

TOWARDS GUARANTEEING EQUAL ACCESS TO JUSTICE FOR WOMEN



Report of the 3rd Conference
of the Council of Europe Network
of National Focal Points
on Gender Equality

**Bern,
15-16 October 2015**

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

TOWARDS GUARANTEEING EQUAL ACCESS TO JUSTICE FOR WOMEN

Report of the 3rd Conference
of the Council of Europe Network
of National Focal Points
on Gender Equality

Bern, 15-16 October 2015

The opinions expressed in this work are the responsibility of the authors and do not necessarily reflect the official policy of the Council of Europe.

All requests concerning the reproduction or translation of all or part of this document should be addressed to the Directorate of Communication (F-67075 Strasbourg Cedex or publishing@coe.int). All other correspondence concerning this document should be addressed to the Directorate General of Democracy.

Cover and layout: SPDP,
Council of Europe

Photo: Shutterstock

© Council of Europe, September 2016
Printed at the Council of Europe

Prepared on the basis of the report by Doina Ioana Străisteanu (General Rapporteur at the Conference and legal expert, Republic of Moldova).

Please see the [Council of Europe Gender Equality website](#) to access all presentations made during the Conference.

Foreword

Women's limited and unequal access to justice is a complex social phenomenon that results from a series of inequalities at the legal, institutional, structural, socio-economic and cultural levels. Ensuring access to justice implies providing women of all backgrounds with access to fair, affordable, accountable and effective remedies so that women and men can enjoy both equal rights and equal chances to assert them.

■ The guarantee of the right to access to justice is part of numerous instruments within the universal system for the protection of human rights and other relevant regional instruments. The obligation not to discriminate against women and to achieve *de facto* equality between women and men is an essential part of these rights. The [Committee on the Elimination of all forms of Discrimination against Women \(CEDAW\)](#) adopted in 2015 a [General recommendation on women's access to justice](#)¹. This Recommendation stresses that the right to access justice is multidimensional. It provides for six interrelated and essential components which are necessary to ensure this right: justiciability, availability, accessibility, good quality, accountability of justice systems, and the provision of remedies for victims.

■ [Guaranteeing equal access of women to justice](#) is one of the five priorities of the Council of Europe [Gender Equality Strategy 2014-2017](#). The Bern Conference is the third in a series of three events on women's access to justice organised by the Gender Equality Commission of the Council of Europe.

■ The [first event](#) (Paris, December 2013) focused on access to justice for women victims of violence². The event aimed to raise awareness about the particular barriers faced by women victims of violence to access justice, to discuss the challenges posed by such barriers, and to promote existing standards, including the Council of Europe Convention on preventing and combating violence against women and domestic violence CETS No. 210 (Istanbul Convention).

-
1. Committee on the Elimination of Discrimination against Women, General Recommendation No. 33 on women's access to justice, 23 July 2015.
 2. See more on www.coe.int/en/web/genderequality/paris-9-december-2013.

■ The **second event**, (Paris, June 2014) focused on existing regional and international standards and initiatives regarding research and data collection in the field of women's equal access to justice, including but not limited to women victims of violence³.

■ The **third event** (Bern, October 2015) took into account previous findings and results and focused on the measures needed to address persistent barriers to women's equal access to justice, including through the work of member states, international and regional organisations, as well as non-governmental organisations. It also launched two new publications of the Council of Europe: a **Compilation of good practices to reduce existing obstacles and facilitate women's access to justice** (2015) and a report on **Equal access to justice in the case law on violence against women before the European Court of Human Rights** (2015), prepared by the European Court of Human Rights (ECtHR).

■ In April 2015, the Council of Europe Parliamentary Assembly adopted **Resolution 2054 (2015) on Equality and non-discrimination in the access to justice**, calling on Council of Europe member states to take measures to improve women's access to justice.

■ The Council of Europe's work and activities in this area have highlighted the barriers that prevent women from having equal access to justice. Many of them stem from persistent inequalities between women and men, gender bias and stereotypes. This work has also identified a number of good practices in the member states to address and redress this unequal access. Justice systems need to be at the forefront of guaranteeing and respecting gender equality and therefore it is of the utmost importance that all those involved in justice systems actively strive to include a gender equality perspective in their work.

■ Removing obstacles faced by women not only facilitates greater accessibility, but is also an essential step towards achieving substantive gender equality. The Council of Europe Gender Equality Commission remains committed to improving women's access to justice in Europe and will continue working with all relevant partners and actors to achieve this goal.

Sergiy Kyslytsya
Chairperson of the Gender Equality Commission of the Council of Europe

3. See more on www.coe.int/en/web/genderequality/paris-9-december-2013.

Introduction

Equal access to justice for women is a central gender equality issue. Indeed, besides being confronted by structural gender inequalities and violence in most areas of life, women also experience specific barriers and discrimination when seeking redress in the justice system. The justice system, which should be the guardian of fairness and human rights, very often replicates the stereotypes and obstacles present in society as a whole. As in all other areas, groups of women in vulnerable situations are confronted with greater obstacles in accessing justice. In order to secure substantive equality across all fields of human life, it is paramount to ensure equal access to justice for all women.

■ While gender-based discrimination is not a new phenomenon, in recent years, women have also been disproportionately affected by austerity measures, budget cuts, strict migration laws, as well as by narrowly focused equality provisions which exclude particular fields of human activity in some countries. In this context, the Bern Conference recalled that equal access to justice for women should have at its basis the following four 'A's: adequacy, adaptability, availability and accessibility for all, as developed by CEDAW and the European Court of Human Rights in the case of [Airey v. Ireland \(1979\)](#). These factors and other inequalities impact on women's capacity to access justice and, more generally, on the realisation of gender equality.

■ Women may be in a particularly vulnerable situation with regards to their health, employment situation, ethnicity, culture and/or other aspects. They may be unable to take action for lack of knowledge, literacy, resources, existing stereotypes or other factors. Women and men in such situations often do not have the authority and power necessary to defend their rights. A justice system that fails to understand such vulnerability will exclude those who need it most.

” *Equal access to justice is a fundamental component of equality between women and men but, in practice, very few women use their right to go to court for fear of being exposed or dismissed.*

Alain Berset, Head of the Swiss Federal Department of Home Affairs

■ Another important barrier that women face is a lack of trust in justice, because of existing bias in the justice system and because, historically, the defence of women's human rights has not been a priority. A justice system that treats women's rights and needs inadequately, including women from particular social groups (women survivors of violence, lesbian/bisexual/transgender women, migrant women, women with disabilities, or women in prison, to mention only a few examples) fails to fulfil its role in a democratic society, including the provision of reparation and redress.

■ Improving women's access to justice is a complex process as many causes and actors need to be addressed and involved, respectively. This includes addressing the role of different stakeholders, namely the police, social services, civil society organisations and the justice system itself. It also requires looking at the social context within which justice operates in terms of policy, legislation and social constructions, notably addressing harmful gender-based discrimination, violence and stereotypes.

” *I see five focus areas for further work: implement existing standards; train and increase the awareness of the justice system about women's rights and needs; tackle the lack of data disaggregated by sex; share good practices; and engage and work together with men to change mentalities and attitudes*

Snežana Samardžić-Marković, Director General of Democracy, Council of Europe

Raise awareness about the difficulties and barriers to women's equal access to justice

■ Women's access to justice and shortcomings in this regard, are not well researched and documented. The phenomenon must be measured, in order to better assess the effectiveness of the justice system from a women's rights perspective. This will also help to inform policies and programmes, to monitor and evaluate the results and the progress achieved, as well as compliance with existing standards. In addition, having a clear picture of the situation will be a catalyst for change and increase accountability. Demand for increased data collection and knowledge building on women's access to justice stems from a number of international organisations, including: UN agencies, especially UN

Women⁴ and the UN Economic Commission for Europe⁵, the World Bank⁶ and the Council of Europe⁷. CEDAW's General Recommendation No. 33 on women's access to justice also calls for the adoption of indicators and data collection to improve the quality and accountability of justice systems.

■ UN Women and the Council of Europe have developed a framework for measuring women's access to justice, which governments and other stakeholders can use in order to have a better understanding of existing gaps in equal protection from the law. The proposed indicators relate to aspects of access to justice that, while measurable and easy to understand, capture the specificity of women's experience of the justice system. These include requiring data to be disaggregated by sex (as well as by age, residence and other characteristics, as relevant and feasible), the geographic and economic accessibility of courts (including issues related to childcare, for example). In addition, the existence of in-service gender equality training for legal and justice professionals and the need to rely on both objective and subjective data sources for measuring women's access to justice are relevant indicators to measure women's access to justice.

The use of indicators will lead to a better understanding of Women's experience in accessing justice and help tracking compliance with international standards and recommendations, such as the CEDAW's General Recommendation No. 33 on women's access to justice

Teresa Marchiori, Consultant, UN Women

■ Data collection through police statistics is an important aspect of knowledge building in relation to gender-based discrimination and violence and to the ways these phenomena are addressed by the justice system. Data should allow for a comprehensive analysis of various variables characterising the victim, the perpetrator, the relationship between them, their age, and the context

-
4. [Progress of the World's Women: In Pursuit of Justice](#), UN Women 2011; [Informal Justice Systems - Charting a Course for Human Rights-Based Engagement](#), UN Women, UNICEF and UNDP, 2012.
 5. [Beijing+20 Regional Review Meeting, Regional review of progress: regional synthesis](#), ECE/AC.28/2014/3, 2014.
 6. World Bank, [World Development Report](#), Gender Equality and Development, 2012.
 7. [Istanbul Convention; Council of Europe Gender Equality Strategy 2014-2017, Analytical study on the 4th round of monitoring of Committee of Minister Recommendation \(2002\)5 on the protection of women against violence](#), 2014; Paper: Ensuring data collection and research on domestic violence and violence against women: Article 11 of the Istanbul Convention (forthcoming, Council of Europe, 2016).

of the aggression among many others aspect. For example in Portugal since November 2014, national criminal justice statistics on domestic violence are regularly collected and made available on the website of the Ministry of Justice. Such data are age- and sex-disaggregated for the victim and the perpetrator, their relationship is specified, as well as other relevant variables (such as the place and hour of the crime, if children were present and if the perpetrator used any kind of weapon).

■ Improving the knowledge of the general public and of private actors about the causes and consequences of gender-based discrimination is a preventive measure, but it can also encourage victims to claim their rights. Being aware of similar cases and acquiring a better knowledge about the justice system and existing rights will put women and men confronted by discrimination in a better position to go to court. For instance, in Switzerland, three databases have been created to make court judgments more accessible not only to legal experts and law professionals but also to the general public, so that they can learn about court decisions regarding gender-based discrimination claims. This publicity also aims to encourage private companies to take proactive preventive measures against discrimination internally.

” *If we want our authorities to act on this issue, we need to show them two things: that it is a real problem and the statistics prove it, and that it costs money. It is extremely important to be aware that inequality costs a lot. Doing nothing about it costs money*

Sylvie Durrer, Director of the Swiss Federal Office for Gender Equality

■ The training of legal professionals can also greatly improve women’s access to justice. In 2009, the Argentinian Supreme Court created a Women’s Office in order to provide training on women’s human rights, and contribute to the achievement of substantial gender equality. The establishment of the Office follows recommendations for the implementation of the Belem do Pará Convention⁸ and the UN Convention on the Elimination of all forms of Discrimination against Women (CEDAW), which clearly state the need for gender-sensitive training of judicial and law enforcement officers and other public officials. Thus, the institution seeks to incorporate a gender equality perspective into both the activities of the justice service as well as in the interpersonal relationships of those working there. The involvement of judges in the design of this training tool represents a significant change in the profession.

8. [Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, “Convention of Belém do Pará”.](#)

The Women's Office of the Argentinian Supreme Court considers that only through successfully modifying the behaviour of those who administer justice, will the responses of the judicial system change.

■ The Women's Office has developed a training tool called "Protocol for workshops on justice with a gender equality perspective", which uses theory as a trigger for a self-examination process that helps make visible the patriarchal bias that need to be addressed. The Protocol's theoretical content provides an accessible approach to gender equality issues through for example the fundamental concepts of gender, patriarchy, and gender stereotypes. It explains the constitutional basis of the right to equality, including concepts like equality, non-discrimination and positive measures.

■ The Supreme Court of Argentina uses a system of training of trainers to replicate the workshops and multiply the number of final beneficiaries. Trainers-to-be are involved on a voluntary basis and are all working in the judiciary as judges, senior officers or employees. The training is conducted on the basis of ready to use templates available to professionals all over the country through a computer programme. Currently, the training tool is used in six other Latin American countries and is increasingly being recognised at international level.

Ensure comprehensive gender equality legislation and the elimination of barriers to women's access to justice

■ The lack of comprehensive provisions to protect women from discrimination is a significant barrier to women's equal access to justice. In many countries, equality laws are either limited to particular fields of human activity (employment, education, access to goods and services) or they lack effective remedies. The absence of provisions banning discrimination in the private sphere in some countries, like tenancy, for example, is a major gap in the right to equal protection by law.

■ In 2014, in an effort to complement its gender equality legislation, Belgium included sexism as a prohibited form of sex discrimination, after a national study showed that 55% of women in Belgium had experienced offensive sexist stereotyping in public spaces. In the new and pioneering legislation, sexism is defined to be "any gesture or act, (...) that is clearly aimed at expressing contempt towards a person, based on his or her sex, or, for the same reason, to consider that person as inferior or essentially reduced to his or her sexual

dimension, resulting in a serious violation of his or her dignity⁹. The judge will be expected to evaluate whether the attack on the dignity of the person is sufficiently serious as to amount to sexism, taking into account the context and objective facts. Sexism is penalised with either a fine of up to 1,000 euros or imprisonment for up to one year. However, there has been no case-law so far.

” *In a national survey, 55% of women in Belgium confirmed to have experienced sexist stereotyping in public spaces. This led to the adoption of specific legislation on sexism.*

Liesbet Stevens, Institute for Equality of Women and Men, Belgium

■ In addition to weak substantive provisions in equality laws, procedural barriers can also affect women’s access to justice. Even in cases where court fees are not applicable when a lawsuit is lodged, there are still financial risks that women face during court proceedings, such as legal representation costs and legal expenses to secure evidence and witnesses. Sometimes the State only covers legal expenses after plaintiffs have presented exhaustive evidence of their need for support. These financial risks have a higher impact on women than on men because of their globally lower level of resources.

■ In the same way, legal aid is allocated only when the income is considered to be insufficient. In some criminal procedures, victims have no right to appeal or the burden of proof in civil cases is sometimes difficult to meet. The length of appeal procedures and the limited amount of compensation can also have a deterrent effect on women’s quest for justice.

Address gender stereotypes and improve the gender sensitiveness of justice systems

■ Among the many factors that limit women’s opportunities to protect their rights when they face legal challenges, judicial stereotyping has been highlighted as one of the significant barriers for women to access justice equally.

■ Stereotyping excludes any individual consideration of, or investigation into a person’s actual circumstances and their needs or abilities. When a judge engages in stereotyping, he or she reaches a view about an individual based on preconceived beliefs about a particular social group, rather than based on

9. Article 2 of the Act of 22 May 2014 to combat sexism in the public space and amending the Act of 10 May 2007 to combat discrimination in order to punish the act of discrimination, Belgium, Official Gazette of 24 July 2014 (translation provided by the Belgian Institute for the Equality of Women and Men).

relevant facts or actual enquiry related to that individual or the circumstances of their case¹⁰. In the context of women's access to justice, gender stereotyping plays an important role, in particular existing stereotypes that primarily consider men as bearers of rights, authority and knowledge.

■ Judicial stereotyping can operate in two ways. Judges may apply, enforce and perpetuate stereotypes in their decision-making by substituting stereotypes for law and facts in evidence. Alternatively, judges may facilitate the perpetuation of stereotypes by failing to challenge stereotyping, for example by lower courts or by parties to legal proceedings¹¹.

■ Judges' decisions can be affected by judicial stereotyping and, as a result undermine equal access to justice for women in different ways. Firstly, judicial stereotyping affects and compromises the impartiality of judges' decisions. Secondly, judicial stereotyping can influence the judges' understanding of the nature of the crime. For example, judges should apply the law to all equally, including cases of rape of women in prostitution. They should move beyond the prejudice that when women accept to perform sexual acts in exchange for money, consent does not apply and therefore those women should expect and accept any form of violence. In many court cases involving sexual intercourse of a commercial nature, the consent for sexual acts, even those of a violent nature, is taken for granted and judges fail to invoke the lack of consent, which should be the decisive criteria in rape cases.

■ Judicial stereotyping can also affect judges' views about witness credibility and legal capacity. For instance, the testimonies of women victims of human trafficking are often considered not credible if their narration of events has somewhat changed over time. This fails to take into account the trauma and fear that victims of trafficking experience.

■ Judges can hold offenders unaccountable for the crimes committed when they expect certain evidence to be presented due to judicial stereotyping. For example judges sometimes request evidence of the victim's physical resistance, rather than require the offender to prove that the victim consented to the sexual intercourse. It is mistakenly believed that it is easy for women to fabricate sexual or physical claims of violence, and therefore evidence of physical resistance is expected, despite the fact that according to legislation in many countries, and to the Istanbul Convention, consent is the main aspect that should prevail.

10. Eliminating judicial stereotyping: Equal access to justice for women in gender-based violence cases, by Simone Cusack, submitted to the Office of the High Commissioner for Human Rights, 2014.

11. Ibid.

■ Judicial stereotyping can also impede access to legal rights and protection. For instance, in custody cases, where there is a history of domestic violence in the family, judicial decisions are too often based on the assumption that the child should maintain contact with his/her father, regardless of the father's violent behaviour. The Istanbul Convention is a useful tool in this case, as it contains legally binding provisions to ensure the safety of victims of violence, including children, in the context of custody rights¹².

■ Finally, judicial stereotyping linked to gender is a violation of women's human right to an effective remedy and fair trial. It can lead to miscarriages of justice, failure to secure equality before the law and equal protection from the law. It can be remedied through improving the gender sensitivity of legal professionals, revising laws to make them more gender-sensitive, highlighting the harm of judicial stereotyping through evidence-based research, advocating for legal and policy reforms that specifically address gender stereotypes, and monitoring the impact of such measures. Other solutions include analysing judicial reasoning for evidence of stereotyping, challenging judicial stereotyping through petitions and expert evidence (appealing court decisions, using CEDAW, lodging *amicus briefs*), highlighting good practice examples of judges challenging gender stereotypes and improving the judicial capacity to address gender stereotypes.

” *We need to raise awareness of the broad-ranging international human rights obligations related to gender stereotypes and stereotyping, in order to secure such obligations and to effectively challenge stereotypes and get proper redress for women victims of abuse.*

Veronica Birga, Office of the UN High Commissioner on Human Rights

Provide specialised assistance to facilitate women's equal access to justice

■ A range of socio-economic and cultural barriers undermine women's access to justice: economic dependence, fear or shame, lack of self-confidence, lack of awareness and knowledge of rights, biased law enforcement (police, public prosecutors, judges).

■ To overcome these barriers, it is crucial that women are provided with advice and assistance from independent and specialised women's support

12. Article 31 of the Istanbul Convention.

services¹³. For example, the [Austrian Federal Ministry of Education and Women's Affairs](#) offers round the clock online advice, and the Austrian Office of the Ombudsperson for Equal Treatment advises and assists women who consider that they have been discriminated against. Furthermore, Violence Protection Centres/Intervention Centres against Domestic Violence, offer comprehensive support and assistance at police stations or at court proceedings for victims of domestic violence and stalking. In Austria, women can benefit from legal advice if they are placed in women's shelters or if they are identified as victim of gender-based violence. In addition, a special helpdesk for migrant women and a helpline against violence in various languages, tailored to women from minority ethnic and linguistic groups, have been created. An "Orient Express" helpline also aims to offer support and emergency accommodation to women and girls threatened or affected by forced marriage. Finally, the Intervention Centre for Women Victims of Trafficking offers two types of assistance in court proceedings: psychological assistance during and after police and judicial questioning, and legal assistance and representation in court by well-trained lawyers.

” *Specialised support services and help are provided to migrant women and women with disabilities, tailored to their specific needs.*

[Eva Fehringer, Federal Ministry of Labour, Social Affairs and Consumer Protection, Austria](#)

■ Equality bodies individually and collectively play a role in ensuring better access to justice in cases of gender-based discrimination and violence. Equality bodies in different European countries have recently led litigation initiatives on topic related to maternity-based discrimination, sexual harassment or access to goods and services.

■ The [European Network of Equality Bodies](#), Equinet operates as a membership organisation for 42 national equality bodies from 32 European countries. It promotes equality in Europe through supporting and enabling the work of national equality bodies. Equinet's work includes access to justice for victims of discrimination, violence against women and gender stereotypes and sexism. Equinet seeks to engage in advancing equality in practice by facilitating contributions and giving a stronger voice to national equality bodies in the wider European debate.

13. Examples of these are given in the [Council of Europe Compilation of good practices to reduce existing obstacles and facilitate women's access to justice](#) (2015).

■ In 2014, Equinet organised gender equality training on harassment and sexual harassment, including the need to guarantee access to justice to women victims of harassment and sexual harassment. Equinet's Working Group on Equality Law monitors cases communicated by the European Court of Human Rights in order to identify those cases directly relevant for equality and non-discrimination, including for the work of equality bodies. In highly relevant cases, the Working Group submits a third-party intervention to the ECtHR on behalf of Equinet.

” *Equinet supports equality bodies to be independent and effective as valuable catalysts for more equal societies*

Jessica Machacova, European Network of Equality Bodies

■ The [Belgian Institute for the Equality of Women and Men](#) for example provides information to victims, refers them to appropriate services, provides mediation between the victim and the perpetrator of discrimination and may bring cases before domestic courts on the basis of legislation guaranteeing equality on the basis of sex. The Institute may also provide lawyers or cover lawyers' fees, which can be very important to ensure successful legal protection and access to court.

■ The Cypriot [Gender Equality Committee in Employment and Vocational Training](#) (EIF) is another relevant example. EIF was set up and operates on the basis of the Equal Treatment of Men and Women in Employment and Vocational Training Law, aimed at the application of the principle of equal treatment for men and women with respect to employment, access to vocational guidance, vocational education and training and the conditions of their provision, including professional development and the conditions and preconditions of dismissal.

■ One of the most important competences of EIF is the provision of free legal aid and independent assistance to victims of gender-based discrimination. Their legal advisors' services can include: granting legal advice to victims of gender-based discrimination in employment and vocational training; representation of victims of discrimination before administrative authorities; representation of victims in judicial procedures. By October 2015, legal aid had been granted to 90 persons (89 women and 1 man). 70% of the women beneficiaries of legal aid applied in relation to gender-based discrimination in career development.

” *Legal aid is provided free of charge in an effort to encourage women to lodge a complaint when they experience discrimination and thus create a Cypriot case-law on gender equality in employment, which is currently very poor.*

Ioanna Pilavaki, Gender Equality Committee in Employment and Vocational Training Cyprus

■ New technologies can also be used in innovative and effective ways to provide support in cases of gender-based violence and discrimination, by combining technical advances with knowledge about the needs and gaps, in relation to the protection of victims. For instance, the Portuguese [Commission for Citizenship and Gender Equality \(CIG\)](#) – which ensures the implementation of public policies in the field of citizenship, and the promotion of equality between women and men – coordinates a Tele-assistance Programme for victims of domestic violence.

■ This Programme aims to improve the protection and security of victims, ensuring adequate and free of charge response to emergency and crisis situations 24 hours a day. Victims of domestic violence have access to the Programme whenever they are at risk of re-victimisation, when they have specific security needs or when a court, in criminal proceedings decides on their protection. In addition to a telephone service, the technological support system allows for the geographical tracking of the victim, which is fundamental in emergency/crisis situations. If psychological support and protection are needed, they will be provided by tele-assistance, a system that is especially suited for victims of domestic violence with high re-victimisation risk or with low social support.

” *Tele-assistance is for both victims in need for protection and to monitor domestic violence aggressors. Tele-assistance does not require the approval of a judge and currently we have more than 500 women with tele-assistance and 470 men and women supervised.*

Marta Silva, Gender-based and Domestic Violence Unit, Portugal

Address the specific challenges faced by irregular migrant women

■ The experience of irregular migrant women in accessing justice, in today's context of armed conflicts and migration, is an example of the intersection between sex and other forms of discrimination and exclusion, leading to very

limited access to justice in practice. The exact number of irregular migrants living in Europe is not known, as they are not registered. According to recent research, in 2008 there were between two and four million irregular migrants in the European Union. Depending on the host country, the proportion of women among them varies from 25% to 60% of the total number of irregular migrants¹⁴.

■ It has to be stressed that being an *irregular* migrant is not an inherent attribute but rather a condition assigned by immigration laws and procedures when they fail to allocate a residence status to a migrant person. Unfortunately, in many countries the residence status has become the dominant and most important aspect of their identity. As a result, their rights and ability to access justice very often depend on this residence status.

■ Being an irregular migrant has other legal consequences: no right to work legally, no right to social housing or shelters, and difficulties in accessing health care. Irregular migrants are dependent on undeclared work, support from families, friends and charities for their survival. They live in constant fear of being detected, apprehended and deported, due to police powers to control residence permits in homes, workplaces and on public transport. Irregular migrants are often deported when detected. This means that, in practice, irregular migrant women confronted with gender-based violence or other forms of exploitation or discrimination cannot claim their rights.

■ Finding accommodation can also be difficult. In some countries where the housing market is highly regularised, it is difficult for irregular migrants to have access to affordable housing. Irregular migrants therefore are often dependant on illegal or exploitative housing practices without access to any legal remedy. Access to health care depends on the structure of the relevant health care system, and on its openness to undeclared residents. Since women are the main providers of child care and caring for other dependants (elderly parents), the additional burden of accessing administrative systems related to social, health and education services often falls onto them.

■ Irregular migrant women are often dependent on their network (family, friends and employers) or on their living partner for shelter, food or other daily life necessities. Research among irregular migrant women in The Netherlands showed that at least 28% of them suffered from sexual violence, and between 10-20% had faced domestic violence¹⁵. In the case of domestic violence, they often have no escape as they are frequently financially dependent on a violent

14. Figures presented at the Bern conference by Rian Ederveen, [Stichting LOS](#), member of the Platform for International Cooperation on Undocumented Migrants (PICUM).

15. Ibid.

partner and access to justice may depend on their residence status. They may also fear deportation when calling the authorities for protection. There are also risks of unreported and continued violence by employers when irregular migrant women are dependent on their informal employer, especially for live-in carers or those who sleep in accommodation provided by the employer.

■ The Istanbul Convention contains a specific chapter aimed at ensuring access to justice for migrant women. It introduces the possibility of granting migrant women who are victims of gender-based violence an independent residence status. Furthermore, it establishes the obligation to recognise gender-based violence against women as a form of persecution, and contains the obligation to ensure that a gender-sensitive interpretation is given when establishing refugee status. In addition, it establishes the obligation of introducing gender-sensitive procedures, guidelines and support services during the asylum process. Finally, it contains provisions pertaining to the respect of the *non-refoulement* principle with regard to victims of violence against women¹⁶.

■ Other groups of women face particular barriers to access justice, for example women victims of violence, women from minority ethnic groups, and lesbian/bisexual/transgender women. Trafficked women, especially women trafficked for sexual exploitation face a wide range of forms of violence and exploitation. At the same time, women victims of trafficking face serious obstacles to access justice because they are usually marginalised and face social stigma and poverty in their countries of origin. For this group, lack of protection is one of the most significant barriers for accessing justice. Victims, witnesses and their families in trafficking cases are often vulnerable to threats and retaliation for cooperating with law enforcement.

■ In order for all women to be able to escape violence, it is important that effective ways of protection are available. In this respect, the Istanbul Convention provides that implementation of its provisions “in particular measures to protect the rights of victims, shall be secured without discrimination on any ground such as (...)national or social, (...), migrant or refugee status, or other status”¹⁷. This means, among other things, that women’ shelters have to be open for irregular migrant women, who should be guaranteed access to services and protection. It also means that authorities should examine with due diligence a complaint about violence notwithstanding the victim’s residence status. All victims should be able to report domestic violence, or any other form of violence, they are confronted with to the police.

16. Chapter VII of the Istanbul Convention – Migration and Asylum of the Istanbul Convention.

17. Article 4§3 of the Istanbul Convention.

Recognise and strengthen the role of civil society in supporting women's equal access to justice

■ Civil society, including women's organisations, has long been instrumental in supporting women's equal access to justice. Activities in this context are diverse, ranging from advocacy, support to individual claimants, strategic litigation or providing gender-sensitive training to law enforcement professionals.

■ The [Women's Human Rights Training Institute](#) (WHRTI) is a good practice and first-of-its-kind programme aimed at building and developing the capacity of young lawyers from Central and Eastern Europe and the Newly Independent States (CEE/NIS) to litigate in cases of violence against women, reproductive rights and employment discrimination. The programme is implemented by the Bulgarian Gender Research Foundation, in partnership with the Centre for Reproductive Rights and the Network of East-West Women. The Institute provides advanced and in-depth training on women's human rights protection in three thematic fields: violence against women, sexual and reproductive health and rights, and employment discrimination. The training proposes an additional focus on intersectional issues and gender stereotypes, practical skills and the development of strategic litigation, through the use of international instruments such as the European Convention on Human Rights and the Optional Protocol to CEDAW. The programme also provides participants with practical skills to use EU standards and the case law of the Court of Justice of the European Union.

” *The Institute provides advanced and in-depth knowledge on women's human rights protection with an additional focus on intersectional discrimination and gender stereotypes*

[Genoveva Tisheva, Women's Human Rights Training Institute, Bulgaria](#)

■ [Women's Link Worldwide](#) illustrates other types of activities carried out by civil society in supporting women's access to justice. The organisation uses law and strategic litigation, in order to create social changes to promote the rights of women and girls, particularly those who face multiple forms of discrimination. Women's Link aims to develop jurisprudence, using a gender equality perspective and an intersectional analysis. At the same time, the organisation works to secure the conditions and capacity necessary to ensure the protection and guarantees for women' and girls' rights. Part of this organisation's work is also to support women's access to justice through training sessions for judges and lawyers, and awareness raising on the importance of eliminating the obstacles to women's access to justice. The organisation

also provides a free online information system: Women's Link Gender Justice Observatory, which contains analytical summaries and the full text of judicial decisions with a significant impact on gender issues.

■ The organisation believes in creating sustainable social changes through and beyond the courts. In order to assess whether social change can be achieved, Women's Link Worldwide has identified four preconditions: an existing rights' framework; a committed judiciary; legal advocates with the capacity to engage in strategic litigation, and a network to support and influence the opportunities presented by litigation.

■ As an example of strategic litigation, Women's Link represented Ms Ángela González Carreño and took her case to the CEDAW Committee after she spent over twelve years fighting to ensure that the violations of her human rights and those of her deceased daughter, murdered by her father and abusive ex-partner, would not be repeated. In its 2014 decision¹⁸, the CEDAW Committee decided that the State had violated provisions of the CEDAW in relation to domestic violence, child visitation rights and child support. Other recommendations of the Committee included: ensuring that domestic violence is taken into account in custody and visitation matters, and that the best interests of the child prevail in related decisions; ensuring that the authorities exercise due diligence and respond appropriately to domestic violence; and providing mandatory training for judges and administrative personnel on the legal framework concerning domestic violence and gender stereotyping. The Committee considered that laws to combat gender-based violence are necessary, but that it is also important to effectively implement them without the prejudices and the gender stereotypes that normalise, minimize, and perpetuate gender-based violence and which impede women's access to justice.

” *In Europe we already have an existing women's human rights framework, but in our everyday experience we see cases in which women can't access justice because they face multiple obstacles such as prejudices and gender stereotypes.*

Tania Sordo, Women's Link Worldwide, Spain

18. Angela González Carreño v. Spain . Communication No. 47/20 12, UN Doc. CEDAW/C/58/D/47/2012 (2014).

Recommendations

Based on the relevant legal and policy frameworks, as well as the discussions, good practices and experiences presented, the Bern conference made the following recommendations:

To member states:

1. Adopt comprehensive gender equality laws to:
 - a. reflect existing international and regional standards as regards equal access to justice for women;
 - b. provide compensatory and punitive damages to secure a deterrent effect on offenders;
 - c. address multiple discrimination and the fact that some groups of women are in particularly difficult situations when seeking justice.
2. Adopt clear standards and comprehensive equal treatment legislation in order to ensure the effectiveness and independence of equality bodies.
3. Ensure the full implementation of existing national legislation as well as international and regional human rights treaties and standards to make equal access to justice for women a reality.
4. Develop protection systems and measures to tackle sexism, including through targeted/specific legislation, which would also help fight prejudicial attitudes and negative gender stereotypes.
5. Ensure access to affordable legal representation and adequate legal aid in both criminal and civil law cases (whether the woman is a complainant or a defendant).
6. Adopt legal, policy and institutional reforms to address judicial stereotyping through research, monitoring, education, capacity building and the promotion of good practices.
7. Allocate resources to institutional mechanisms for the advancement of women, civil society organisations working in this area, support services and training related to women's rights and gender equality.

8. Ensure gender-sensitive data collection and knowledge building on the different aspects of women's access to justice (judicial stereotyping, practical and legal barriers, etc.).
9. Ensure the effectiveness and independence of national equality bodies so that they can reach out and provide remedies to victims of discrimination (dissuasive, effective, and timely).

To national equality bodies:

10. Prioritise, research, address and remedy gender-based and multiple discrimination as well as gender-based violence.
11. Develop and deliver training on gender-based violence, gender equality issues, and women human's rights (tailored to the needs of justice professionals and members of law enforcement bodies).

To civil society and lawyers' associations:

12. Use collective actions as a possible way to bring forward important issues in relation to gender equality and gender-based violence and build a case law (*action popularis*, public litigation, *amicus curiae*, etc.).

To justice and law enforcement authorities:

13. Use innovative techniques, as appropriate to secure the adequate protection of victims of violence as provided by the Istanbul Convention.
14. Develop tools such as gender-sensitive training or databases of court decisions to raise awareness and ensure a better understanding among legal professionals of issues related to women's access to justice, including judicial stereotypes and protection against gender-based violence and discrimination.
15. Engage with equality bodies and civil society to organise awareness raising and capacity building events aimed to increase understanding of gender equality and women rights' issues.

” Persisting inequalities between women and men, gender bias and stereotypes also result in unequal access of women and men to justice.

Council of Europe Gender Equality Strategy 2014–2017

www.coe.int

The Council of Europe is the continent's leading human rights organisation. It comprises 47 member states, 28 of which are members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE