republic of Srpska. In another entity (Federation BiH), sexual harassment is not criminalized. The same applies to Brcko District of BiH.

Article 170, Criminal Code of Republic of Srpska, Sexual harassment

(1) Whoever sexually harasses another person who is in a subordinate or dependent position in relation to him or who is particularly vulnerable due to person's age, illness, disability, dependency, pregnancy, serious physical or mental disorder, shall be punished by imprisonment for a maximum term of two years.

(2) Sexual harassment is any verbal, non-verbal or physical undesired behavior of sexual nature with the aim to degrade dignity in relation to person's

9 The Law on Gender Equality of Bosnia and Herzegovina, Official Gazette of BiH, no. 16/03 and 102/09, consolidated version, English translation provided by the Agency for Gender Equality of BiH: **https://arsbih.gov.ba/wp-content/uploads/2014/02/GEL_32_10_E.pdf**

10 The Law on Prohibition of Discrimination of Bosnia and Herzegovina, Official Gazette of BiH no. 59/09 **https://www.legislationline.org/download/id/3496/file/BiH_Law_on_prohibition_of_discrimination_2009.pdf** and the Law on Changes and Ammendments of the Law on Prohibition of Discrimination of Bosnia and Herzegovina, Official Gazette of BiH, no. 66/16

11 The Labour Law of Federation of Bosnia and Herzegovina, Official Gazette of FBiH, no. 62/15, unofficial translation into English provided at: **https://advokat-prnjavorac.com/legislation/Labour-Law-FBiH-2015.pdf**

12 The Labour Law of Republika Srpska, Official Gazette of RS, no. 1/16 and 66/18 – no official translation available in any of the suggested sources, unoficial translation into English provided by Foundation United Women

13 The Labour Law of Brčko District of BiH, Official Gazette of BDBiH, no. 34/19 and 2/21 – no official translation available in any of the suggested sources, unoficial translation into English provided by Foundation United Women

sexual life or causes fear or creates hostile, degrading or offensive environment.

(3) Prosecution of a criminal offence under paragraph 1 of this Article shall be carried only on request.

SERBIA

Article 182a of the Criminal Code of Serbia, Sexual Harassment

(1) Whoever sexually harasses another person shall be punished with a fine or imprisonment of up to six months.

(2) If the act specified in paragraph 1 of this Article has been committed vis-à-vis a minor, the perpetrator shall be punished with imprisonment of three months to three years.

(3) Sexual harassment shall be each instance of verbal, non-verbal or physical behaviour that is aimed at or that is a violation of dignity of a person in the domain of his/her sexual life, which causes fear or creates a hostile, degrading or offensive environment.

(4) Prosecution for the offence specified in paragraph 1 of this Article shall be undertaken upon proposition.

TURKEY

Article 105 of the Criminal Code of Turkey, Sexual Harassment

(1) If a person is subject to sexual harassment by another person, the person performing such act is sentenced to a term of imprisonment from three months to two years or to a judicial fine; and if the act of sexual harassment is committed against a child, the offender is sentenced to imprisonment from six months to three years upon complaint of the victim.

(2) *(Amended on 18 June 2014 – By Article 61 of the Law no. 6545):*

If the act of offence is committed:

a) by undue influence based on public office or employment relationship or by using the advantage of intra-familial relationships,

b) by his/her guardian, tutor, instructor, caregiver, custodial parents or by those who provide him/her with health care or are under an obligation to protect, look after or supervise him/her,

c) by using the advantage of working in the same workplace with the victim,

d) by using the advantage provided by mail or electronic communication instruments

e) by the act of exposing, the punishment to be imposed according to the above paragraph is increased by one half. If the victim was obliged to quit his/her job or leave his/her school or family for this reason, the punishment to be imposed cannot be less than one year.

KOSOVO*

Article 183 of the Criminal Code of Kosovo*, Sexual Harassment

(1) Whoever sexually harasses another person, in particular a person who is vulnerable due to age, illness, disability, addiction, pregnancy, a severe physical or mental disability, shall be punished by a fine or imprisonment of up to three (3) years.

(2) Sexual harassment shall mean any form of unwanted verbal, non-verbal or physical conduct of a sexual nature which aims at or effectively constitutes a violation of the dignity of a person, which creates an intimidating, hostile, degrading or offensive environment

(3) When the offence provided for in paragraph 1. of this Article is committed by a perpetrator who is a teacher, a religious leader, a health care professional, a person entrusted with such person's upbringing or care or otherwise in a position of authority over the person, the perpetrator shall be punished of imprisonment of six (6) months to three (3) years.

(4) When the offence provided for in paragraph 1., 2. or 3. of this Article is committed with a weapon, a dangerous instrument or another object capable of causing grievous bodily injury or serious impairment to mental or physical health, the perpetrator shall be punished by imprisonment of one (1) to five (5) years.

(5) The criminal offence referred to in paragraph 1., 2. or 3. of this Article shall be initiated following a motion.

Provisions on sexual harassment in labour legislation and other relevant legislation (Law on Protection from Discrimination, Law on Gender Equality, etc.) in Bosnia and Herzegovina, Montenegro, and North Macedonia

BOSNIA AND HERZEGOVINA

Sexual harassment is a specific criminal offence only in one entity of BiH (Republic of Srpska). There are, however, other relevant laws, at the state level, as well as at entity level (Federation BiH), which contain provisions on sexual harassment.

Article 5, Paragraph 2 of the Law on Gender Equality of Bosnia and Herzegovina
defines sexual harassment as "every unwanted form of

verbal, non-verbal or physical behavior of sexual nature that aims to harm dignity of a person or group of persons, or has such effect, especially when this behavior creates intimidating, hostile, degrading, humiliating or offensive environment." It applies in multiple contexts.

Article 29 of the Law on Gender Equality regulates sanctions for the perpetrator, as follows: "A person who, on grounds of sex, commits violence, harassment or sexual harassment that endanger serenity, mental health or body integrity shall be punished with a fine or imprisonment for a term of six months up to five years."

Article 4, Paragraph 2 of the Law on Prohibition of Discrimination of Bosnia and Herzegovina[14], defines sexual harassment as every form of unwanted verbal, non- verbal or physical behavior of sexual nature which aims for or has effect of harming dignity of a person, especially when it creates fearful, hostile, degrading, humiliating or offensive environment. This definition covers multiple contexts, but the Law does not prescribe criminal sanctions for the perpetrator.

Article 19 of the Law on Prohibition of Discrimination of Bosnia and Herzegovina prescribes minor offence sanctions, as follows: "(1) A legal person who puts a person or a group of persons into a less favorable position on grounds given in **Article 2 (Discrimination)**, paragraph (1), in a way described in **Article 3 (Forms of Discrimination)** and **Article 4 (Other Forms of Discrimination) of this Law**, shall be fined for minor offence with 1,500 to 5,000 KM.
(2) A responsible person in state, entity and cantonal institution, Brčko District body, municipal institutions, legal person with public authorities and other legal person shall be also fined for minor offence from paragraph (1) of this Article in the amount of 7,000 to 1,500 KM.
(3) A natural person shall be fined with 550 to 1,500 KM for a minor offence paragraph (1) of this Article.
(4) If a minor offence from paragraph (1) of this Article is conducted by failure to act upon Ombudsman's recommendation, a legal person shall be fined with 2,500 to 6,500 KM, and a responsible person in the legal person or a natural person shall be fined with 1,000 to 3,000 KM.
(5) If a minor offence from paragraph (1) of this Article is conducted by failure to act upon a warrant of a court, a le-gal person shall be fined with 3,500 to 10,000 KM and a re-sponsible person in a legal person or a natural person shall be fined with 2,000 to 5,000 KM.

Article 9, Paragraph 3 of the Labor Law of the Federation of Bosnia and Herzegovina [15] defines sexual harassment as "any conduct, which by way of words or actions of sexual nature intends to violate or constitutes a violation of dignity of an employee or a job seeker, which causes fear and creates degrading or offensive environment." This Law covers only the context of employment. The Law does not prescribe penalty provisions.

Paragraph 3, Article 24 of the Labor Law of the Republika Srpska[16] defines sexual harassment as "every verbal or physical behavior which intends or represents violation of dignity of a job seeker, as well as an employee within a sphere of sexual life, which causes fear or creates degrading or offensive environment." This Law covers only the context of employment. The Law does not prescribe penalty provisions.

Paragraph 3, Article 10 0f the Labor Law of Brčko District BiH[17] defines sexual harassment as "any conduct, which by way of words or actions of sexual nature intends to violate or constitutes a violation of dignity of an employee or a job seeker, which causes fear and creates degrading or offensive environment." This Law covers only the context of employment. The Law does not prescribe penalty provisions.

MONTENEGRO

Sexual harassment is not criminalised in Montenegro, but it is addressed in other relevant laws.

The Law on Protection from Domestic Violence stipulates that sexual harassment is one of the acts of domestic violence, if it is committed between family members, for which the perpetrator's responsibility is determined within the misdemeanour procedure.

The Law on Prohibition of Discrimination treats sexual harassment as a special form of discrimination. According to Art. 7 of the Law, discrimination is also considered any unwanted verbal, non-verbal or physical behaviour of a sexual nature which seeks to violate the dignity of a person or group of persons, or which achieves such an effect, and which specifically causes fear, creates a hostile or degrading environment, and

14 The Law on Prohibition of Discrimination of Bosnia and Herzegovina, Official Gazette of BiH no. 59/09, English translation: https://www.legislationline.org/download/id/3496/file/BiH_Law_on_prohibition_of_discrimination_2009.pdf and the Law on Changes and Ammendments of the Law on Prohibition of Discrimination of Bosnia and Herzegovina, Official Gazette of BiH, no. 66/16

15 The Labor Law of Federation of Bosnia and Herzegovina, Official Gazette of FBiH, no. 26/16 and 89/18 – no official translation available in any of the suggested sources; unofficial translation into English provided by the national partner: Foundation United Women

16 The Labor Law of Republika Srpska, Official Gazette of RS, no. 1/16 and 66/18 – no official translation available in any of the suggested sources, unoficial translation into English provided by the national partner: Foundation United Women

17 The Labor Law of Brčko District of BiH, Official Gazette of BDBiH, no. 34/19 and 2/21 – no official translation available in any of the suggested sources, unoficial translation into English provided by the national partner: Foundation United Women

causes feeling humiliated or offended. The law does not sanction this form of discrimination, but it does provide the possibility of judicial protection, within which compensation for damages can be claimed.

The Labour Law prohibits harassment and sexual harassment at or in connection with work, and treats it as a violation of work discipline. Harassment is defined as unwanted behaviour, caused, inter alia, on the basis of sex, as well as harassment through audio and video surveillance, which aims at or violates the dignity of the job seeker, as well as the employee, which causes fear or creates hostility, a humiliating or offensive environment. Sexual harassment is any unwanted verbal, non-verbal or physical behaviour that aims at or violates the dignity of a job seeker, as well as a full-time employee, that causes fear or creates a hostile, degrading, embarrassing, aggressive or offensive environment. The Law on Prohibition of Harassment at Work also applies to cases of harassment and sexual harassment, so it analogously obliges the employer to provide the employee with work at the workplace and work environment under conditions that ensure respect for his dignity, integrity and health, as well as to take the necessary measures to protect the employee from harassment. If there are no preventive measures or if the employer does not inform the employee before starting work and employees who are employed with the prohibition of harassment, obligations and responsibilities related to harassment, manner of identification and protection against harassment, do not appoint a mediator to receive complaints and mediate between the parties in a dispute related to harassment, with an employer with 30 or more employees, acts contrary to the provisions of this law on protection of participants in the procedure for protection against harassment, the

Law on Prohibition of Harassment at Work provides for misdemeanour fines from 500 euros to 10,000 euros. The employer is also liable for damage caused by the responsible person, employee or group of employees to another employee by harassing him/her.

NORTH MACEDONIA

According to the Criminal Code of the Republic of North Macedonia, sexual harassment is not defined as a specific criminal act. There are, however, relevant provisions in other laws: non-discrimination law and labour laws.

Law on Prevention of and Protection Against Discrimination, Article 7, paragraph 2

("Official Gazette of the Republic of Macedonia" nos. 50/2010, 44/2014, 150/2015, 31/2016 and 21/2018).
Decision of the Constitutional Court of the Republic of Macedonia U. no 82/2010 dated 15 September 2010, published in the "Official Gazette of the Republic of Macedonia" no. 127/2010).
The definition of the sexual harassment is provided in the Law on Prevention of and Protection Against Discrimination[18] Article 7, paragraph 2 as
"Sexual harassment shall be unwanted behaviour of sexual nature, manifested physically, verbally or in any other manner, aimed at or resulting in violation of the dignity of a person, especially when creating hostile, intimidating, degrading or humiliating environment."

Labour Relations Law[19] *("Official Gazette of the Republic of Macedonia" no. 62/05, 106/08, 161/08, 114/09,130/09, 50/10, 52/10, 124/10, 47/11, 11/12, 39/12, 13/13, 25/13, 170/13, 187/13, 113/14, 20/15, 33/15, 72/15, 129/15 and 27/16),* Article 9, paragraph 4

Sexual harassment is also regulated by the Labour Law, Article 9, paragraph 4:
Harassment and Sexual Harassment Article 9

(1) Harassment and sexual harassment shall be prohibited.

(2) Harassment and sexual harassment shall be deemed to be discrimination within the meaning of article 6 of the present law.

(3) Harassment, within the meaning of the present law, shall be any unwelcome behaviour caused by any of the cases referred to in article 6 of the present law that aims at or amounts to a violation of the dignity of the job applicant or the employee, and which causes fear and creates a hostile, degrading or offensive conduct.

(4) Sexual harassment, within the meaning of the present law, shall be any verbal, nonverbal or physical behaviour of a sexual nature which aims at or amounts to a violation of the dignity of the job applicant or the employee, and which causes fear and creates a hostile, degrading or offensive conduct.

Law on Protection from Harassment at the Workplace, Official Gazette No. 79/2013[20], Articles 2, 4 and 5

Sexual harassment is also defined in the Law on Protection from Harassment at the Workplace (mobbing). As stated in Article 2 of the Law, the aim is to prevent and protect every person from psychological and sexual harassment in the workplace and to ensure a healthy work environment. Article 4 further states that this Law prohibits all types of harassment in the workplace. Then, Article 5 paragraph 2 defines sexual harassment as any verbal, non-verbal or physical attack on the sexual nature in order to degrade the dignity of the worker, which creates a feeling of intimidation, hostility, humiliation.

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18 Law on Prevention of and Protection against Discrimination in North Macedonia, **https://www.refworld.org/pdfid/5aa12ad47.pdf** (in English)

19 Labour Relations Law in North Macedonia, **https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/71332/109716/F-1464727386/MKD71332%20Eng.pdf** (in English)

20 Unofficial translation into English, provided by the national partner National Network to End Violence against Women and Domestic Violence

According to the Criminal Procedure Law of the Republic of North Macedonia, the victim can complain (in addition to the police and Centre for Social Work) to other institutions, i.e. court.

The victim's rights in the Criminal Procedure Law are stated at the Article 53 and Article 55, Special rights of victims of crimes against gender freedom and gender morality, humanity and international law.[21]

According to the legal provisions, any person who considers that he/she has been discriminated against can submit a complaint to the Commission for Protection against Discrimination, which acts in accordance with its legal competencies. The Law on Prevention and Protection against Discrimination contains penal provisions for violation of the Law and provides sanctions in the amount of 400 to 600 euros in denar value. Despite the predicted sanction for indicting, encouraging, and helping discrimination acts for individuals and legal entities, separate sanction is provided for the violation of the provisions of Article 7 (sexual harassment).[22]

21 **https://www.legislationline.org/download/id/6377/file/FYROM_CPC_am2010_en.pdf (in English)**

22 Risteska, M. and Cekov, A. (2019). *Analysis of the needs to harmonise Criminal Code of the North Macedonia with the Istanbul Convention*, **http://www.crpm.org.mk/wp-content/uploads/2019/07/Gap_Analysis_MK_PRINT.pdf** (in Macedonian)

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