



Manual on the law relating to violence against women

England and Wales

Greece

Ireland

Italy

Northern Ireland

Poland

Spain



THE BAR of
NORTHERN
IRELAND



Publisher

© European Lawyers Foundation, May 2018
Neuhuyskade 94 2596 XM
The Hague (The Netherlands)
www.elf-fae.eu

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Layout

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Acknowledgements

The European Lawyers Foundation would like to thank Commissioner Věra Jourová for agreeing to write the foreword of this Manual.



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The project is co-funded by the European Union. The contents of this publication are the sole responsibility of the authors and can in no way be taken to reflect the views of the European Commission or of any other organisation.

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Foreword

Violence against women is a human rights violation, and it is at the same time the cause and the consequence of persisting inequalities between women and men. Recent survey data have shown that at least one woman in three in the European Union has been confronted with physical or sexual violence in her daily life and more than half of European women have experienced sexual harassment.

This is a serious societal problem that needs to be dealt with at all levels of governance. At the European level, combating gender-based violence and supporting its victims is a key priority within its Strategic Engagement for Gender Equality (2016-2019). European action complements diverse actions by national, regional and local actors and the European Commission is keen to support projects, such as TRAVAW, that contribute to building our capacity to prevent violence and to ensure victims are treated properly. We must all work together, and we must ensure that all available expertise can be used.

Women who are victims of violence often feel victimised a second time if they come forward and report those who caused them harm. It is therefore crucial to ensure that professionals whose job it is to assist, support and protect these women are specifically trained to provide assistance in a professional and respectful manner that considers the victim's individual needs. Legal practitioners are at the front line of this work and have an essential role to play in our fight against gender-based violence. A properly trained lawyer can help preventing further violence and can also be the support needed for women to come forward, report the case and contribute to a successful prosecution.

This legal manual will be a useful tool for legal practitioners. Laws are different in every country but must also comply with legal standards agreed at the European or international level. Not all lawyers across the EU representing women victims of violence have full knowledge about the legal framework beyond their own national laws. This is why the project TRAVAW is so important: to educate lawyers from a range of EU countries about all the legal instruments that are available to them in their daily work.

Making it easier for victims to seek professional legal assistance is essential for their recovery and for a life free of violence. Together with the training programme provided by the TRAVAW project, this manual is a valuable contribution to build legal capacity in Europe.

Věra Jourová

Commissioner for Justice, Consumers and Gender Equality
European Commission

Introduction

Ending violence against women is a key priority for the European Union (EU). This is the reason why in March 2016 the European Commission (EC) proposed that the EU ratify the Council of Europe's Istanbul Convention on combatting violence against women and domestic violence. As Commissioner for Justice, Consumer and Gender Equality Ms. Jourová said at the time, the EC proposal of ratification of the Istanbul Convention sent "a clear message: victims of violence against women must be better protected across Europe". This statement involves many parties: governments, law enforcement agencies, judges, prosecutors, social workers and, of course, lawyers. Lawyers play a very important role in combatting violence against women since they are often the first professionals to be contacted by victims who choose to seek legal advice.

This Manual is one of the main outcomes of the TRAVAW project (Training of lawyers on the law relating to violence against women), led by the European Lawyers Foundation with the aim of joining the fight against violence against women, through training lawyers from various Member States' jurisdictions (Spain, Greece, Italy, Ireland, Poland, Northern Ireland and England and Wales) on the various legal topics involved in domestic and other types of violence against women.

The training in the TRAVAW project has been delivered in three ways: first, there have been seminars in each of the jurisdictions involved in the project, at which national speakers and speakers from other EU Member States have enabled lawyers attending the seminars to extend their knowledge about the law related to violence against women, to have a better understanding of how these cases are handled in other Member States, and to network with other lawyers participating in the same seminars. Second, in order to reach lawyers beyond the participants and to create a lasting legacy, TRAVAW has published all training materials presented at the training seminars on the ELF's website. Third, the manual, of which this introduction forms a part, aims to present a clear picture of the legal aspects of violence against women in the various partner-jurisdictions in the TRAVAW project. The Manual does not consist of academic research, but is a practical tool to enable legal professionals to have an idea about how the violence against women is dealt with in Spain, Greece, Italy, Ireland, Poland, Northern Ireland and England and Wales, so that the information may be used in handling cases of cross-border violence against women or simply by way of comparative analysis.

The TRAVAW project has been very successful. More lawyers than expected were trained, and their satisfaction level was high. This shows that not only is the topic highly relevant but there is also a strong commitment from European lawyers to be part of the solution. From the European Lawyers Foundation's perspective, we are proud of having been part of the project and we are very grateful to our partners, the speakers and the participants. And, of course, we thank the EC for awarding us the project that we hope will be repeated in the future. We will put all our efforts into making that possible.

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Country reports

1

England and Wales



Introduction

The UK has an ambition to eliminate violence against women and girls (VAWG) and therefore introduced a refreshed [VAWG strategy](#) on 8 March 2016. The focus is on increasing the reporting of the hidden crimes (within the VAWG genre), to overhaul the criminal justice response to vulnerable victims and to bring more perpetrators to justice. The Crown Prosecution Service (CPS) in England and Wales defines VAWG crimes to include domestic abuse, stalking, harassment, rape, sexual offences, forced marriage (FM), so-called ‘honour-based’ violence (HBV), female genital mutilation (FGM), child abuse, human trafficking for sexual exploitation, prostitution and pornography. Grouping these offences together recognises the female gendered based violence nature of these crime types. However, the aforementioned UK Government strategy and the CPS’s approach also recognises that males are victimised too.

In 2010 the then UK Government agreed for the first time to work to a single definition of VAWG. VAWG is a gender-based crime, which the previous Government acknowledged required a focused and robust cross-government approach. This approach was underpinned by a single agreed definition as set out in the United Nations (UN) Declaration (1993) on the elimination of violence against women to guide our work across all government departments ‘*Any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.*’ The declaration enshrines women’s rights to live without the fear of violence and abuse and the United Kingdom’s ratification of the UN Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) upholds this principle.

The previous UK Government set out its ambitious strategic narrative and guiding principles in its paper ‘Call to End Violence Against Women’ published on 25 November 2010. This outlined the four pillars of the approach – prevention, provision of services, partnership working and pursuing perpetrators. This provided the framework for the accompanying action plan and made a long-term commitment to work towards the prevention of VAWG. It also recognises that it is an international issue that occurs in all countries and crosses borders. An overview of the wide range of planned actions is set out in the accompanying action plan the Government will be taking forward with key partners to deliver its VAWG strategy.

The current VAWG strategy complements, and will be supported by, wider HM Government work to tackle modern slavery, prevent child sexual abuse and protect girls from exploitation by gangs. A key theme of the VAWG strategy is that VAWG is everybody’s business to reflect the collaboration that is required across government departments, statutory agencies and civil society to attain a reduction in the prevalence of all forms of VAWG, matched by increases in reporting, police referrals, prosecution and convictions. The VAWG Strategy builds on the significant work that has taken place to date including the call to action on protecting girls and women in conflict emergencies in 2013, the Girl Summit in July 2014, and the Global Summit to End Sexual Violence in Conflict in 2014. Internationally the UK is driving and supporting the implementation of the UN Sustainable Development Goals (SDGs), notably SDG 5 to achieve gender equality, empower

women and girls and eliminating discrimination including all forms of VAWG and harmful practices such as FGM and child, early forced marriage (CEFM).

The UK is collaborating with UN agencies, civil society organisations and with other governments to ensure international action, as agreed at the UN General Assembly in September 2015, to implement the [Global Goal targets](#), which have a direct impact on all forms VAWG and on harmful practices.

Significant new legislation has been introduced since 2010, particularly the Modern Slavery Act. Specific new criminal offences have also been implemented including:

- stalking [Section 111 of the Protection of Freedoms Act 2012 amended the 1997 Act and created two new offences of stalking: • stalking (section 2A) which is pursuing a course of conduct which amounts to harassment and which also amounts to stalking • stalking (section 4A) involving fear of violence or serious alarm or distress. The offences came into force on 25 November 2012].
- FM [Section 121 the Anti-social Behaviour, Crime and Policing Act, which received royal assent on 13 March 2014. The new offences come into force on 16 June 2014].
- failure to protect from FGM [Section 72 of Serious Crime 2015 Act inserts new section 3A into the Female Genital Mutilation Act 2003 introduced 3 May 2015]
- revenge pornography [Section 33 of the Criminal Justice and Courts Act 2015 creates an offence of disclosing private sexual photographs or films without the consent of an individual who appears in them and with intent to cause that individual distress, introduced 13 April 2015]
- new domestic abuse offence to capture coercive or controlling behaviour in an intimate or family relationship [Section 76 of the Serious Crime Act 2015 created a new offence of controlling or coercive behaviour in an intimate or family relationship introduced 29 December 2015]
- FGM Protection Orders [Section 73 is brought into force which inserts a new section 5A into the Female Genital Mutilation Act 2003 introduced 17 July 2015. These orders mirror the Forced Marriage Protection Order], have also been introduced, together with the FGM mandatory reporting duty under 74 Serious Crime Act 2015.
- Domestic Violence Protection Orders (DVPOs) [Sections 24-33 Crime and Security Act 2010 Domestic Violence Protection Orders (DVPOs) and Domestic Violence Protection Notices (DVPNs) were rolled out across all 43 police forces in England Wales from 8 March 2014. A DVPN is an emergency civil non-molestation and eviction notice which can be issued by the police, when attending to a domestic abuse incident, to a perpetrator. Because the DVPN is a police-issued notice, it is effective from the time of issue, thereby giving the victim the immediate support they require in such a situation].
- Domestic Violence Disclosure Scheme (DVDS) [The Domestic Violence Disclosure Scheme (DVDS) – often referred to as “Clare’s Law” after the tragic case of Clare Wood, who was murdered by her former partner in Greater Manchester in 2009 – was rolled out across all 43 police forces in England and Wales in March 2014].
- The Modern Slavery Act 2015, which includes offences relating to human trafficking, domestic servitude and forced labour.

A. Implementation of European and international legal instruments on violence against women

The UK has taken steps to implement European and international legal instruments on violence against women. The UK signed the Council of Europe Convention on Violence Against Women and Domestic Violence (the Istanbul Convention) on 8 March 2012 to signal its strong commitment to tackling VAWG but has not yet ratified due to the necessary amendments required to domestic law - to take extra-territorial jurisdiction over a range of offences. The UK Government's approach to this is encapsulated in the Preventing and Combating Violence Against Women and Domestic Violence (Ratification of Convention) Act 2017, which received Royal Assent on 27 April 2017.

The Council of Europe Convention consists of 81 articles aimed at tackling VAWG that focus on prevention, protection of victims, prosecution, and integrated policies. Since signing the Convention, HM Government has continued to step up efforts to combat VAWG. Despite not ratifying the Convention after signing it, activity and pressure to progress work to tackle VAWG has continued. In its March 2014 VAWG action plan HM Government gave its commitment; 'towards ratifying the Istanbul Convention to incorporate the treaty into UK law which will mean the UK will be legally bound to a set of standards to protect women and girls from violence'. In addition, the UK's International Development Committee, on its [second report of Session 2013-14](#), maintained pressure on the government by calling on it to do more to address VAWG within England and Wales and elsewhere in the UK: "the UK's international leadership is weakened by its failure to address violence against women and girls within its own borders", as did the Joint Committee on Human Rights and The Bar Human Rights Committee of England and Wales. The Bar Human Right Committee said, "Ratification would emphasise that the state has a positive duty in law to intervene in a proactive way to modify practices that result in harm, violence and degradation to women and girls. It would provide a further basis in law for those who wish to persuade the state to provide adequate and meaningful resources to construct an effective mechanism to protect women from gender violence and harm".

Last year the UK government announced that it will introduce new measures to protect women and girls from crimes committed overseas as part of its latest Domestic Abuse Bill and will establish a Domestic Violence and Abuse Commissioner, define domestic abuse in law, and ensure that if abusive behaviour involves a child, the court can hand down a sentence that reflects the devastating life-long impact that abuse can have on them. The Bill seeks to protect and support victims and make sure agencies effectively respond to domestic abuse. The Bill will also help to deliver the commitment to ratifying the Convention by extending extra-territorial jurisdiction over VAWG related offences in England and Wales. Dr Eilidh Whiteford introduced a Private Members' Bill requiring HM Government to "take all reasonable steps as soon as reasonably practicable to enable the United Kingdom to become compliant" with the Convention. This extends to England and Wales, Scotland and Northern Ireland. The Preventing and Combating Violence Against Women and Domestic Violence Act 2017 makes provision in connection with the ratification by the UK of the Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention).

The Devolved Administrations are currently considering what legislative or other changes are necessary for compliance with the Istanbul Convention in their territories. Northern Ireland's Stopping Domestic and Sexual Violence and Abuse Strategy' defines 'domestic violence and abuse' and 'sexual violence' in line with the Istanbul Convention and acknowledges that anyone can be a victim irrespective of age, ethnicity, religion, gender, gender identity, sexual orientation or any form of disability.

The Victim's Directive

On 4 October 2012 the UK opted into an EU Directive 2011/0129 (the Victims' Directive), establishing minimum standards on the rights, support and protection of victims of crime, the right of victims to safeguards in restorative justice services and recognising the 'great benefit' to victims that participation in restorative justice brings.

Prior to the introduction of this Directive a Code of Practice for Victims of Crime (the [Victims' Code](#)) was introduced in England and Wales in 2006, which set out the minimum levels of service, which victims can expect from agencies.

In conjunction with existing legislation and regulations, the Victims' Code is the main mechanism used to transpose this Directive into UK domestic legislation. The Victims' Code has also been used to transpose parts of the Human Trafficking and Child Sexual Exploitation EU Directives.

This Victims' Code was revised in 2013 to reflect the commitments set out in the Directive. In addition, it also introduced an enhanced level of service for victims of the most serious crime, vulnerable and/or intimidated victims and persistently targeted victims; the Victim Personal Statement scheme; and the CPS's commitments under the Victims' Right to Review scheme. Following a public consultation in 2015, further updates were made to the Victims' Code to complete the formal transition of the Victims' Directive into national laws and systems. The updated (2015) version of the Victims' Code was formally published on 22 October 2015 and came into effect on 16 November 2015, to coincide with the introduction of the Victims' Directive.

UN Committee on the Rights of the Child (UNCRC)

On 23 May 2014, HM Government submitted its fifth periodic report to the United Nations on its implementation of the UN Convention on the Rights of the Child (UNCRC). The UN Committee heard evidence from non-government organisations (NGOs) and children and has responded in its report into children's rights in the UK and published the fifth periodic report of the United Kingdom under the Convention on the Rights of the Child on 24 May 2016.

Despite some progress from their last report in 2008, the UNCRC Committee's report stated that the UK was not doing enough to prioritise children and give them the opportunity to fulfil their potential. It is worth noting that by ratifying the UNCRC, a State agrees to the UN Committee on the Rights of the Child – an independent body of child rights experts – regularly examining its progress on implementation. The examination of the UK's 5th periodic report took place at the 72nd session of the UN Committee on the Rights

of the Child on 23/ 24 May 2016. The UK's approach was last examined by the UN Committee in 2008. The Children's Rights Alliance for England (CRAE), a collective of charities including Action for Children, Barnardo's, The Children's Society, UNICEF UK, and others says that too often children bear the brunt of spending cuts and decisions are made without proper consideration of how they affect children. The UN Committee said it is "Seriously concerned at the effects that recent fiscal policies and allocation of resources" have had and that they are "disproportionately affecting children in disadvantaged situations." It calls on the UK to "introduce a statutory obligation' to consider children's needs "when developing laws and policies affecting children" and "adopt comprehensive action plans" to ensure children in the UK have the best start in life.

The UN made over 150 recommendations to UK Government, including that it must:

- Urgently get to grips with the shocking numbers of children suffering mental health problems by developing a comprehensive strategy to make sure these children's needs are not ignored and they can access vital services.
- "Strictly implement" the ban on placing children and families in temporary accommodation, including bed & breakfast accommodation, for longer than the six week legal limit. The UN highlighted the damaging long-term impact on children's health and educational outcomes of dirty, unsafe and overcrowded accommodation.
- Further reduce the number of children in custody and tackle the disproportionate number of Black and Minority Ethnic (BAME) children and children from care in the youth justice system. It must also make immediate improvements to the treatment of children in custody, including stopping the use of solitary confinement and abolishing the use of deliberately painful restraint on children.
- "Take all necessary measures to provide stability for children in care", including increasing and retaining the number of social workers and avoiding unnecessary changes in placement and providing sufficient support for care leavers.
- Review its asylum policy in order to help unaccompanied and separated children reunite with their family from both within and outside the UK.

A plan to deliver the recommendations is yet to be articulated.

B. Presentation of the national legal frame work for protecting women victims of violence

The UK National Framework for protecting women victims of violence includes in the main legislation, legal guidance for prosecutors and the Code for Crown Prosecutors, guidance for police investigators, multi-agency statutory guidance for police, health, social care and education (e.g. Multi-agency Statutory Guidance on FGM, and Multi-agency Statutory Guidance on FM), which is supported for some professional training and awareness raising.

As highlighted above the CPS in England and Wales includes the following offences in its definition of VAWG.

Domestic Abuse	Section 76 of the Serious Crime Act 2015 created a new offence of controlling or coercive behaviour in an intimate or family relationship introduced 29 December 2015. At the time of writing there is currently no separate law criminalising domestic abuse.
Stalking	Section 111 of the Protection of Freedoms Act 2012 amended the Protection from Harassment Act 1997 and created two new offences of stalking: • stalking (section 2A) which is pursuing a course of conduct which amounts to harassment and which also amounts to stalking • stalking (section 4A) involving fear of violence or serious alarm or distress The offences came into force on 25 November 2012
Harassment	Protection from Harassment Act 1997
Rape	Sexual Offences Act 2003 in force 1 May 2004
Sexual Offences	Sexual Offences Act 2003 in force 1 May 2004
Honour-based Violence	No specific legislation
Female Genital Mutilation	Female Genital Mutilation Act 2003 in force since 3 March 2004 as has recently been amended by Serious Crime Act 2015
Non-Sexual Child Abuse	<p>Causing of allowing death or serious physical harm</p> <p>Section 5 of the Domestic Violence, Crime and Victims Act 2004 created the offence of causing or allowing the death a child or vulnerable adult. The Section was amended by the Domestic Violence, Crime and Victims (Amendment) Act 2012. The amendment came into force on 2 July 2012 and extended the offence in section 5 to cover cases of causing or allowing a child or vulnerable adult to suffer serious physical harm.</p> <p>Child cruelty neglect and violence</p> <p>Section 1(1) Children and Young Persons Act 1933 was amended on 3 May 2015, by Part 5 Section 66 of the Serious Crime Act 2015 to update and modernise some of the language. The amended version provides that the offence is made out if:</p>

Child Abduction

Section 1 of the Child Abduction Act 1984 as amended by the Children Act 1989 makes it an offence if a person connected with a child under the age of 16 takes or sends the child out of the UK without the appropriate consent. 'Connected with' is defined in section 2; it includes a parent, guardian or any person who has custody of the child.

Kidnapping

Kidnapping is a common law offence comprising the taking or carrying away of one person by another, by force or fraud, without the consent of the person so taken or carried away and without lawful excuse. Other offences such as death of a foetus; death of a child and infanticide; assaults; non-accidental head injuries; and concealing the body of a child

Child Sexual Abuse

The [CPS guidelines](#) cover the range of child sexual abuse, including the abuse referred to as 'child sexual exploitation'.

The range of sexual offences can be charged including those involving trafficking for sex.

Human trafficking for sexual exploitation

The Modern Slavery Act 2015 consolidates existing offences of human trafficking and slavery and encompasses trafficking for all forms of exploitation. It came into force on 31 July 2015.

Prostitution

Section 16 of the Policing and Crime Act 2009 amends section 1(1) of the Street Offences Act 1959 to create an offence for a person (whether male or female) persistently to loiter or solicit in a street or public place for the purposes of offering services as a prostitute, with effect from 1 April 2010. The term "common prostitute" has now been removed.

Sexual Offences Act 2003

Pornography

Revenge Pornography

section 33 of the Criminal Justice and Courts Act 2015. Cases involving 'revenge pornography' may fall to be considered under the social media [guidelines](#) and under the Protection from Harassment Act 1997; sending a communication that is grossly offensive, indecent, obscene, menacing or false under Section 127 of the Communications Act 2003; sending a communication that is grossly offensive, indecent, obscene, conveys a threat or is false, with intent to cause distress or anxiety, under Section 1 Malicious Communications Act 1988; offences under [Section 1 of the Protection of Children Act 1978](#) (where the image was taken before the subject turned 18); unauthorised access to computer material under [Section 1 of the Computer Misuse Act 1990](#) (where the images have been obtained through computer hacking)

The CPS's 10th Violence Against Women and Girls (VAWG) report published on 10 October 2017 outlines the large increases in convictions for rape (48%) and other sexual offences (79%) that have been witnessed in the decade since the first VAWG report was published in 2007-08. It also shows large annual increases in prosecutions and convictions over the last year for rape (11.8% and 11.2%, respectively) and other sexual offences (12.5% and 14.7%). These offences, along with domestic abuse, now account for one fifth (19.3%) of the CPS's caseload – up from just 7.1% a decade ago.

KEY DATA:

- A 63% rise in VAWG convictions over the past 10 years, from 51,974 in 2007/8, to 84,565 in 2016/17
- The conviction rate for VAWG prosecutions has also increased, from 69% in 2007/08 to 75.3% in 2016/17, the highest ever recorded
- More than 13,700 defendants were convicted for overall sexual offences, including rape and child sexual abuse, a 14% rise since 2015/16

A breakdown of those defendants' shows:

- An 11.8% increase in completed rape prosecutions in 2016/17 compared to the previous year (5,190 up from 4,643), and an 11.2% rise in convictions (2,991 up from 2,689).
- The highest ever volume (13,490) of completed sexual offence prosecutions, excluding rape, with a 12.5% rise in defendants compared to the previous year. The conviction rate is now 79.5% – the highest rate ever recorded.
- Child sexual abuse prosecutions have risen by 82% and convictions by 89% over the decade, and by 15.5% and 15.7% respectively over the last year, the highest volume ever.

The data included in the CPS's 10th VAWG Report also reflects the changing nature of VAWG related crimes, with an increase in offending using the Internet and social media.

In the past year the number of prosecutions for disclosing private sexual images without consent (so-called 'revenge pornography') has more than doubled from 206 to 465. There have also been more prosecutions using new offences, including a rise in rape pornography prosecutions (three to 24), and for possession of a paedophile manual (one to 14), although, as you can see, numbers remain very low.

The report also shows that since the introduction of the offence of controlling and coercive behaviour, 309 offences have been charged and reached a first hearing. Many of these involved control of victims through the Internet, tracking software and social media platforms. The CPS has also prosecuted a higher proportion of domestic abuse-related offences of indecent or grossly offensive communications.

HM Government has been actively introducing new offences to tackle VAWG. Recent examples of legislative change to facilitate the investigation and prosecution of violence against women and girls offences include the following;

1. FGM

The Serious Crime Act 2015 (the SCA 2015) amended the Female Genital Mutilation Act 2003 ('the FGM Act 2003') and introduced a range of new measures designed to lead to an increase in the number of prosecutions following successful campaigning by non-government organisations (NGOs), survivors and campaigners. England and Wales has had FGM legislation since 1985 and has only had two unsuccessful prosecutions to date for offences under the FGM Act 2003 and allied matters. At the time of writing another criminal trial is underway. However, suffice to say, there is a dearth of prosecutions for FGM related crimes in England and Wales.

- **Extension of extra-territorial jurisdiction:** Section 70(1) of the SCA 2015 amends section 4 of the FGM Act 2003 Act so that the extra-territorial jurisdiction extends to prohibited acts done outside the UK by a UK national or a person who is resident in the UK. Consistent with that change, section 70(1) also amends section 3 of the FGM Act 2003 (offence of assisting a non-UK person to mutilate overseas a girl's genitalia) so it extends to acts of FGM done to a UK national or a person who is resident in the UK. "UK resident" is defined as an individual who is habitually (or ordinarily) resident in the UK including England and Wales. The term habitually resident covers a person's ordinary resident, as opposed to a short, temporary stay in a country. The FGM Act 2003 now captures offences of FGM committed abroad by or against those who are at the time are habitually resident in the UK irrespective of whether they are subject to immigration restrictions.
- **Anonymity of victims of FGM:** Section 71 of the SCA 2015 amends the FGM 2003 Act to prohibit the publication of any information that would be likely to lead to the identification of a person against whom an FGM offence is alleged to have been committed. This is similar, although not identical, to the anonymity given to alleged victims of sexual offences by the Sexual Offences (Amendment) Act 1992. Anonymity will commence once an allegation has been made and will last for the duration of the victim's lifetime. This provision has been introduced to encourage more victims to come forward.
- **Offence of failing to protect a girl from risk of FGM:** Section 72 of the SCA 2015 Act inserts new section 3A into the FGM 2003 Act and introduces a new offence of failing to protect a girl from FGM. This will mean that if an offence of FGM is committed against a girl under the age of 16, each person who is responsible for the girl at the time of FGM occurred will be liable under this new offence.
- **FGM Protection Order ("FGMPO"):** Section 73 of the SCA 2015 Act introduced FGMPOs for the purposes of protecting a girl against the commission of a genital mutilation offence or protecting a girl against whom such an offence has been committed. The court may make a FGMPO on application by the girl who is to be protected or a third party. The court must consider all the circumstances including the need to secure the health, safety, and well being of the girl. An FGMPO might contain such prohibitions, restrictions or other requirements for the purposes of protecting a victim or potential victim of FGM. This could include, for example, provisions to surrender a person's passport or any other travel document; and not to enter into any arrangements, in the UK or abroad, for FGM to be performed on the person to be protected.
- **Mandatory Reporting of FGM:** Section 74 SCA 2015 inserts a new section 5B into the FGM 2003 Act that creates a new mandatory reporting duty requiring professionals working within healthcare or

social care, and teachers. It includes doctors, nurses, midwives, and, in England, social workers, teachers and social care workers in Wales. The duty applies where, in the course of their professional duties, a professional discovers that FGM appears to have been carried out on a girl aged under 18 (at the time of the discovery). The duty applies where the professional either is informed by the girl that an act of FGM has been carried out on her, or observes physical signs which appear to show an act of FGM has carried out and has no reason to believe that the act was necessary for the girl's physical or mental health or for purposes connected with labour or birth.

- **Guidance about FGM:** Section 75 SCA 2015 inserts new section 5C into the FGM Act 2003 and confers the Secretary of State a power to issue statutory guidance on FGM which relevant individuals are required to have regard to.

2. Domestic Abuse

There is no specific offence of domestic abuse in English legislation and investigators and prosecutors are left to consider the range of criminal offences to reflect the totality of the offending. HM Government launched a [consultation](#) on 8 March 2018 relating to this whilst seeking views about the Domestic Violence and Abuse Bill.

The terminology in England and Wales has shifted to refer to such offending as domestic abuse following the introduction on 26 March 2013 of the new cross-government definition of domestic violence and abuse and now includes *'any incident or pattern of incidents of controlling, coercive, threatening behaviour, violence or abuse between those aged 16 or over who are, or have been, intimate partners or family members regardless of gender or sexuality. The abuse can encompass, but is not limited to psychological, physical, sexual, financial and emotional.*

Controlling behaviour is a range of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour. Coercive behaviour is an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten their victim.'

Successful pressure from non-government organisations (NGOs) to introduce a specific offence to close the gap in the law around patterns of coercive and controlling behaviour during a relationship between intimate partners, former partners who still live together or family members resulted in the introduction of Section 76 of the Serious Crime Act 2015. The new offence commenced on 29 December 2015 and is intended to help victims experiencing the type of behaviour that stops short of serious physical violence but amounts to extreme psychological and emotional abuse. The CPS data detailed in the previously referenced 10th VAWG Report confirms that since the introduction of the offence of controlling or coercive behaviour 309 offences have been charged and reached a first hearing. This must be considered within the wider context of prosecutions overall for offences of domestic abuse and it is noteworthy that this same report details that in 2016-17 the CPS convicted 70,853 domestic abuse cases.

3. Revenge Pornography

Section 33 of the Criminal Justice and Courts Act 2015, which was introduced in February 2015 created the new offence of ‘revenge pornography’ to criminalise the sharing of private, sexual photographs or films, where what is shown would not usually be seen in public. Sexual material not only covers images that show the genitals but also anything that a reasonable person would consider to be sexual, so this could be a picture of someone who is engaged in sexual behaviour or posing in a sexually provocative way. The offence applies both online and offline and to images which are shared electronically or in a more traditional way so includes the uploading of images on the internet, sharing by text and e-mail, or showing someone a physical or electronic image. The CPS 10th VAWG Report states that in 2016-17, 465 prosecutions were commenced for this new offence.

4. Court processes to support victims in court

In England and Wales there is provision for a range of measures to be used to facilitate the gathering and giving of evidence by vulnerable and intimidated witnesses in court to enable such witnesses to give their evidence. These measures, which were created by the Youth Justice and Criminal Evidence Act 1999 (YJCEA) are collectively known as ‘special measures’.

Special measures are a series of provisions that help vulnerable and intimidated witnesses give their best evidence in court and help to relieve some of the stress associated with giving evidence. Special measures apply to prosecution and defence witnesses, but not to the defendant and are subject to the discretion of the court. Paragraph 2.21, Part B, of the [Code of Practice for Victims of Crime](#) (the Victims’ Code) requires prosecutors to give early consideration to making a Special Measures application to the court, taking into account any views expressed by the victim (see the [Code of Practice for Victims of Crime: CPS Legal Guidance](#)). The [CPS’s Special Measures legal guidance](#) details the range of measures available to support vulnerable and intimidated witnesses in court.

1.2

Case-law of national courts in legal cases of violence against women

A. Tendencies of case law from national courts on cases of violence against women

1. Unused material

A number of cases in England and Wales in 2017 and early 2018 have resulted in the review of the handling of unused material by the police and prosecutors. Disclosure of unused material i.e. that which undermines the prosecution case or supports the defence case (if a defence statement is used) by the CPS to the defence is a significant area of improvement in rape and other sexual offences cases in England and Wales. The duty of disclosure is an on-going one.

In England and Wales 13 rape trials collapsed after failures to disclose unused material in 2016/17. This figure doesn't include the 4 cases, which collapsed recently, including one in which an accused had been on remand in prison awaiting trial. Some failures in disclosure reported recently have related to failure to disclose digital media. These matters are the subject of a high level police and CPS review, the fuller details of which are unlikely to be published. Between January and March 2017, HM Crown Prosecution Service Inspectorate (HMCPIS) and HM Inspectorate of Constabulary (HMIC) carried out an inspection into the police and CPS compliance with the disclosure of unused material provisions. This [joint inspection](#), published in July 2017 found widespread failures across the Criminal Justice System in relation to the disclosure of evidence.

This is a matter of notable concern, which needs to be satisfactorily addressed in the interests of justice. Any failure to carry out the disclosure process appropriately can result in miscarriages of justice and a loss of confidence in the criminal justice agencies and the criminal justice system.

2. Rape – gender as deception to obtain consent

The Court of Appeal in *Justine McNally v R* [2013] EWCA Crim 1051 determined that deception as to gender can vitiate consent (paragraph 27). Whether there has been deception as to gender will require very careful consideration of all the surrounding circumstances including how the suspect perceives his/her gender; what steps, if any, he/she has taken to live as his/her chosen identity; and what steps, if any, he/she has taken to acquire a new gender status.

3. Rape – retraction of original allegation of rape or domestic abuse

Where there has been a retraction of an allegation of rape or domestic abuse, the reason for the retraction must be understood. Retraction relates to a situation in which the victim has withdrawn their original allegation stating it was untrue. Sometimes the retraction itself is then withdrawn and the victim reverts to maintaining the truth of the original complaint - a "[double retraction](#)". The comments of the Lord Chief Justice in *A (R v A)* [2010] EWCA Crim 2913) are helpful in providing guidance to prosecutors stating that "experience shows that the withdrawal of a truthful complaint of crime committed in a domestic environment usually stems from pressures, sometimes direct, sometimes indirect, sometimes immensely subtle, which are consequent on the nature of the individual relationship and the characters of the people who are involved in it".

B. Presentation of influential national case studies on violence against women

Significant cases in the last twenty years have influenced the way VAWG offences are treated in England and Wales.

1. Honour-based Abuse (HBA)

The term honour-based abuse (HBA) can be used interchangeably with honour-based violence (HBV) in England and Wales.

The murder of the late Ms Banaz Mahmud 2006

'This was a barbaric and callous crime.... To restore the so-called family honour, it was decided by her father and uncle that she should die and her memory be erased'. His Honour Judge (HHJ) Barker's sentencing remarks on 20 July 2007.

Ms Banaz Mahmud was born in Iraqi Kurdistan and aged 10 years she moved to the UK with her family and claimed asylum. Aged 17 Banaz entered into an arranged marriage, however, 2 years later following domestic sexual and physical abuse Banaz left him and returned to live with her parents in Mitcham, London. Following this separation, Banaz formed a relationship with another man – Rahmat Suleimani, which was deemed 'unsuitable' by male family members. In December 2005 Banaz's paternal uncle Ari Mahmud called a family council, which sealed Banaz's fate. It was determined she had brought shame on her family. Banaz and Rahmat faced a series of threats, including an attempt on Banaz's life by her father on 31 December 2005. On 25 January 2006, Banaz was reported missing by Rahmat, days after he was threatened in the street. The Metropolitan Police Service (London) began a three-month intensive high-risk missing person investigation. On 29 April 2006 Banaz's decomposed body was found in a suitcase buried in a shallow grave in a rear garden in Birmingham, some 200 miles away from her family home in London.

Following a large number of arrests and close working relationship with the CPS, Banaz's father, Mahmud Mahmud, her paternal uncle, Ari Mahmud, and another relative, Mohammed Hama were charged with her murder. The investigation, which used the fullest range of conventional and covert surveillance techniques similar to those used in serious and organised crime investigations, continued after the 3 were charged. Given the depth and breadth of the investigation, its sensitivities and complexities including risks to 2 protected witnesses the police investigation team, CPS and prosecuting Counsel came together as an formidable team. On 11 June 2007 the 3 were convicted of Banaz's murder and sentenced to life imprisonment. As the investigation progressed other Iraqi Kurdistan community members were arrested, charged and convicted of crimes associated with Banaz's murder e.g. perjury and preventing the lawful and decent burial of Banaz – including 2 defendants - Mohammed Saleh Ali and Omar Hussain who were extradited from Iraqi Kurdistan, following a criminal justice hearing – a British Criminal Justice first.

Between September 2005 and January 2006, Banaz came into contact with police officers from the Metropolitan Police Service and West Midlands Police on five occasions, during which serious allegations including sexual assault and threats to kill were made. The Independent Police Complaints Commission (now the Independent Office of Police Conduct) would later find there were deficiencies in how some police officers responded to and investigated these allegations. The IPCC's report, which was published in November 2006 is entitled; '*Independent Investigation – Executive Summary Contact between Banaz Mahmud and the Metropolitan Police Service and West Midlands Police September 2005 - January 2006*'.

The so-called honour killing of Banaz Mahmud acted as a notable catalyst for changes to how the police forces in England and Wales investigated and responded to HBV and also dramatically influenced police forces and CPS prosecutors' knowledge. In October 2008 the Association of Chief Police Officers' (now National Police Chiefs' Council [NPCC]) published its first HBV strategy to provide leadership, direction and gui-

dance to forces. An [updated NPCC HBA, FM and FGM strategy](#) providing guidance to the 42 police forces in England and Wales was published in December 2015. This strategy now uses the term HBA to replace HBV. The CPS however continues to use term HBV.

In addition the developments in policing responding to Banaz's honour killing, a team of about 20 senior CPS prosecutors; all of whom had experience of complex organised crime cases, were given up-to-date multi-agency training and deployed in the honour violence hotspots of London, the West Midlands, West Yorkshire and Lancashire as part of CPS' improved approach to such cases to improve prosecutions.

2. Modern Slavery

Man becomes the first person in the UK to be jailed for keeping his wife as a slave in a case domestic servitude; Modern Slavery.

Ms Iram, a 29-years old and a MA graduate entered into an arranged marriage to Safraz Ahmed in Pakistan in 2012. She joined her husband in the UK and had her mother-in-law living with them in London. Soon after joining her husband in the UK a second marriage ceremony was held and the abuse started. Prosecutor Caroline Haughey said he slapped her across the face calling her "a whore" and "a shameless woman", adding "he had married her so she could look after his mother and his house" (source: [BBC](#)). She was tortured for 18 months before raising the alarm in August 2014. She was beaten regularly and endured an existence of "violence, intimidation, aggression and misery". The victim was never allowed out of the house by herself. During the abuse and in desperation she took an overdose of painkillers, was denied medical attention but was taken to a wedding celebration.

In a victim impact statement, Ms Iram, said: "Because the beatings happened regularly and for such small things I felt worthless. I was never allowed to step out of the house alone and I was not allowed to make friends. I felt like their prisoner. I cooked, I cleaned, I washed, I ironed, and looked after other people's children and when things were not to the liking of the family I was punished by beatings. I felt that there was only one purpose of my life and that was to serve this family."

Ahmed was convicted of holding a person in servitude and assault causing actual bodily harm. In sentencing Ahmed, Judge Christopher Hehir told him: "She was bullied and controlled by you, given little money and expected to cook, clean and look after your family as if she was a skivvy".

"She described your behaviour as physical and mental torture and in my judgment she was right". Judge Hehir told Ahmed cultural differences did not excuse his actions. Ahmed was jailed for two years.

Suffice to say this was a creative use of the Modern Slavery Act 2015, which tested this legislation for the first time in the Crown Court and is likely to prompt a number of similar cases of domestic servitude being heard before the criminal courts as learning from this case will have been shared across the CPS and police service. Certainly campaigners highlighted that there are many more similar cases, with women suffering similar abuses.

1.3

National practices in supporting women who have suffered gender violence

A. Bad practices from police or judicial authorities to women victims of gender violence

Performance Challenges

This chapter clearly highlights the many developments in legislation, policies / strategy and joint working between Police strategic organisations, police forces and the CPS as shown in Section B below. However, there are areas that require improvement and present performance challenges, for example, the lack of successful prosecutions for cases involving FGM, FM, and HBA. There have been improvements in the handling of sexual offences, but challenges still remain.

1. HBV/A and FM

Despite the plethora of guidance material to increase the knowledge and awareness of police officers, the number of cases referred by the police to the CPS for a charging / prosecution decision for FM and HBV/A is in decline as published in [CPS Violence against Women and Girls crime report for 2016-2017](#). This is indicative of some of the challenges involved in investigating such crimes including:

- the many barriers to reporting to the police including securing the trust and confidence of victims to report to the police in a timely way, which means securing the evidence, which otherwise may be destroyed, lost or put out of reach;
- the fact that victims do not wish to criminalise their parents or siblings;
- the organised nature of offending (with extended family and community members involvement in offending) creates a climate of fear deterring victims and witnesses participating in investigations and/or court proceedings;
- Victims and witnesses fear being isolated from family and friends and being ostracised by their communities. Isolation is one of the greatest risks facing victims who have escape resulting in mental health problems and for some returning to their abusers.

[An inspection of the 42 police forces in England and Wales](#) was conducted in 2015 by Her Majesty's Inspectorate of Constabulary (now known as HM Inspectorate of Constabulary and Fire & Rescue Services) in relation to HBV FM and FGM, particularly: (a) their preparedness for responding to such crimes, (b) Leadership, (c) Awareness and Understanding, (d) Protection and (e) Enforcement and Prevention. A key finding of this inspection was that only 3 of the 42 police forces were fully prepared across all aspects of the inspection. This confirms the scale of the challenge faced by police forces in preventing, responding and tackling this complex form of VAWG. Training and raising awareness in this complicated subject area, as is the acquisition of a genuine understanding of risk assessment & management with 130,000 police officers (in England and Wales) alongside their other notable demands.

There is also a need for CPS prosecutors and barristers to be aware of honour, HBV/A and its various manifestations so that they can effectively discharge their functions in partnership to preserve life, prevent and detect crime, protect and safeguard and bring offenders to justice as appropriate.

The legal framework in England and Wales does not as yet cover the full range of risks faced by honour-based victims. This may act as an additional barrier to police referrals to the CPS and to victims accessing justice. Whilst there are laws criminalising FGM and recently FM, with accompanying protective orders there are no similar provisions currently for victims of HBV/A. In addition, at the time of writing no specific sentencing guidelines exist for courts for offences relating to HBV/A. This is an area for improvement, which was also identified by HMIC in its 2015 inspection (as previously described).

2. Prosecuting FGM cases

There has been no successful prosecution for FGM in the UK despite having legislation since 1985. The Home Affairs Select Committee in its role of holding HM Government and organisations to account, have been particularly intrusive and damning on the subject of FGM leading to several inquiries and demanding progress, whilst making recommendations. In its [latest report](#) on FGM the Select Committee said, 'It is beyond belief that there still has not been a successful prosecution for an FGM offence since it was made illegal over 30 years ago. That is a lamentable record and the failure to identify cases, to prosecute and to achieve convictions can only have negative consequences for those who are brave enough to come forward to highlight this crime. In the absence of successful prosecutions, FGM remains a national scandal...'. In paragraph 55 of the same report the Select Committee identifies the successful prosecutions for FGM related offences in France, the Committee notes that despite the different legal structures and traditions the UK could learn about different methods to prosecute FGM.

In the 2015 UK the first FGM prosecution and trial related to the prosecution of an obstetrics and gynaecology registrar (Whittington Hospital, London) and the husband of a patient who had given birth (R v Dr Dhanuson Dharmasena and Hosan Mohamed). The matter was originally referred to the police service by Whittington Hospital after a report was made to the hospital authorities by another medical professional.

The facts are that the patient had previously undergone FGM, and the doctor is alleged to have re-infibulated her post complicated delivery. In the case the defence argued that the historical literal interpretation of infibulate referred to the 'narrowing of the vaginal orifice with the creation of a covering seal by cutting and appositioning the labia minora/majora with or without the excision of the clitoris'. The victim had FGM by infibulation at the age of 6 years and the procedure was later reversed when in the UK. The defence submitted that the single figure of eight stitch, which was performed by the doctor at the Whittington hospital to stop the woman bleeding following an incision made in the course of labour fell short of FGM. Mr Justice Sweeney, however, concluded following legal argument that the offence is committed 'if a person infibulates the whole or any part of a girl's labia minora and/or labia majora. The infibulation need not necessarily significantly occlude the vaginal introitus'.

On 4 February 2015, both men were found not guilty of offences under the FGM Act and allied offences. The doctor was alleged to have performed reinfibulation on a woman after she had given birth. The FGM survivor in this case gave evidence for the defence. The police investigator and the CPS reviewing lawyer had been in close consultation with each other from the inception of the investigation. The identified learning from this case included the need for a more timely police investigation, which included securing a statement from the FGM survivor as soon as practicable after the commencement of the police investigation; and the selection of the right medical experts engaged by the prosecution is critical.

The issue of selecting the right expert medical witnesses for the right reasons, was highlighted in the Family Court case *B and G (children) (no2) v Leeds City Council [2015] EWFC3*. This matter related to care proceedings in relation to two children, B, a boy, born in July 2010 and G, a girl, born in July 2011 (these are not their real initials). The children's parent had originated from an African country, although the mother was born and brought up in a Scandinavian country. The proceedings were commenced in November 2013, after it was alleged that the mother had abandoned the girl (G) in the street. B and G were placed in foster care the same month. The case related to whether G had undergone or was at risk of FGM. Sir James Munby, President of the Family Division, High Court noted that this was a complex and the first time that FGM had been aired in the Family Division in the context of care.

The President of the Family Division Sir James Munby said, 'It is unavoidable that I make findings about the expertise and reliability of the three experts' (*B and G (children) (no2) v Leeds City Council [2015] EWFC3, para 43*) and went on to describe the important lessons to be learnt from the case; highlighted at paragraph 79 of the judgement.

3. Domestic Abuse Homicide

The UK has been on a significant historic journey in how it tackles domestic violence and abuse. There have been notable recent developments in legislation, which are highlighted elsewhere in this chapter that have also had a major impact on how police forces and the CPS respond to cases. It is pertinent to note that VAWG crimes account for 19.3% of the CPS' caseload and more than 80% of this relates to domestic abuse.

In 2017-18 there were 93,590 prosecutions (from 110,833 police referrals) and 70,853 convictions for domestic abuse; a 61% rise in convictions since 2007-08. However, over the past 3 years (to March 2017) there were 454 domestic abuse homicides in England and Wales; an average of 151 homicides per year, despite the depth and breadth of developments.

The level of domestic abuse homicide is a matter of concern as are the continued lessons to be learnt from such homicide cases through domestic homicide reviews. Section [9 Domestic Violence, Crime and Victims Act 2004](#) statutory agencies including the police service, local authority, strategic health authorities and are required to participate in such a review. The CPS may also be invited to attend such meetings in England and Wales.

In addition, in certain circumstances HM Government's relevant Secretary of State can direct that a homicide review be undertaken. An independent chairperson, who subsequently produces a report, making recommendations with the aim of learning the lessons and preventing similar occurrences in that area, leads each homicide review. HM Government's Home Office has a Quality Assurance Review Panel, which considers the independent homicide report to ensure that it meets the high standards set and effectively addresses the issues highlighted.

The Home Office's quality assurance panel has reviewed and assessed in excess of 400 DA homicide reports since 2011 (the analytical findings of which can be found by visiting the following [webpage](#)). It is disappointing to note that perennial deficiencies and areas for improvement continue to be identified in the Home Office's analysis. The key areas for improvement include:

- **Record keeping.** This was highlighted as an issue in 28 out of 33 (85% of those sampled) intimate partner DVHRs sampled.
- **Risk assessment.** A commonly occurring theme with 27 out of 33 DVHRs (82%) highlighting this as an issue.
- **Communication and information sharing between agencies.** This was identified as an issue in 25 out of 33 (76%) DHRs sampled.
- **Identification and understanding of domestic abuse.** There were 24 cases (73%) where problems with identification and understanding of domestic abuse meant victims or perpetrators presented to agencies with possible signs of domestic abuse and/or domestic violence but this was not recognised or explored further.

4. Sexual Offences

The investigation and prosecution of rape and other sexual offences, particularly historic or non-recent offences including those connected to high profile media and other personalities and the use of digital media continues to be a notable challenge for the Police and CPS.

In 2016-17, a co-ordinated programme of work was implemented by the Police and CPS Joint National Rape Steering Group, including a national comprehensive training programme for specialist prosecutors. This was complemented by the more effective use of special measures introduced through the Youth Justice and Criminal Evidence Act 1999, notably section 28, which allows for cross examination of victims to happen earlier than the trial stage helping the victims' with memory recall as evidence is given closer to the time of the crime. This approach was piloted at Liverpool, Leeds and Kingston Crown Courts for children under 16 years prior to national rollout. In January 2017 this approach was extended to vulnerable witnesses under 18 years and to cases involving rape, serious sexual offences and modern slavery.

This activity contributed to an increase in the number of prosecutions and convictions for rape; 5190 and 2991 respectively. The 2991 convictions are the highest recorded in England and Wales over a 10 years period. This data is complemented by a rise in the prosecution and conviction of Other Sexual Offences (excluding Rape). There were 13,490 prosecutions in 2016/17 compared to 11,995 the year before and 10,721 convictions - a rise of 14.7% convictions in the same comparable period. Further details relating to this data can be found in The CPS's [10th Violence Against Women and Girls \(VAWG\) report](#).

The issue of sexual offences victims' 'right to be believed' and/or the issue of victims being taken seriously, particularly in historic cases has resulted in much discourse. The allied matters of naming alleged suspects and defendants prior to conviction and the challenges to a basic tenet of British Justice – the presumption of innocence have also resulted in much debate. This follows high profile cases and police investigations notably Scotland Yard's Operation Yewtree and Operation Midland investigations.

Operation Yewtree was the investigation into the now deceased media personality Jimmy Savile and other media and music industry personalities. The Operation Yewtree police investigation commenced in October 2012 following a BBC documentary in which 5 women recounted being abused by the late Jimmy

Savile in the 1970s. The joint Metropolitan Police Service (MPS) and National Society for the Prevention of Cruelty to Children's (NSPCC) report into allegations of sexual abuse made against Jimmy Savile can be found [here](#).

Whilst he was alive Surrey Police and The States of Jersey Police forces investigation sexual offences allegations against Savile, which resulted in insufficient evidence to take further action (decision taken by the CPS) and insufficient evidence to proceed (see also: '**Giving Victims a Voice**', A joint MPS and NSPCC report into allegations of sexual abuse made against Jimmy Savile under Operation Yewtree, paras 5.6, 5.7, p8).

A total of 214 crimes were recorded by 31 police forces across the UK. This investigation and inquiry prove to be a watershed in the investigation of sexual offences in the UK.

This inquiry identified a number of key outcomes including:

- A significant rise in the level of reporting of past sexual abuse of children. This is believed to be the result of media coverage about Jimmy Savile and victims' increased confidence that they will be listened to by the authorities.
- A better understanding of the reluctance to confront abusive behaviour, particularly that of dominant figures in positions of authority or influence.
- Reinforcement of the need for organisations and institutions to operate rigorous safeguarding and vetting procedures.
- Corroboration of the benefits of the integrated approach taken by police, the NSPCC, NAPAC (a charity supporting recovery from child abuse) and Child Exploitation On-line Protection Command (CEOP) and the opportunity to develop further understanding and best joint working practices when dealing with victims of child sexual exploitation. (NB: CEOP is a part of the UK's National Crime Agency).
- Increasing awareness about the importance of support for victims and the vital roles played by charities in this field.

Another of the MPS's (Scotland Yard) investigations named 'Operation Midland' was set up in November 2014 to investigate allegations of historic serious sexual offending and homicide of children and young people. A man in his 40s known as 'Nick' made allegations about VIPs including a former Prime Minister, former Home Secretary, former Chief of the Defence Staff, former MP and former Directors of the intelligence services. This case highlighted different challenges for the police. Police investigators searched the homes of a former Member of Parliament and a former Chief of Defence Staff. In March 2016, however, Scotland Yard confirmed that the investigation had been closed down. It was found that the alleged perpetrators had been falsely accused. In a further twist the alleged victim 'Nick' has himself been recently charged in relation to possessing indecent images of children.

Sir Richard Henriques (a retired High Court Judge) was appointed by Scotland Yard to conduct an independent inquiry into Operation Midland. Sir Richard makes 25 recommendations in his [2016 report](#), entitled: "An Independent Review of the Metropolitan Police Service's handling of non-recent sexual offence investigations alleged against persons of public prominence".

Of importance the first 2 recommendations relate to the use of terminology i.e. the use of ‘complainant’ pre-conviction and ‘victim’ after conviction. This has been here until now counter-intuitive for the police service, with senior police leaders and oversight organisations providing direction and guidance contrary to the Judiciary and the legal profession’s approach.

In its [2014 inspection report](#) on crime reporting HM Inspector of Constabulary recommended: ‘*The presumption that the victim should always be believed should be institutionalised*’ and the following, which is an extract from the [Operation Hydrant](#) guidance for senior investigating officers reported by the College of Policing in its [Summary of National Guidance on belief in victims’ allegations](#):

‘1.1 SIOs are responsible for ensuring victims are supported from the outset, and that a robust investigative approach is applied throughout.

1.2 The purpose of a victim strategy is to support and add value to the operational activity, to identify good practice to ensure that victims are fully supported during the investigation and to identify and address any ongoing risks to other potential victims. Adult victims who have been abused as children will often have experienced not being believed, being dismissed and silenced and feeling unable to share their experiences over many years. It is, therefore, essential that officers and staff now deal with their disclosures sensitively so that they can begin a process of recovery and have trust and confidence in any subsequent investigation.’

There is an abundance of police strategies and policies, which uses the terminology ‘victim’ and which is entrenched in police training.

There are a number of different factors to be considered in the aforementioned including:

- access to justice for the people alleging that they’ve been offended against in historic and recent cases
- clarity and agreed use and understanding of terminology to describe people who alleged they’ve been offended against
- the rights of alleged offenders being innocent until they have been proven guilty.
- the continuing debate regarding alleged sexual offence perpetrators being entitled to anonymity pre-conviction

In the interests of justice these matters should be addressed as soon as is practicable.

B. Good practices in supporting women victims of gender violence

HM Government and the England and Welsh Judicial System, CPS and law enforcement agencies recognise the value of playing its independent roles to protect women and girls experiencing violence and abuse. Over time good practice has emerged to support and protect women whilst holding perpetrators to account in the Criminal and Civil Justice Systems, which is reliant on each body and agency playing its role in

a qualitative way. This good practice includes:

(i) HM Government has developed a number of strategic guidance documents, which are intended to enhance the multi-agency approach to subject areas including [FM](#), [FGM](#) and [Child Sexual Exploitation](#).

These documents provide front line practitioners with invaluable information about the Do's and Don'ts of what to do and the Signs and Symptoms to enable practitioners to identify victims.

(ii) The guidance is also complemented at a strategic level by police guidance introduced by the [College of Policing](#) and the [NPCC](#). The College develops knowledge, standards of conduct, leadership and professionalism required by police officers, which is established through Authorised Professional Practice.

The NPCC has number of core functions including the co-ordination of national operations including defining, monitoring and testing force contributions to the Strategic Policing Requirement; the co-ordination of the national police response to national emergencies and the co-ordination of the mobilisation of resources across force borders and internationally; the national operational implementation of standards and policy as set by the College of Policing and Government; and to work with the College of Policing, to develop joint national approaches on criminal justice and performance.

The College of Policing has developed Authorised Professional Practice to provide leadership, direction and investigation standards in relation to the following VAWG subject areas:

1. [Domestic Abuse](#)
2. [FM and HBV](#)
3. [College of Policing FGM](#)
4. [Child Sexual Exploitation](#)
5. [Modern Slavery](#)
6. [Stalking and Harassment](#)
7. [Rape and Sexual Offences](#)

In relation to rape further guidance has developed on First Response to Rape, Challenging myths and stereotypes and Police Investigators tool kit for addressing the issue of consent.

To the complement the College of Policing's Authorised Professional Practice, the NPCC also developed a [strategy regarding HBA, FM and FGM](#), which provides policy guidance to the 43 police force chief constables in England, Wales and Northern Ireland.

(iii) The CPS has also provided a legal policy guidance to its prosecutors to consider in the prosecution of VAWG related crimes including:

- [Domestic Abuse](#)
- [Child Sexual Abuse](#)

- [FGM legal Guidance](#)
- [FM and HBV Legal Guidance](#)
- [Guidance relating to sex worker](#)
- [Talking and Harassment](#)
- [Human Trafficking, Smuggling and Slavery](#)

This legal policy guidance is complemented with training. For example the CPS has developed two new mandatory domestic abuse e-learning modules on evidence-led prosecutions and controlling or behaviour for all prosecutors. An aide memoire based on this e-learning has also been supplied to the police.

(iv) In England and Wales there is a strong working relationship with the CPS, police forces, College of Policing and NPCC. This professional working relationship is particularly strong in relation to VAWG matters where there is a recognition that there must be a united approach to secure the trust and confidence of vulnerable victims as well as obtain to the best possible evidence to secure successful prosecutions. This later aspect was also fundamental to securing vulnerable victims access to justice, whilst further securing their trust and confidence.

(v) In order to achieve the above the CPS, NPCC and Police Forces have conducted invaluable joint training sessions and developed joint protocols particularly in the investigation and prosecution of [Rape](#), HBA, [FM](#) and FGM.

CONCLUSION

The UK Government has set out their ambition in the VAWG Strategy 2016 - 2020. This requires collaboration and partnership working across all sectors between government departments, non-government organisations and engagement with victims of VAWG. The key aspirations are:

- To achieve a significant reduction in the number of VAWG victims, achieved by challenging the deep-rooted social norms, attitudes and behaviours that discriminate against and limit women and girls, and by educating, informing and challenging young people about healthy relationships, abuse and consent;
- For all services make early intervention and prevention a priority, identifying women and girls in need before a crisis occurs, and intervening to make sure they get the help they need for themselves and for their children;
- To enable women and girls to access the support they need, when they need it, helped by the information they need to make an informed choice;
- To provide specialist support, including accommodation-based support, will be available for the most vulnerable victims, and those with complex needs will be able to access the services they need;
- For services in local areas to work across boundaries in strong partnerships to assess and meet local need, and ensure that services can spot the signs of abuse in all family members and intervene early;

- To enable women to disclose experiences of violence and abuse across all public services, including the National Health Service (NHS). Trained staff in these safe spaces will help people access specialist support whether as victims or as perpetrators;
- For elected representatives across England and Wales will show the leadership, political will and senior accountability necessary to achieve the necessary change, and will champion efforts to tackle these crimes;
- For everyone in a local area will be able to hold their elected leaders to account through clear data on how local need is being met;
- To achieve a lower level of offending through an improved criminal justice response and a greater focus on changing the behaviour of perpetrators through a combination of disruption and support; and
- The development of a stronger evidence base of what works, and victim safety, will be embedded into all interventions to protect victims of VAWG.

The strategy also includes £80 million of dedicated funding to provide core support for refuges and other accommodation-based services, rape support centres and national helplines. A further £20 million was announced in the 2017 Spring Budget. Included within this £100 million total is a £15 million new VAWG Service Transformation Fund to support local domestic abuse service provision.

2

Greece



Introduction

“Violence against women is the most flagrant violation of human rights. It knows no cultural, economic or social boundaries. As long as it continues we cannot claim to be making substantial progress or achieving development and peace.”

The definition of violence against women was first adopted in 1995 by the United Nations Fourth World Conference on Women, and it is mentioned in paragraphs 113 and 118 of the Beijing Platform for Action. According to Article 113, the term “violence against women” means any act of gender-based violence that results in physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.

As is stated in Article 118: “Violence against women is a manifestation of the historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to prevention of women’s full advancement. Violence against women throughout the life cycle derives essentially from cultural patterns, in particular the harmful effects of certain traditional or customary practices and all acts of extremism linked to race, sex, violence, language or religion that perpetuate the lower status accorded to women in the workplace, the community and society.”

Gender-based violence should be interpreted as encompassing, but not limited to, the following acts: domestic violence, spouse murders, rape, domestic rape and incest, forced marriages, honour crimes, human trafficking, acts of racial violence, hate crimes due to perceived sexual orientation stalking and *female genital mutilation* (FGM). It must be acknowledged that, in these cases, violence is being used as a weapon of ensuring the skewed balance of power between men and women and reinforcing the shape of gender hierarchy.

Despite the fact that we are now living in the 21st century, the phenomenon of violence against women is a global pandemic that knows no social or economic boundaries, affecting women of all socio-economic backgrounds, and despite its huge negative impact on the development of humanity as a whole, the numbers are staggering.

Since the overwhelming majority of domestic violence is perpetrated by men, it would be interesting to examine the root causes that lead to this behaviour.

One of the main reasons is social norms. In fact norms related to male authority, acceptance of wife beating and female obedience affect the overall level of abuse in different settings. Also, the expectations society places on men also plays a key role, since men who are unable to provide for their family’s financial needs are often sanctioned by society. Men facing these problems may try to exert power over women and children in frustration or to prove their manhood.

Since the 1960s, the dominant models of masculinity and femininity in Greece have gradually been modified, while, at the same time, the state, as well as institutions, have paved the way for progress in the field of gender equality. There is an element regarding Gender Based Violence that has also been altered. It is the feeling of embarrassment for each perpetrator having committed the illegal act, at least until the 1960s, while nowadays, this feeling, in light of the political and social evolution, has been clearly shifted to the victim, being deemed as a typical feeling of this person. This feeling of embarrassment is one of the main reasons why these crimes remain unseen, hard to be identified and thus, they usually stay unpunished.

2.1

Overview of the national legal framework on violence against women

A. Implementation of the European and international legal framework for protecting women victims of violence

As regards the European legal framework that is applicable in Greece, the following directives and regulations have been transposed into national law:

1. Directive 2012/29 of the European Parliament and Council establishing minimum standards on the rights, support and protection of victims of crime, which replaced the Council Framework Decision 2001/220/JHA.
2. Regulation 235/2014 of the European Parliament of the Council of March 2014 establishing a financing instrument for democracy and human rights worldwide.
3. Regulation 1381/2013 of the European Parliament and of the Council of 17 December 2013 establishing a Rights, Equality and Citizenship Programme for the period 2014 to 2020.
4. Greece has adopted the European Parliament Resolution of 5 April 2011 on priorities and outline for a new EU policy framework to fight violence against women.

As regards the international treaties that have been transposed into national law, Greece has signed and ratified the following international treaties that have been transposed into national law:

1. The **Convention on the Elimination of all forms of Discrimination against Women (CEDAW)**, which was ratified by Greece on June 7th 1983. Greece has also ratified the Optional Protocol to the Convention on January 24th 2002. For Greece, the report to the Committee on the Elimination of all Forms of Discrimination against Women is drafted and submitted by the General Secretariat for Gender Equality and the last report was submitted in 2011.
2. Greece has also signed **the Council of Europe Convention on preventing and combating violence against women (Istanbul Convention)**, which, however has not yet been ratified.
3. Greece has adopted the UN Human Rights Council resolution on Eliminating all Sorts of Violence against Women.

B. Presentation of the national legal framework for protecting women victims of violence

The greatest piece of legislation among other anti-discrimination constitutional stipulations and provisions is Law 3500/2006, which entered into force from 24.01.2007 and criminalises violent forms of behaviour that are deemed to be problematic in the context of domestic life and are turned against the “vulnerable” members within a family. The law characterizes these behaviours as autonomous crimes. It concerns mainly women – but also other persons (minors, disabled persons, seniors) for which the lawmakers considered that a special provision was needed.

The lawmaker has declared in the Recital the intention to ensure that only the least possible intervention would take place, since it concerns a sensitive matter.

More specifically, the law:

- a. introduces a broader definition of family (article 1 par 2 a). The term “family” is viewed as more as a sociological rather than a legal notion. Neither does the term “family” appear in Greek family law, where the term is mostly linked with the family deriving from marriage. The definition of law 3500/2006 is much broader, since it consists of a circle of individuals, which are selected by different criteria, such as: (a) affinity (up to the fourth degree) – stricto sensu definition; (b) cohabitation; and (c) special relationships (permanent partners, their children and minors who live with the family);
- b. also includes the definition of the “victim of domestic violence” (Article 1 par. 3) The victim is considered as: (a) a person who belongs to the family, as prescribed by the law - against whom the criminalized behaviours take place or the ones prescribed in articles 299 (intentional homicide) and 311 (fatal injury) of the Greek Penal Code; (b) the underage member of the family before whom the aforementioned acts are committed. The justification for the introduction of this new crime variant lies in the psycho-social effects that these kind of incidents have on minors when they take place before them;
- c. at the same time, new provisions were introduced, which standardised more special crimes, divided into:

Misdemeanors

- i. Domestic personal injury, as well as dangerous domestic personal injury. These acts constitute variations of articles 308 (art. 6 par. 1) and article 309 (art. 6 par. 2)
- ii. The special crime that is prescribed in par. 3 of article 6 consisting of domestic personal injury (article 6 par. 1) against pregnant women or disabled members of the family or before an underage member of the family.
- iii. The crimes of domestic unlawful threat and violence (Article 7)
- iv. The special crime of insult of sexual dignity of a family member with particularly humiliating words (article 9 par. 1), and the same crime when committed against minors (article 9 par. 2)
- v. Obstructing the course of justice by intimidating or bribing witnesses who are examined within the course of civil or penal domestic violence hearings (article 10)

Felonies

- i. Domestic grievous bodily harm (article 6 par. 2 b). In this case if the perpetrator was aiming at or was aware of the result of his act, his behavior constitutes an aggravating circumstance (article 6 par. 2 c).
- ii. The special crime that is prescribed in par. 4 of article 6 refers to torture that takes place within the family, with an aggravating circumstance if the victim is a minor.

Furthermore, the Greek lawmakers should be given credit for the amendment of article 336 of the Greek criminal Code, which criminalises rape by article 8 of law 3500/2006, which regulated rape for the first time in the context of marital relationships.

The law provides for the ex officio prosecution of crimes of domestic violence, and the procedural regulations of Articles 19 (examination of witnesses) and 20 (confidentiality obligations) constitute a move in the right direction. Article 19 foresees the unsworn examination of family members in cases where one of the crimes covered by the law has been committed. And Article 20 aims at maintaining confidentiality for the personal details both of the victim and the defendant, which helps in the avoidance of further traumatization of the victims of such crimes. They both contribute to addressing the so-called “secondary victimisation”. The provisions of Article 16, also constitute a positive development as regards the suspension of the limitation period of crimes of articles 6, 7 and 9 of law 3500/2006 when an underage victim enters into adulthood.

The greatest novelty of law 3500/2006 is the introduction of a reconciliation (mediation) procedure in cases of domestic violence. According to this provision, it is prescribed that a procedure of reconciliation (as an alternative to legal recourse) can be initiated by the competent Prosecutor in cases of domestic violence misdemeanours.

According to this provision, there are three requirements that need to be fulfilled in order for this procedure to be initiated:

- i. A pledge by the defendant that he or she shall not commit any act of domestic violence in the future (parole) and that – in case of cohabitation – he or she shall stay away from the family residence for a reasonable time if the victim so wishes.
- ii. The attendance of a therapy programme specialised in domestic violence, organised by a public institution wherever and for as long as it is considered necessary by the therapists in charge.
- iii. The restitution of any damages caused by the act of domestic violence, as well as the payment of fair compensation.

The consequences of conciliation are prescribed in Article 13, where it is stated that if the suspect complies with the terms of conciliation for a period of three years, then the offence is eliminated.

The application of this law has so far produced encouraging results. According to data provided by the Prosecutor of Domestic Violence at the Athens Court of First Instance, Konstantina Aggelopoulou, during

the period from 2007 to 2010 the number of reported cases increased by 29%, whilst the number of closures of cases dwindled.

There are also other laws concerning gender based violence. The 18th and 19th chapters of the Greek Criminal Code (Crimes Against Personal Liberty and Security, Art. 322 et seq. and Crimes against Sexual Freedom and Economic Exploitation of Sexual Life, Art. 336 et seq.) constitute the corpus of the criminal provisions as regards legal protection against gender-based violence. It should also be noted that the penalisation of sexual harassment in the workplace has been laid down for the first time, as per paragraph 5 of Article 337 CC which was introduced by Law 3896/2010. At the same time, Article 312 CC which is related to the causing of harm on the basis of ongoing harsh treatment has been amended by Law 4322/2015 (Article 8) in order to cover instances of intimidation. In any event, Law 3064/2002 is established with a view to cases such as trafficking, modern forms of human trafficking (in particular the smuggling intended to bring about the sexual and labour exploitation) as well as organ trafficking to fall within the scope of its provisions. Most of the aforementioned criminal offences have been categorised as felonies while severe sentences, even life sentences for a number of them, have been set out.

Moreover, pursuant to Article 81 A CC, in so far as the offence committed is based on one's race, sexual orientation, gender identity and sex characteristics, the penalty limits increase. As far as the crime of female genital mutilation is concerned, though, it should be underlined that there is no specific national provision under which that offence can be punished. Nevertheless, it is widely argued that this offence could fall under Article 310 CC since this Article is related to grievous bodily harm with intent. Likewise, there are no national law provisions expressly criminalising forced marriages, given that these marriages - which are still taking place in other countries - are contracted lawfully between minors. Therefore, starting from the presumption that this type of marriage is, in principle, prohibited according to the Greek Civil Code (Art. 1350 subpar. b') and it may be allowed in exceptional cases and on serious grounds, the absence of criminal provisions on forced marriages (FM) is deemed appropriate. Further, for a marriage between minors to be valid, alongside the Court's authorisation, a prior hearing of the people having child custody is also required. As a result, the national legislator has not yet had to deal with this specific criminal offence.

2.2

Case-law of national courts in legal cases of violence against women

A. Tendencies of case-law from national courts on cases of violence against women

Greek case law on violence against women

A common pattern that has occurred many times, and especially in the past, is that of the murder of the

tyrannical husband; an issue with a great practical significance which is purely based on the long-term, systematic and abusive behavior of the husband over a period from 2 to 20 years. As a result of the behaviour in question, the partner-wife of the harsh tyrannical husband decides to perpetrate the crime of intentional homicide against him. Therefore, the question arises as to whether the woman's lawyer is offered any defence possibilities. In any case, the view is tenable that this limitation should not apply in the event of long-term violent behaviour affecting the dignity of the wife. Although there are several objections in terms of legal theory related to the occurrence of a state of defence during killing, they have not however been made available to the courts' rulings on the merits nor have they been highlighted by defence lawyers. Nevertheless, the definition contained in Article 25 GCC serves as a stepping stone to support a submission of an ongoing emergency which poses risks that may lead to harm. The emergency emanates from the position of the man-oppressor and might be addressed by killing him.

A major stumbling block for the defence lawyer is the condition of the "imminent, otherwise *unavoidable risk*" of Articles 25 and 32 GCC, since it is obvious that there is the possibility to a certain extent for the women to leave the potential risk "centre" and resort to a shelter for people in distress. Moreover, according to judgment 1176/86 of the Supreme Court of Greece, it is apparent that, apart from women, also the *children* can be considered as victims of long-term violence. On top of that, another argument of interest appears, which is referred to as the absence of the heat of passion. More particularly, it was stressed that the affirmation of sudden hyperstimulation cannot be adopted in a case of long-term abuse, and other factors taken into account include the period of time between the latest incident of violence and the murder of the offender – which also implies emotional sobriety in the victim – and a five-minute to six-minute reluctance of the victim just before the final, fatal decision as well.

A number of judgments concerning cases decided under Law 3500/2006 can be mentioned as follows: 182/2014, 1213/2015, 1095/2015, 769/2015 and 508/2015 of the Supreme Court of Greece. Similarly, as far as the separate plea in law of the offender is concerned, there are judgments 1110/2014 and 621/2014 of the same Court. It is also essential to note the provision of Articles 2 and 4 of the Law according to which corporal punishment is absolutely prohibited as a pedagogical method. Meanwhile, in Article 6 par. 3 a distinct variant of domestic violence is introduced when the crime takes place in front of a minor. In this case, the minor must be associated with the incident through visual perception of it. A relevant judgment is the following: 268/2014 of the Supreme Court of Greece. Last but not least, pursuant to Article 9 Law 3500/2006, the family member who insults the dignity of another family member which results in particularly degrading treatment relating to his sexual health and integrity shall be liable to imprisonment not exceeding two years, while there is a penalty of at least six months of imprisonment for the same offence if the victim is a minor. To sum up, judgment 1196/2016 of the Supreme Court of Greece is highlighted according to which statements were hurled by a father against his minor daughter laced with contempt and scorn towards her.

Another recurring pattern is that of the notion of honour in crimes of gender based violence. Greece is one of the areas, where honour was considered as an organisational principle and typical feature on which societies were based on. Honour was thought to be the key link between family members relating not only to one's self-esteem and self-image but - which is of concern to us - mostly to public recognition of one's value. The preservation of "honour" specifies specific types of conduct, strictly different between men and

women, within a framework of acclaim and acknowledgement of male superiority over women. As far as the woman is concerned, honour was closely connected with sexual chastity and inhibition.

Contrariwise, male honour is equated with the purposeful protection of the family's honour, the defence and perseverance of its prestige and consideration. The accomplishment of this role was, for the man, synonymous with his manhood. He who took offence at honour-related matters was bound by duty to restore the reputation of the family. Additionally, two versions of punishment emerge. The first implies the imposition of punishment upon the man - outside the sphere of family members - who openly disgraces family honour through his actions and brings shame on it (e.g. by refusing to marry the 'corrupted' daughter or sister). In the second version, punishment is meted out within the family to the "immoral" daughter or sister whose behaviour dishonours the family. Despite the fact that honour killing crimes have been declining in our country, on the one hand they are still increasing in other countries, and on the other hand, the punishment of a woman's body either through an extreme form of bodily partition (case Frantzis, case Valbona) or seen as a daily practice has not ceased to exist.

B. Presentation of influential national case-studies on violence against women

Landmark Greek case law on FGM

In 2014, a landmark ruling by the Athens Administrative Court of Appeals placed a temporary hold on the deportation of a Kenyan woman and her three underage children because they would face female genital mutilation if they returned to their country, recognising for the first time that female genital mutilation may constitute grounds for asylum.

Furthermore, recently, the prosecutor of Greece's Supreme Court ordered an urgent investigation into claims of genital mutilation in juvenile refugee and migrant girls in the country's reception centres. In a press release issued by the Supreme Court, the prosecutor stressed that this practice is "a barbarity that cannot be tolerated" by the Greek State. According to the claims, dozens of girls under 15 underwent this torture. Their parents hired either midwives or unauthorised imams for a fee. The operations are performed without anesthesia, safety or hygiene rules in some hot spots across the country and it seems that a whole industry has been established in Athens.

2.3

National practices in supporting women who have suffered gender violence

A. Bad practices by police or judicial authorities involving women victims of gender violence.

Unfortunately several bad practices regarding post-violence care in Greece, such as not taking into account sociological theories about VAW (e.g. the reluctance to file official complaints against the perpetrator of GBV) are still taking place. In fact there was a case where the Juvenile Prosecutor assessed the mother's

attitude as improper as she did not take any legal action against the perpetrator of GBV which occurred in front of the minor children, and this resulted in the deprivation of her custody rights.

In the case of victims of foreign origin, there are additional challenges, e.g. lack of supportive network, language barriers and uncertain legal status. There are cases of foreign women who ended up in detention due to the lack of a residence permit. Further, the list of certified interpreters is not used by police officers in receiving complaints. However, no legal stay needs to be proved in case of appearing before Greek judicial authorities.

B. Good practices in supporting women victims of gender violence

As regards the legal framework concerning post-violence care, a legal entity governed by public law under the name “National Center of Social Solidarity” was founded by law no. 3106/2003. It provides care for individuals, families and population groups who are in emergency situations such as victims of domestic violence. The competences of this public entity include the provision of short-term counselling services to an individual, group and community level to couples, families and other population groups. It also runs information campaigns and covers basic needs such as housing, food and clothing, on-site interventions in places where the violent incident is reported, as well as the development of a network of cooperation with other entities that deal with handling these types of emergencies. Apart from this institution, there are 26 women’s shelters in Greece, with approximately 470 shelter beds for women and their children.

Furthermore, the helpline “Womensos”, created under the auspices of the General Secretariat for Gender Equality (GSGE) operates 24 hours day. During the first two years of its operation, it received 10,176 calls, of which 79% involved incidents of gender-based violence.

CONCLUSION

It is regrettable that even though the global community has come a long way, gender equality is still far from becoming a reality, whereas gender based violence is still one of the greatest challenges of humanity and affects even the most developed countries. Hopefully, international cooperation will enable all states to engage in tackling violence against women through the adoption of best practices and the application of uniform standards as regards preventing and combatting the phenomenon.

3

Ireland



Introduction

In Ireland, the Domestic Violence Act 1996 came into force on the 27th March 1996. It replaced several earlier Acts which had provided limited reliefs to victims of domestic violence.

It was an Act designed to make provision:

- For the protection of a spouse and any children or other dependent persons
- For persons in other domestic relationships – whose safety and welfare required it because of the conduct of another person.
- Also to provide for arrest without warrant in certain circumstances
- To provide for the hearing at the same time, of certain applications to the Court for Orders relating to custody, access or maintenance.
- To make Orders both in the District Court as a ‘stand alone’ remedy and in the Circuit Court in the context of either Judicial Separation or Divorce proceedings

In the last 21 years there have been some amendments to the 1996 Act namely:

- By the Family Law (Miscellaneous Provisions Act) 1997
- The Domestic Violence (Amendment) Act 2002
- The Civil Law (Miscellaneous Provisions) Act 2011
- By the Domestic Violence Bill 2017

3.1

Overview of the national legal framework on violence against women

A. Implementation of European and international legal instruments on violence against women

1st August 2014 marked the entry into force of the first legally binding instrument in Europe that specifically targets violence against women and domestic violence known as the **Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)**. It requires States to take steps to prevent and eliminate all forms of violence and discrimination against women and to implement policies, practices and supportive measures that assist survivors and relevant agencies. It was drafted

Acts of Parliament are debated and discussed by the Senate (upper House) and Dail (lower House) (the Oireachtas). Once passed, the Act is signed into law by the President and an Order commencing the Act will then be signed by the relevant Minister.

The 1996 Act prescribed two principal forms of protection – the Barring Order and the Safety Order. In addition it facilitates the making of interim Orders where immediate protection is required pending a Court fully determining proceedings initiated under it. An application can be made under the Act by persons in need of protection themselves and/or for a dependent person. These are Protection Orders and Interim Barring Orders. Reliefs are available to spouses, cohabitees, family and parties who have a child together.

Over the past 22 years there have been many calls for changes to the Domestic Violence Legislation in order to protect new families, children, parties who have had a child together, co-habiting couples and parents as well as expanding the nature of the reliefs that can be sought under the Act. In 2017 the [Domestic Violence Bill 2017](#) was published and in late 2017 this Bill, with a considerable number of amendments, passed through the Senate 2017. It will now go to the Dail and as it has all party consent, it is anticipated that early in 2018 this Bill will become an Act and will be signed into law by the President. The aim of the Bill was to consolidate the law on Domestic Violence and also to provide for emergency Barring Orders in certain circumstances and various other reliefs.

A major change in the proposed legislation is Section 5 of the Bill setting out the factors or circumstances to which the Court shall have regard in determining applications for specific Orders. For the first time there is a recognition by the legislature that domestic abuse does not happen in a vacuum and can be a continuing and insidious level of behaviour perpetrated against a woman by her spouse or partner. Therefore the factors to be taken into consideration and which may have a bearing on the application before the Court include

- any history of violence inflicted by the Respondent on the Applicant
- any previous convictions on the part of a Respondent for an offence that involves violence;
- the level of severity or the increase in frequency over time of such violence;
- any evidence of deterioration in the physical psychological or emotional welfare of the Applicant or a dependent person
- fear of the behaviour of the Respondent.
- as stated, the 20 factors to be taken into consideration by the Court are listed in Section 5.

The jurisdiction of the Court in respect of Civil Proceedings previously issued under the 1996 Act and in future to be issued under the 2017/2018 legislation is as follows:

- a. (i) By **the District Court** in the area or district where the Applicant resides. Proceedings are issued in the District Court (of which there are 24 Districts and sixty four judges), by the issuing of a Notice of Application seeking the relief required by the Applicant.
(ii) Practice and Procedure;

If emergency relief is required by means of a Protection Order, Interim Barring Order or Emergency Barring Order, this can be done in person by an Applicant ex parte (in other words the Respondent is not present). The hearing of any final application sought in conjunction with an Emergency Order must be returned to the Court within a period of 8 working days (Section 8 Sub-Section 14). Such notices of application may be issued by the officials in the relevant District Court Office or in the alternative may be issued and served by any legal representative of the Applicant. Applications made before the District Court shall be as informal as is practicable consistent with the administration of justice. Such applications can be linked to applications for maintenance, access or custody and can have the effect of a de facto separation between the parties. Applications tend to be heard within a period of 6 to 8 weeks from the date of application (save where emergency relief is sought as stated above).

- b. (i) It is also possible for an Applicant to seek relief under the Domestic Violence Legislation in the **Circuit Court** but such application will be part of proceedings applying for a Judicial Separation under the Family Law Act 1995 or a Divorce under the Family Law (Divorce) Act 1996. There are 38 Circuit judges sitting in 8 different circuits.

(ii) Practice and Procedure; In the context of these Acts the Applicant and/or the Respondent may claim ancillary reliefs which can include reference to Orders sought under the Domestic Violence Legislation. Even if such Orders are not granted in any application for Judicial Separation, the Court is empowered to make an Exclusion Order as both parties cannot continue to reside in the same premises post separation. This provision may make an application for relief under the Domestic Violence Legislation irrelevant save and unless there is a continuing risk of stalking, watching or besetting of one party by the other which the Applicant is concerned will continue post separation or post-divorce. In such a case a Safety order may be granted.

- c. A Respondent who contravenes an Order made under the Act commits a criminal offence and shall be liable on summary conviction to a fine or imprisonment. The proposed new legislation extends the privilege of in-camera to summons issued for a breach on the part of the Gardai. It increases the penalties on conviction and it creates inter alia new offences of forced marriage, and exercising cohesive control. It sets out that the relationship between the defendant and the victim shall be an aggravating factor in sentencing for certain offences. It is important to distinguish the burden of proof in a criminal case (*beyond all reasonable doubt*) as against the burden in Civil Cases (*on the balance of probabilities*)
- d. If an Applicant does not qualify to seek relief under the Domestic Violence Legislation **The Non-fatal Offences against the Person Act 1997** (and all amendments thereto) may give the necessary relief but an application under this Act or indeed a request on the part of the Applicant to have a summons issued, means that any action taken will not have the benefit of the in camera rule. Such remedies are available for offences under the above Act involving assault, coercion, harassment and many other offences. Once again a new Bill is before our Houses of Parliament extending the powers contained in this Act to take into account cyber bullying and all forms of electronic harassment
- e. [COSC](#) is the National Office set up by the Department of Justice for the prevention of domestic, sexual and gender based violence. In Ireland **the Second National strategy on Domestic Sexual and Gender Based Violence runs from 2016 to 2021**. A national monitoring committee has been set up under the Department of Justice, the purpose of which is to monitor the progress in implementing all of the actions under the National Strategy Action Plan. The membership of the committee includes all the gov-

ernment stakeholders, semi-state organisations such as an Garda Síochána, Tusla the Child and Family agency, the Court Services, the Health Authorities, the Probation Authorities as well as the non-governmental organisations involved in providing services in this area. The actions of the Strategy include such actions as are agreed by government which must be implemented to enable Ireland to ratify the Council of Europe Convention and also include relevant actions to implement the EU Victims Directive

- f. The strategy is now leading a Domestic Violence **national awareness campaign**, known as “What Would you Do?”, aimed at bystanders witnessing domestic violence. It is scheduled to run for 6 years from 2016, with the first 3 years being dedicated to raising awareness of domestic violence issues. Substantial additional funding was allocated by Government to ensure this project runs to completion.
- g. Cosc are also responsible for overseeing and funding **domestic violence perpetrator programmes**, through its partnership with the civil society organisation MOVE (Men Overcoming Violence);

3.2

Case-law of national courts in legal cases of violence against women

A. Tendencies of case law from national courts on cases of violence against women

The Irish judicial system under the various legislative Acts operates an ‘In Camera’ system for family law cases in all the Courts. As a result of this prohibition, which prevents reporting on cases except under very strict guidelines, we have very little decided Case law which could be used as precedent in subsequent cases.

A seminal case of O’B v O’B (1984 IR) set out the criteria necessary to obtain a barring order and also interpreted the meaning of safety and welfare in the context of the Family Law (Protection of spouses and children) Act 1981. It remains the leading authority in this area and while the 1996 Act dealt with some of the issues raised most of its principles apply 34 years on. The risk to the applicant cannot arise merely from the irretrievable breakdown of a marriage. It also highlighted that constitutional rights sometimes override Statutory rights. A subsequent case of L v Ireland also dealt with this dichotomy.

Finally decision of Mr. Justice Gerard Hogan 17th January 2017 in a case entitled NK Applicant and FK Respondent – an interesting review of the jurisdiction of the Court to exclude a spouse from the family home, the inherent jurisdiction of the Court and the Family Law Act and Guardianship of Infants Act . In the absence of any proof of domestic abuse or an amendment to the application under the relevant Acts, the court cannot extend its jurisdiction.

Statistics from the District Court for 2016 indicate that 15227 cases went through the Court. These cases would include applications for Barring orders, Protection orders and Safety orders. There are now facilities for accredited journalists/professionals to report on cases in an anonymised manner so as to give an impression of the type of cases appearing before the Courts and the decisions made. Under Sec40.(3) Civil li-

ability and Courts Act 2004) Dr. Carol Coulter was appointed to undertake a [research project](#) into child care cases and she also undertook research into an overall family law project and the publication of a journal entitled [Family Law Matters](#).

A project entitled '[Listen to Me](#)' Children's experience of Domestic Violence' was published by the Children's Research Centre, Trinity College, Dublin, and Mayo Women's Support Services. A considerable body of research continues to be done by Dr. Stephanie Holt particularly highlighting the continuation of domestic abuse post separation contact.

While these projects go some way towards opening up the Courts to public scrutiny, family law cases of their very nature are personal private and very sensitive so the parties involved do not want their domestic matters aired in public.

B. Presentation of influential national case-studies on violence against women

Introduction

In recent years, SAFE Ireland, the Irish national network of domestic violence refuges and support services, has commissioned and overseen the completion of a number of studies of the interaction between the justice system and women victims of domestic violence in the Republic of Ireland. A key focus of these studies has been the evidence of the women themselves, gathered through face-to-face interviews which were generated and supported by experienced domestic violence services. In addition, the research has also recorded women's experience of the justice system indirectly, through evidence gathered in interviews with a wide range of justice and other specialised professionals. As a result, it has been possible to use many of these experiences to identify common difficulties and to help to formulate solutions to them. In particular, this body of recent research has had a strong influence on the formulation and later, adoption of many legal recommendations through the new Domestic Violence Bill 2017 (now going through the Irish Oireachtas (Houses of Parliament)). It has also had some positive influence on Garda (police) reforms in this area.

In this Part, a small number of especially influential case-studies will be presented under the heading of each of three major research studies conducted by [SAFE Ireland](#). These are "The Lawlessness of the Home", "In Search of Justice" and "Justice Sought, Justice Lost". The Part ends with reference to a femicide study conducted by Women's Aid, one of SAFE Ireland's members.

"The Lawlessness of the Home"

In this study based on a series of 13 in-depth interviews with women, the **consequences of the court not hearing the evidence**, and thus, failing to identify and act upon **high risk factors**, are illustrated in a case study in which the example of cruelty to animals is given in the context of severe violence and other psychological abuse, and where the perpetrator's son is afraid of his father on access visits (p.37 et seq):

The Applicant, Jane, did not give evidence directly to any judge. The authors of the report comment: that there is much "evidence that perpetrators may use threats of or actual violence towards animals as a means

of controlling and coercing women". They conclude that "when women and children are not heard by the legal system and evidence is not presented, these indicators of both actual and potential harm are missed and the opportunity to protect and to prevent serious harm to these victims is missed."

Consistency and continuity in the application of the law are also dominant themes in this research. See for example, this extract from a much longer testimony by Noeleen, page 42:

"I had to leave my job behind and my home behind, and I actually had a judge at one stage that said to me, 'you're not leaving your home under any circumstances [...].' Now I was [...] advised by another judge before him to come away and start a new life, which I was battling to try and do. One judge could see the need for me to get up and move for safety reasons. But when I went back to the same court on the next occasion, again the first judge, he said to me, 'under no circumstances will you be leaving your home, you stand up to this man and you use your barring order.' I didn't want to leave my home. I was leaving everything behind - I had a job at the time, I had my son settled into a crèche, I had my home, which I had long before I met him, which I worked very hard for, I had a lovely family I was leaving behind, so it's not an easy decision, it takes a lot of courage to get up and leave all that behind. And for a judge to come along and say to you, 'under no circumstances are you leaving your home?' To me I was being controlled by another male person, [...] you know?"

The authors of the report comment on this and similar cases also showing inconsistency, saying that this story and others show that the risks to women and children where systems of investigation and justice are inconsistent and discontinuous. They also make the point that child related issues such as custody and access are often dealt with separately from domestic violence, thereby minimising the importance of the violence in determining these issues; and conclude that "Inconsistencies in applying the law lead to reversals of judgements with potential consequences for the safety, welfare and subsistence of children and their mothers. Those who use violence can also use the divide [or lack of continuity] between the family and criminal courts to delay cases, evade consequences and prevent women from moving on in their lives".

"In Search of Justice": INASC: Improving Needs Assessment and Victims Support in Domestic Violence-related Criminal Proceedings

This Report is based on quantitative data from 40 women who had contact with the criminal justice system in relation to domestic violence, using questionnaires, and qualitative data from a further 10 women who also had such contact, using interview records. Its findings show that **an immediate, effective response from the Gardaí** which includes a **timely and effective risk assessment** (police) – is vital, given the severity of 50% of first violent incidents :- attempted strangulation, physical abuse while pregnant, threats to kill victim or children, possessive behaviour over victim, or reported use of weapons, each of which are each associated with a serious risk to the victim's life. The report states that half of the participants indicated that at least one of these forms of abuse occurred during the very first incident of violence, and therefore, that domestic violence sometimes begins at a very serious level.

The prevalence of coercive control is also a significant theme in this study. See for one example among many, this testimony from Mary, at page 26:

"[My] aunt died and [I] couldn't go to the funeral. I felt very bad about that. That really hurts me now still. ...

He was controlling, he was isolating, he was the boss, he had the say at the end of the day. When he says I could go, I could go, so that's all back to the controlling thing." She went on to say that she "was not allowed to put up one holy statue in the house.... I was not allowed to go to Mass."

The authors identified that coercive control occurred in 83% of all cases studied (p 26), a startling statistic. It should be noted that "possessive behaviour over victim" is one of the five indicators associated with a serious risk to the woman's life listed above. (p 27).

"Justice Sought, Justice Lost": SNaP An Assessment of the Effectiveness of Domestic Violence Orders and Specific Needs

This study included quantitative data, gathered by questionnaire, from 50 women, and qualitative data from a further 10 women in the form of recorded face-to-face interviews, looking at the range and nature of specific needs among them. There are no individuals identified in the research report, instead the authors have put specific needs clusters based on various characteristics and circumstances together to illustrate the complex and intersecting needs of these women. It must be stressed that such scenarios reflect many common barriers to justice. See for example, this specific needs cluster at page 80:

"Specific needs cluster: Dependent children, one with intellectual and physical disability, reported to Gardaí, applied BO, IBO in place, living with perpetrator, financially dependent on perpetrator, but above threshold for legal aid. Breaches of Interim Barring Order (IBO) but no arrest. Barring Order (BO) denied and access granted. Lack of continuity in legal system, different judge each time. Safety Order (SO) applied for. (non-molestation order). Protection Order (PO) in place and more breaches, but no court appearances or convictions. (temporary safety order).

The Conclusion and Recommendations in this report (p 82 et seq) have had some positive effect on policymakers, so that there is now more emphasis on increasing awareness of the complexity of these issues through **appropriate training** for all groups of justice professionals, and through effective **needs and risk assessment** by all relevant agencies. Access to **Legal Aid**, cited in the Report, has since been improved, and there is more awareness of the need for **effective communication with women** so that their needs may be understood and so that they understand in turn, the effects of any orders made.

Women's Aid Femicide Watch 2017

This study analyses the 216 cases of unlawful killing of women between 1996 and 2017 (up to the date of the report), looking at victim and perpetrator characteristics and relationships, and setting out the results of any relevant criminal proceedings. Case Studies include this one in 2017:

"Anna **Finnegan**, from Dublin, was 25 years old when she was stabbed to death in her own home. Her brother Karl was injured in the attack in September 2012. Anna was the mother of two young children and was described by her sister "*as a wonderful, loving, kind, selfless soul. An amazing mother and the best sister and friend*". In April this year a Central Criminal Court jury found her former partner Vesel Jahiri (36) guilty of the murder. The court heard evidence of a serious history of domestic violence during the relationship and afterwards with Anna and her children previously seeking refuge. Jahiri was sentenced to life in prison.

3.3

National practices in supporting women who have suffered gender violence

A. Bad practices from police or judicial authorities to women victims of gender violence

The Garda Síochána Inspectorate Report “Crime Investigation” ([GSI Report](#)), published in 2014, represents a baseline from which significant positive developments have ensued. It identified considerable problems in the Garda response to domestic crime, and set out a list of recommendations for improvement. The principal problems identified by the GSI Report are paraphrased below: (See pages 39-42 of the Report)

- There was a failure to identify and record DV incidents appropriately, so that many were not recorded officially as crimes, and therefore, were not investigated as such;
- No formal risk assessment process was undertaken at DV incidents; (Now being addressed by Gardai, see next Part 3(b) below;)
- DV crimes were rarely investigated by Garda detectives, except murders or very serious assaults;
- Where a DV crime had clearly occurred, but there was no court order, positive action was not often undertaken by Gardai;
- There was a lack of appropriate training in DV issues;
- There was a lack of effective supervision of DV investigations; and finally
- The Garda approach to DV issues was non-specialist and inconsistent.

See Commentary on page 42: “The failure to record an assault or other crime has wide ranging implications. DV is often a recurring crime and one where the violence against a victim continues and often escalates. A lack of action in these cases can expose victims to potentially life threatening violence.”

The conclusions of the three SAFE Ireland research reports considered in Part 2(b) with regard to bad practices from both police and judicial authorities, are summarised below:

The Lawlessness of the Home: The Conclusions of this Report (from p 87 onwards) echo many bad practices cited in the GSI Report and identify others: “The narratives [of the women subjects of the study] demonstrate the serious deficiency, especially among the Gardaí in **risk assessment**...” With regard to bad practices in the courts system, the Report cited in addition:

- the **lack of consistency and continuity** in cases where hearings for domestic violence orders and family law orders are heard separately contributes too to minimising domestic violence and its impacts.
- The **lack of understanding of how the separation, access, custody and maintenance proceedings can be used to continue to abuse, harass and intimidate victims;**
- Failure to **hear evidence from women themselves** in some cases;
- The **lack of specialist training for all justice professionals in the impacts of DV on women**

In Search Of Justice – INASC: Improving Needs Assessment and Victims Support in Domestic Violence-related Criminal Proceedings [Note](#): As very few of the cases reported in this study reached hearing, there is very little information in it on the behaviour of prosecutors, court staff and judges; the focus is on the conduct of An Garda Síochána to a great extent. In addition to the lack of a formal risk assessment process undertaken by the Gardaí, this Report identified **Garda failures to attend domestic violence scenes**, and once there, to **make full use of available arrest powers** – although the Garda Policy on domestic violence at the time did stipulate that the woman’s attitude should not be determinative of whether an arrest was made. The Gardaí attended the scene in only half the cases reported between 2010 and 2013, and the abuser was arrested in only one-fifth of those cases. However, it was also noted that not every woman wanted to trigger an investigation by having the abuser arrested. That said, the Gardaí were more likely to act whenever there was a DVA order already in place.

Other bad practices found in this study were: a **lack of consistency and continuity**, both from Gardaí and during court proceedings. A lack of **anonymity provisions and other special measures** to assist DV victims giving evidence in court, was also identified. Finally, this Report noted some **failures to provide information about, and referral to, specialist Domestic Violence support services by An Garda Síochána**.

SNaP: An Assessment of the Effectiveness of Domestic Violence Orders and Specific Needs

With regard to the Gardaí, the Report summarises some bad practices in this paragraph:

“...Gardaí frequently provide information verbally and do not check that the **information is received and understood**. Gardaí are found to be **inconsistent in application of law and policy**, despite having considerable powers of entry and arrest without warrant in cases of DV. Time and time again, women report that they feel that they are not taken seriously, **information is not provided, Gardaí response times are slow, records are not kept, contact is lost, and evidence is not collected**. Breaches of DVA orders are dealt with in the criminal courts if the Gardaí determine that an offence has occurred and if evidence is collected. In practice, women report thatGardaí do not always agree with the victim that there has been a breach, or Gardaí **decide that a further warning to the perpetrator is sufficient or appropriate for the situation**”.

With regard to Courts Service staff, Lawyers, and Judges:

The Conclusions of this Report echo the findings of the other Reports examined above, in many respects. There is reference to a lack of consistency in policy and practice, lack of a formal risk assessment process, lack of formal training in the impacts of Domestic Violence for judges, lack of understanding of acute complex needs, patchy inter-agency co-ordination, and further, too little attention being paid to whether the effect of a particular DVA order(s) has been understood fully by the woman who holds it: “Worryingly, some women in possession of DVA orders do not understand the details of how the order may protect her, and/or whether the order covers her children”.

B. Good practices in supporting women victims of gender violence

i. Good Practices Across Legal Professionals, Gardaí, Judges, Courts Service staff and specialist Domestic Violence services:

- In line with obligations under Article 25 of the Victims' Directive, Specialist Training on Domestic Violence issues, to increase awareness of their impact on its victims – is now being developed for, and made available, to Courts Service staff, lawyers working on domestic violence related issues and also, to our judges, particularly our District Court judges who must decide most Domestic Violence Act applications. In addition, our Gardai are also receiving more and more specialised training, both at specialist Regional Protective Service Unit level and at the level of Continuing Professional Development (aimed at first responders). Some training for Gardai, legal professionals, court staff and judges, has been run in collaboration with specialist Domestic Violence support services;

ii. Good Practices – Irish Government and Department of Justice

- The Irish Government committed in November 2015 to **ratifying the Council of Europe Convention on preventing and combating violence against women and domestic violence**, and is now sponsoring legislation to promote ratification as soon as possible (in the Domestic Violence Bill 2017 which has been passed by the Seanad (Upper House) and has started its journey through the Dail (Lower House) the Irish Government has also adopted the EU Directive 2012/29 establishing minimum standards on the rights, support and protection of victims of crime and replacing Council Framework Decision 2001/220/JHA and has passed the **Criminal Justice (Victims of Crime) Act 2017**.
- **Which introduced some new special measures applicable to victims of domestic violence**, including e.g a right to apply for a direction to prevent questioning on the victim's private life which is not related to the offence and the right to be accompanied in court, in addition to the rights already mentioned under the Garda heading.
- The Irish Government, through the Department of Justice and Cosc, has introduced a major reforming and consolidating statute, which is now being examined by the Oireachtas (Irish Houses of Parliament), known as the **Domestic Violence Bill 2017**. This Bill introduces a new open List of Factors and Circumstances which must be taken into account whenever a court must decide an application for a protective order under this statute (barring, safety, protection, interim barring, emergency barring order), it provides for Emergency Barring Orders to be made, it includes provisions for some new special measures, including the power to grant an order to prevent cross-examination in person; and it creates new offences of coercive control and forced marriage, and states that the existence of an intimate relationship (as defined in the relevant Section) shall be regarded as an **aggravating factor on sentence** for a crime of domestic violence (broadly defined), among other innovative provisions;
- The Irish Government has also just removed the **Legal Aid contribution** from domestic violence order applications. This means that the contribution (now €130) will no longer be a barrier to applications to the court for an order under the Domestic Violence Acts;
- COSC the Department based National office as referenced above in Section B(e)

iii. Good Practices – The Gardai:

- A new **formal risk assessment** process has been put in place, and
- new **specialist Regional Protective Service Units** are being rolled out countrywide (there will be 28 of them when they are all established), under the direction of the Garda National Protective Services Bureau, to investigate domestic violence crime;
- Work is also in progress to **improve formal recording of domestic violence crime** on the Garda PULSE computer system;
- New **training and supervision initiatives** have also been undertaken;
- An Garda Síochána as a whole now works much more with DV support services at both national and local levels;
- The **Garda Policy on Domestic Abuse** has been revised;
- New investigative procedures, such as the use of **body cams**, are being explored;
- Gardai are now facilitating victims of crime, including DV victims, to be **accompanied** by a support worker when they come to report a crime to the Gardai, or make a statement;
- All victims of crime, including DV victims, are now being given **information about the criminal justice system, about their own case, and about specialist support services including refuges**, in line with EU Directive 2012/29 establishing minimum standards on the rights, support and protection of victims of crime and replacing Council Framework Decision 2001/220/JHA, now largely transposed into Irish law via the [Criminal Justice Act](#) (Victims of Crime) 2017 (Sections 7 and 8);
- All victims of crime, including DV victims, are now **being referred by Gardai, with their consent, to specialist support services** including refuges, in line with the EU Directive and with CJVOCA 2017 (Section 7);
- All victims of domestic violence crime will be **individually assessed by Gardai** to determine whether they have any specific protection needs which might be addressed through protection measures or special measures in our criminal courts (CJVOCA 2017 Section 15)

iv. Good Practices which are examples of Effective Inter-Agency Working:

- “**Pockets of Good Practice**” based on **effective co-operation between different agencies** in some Garda stations and courts, were a feature of every research report discussed. Effective co-operation at local level to ensure that victims of domestic violence were supported as well as possible at every stage, appeared to be based on good personal relationships between individuals in different agencies and on a common conviction that supporting domestic violence victims can be done most effectively if every agency works together. While these good relationships and practices may happen by accident or by design, once established they tend to persist, as each professional sees the advantages of such positive co-operation for women victims of domestic violence;
- As part of the INASC research project looking at improving needs assessment and victim support in domestic violence-related criminal proceedings, a toolkit was produced by SAFE Ireland entitled “[Make it Happen!](#)”.

- It provides a useful checklist of good practices for Gardaí, lawyers, Court staff and judges which are relevant to women bringing criminal proceedings for domestic violence, for each stage of the criminal justice process. This Toolkit was produced in collaboration with State agency representatives, including Garda officers, and is a good example of effective inter-agency collaboration;
- As part of the **SNaP Project (An Assessment of the Effectiveness of Domestic Violence Orders and Specific Needs)** For this project, a detailed checklist in the SNaP National Policy Paper recommending good practices was also produced by SAFE Ireland, aimed at each relevant professional or agency working with women in the civil (family) court system. This checklist was compiled having taken into account detailed feedback from legal professionals and State agency representatives, including Gardaí. This is another good example of effective inter-agency working, this time focused on the civil (family) courts;
- A robust model of good practice in inter-agency working may be found in our [Sexual Assault Treatment Units National Guidelines Committee](#), which has produced three editions of Recent Rape and Sexual Assault Guidelines, over a period of some 13 years. Representatives from the medical profession (forensic examiners and forensic nurse examiners), counselling services (Rape Crisis Network Ireland and Dublin Rape Crisis Centre), An Garda Síochána, the Office of the Director of Public Prosecutions, the Forensic Science Laboratory among others, all work together in quarterly meetings to discuss the format and wording of each section in the detailed Guidelines, so that no part of the Guidelines is in conflict with any other, and so that their distinct responsibilities are clear to each professional involved in the collection and examination of forensic evidence gathered in the aftermath of a recent rape or sexual assault. The clarity and completeness of the Guidelines are testimony to the effectiveness of the disparate, but extremely expert and focused, members of the Committee.

CONCLUSION

(1) **NASC: Improving Needs Assessment and Victims Support in Domestic Violence related Criminal Proceedings**

As part of this research project, a toolkit was produced entitled “**Make it Happen!**” (referenced above) Many of these good practices are also relevant to women applying for DVA orders in the civil (family) courts. The principal themes across the detailed lists, which are **additional to those identified in the GSI**

Report recommendations, are:

1. In relation to good practice by An Garda Síochána:
 - a. **Referral, Information, Communication**
 - b. **Protection Needs: ;**
 - c. **Effective Liaison with DV Support Services, Prosecutors**
 - d. **Proactive Contact with Women facing Criminal Justice Proceedings: One of;**
 - e. **Proactive Liaison** with DV victim support services,

2. In relation to good practice by prosecutors and judges:
 - a. Prosecutors should be mindful also of the **safety concerns**
 - b. **Pre-trial meetings , need for** special measures etc. **Judges** should take every care to ensure that women are afforded respect and courtesy in court by all others involved in the court process.
 - c. **Both Judges and Prosecutors** should take up every opportunity to inform themselves about the dynamics and impacts of domestic violence on its victims, so that they understand how difficult it may be for women to be prosecution witnesses.

(2) **SNaP: An Assessment of the Effectiveness of Domestic Violence Orders and Specific Needs**

A detailed checklist in the SNaP National Policy Paper recommending good practices was also produced, aimed at each relevant professional or agency working with women in the civil (family) court system. The principal themes relevant to Gardaí, lawyers, Court staff and judges which are **additional** to those identified in the “Make it Happen!” list are:

1. **Solicitors and Barristers**

All legal representatives of women seeking DVA orders must take extra care to ensure that advice, information and instructions about court processes, outcomes and what to do if there is a breach of an order or the situation becomes more dangerous – has been understood fully by their client, at every stage of the process but especially after every court appearance;

1. Legal professional training bodies should ensure that regular training sessions are made available to their members on the dynamics of domestic violence and on the nature, recognition and where appropriate, management of the specific needs of women who are eligible for DVA orders, and should include an element of “unconscious bias” training;
2. Such professional training should include at least an overview of the range of specialist services available to address some specific needs which these women may have, and this overview should include material on the range of services provided by DV support services – so that they can advise and refer their clients appropriately and in a timely manner;
3. All legal representatives working in this area should take every opportunity to develop relationships with other agencies working with women in domestic violence, such as DV and non-DV victim support services, so that over time, they develop a fuller understanding of the nature and complexity of special needs which these women may have.

2. **Judges**

1. The Judiciary as a whole, through whatever structure is appropriate, should take steps to ensure that all judges who handle DVA applications (and breaches) regularly, are trained in the dynamics and impacts of domestic violence. This training should include material on the fluid, complex and inter-relat-

ed nature of the specific needs of women victims of domestic violence, so that they can recognise and address these in the applicants before them, to the extent that this is possible, and should also some input on “conscious bias”, to help them to avoid stereotypical thinking in relation to some groups of women with specific needs;

2. Individual judges should always be alert to recognize and where possible, address, the specific needs of women applicants for DVA orders in court, whether or not these are brought to their attention through a previous assessment;
3. Judges should be mindful that some specific needs will have the effect of making it hard for the applicant to absorb and retain important information, and that these needs may not always be obvious (e.g. a person may speak a second language very well, but have great difficulty in understanding a native speaker’s meaning correctly when s/he replies), and therefore should take the utmost care to ensure that applicants understand what is going on, so that they grasp outcomes and above all, what they should do if there is a breach of an order or the risk to them escalates in the future;
4. As far as possible, judges should facilitate applicants to have the support of DV service accompaniment staff, in court;
5. As far as possible, judges should facilitate, including through the use of special measures where appropriate, DVA order applicants to give their evidence fully and coherently, whatever their specific needs might be;
6. The judiciary as a body should not hesitate to advocate for more court time and other resources, through whatever structure and to whatever extent, is appropriate to their role;
7. To the extent that it is appropriate to their role, judges should make and maintain links with other professionals working with women victims of domestic violence, with a view to working together to improve responses to their specific needs;
8. Judges should assume that applicants for DVA orders with specific needs related to a learning or intellectual disability, have the capacity both to give instructions and to give evidence, in the absence of impartial and expert evidence to the contrary, and should be alert to prevent the use of unfounded allegations of incapacity by respondents as a tactic to discredit applicants;
9. Judges should avoid accepting undertakings, especially cross-undertakings unsupported by evidence, to resolve applications for DVA orders, save in exceptional circumstances, because they do not offer an applicant at risk any form of protection from violence;
10. Mediation should not be supported by judges in DVA proceedings, whenever this is put forward as a possible means of resolving issues between the parties, save in exceptional circumstances, as the risk of exploitation of the applicant by the respondent is too great.

3. Courts Service Staff

1. Courts Service training in Domestic Violence should include training in the recognition and where appropriate, the management of specific needs of women seeking DVA orders, and this training should include an element of “unconscious bias” training to help them avoid stereotypical thinking in relation to women with specific needs;

2. Courts Service management should consider introducing a standardized approach to recognizing and where appropriate, managing the specific needs of women seeking DVA orders;
3. In all contacts with women seeking DVA orders, Courts Service staff should do all they can to ensure that information about processes, outcomes and what to do if a breach occurs, has been well understood;
4. As far as possible, Courts Service staff should facilitate DV support service staff to provide accompaniment to women victims of domestic violence in court and in the court precincts, by providing space and other facilities for resident DV support services and by appropriate and timely referrals to non-resident DV services;
5. Where possible especially at local level, inter-agency contacts with other relevant statutory and NGO agencies (including the local Gardai) working with victims of domestic violence, should be maintained and developed as a priority.

4. Gardai

2. “[...] Both general and specialist team Garda training and performance monitoring should stress the importance of consistency in putting the Garda Policy on Domestic Abuse into practice, especially with regard to proactive arrests, prompt preservation of evidence, establishing and maintaining contact with the victim, and effective and appropriate liaison with other relevant agencies;
- 3 Both general and specialist team Garda training should include “unconscious bias” training to make it easier for them to avoid unconscious stereotyping of women with specific needs (she is Roma so she comes from a culture which accepts DV e g) [...]
6. Breaches of DVA orders should always be investigated fully and prosecuted with vigour wherever possible;
7. The timely and thorough investigation of DV related crimes should be identified in Garda Strategy and Policing Plan documents as a constant high priority, even in areas where there is a high volume of non DV related crime, and Gardai at high levels within the Force should not hesitate to seek increased resources aimed at reducing DV crime;[...]
9. As far as possible and appropriate at local level, the Garda response to women experiencing DV and the Garda response on related issues (such as child protection, criminal investigations) should be co-ordinated;
10. Specialist approaches to investigation and prosecution of domestic violence should be supported, developed further, resourced adequately and publicised well; [...]
12. Garda data collection systems: should identify DV incidents as such from earliest contact, should record them as such and should alert users to repeated contacts with same person or address.

The need for a dedicated family law division

A new court complex is planned for dedicated Family Law facilities close to the main court buildings. This complex would house family courts at all levels and would include child care facilities as well as other dedicated professionals. It is crucial that this development is progressed as quickly as possible.

The authors of the femicide report recommended that **the State set up a Domestic Homicide Review (DHR) mechanism with a statutory basis, a multi-agency composition** including specialist domestic violence services and families, with powers to make and monitor recommendations to improve overall response to intimate partner violence. This is now under active consideration by the Gardaí (police).

The authors of the Safe Ireland reports notes the recommendations contained in **the Garda Inspectorate Report from 2014**, contains a list of good investigative and victim liaison practices particularly.

4

Italy



Introduction

Throughout the world, one out of three women have been victims of physical or sexual violence at least once in their lives. As a structural phenomenon which affects all countries and social classes, violence against women is the most widespread violation of human rights worldwide.

According to the 2014 ISTAT survey, almost 7 million women in Italy have experienced physical or sexual violence during their lifetime. With regard to the number of women killed by their partner or former partner, a precise number is unknown, given that the data provided by the Ministry of Justice is incomplete. Based on the 2014 EURES report on femicide, it can be said that between 2000 and 2013, 2399 cases of femicide were reported, 70% of which were committed within the family.

This manual examines the phenomenon of violence against women at a national level also focusing on specific case-law dealt with by Italian courts, and giving an overview of national practices followed in Italy to support women who have suffered from gender violence.

4.1

Overview of the national legal framework on violence against women

A. Implementation of European and international legal instruments on violence against women

Violence against women: an overview

The Italian criminal law has drawn the definitions of gender violence and violence against women mainly from international law which are directly enforced in our system pursuant to article 117 of the Constitution.

The recent sentence issued by the Supreme Court in its joint sessions – nr. 10959 of 29th January 2016 – that gives all the definitions of violence within gender relationships in consideration of international conventions and specifically European law, came to the conclusion that such definitions, even if they are not included in domestic regulations, *“are fully part of our national system through international law and are therefore enforceable”*.

According to this interpretation, the many definitions given by the Istanbul Convention on preventing and combating violence against women and domestic violence are directly applicable.

It is useful to note that in the Italian system there is no clear definition of domestic violence. The only existing reference introduced by article 4 of Law 15th October 2013 nr. 119 on femicide refers to one or more non-isolated serious physical, sexual, psychological or economic acts that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim.

Such a definition, endorsed by the Istanbul Convention, is one of the conditions required in order to obtain a residence permit for humanitarian reasons by a foreign woman irregularly living in Italy who is a victim of violence who intends to turn to the Authorities to put an end to it. This means that such a definition of violence cannot be considered an independent legal condition if not combined with an existing type of offence.

Having said that, the different definitions of violence are the following.

With reference to traditional legal institutions, one can speak of **physical violence** when physical energy is used to overcome an obstacle, real or supposed, which results in violation of basic rights such as life, which is safeguarded by art. 575 of the Criminal Code. The Code includes provisions regarding murder, and personal safety, protected by various regulations, that also differ according to the degree of gravity of the perpetrator's behaviour.

Psychological violence occurs, even in the absence of words and explicit intimidating acts, in any conduct that in relation to the particular circumstances is likely to remove the victims from their ability to decide and act autonomously. Criminal acts are aimed at limiting, reducing or removing individual liberty, which includes, pursuant to art. 13 of the Italian Constitution, moral freedom - of thought, conscience, affection, relationships, sexual life - freedom to act and self-determination, that can also be achieved through freedom of movement and from economic pressure.

Nowadays, **sexual violence** can be defined as conduct involving violence, threat, abuse of authority, abuse of the victim's physical or psychological inferiority, deceptive acts to the detriment of the victim with the aim of having sexual intercourse. The sexual act can be described as something which concerns not only the genital sphere but also all the parts of the body considered erogenous according to medical, psychological, anthropological and sociological opinion.

Economic violence, defined in the relevant literature as "*a series of attitudes aimed at preventing the search for a job, at taking away the salary or controlling it, monitoring the management of daily life, at depriving the victim of her access to money, all aimed at preventing the victim from becoming financially independent and in order to be able to exercise indirect but extremely effective control over it*" has no legal definition in our system.

The only legal reference that can be of help for a legal classification of this behaviour turns out to be the crime pursuant to art. 570 criminal code regarding a breach of family support obligations. The different cases provided for by art. 570 do not point to a number of distinct criminal actions, because they are all part of the same crime that deals with breach of family economic support obligations arising from family bonds. So, avoiding to pay maintenance to the spouse who is in serious financial problems can result in economic

violence as mentioned by the relevant literature.

Therefore, according to the most recent decisions of the Italian Supreme Court, in a case of **non-payment of maintenance** even if the situation of the person entitled to the benefit is not in need, the breach of providing maintenance to the spouse, as dictated by the civil code, is a crime pursuant to art. 570, section 1, of the Italian criminal code provided that all the other elements listed in the article are present.

It is basically a sort of criminal cover attributed to one of the multi-faceted aspects of a classic form of economic violence which results from indifference towards the needs of the other spouse.

To define **violence at the workplace**, the term *mobbing* was coined to be understood as “*a form of psychological pressure towards employees, occurring, at the workplace, by colleagues or superiors, considered a sort of epidemic worldwide of distress connected to psychological violence at the workplace*”.

When such distressful situations occur through harassment that can extend to personal and sexual injuries, mobbing falls under certain types of offences provided for by the Italian criminal code.

In the Italian legal system today, the only rule which is really applied and followed by the Courts in order to combat situations of psychological violence is art. 572 of the Criminal Code dealing with family violence; this is because of the lack of a specific incriminating fact as required by the Istanbul Convention.

Moreover, according to clear Court decisions, the crime of abuse aimed at employees can be applied only to those companies with a family structure where there is a direct relationship between employer and employees, who must be limited in number.

According to civil law, with particular reference to damage claims for different kinds of abuse suffered by the worker, the current trend of the Supreme Court requires the presence of the following facts in order to consider mobbing viable:

- a series of disrespectful repeated behaviours - unlawful or even lawful if considered individually - which, with an intent to vex, are committed against the victim in a regular and ongoing manner, directly by the employer or by his subordinates;
- an event that harms the health, personality or dignity of the employee;
- a link between the described behaviours and the prejudice suffered by the victim in his/her own psychophysical integrity and / or in his/her own dignity;
- a fraudulent intent covering all the malevolent or harmful behaviours.

Lastly, there is **violence connected to religious practices**. The Italian legislator introduced into the criminal code the type of offence envisaged by article 583 bis which punishes all practices of **mutilation of female genital organs** carried out in the absence of therapeutic needs. It should also be noted that our system intended, precisely for the characteristic of the phenomenon that is normally practiced in foreign countries for cultural or religious reasons, to widen the cases of punishment of offences committed outside the national territory to certain situations unrelated to the general principles, and this from a dutifully repressive perspective of such conduct. From a judicial policy point of view, this criminal offence can be traced back

to so-called **culturally oriented or motivated crimes**, definable as those circumstances in which a foreign citizen performs an activity that can be abstractly configured as a crime in our legal system, in the exercise of a faculty recognised by the culture of the state of belonging - conduct, in other words, that comprises a crime in our legal order despite being optional, or even imposed, by the culture or by the laws of the country of origin.

Even apart from the provisions of EU law, our case law was already consolidated in the sense of believing that unlawful conduct motivated by cultural reasons could never justify the conduct itself and this in the light of the comparison of constitutionally protected principles. It has always been considered that the victim's right to health (provided for by article 32 of the Constitution) should have absolute precedence over other constitutional rights that may be referred to. In this way culturally oriented conduct can be accepted in our legal system only as regards the degree of malice, and it therefore has an impact on the sentence in accordance with the constitutional principle of guilt.

A brief overview of violent crimes related to gender

Abuse and Violence Against Family Members and Cohabitants

Abuse and violence against family members and cohabitants is accounted for by article 572 of the Italian Criminal Code, which punishes the perpetrator of these crimes with a conviction from 2 to 6 years (*"Anyone who abuses a person in the family or in any case cohabiting, or a person subjected to his authority or entrusted to him for reasons of education, care, supervision or custody, or for professional reasons"*).

The crime is described as a series of acts damaging:

- physical or moral integrity,
- freedom or conduct of the family in such a way as to make relationships with the victims painful and degrading.

The victim enters a state of misery due to the on-going overpowering conduct that makes cohabitation a particularly painful experience.

The case referred to by Article 572 of the Italian Criminal Code integrates a presumption of crime that can also be characterized by the simultaneous existence of:

- commissive and
- omissive facts,
- reiterated behaviours

However, in order for the crime to occur, it is not necessary to conduct continuous and uninterrupted oppression, because the case may be characterised by a series of acts, also committed at a later time, but always with a nexus of habituality, combining a reiterated conduct with criminal intent of harming the physical or moral integrity of the victim.

The range of criminal behaviour can consist of:

- beatings
- injuries
- insults
- threats
- deprivations and humiliations
- acts of contempt
- psychological violence
- enslavement or
- offence to the dignity

any of which may not be *per se* criminal, which still result in moral suffering. These behaviours, which are offences in themselves, are included in the crime in question precisely because they fall within criminal acts. Failing to act is, however, characterised by a deliberate indifference and negligence on the part of the perpetrator towards the emotional and existential needs of the victim.

As far as the subjective element is concerned, for the crime in question to exist, the generic fraud that consists in the conscience and the will to subject the victim to a series of **physical and moral sufferings in a habitual manner** without the need for the perpetrator to have pursued particular purposes or the specific purpose of inflicting such suffering on the victim without plausible reason.

Sexual Violence

The crime of sexual violence, introduced by the Law of 15 February 1996 n.66 "**Rules against sexual violence**", is regulated by Article 609 bis of the Italian Criminal Code which states that "*anyone who violently or threatens or through the abuse of authority forces someone to perform or undergo sexual acts is punished with imprisonment from five to ten years*".

The removal of the distinction between sexual intercourse and indecent assault and the concept of a single sexual crime, pertaining not only to the genital sphere but also all the parts of the body, scientifically recognised as erogenous, finds its rationale in the aim of the law to focus on the victims and their freedom of self-determination.

Any act is therefore **punishable** that, even if not committed through direct physical contact with the victim, is intentional and **has the potential to endanger the victim's freedom through the arousal or sexual satisfaction of the perpetrator**.

The crime is punishable by irrevocable lawsuit of the victim within a period of **six months** from the time of the crime.

Stalking

The crime of stalking pursuant to Article 612 bis of the Criminal Code states that “[...] anyone repeatedly threatening or harassing someone in order to cause

- a persistent and severe state of anxiety
- fear
- to generate a well-founded fear for the safety of their own or a close relative or a person tied to them by relationship
- to force them to alter their habits of life

is punished from **six months** to **five years** of prison. The penalty is increased if the act is committed

- by the spouse, separated or divorced, or
- by a person who is or has been linked by a relationship to the victim or
- if the fact is committed through IT or the Internet.

The **penalty is increased by fifty percent** if the victim is

- a minor,
- a pregnant woman or
- a person with disabilities [...]
- or is carried out with weapons or
- by a person under false pretences”.

The crime **has to be habitual with a flexible pattern of criminal behaviour** and cannot be considered such when only a single - however serious - act of harassment/threat occur, but when there is a **repeated conduct** of the perpetrator that causes

- severe damage altering the victim’s life habits or
- a persistent state of anxiety or fear or,
- alternatively, an event of danger, consisting in the well-founded fear of one’s own safety or of a close relative or person connected by an emotional bond.

As for stalking, although a pathological condition of the victim is not needed to be ascertained, it is sufficient that the repeated conduct of the perpetrator carries a destabilising effect on the victim’s psychological peace of mind and balance, a fact that the judge does not necessarily have to obtain through an investigation of medical nature but from the acquired evidence. The crime pursuant to art. 612 bis Criminal Code includes the consequent filing of a lawsuit, which can be lodged up to six months after the crime has been committed.

Finally, **the immediate arrest of the stalker** is mandatory when in flagrante and all the personal coercive measures can be adopted.

B. Presentation of the national legal framework for protecting women victims of violence

- **Law of 15 February 1996 n. 66, “Regulations against sexual violence”**

The law of 15th February 1996 n. 66 entitled “Regulations against sexual violence” included the criminal offences in Title XII of the Italian Criminal Code that protect the person, recognising sexual freedom as a right pertaining only to the moral values of the person and removing all the offences which were classified against moral and common decency. The new law has removed the old distinction between sexual abuse, which entailed intercourse with penetration between the perpetrator and the victim, and acts of indecent assault, which punished conduct of those who carried out a sexual assault without penetration. The concept of a sexual act not only involving the genitals, but all areas of the body known as erogenous zones was introduced. According to the new law, a new concept of sexual violence has been introduced in relation to the victim and to the intimidating climate created by the perpetrator; the crime is considered such when there is violence, even if the perpetrator has taken advantage of the situation of difficulty or diminished resistance the victim had at the time of the crime (for example, in cases of violence against family members and cohabitants). The new law also includes coercion (implicit violence), even excluding the fact that the victim has to raise clear opposition in order to be considered a victim.

[Law n.66 of 1996](#) has redefined the sexual sphere as a right of the person in terms of free expression of their sexuality, so that in order to be criminal the conduct must now be assessed in relation to respect due to the person and an attitude to offend the freedom of determination of the victim. **The new law prescribes free legal aid for the victim regardless of their income.**

- **Law of 4 April 2001 n. 154, “Domestic violence and protective measures”**

This law introduced some patterns for the protection of the victim, for provisional, quick and effective judicial measures, which lead to the removal of the perpetrator from the family home, allowing the victim to choose whether to resort to a protection plan, certainly less traumatic than criminal proceedings.

The law introduced in the Civil Code Title IX bis a section dedicated to the **Orders of protection against family abuse** under Articles 342 bis Civil Code and 342 ter, also changing trial procedure regulations by including Art. 736 bis, referred to as “Orders for the protection of the victim in family abuse”.

The new law states that when there is severe damage of physical or moral integrity or of freedom, because of the behaviour of a spouse or a cohabitant, the victim can file for protective measures at a civil court. When in the presence of family abuse as described by Art. 342 bis Civil Code “behaviour that causes serious damage to physical or moral integrity or to the freedom of a family member”, a protection order can be requested.

Protection orders, which are civil remedies, are divided into two categories, namely

- **order of cessation of the behaviour** (mandatory) and
- **order of removal** from the family house and
- **restraining order from approaching the place of work** of the victim and of her relatives or of other persons or to go near the children's school, as well as
- **periodic payment order** or requiring the employer to transfer an amount of money directly to the victim.

Among the **protective measures** the Judge can issue, particularly significant is the one referred to by art. 342 ter civil code: "*The involvement of social services or of a centre for mediation, as well as women's aid centres or other agencies for the protection of the victims of abuse and violence*", because it allows both to act against the perpetrator, who will be dealt with by social services, or by a mediation centre, and to give psychological support to the victim.

The duration of the protection order, initially expected for six months, was brought to one year by art. 10 of the law decree 23 February 2009 n. 11 that introduced the crime of stalking in the criminal code.

[Law n. 154 of 2001](#) also introduced a new protective measure for the victim's protection issued by the criminal court consisting of the removal of the perpetrator from the family home (art. 282 bis Criminal Procedure Code).

- [Law of 23 April 2009 n. 38 \(former decree of 23 February 2009, n. 11\) regulating urgent measures on public security and against sexual violence, as well as on stalking](#)

After introducing in the Criminal Code art. 612 bis (**stalking**), the 2009 law includes the new provision of a **restraining order**, that prohibits the perpetrator from approaching the victim ex art. 282 ter criminal procedure code, with the aim of protecting victims of stalking, a crime punishable by art. 612 bis criminal code.

By means of this remedy, the judge specifically prohibits the perpetrator from approaching certain places habitually frequented by the victim or to keep a certain distance both from the places indicated and the victim (paragraph 1). Moreover, if there are further requirements for protection, the judge can extend the same **restraining order** to the victim's close relatives, to cohabitants or persons linked by a personal relationship (paragraph 2). It is clear that the rationale of this provision is to prevent any contacts between the victim and the perpetrator, who could otherwise continue his persecutory behaviours that could eventually lead to violence.

This provision, whose strong restraining content point to a clearly preventive intent, has a dual aim:

- a "general" prohibition from approaching the specific places habitually frequented by the victim
- a specific obligation to maintain a certain distance from such places or from the victim.

Once again, the law emphasises the importance of precautionary measures, requiring a list of places frequented by the victim, in order to balance the primary aim of protection of the victim of stalking and safeguarding the rights of the alleged/perpetrator. A precise list of the places is therefore required in order to

issue a specific order, including both its enforcement and respect for the prescriptions in the order.

As regards the content of the order, according to court trends, its enforcement requires specific and detailed indications of the places prohibited to the alleged perpetrator. Therefore, a vague reference “to all the places frequented” by the victim is not considered admissible.

- [Law 15 October 2013 n. 119 on “Urgent provisions on safety and the fight against gender-based violence \(...\)” \(The so-called law against femicide\)](#)

The Law of 15 October 2013 n.119, despite the criticisms it has received for considering the issue mainly in the light of the protection of public safety, endangered by a progressively increasing number of femicides within the family or in personal relationships, is the basic law on preventing domestic violence.

Regarding the remedies for these crimes, the law has provided for:

- the repeal of the second paragraph of Article 572 of the Italian Criminal Code, which provided for an increase in the sentence if the act had been committed against a minor under fourteen, with the shift of the pre-existing aggravating factor in the crimes provided for by art. 61 criminal code;
- the amendment of article 612 bis paragraph II of the criminal code, according to which: “*the sentence is increased if the fact is committed by the spouse, even if separated or divorced, or by a person who is or has been linked by a personal relationship to the victim or if the fact has been committed through IT or internet tools*”. With this change, the law intended to punish through aggravating circumstance most of the cases of stalking taken to court where it is difficult to find a stalker not linked to the victim by a previous personal relationship.

In terms of aggravating circumstances, the remedies are:

- the amendment of article 609 ter criminal code which raises the victim’s age limit. That specifies that “against a person under eighteen when the perpetrator is the parent, even adoptive, or the guardian”. There is therefore an increase in the age of the victim (before it was 16) for the application of aggravating circumstances (from 6 to 12 years) of sexual violence perpetrated by the parent, the adoptive parent or by the guardian;
- the application of aggravating circumstances if sexual violence is committed against:
 - a particularly vulnerable person or with an abuse of trust where violence,
 - a pregnant woman
 - a person whose perpetrator is a spouse, even if separated or divorced, or the person who is or has been linked by a personal relationship, even without cohabitation.

With this last change, the law intended to punish more severely those acts committed by a person linked to the victim rather than by a stranger. In a legal framework aimed at fighting domestic violence, the rationale of the provision must in fact be sought in the greater vulnerability of a victim who tends to feel more protected in a family environment rather than in another social context, creating a greater shock and therefore a weaker defence, in the case of violence perpetrated by the partner;

- the introduction of the common aggravating circumstance pursuant to article 61 n.11 *quinquies criminal code* that is “having committed a crime against life, personal safety and personal freedom in the presence of or against a child under 18 or a pregnant woman”. The so-called **assisted violence** is therefore considered an aggravating circumstance, defined as the psychological pain suffered by minors when, in the family, they repeatedly witness physical or verbal abuse of one parent against the other, that was in the past regulated by the joint application of different articles of the code.
- [The Prime Ministerial Decree of 7 July 2015, which adopted the extraordinary action plan against sexual and gender-based violence](#)

To enrich the legislative intervention carried out by law n. 119 of 15 October 2013 - ratification law of the Istanbul Convention - based on the double track of protection and prevention on the one hand, through the provision of rules that enhance and complement existing instruments, and sanctions on the other that renew the current provisions of the Criminal Code and of the Criminal Procedure Code, there is in particular article 5 of the same law which provides for the adoption of an “Extraordinary Action Plan against sexual and gender-based violence”. This Plan, adopted by Prime Ministerial Decree of 7 July 2015, has as its primary objective to put in the system actions in favour of women victims of male violence according to a general and multilevel approach in order to overcome the emergency logic that still characterizes the management of the phenomenon.

The Plan adopts a “multifaceted” approach through coordinated actions carried out by competent bodies such as the Ministry, the Regions and local authorities, as well as anti-violence centres, aimed at preventing the phenomenon and strengthening the measures of support for women and services dedicated to them with a view to female empowerment.

In summary, these actions are aimed at:

- preventing violence against women using information and awareness of the community as primary tools, and strengthening the awareness and culture of men and young people. In particular, for the purpose of combating violence against women, the Plan provides for the sensitisation of the media to achieve communication and information (also commercial), respectful of the representation of gender and of women, and additionally through adopting self-regulation codes;
- promoting education for non-discriminatory relationships towards women for school curricula at all levels, raising awareness and training for students to prevent violence against women and gender discrimination, including having such topics in textbooks;
- strengthening the forms of assistance and support for women and their daughters / children, focusing on the development of territorial services, anti-violence centres and other social actors who deal with this issue in different ways;
- guaranteeing adequate training for all professionals who deal with gender-based violence and stalking;
- increasing the protection of victims through a strong collaboration between all the institutions involved and the associations and bodies of the private social sector, operating in the field of support

and help for women victims of violence and their children;

- providing adequate collection of data, including by coordinating existing databases;
- providing specific actions that enhance the skills of the bodies involved in the prevention, contrast and support of victims of gender-based violence and stalking;
- defining a structured governance system among all levels of government, which is also based on the different experiences and good practices already implemented in local networks and in the region.

In order to implement these actions, it is necessary to adopt a strategy based on multi-level governance to coordinate the measures between the central government and the local authority, in order to act on a circular subsidiarity plan.

4.2

Case-law of national courts in legal cases of violence against women

With regard to interventions on **precautionary measures**, the law provides for the removal of the perpetrator from the family home pursuant to Article 282 bis of the Italian Criminal Code, also for offences ex 582 criminal code which are automatically enforceable (i.e. when the medical consequences require more than 20 days to heal or if a weapon has been used) or in any case aggravated, and ex art. 612 criminal code in the event of serious threat. It has to be noted that the law may oblige the perpetrator to wear an **electronic bracelet** as a means of checking on him. Therefore, there is the possibility to include in this measure monitoring methods provided for in article 275 bis of the Italian Criminal Code strictly related to house arrest and applicable only with the consent of the perpetrator.

With regard to the amendment to the code of criminal procedure for crimes against the person, the Italian law has provided for:

- As for a residence permit for foreign citizens, the provision, which is of remarkable importance, introduces the possibility of **issuing residence permits** for victims of domestic violence, by the Police Chief and with the favourable opinion of the judicial authority, pursuant to Article 5 of Legislative Decree no. 286/1998 (for humanitarian reasons), when there is a real danger for their safety as a consequence of their choice to avoid violence or due to the statements made during the investigation.
- On the contrary, the alien's **residence permit is revoked** "*in case of an incompatible behaviour, reported by the public prosecutor or, to the extent of its competence, by the social services referred to in paragraph 3, or stated by the Police Chief, or when the conditions that justified the release are no longer valid and also the revocation of the permit with the consequent expulsion (optional) for the alien convicted even with a pending sentence*". This latter provision, by putting at risk the presence of a foreign citizen who fully complies with the immigration laws in force but commits domestic violence-related crimes, could constitute an impediment. The victim may not report the crime because she depends on the income

produced by the partner-perpetrator and is obviously scared to lose the only source of support for the entire household.

The law has provided that the Public Prosecutor must notify the Juvenile Court or the Family Court, if committed against a minor or by one of the parents of a minor to the detriment of the other parent. If it concerns crimes committed against a minor or one of the parents of a minor to the detriment of the other parent, the communication shall also be considered for the purposes of adopting measures pursuant to Articles 155 of the Civil Code and following, which deal with the possibility of ordering forfeiture of parental responsibility and interventions in case of risky conduct of the parent prejudicial to the children. This is, in particular, an attempt to carry out an early and timely intervention in case of “assisted violence” to stop the exposure of children to a climate of family violence unquestionably prejudicial to them with the specific indication of legal and cultural awareness, that the mother, victim of the violence, must interrupt this vicious circle in order to protect the minor children.

The law has also given the possibility to report to the police in a **non-anonymous way** family violence-related crime (the so-called “warnings”) that can be prosecuted when reported by one of the victims. **Anyone can report such crimes**, neighbours for instance, who have the perception that violence occurs in a household, or even public officials or persons in charge of a public service where it does not fall into a situation that includes an obligation to report crimes that can be prosecuted *ex officio*.

When notified of the report, the Police Chief, having taken the necessary information from the investigative bodies, can proceed with a **warning** to the perpetrator, ordering him or her to terminate the violent conduct. The character of this step, designed to act on the so-called “**sentinel crimes**” of the abuse has been conceived to prevent violent conduct.

The Chief of Police’s warning

Article 8 of Legislative Decree no. 2009/11 introduces a new remedy called “*The Chief of Police’s warning*” aimed at ensuring a rapid and timely protection compared to the criminal proceedings for victims of stalking.

The law fixes a strict timeframe to be complied with until a lawsuit is filed, so that the victim can refer the facts to the law-enforcement agencies by filing a request to the Chief of Police so that he/she can issue a warning addressed to the perpetrator. Article 8 gives the victim the choice of the protective remedy to be used. It is therefore not possible for the Chief of Police’s warning to be issued on request of other subjects such as family members or the person with whom the victim has a personal relationship.

Secondly, the possibility for the victim to file, in addition to the time limit, is also subject to the condition that the victim does not wish to file a lawsuit.

Given its enforcing power, the provision does not require evidence of the facts as for the offence, but instead it requires the existence of a framework making these criminal acts credible, according to the experience acquired in dealing with these cases.

Law enforcement agencies hold a broadly discretionary power so that “when issuing the provision, the authority must only assess if the claim is founded, forming the reasonable conviction on the plausibility and credibility of the events reported, without checking if the rights of the victim have been infringed”.

Finally, the Chief of Police is notified without delay. Even if the law does not set a precise deadline for the filing of the complaint, the expression “without delay” is very clear, giving the police the ability to conduct in-depth investigations in order to

- understand how the acts took place,
- the behaviour of the perpetrator,
- the consequent effects of his actions,
- his identification.

Unjustified delay occurs if the communication is made with excessive delay such as to jeopardise the activities of the Chief of the Police and, possibly, the prosecution of the crime.

Finally, it has to be noted that there is no formal overlap between this remedy and the precautionary measure pursuant to art. 282 ter criminal procedure code, except for the possibility of integrating it with restraining orders.

Article 11 of Law 2009/11 introduces measures to support victims of stalking by expressly providing that *“law enforcement agencies, health centres and public institutions that are notified of acts of stalking by the victim must provide the victim with all the information concerning the anti-violence centres available in the territory and, in particular, in the victim’s area. Law enforcement agencies, health centres and public bodies must ensure that the victim be in contact with the anti-violence centres, if expressly requested”*.

Finally, article 12 of the D.L. 2009/11 has set up a Department for Equal Opportunities, with a national 24/7 toll-free number for the victims of stalking, with the aim of *“providing the victim with all the relevant information of the Italian anti-violence centres and, in particular, in the victim’s area”*.

A. Trends of case-law from national courts on cases of violence against women

In the trial (No. 4111/16 RG. Tribunale Milano) held before the Court of Milan (presided over by a single judge) a Peruvian citizen, born in 1983, was accused of domestic violence against his partner (Article 572 Criminal Code). He even used to take her, among others facts, *“to the cellar to beat her and to prevent her from having social relations with her friends because of his morbid jealousy”* (**physical and psychological violence**). During the trial all the **good practices** were followed and, specifically:

- **speedy trial**: between the first hearing (29/6/2016) and the first degree sentence (25/10/2016) only 4 months elapsed for facts committed up to 27/4/2014;
- the judge verified a *“marked tendency by the victim to minimise her sufferings, but still expressing strong feelings for the perpetrator”* and took it as a confirmation of the **credibility** of the woman’s story;

- the judge created a **strong and non-leading empathy** with the victim - heard in a **protective way with a screen** to prevent visual contact with the perpetrator - who for the first time also reported sexual violence. Hearing this latter fact, the judge notified the Public Prosecutor's office for a further indictment for the crime of **continuous sexual violence** that was not reported at the beginning of the trial and could be prosecuted in connection with the crime of domestic violence;
- the woman had turned to a public anti-violence centre (Sexual and Domestic Violence Help Desk set up at the "Mangiagalli Clinic" in Milan) and was given psychological and legal support that in the end led her to take legal action against the perpetrator. The Judge endorsed the victim's claims and requested "*the entry form*" filled in when the woman was taken on by the help desk;
- "**assisted violence**" was ascertained because the facts had been committed in the presence of the minor daughter;
- a sentence of **3 years of imprisonment** was issued with the recognition of partial damage ("immediately enforceable") amounting to € 25,000;
- the trial expenses were paid by the State according to the **free legal aid** programme relating to these crimes (art. 572 Criminal Code).

B. Presentation of influential national case-studies on violence against women

This tragic story features Gessica Notaro, a girl from Rimini who was **disfigured with acid** by her former partner J.E.Tavares, who could not accept the end of their relationship. He was sentenced to **10 years of imprisonment** for aggravated injuries and to **damage compensation of 230,000 euros**, at the end of a summary procedure, after a few sensitive issues were brought up. From this example, we can understand that there was an **inadequate assessment of the risk** suffered by the victim before the last assault.

It turned out that J.E. Tavares, accused of the crime of **stalking**, had been subjected, in relation to this crime, to gradually mitigating measures which consisted, in the end, in a prohibition to attend the places normally attended by the victim.

When the last revocation of the order was filed by the lawyer, opposed by the victim pursuant to art. 299 co. 4 bis c.p.p. stating that the former partner had never infringed the order, a factual situation was brought up that led the judge to consider that the precautionary measures, the protection of the victim, had to be mitigated because the perpetrator had complied with the order, so that the situation of risk in which Gessica Notaro had to be considered terminated.

Contrary to this expectation, that later proved to be wrong, but that at the beginning was considered a rigorous and consistent decision, the perpetrator having assaulted the victim with acid with clear premeditation.

In the specific case regarding the personal freedom of the suspect of stalking, the Italian judicial system provided an unsatisfactory measure for the protection of the victim because of the difficulty in tracing the personal information of the offender who apparently, but only apparently, presented himself as re-habilitated to respect the victim.

Bearing this example in mind, it is therefore necessary to reconsider the whole system of **risk assessment** of victims of gender violence crimes (domestic violence against family members and cohabitants, stalking, sexual violence) to provide judges, called upon to apply or amend coercive measures against perpetrators, with scientific tools and knowledge that can give a **clear analysis of the profile of the offender**.

4.3

National practices in supporting women who have suffered gender violence

Notwithstanding the fact that violence against women cannot be solved or tackled only by resorting to criminal justice, since it is vital to take preventive measures, mainly aimed at developing a culture of widespread disapproval and blame, it is necessary to apply the existing laws with intelligence, focus and sensitivity.

- A. In short, it is necessary to **gather evidence** to support the victim's accusations in order to take the responsibility off her shoulders as for the outcome of the trial; gather evidence from the victim before the trial, therefore making the time for the psychological recovery of the victim and the timing of the trial coincide (pursuant to Laws 38/2009, 119/2013 and Legislative Decree 212/2015), by **videotaping the testimony** of adult victims of the crimes referred to in articles 572, 612 bis and 609 bis criminal code. The judge is called to give **maximum priority** to a trial concerning crimes against women (pursuant to art. 132 bis Criminal Procedure Code, for crimes such as abuse, stalking, sexual violence).

Finally, the issues of the trial should be discussed without those obnoxious stereotypes that have nothing to do with domestic violence and always affect the dignity of the victim. This has to be carried out without exposing her, for example, to questions, which are banned, on her personality or behaviour model, understanding, according to the ruling of the Supreme Court:

“the ambivalence of the victim's feelings towards the abuser is not a matter of unreliability but, on the contrary, it represents a classical pattern of victims; periods of peaceful cohabitation alternate with domestic abuse; the assessment of the victim's version of the facts is a dutiful activity that the judge has to carry out however sufficient, if expressed in positive terms, to pronounce a guilty sentence”.

- B. The responsibility of the central management and coordination of the system and planning of actions belong to the Presidency of the Council of Ministers through the Department for Equal Opportunities, in liaison with other Ministries, local Authorities and NGOs engaged in the fight against violence and the protection of victims (anti-violence centres). Their coordinated efforts focus on finding specific areas of intervention.

So far the following steps have been taken :

1. the creation of a central coordinating agency (the so called “Cabina di Regia” led by the Department of Equal Opportunities) involving the participation of :
 - Ministries (Health, Family issues, Interiors, Justice, Labour)
 - Local Authorities (Regions, Cities)

The aim of the agency is to orchestrate a national strategy to combat violence against women.

2. the creation of a National Observatory to give support to the Central Coordination Agency (“Cabina di Regia”) for the following tasks:
 - Studies and research
 - Action plans
 - Monitoring the implementation of the national Plan
 - Evaluation of the impact of policies against violence against women
 - Victim protection
 - Best practices
3. a National Database has been set up to monitor gender-based violence against women by collecting data from public and private sectors. Moreover, statistical studies are carried out to monitor and analyse the impact of policies; and finally, a close liaison with anti-violence networks has been implemented.

On a local level

In order to provide adequate protection and support for victims of gender-based violence, a “**Coordinating Unit**” has been set up for

- **the fight against violence against women**
- **the treatment of perpetrators and their rehabilitation into society**

with local units operating throughout the country planning guidelines, monitoring and evaluation of local policies to combat violence against women. They focus on strategies to support women at home and at work.

The Unit is composed of:

- Central Government local representative
- Prosecutor’s office
- Municipality
- Associations and bodies of private social and non-governmental associations (anti-violence centres)

- Hospitals
- Social partners
- Trade associations

In contrast to gender-based violence, the State thus becomes the protagonist and guarantor of the whole process implemented to preventive and protection measures as well as actions to fight violence against women.

Among the aims of the Plan there are actions:

- to **promote a cultural change** in attitudes, gender roles and stereotypes that make violence against women acceptable;
- to **protect** and **support** victims and their children;
- to **punish** the perpetrators

Prevention implies the following actions being taken:

- *Communication*: in order to involve the media so that they promote communication in full respect for the cultural and professional dignity of women, thus avoiding passing biased messages with a misleading perception of the female image. In this perspective, a Group of Experts from the world of work and communication has been working at the Department for Equal Opportunities with the primary task of “promoting gender language” in the media;
- *Education*: in order to educate on equality and respect for differences, both through training of school staff and teachers and the inclusion of a gender approach in educational and teaching practice;
- *Training*: this action, which involves the specific training of professionals dealing with victims and perpetrators, focuses on three areas of intervention, namely:
 1. recognition of violence,
 2. taking care of the victim
 3. supporting the victim by leading her to exit the violent circle.

The **Protection** project is carried out taking in due consideration the following steps:

- *Risk assessment*: the guidelines for risk assessment represent a simplified evaluation method to be made available to operators who deal with situations of gender violence. Its main aim is therefore to promote and put in place protective actions and support for women who are often in a situation of high risk of being the victims of further violence;
- *Relief*: it is necessary to develop strategies that put in place an integrated approach, thus strengthening the services provided by certified public and private social health services. Relief must include the following steps: listening and welcoming, medical and psychological assistance together with care and support courses dedicated to female victims of violence.

- *Social and work reintegration*: a network of services, led by a team of professionals, guaranteeing to take concrete actions aimed at the effective reintegration of women affected by violence.

Lastly, given that violence against women is a social phenomenon mainly due to the inability of men to accept and recognise women's autonomy and freedom of self-determination, the Plan provides a line of intervention aimed at the treatment of *abusers/perpetrators*. In this perspective, ad hoc psychological and criminological treatments have been developed in the social health field, which allow an effective treatment in order for men to avoid committing the same crime.

CONCLUSION

The legislation adopted in recent years in Italy protects women victims of violence, representing a great step forward against all forms of gender-based violence.

The link between criminal and civil jurisdiction is increasingly close and there is growing collaboration between the two sectors in order to prevent violence, and support and defend victims of violence.

For a better protection of victims, it would be desirable to take further substantial measures.

In orders issued by the civil court, the judge should bear in mind the position of minors who are also victims of "assisted violence".

This omission hinders a full protection of female victims of abuse who are likely to be the target, due to the shared custody procedures of their children, of further violence.

This omission also exposes women to so-called "secondary victimisation" by the institutions, which the Istanbul Convention of the Council of Europe censures and condemns. This happens because they have to meet the violent partner in order to share decisions regarding their children.

It is therefore necessary that the Family Court Judge, in accordance with the Istanbul Convention, should gather information on current claims and on the evidence and facts that occurred during the cohabitation and even after the end of the relationship. All this information helps the judge to determine whether there was any abuse.

In fact, violence against women is itself a harmful behaviour for the health of the children through the experience of assisted violence .

In the articles of the Istanbul Convention, children feature as victims of assisted violence, and therefore victims together with the women, of the violence of the father; it is also pointed out that security in these cases is the first step to be taken as a benchmark in the choices on foster care, that must essentially be taken to protect the mother-child couple in the case of domestic violence.

The Istanbul Convention introduced an important provision on prejudice to the health and life of the minor; assisted violence is strictly linked to violence against women, with an immediate effect on children. An initial response to this type of “*secondary victimisation*” is given by the creation of a list of experts for gender-based violence against women. In case of gender-based violence, Judges will have to choose their consultants from this specific list and ask them whether they are facing a situation of conflict or of violence.

For the criminal system, it is appropriate to define “*femicide*” as an independent crime whose definition needs to be included in the criminal code, both for the crime of murder and for other crimes committed against the person, first of all personal injury, but also threat.

It is also necessary to focus on the preliminary investigation phase, making it shorter and more effective in the very first steps. In the case of gender violence, it is necessary to speed up the time already in the crucial first moments. In this respect, an obligation could be placed on the police to notify the crime within a limited timeframe, not later than 24 hours, to the Public Prosecutor’s Office.

It is important to underline that speed must be guaranteed during the preliminary investigation phase, when the victim’s need for protection is greater.

For women who are victims of violence, protection should also be guaranteed after the precautionary measure or after the expiration of the definitive sentence, with protection programmes similar to the legislation dealing with witnesses of justice.

However, in order for the Istanbul Convention to be fully implemented in our country, it is necessary to regulate specific sectors not only for magistrates and the police, but also for those lawyers who want to specialise in this field. A specialised section of the Court should be established in the court system, enhanced privacy protection systems, in-camera hearings, and the obligation of permanent training for magistrates and lawyers who want to specialise in these kind of crimes; trainers must have proven experience in this area for several years or be part of anti-violence centres specifically authorised by the State.

5

Northern Ireland



Introduction

It must be acknowledged at the outset of this Chapter that violence against women sadly continues to be an endemic problem in Northern Ireland. Violence against women, in whatever form it may take, is a complete scourge on Northern Ireland society and despite the best endeavours of government agencies, professionals and charitable organisations, violence against women continues to increase. It will come as no surprise to anyone that within Northern Ireland the majority of incidents of violence against women continue to be those occurring within a domestic setting e.g. partner / family member.

Statistics from the Police Service of Northern Ireland (PSNI) regarding incidents of domestic abuse for the period October 2016 to the 30th September 2017 show an increase each year since 2004/2005 (with the exception of 2007/2008 and 2010/2011). From October 2016 – 30th September 2017 29,404 incidents of domestic abuse were reported to the PSNI. Unfortunately, these statistics do not record the number of incidents reported by women however on the 28th November 2017, Women's Aid in Northern Ireland reported in their statistics for the period 2016 that 710 women and 568 children stayed in their refuges across Northern Ireland and 7,030 women and 7,878 children accessed support and services through Women's Aid. Perhaps the most telling statistic is that in 2016 Women's Aid took 29,657 calls in respect of domestic abuse with 93% of those calls being from women.

Given these harrowing statistics it is vitally important that everyone practicing in the legal profession in Northern Ireland is fully versed with the legal remedies available to women who are victims of or are at risk of violence. This Chapter seeks to assist colleagues by setting out the legislative framework and case law within Northern Ireland regarding the protection of women who have either experienced or are at risk of experiencing violence.

5.1

Overview of the national legal framework on violence against women

As a result of violence against women being predominantly domestic based in Northern Ireland, it is important to understand the definition of domestic violence and abuse used at government level in Northern Ireland. In 2016 the Northern Ireland Government Strategy "Stopping Domestic and Sexual Abuse in Northern Ireland" defined domestic abuse as: "*threatening, controlling, coercive behaviour, violence or abuse (psychological, virtual, physical, verbal, sexual, financial or emotional) inflicted on anyone (irrespective of age, ethnicity, religion, gender, gender identity, sexual orientation or any form of disability) by a current or former intimate partner or family member*".

In Northern Ireland, victims of domestic violence or abuse will come into contact with the Court system by way of two Court avenues - the civil court or (if a complaint has been made to the PSNI) by way of the criminal court. The civil court is the most commonly used court for legal remedies in respect of violence against women.

A. Implementation of European and international legal instruments on violence against women

One of the most valued pieces of European legislation yet the most under used in Northern Ireland in the context of protecting women internationally against violence is *Regulation (EU) No. 606/2013 of the European Parliament and of the Council of 12 June 2013 on Mutual Recognition of Protection Measures in Civil Matters* ('the Protection Measures Regulation'). This piece of EU legislation is particularly pertinent to Northern Ireland given that to date there are no border controls between Northern Ireland and the Republic of Ireland (the Regulation does not apply to intra-UK decisions). As a result, even when the victim had an order in place from the Northern Ireland Court's protecting them from abuse by the perpetrator, the perpetrator could have crossed the border and continued their campaign of violence against their victim e.g. text messages, phone calls, revenge porn postings on social media with little to no remedies available to the victim in the Northern Ireland.

"The Protection Measures Regulation" came into force on the 11th January 2015 in the UK (including Northern Ireland) and it provides an automatic intra-EU recognition and enforcement of civil protection measures made in Member States and by doing so extends the tools available to protect victims of domestic violence within the European Union (save for Denmark which is not bound by the Regulation). *The Civil Jurisdiction and Judgement (Protection Measures) Regulations 2014* supports the implementation of the Regulation in Northern Ireland by making provisions to facilitate the application of the "Protection Measures Regulation" in the County Courts and High Court of Northern Ireland. In Northern Ireland the most prominent legislation requiring implementation and enforcement in another Member State are *the Family Homes and Domestic Violence (Northern Ireland) Order 1998*, *the Children (Northern Ireland) Order 1995* (however be aware that the Regulation does not apply to protection measures made under *Brussels Ila Regulation EC Re No 2201/2003* e.g. prohibited steps orders as they have their own enforcement procedure), *the Protection from Harassment (Northern Ireland) Order 1997*, *the Forced Marriage (Civil Protection) Order 2007* and *the Female Genital Mutilation Act 2003*. This legislation is discussed in more detail at section B.

The refreshing aspect of this piece of legislation is that no special procedure, mirror order or declaration of enforceability is required. The steps for implementation are simply:

- i. a copy of the protection measure from the member State (translated if necessary) - these are defined in the Regulation as any decision including a Court Order made in a Member State imposing obligations on a person causing a risk with a view to protecting another person when the latter's physical or psychological integrity may be at risk. This definition includes the prevention of any form of violence in close relationships, such as physical violence, harassment, sexual aggression, stalking, intimidation or other forms of indirect coercion.
- ii. a certificate under Article 5 from the issuing Member State.

The recognition corresponds with the duration of the protection measure order made but it is limited to 12 months from the issuing certificate. It is however possible to invoke protection measures of more than 12 months under any other legal act of the EU for providing recognition or you can apply for a protection measure in the Member State addressed if more than 12 month duration is required. The Regulation does not regulate the procedures for implementation or enforcement and does not deal with the sanctions for violation of a protection measure foreseen by each Member State - those matters are left to the law of that Member State. The Regulation does however provide for the provision of legal aid in other Member States to ensure access to the procedures covered within it.

With the implementation of this Regulation in Northern Ireland, care needs to be taken in respect of undertakings given to the Court in Northern Ireland. Relatively unique to Northern Ireland (and the UK) is the concept of undertakings. Undertakings are a common way in Northern Ireland of achieving protection without an order being made. The undertaking is normally given by the alleged perpetrator in writing to the Court and is, in effect, a promise to the Court to do / not do certain acts. In the undertaking there is no acceptance of any liability by the alleged perpetrator. In such circumstances Northern Ireland Courts could provide a certificate to another Member State on the basis that the undertaking is a protective measure however because undertakings do not exist in the other Member States (either an Order is or is not made in those Member States) the undertaking may not be capable of being registered as the Regulation also provides grounds for refusal of recognition or enforcement in cases of irreconcilability of decisions or where it is manifestly contrary to public policy. Caution is therefore advised if settling any case on undertakings in Northern Ireland where enforcement in another Member State is foreseeable.

Just like the rest of the UK, Northern Ireland awaits ratification of the Istanbul Convention into domestic law. The Council of Europe Convention on preventing and combating violence against women and domestic violence is based on the understanding that violence against women is a form of gender-based violence that is committed against women because they are women. It places an express obligation on the Member state to address it fully in all its forms and to take measures to prevent violence against women, protect its victims and prosecute the perpetrators. Failure by a Member State to do so makes it the responsibility of that Member State. The Convention leaves no doubt that there can be no real equality between the sexes if women experience gender-based violence on a large-scale and Member States, its agencies and institutions ignore it. This piece of legislation is of paramount importance within Northern Ireland as it is the only legislation (save for the *Female Genital Mutilation Act 2003*) which is specifically designed to protect women. The sooner this piece of legislation is ratified in Northern Ireland the better it will be for women who are at risk of or have experienced violence. Violence against women is indefensible and inexcusable – the continual delay to implement the Istanbul Convention into law in Northern Ireland is likewise indefensible and inexcusable.

B. Presentation of the national legal framework for protecting women victims of violence

In Northern Ireland there are six key pieces of legislation which provide the legal framework for protecting women from violence and they are:

- i. [Family Homes and Domestic Violence \(Northern Ireland\) Order 1998](#)

- ii. [The Protection from Harassment \(Northern Ireland\) Order 1997](#)
 - iii. [Domestic Violence, Crime and Victims Act 2004](#) and the [Domestic Violence, Crime and Victims Act 2004 \(Commencement No. 11\) Order 2009](#)
 - iv. [The Children \(Northern Ireland\) Order 1995](#)
 - v. [The Forced Marriage \(Civil Protection\) Order 2007](#)
 - vi. [The Female Genital Mutilation Act 2003](#) as amended by the [Serious Crime Act 2015 Section 73](#) (this is the only piece of legislation that is gender specific)
- i. **Family Homes and Domestic Violence (Northern Ireland) Order 1998 and the Family Homes and Domestic Violence (Allocation of Proceedings) Order (Northern Ireland) 1999**

This legislation allows victims of domestic violence / abuse to apply for protective civil orders – this is the most commonly used statute in respect of domestic violence in Northern Ireland. The person applying for the Order is referred to as the Applicant and the person who is replying to the application is referred to as the Respondent. Under the 1999 Order there is a discretion given to the Court tiers to move applications up and down if there are related family proceedings ongoing in another Court tier however proceedings normally commence in the Domestic Proceedings Courts (Magistrates Court level) with the following exceptions under the 1999 Order:

- a. if the Applicant is under the age of 18, proceedings must be commenced in the High Court of Northern Ireland (this includes even when the Applicant requires leave as a result of being under the age of 16). The High Court can transfer down to the Family Care Centre the application if it deems it appropriate to do so.
- b. If the Respondent is under the age of 18 or a child under the age of 18 wishes to become a party to the proceedings, the case must transfer to the County Court (the Family Care Centre) from the Domestic Proceedings Court.
- c. If there are already family proceedings pending in the High Court in Northern Ireland, an application commenced in the Domestic Proceedings Court will be transferred to the High Court if the Domestic Proceedings Court deems it appropriate for the application to be heard alongside the family case.

Under the 1998 Order, applications are either for a Non Molestation Order (Article 20) and / or an Occupation Order (Articles 11 – 19). A Non Molestation Order can even be made in any family proceedings to which the Respondent is a party where the Court considers that the Order should be made for the benefit of any other party to the proceedings or any relevant child even though no such application has been made.

A Non Molestation Order is an Order to stop or prevent a person from abusing, harassing, pestering, using or threatening to use violence against a person in any way or instructing a third party to do so on their behalf. The Order can also be made for the benefit of a relevant child under the age of 18 and an exclusion zone can be attached as a term of the Order e.g. around the Applicant's home/place of work etc. An Occupation Order can be used as an additional order to the Non Molestation Order or as a stand-alone Order – it

provides the Applicant with the right to enjoy peaceful occupation of the family home however the Court will scrutinise whether the Respondent has alternative accommodation and should be removed from the family home before making such an Order.

The Applicant can seek an order for themselves or for the benefit of a relevant child. In Order to qualify as an Applicant, you have to be an 'associated person' in respect of the Respondent. Articles 2 and 3 of the 1998 Order (and *The Law Reform (Miscellaneous Provisions) (Northern Ireland) Order 2005 and Civil Partnership Act 2004*) provide further clarity in respect of who can bring an application as an 'associated person' and the definition of a relative.

All applications can be made *ex parte* i.e. without the Respondent being put on notice. Interim Orders granted on an *ex parte* basis are only granted where there has been a recent incident of abuse and urgent and immediate protection is required. They are short in duration to allow the Respondent to be served with proceedings and to attend Court at the earliest opportunity (usually a matter of days rather than weeks). All Orders granted are served by the PSNI on the Respondent and are sent by the Court to the PSNI. The Non Molestation Order carries with it a power of arrest and takes effect once served. If the Applicant reports to the PSNI that the Respondent has breached a term of the Order, the PSNI can arrest and charge the Respondent with breaching the Order. The Respondent can face criminal proceedings before the Magistrates Court for breach. Conviction for breaching an Order is a serious offence and the Respondent can face a fine or up to 6 months' imprisonment or both before the Magistrates Court. An Occupation Order on its own (i.e. without a Non Molestation Order) does not carry a power of arrest.

Upon receipt of an application or upon an *ex parte* application having been made, the case will be returned for inter parties Hearing with both parties required to be in attendance. The Court can make an Order for whatever period the Court deems appropriate however in practice Orders are rarely made beyond eighteen months; the Orders can be varied during this period to meet changing needs e.g. change of address of Applicant.

It is however common practice for these applications to settle on undertakings given by the Respondent. There is no admission of liability and whilst undertakings should be time limited in duration, they more often than not are not. On foot of a case settling on undertakings, any Order currently in place is discharged. An undertaking is a promise given by the Respondent to the Court to do / not do certain acts and as such, an undertaking carries no power of arrest if breached. If an undertaking is breached the practice is for the Applicant to seek a fresh Order against the Respondent rather than to issue contempt proceedings against the Respondent.

Legal aid is available for Applicants to bring any application under *the Family Homes and Domestic Violence (Northern Ireland) Order 1998* under *the Civil Legal Services (General) Regulations (Northern Ireland) 2015* however the application for legal aid is both merit and means tested – it is not automatic. If an Applicant exceeds the financial threshold, limited legal funding is still permissible under *Regulation 10(1)(a) of the 2015 Regulations*. Although permitted, it is unheard of for an Order for costs to be made against a Respondent.

ii. The Protection from Harassment (Northern Ireland) Order 1997

Harassment is both a criminal offence and a civil action under the Protection from Harassment (Northern Ireland) Order 1997. If the victim does not qualify as an associated person for a Non Molestation Order, they can apply as a Plaintiff before the County Court / High Court by way of a Civil Bill / Writ seeking damages and an Order protecting them from harassment under the Protection from Harassment (Northern Ireland) Order 1997. Article 3(1) of the legislation prohibits the act of harassment and states that a person shall not pursue a course of conduct which amounts to harassment of another and which the perpetrator knows or ought to know will cause the victim harassment (which includes alarming the person or causing them distress). Cases have been brought in Northern Ireland under this legislation involving revenge porn / inappropriate postings on all forms of social media. The key differences between a Non Molestation Order and Protection from Harassment Order are as follows:

1. Protection from Harassment Order requires a course of conduct (defined as having occurred on at least two occasions). A Non Molestation Order does not require a course of conduct.
2. There is no power of arrest by the PSNI for breach of a Protection for Harassment Order made before the Civil Courts. It is the Plaintiff who has to commence additional proceedings i.e. committal proceedings before the County Court / High Court. The Plaintiff can however make a criminal complaint of harassment to the PSNI.
3. Service of the Protection from Harassment Order on the Defendant is not undertaken by the PSNI – the solicitor or the Plaintiff (if acting as litigant in person) has to serve the papers on the Defendant and they have to be served personally (usually done by way of process server).

Injunctive relief in the form of a Protection from Harassment Order can also be made ex parte and where an Order is made a penal notice is attached to same. An ex parte Order is short in duration to provide the Defendant with an opportunity to be served with the papers and attend Court at the earliest opportunity. Again it is common for these actions to settle by way of undertakings in writing with any Order and a penal notice in place discharged. However there has been recent changes in the form and content of undertakings given before the County Court - it is now practice for the undertaking to be time limited in duration, for the preamble to the undertaking to expressly state that the Defendant has been made aware that any breach of said undertaking is contempt of Court and for a penal notice to be attached to same.

Legal aid is available to the Plaintiff to bring an action under the *Protection from Harassment (Northern Ireland) Order 1997* however the application for legal aid is both merit and means tested. An award of damages and costs can be made against the Defendant.

iii. Domestic Violence, Crime and Victims Act 2004 and the Domestic Violence, Crime and Victims Act 2004 (Commencement No. 11) Order 2009,

This is the legislation used in criminal proceedings to make a restraining order against a Defendant. It can only be applied for once criminal proceedings have concluded in Court however it can be made even where the Defendant has been acquitted. The Order may specifically state the conduct or act which is be-

ing prohibited and which amounts to harassment or will cause a fear of violence. Orders can be made even when the Defendant has been acquitted and the basis for such an Order being made is where the Court feels that the victim of harassment still needs protection from the Court. The Court is at liberty to make the Order if it so chooses to or on the request of the Prosecution.

iv. The Children (Northern Ireland) Order 1995,

This legislation can provide protection but it is specifically for the protection of children. Under Article 8 the protection that can be afforded to a child can take the form of a No Contact Order against a parent, Prohibited Steps Order / Specific Issue Order e.g. not to leave the jurisdiction, not to attend a child's school etc. These applications can be made ex parte however there is no power of arrest by the PSNI if breached by the Respondent as they are civil orders. Public law protection can be brought by the Trusts in Northern Ireland for emergency protection orders, child assessment Orders and care / supervision orders if they believe that the child is suffering or has suffered significant harm as a result of the care being given to the child or the child being beyond parental control.

Again legal aid is available for an Applicant to bring any application under Article 8 of the Children (Northern Ireland) Order 1995 but it is both merit and means tested. A parent defending any application brought by the Trust for care or supervision orders is automatically granted legal aid to defend same.

iv. The Forced Marriage (Civil Protection) Order 2007,

The Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act Northern Ireland 2015 and in particular section 16 of the 2015 Act creates the criminal offence of forced marriage in Northern Ireland however the *Forced Marriage (Civil Protection) Order 2007* is the legislation used to protect an individual from being forced into marriage. It is the same legislation that is used in England and Wales. An application can be made to either the County Court or High Court in Northern Ireland. The powers given to the Court are quite wide and the Order can contain prohibitions, restrictions or requirements or other such terms as the Court deems appropriate to stop or change the behaviour or conduct of that person who would force the victim into marriage. The Court can also add a power of arrest to the Order where violence is threatened / there is a risk of same or where there is a risk of significant harm, either to the potential victim or to someone else in connection with the intended marriage. Breach of an Order made under the 2007 Act is not a criminal offence (however section 16 of the 2015 Act makes Forced Marriage a criminal offence).

There are three categories of Applicant under the 2007 Act – the victim, a person applying on behalf of a victim provided they have obtained leave from the Court to make the application and a relevant third party (a Trust). The Court can also make an Order of its own volition. The Order can be applied for on an ex parte basis and there is no time limit stipulated for how long an Order can remain in force. All Orders made, even on an interim basis, are recorded with the Forced Marriage Unit in the PSNI.

At the date of this chapter being printed there have been two recorded applications for Forced Marriage Protection Orders in Northern Ireland; both were heard before the High Court in Northern Ireland.

v. **The Female Genital Mutilation Act 2003 as amended by the Serious Crime Act 2015**
Section 73 (this is the only piece of legislation that is gender specific).

Again the legislation in Northern Ireland is the same as that for England and Wales – Schedule 2 part 2 deals exclusively with FGM Protection Orders in Northern Ireland. An FGM Protection Order is a civil remedy which can be applied for in the County Court of High Court in Northern Ireland. The FGM Protection Order protects a girl against genital mutilation being performed and also protects those girls who have been the victim of genital mutilation. Breach of an FGM Protection Order is a specific criminal offence carrying a sentence of up to 5 years in prison.

Applications for an order can be made ex parte and they can be made by the person who is to be protected by the order, a relevant third party (such as the Trust) or any other person with the permission of the court (for example, teachers, health care professionals, police, family member). The terms of an FGM Protection Order are case specific and like the Forced Marriage Protection Order, contain legally binding conditions, prohibitions and restrictions to protect the person at risk of FGM. These can include confiscating passports or travel documents of the girl at risk and/or family members or other named individuals to prevent girls from being taken abroad, ordering that family members or other named individuals should not aid another person in any way to commit or attempt to commit an FGM offence, such as prohibiting bringing a “cutter” to the UK for the purpose of committing FGM.

At the date of this chapter being printed, there are no recorded applications for FGM Protection Orders in

5.2

Case-law of national courts in legal cases of violence against women

A. Tendencies of case law from national courts on cases of violence against women

It is very difficult to ascertain tendencies from civil case law in Northern Ireland because the main difficulty emanating from the Northern Ireland Courts is that there is a scarcity of written judgements in respect of civil cases concerning violence against women; this is not because there is a scarcity of cases. This is not meant as a criticism of the judiciary but rather there is a developed practice at Magistrates’ level (Family Proceedings and Domestic Proceedings Court) where written judgments are the exception rather than the norm. Most of the cases concerning violence against women commence in the Magistrates’ Courts. These are difficult cases with potentially draconian decisions being made that impact on the whole of Northern Ireland society. It is therefore important for practitioners and the public that judgements dealing with complex, novel and difficult legal issues pertaining to violence against women be written; especially in light of the ever evolving nature of violence against women where the Courts are continuing to face advances in technology being used as weapons of violence against women e.g. social media postings, revenge porn videos.

B. Presentation of influential national case studies on violence against women

From the written judgements that are available in respect of civil applications in Northern Ireland, it is noticeable that the most influential cases are not gender specific.

The one reported case which is gender specific is that of *G and D 2010 NIFAM 6*. This case related to proceedings concerning two female children and a Forced Marriage Protection Order being made by the High Court. The importance of this case was not the issue of gender but rather the fact that this was the first time the High Court in Northern Ireland was being asked to make such an Order. The judgement itself goes through the specific facts of that case, the consideration of the evidence available to the Court and the need for an Order being made. This is the only reported judgement to date in respect of forced marriage. There are no written judgments in respect of female genital mutilation orders having been made.

In respect of case law under the *Protection from Harassment (Northern Ireland) Order 1997*, the recent advances in social media have come to the attention of the Courts in Northern Ireland and have resulted in a number of written decisions concerning private information about Plaintiffs being disseminated without their permission on various social media platforms. The Plaintiffs have relied upon the *Protection from Harassment (Northern Ireland) Order 1997 and the Data Protection Act 1998 and the Data Protection Directive 95/46/EC* to obtain injunctive orders against social media – *GH (a minor by her father and next friend GK) v Frew (2016 NICty 3 and AY (a minor suing by FY as next friend) v Facebook Ireland Ltd and others (2016) NIQB 76*.

In respect of Non Molestation and Occupation Orders, these applications are mostly heard before the Domestic Proceedings Courts however there are five reported cases from the High Court in Northern Ireland – *A v B (2011) NIFam 7, Re Alwyn (2009) NIFam 22, Re Arthur (2009) NI Fam 19, RH and others v IH (2009) NIFam 17 and LA v UJ and RF (2009) NIFam 8*. These cases primarily focus on the practice and procedure regarding applications brought by minors against a relative and whether or not an ‘associated person’ under the 1998 Order should bring an application for the benefit of that child rather than the child bringing an application in their own right. They do not relate specifically to violence against women.

A written judgment has emanated from the Domestic Proceedings Court in *H v W, W v H (2017) NIMag1*. The issue in this case was that the husband had applied for an ex parte Non Molestation and Occupation Order against his wife. The husband had been granted both orders on an ex parte basis and the wife had applied for both orders to be discharged. At the inter parte Hearing the District Judge dismissed the husband’s application and stated at paragraph 37 that “*this is a classic case of attempting to use the powers of a Magistrates Court under the domestic violence legislation in order to resolve, or pre-empt any enquiry into wider issues about title to the property and financial consequences of the breakdown in the relationship*”. The District Judge gave further guidance on the appropriateness of ex parte applications and the requirement for ex parte applications to be made only if the case was genuinely one of emergency or other great urgency. The District Judge further stated that even then it should normally be possible to give some kind of albeit informal notice unless there were compelling reasons to believe that a child of the family’s welfare would be compromised if the a parent were alerted in advance to what was going on.

There has however been significant reporting in respect of violence against women in the criminal courts and it is the criminal courts in Northern Ireland that are the most vocal regarding the protection of women from violence. In 2012 the first conviction for human trafficking occurred in the case of R v Pis with the Defendant receiving an 18 month custodial sentence and in October 2017 the PPS confirmed its first prosecution under the 2015 Human Trafficking and Exploitation Bill regarding the paying for sexual services.

In the case of R v McCullough judgment was delivered by the District Judge sitting at Londonderry Magistrates Court on the 23rd September 2017. The District Judge voiced his disgust at the current laws relating to choking which dated back to 1861. The case before the Court concerned a male partner who had choked his female partner and was convicted of assault. The District Judge drew an analogy with sentencing in the USA for choking a partner. If the Defendant had been tried in the USA for this type of assault on his partner, he would have faced a minimum of 15 years however as the law stands in Northern Ireland, the maximum sentence he can receive is 6 months as choking was obscuring referenced in the 1861 Act. The Defendant in that case was sentenced to 5 months suspended for 3 years.

5.3

National practices in supporting women who have suffered gender violence

A. Bad practice from police or judicial authorities to women victims of gender violence

It is always a concern when legislation designed to protect fails to do so and causes further harm to the victim. Ex parte applications are meant to protect the Applicant / Plaintiff however, the question of potential repercussions for the Applicant / Plaintiff when an ex parte application is refused is rarely discussed. It is not unheard of for an Applicant to seek to have the whole application withdrawn out of fear for what the Respondent will do upon receipt of papers. This is because where an application is made on an ex parte basis and it is refused, the substantive application is served on the Respondent and there is no protection in place for the Applicant. It is quite possible that the service of the application with the statement of evidence on the Respondent can exacerbate the situation and place the Applicant at heightened risk of harm as a result of same having been served. As service is affected by first class post when no ex parte order has been made, the Applicant is normally not aware that the papers have been served until the Respondent presents at their door. The Applicant can of course go back to Court and seek an ex parte order again however a fresh incident has to have occurred.

There is also a financial disadvantage occurring in practice for Applicants in Non Molestation Proceedings at the ex parte stage. The granting of an ex parte Order results in a fee being charged for service of the proceedings on the Respondent by the process server yet an Applicant who does not obtain an Order does not incur this fee as service is by first class post. In ex parte applications there are always two service methods in play when an order is made – the ex parte order itself which is served by the PSNI and the substantive application (including summons and statement) that has to be served separately by way of a process server. More often than not Applicants who have obtained an ex parte order attend at Court for the inter partes

Hearing only to find that the summons has not been able to be served. This results in a further additional service fee having to be paid for the summons to be served again. One has to question why the legislators created a dual service approach in these instances when the PSNI who are serving the order could easily affect service of all the documents on the Respondent and thereby ensuring a more efficient process.

The procedure is further exacerbated by the different Magistrates' Court Offices operating different processes for service with some Court Offices insisting on the fee for an ex parte application being paid regardless if the Order is made or not and other Court Offices seeking payment only when the Order is made. There needs to be uniformity in respect of this issue and a re-think regarding Applicants having to pay for service of an Order on the Respondent.

Perhaps the most obvious bad practice in Northern Ireland regarding supporting women who have suffered gender violence is the current suspension of devolved government and the challenges Northern Ireland now faces regarding implementation and changes necessary to out-dated legislation; not to mention the further practice of delay in ratifying measures to protect women from violence i.e. the Istanbul Convention.

In Northern Ireland there is currently no departmental body taking responsibility for the issue of female genital mutilation and at present there are no plans on the horizon to implement multi agency guidelines in respect of same. Northern Ireland even lags behind the rest of the UK and Europe by having no specific data available on the number of women and girls affected in Northern Ireland by female genital mutilation. As a result, society develops the wrong perception that there are no victims of female genital mutilation living and working in Northern Ireland and no girls at risk of same. Ignorance of the reality of the situation impacts on the ability to take protective measures because there then follows an ignorance of the law designed to protect girls from female genital mutilation.

In respect of cases that traverse both the civil and criminal Courts, there needs to be a more streamlined sharing of information between the PSNI/PPS and the Civil Courts; in particular victim impact reports, Pre Sentence and probation reports which are not freely available to Applicant's seeking protection from the civil courts. As a result applications have to be made to the Criminal Courts for cross-court disclosure. This is often a cumbersome process requiring third party applications in the criminal court and where the criminal case has already been disposed of before the Non Molestation case is determined, the disclosure of these reports can, in some cases, be difficult to obtain. Whilst the PSNI and Social Services have joint protocols for the sharing of information on perpetrators of domestic violence, this information is rarely shared with the judiciary and indeed steps now implemented for assessments to be completed at an early intervention stage to determine the risk to an Applicant (through the MARAC scheme and Dash Forms completed by PSNI Officers in any initial complaint) are not made known to the Judiciary in Non Molestation Applications and who, in turn, are not aware of the risks arising to that particular Applicant. Again this is a practice that needs to be reviewed.

B. Good practices in supporting women victims of gender violence

The good practice currently in place in Northern Ireland definitely outweighs the bad practice however all

legislation and practice benefits from stress testing and more can be done to strengthen vital legislation and the powers of the Court to protect women from violence.

In Northern Ireland reform was taken of *the Family Homes and Domestic Violence (Northern Ireland) Order 1998* in 2004 and 2005 to include civil partners and to extend the meaning of relative for the purposes of being an associated person. These were welcome and much needed changes to the 1998 legislation. In addition the Review of Civil and Family Justice in Northern Ireland which published its findings in 2017 also looked at the role personal litigants play in applications concerning violence - especially where the Litigant-in-Person is the Defendant and how the Court can balance the Article 6 Human Rights of the Litigant-in-Person whilst ensuring the protection of the Applicant at the same time. In recent years the Northern Ireland Court Service has seen an increase in Special Measure Applications for evidence giving which has afforded this protection to the Applicant and whilst, on the whole, this is working well, improvements in IT resources are still required.

In March 2016 a new Strategy was jointly developed by the Department of Health, Social Services and Public Safety and the Department of Justice in conjunction with many key organisations across the statutory, voluntary and community sectors. At its core, the Strategy takes a zero tolerance approach to domestic and sexual violence. The Strategy is constructed around five key strands which focus on leadership, prevention, support, services and justice. Within these strands, 20 priority areas have been highlighted for implementation throughout the life of the Strategy. The Strategy, which has been developed in conjunction with a diverse range of statutory and voluntary and community sector organisations also sets out new definitions for both Domestic and Sexual Violence and Abuse for Northern Ireland.

A further example of good practice in Northern Ireland is the first purpose built Sexual Assault Referral Centre at the Rowan Centre – this is jointly funded by DHSSPS and the PSNI. The Rowan provides services in the aftermath of a sexual assault, rape or an incident involving childhood abuse and offers services 24 hours a day, 365 days a year. Services offered at The Rowan include forensic medical examination by specially-trained doctors, risk assessment of HIV and other sexually transmitted infections, emotional support and support in making a report to the police. Since opening its doors in 2013, The Rowan has offered advice, support and direct care to over 1,800 individuals.

The Criminal Courts are also playing their part in developing good practice regarding protecting women from violence - zero tolerance to domestic violence complaints in the criminal courts has seen a growing increase in successful prosecutions even where the Applicant withdraws her statement of complaint. Modern day evidence through body cameras worn by police officers attending at domestic violence incidents is helping to strengthen the evidence for the PPS at trial.

On International Day for the Elimination of Violence Against Women on the 25th November 2016 the Northern Ireland Human Rights Commission called on the Northern Ireland Executive to strengthen its Human Rights protection and to ratify the Istanbul Convention. Within policing there have been advances in good practice - the regional domestic violence unit based at Antrim Road Police Station has a representative from Women's Aid, MARAC and DASH forms are being completed by PSNI when attending at an incident of domestic violence. This form allows the PSNI to undertake a risk assessment in respect of persons and children involved in those incidents.

CONCLUSION

Violence against women is being tackled head on in Northern Ireland however much still remains to be done. The ratification of the Istanbul Convention will bring much needed specific legislation to protect women against violence however issues such as the funding for protective applications remains a burning issue. At present in Northern Ireland, applications for protection orders are both merit and means tested with legal aid. This means that vulnerable women who are just over the financial threshold for legal aid have to make difficult decisions regarding their own safety based on their financial circumstances. This cannot be allowed to continue. Just as violence against women does not discriminate against culture, wealth or religious beliefs, neither should the availability to access protection from the Courts and legal representation. Going to Court to seek protection is highly emotional and traumatic for many women who are already experiencing and living with the scars of violence. Making those same people pay to be able to access Court protection or face the intolerable situation of representing themselves against their abusers cannot be allowed to continue. Public funding needs to be automatic for all seeking civil protection from the Court.

6

Poland



Introduction

Poland is a traditional society dominated by the conservative views of the Roman Catholic Church. For a large part of society, the role of women is viewed predominantly in the context of their duties towards the family, their husband and children. After the collapse of communism in 1989, a conservative backlash influenced legislation, resulting in one of the strictest abortion laws in Europe, limiting the access of women to reproductive health and the general tendency to ignore women as a part of society. Even the major social laws introduced in 2015-2017 had the effect of pushing women to the margin of social life. For instance, the so-called “500+” government programme (social benefits of 500 PLN are granted to all families for every second and subsequent child in a family, and also for the first child if the family is poor) resulted in pushing some 80,000 women from the labour market and so make them economically dependent on men. Another example is the re-introduction of a difference in retirement ages, being now 60 for women and 65 for men, contrary to the EU principle of gender equality - resulting, again, in lower pensions for women and in consequence, their economic dependence on men. Also, women were deprived of “day after” contraception which, since 2017, is sold only on receipt and the latter is very often unavailable since doctors invoke a “conscientious objection”.

The generally conservative tendencies in society and the policy of Poland’s government shape the context of provisions applicable to combating violence against women. Actual governmental policy regarding violence against women, in spite of all the rhetoric developed exclusively in order to obtain EU funds, can be described as a combination of A-N-D: allowing, neglecting, disregarding. To exemplify this trend, one can mention the refusal of the Ministry of Justice to grant subsidies to the NGO “Centre of Women’s Rights”, motivated by the fact that the said NGO “limits its help to women only”.

6.1

Overview of the national legal framework on violence against women

A. Implementation of European and international legal instruments on violence against women

The 1997 Constitution of the Republic of Poland provides for a very strong guarantee of equality and prohibition of discrimination on any grounds, reading in Article 32 § 1 that “all persons shall be equal before the law. All persons shall have the right to equal treatment by public authorities” and summarising in § 2 that “no one shall be discriminated against in political, social or economic life for any reason whatsoever”. This provision is not justiciable as such. However, Article 33 of the Constitution, which guarantees equal rights for men and women in a family, political, social and economic environment, is justiciable as such.

Article 40 of the Constitution provides that “no one may be subjected to torture or cruel, inhuman, or degrading treatment or punishment”. As for assuring effectiveness of international law in Poland, Article 9 of the Constitution provides that “the Republic of Poland shall respect international law binding upon it” (which is a source of obligation not only in international relations but also internally, *vis-à-vis* individuals). Article 87 includes international agreements, after their ratification, among the universally binding sources of law in Poland (§ 1 reads that “the sources of universally binding law of the Republic of Poland shall be: the Constitution, statutes, ratified international agreements, and regulations”) and Article 91 of the Constitution determines the monistic approach to international treaties in Poland, which shall be treated as precedent over conflicting domestic laws by providing that “(§ 1) After promulgation thereof in the Journal of Laws of the Republic of Poland (*Dziennik Ustaw*), a ratified international agreement shall constitute part of the domestic legal order and shall be applied directly, unless its application depends on the enactment of a statute. (§ 2) An international agreement ratified prior to consent granted by statute shall have precedence over statutes if such an agreement cannot be reconciled with the provisions of such statutes. (§ 3) If an agreement, ratified by the Republic of Poland, establishing an international organisation so provides, the laws established by it shall be applied directly and have precedence in the event of a conflict of laws”.

Polish courts, at least in principle, internalised their duty to “take into consideration” the ECtHR *acquis* while deciding cases. The Supreme Court ruled that:

“the duty to respect the decisions of the European Court of Human Rights lies also on the courts. It is not just a question of taking the position of the ECtHR into account while interpreting the Convention and construing the domestic law in accordance with that interpretation, but equally of taking concrete steps aimed at implementing the judgment of the ECtHR”.

The Supreme Court already in 1995 ruled in a landmark decision that “since the accession of Poland to the Council of Europe, the jurisprudence of the European Court of Human Rights in Strasbourg may and ought to be taken into account while interpreting national law”. The Supreme Court added that the ECtHR case law should serve as a “significant source of interpretation while interpreting provisions of Polish law”. That standing was later referred to in a number of decisions of the Supreme Court as well as of ordinary and administrative courts.

However, thorough analysis of the jurisprudence of Polish courts shows that in practice they encounter significant problems related to observance of the duty – incumbent upon domestic bodies of State Parties to the ECHR – to ensure the protection of rights and freedoms guaranteed by the European Convention. Sadly, it is a common practice to overlook the Convention standard and Strasbourg case law, or to pretend that the latter is taken into consideration by randomly referring to incidental decisions of the ECtHR without proper analysis of the actual interpretative standard of the Convention. This issue was already discussed broadly in legal scholarship and thus we only signal the problem here to the extent that it influences the mechanism of reception of Strasbourg’s body of case law applicable to the issue of violence against women.

It is important to note that since the policy of the Polish government seems to disregard the Istanbul Convention and deprives it of practical relevance, the Istanbul Convention standard will nevertheless need to

have indirect impact on the case law of Polish courts. The reason is that the ECtHR takes the Istanbul Convention into account while interpreting e.g. Articles 3 or 8 of the Convention. This well-settled case law of the Strasbourg court started with the *Valiulienė* ruling and so far it encompasses 14 decisions. Therefore, although to date the Istanbul Convention has been applied by Polish courts only once, it is to be expected that in future references to the Istanbul Convention will be more frequent and elaborate.

One should mention that Poland transposed Directive 2012/29/EU by adopting the Law of 28th November 2014 on protection and help for victims and witnesses. The law provides for instruments protecting victims or witnesses in the course of or before the formal commencement of criminal proceedings and includes such instruments as personal protection during investigative actions, permanent personal protection (physical bodyguarding by the Police) and organising and providing relocation to a new domicile as well as related assistance. The Directive was also partly transposed by the amendment of 2015 to the Code of Criminal Procedure, which introduced the duty to issue confirmation of notification of crime (Article 304b of the Code of Criminal Procedure). Although the transposition is not perfect (e.g. witnesses or victims are not guaranteed special protection as required by the Directive) and awareness of the instruments available under the law is not exactly widespread, the transposition was to date not challenged by the European Commission through Article 258 TFEU.

B. Presentation of the Polish legal framework for protecting women victims of violence

Poland is party to the ECHR (since 1993), the Istanbul Convention (since 2015), the CEDAW (since 1982) and a Member State of the EU (since 2004).

The 1997 Penal Code penalises certain acts of violence against women, namely rape (Article 197), sexual abuse of the relationship of dependence (Article 199), stalking (190a), violation of sexual intimacy resulting from violence (191a) and physical or psychological mistreatment (207). The prosecution of rape, sexual abuse of the relationship of dependence and mistreatment does not require a motion by the injured person.

Rape is defined as subjecting another person to sexual intercourse or other sexual act by force, illegal threat or deceit.

The 1997 Code of Criminal Procedure was amended in 2014 and the new Articles 185c-185d were introduced concerning the hearing of victims of crimes covered by Articles 197-199 of the Penal Code:

Art. 185c. [Crimes referred to in Articles 197-199 of the Penal Code – notification of a crime, hearing the aggrieved]

§ 1. In cases concerning crimes referred to in Articles 197-199 of the Penal Code the notification of the crime, if made by the aggrieved, shall be limited to identification of the crucial facts and evidence.

§ 2. Hearing the aggrieved as a witness shall be conducted by the court during the session in which the prosecutor, the defender and the attorney of the aggrieved can participate. The image and sound recording and the minutes of the session shall be produced during the court hearing.

§ 3. In case it is indispensable to re-hear the aggrieved as a witness, the hearing shall be conducted in accordance with Article 177 § 1a if the aggrieved so requests and the apprehension occurs that direct presence of the accused during the hearing is likely to hinder the testimonies of the aggrieved and/or negatively influence his/her psychic condition.

§ 4. If an expert psychologist participates in the hearing one ought to make sure, if the aggrieved so requests and unless it hinders the hearing, that the expert is of the same sex as the aggrieved.

Art. 185d. [Hearing referred to in Articles 185a – 185c]

§ 1. Hearing referred to in Articles 185a – 185c shall be conducted in appropriately accommodated rooms inside or outside the court's premises.

§ 2. The Minister of Justice shall define, by way of regulation, the methods of preparing the hearing referred to in § 1 and the conditions concerning the rooms dedicated to conducting such hearings, in particular as regards necessary technical appliances, while taking into account the necessity to ensure freedom of speech and the sense of safety of the testifying persons.

The Regulation of the Minister of Justice (2015) on the internal organisation of common courts defines cases where the testifying by a witness is organised pursuant to Article 185c-185d CPC as "urgent cases" (§ 2). They ought to be dealt with without taking into consideration the inflow of cases (§ 56.2).

6.2

Case-law of national courts in legal cases of violence against women

A. Tendencies of case-law from Polish courts in cases of violence against women

In this section of the report, one can familiarise oneself with the approach of Polish courts to some basic notions and legal mechanisms necessary for the problem of combating violence against women.

1) Notion of rape

The interpretation of the notion of rape has evolved in time and at present it is assumed that the court must always establish beyond reasonable doubt whether the consent for sexual act was granted, when it was granted and what exactly was the scope of that consent. However, the *opinio communis* of case law and legal scholars in Poland is that to establish that rape was perpetrated there must be resistance on the part of the victim, i.e. an externally manifested contumacy against the sexual act to which the force employed was supposed to force the victim, although it is not necessary for the victim to exhaust all accessible measures to stop the perpetrator. The manifested resistance of the victim does not have to take physical form and, depending on the circumstance, it may be expressed by crying, verbal statements, yanking or attempting to call for help. So these forms can be different but the key point is that the resistance must be manifested. On the other hand sometimes it is not sufficient for the court to rely on the resistance since in specific circumstances the perpetrator can reasonably assume that the resistance is not genuine but is part of love play.

Although unacceptable from the perspective of the Istanbul Convention, this stance is still present in the case-law of Polish courts.

The practice of Polish courts reveals a tendency to apply the theory of sexual liberty instead of sexual autonomy (as it should be under the Istanbul Convention) in rape cases. In accordance with the Istanbul Convention, the crucial element in such cases should be to establish whether there was a conscious, non-coerced and autonomous decision on the part of the victim to engage in a sexual act. Instead, Polish practice visibly tends to concentrate on whether the sexual act was sufficiently transparently opposed by the victim. This practice must be assessed as incompatible with the Istanbul Convention standard and the ECHR standard as defined in the landmark case *M.C. v Bulgaria*.

It is noteworthy that certain rulings reflect – presumably unintentionally – the assumption of a “naturally submissive” role of women which reflects deeply rooted prejudices and in fact a discriminatory approach towards the “natural role” of women. For instance, in a judgment of the Court of Appeal in Cracow, it is mentioned that “the notion of rape in common language has a meaning which is similar to that in legal terms and it refers to forcing a woman to a sexual act”. In the same ruling, the Court of Appeal in Cracow assumed that the accused “abstained” from raping the victim voluntarily due to his problems with his erection.

2) Certain specific issues concerning crimes of sexual violence

a) Participation in rape

A person recording the act of rape, although undisputedly causing additional harm and humiliation of a victim, would not be considered as a person participating in the act of violence himself. The Regional Court in Wrocław ruled that such a person cannot be found acting jointly with the rapist if he just filmed the victim while she was raped. It led to decision that the indictment against the person “just” filming the rape scene should be heard by a district court in separate proceedings. It seems doubtful whether this decision of the Court is in accordance with the duty to provide expeditious proceedings (Article 49 § 1 of the Istanbul Convention).

b) Damages

Raping a woman seems to be a rather “cheap thrill” according to some of the Polish courts. The Court of Appeal in Cracow found that a woman who was raped and sued the perpetrator for damages under Articles 445 and 448 of the Civil Code and proved that she underwent psychological treatment for 4,5 years should not be paid 60,000 PLN but just 40,000 PLN due to the fact that, first of all, she had not managed to prove that she received psychological treatment immediately after the day when she was raped and, secondly, her marriage was terminated due to the mutual fault of both parties, since the victim’s reactions to acts of envy on the part of her husband were disproportionate. This position of the court is hardly reconcilable with the duty to assure adequate measure of civil law accessible to the victim, as provided for in Article 29 § 1 and Article 30 § 1 of the Istanbul Convention. The same remark can be addressed to the Regional Court in Piotrków Trybunalski, which ordered the defendant to pay 40,000 PLN in the circumstances where not only was the victim-plaintiff raped but also subjected to mistreatment lasting for some 6 years.

Similar problems appeared in the practice of the District Court in Goleniów which ordered the accused of one rape and one attempted rape to pay, as just satisfaction, the sums of 10,000 and 5,000 PLN respectively. The court's reasoning concentrated in the latter case on the fact that the victim was not actually raped but the accused "only" attempted to rape her. One can be surprised that the victim was – in a way – "punished" by the court for her contumacy.

In another case concerning just satisfaction from the rapist, the Regional Court in Siedlce found the claim of 100,000 PLN "exorbitant" and ordered the defendant to pay 80,000 PLN. However, the court did not explain why it found the plaintiff's claim "exorbitant".

As a general remark one should recall that there appears to be a systemic problem in Poland concerning the amount of just satisfaction ordered for the violation of fundamental rights. This conclusion can be drawn from the ECtHR judgment *M.C. v. Poland* where the victim of drastic mistreatment perpetrated by fellow prisoners was awarded by Polish courts some several thousand PLN as just satisfaction.

It is also striking that in most cases concerning sexual violence against women, even though the accused are found guilty, public prosecutors do not request the courts to order the accused to pay just satisfaction to the victim in accordance with Article 46 § 1 of the Penal Code. Such a decision would protect victims from further traumatising resulting from subsequent civil proceedings concerning damages and/or just satisfaction in a separate lawsuit.

c) The "life-style" of the victim

A positive example of the court's approach can be found in a judgment of the Regional Court in Świdnica. The case concerned a rape committed on a young girl who occasionally engaged in paid sex with accidentally met males. She was raped by a man whom she met after a long-lasting exchange of SMS's containing her nude pictures and descriptions of her sexual fantasies. The Court nevertheless found that, in spite of all these circumstances which "cast a shadow" on the victim, it was established beyond doubt that she did not agree to sexual intercourse with the rapist. This stance of the court is a good reflection of the Article 1 § 1b of the Convention which guarantees elimination of all forms of discrimination against women.

A very positive example of reflection of the Istanbul Convention's standard under its Article 1 § 1b was given in the reasoning of the Regional Court in Piotrków Trybunalski (appellate proceedings) which vigorously and even somewhat emotionally replied to the defendant attorney's arguments saying: "the defendant's attorney should internalise in his future attorney's practice that neither the provocative behavior of a young woman, nor hugging a dance-partner while dancing together or even submissiveness towards the opposite sex (or the same sex) prove the innocence of the perpetrator, who undertook any sexual action relating to the victim against her will". One cannot but applaud.

However, the Regional Court in Gliwice showed a different approach, needlessly stigmatising the victim of rape by saying: "Addressing the position expressed in the appeal that the victim voluntarily went to the accused's house, one should say that going to the accused's house and drinking alcohol with him can be

– from the perspective of subsequent events – assessed as recklessness. However in no event could it be treated as agreeing to the accused’s behaviour, which abused her trust”. The assumption by the Court that when a woman goes to a man’s house and drinks alcohol with him, then she is reckless and frivolous, is nothing more than an expression of prejudice and discrimination on grounds of sex.

d) “Amenity” of the rapist

Another interesting practice of Polish courts concerns finding mitigating circumstances in certain features of the rapist’s behavior. For example, the District Court in Lubań stated that “a mitigating circumstance was that the accused did not employ intensive physical force likely to cause bodily harm to the victim and that he refrained from attempted rape relatively soon”. This interpretation of the court gives rise to even more intriguing observations as regards the interpretation of Article 49 § 2 of the Istanbul Convention, which states that “Parties shall take the necessary legislative or other measures, in conformity with the fundamental principles of human rights and having regard to the gendered understanding of violence, to ensure the effective investigation and prosecution of offences established in accordance with this Convention”.

e) Hearing a victim of rape

The hearing of the victim of rape should be immediate. It is essential for the protection of the victim from re-victimisation. However, the survey conducted by the Office of the Ombudsman in 2016 proved that there exist significant differences in practice from different prosecutors and courts. Normally the hearing is organised within one month following the date of notification of the suspicion of the crime. In some courts (e.g. in the city of Płock) this term is limited to a couple of days. Nonetheless, it happens sometimes that it takes up to three months to organise a hearing in accordance with Article 185c of the CPC. The Ombudsman referred the matter to the Minister of Justice in September 2016 in order to remedy this situation – however, no steps were taken to date.

Hearing a victim of rape should in principle take place only once, and should not lead to re-victimisation of the victim. In practice, it happens though that not only does the victim testify more than once, but she or he can also be punished for notifying the suspicion of rape. The Regional Court in Płock ordered the victim to pay damages for violation of personal interests of alleged rapists after the preliminary proceedings concerning the alleged rape were discontinued (since the prosecutor established that the suspected perpetrator had not committed the crime). What is interesting – in that case the victim was actually engaged in sexual intercourse with several men when she was drunk but the circumstances of that case could not be established beyond reasonable doubt.

An example of good practice was provided by the Regional Court in Poznań which dismissed the defendant attorney’s plea for admission of evidence consisting of renewed hearing of a juvenile victim of sexual abuse in circumstances where the victim’s testimony discernibly collided with other evidence material as regards the actual course of events, namely she testified that the perpetrator put her on top whereas it seemed from the testimony of witnesses that it was actually opposite. The court found this issue of secondary importance and did not agree to the exposure of the aggrieved to additional traumatising.

3) Domestic violence

A good example of interpretation of the 2005 Law on combating domestic violence (hereafter: "LCDV") was provided by the Wrocław-Śródmieście District Court which ordered the expulsion of the applicant's husband from common domicile four months after the applicant moved out from their house. What is interesting is that the relevant provision of the LCDV was interpreted broadly, as the court held that "the fact that the applicant currently stays at her parents' house in consequence of the domestic violence cannot be treated as a reason to find her motion groundless. It results from the teleological interpretation of Article 11a [LCDV]. If one interprets this provision to the contrary, it would put the victim of violence in a situation where she/he has to maintain the common domicile with the perpetrator in order to defend her/his legal interests effectively, in spite of the threat of harm or even bodily injury". Moreover, in that case the last manifestation of violence had occurred several months before the motion for expulsion was filed, which did not stop the court from applying the measure in question.

In contrast, the Regional Court in Wrocław held that Article 11a LCDV "cannot be interpreted broadly" and the District Court in Ciechanów went on to say that "it is not sufficient that the person concerned by the motion for expulsion had been using domestic violence in the past [...] but it is required that he or she has been doing so at the time of adjudicating or in a short (several months) period predeceasing the day of delivery of the order". Obviously the Ciechanów court had erred in law since the LCDV does not require the victim to expose him- or herself to domestic violence until the delivery of the court's order. To the contrary: it is sufficient that domestic violence reached the level of intensity justifying the expulsion.

B. Presentation of influential Polish case-studies on violence against women

1) The case of Ms. Karolina Piasecka

Mrs. Karolina Piasecka, a pharmacist, was married to Mr. Rafał Piasecki, a prominent local politician of the ruling "Law and Justice" party in Poland. It is noteworthy that the ruling party in Poland has been accused of "turning off" the Constitutional Court, general courts and the public prosecution and subjecting them to political control. In spite of these circumstances, Mrs. Piasecka revealed records proving that she had been maltreated by her husband. Moreover, she also stated publicly that she had been raped repeatedly by her husband. Obviously, neither the public prosecution nor courts reacted to her publicly revealed and shocking history. In spite of the circumstances calling for the imposition of a temporary arrest warrant – to avoid inducing witnesses to false testimony – no such restrictions were applied. The ruling party did not officially condemn their fellow member. The criminal proceedings are dragging on slowly as are the divorce proceedings.

2) The case of Ms. Aneta Krawczyk

In December 2006, Poland was shocked by an article released by the "Gazeta Wyborcza" revealing that "Aneta K." accused high-profile politicians of the coalition "Self-Defence" party of proposing public-financed jobs for sex. Ms. Krawczyk said that Mr. Andrzej Lepper (the late deputy prime minister of the "Law and Justice" party coalition cabinet) was father of her daughter. Mr. Stanisław Łyżwiński (the "Self-Defence" M.P.) and Mr. Andrzej Lepper were convicted in 2010 and sentenced to deprivation of liberty for sexual corrup-

tion, rape, instigation to illegal abortion and other charges. Both politicians appealed, but Mr. Lepper died in 2011. Criminal proceedings against Mr. Łyżwiński was suspended in 2013 for an undefined period due to his bad health condition.

3) Polish #Metoo campaign

Several high-profile public figures were accused in 2017 of using verbal and/or physical violence against women. In November 2017, two left-wing journalists were identified as perpetrators of violence against women, encompassing sexual harassment, sexual corruption and nepotism. The public prosecution commenced criminal proceedings immediately (probably its willingness was motivated by the leftist political views of the suspects). Another famous writer was alleged to welcome his colleague at a restaurant by saying “Come in, the whores are already here!”, the latter “amusing” remark apparently concerning a female companion sitting at the same table. He expressed publicly his apology for this sexist and humiliating remark.

6.3

National practices in supporting women who have suffered gender violence

A. Bad practices by police or judicial authorities towards female victims of gender violence in Poland

1) Contextualising the problem

Certainly any well-coordinated action aimed at reducing the scale of socially dangerous behaviour must start with defining the phenomenon in question and its scale. Surprisingly enough, although the website of the Police General Headquarters provides for a number of statistics relating to incidents of drowning, deaths caused by hypothermia or copyright violations, instances of violence against women (or generally – gender based violence) are not presented statistically. What is perhaps even more interesting, according to official statistics provided by the police, is that the number of reported rapes in Poland range from the top 2399 in 2000 to the lowest 1144 in 2015, with the average percentage of detected rapes at the level of some 80% (the table below is from the official website of the police).

Year	Reported rapes	Detected rapes	Percentage of detected rapes
2016	1 383	1 116	80,5
2015	1 144	896	77,6
2014	1 249	983	78,1

Year	Reported rapes	Detected rapes	Percentage of detected rapes
2013	1 362	1 164	84,1
2012	1 432	1 209	83,3
2011	1 498	1 230	80,1
2010	1 567	1 305	82,3
2009	1 530	1 268	82,6
2008	1 611	1 315	81,1
2007	1 827	1 549	84,2
2006	2 001	1 665	82,7
2005	1 987	1 678	84,1
2004	2 176	1 818	82,7
2003	2 322	2 021	85,7
2002	2 345	2 032	85,3
2001	2 339	1 972	83,9
2000	2 399	2 075	85,9
1999	3 029	1 715	83,7

The reality however is that “only a marginal percentage of these crimes are being reported”, and in fact, as proved by the STER Foundation report in 2016, in Poland “87% of women faced some form of sexual harassment, 62% experienced sexual activity against their will. 23% of women have had experience of an attempted rape, and 22% of rape”. Once again – every fifth polled woman was raped and a further ¼ experienced attempted rape. Compared to official statistics, this survey proves that the police try to sweep the problem of sexual violence against women under the carpet.

It is also rather disappointing that the average length of deprivation of liberty imposed by courts for rape is 3,3 years, and around 40% of those convicted for this type of crime are granted probationary measures.

2) Gender stereotyping

Changing society’s cultural landscape is crucial to combating violence against women. Nevertheless, women are still exposed to gender stereotyping when they stand before prosecutors or judicial authorities. Especially recently, when the official policy of the ruling “Law and Justice” party in Poland is aimed at institutional violence against women (e.g. government decisions deprived women of access to contraceptives without a doctor’s prescription, single mothers are not supported by social schemes, the ruling party’s prominent figures constantly use the language of exclusion and discrimination against women etc.), and at the same time the party controls the judicial administration in Poland, it requires a lot of courage from

judges, prosecutors or police personnel to stick to the equality principle enshrined in the Constitution and Union law.

It is therefore not surprising that the research conducted by the Centre for Women's Rights showed an unbelievably large scale of gender stereotyping on the part of Polish judges. They believe e.g. that "women who are good mothers and decent women do not experience violence", "only poor women from certain social classes experience violence", "women often make false accusations", "women provoke and act violently themselves", "genuine rape cannot be perpetrated by a woman's husband or life partner", "women drinking alcohol should be blamed for violence which they experience", "family violence is not in itself a significant social problem", "men using violence against their female partners are often good fathers", "only sick and mentally deranged men use violence against women" etc.

B. Good practices in supporting female victims of gender violence in Poland

The LCDV introduced a civil law measure protecting victims of domestic violence i.e. an order of expulsion from a common domicile issued after request by the victim of domestic violence. Article 11a LCDV provides that a perpetrator of domestic violence can be ordered to leave a common domicile following a request from the family member experiencing domestic violence. The order is delivered after a hearing conducted in non-contentious proceedings, within one month after filing the request. It is effective from the date of its delivery – regardless of possible appellate proceedings – and can be enforced by the bailiff. It is irrelevant who is the owner or lessee of the apartment.

One needs to note that such an order is not dependent on any criminal proceedings against the perpetrator, as it is parallel to penal measures which can be ordered in criminal proceedings. Article 39 § 2e of the Penal Code provides for a penal measure of ordering the defendant to temporarily (for a period of 1 to 10 years) leave the domicile jointly occupied with the victim. Moreover, if the said order is applied for crimes against sexual liberty (e.g. rape) or crimes such as maltreatment, the court applies the penal measure of prohibiting the defendant to contact the victim for the same period (Article 41a § 3a of the Penal Code).

Moreover, the measure provided for in Article 11a LCDV is independent from whether any divorce proceedings were commenced or not. The divorce court may also order the former spouse to leave the common domicile when he or she makes it impossible for both former spouses to occupy the common apartment as a result of his/her "manifestly reprehensible behaviour" (Article 58 § 2 of the Family and Guardianship Code).

Introduction of a civil measure applicable regardless of the existence of any divorce or criminal proceedings against the perpetrator of domestic violence is a good practice which can inspire especially those jurisdictions where – as is the case in Poland – societies are too conservative and traditional to accept further actions, and women need additional courage to take further legal steps to protect themselves from the violence of their partners or husbands.

CONCLUSION

Generally, it is quite ironic that in the past Poland used to be one of the most progressive states when it came to protecting women's rights: for instance, equality of electoral rights was introduced in 1918 and abortion was formally declared legal: partly in 1932 and fully in 1956. The conservative backlash after 1989 pushed Poland away from the group of liberal countries and pushed the question of women's rights away from the public agenda.

The approach of conservative Polish society to the issue of protecting women from violence is influenced by the views of the Roman Catholic Church, promoting the "submissive role" of women in society.

One of the most important factors impacting the intensity of protecting women from violence is the expertise of judges, prosecutors and the police. Traces of their discriminatory approach, exemplified by rulings blaming women for provocative behaviour (like drinking alcohol with men, flirting or wearing improperly short dresses) are still identifiable and their scale is frightening. Therefore education – including life-long specialised education for functionaries of the administration justice – is crucial.

Another important issue – also relating to education – is promoting women's awareness of their rights. A very low level of reported cases of rape can be viewed as a consequence of a combination of factors. First, women do not perceive certain behaviours as sexual violence (believing that the latter exists only when they oppose a sexual act); second, even where a woman realises that she has experienced sexual violence, she is still hesitant to report it to the police because she does not believe in the effectiveness of measures available to her (like quick expulsion of the rapist from the common domicile and imposing on him a ban on approaching her); third, women are fearful of reporting crimes of violence because they are afraid of stigmatisation by a society which believes that "decent women are not victims of sexual violence".

Campaigns like "Non. No. Nein" build awareness and capacities. However they should be implemented at a very basic level i.e. in local communities and schools. If they are, we can expect change one day.

7

Spain



Introduction

In recent years in Spain, especially since the early years of the 21st century, there has been a great legislative development in terms of gender violence and equality. Various national laws, together with the laws promulgated by the various Autonomous Communities and with the implementation of European and international legal instruments, have contributed significantly to the attempt to eradicate violence against women.

In 2002, the National Observatory against Domestic and Gender-based Violence was founded with the main purpose of addressing the way such violence is dealt with in the judicial administration, in order to provide advice, evaluation, institutional collaboration, preparation of reports and studies, and proposals for action to eradicate violence against women, such as compiling and analysing data from judicial statistics, the number of cases reported to the police, protection orders, judgments, victims, etc. promoting the analysis, study and investigation of the response of the justice system; drawing up conclusions and recommendations, improving coordination between the institutions under its umbrella, and implementing initiatives for eradication through the justice system.

The Observatory is currently composed of forty members and integrated into the General Council of the Judiciary, the Ministry of Justice, the Ministry of Health and Social Services, the Ministry of the Interior, the State General Prosecutor against gender violence, the Autonomous Regions, the General Council of the Spanish Bar and the General Council of Spanish Notaries. And besides this mostly institutional representation, the observatory representatives also include national women's organisations which work in the field of gender violence, plus representatives of affected groups and agencies involved in this area, such as business organisations, consumers and users, people with disabilities and trade unions.

The observatory sends to the Government and the seventeen different regions, Autonomous Communities, an annual report on the evolution of violence against women and the effectiveness of the measures agreed for the protection of victims to ensure the highest level of protection for women. The report shows the developments relating to violence against women, to provide a wider and better knowledge of violence against women in Spain, the behaviour of victims and perpetrators, reports to the police, resources available to victims and the development of the social perception of violence against women, among other things.

This kind of measure, along with the growing legislation and social visibility of the problem, has been, without doubt, one of the most important factors at the social level, together with its presence in the press and the media.

Despite these initiatives and attempts, according to the National Observatory, the total number of fatal victims from 2003 to 2017 was over 900 women murdered in 15 years in Spain at the hands of their partners

or former partners. Of this number of murdered women, only about 25% had denounced their aggressor. A smaller number of fatal victims had requested protection measures, and even fewer had obtained these measures.

One of the worst and the most important problems we are finding is the fact that in a high percentage of cases, the victim does not consider herself a victim or, if she does, she is silent and hides the reality. A great number of victims do not report to the police. After several studies and reports, the reasons for not reporting are: fear, shame, hiding the aggression from those closest, considering that the aggression was justified, mistrust of authorities, not considering the attacks as serious as they are.

Even though, according to the latest reports, the Spanish population considers violence against women as one of the main problems of Spain, most likely due to the fact that over the years the situation of victims of violence against women have been highlighted in the media as a specific phenomenon and many measures have been established for its eradication, the social perception among teenagers and young people of the existence of gender inequality and violence against women is lower than for the rest of the Spanish population. Despite 92% of young men and women considering violence against women to be unacceptable, the reports point out that one in three Spanish young people between 15 and 29 years old considers it acceptable to control and monitor their partner's lives, such as their schedules, relationships with friends or family, studies or work - to the point where they consider it normal to prohibit the partner from seeing their friends or families and even from studying or working and telling the partner what they can do and cannot do. The reports reveal a problem among Spanish youth in not identifying behaviour that constitutes abuse. And a large majority perceive violence against women as consisting only of very violent actions, such as attacks or serious threats.

This panorama shows the need for the whole of society in general, and especially professionals who have a role in these situations, to obtain the most effective and specialised training focused on eradicating violence against women for once and all.

7.1

Overview of the national legal framework on violence against women

A. Implementation of European and international legal instruments on violence against women

The recommendations adopted in Spain from the various international institutions are very numerous in the context of providing a global response to the violence against women, which is directed against them by the mere fact of being female, and is focused on the definitive eradication of discrimination against women.

Article 1 of the Declaration on the Elimination of Violence against Women, proclaimed on December 20th,

1993 by the General Assembly of the United Nations, is the world reference definition of “violence against women” and specifically defines it as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life”.

In the context of the United Nations, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted in 1979 and ratified by Spain in 1984, places an obligation on the States Parties and creates a monitoring and surveillance system, which establishes general and specific recommendations to the States to guarantee the application of the provisions of the Convention.

Within the context of the European Union, the treaties and directives, and the decisions and jurisprudence of the Court of Justice, have shaped an extensive doctrine on equality between men and women which is applied in Spain. It should be noted: the Constitutive Treaty of the European Community recognises the right to equality between women and men, and urges States Parties to act with concrete policies for the prevention and punishment of gender violence. Articles 2 and 3 recognise the obligation to try to eliminate inequalities and promote equality between men and women in all their activities. Under Article 13 of the Treaty, the Council can take the necessary measures to combat all discrimination based on sex.

Spain has implemented most of European legal instruments on violence against women, of which the most recent and significant are the following:

- Directive 2011/99 on the European Protection Order, implemented in Spain in Law 23/2014, 20th November, on mutual recognition of criminal resolutions in the European Union (art. 130-142 and General Dispositions)
- Directive 2012/29/EU, 25th October, on common minimum standards on the rights, support and protection of victims of crime
- Regulation (EU) 606/2013, 12 June, on mutual recognition of protection measures in civil matters
- The Council of Europe Convention on preventing and combating violence against women and domestic violence.- Istanbul 11 May 2011, signed by Spain on the same date and ratified on 10th April 2014, coming into force 1st August 2014.- treats gender-based violence as a brutal form of discrimination and a violation of fundamental rights and as both a cause and a consequence of inequalities between women and men.

B. Presentation of the national legal framework for protecting women victims of violence

Gender equality policies and legislation in Spain have shown a positive development from the 1980s with the institutionalisation of gender equality policy agencies at the central and regional levels and the adoption of gender equality policies through instruments such as plans, protocols and laws.

Among the various and numerous laws, we highlight the following:

Law 27/2003, 31st July, on protection orders for victims of domestic violence

From a point of view of effective protection, this law was an important advance with respect to the previous protection measures available for victims.

The Spanish Order of Protection or Restraining Order is a judicial resolution that establishes “the statute of comprehensive protection” of gender-based violence victims through the adoption of criminal and civil precautionary measures by a single court, activating other measures in the field of social services.

The order of protection is “a court judgement” that, in cases where there is strong evidence of the commission of crimes or misdemeanors of domestic violence and in cases where there is an objective situation of risk to the victim, a judge can order protection through the adoption of civil and / or criminal precautionary measures, in addition to activating the necessary social assistance and protection measures, by reference to the order of protection concerning the coordination points of the autonomous regions.

Criminal Measures:

- Prison
- Restraining order
- Prohibition to communicate
- Prohibition to return to the scene of the crime or the victim’s residence or work or any place she usually goes to.
- Withdrawal of weapons or other dangerous objects

Civil measures:

- Award of use and enjoyment of the dwelling
- Conditions of custody, visitation, communication with children
- Provision of food
- Child protection measure to avoid danger or injury

The civil action must be requested specifically by the victim or her legal representative and/or by the prosecutor; when there are children who are either minors or disqualified, they must specifically requested.

The civil actions are valid for 30 days. If within this period family proceedings were initiated at the request of the victim or her legal representative before a judge, the measures taken in the protection order will remain in effect for thirty days following the bringing of the lawsuit. In these 30 days, the civil family judge or the judge specifically responsible for cases of violence against women will confirm, amend or rescind them.

Other measures:

Assistance and protection measures: economic and social aid, labour rights and social security rights, access to protected homes and public residences for elderly women, access to an application for residence

authorisation for exceptional circumstances, which will only be granted when the conviction is handed down, and request for authorisation of independent residence of the regrouped family members.

Who can apply?

- The victim
- Anyone related to the victim in accordance with Article 173 of the Criminal Code
- The Public Prosecutor
- Adopted by the judge ex officio
- Assistance institutions or bodies, either private or public, which were aware of any crime for domestic violence should immediately inform the judge or the prosecutor on duty in order that the judge may initiate or urge the prosecutor to start the procedure to implement the protection order. If there was evidence of criminal violence against women in the area referred to in the comprehensive act, it must be communicated to the Judge responsible for cases of violence against women (the examining judge on duty acts in these cases only when there are no hearings on process)

Where to apply for it?

- To a judge
- To the prosecutor
- To the security forces - police, civil guard, autonomous or local police. These will carry out the corresponding testimony for accreditation of the facts
- In victim support offices
- In social services or dependent assistance institutions belonging to the public administration
- At counselling services within the bar association

Procedure

- The request must be forwarded immediately to the judge on duty or the judge responsible for cases of violence against women
- In the court on duty, once the request has been received, the judge will call for an urgent hearing to include:
 - The victim
 - The applicant if different from the victim
 - The aggressor
 - The prosecutor

The hearing:

- It will be held within a maximum of 72 hours
- The declaration will be made separately
- During the hearing, the judge will take the necessary measures to prevent any confrontation between the perpetrator and the victim, their children and other family members
- Once the hearing has been held, the judge will issue the order, which in case of being grounded, will agree measures to protect the victim

The protection order will be registered in the Central Register for the protection of victims of domestic violence, where it should be equally recorded whether there was any subsequent effect.

The protection order is communicated to:

- The parties, aggressor and the prosecutor
- The victim
- Public administrations (point of coordination)
- The police and security forces

The protection order gives the victim:

- A comprehensive protection statute comprising civil and criminal actions as well as assistance and social protection measures established in law. They can be invoked before any authority and public administration.
- The right to be permanently informed about the legal situation of the offender and circumstances related to his or her imprisonment.

The Central Registry for the protection of victims of domestic violence exists in order to ensure compliance with protection measures, whether temporary or final, agreed by the courts in the area of jurisdiction. This registry, managed by the Ministry of Justice, consists of a computerised database containing national penalties and security measures imposed in relation to convictions for crimes as well as protection measures and precautionary actions agreed in criminal proceedings on grounds of domestic violence.

Organic Law 1/2004, of 28th December, on Integral Protection Measures against Gender Violence

From the point of view of the Spanish experience, it is essential to highlight this law, also known as the "*Integral Law*", as it was a great legislative advance in terms of combatting and eradicating gender violence.

The purpose of the law is to act against violence as a manifestation of discrimination, inequality and power

relations of men over women, exercised over women by those who are or have been their husbands or who are or have been linked to them by similar affectionate relationships, even without cohabitation.

This important law establishes protection measures to prevent, sanction and eradicate such violence and provides measures to assist victims and defines gender violence as any act of physical and psychological violence, including sexual assault on freedom, threats, coercion or arbitrary deprivation of liberty.

One of the main purposes is to strengthen measures to sensitise society and to provide the government with effective instruments in education, social services, health, advertising and media.

It also draws up a National Plan for the Awareness and Prevention of Gender Violence.

The law grants great importance to training and education from different points of view, focused mainly on children and young men and women but considering it also of vital value to promote the specialisation of the various professional groups involved in the process of information, care and protection for victims. It also establishes the existence of plans and programmes for initial and continued training for all these professionals

The law provides an education system which includes the elimination of obstacles and handicaps to reach a full equality between men and women, plus training for the prevention of conflict and for the peaceful settlement of such conflicts.

It is also important, in order to ensure effective equality between men and women, to remove all sexist or discriminatory stereotypes from educational material. Here the importance of language arises in promoting the equal value of men and women.

In addition to the field of **education**, the law places particular emphasis on the field of advertising and the media, ensuring an image of women in accordance with the principles of equality and non-discrimination

Regarding **the area of health**, the law indicates the importance of encouraging and promoting actions by health professionals aimed towards the prevention and early detection of gender violence, and intervention and support for its victims.

Rights.- According to the law, all victims of gender violence have the right to receive full information and advice appropriate to their personal circumstances, including measures that can be adopted for their protection and security, and the rights and assistance - as well as the location - of care services, emergency aid and full recovery.

They also have the right to receive universal and integrated assistance, including emergency cases, and to receive support and recovery. In particular:

- information for victims
- legal advice

- social support
- monitoring of women's rights claims.
- support for education for the whole family group
- preventive training on the values of equality directed towards their personal development and the acquisition of skills in the non-violent resolution of conflicts
- support for training and placement

Children who are under the custody of the victim will also have the right to this full social assistance. With this aim, social services must have specially trained professionals to care for these children, in order to prevent and effectively avoid situations that may cause mental or physical harm to minors who live in such family contexts.

This law also ensures free legal assistance for all victims. They have the right to a lawyer for all proceedings that are a direct or indirect cause of the violence suffered. In such cases, legal assistance and defence will be free and specialised. It will be guaranteed immediately to all victims of gender violence who ask for it.

Labour rights are also in scope, for example by the reduction or reorganisation of working hours, geographical mobility, suspension of employment with a possibility of return, and for those women they have no work, there are contracts with special and better conditions for the employers of victims of violence against women

Economic rights for the victims, understood as social economic aids, are guaranteed and financed by the state budget, that also includes assistance for a change of residence.

These economic and work measures are probably the most important part of this law, without underestimating, of course, the legal, psychological and other assistance, since it is obvious that having sufficient and independent economic capacity helps the victim to decide to leave a situation of violence.

Concerning **foreign women**, the law also provides for concessions of temporary residence and work permits for foreign women who are victims of violence.

Law 3/2007, 22nd March, for the effective equality of women and men: this covers the prevention of discriminatory behaviour, through the provision of active policies to enforce the principle of equality as recognised in the Spanish Constitution over various areas in the social, cultural and artistic field in which inequality may be generated or perpetuated. It raises the transversal dimension of equality, the hallmark of modern anti-discrimination law, as a fundamental principle

Law 4/2015, 27th April, about the statute of victims of crimes: this covers the legal status of the victim of crime by public authorities, on a legal and social basis, not only to repair the damage in the context of a criminal trial, but also to minimise other traumatic effects that their condition can generate. This takes place regardless of their procedural situation, based on the recognition of the dignity of victims and the defence of their material and moral assets.

On the procedural side, it is important to point out the existence in Spain since 2005 of **specialised Tribunals** dedicated exclusively to dealing with cases of violence against women. These courts, called “Courts of violence over women”, have jurisdiction for the investigation of these kind of cases, and besides Criminal Tribunals there are Sections of the various Courts of Appeal which exclusively assume knowledge of cases of violence against women in the terms established in the Integral Law. These Tribunals also have jurisdiction for any case of family law which has its origin in gender violence (from a criminal point of view) which means that the same Tribunal will cover both proceedings, therefore taking into account the special gender violence circumstances.

These specialised Tribunals also have access to medical units and psychosocial professionals who work in collaboration with them to give the required advice in both criminal and civil (family) cases.

In addition, in another particularity of the Spanish system, unlike other legal systems, the law recognises the right of the victim to go to court with a lawyer to defend their interests and to bring forward an accusation at the same level as the Public Prosecutor, although it does not have to conform to the legal classification of the facts nor the penalty required in the same terms as the Public Ministry. It means that the perpetrator can face two prosecutions instead of one, that is the Public Prosecution and the “**private**” prosecution.

7.2

Case-law of national courts in legal cases of violence against women

A. Tendencies of case-law from national courts in cases of violence against women

It should be noted that Spain does not have a common law system and in addition there is not a very large number of cases, regarding all the cases judged in Spanish courts, which reach the highest levels of the Spanish legal system such as the Supreme Court and the Constitutional Court, since special techniques, circumstances and conditions are required for this. However, in certain points the jurisprudence has established important tendencies which help to clarify different points that the substantive and procedural laws do not seem to make clear:

- The victim as the only witness, which implies the victim has a double role, as part of the procedure at the same time as being part of the evidence. The Supreme Court considers sufficient evidence can support the victim’s statement as long as it has certain requirements (credibility, verisimilitude and persistence in the incrimination) “to avoid spaces of unacceptable impunity” (Judgment 28th June 2012)

The judgment 17th May 2010 of the Supreme Court of Spain establishes that no one must suffer harm by the reason that the facts which originate the criminal proceeding have taken place in privacy between the victim and the defendant.

- There is no obligation for the victim to testify against the victim's partner or ex-partner (Supreme Court Agreement 24th April 2013) except in a case where the facts have taken place after separation or divorce. In a case where the victim exercises her right to go before the court in a private prosecution (through her lawyer), she will be obliged to declare her testimony or otherwise she must desist from her prosecution, leaving just the Public Prosecution.
- Unlike the general rule for criminal procedures, the territorial jurisdiction, in cases of violence against women, corresponds to the court where the victim had her habitual residence when the crime has been committed (and not in the place where the crime was committed) (Supreme Court Agreement 31st June 2006).
- In a case of breach of a precautionary measure adopted in order to protect the victim, her consent does not exclude punishment (Supreme Court Agreement 25th November 2008).
- A threat to commit suicide when the person warned does not do what is asked for is not a crime of coercion (Judgement 3rd March 2011 of Supreme Court).
- In a case of a crime of injuries in the area of gender violence, in addition to the right to financial compensation for such injuries, there is also the right to financial compensation for moral damages (Judgement 592/2003 of Supreme Court).

B. Presentation of influential national case-studies on violence against women

In recent years, and in an effort to make cases of gender violence visible, the press and the media have highlighted many issues that have caused a public outcry and have somehow influenced subsequent legislative development.

- Case José Bretón - in September 2011, Ruth Ortiz told her husband José Bretón that she wanted to end their marriage and go to live in another nearby city with their two children (six and two years old). The defendant conceived the idea of killing both children as revenge against his wife and next month, taking advantage of a visiting regime, he gave them tranquilizers before burning their bodies in a large bonfire, leaving hardly any identifiable remains of the minors. Bretón was sentenced to 40 years in prison.

This case convulsed Spanish society but was not considered one of gender violence, although one of the agreed measures in the recent State Pact is to include this kind of case on the list of gender violence cases, as the aim of the perpetrator was to inflict pain and suffering on the mother.

- Case Marta del Castillo - In 2009, Marta del Castillo, a 17-year-old girl, disappeared from her home. Three weeks later, the girl's ex-boyfriend, Miguel Carcaño Delgado, 20 years old, confessed to the murder of Marta and to having thrown her body into the river, and the body has never been found. Although he changed his version of the facts on several occasions, he was sentenced for the murder to 21 years and 3 months in prison. A minor (15 years old) was also convicted for complicity to three years in a centre for minors.

This case, which also caused a public outcry, led to a part of the population to ask for permanent life im-

prisonment. Since 2015, the Spanish Criminal Code allows for a “reviewable” permanent prison sentence.

- Case Zaida Cantera – a military officer denounced her superior for sexual abuse suffered in 2008. In 2012, a Military court sentenced her superior to 2 years and 10 months in prison for a crime of abuse of authority and degrading treatment, since the crime of sexual abuse was not covered by the Military Penal Code. Despite being an unprecedented sentence in Spain, Zaida had to leave the Army as she was persecuted and harassed constantly by her own colleagues.
- Case Ángela González Carreño v. Spain - Ángela, a survivor of gender violence, determined to put an end to this violence. In 1999, she fled the family home with her daughter Andrea, who was then 3 years old, she denounced the abuse they had suffered and requested separation from the aggressor. The abuse continued after the divorce through their daughter Andrea. Despite dozens of complaints filed by Angela, in 2003 her ex-husband killed their daughter during an unsupervised visit and then killed himself.

In 2014, CEDAW Committee condemned Spain for failing to protect Angela and her daughter and proposed measures that the Spanish State could implement to protect women and their children from gender-based violence.

It is also noticeable that in the last few years more cases of gender violence among adolescent couples have come to light. Very young girls go before court to reveal repeated situations of coercion through mobile phones and social networks, psychological manipulation and physical aggression. Juvenile judges in 2017 tried 48% more minor boys for crimes of violence against women than in the previous year. Given the data protection accorded to minors, it is not possible to publish these sentences.

7.3

National practices in supporting women who have suffered gender violence

A. Bad practices by police or judicial authorities towards female victims of gender violence

Among the most controversial aspects of Spanish legislation, we find two very significant points:

- the fact that under Spanish law all men guilty of violence against women must be handed a restraining order, without the woman being heard, as Spanish legislation imposes a restraining order by default in all guilty verdicts. This forced separation, whether the victim wants it or not, was incorporated into the Penal Code in 2003 and has been hotly debated. Some professionals and victims consider that judges should in all cases listen to the victim’s point of view and take it into account.
- according to Spanish Criminal Procedural Law, the victim, as a complainant, is not required to testify at the trial. The law provides that if the victim is linked to the accused by marriage or a relationship similar

to marriage at the time of commission of the facts and at the time of the trial, then the victim has no obligation to testify against the defendant. An implicit part of this doctrine is that the victim may have to give evidence in such cases because of the risk that situations of violence remain unpunished if there is no other evidence.

At a political level, while gender equality policies have been institutionalised and consolidated in recent years, since about 2009 until today there has been a regression provoked by austerity policies adopted in response to the economic crisis, especially budget cuts and problems of implementation, which indicates an uncertain future for gender equality policies in Spain.

Although the Spanish political “spirit” seems to reflect a priority for gender violence issues, it is certain that public funds have been decreasing. This reality is reflected in a lack of adoption of measures, including protection of victims, which brings about a lack of implementation of planned resources in laws, as well as distrust in the system at the time of reporting and/or seeking help.

The final observations presented by the Committee for the Elimination of Discrimination against Women (CEDAW) in its last report on Spain in 2015 are worth highlighting.

The CEDAW focuses attention by criticising clearly the policies of budget cuts carried out in our country in recent years, which they consider have especially affected women, especially the in the field of prevention of gender violence. In the area of education, CEDAW indicates that “no measures have been taken to eliminate stereotypes in the education system, and that curricula and textbooks have not been revised”, stating that attitudes and stereotypes about roles are still maintained regarding responsibilities of women and men in the family and in society.

In addition, it asks for a review of legislation to include other forms of violence against women, such as “violence of caregivers, police violence and violence in public spaces, workplaces and schools.”

The recommendations include the prevention of prostitution and exploitation of women and girls through the creation of exit and reintegration programmes for women who wish to abandon prostitution, and measures to reduce the demand for prostitution. Once again, mandatory training is proposed for judges, prosecutors, police and those who deal with cases of gender violence, so that they are especially aware of the procedures and the need that these have a gender perspective.

It also highlights the gender pay gap that persists and vertical and horizontal segregation in the labour market together with the high concentration of women in part-time jobs, with the consequent adverse effects on careers and pensions.

In terms of employment, the Committee criticises the austerity measures applied in the face of the economic crisis that have seriously and disproportionately affected women, especially women with disabilities, the elderly and domestic workers.

B. Good practices in supporting female victims of gender violence

Spanish legislation provides different protocols and plans for all the professionals involved in cases of violence against women, such as in schools, hospitals, courts, police, media....as also there are different measures taking into account different aspects of the victims such as their age in order to target specific resources at specific groups - girls and women under eighteen years old, elderly women and retired, foreign women, disabled women and women who live in the rural areas given the small population that resides over very large territories which brings many difficulties regarding access to aid, legal advice centres, protection centres, shelters etc.

The law 1/2004 (Integral Law) undoubtedly represented a positive step forward in terms of measures and good practices and in addition the law also established the creation of a telephone information and counselling service on violence against women (telephone 016), which registers every year about 70,000 calls for this type of violence

Besides this help-line, there is the "Child and Adolescent Telephone" for children and teenagers set up to respond to the problems and needs of girls and boys, children and adolescents at risk, and also the "Adult and Family line", which is aimed at adults looking for help, guidance and support for minors in these situations. This service offers help in the psychological, social and legal fields.

The most recent and practical move was in September 2017 when the various political parties in the Spanish Congress (except one) reached an agreement to sign a State Pact against gender violence.

The agreement includes 213 measures and has a budget of around a billion euros over the next five years to combat and eradicate violence against women.

Among the measures, Spain's political parties have agreed to forbid minors from visiting their father in jail if he has been convicted of gender violence, while men who have been found guilty of mistreating their partner would lose visiting rights.

Meanwhile it will now no longer be necessary for a woman to make a formal complaint in order to receive advice or protection from judicial services.

The measures include providing victims of abuse with six months' unconditional unemployment benefit to give them a new start, and outlawing imprisoned abusers from being visited by their children.

Among the 213 measures that received parliamentary endorsement are:

- The status of victim will be extended to women who have not yet filed a criminal complaint, to allow them to access safeguards and assistance
- Mechanisms for identifying victims of gender-based violence will be established in hospital emergency rooms and primary care

- Children orphaned by gender-based violence will have priority access to state benefits including educational support. Their guardians (excluding the abuser) will receive tax benefits and priority access to housing
- There will be tougher sanctions for gender-based crimes committed on the internet
- School curricula will include lessons to tackle sexism and raise awareness of the feminist movement

CONCLUSION

Without any doubt, Spanish legislation, with the implementation of international and European legal instruments, has improved over the years, and numerous measures have been developed for the protection of victims of gender violence and eradication of the violence involved. However, the number of victims we have each year in our country is intolerable.

A good law is needed in order to detect, help and eradicate gender violence but beyond any legislative initiative, society must be aware of the importance of education at all levels and of the reality that gender violence is a violation of human rights. Girls and boys must learn from birth that violence is unacceptable and they have to learn not to reproduce the sexist stereotypes that lead to a situation of inequality between men and women in their most intimate and private sphere as well as at the social and labour level.

The public authorities must provide sufficient funds to implement these legislative and social initiatives to achieve effective equality, to avoid the existence of further victims.