



Focus section: approaches taken in states parties to the Istanbul Convention on the criminalisation and prosecution of sexual violence, including rape

Introduction

Sexual violence, including rape, are not only pervasive crimes but are the most under-reported crimes and the least likely to end in conviction.⁸ Research conducted by the EU Agency for Fundamental Rights in 2014 found that one in 10 women has experienced some form of sexual violence since the age of 15, and one in 20 women has been raped since the age of 15.⁹ The research also found that about one in four victims of sexual assault, by either a partner or a non-partner, did not contact the police or any other organisation after the most serious incident because of feelings of shame and embarrassment.¹⁰ GREVIO has consistently drawn attention to the

8. Council of Europe (2022), "Mid-term Horizontal Review of GREVIO baseline evaluation reports", paragraphs 442 and 446. For a comparative study, see also Burman M., Lovett J. and Kelly L. (2009), Lovett, J. & Kelly, L. (June 2009) "Different systems, similar outcomes? Tracking attrition in reported rape cases in eleven countries", p. 3.

9. EU Agency for Fundamental Rights (2014), "Violence Against Women: An EU Wide Survey by the European Union Fundamental Rights Agency", p. 14.

10. Ibid., p. 69.

issue of under-reporting¹¹ and to the phenomenon of attrition (the process by which cases fail to proceed through the criminal justice system) in cases of sexual violence, including rape.¹² In addition to being one of the most under-reported crimes, GREVIO has also noted in a number of baseline evaluation reports that these cases have high dropout rates at the investigation and prosecution stages,¹³ low conviction rates¹⁴ and attract low sentences.¹⁵ This state of affairs results in women losing trust in the criminal system, low reporting rates and a culture of impunity, leading to the normalisation of sexual violence, including rape.¹⁶

The Istanbul Convention – a comprehensive framework to prevent and punish sexual violence, including rape, and to protect victims

The Istanbul Convention provides a comprehensive framework to prevent, criminalise and prosecute sexual violence, including rape, and it requires the setting up of specialist support services for victims. The backbone of such a framework is provided by Article 36, on sexual violence, including rape, Articles 49, 50 and 56 in the areas of investigation, prosecution and protective measures, and Article 25 on support services for victims of sexual violence.

The central legal element of the convention's definition of sexual violence, as articulated under Article 36, is the lack of consent given voluntarily as a result of the person's free will. This provision recognises the risks of leaving certain types of rape and sexual violence unpunished if the relevant criminal offences are based on force, threat or coercion rather than lack of consent. Article 36 of the convention builds on the case law of the European Court of Human Rights, which stresses that such rigid approaches jeopardise the effective protection of the individual's sexual autonomy.¹⁷ For this reason, Article 36 sets out the obligation to criminalise all forms of non-consensual sexual acts, including rape. This definition, therefore, does not

11. For example, in Finland and France it has been estimated that less than 10% of all rape cases are reported. See GREVIO's baseline evaluation reports on Finland, paragraph 198; and France, paragraph 219. Other GREVIO reports that raise concerns of under-reporting include Austria, paragraph 153; Montenegro, paragraph 221; Türkiye, paragraph 281; Italy, paragraph 221; the Netherlands, paragraph 254; Belgium, paragraph 184; Slovenia, paragraph 306; Romania, paragraph 340; Bosnia and Herzegovina, paragraph 259; Estonia, paragraph 204; Georgia, paragraph 306; and Norway, paragraph 221.
12. Council of Europe. 2022. "Mid-term Horizontal Review of GREVIO baseline evaluation reports", paragraph 450.
13. See GREVIO's baseline evaluation reports on Denmark, paragraph 198; Belgium, paragraph 187; Poland, paragraph 265; Iceland, paragraph 252; Estonia, paragraph 215; and Norway, paragraph 221.
14. See GREVIO's baseline evaluation reports on Portugal, paragraph 195; Finland, paragraph 206; France, paragraph 230; Italy, paragraph 221; Slovenia, paragraph 323; Germany, paragraph 303; Bosnia and Herzegovina, paragraph 267; Iceland, paragraph 261; Georgia, paragraph 311; Cyprus, paragraph 235; and Norway, paragraph 231.
15. See GREVIO's baseline evaluation reports on Italy, paragraph 222; Slovenia, paragraph 323; Bosnia and Herzegovina, paragraph 273; Switzerland, paragraph 225; and Cyprus, paragraph 235.
16. Council of Europe (2022), "Mid-term Horizontal Review of GREVIO baseline evaluation reports", paragraph 446. For more information on the impunity of perpetrators of sexual violence and recommendations to rectify it, see UN Special Rapporteur on violence against women (2020), "Report on rape as a grave and systematic human rights violation and gender-based violence against women".
17. *M.C. v Bulgaria* (Application No. 39272/98), judgment of 4 December 2003.

require the offender's use of force or threat, or proof of the victim's physical or verbal resistance. The Istanbul Convention's emphasis on "consent" is elaborated on in paragraph 2 of Article 36, which requires that the prosecution of sexual offences shall be based on a context-sensitive assessment of the evidence in order to establish, on a case-by-case basis, whether or not the victim has freely consented to the sexual act. In its mid-term horizontal review and subsequent baseline evaluation reports, GREVIO stresses the need to ensure that the legal definitions of sexual offences fully capture the realities of women experiencing sexual violence and their coping mechanisms to deal with such violence.¹⁸ In order to ensure that certain types of sexual violence do not go unpunished, paragraph 1 of Article 36 further describes the types of non-consensual sexual acts that states parties must criminalise. This covers non-consensual vaginal, anal or oral penetrative sexual acts with any bodily part or object; non-consensual non-penetrative sexual acts; and causing another person to engage in non-consensual acts of a sexual nature with a third person.

Articles 49, 50 and 56, furthermore, are essential provisions aimed at decreasing attrition rates of cases involving sexual violence, including rape. While Articles 49 and 50 set out the obligation of immediate response, prevention and protection for women victims of the forms of violence covered by the convention, having regard to a gendered understanding of violence, Article 56 lists a range of measures to protect the rights and interests of victims at all stages of investigation and judicial proceedings. Recognising that victims who are protected and supported are more likely to report and continue their participation in the criminal justice chain, these articles reflect a victim-centred approach to investigations and prosecutions and aim to make criminal justice systems more tailored to the actual needs of victims, starting at police stations.

On the other hand, Article 25 of the convention requires states to ensure the provision of support to victims of sexual violence when they are the most vulnerable. Such support services must aim to empower victims and accompany them throughout their journey of recovery, while facilitating and enabling the gathering of forensic evidence, thereby increasing their chances of obtaining justice. More specifically, this article requires states parties to take the necessary legislative or other measures to provide for the setting up of appropriate, easily accessible rape crisis and/or sexual violence referral centres for victims in sufficient numbers, to cover medical and forensic examination, trauma support and counselling for victims.

GREVIO's mid-term horizontal review of its first baseline evaluation reports highlights a number of factors that contribute to low reporting and high attrition rates in sexual violence cases.¹⁹ These include low levels of awareness and the professional capacity concerning sexual violence and lack of specialised training for law enforcement, prosecutors or judges, resulting in poor gendered understanding of this violence, entrenched stereotypes and patriarchal attitudes.²⁰ Other contributing factors include narrow definitions of sexual offences and the lack of guidance

18. Council of Europe (2022), "Mid-term Horizontal Review of GREVIO baseline evaluation reports", paragraph 365.

19. Council of Europe (2022), "Mid-term Horizontal Review of GREVIO baseline evaluation reports", paragraphs 442 and 446.

20. *Ibid.*, paragraphs 435 and 447.

in terms of specialised protocols, which result in poor case building, over-reliance on victim testimony as primary evidence and the influence of bias and stereotyping that minimise the violence, blame the victim or assume that victims make false allegations about the violence.²¹ GREVIO has also emphasised problems encountered in the process of obtaining and storing evidence in cases of rape, including cases in which forensic evidence is gathered from the victim only if she reports the crime to the police. This is compounded by the limited numbers of women police officers; a lack of adequate, victim-friendly police and courtroom premises; lengthy judicial procedures; and a lack of holistic support services to victims of sexual violence.²² These factors illustrate how secondary victimisation can stem from the criminal justice system. Indeed, a number of studies describe victims of sexual violence as being the most re-traumatised by the criminal justice process itself, with some victims viewing the criminal justice system as a “second assault” and feeling that they themselves were on trial.²³

In recent years there has been a succession of positive developments in many states parties to the convention in the area of sexual violence, resulting in improvements for victims. Many states are embracing definitions of rape based on the lack of consent, improving investigation, prosecution, procedural and protective measures and establishing rape crisis and/or sexual assault referral centres to offer specialist support services for victims of sexual violence. Many of these developments are recognised to have been driven by states’ efforts to comply with the Istanbul Convention standards. This is but one example of the convention’s and GREVIO’s ability to deliver so that women and girls are better protected and safe from violence. Most of the promising practices reflected in this section have been acknowledged in GREVIO baseline evaluation reports, whereas some have been documented through the Committee of the Parties conclusions.²⁴ Other states have made reforms that have not yet been analysed by GREVIO, either because the changes post-dated the GREVIO baseline evaluations or because GREVIO has not yet evaluated the state party in question. The following section provides an overview of the different approaches to criminalising rape and sexual violence.

21. Ibid., paragraphs 364-365, 435, 437 and 447.

22. Ibid., paragraphs 445, 438, 443 and 277-287.

23. Craig E. (2015), “The Inhospitable Court”, *University of Toronto Law Journal* 10.3138; also see studies discussed in UNODC (2019), “Handbook for the Judiciary on Effective Criminal Justice Response to Gender-based Violence against Women and Girls”.

24. The Committee of the Parties to the Istanbul Convention plays a role in monitoring the Istanbul Convention. Since 2018, it has been adopting, on the basis of GREVIO’s findings, recommendations to states parties to further the implementation of the convention. States parties are given three years to implement such recommendations and report back to the committee. At its 10th meeting on 13 April 2021, the committee agreed on a framework to supervise the implementation of these recommendations, issuing a standardised reporting form. On the basis of the information provided by states parties and any additional information, the committee then adopts conclusions on the implementation of its recommendations in relation to each state party under review. So far, the committee has reviewed Austria, Albania, Denmark, Monaco, Montenegro, Portugal and Sweden.

Different approaches in the criminalisation of sexual violence, including rape

The criminalisation of sexual violence, including rape, by states parties to the convention is characterised by different definitions and scopes of protection, and various behaviours, different sanctions and aggravating and mitigating circumstances.²⁵ From a review of GREVIO's monitoring activity to date, there appear to be four different approaches in the criminalisation of sexual violence, including rape. This includes one that requires the use of force, coercion or vulnerability. Another approach is based on a two-tiered approach, with a legal provision that requires the use of force, threat or coercion and adding another offence that is based entirely on lack of consent. A third approach, otherwise known as the "no means no" model, does not require the use of force, threat or coercion but, rather requires proof that the sexual act was committed against the will of a person. In the fourth approach, also informally called the "only yes is yes" model, or "affirmative consent", the voluntary participation of both or all parties is required for sexual acts not to be criminalised.

Laws based on the use of force, coercion or threat

The traditional criminal law approach to sexual violence was based on purely force-based definitions, requiring the use of force, threats, coercion or intimidation. This approach was not designed to protect sexual autonomy, but rather was based on religious and/or moral rules for sexual conduct.²⁶ Moreover, such an approach reflects the archaic view that when it comes to rape, the most pervasive danger comes from strangers. However, studies refute the common myth that "real rape" involves strangers, physical force and physical injury and find that most rapes involve people known to the victim and do not result in visible injury.²⁷ This effectively consigned most rapes to a place beyond law's reach and out of step with modern concepts of women's sexual agency.²⁸ As GREVIO has observed, historically such models represent beliefs and practices based on the idea that women are the bearers of society's "moral standards", fostering an environment in which perpetrators of sexual violence are exonerated and the responsibility for the violence is transferred to the victims. Because laws based on the use of force or coercion reflect more concern for the accused than for the victim, and reflect the persistent belief that false rape accusations are easily made but are challenging to disprove, this had a negative impact on the development of the rules of evidence and criminal procedures around sexual offences.²⁹

25. For an analysis of aggravating factors applied by different European Union member states, see European Network of legal experts in gender equality and non-discrimination (2021), "Criminalisation of gender-based violence against women in European States, including ICT-facilitated violence", pp. 172-178.

26. For a discussion on the evolution of sexual autonomy, see Tatjana Hörnle, "#MeToo – Implications for Criminal Law?" (2019), *Bergen J. Crim. L. & Crim. Just.* 6, 129-306.

27. Among other sources, studies listed in UNODC (2014), "Handbook on effective prosecution responses to violence against women and girls", page 31, confirm this.

28. Tuerkheimer D. (2015), "Rape on and off campus", *Emory Law Journal*, Vol 65:1, pp. 44-45.

29. The 17th Century statement by English jurist Sir Matthew Hales "rape is an accusation easily made and hard to be proved and harder to be defended by the party accused, tho never so innocent", discussed in Lonsway K. et al. (2009), "False Reports: Moving Beyond the Issue to Successfully Investigate and Prosecute Non-Stranger Sexual Assaults", 3:1 *The Voice* 1.

For example, GREVIO noted in its baseline evaluation reports on Finland and Norway that a consequence of a force-based model is the requirement of higher thresholds of evidentiary standards of physical resistance and a shifting of the focus onto the victim's behaviour rather than on the accused's actions.³⁰ In relation to Georgia³¹ and Poland,³² GREVIO noted with concern that the strict corroboration rules for evidence to establish sexual violence may result in high evidentiary requirements for rape.³³

A limited understanding of lack of consent based on vulnerability

Early reforms to move away from force-based definitions introduced limited situations in which the lack of consent became a defining element of sexual violence and rape. More specifically, some countries included in the definition of rape certain cases of invalidated consent, such as where the victim is in a helpless state due to unconsciousness (caused by alcohol or drugs) or the particular situation of the victim (illness or mental disability or detention of some form).³⁴

States parties that have adopted a force-based approach

A significant number of parties – Albania, Andorra, Bosnia and Herzegovina, Estonia, France, Georgia, Italy, the Netherlands, Norway, Poland, Romania, San Marino, Serbia and Switzerland – continue to require as constituent elements of sexual offences the use of violence, coercion, compulsion, threat, intimidation or a state or situation of the victim which makes them incapable of resisting.³⁵ GREVIO did, however, welcome the law reform efforts being discussed in the Netherlands, Norway, Serbia and Switzerland at the time of GREVIO's respective evaluations.

The majority of force-based definitions make reference to using violence or threat of violence (such as France, Italy and the Netherlands) or going against the person's will by using force (such as Estonia) or by constraint (Romania). That said, it should be noted that in all jurisdictions, including those where the legal definition is force-based, situations which invalidate consent are also recognised in the criminal law or introduced by case law.³⁶ Some forms of annulment of consent refer to the

30. See GREVIO's baseline evaluation reports on Finland, paragraph 165; and Norway, paragraph 185.

31. See GREVIO's baseline evaluation report on Georgia, paragraph 310.

32. See GREVIO's baseline evaluation report on Poland, paragraph 215.

33. As regards in particular the baseline evaluation report on Georgia, GREVIO found that although according to Georgian legislation evidence has no predetermined value and should be evaluated in terms of its relevance, admissibility and credibility for each criminal case, prosecutors and the judiciary interpret the legislation in a sense that requires two pieces of direct evidence on which to base an indictment or a conviction for sexual violence. GREVIO expressed its concern that this may result in high evidentiary requirements for rape, as this rule is not only applied for a conviction but also for an indictment and may result in low levels of indictments and, subsequently, convictions.

34. As regards European Union member states, see the European Network of legal experts in gender equality and non-discrimination (2021) cited above.

35. See GREVIO's baseline evaluation reports on Albania, paragraphs 135-138; Andorra, paragraphs 158-161; Bosnia and Herzegovina, paragraphs 218-220; Estonia, paragraphs 171-172; Finland, paragraphs 165-168; France, paragraphs 190-195; Georgia, paragraphs 252-256; Italy, paragraphs 189-190; Monaco, paragraph 116; the Netherlands, paragraphs 223-225; Norway, paragraphs 184-189; Poland, paragraph 213-216; Romania, paragraphs 278-281; San Marino, paragraphs 157-160; Serbia, paragraphs 184-186; Spain, paragraphs 220-224; and Switzerland, paragraphs 183-184.

36. European network of legal experts in gender equality and non-discrimination (2021), cited above.

helpless state of the victim, with formulations such as “taking advantage” or “abusing the vulnerability”. This “helpless” state is connected in most cases to some kind of unconsciousness due to alcohol or drugs or the particular situation of the victim, for example illness or mental disability or detention of some form. Italy describes this act of taking advantage as “abusing the conditions of physical or mental inferiority of the injured person”. In France, besides the use of force, reference is also made to penetration achieved by “coercion and surprise”, and it is left to the judge to determine its meaning on a case-by-case basis. Hence, references to the inability of victims to consent are present in all definitions, regardless of whether they are force or consent based. These result in the alleviation of the need for the victim to demonstrate their resistance. However, national experts reported that courts do not interpret these “non-consensual” elements consistently and the threshold of proof remains high, often resulting in secondary victimisation.³⁷

In its baseline evaluation reports on Andorra, Bosnia and Herzegovina, Norway, Poland, Romania and San Marino, GREVIO has clearly stated that the above-mentioned approach requiring elements of violence, coercion and threat do not fully capture the realities of women experiencing sexual violence and their coping mechanisms to deal with such violence, which include reactions such as flight, fight, freeze, flop or befriend. This conflicts with the requirement under the Istanbul Convention that prosecutions of sexual offences are to be based on a context-sensitive assessment of the evidence in order to establish, on a case-by-case basis, whether or not the victim has freely consented to the sexual act.³⁸ GREVIO has therefore strongly encouraged or urged the relevant parties to amend their legislation on sexual violence so that it is based on the notion of freely given consent as required by Article 36.

The two-tiered approach

In the two-tiered approach, a provision requiring the use of force and a provision requiring the element of lack of consent coexist in parallel. However, the former often carries a harsher prison sentence compared to the latter. In the “one crime model”, threats or violence enhance the severity of the wrongdoing as additional elements, but are not constituent for the existence of wrongdoing, as it is for the two-tier approach. In its baseline evaluation reports, GREVIO has adopted the view that it is the fact that the act is carried out without the consent of the victim that should determine the punishment, whether this is committed by someone who employs violence or abuses his position of power over the victim, for example. Where the circumstances of the act are particularly violent, abusive and traumatising, however, aggravating circumstances should be applied to ensure a sanction commensurate with the gravity of the act.³⁹

States parties that have adopted this approach

A number of states do not follow the “one crime model” but rather have tiers of sexual offences with different constituent elements, such as force, threat of violence or

37. Ibid.

38. Explanatory Report to the Istanbul Convention, paragraph 192.

39. See GREVIO’s baseline evaluation report on Serbia, paragraph 186.

incapacity of the victim, with different severity of the sanctions across the different sexual violence offences. GREVIO observed this approach in its baseline evaluation reports on Austria, Georgia, Norway and Serbia.⁴⁰ An example is found in Georgia, where the legislation incriminates two different types of acts of rape, one which is termed “rape” and attracts more serious penalties, and one that is termed “coercion to intercourse” and is defined as a less serious crime, mainly because it does not require the use of force or threats. Similarly, in Norway, most of the sexual offences continue to be categorised according to the degree of physical violence or threat employed, or to the degree of the victim’s helplessness, except for section 297 of the criminal code which covers sexual acts performed without consent, which is punishable by a fine or imprisonment for up to one year.

The “no means no” approach

The “no means no” approach is based on the premise that sexual intercourse is considered consensual as long as neither party said “no”. This approach criminalises sexual acts that happen “against the will of a person”. The degree of resistance, whether verbal or non-verbal, is used as a measure of whether the victim consented to the sexual acts.⁴¹ The “no means no” approach presumes consent, unless it is withdrawn – explicitly or implicitly – by the victim. The prosecutor is therefore required to prove beyond a reasonable doubt that the act took place against the will of the complainant. In other words, the prosecutor must demonstrate to the satisfaction of the fact-finders (the judge or jury) that the complainant made the accused aware that she/he did not wish to engage in sexual acts. This includes resistance that is verbally expressed or through unequivocal gestures or conduct such as pushing away, crying, attempting to leave, etc. In other words, where a prosecutor is unable to prove a victim’s communication of a “no”, whether verbal or non-verbal, proof of a constituent element of the crime will be considered to be lacking, and therefore the accused will not be found criminally liable. By way of example, in Austria, which in its two-tiered approach has adopted a “no means no” provision, for sexual acts to be punishable, the victims must express their opposing will verbally or otherwise.⁴²

In practical terms, scholars have highlighted the risk that where this approach is taken, the burden is on the victim to verbally or non-verbally reject sexual advances or ward off sexual violence, rather than on the perpetrator to ascertain the agreement of another to engage in a sexual act.⁴³ More specifically, a risk has been identified that criminal proceedings may focus on the former as a central element, thereby placing undue attention on the behaviour of the victim. GREVIO in its baseline evaluation report on Germany observed that its “no means no” approach means that criminal proceedings will focus on the actions of the victim rather than those of the accused,

40. See GREVIO’s baseline evaluation reports on Austria, paragraphs 139-143; Georgia, paragraphs 256-257; Norway, paragraph 189; and Serbia, paragraph 186.

41. Little N. (2019), “From No Means No to Only Yes Means Yes: The Rational Results of an Affirmative Consent Standard in Rape Law”, *Vanderbilt Law Review*, 58, 1 321.

42. See GREVIO’s baseline evaluation report on Austria, paragraphs 140-142.

43. Little N. (2019), “From No Means No to Only Yes Means Yes: The Rational Results of an Affirmative Consent Standard in Rape Law”, *Vanderbilt Law Review*, 58, 1 349; and Leary M. G. (2016), “Affirmatively replacing rape culture with consent culture”, *Texas Tech Law Review*, Vol 49:1, pp. 49-51.

creating room for gender stereotypes and rape myths to resurface.⁴⁴ Moreover, myths continue to abound to suggest that “no” may not actually mean “no”, and that many still believe that a woman’s outright verbal rejection of sexual advances does not, in and of itself, create a case of sexual violence by the man who engages in sexual acts with the woman.⁴⁵ Another concern of requiring conduct “against the will of a person” is that this will not cover instances where the victims remains passive but does not consent.⁴⁶

States parties that have adopted this approach

The “no means no” approach has been adopted, among others, by Austria and Germany. More specifically, GREVIO noted in its baseline evaluation reports on Austria and Germany that framing sexual offences to cover instances of sexual intercourse against the will of a person meant that for non-consensual sexual acts to be punishable under Austrian and German legislation, the victim must express her opposing will verbally or otherwise, hence not covering instances where the victim remains passive but does not consent.⁴⁷ In other words, regarding consent-based definitions that take the “no means no” approach, GREVIO has noted that there is – however slight – a difference between sexual acts committed against the will of the victim and all non-consensual sexual acts, as required by the convention.⁴⁸

Furthermore, GREVIO reviewed a preliminary draft law to amend sexual assault offences in its baseline evaluation report on Switzerland, which, at the time, proposed a “no means no” approach stating that the act of rape or sexual assault is defined as being committed “against the will of victims”.⁴⁹ Specifically, GREVIO pointed out that such a conceptualisation does not fully meet the requirement under Article 36 of criminalising all non-consensual sexual acts. GREVIO was concerned that the situation envisaged by the revised bill would require victims to have to express their lack of consent, either verbally or in some other way, for rape and sexual assault to be punishable and that this would mean the focus would be on the victims’ actions rather than on those of the accused. A promising development has been that after the adoption of GREVIO’s baseline evaluation report, Switzerland’s Parliament decided to amend the current law, which is based on force, threats or psychological pressure, and opted, in March 2023, in favour of a new definition of rape based on the “no means no” approach, expanded through a provision indicating that sexual acts committed on a person in a situation of “freezing” also constitutes rape. The parliament’s decision paves the way for the adoption of a law based on this definition.

44. See GREVIO’s baseline evaluation report on Germany, paragraph 252.

45. Little N. (2019), cited above, p. 1 322.

46. See GREVIO’s baseline evaluation reports on Austria, paragraphs 140-142; and Germany, paragraph 252.

47. See GREVIO’s baseline evaluation report on Germany, paragraph 252.

48. See GREVIO’s baseline evaluation reports on Austria, paragraphs 140-142; and Germany, paragraphs 250-252.

49. Swiss Council of States, Legal Affairs Committee, decision of 18 February 2022.

The “only yes is yes” approach

The “only yes is yes” approach, also known as the “affirmative consent standard”, equates consent to sexual acts to mean “affirmative and freely given consent”.⁵⁰ This focuses on an affirmative expression, whether verbal or non-verbal. Consent is seen as an “agreement” communicated between the parties based on free will. Advocates have noted that the difference between sex and rape is simply whether someone wants to have sex or not, and the fact that the responsibility is not for a person to say no, but for the other person to listen for a yes.⁵¹ Such an approach has been reflected in laws criminalising sexual acts with a person “who is not participating voluntarily”⁵² or “who has not given consent”.⁵³ This approach specifically means that passivity, silence, lack of protest or lack of resistance cannot be deemed to mean consent. In such an approach, affirmative consent must be ongoing through the sexual activity and can be revoked at any time.

Ultimately, the shift from “no means no” to “only yes is yes” is a shift in the way society, and in particular the justice system, looks at the process of consenting to sexual acts. This shift views sex as an act that should be entered into willingly by both parties. Affirmative consent approaches provide clearer rules to parties at risk of perpetrating or being victims of sexual violence, as well as providing clarity to those charged with investigating and prosecuting such cases.⁵⁴

States parties that have adopted this approach

Out of the 29 GREVIO baseline evaluation reports published by the end of 2022, GREVIO acknowledged that five states have an offence of sexual violence based on the lack of freely given consent, namely Belgium, Iceland, Malta, Slovenia and Sweden.⁵⁵ GREVIO has positively noted that Iceland, Malta and Sweden have amended their legislation on sexual violence following their ratification of the Istanbul Convention to comply with Article 36. A good example of promising practice has been noted by GREVIO in Sweden, where intercourse or any other sexual act with a person “who is not participating voluntarily” is criminalised.⁵⁶ GREVIO has observed that under this offence, participation must be voluntary and perceived to be so, as passivity cannot be, per se, considered a sign of voluntary participation. GREVIO has further noted that Sweden has introduced two new offences of “negligent rape” and “negligent sexual

50. Tatjana Hörnle, “#MeToo – Implications for Criminal Law?” (2019), *Bergen J. Crim. L. & Crim. Just.* 6, 130; Linnea Wegerstad (2021), “Sex must be voluntary: Sexual communication and the new definition of rape in Sweden”, *German Law Journal*, Vol 22, Special Issue 5: “Sexual Violence and Criminal Justice in the 21st Century”, p. 740.

51. Olivia Björklund Dahlgren, FATTA (NGO that means “Get it”), Presentation on the law reform in Sweden at the UN Special Rapporteur on violence against women and Equality Now at the 2020 Expert Group Meeting on Rape as a Grave and Systematic Human Rights Violation and Gender-Based Violence against Women. www.ohchr.org/sites/default/files/Documents/Issues/Women/SR/Call_on_Rape/Olivia_Bjorklund_Dahlgren.pdf.

52. See GREVIO’s baseline evaluation report on Sweden, paragraphs 181-183.

53. See GREVIO’s baseline evaluation report on Belgium, paragraph 155.

54. Leary M. G. (2016), “Affirmatively replacing rape culture with consent culture”, *Texas Tech Law Review*, Vol 49:1 p. 32.

55. GREVIO’s baseline evaluation reports on Belgium, paragraphs 155-156; Iceland, paragraphs 202-204; Malta, paragraphs 169-171; and Sweden, paragraphs 181-183.

56. See GREVIO’s baseline evaluation report on Sweden, paragraphs 181-183.

abuse”, in order to ensure criminal liability for perpetrators of sexual acts who ought to have been aware of the victim’s lack of consent. More specifically, the aim of these offences is to ensure criminal liability in cases where sexual acts or intercourse are carried out without any reasonable measures taken by the perpetrator to establish the victim’s consent. In other words, the difference between rape and negligent rape is based on the different required “state of mind” (*mens rea*) of the accused.⁵⁷ For rape cases, the prosecutor must prove that the accused acted with criminal intent, either because he was certain that the complainant’s participation was non-voluntary or because he was indifferent to whether or not she was participating voluntarily. In cases of negligent rape, the prosecutor must prove gross negligence on behalf of the accused. This includes situations where the accused appreciated that there was a risk that the complainant was not participating voluntarily, but nevertheless went through with the sexual act and/or did not appreciate the risk that the complainant was participating in a non-voluntary manner, but should and could have done so.

GREVIO also commended Belgium for its definition of sexual violence, which rests on the victim’s lack of consent. The criminal code of Belgium defines rape as “any act of sexual penetration, of whatever nature and by whatever means, committed in respect of a person who has not given consent”.⁵⁸ Another practice worthy of note is the amendments to the criminal code of Malta, which GREVIO noted to have resulted in a standard that is more explicit than the convention in requiring not only that consent “be assessed in the context of the surrounding circumstances” but that attention should be given to the “state of that person at the time, taking into account that person’s emotional and psychological state, among other considerations”.⁵⁹ As regards Iceland, GREVIO commended the amendment of the General Penal Code to specifically include the notion of consent in the elements of sexual offences, in order to obtain consensus within society on the definition of rape, to prompt a change in culture for professionals dealing with such cases and to provide victims with sufficient protection.⁶⁰ GREVIO also commended Slovenia for its amendment of the criminal code aligning the relevant provisions with the notion of lack of freely given consent, noting, however, that since the amendment was adopted by the Slovenian Parliament after the submission of the government’s comments to GREVIO’s draft evaluation report, GREVIO was not in a position to assess its content.⁶¹

A further illustration of the Istanbul Convention and GREVIO’s positive impact on legislation, policies and, ultimately, victim’s safety in states parties are the positive responses to the findings issued in this area by GREVIO in its baseline evaluation reports. These findings have urged the relevant states parties to amend the criminal legislation on sexual violence and rape to ensure that provisions are firmly rooted

57. Linnea Wegerstad (2021), “Sex must be voluntary: Sexual communication and the new definition of rape in Sweden”, *German Law Journal*, Vol 22, Special Issue 5: “Sexual Violence and Criminal Justice in the 21st Century”, p. 742.

58. See GREVIO’s baseline evaluation report on Belgium, paragraph 155.

59. See GREVIO’s baseline evaluation report on Malta, paragraphs 169-171.

60. See GREVIO’s baseline evaluation report on Iceland, paragraph 202.

61. See GREVIO’s baseline evaluation report on Slovenia, paragraphs 258-260.

in the lack of freely given consent and to fully incorporate the notion of consent.⁶² While noting that GREVIO has not yet had the opportunity to assess these developments as they postdate the publication of the respective baseline evaluation reports, five additional states, namely Denmark, Finland, Monaco, Portugal and Spain, have transitioned to the “only yes is yes” approach. As regards Denmark, following GREVIO’s baseline evaluation urging the state party to amend its rape law in line with the standards of the convention, Denmark amended its law on 17 December 2020 and criminalised sexual intercourse without explicit consent. In order to bring a rape charge, the law previously required proof of violence, threat or evidence that the victim was unable to fend off the assault, whereas the new provision now clearly states that if both parties do not consent to sex, it is rape. This amendment was welcomed as a positive development in the 2021 Conclusions on the implementation of recommendations in respect of Denmark adopted by the Committee of the Parties to the Istanbul Convention.⁶³ In Finland, a bill to redefine rape as sexual acts with a person, regardless of age, who has not indicated their consent verbally or non-verbally was adopted on 1 January 2023.⁶⁴

Recent developments that remain to be assessed

In Portugal, law reforms in January 2019 expanded the definition of rape to include the lack of consent,⁶⁵ but it appears that consent remains linked to coercion and that the current definition would then not be entirely in line with Article 36 of the convention. Similarly, Monaco redefined, by Law 1 517 of December 2021, the offences of rape and sexual assault by making reference to the “lack of consent”. However, the new definition still includes an element of constraint. In Spain, the Organic Law on Comprehensive Guarantee of Sexual Freedom was adopted in September 2022, making sexual acts without consent liable as sexual assault.⁶⁶ The law was amended in April 2023 to introduce harsher penalties for sexual assault carried out with violence or intimidation, or against a person whose free will has been annulled. In August 2023, Luxembourg adopted a law amending the Criminal Code and the Code of Criminal Procedure and specifying that consent to a sexual act must be assessed “in the light of the circumstances of the case” and that “it cannot be inferred from a lack of resistance by the victim”⁶⁷. As highlighted by GREVIO in its first baseline evaluation on Luxembourg, this law should “allow the judiciary to focus, in the context of

62. Such a specific finding was articulated in 19 GREVIO baseline evaluation reports: Albania, Denmark, Portugal, Finland, France, Italy, the Netherlands, Serbia, Spain, Andorra, Poland, San Marino, Romania, Bosnia and Herzegovina, Switzerland, Estonia, Georgia, Cyprus and Norway.

63. Committee of the Parties, “Conclusions on the implementation of recommendations in respect of Denmark adopted by the Committee of the Parties to the Istanbul Convention”, IC-CP/Inf(2021)6, adopted on 7 December 2021.

64. Aleksu Teivainen (January 2023), “Finnish Police to re-think rape interrogations after legislative overhaul”, *Helsinki Times*: www.helsinkitimes.fi/finland/finland-news/domestic/22795-finnish-police-to-re-think-rape-interrogations-after-legislative-overhaul.html.

65. Helen Battaglini (21 February 2019), “Portugal finally expands the legal definition of rape”, amicus info: <https://info.amicus-curiae.net/author/helenbattaglini/>

66. Guy Hedgecoe (26 May 2022), “Spanish MPs back ‘only yes means yes’ sexual consent law”, BBC: www.bbc.com/news/world-europe-61591615. In particular, the provision clarifies that “It will only be understood that there is consent when ... the will of the person is clearly expressed”.

67. Law of 7 August 2023 law amending the Criminal Code and the Code of Criminal Procedure, strengthening the means of combating sexual abuse and sexual exploitation of minors.

the surrounding circumstances of the case, on the assessment of the woman's free will and the ability of the perpetrator to take notice of the woman's will, instead of evidence of other constituent elements of fact. The definition could also help to encourage more victims of sexual violence to lodge complaints".⁶⁸

States parties where GREVIO has identified the need for additional steps to bring legislation in line with the Istanbul Convention

In addition to the shortcomings discussed above concerning the elements of consent, GREVIO has identified some additional steps needed to bring legislation in line with the Istanbul Convention in a number of states parties, including in those states that have adopted an "only yes is yes" or a "two-tiered" approach.

In its baseline evaluation report on Cyprus, GREVIO observed that the criminal code does not qualify the concept of consent in order to clarify that it should be given voluntarily as the result of the person's free will assessed in the context of the surrounding circumstances, as required by the convention.

GREVIO has also identified gaps in a number of states parties as regards the type of sexual acts covered by the respective laws. For example, GREVIO has consistently drawn attention to those states parties that do not cover the specific conduct referred to in Article 36, paragraph 1, indent c, namely "causing another person to engage in non-consensual acts of a sexual nature with a third person", which aims to criminalise the conduct of abrogating a woman's sexual self-determination.⁶⁹

Creating "hierarchies" of victims

In a number of baseline evaluation reports, GREVIO specifically warned against the creation of a "hierarchy of victims" on the basis of their characteristics, such as age, helplessness, dependence, disability or others, calling for appropriate legislative measures to send the message that rape is rape.⁷⁰ By way of example, in GREVIO's baseline evaluation report on Serbia, when comparing the offence of rape to the offence of sexual intercourse with a helpless person, GREVIO was concerned that this sends the message that the violation of sexual decision making and autonomy does not amount to rape. Similarly, in Bosnia and Herzegovina, the offence of sexual intercourse with a helpless person carries markedly lower sentences than the offence of rape, which requires proof of the use of violence, coercion or threats by the perpetrator.

⁶⁸ GREVIO baseline evaluation report on Luxembourg, published on 10 July 2023, paragraph 152.

⁶⁹ GREVIO's baseline evaluation reports on Albania, paragraphs 135-138; Austria, paragraphs 140-142; Bosnia and Herzegovina, paragraphs 219-223; Georgia, paragraphs 259-262; Monaco, paragraph 116; Montenegro, paragraphs 179-180; Poland, paragraphs 219-221; Sweden, paragraphs 181-183; and Türkiye, paragraphs 222-225.

⁷⁰ See GREVIO's baseline evaluation reports on Bosnia and Herzegovina, paragraph 221; Cyprus, paragraph 196; Denmark, paragraph 178; Estonia, paragraph 173; Finland, paragraph 167; Georgia, paragraphs 256-257; Norway, paragraph 189; Poland, paragraph 218; Romania, paragraph 287; and Serbia, paragraph 186.

Trends identified and lessons learned

Since the Istanbul Convention entered into force in 2014, there has been a positive shift in European states to move away from force as a necessary element of sexual offences, towards the view that sexual intercourse without consent is, by itself, sexual violence/rape.⁷¹ While the drafters left it “to the Parties to decide on the specific wording of the legislation and the factors that they consider to preclude freely given consent”;⁷² it is vital that all non-consensual sexual acts are criminalised.⁷³ Only then will it be possible to make the necessary paradigm shift to recognise the central role of the victim’s willingness to consent and thereby improve the criminal justice response to the needs of victims of sexual violence.

GREVIO has pointed out in several baseline evaluation reports that conceptualising sexual offences as sexual acts committed “against the victim’s will” does not fully meet the requirement under Article 36, as it fails to ensure that all non-consensual sexual acts are criminalised.⁷⁴ It can be deduced that in GREVIO’s opinion the affirmative consent approach is more aligned with the spirit of the convention as a whole and with the overall objective to improve prevention, protection and prosecution. Indeed, an “only yes is yes” approach is more likely to have an impact in the field of prevention and to raise the awareness of society about the gender prejudices and stereotypes that are often expressed when dealing with rape and sexual offences. It is also a powerful way of changing the mindset of law-enforcement and judicial officers and of providing better protection to victims, by putting them at the centre of any intervention.

A recent assessment of the impact of the Swedish definition of rape from the Swedish National Council for Crime Prevention has also identified a number of specific practical advantages of the “only yes is yes” approach.⁷⁵ First, the assessment found that the number of reports, prosecutions and convictions increased after the law was changed and that, more specifically, the rate of convictions increased by 75%.⁷⁶ Moreover, the assessment found that new types of cases now reach the courts. These are the very types of situations that the changes to the law were intended to cover, namely instances of “surprise rape” and cases where the victim remained passive during the sexual act.⁷⁷

Where the state has adopted an “only yes is yes” approach, the investigation and prosecution of rape and sexual offences no longer hinges on proving that the acts were a result of violence, threatening behaviour or a particularly vulnerable situation.⁷⁸

71. Council of Europe (2022), “Mid-term Horizontal Review of GREVIO baseline evaluation reports”, paragraphs 361-364.

72. Explanatory Report to the Istanbul Convention, paragraph 193.

73. For example, see GREVIO’s baseline evaluation report on Switzerland, paragraph 184.

74. See GREVIO’s baseline evaluation reports on Austria, paragraphs 140-142; Germany, paragraphs 250-252; and Switzerland, paragraph 184.

75. Stina Holmberg and Lars Lewenhagen (2020), “The new consent law in practice: An updated review of the changes in 2018 to the legal rules concerning rape”, the English summary of the Brå report 2020:6. (The Swedish National Council for Crime Prevention (Brå)).

76. *Ibid.* The report notes that the number of convictions increased from 190 in 2017 to 333 in 2019.

77. *Ibid.*

78. Aleksii Teivainen (January 2023), cited above.

The police questioning will shift from determining if the suspect used violence or the threat of violence, to determining whether the victim had consented to the act. Cases will not have to be discontinued if no physical evidence or corroborating evidence about her vulnerability or helplessness is secured. In this connection, a positive practice can be found in Denmark, which amended its law to criminalise sex without explicit consent in 2020, where guidelines have been developed as part of the preparatory works of the law on how to establish the existence or lack of consent.⁷⁹ The guidelines take steps to clarify that rape is not about coercion or the duty to say no, but about whether the parties voluntarily consent to a sexual activity during the entire intercourse. It clarifies that consent can be expressed through words or action and that there is no requirement that it is done directly or in any particular way. Furthermore, they establish that, in principle, there is a presumption that a person who consents to intercourse does not behave completely passively, but participates to some extent, providing some examples of actions that can be indicative of consent to sexual intercourse.

The assessment carried out by the Swedish National Council for Crime Prevention also observed a change in the types of evidence used in convictions under the new law. It found a reduction in the use of evidence of injury, used only in 13% of the new cases, whereas it was used in 37% of cases pending the year prior to the change in law. Moreover, the assessment indicated that reliance on different types of evidence, such as a recording of the event, calls to the emergency services, a confession or the testimony of an eyewitness, nearly doubled in cases that resulted in convictions under the new law as compared to those under the old law. There were also a greater proportion of convictions where the only evidence used was the testimony of a person in whom the injured party had confided – the proportion was 31% under the new law, as opposed to 16% in 2017, under the previous provisions. In nine of the 12 cases that have resulted in a conviction for negligent rape, there was no additional supporting evidence other than people who had not personally witnessed the event, but who had been told about it by the injured party.⁸⁰

The Swedish assessment also noted other advantages to victims stemming from an “only yes is yes” approach. Notably, the assessment indicates that victims feel that they are now less likely to bear the blame for what happened, and that they now have the opportunity to seek legal redress by reporting the crime. More specifically, it highlights that an “only yes is yes” approach addresses the deeply embedded myths about rape and sexual violence which can be prevalent in the criminal justice system and which can affect how the defence lawyers, police, prosecutors and judges interpret what is meant by sexual acts committed against a victim’s will.⁸¹ An analysis from a non-governmental organisation in Sweden indicates that since the adoption of amendments to the Swedish law, there has been greater public awareness of the importance of consent in sexual relations and that this approach and the relevant basic principle is now also being introduced in the school curriculum.⁸² Other sources,

79. European network of legal experts in gender equality and non-discrimination (2021), cited above. p. 80.

80. Stina Holmberg and Lars Lewenhagen (2020), cited above.

81. Ibid.

82. Olivia Björklund Dahlgren, cited above.

such as media reports, also attest to important societal changes and awareness stemming from the amendment of rape laws to a consent-based definition. Such law reform efforts are often accompanied by a strong civil society movement and awareness-raising campaigns.⁸³

It further appears that the “only yes is yes” approach allows for incorporating and criminalising new trends on non-consensual sexual acts such as non-consensual condom removal during sexual intercourse, otherwise known as “stealthing”, and drug-facilitated sexual assault. With the “only yes is yes” approach, these practices can be understood to transform consensual sex into non-consensual sex and be viewed as violations of trust and a denial of sexual autonomy. For instance, criminal courts in Germany, Belgium and Switzerland have considered non-consensual removal of a condom as vitiating consent to the sexual act and therefore could be considered a form of sexual offence.⁸⁴ Furthermore, in Belgium, the “voluntary administration of inhibiting substances”, or drugging, for the purpose of abusing a person’s vulnerability, has become an aggravating factor in non-consensual sexual acts, and is to be taken into account when considering the “state of impaired free will” to determine whether the person was capable of giving consent.⁸⁵

Analysis of positive practices identified by GREVIO in the fields of investigation, prosecution, procedural law and protective measures

How to decrease attrition rates: immediate response, investigation, prosecution and protection

While amending rape and sexual violence laws are a vital step towards changing attitudes and achieving justice, much more is needed to effect institutional change and to ensure a decrease in attrition rates of cases involving rape and sexual violence. The convention requires states parties to ensure that law enforcement can react promptly and appropriately by offering victims immediate protection and engaging in the prevention of violence, such as by making use of preventive operational measures and through the efficient collection of evidence (Articles 49 and 50). It also requires designing procedures to protect victims of violence at all stages of proceedings, during investigations and at trial, covering – but not limited to – victims who are witnesses (Article 56). GREVIO has welcomed various promising practices that states have introduced in order to achieve a more focused, driven and outcome-based approach to perpetrators’ accountability. This section reviews the practices highlighted in GREVIO’s baseline evaluation reports that contribute to making the

83. Guy Hedgecoe (26 May 2022), cited above.

84. HIV Justice Network (18 December 2018), “Germany: Country broadens use of criminal law to removal of condom without consent”: www.hivjustice.net/cases/germany-germany-broadens-use-of-criminal-law-to-removal-of-condom-without-consent/; Lauren Walker (21 November 2022), “Removing condom and drugging: Belgium rewrites ‘patriarchal’ criminal code”, *The Brussels Times*: www.brusselstimes.com/325324/removing-condom-and-drugging-belgium-rewrites-patriarchal-criminal-code; Reuters (9 May 2017), “Swiss court upholds sentence in ‘stealthing’ condom case”, ABC News: www.abc.net.au/news/2017-05-10/swiss-court-upholds-sentence-in-stealthing-condom-case/8512326.

85. Lauren Walker (21 November 2022), cited above.

criminal justice system more victim-friendly, all along the criminal justice chain, from police and prosecution work to the courts; allowing for comprehensive and victim-sensitive evidence collection; and providing protective measures for victims at all stages of the investigation and judicial process.

GREVIO has frequently noted that while criminal justice is not the only response to be pursued in cases of violence against women, it is important to ensure accountability for criminal acts to build trust in the system and send the message that violence against women is not acceptable.⁸⁶ Without a process that holds perpetrators to account, the violence is unlikely to stop, whether it is continued violence towards the same victim or against a new victim. Prosecution and sanctions are therefore an essential part of the protection of women. Moreover, low conviction rates generally contribute to low reporting rates. Law-enforcement agencies and the judiciary should be seeking an increase in crime reporting as their response becomes more effective and trusted and judicial processes deliver sanctions that match the crime. Because of this, the importance of understanding attrition, as the process by which cases fail to proceed through the criminal justice system and reach trial and/or result in conviction,⁸⁷ is a common theme raised in a number of GREVIO baseline evaluation reports.⁸⁸

Prioritisation of cases of sexual violence and rape in a gender-sensitive manner

Traditional responses to sexual violence cases based on common gender stereotypes, prejudices and discriminatory attitudes minimise the victim's account of violence, hinder the recognition of the seriousness and specificity of the violence and feed into assumptions of false allegations. This contributes to assigning low priority to these cases, in comparison to other violent crimes, and leads to delays in initiating investigation and judicial processes, which in turn can lead to loss of vital evidence and secondary victimisation of the victim.⁸⁹ As noted by the convention drafters, being assigned low priority contributes to impunity for perpetrators and reinforces the misconception that such violence is acceptable in society.⁹⁰ A key principle of an adequate response is that of ensuring swift and effective investigations and judicial proceedings that are based on a gendered understanding of these offences and that duly take into consideration the victim during all stages.⁹¹

GREVIO has noted positively in its baseline evaluation report on Portugal the measures put in place to prioritise the handling of violence against women, including sexual violence.⁹² More specifically, following the ratification of the Istanbul Convention by

86. See GREVIO's baseline evaluation reports on Portugal, paragraph 195; France, paragraph 232; Italy, paragraph 222; Belgium, paragraph 189; and Norway, paragraph 158.

87. The definition of attrition is from Lovett and Kelly (2009), cited above, p. 1.

88. See GREVIO's baseline evaluation reports on Denmark, paragraph 198; Italy, paragraph 222; and Portugal, paragraph 195.

89. Council of Europe (2022), "Mid-term Horizontal Review of GREVIO baseline evaluation reports", paragraph 439. See also GREVIO's baseline evaluation reports on France, paragraph 221; Slovenia, paragraph 311; and Romania, paragraph 341.

90. Explanatory Report to the Istanbul Convention, paragraph 255.

91. See GREVIO's baseline evaluation report on San Marino, paragraph 178; and Slovenia, paragraph 311.

92. See GREVIO's baseline evaluation report on Portugal, paragraph 187.



Portugal, Law No. 72/2015 was introduced establishing as an objective of criminal policies the principle that sexual violence-related offences should be investigated as a matter of priority. Another promising practice is found in San Marino, where Law 97/2008 obliges the law-enforcement agency to take immediate action in cases of violence against women and, in any case, to intervene within an hour of receiving the report. Moreover, the GREVIO baseline evaluation report on San Marino refers to an intervention protocol that clearly recognises the structured nature of gender-based violence and warns police about the risk of secondary victimisation and victim blaming.⁹³ The GREVIO baseline evaluation report on Norway notes that the Director General of Public Prosecutions has instructed the police force to give priority to cases involving violence against women and that these cases are to be handled in a swift manner.⁹⁴ GREVIO also welcomed initiatives to establish monitoring departments to ensure timely responses and effective investigations in sexual violence cases, as with the Georgia Human Rights Protection and Quality Monitoring Department. The baseline evaluation report on Georgia positively noted the information provided by authorities indicating that investigations into such offences rose substantially in the following two years.⁹⁵

Improving reporting and investigation: victim-friendly police stations, specialised police units and trained police officers

Improving reporting and investigations requires various measures to make the criminal justice system more victim-friendly, reduce victims' secondary victimisation and ensure a quality law-enforcement response based on a trauma-informed approach free from stereotypes and biases. This can greatly contribute to higher levels of satisfaction among victims with their experience at the reporting stage, as GREVIO noted in its baseline evaluation report on Denmark. In this report, GREVIO

93. See GREVIO's baseline evaluation report on San Marino, paragraphs 178-181.

94. See GREVIO's baseline evaluation report on Norway, paragraph 219.

95. See GREVIO's baseline evaluation report on Georgia, paragraphs 303-304.

positively noted the statistics provided by the authorities indicating a significant drop in the rate of discouraged women attempting to report a rape after much work was done to improve the law-enforcement response.⁹⁶ The continued efforts made by Denmark in this area, following the adoption of the baseline evaluation report, were also noted in the 2021 Conclusions on the implementation of recommendations in respect of Denmark, adopted by the Committee of the Parties to the Istanbul Convention. More specifically, the latter conclusions welcomed the development of the 2021-2023 multiyear strategy of the police which includes the setting up of special teams for handling sexual offences cases and the opportunity afforded to victims of sexual violence to benefit from a recorded interview.⁹⁷ Indeed, GREVIO has observed that swift investigations based on a sensitive and professional approach to victims significantly reduces the risk of victims abandoning their cases.⁹⁸

Comprehensive measures to improve reporting and investigations

In addition to the positive practices adopted by Denmark, other promising examples noted by GREVIO are those that provide for targeted specialist training of police officers, specialised units or designated investigators, standardised protocols and the setting up of specialised victim-friendly rooms in police stations. A good example of this is described in GREVIO's baseline evaluation report on Iceland, which refers to the various measures articulated in the Icelandic Action Plan on Sexual Violence. This action plan was passed by parliament, upon the initiative of the Ministry of Interior and following a study pointing to high acquittal rates for sexual offences.⁹⁹ Measures included creating divisions in the Metropolitan Police specialising in sexual crimes and technology-facilitated violence; a protocol for handling and investigating sexual offences; additional full-time police officer positions; and additional funding to update procedures and for investigative equipment. It also included other initiatives such as establishing a comforting room in the main police station, where the victim can give her report with privacy, after having made an appointment online. GREVIO has also welcomed the measures taken in Italy, which include systematic initial and in-service training, specialised police units on violence against women, standardised procedures, involving psychologists during police interventions, and specialised rooms in police stations, designed to provide victims with the necessary privacy and a suitable environment for reporting in order to lower the risk of secondary victimisation.¹⁰⁰

In its report on Poland, GREVIO noted that the authorities had introduced measures to improve the criminal justice response to rape cases and to avoid re-traumatisation and secondary victimisation. Such measures included a new legislative requirement that victims be interviewed only once by courts (single hearing procedure), as well as the adoption of guidelines requiring that interviews take place in a separate room and be conducted by a trained officer of the same sex, unless the victim wishes otherwise,

96. See GREVIO's baseline evaluation report on Denmark, paragraph 191.

97. Conclusions on the implementation of recommendations in respect of Denmark adopted by the Committee of the Parties to the Istanbul Convention on 7 December 2021(IC-CP/Inf(2021)6).

98. See GREVIO's baseline evaluation report on Montenegro, paragraph 219.

99. See GREVIO's baseline evaluation report on Iceland, paragraphs 246-250.

100. See GREVIO's baseline evaluation report on Italy, paragraphs 214-216.

and that the interviewing officer refrain from any statements that may be perceived as judging or questioning the victim's behaviour, her appearance or actions. These guidelines also include the requirement to inform victims of their rights and role in the process, as well as the legal and psychological assistance available to them, and to accompany them to a medical facility for medical support and a forensic examination.¹⁰¹ While GREVIO welcomed these measures, it did raise various concerns related to major gaps in its implementation. This includes a lack of co-ordination between law-enforcement agencies and the justice system, which constitutes an obstacle to efficient and robust case building. In this context, when women victims, particularly those experiencing sexual violence committed by intimate partners or relatives, make use of their right not to testify, this usually leads to the dismissal of the case, as no further evidence may be available or even collected. In addition, the requirement to hear the victim only once, and only by the courts, means that victims can neither alter nor add to their statement and hence cannot react to any turn in the investigation. Moreover, GREVIO noted that some courts are slow to schedule the hearing of rape victims, which is central to the single-hearing procedure.

In San Marino, GREVIO welcomed the intervention protocol for law-enforcement officials in cases of gender-based violence, which clearly recognises the structural nature of gender-based violence and underlines the crucial role of the police as one of the first interlocutors for victims.¹⁰² The protocol warns police officials against the risk of secondary victimisation and prescribes never questioning a victim's narrative or blaming her, but instead making clear that the only person responsible for the violence is the perpetrator. This is complemented with mandatory training on violence against women for all law-enforcement officers, the establishment of a special unit on gender-based violence, including rape, and the appointment of a police liaison person to ensure due co-ordination and exchange of information on cases.

Ensuring victims' privacy and confidentiality when reporting a case of sexual offence

As regards victims' support and privacy when reporting sexual offences, in addition to the positive practices noted in Iceland and Italy, GREVIO has also welcomed measures taken by the Monégasque and French authorities in this respect.¹⁰³ More specifically, it welcomed the practice, albeit non-formalised in Monaco, to provide dedicated reception premises satisfying the requirements of confidentiality, to never leave the victim alone in reception areas and to make available police social workers specialising in victim reception, response and counselling. GREVIO also welcomed in its baseline evaluation report on France the online reporting platform in France, launched in November 2018 by the Ministry of the Interior, to help victims of sexual and gender-based violence to take the step of filing a complaint.

101. See GREVIO's baseline evaluation report on Poland, paragraphs 251-253.

102. See GREVIO's baseline evaluation report on San Marino, paragraphs 180-182.

103. See GREVIO's baseline evaluation reports on Monaco, paragraph 75; and France, paragraph 224.

Setting up of specialised units/designated investigators for cases of sexual violence and rape, supported by dedicated instructions/guidelines and specialist training

When it comes to the setting up of specialised units or designated investigators for cases of sexual violence and rape, supported by dedicated instructions/guidelines and specialist training, GREVIO has identified numerous states parties that have made progress, including Bosnia and Herzegovina, Cyprus, Denmark, Georgia, Iceland, Italy, Malta, the Netherlands, Sweden and Switzerland.¹⁰⁴ GREVIO has welcomed the establishment of specialised units on sexual violence in Cyprus, noting that their work has been recognised by different stakeholders to have led to an increase in the reporting of cases of violence against women.

In Malta, GREVIO noted that cases of sexual violence can be referred to a specialised unit and victims requiring further support are referred to the victim support unit, staffed by women police officers who serve as a single point of contact, providing crisis counselling, information about the criminal case and facilitating referrals to support services. In addition, in its baseline evaluation reports on Sweden and Georgia, GREVIO noted that each police district had investigators specially trained on sexual offences, and that in the Netherlands, Bosnia and Herzegovina and Switzerland, there were specialist police officers for sexual offences, at least in some parts of the country. GREVIO welcomed, in particular, the adoption and use in Sweden of an investigators' checklist developed for rape cases.

Initiatives to issue guidance and set up formalised co-operation between law-enforcement authorities and other first responders

GREVIO has also welcomed initiatives to formalise guidance and co-operation between law-enforcement authorities and different stakeholders to ensure a swift response and the provision of support and protection to victims of rape and sexual violence. For example, it welcomed the adoption of the joint circular on sexual assault that set forth minimal measures for all police and judicial work in Belgium, which has formalised a multidisciplinary approach between the criminal justice system, the health system and victim services.¹⁰⁵ In Andorra, following ratification of the Istanbul Convention, the police force and the state-supported victim support services negotiated a co-operation protocol with the aim of harmonising police activities with the convention standards. The protocol sets out the main guidelines for police measures, starting with the victims' first contact with police until their referral to specialist support services. The protocol establishes an obligation to create optimum conditions for victims to be heard and for their complaints to be registered, while paying particular attention to the possible presence of child victims and/or witnesses. Furthermore, it explicitly prohibits "any attitude that makes victims feel guilty or minimises the violence" in order to prevent secondary victimisation and stresses the proactive role that law-enforcement agencies should play in finding evidence that can corroborate

104. See GREVIO's baseline evaluation reports on Bosnia and Herzegovina, paragraph 258; Cyprus, paragraph 226; Denmark, paragraph 191; Georgia, paragraph 305; Iceland, paragraphs 246-250; Italy, paragraphs 214-216; Malta, paragraphs 191-193; the Netherlands, paragraph 250; Sweden, paragraph 198; and Switzerland, paragraph 215.

105. See GREVIO's baseline evaluation report on Belgium, paragraph 177.

victims' claims and/or support a judicial investigation; providing a standard model complaint that lists all the questions and information that must be covered by the police officer in charge of assisting victims.¹⁰⁶

Improvements in the collection of evidence in sexual offences

As regards improving evidence collection in sexual offences, GREVIO has noted that having the legal possibility for victims of rape and sexual assault to have their forensic evidence taken and stored free of charge, irrespective of their desire to report, is of essence and enables proceedings to be instituted at a later stage.¹⁰⁷

Improving prosecutorial and judicial practices

Reducing the risk of attrition at the prosecution and trial stages can involve various measures, including specialisation, guidance and training, along with effective case management. As GREVIO has noted, there are many factors that contribute to a solid investigation, prosecution and trial for sex offences, such as the collection of evidence, its assessment by prosecution services, the support given to victims and their role in the case and the role of the judiciary in handling these sensitive cases.¹⁰⁸

Improvement of prosecutorial practices

GREVIO noted in its baseline evaluation reports on Denmark, Georgia and Sweden some positive measures taken to improve the prosecution stage of sexual violence cases.¹⁰⁹ In Denmark, a fast-track procedure was established to ensure the swift handling of all violent crime, including a time frame for assessing the case by the prosecutor. Moreover, guidance has been issued to assign such cases to experienced prosecutors, thus ensuring a certain amount of *de facto* specialisation. Similarly, GREVIO noted that in Georgia only prosecutors who have completed a special training course on sexual violence are assigned these types of cases, and their work is directed by guidelines. In Sweden, the prosecution services have set up a prosecution development centre to develop methods for the investigation and prosecution of sexual offences and have introduced checklists.

GREVIO has highlighted other positive trends such as the adoption of protocols, guidelines or specialisation in the prosecution and adjudication of sexual violence cases, notably in the Netherlands, Poland and Iceland.¹¹⁰ For instance, following the ratification of the Istanbul Convention, the Public Prosecution Service in the Netherlands adopted instructions on sexual offences that detail how such forms of violence should be identified and prosecuted, including explicit information about protecting the rights of victims and avoiding secondary victimisation. In Poland, standards for the investigation and prosecution of cases of sexual violence are set

106. See GREVIO's baseline evaluation report on Andorra, paragraphs 179-180.

107. For example, see GREVIO's baseline evaluation report on Germany, paragraph 300.

108. See GREVIO's baseline evaluation report on Sweden, paragraph 210.

109. See GREVIO's baseline evaluation report on Denmark, paragraphs 195-196; Georgia, paragraph 305; and Sweden, paragraph 205.

110. See GREVIO's baseline evaluation reports on the Netherlands, paragraph 263; Poland, paragraph 262; and Iceland, paragraph 251.

out in specific Prosecutor General's Guidelines, issued in 2015. In Iceland, Instruction No. 2/2018 from the Director of Public Prosecution requires an investigation plan to be prepared for the investigation of rape offences, sexual offences against children and offences in close relationships, in order to standardise good practice. When a case of rape is entered into police records, a list of the measures to be undertaken is automatically provided. In addition, instructions issued by the Director of Public Prosecutions require such cases to be expedited and given priority. The District Prosecutor and the Chiefs of Police are also required to send a list of cases and their progress to the Attorney General, twice a year. Germany has equally set up specialist departments for the prosecution of crimes against sexual self-determination in some public prosecutors' offices across the country.¹¹¹

A comprehensive approach to the prosecution of cases of rape and sexual violence

A good example of an approach that involves a wide range of measures is noted in GREVIO's baseline evaluation report on Italy.¹¹² The High Judiciary Council adopted guidelines for judicial proceedings in cases of gender-based violence. Such cases are assigned to specialist prosecutorial units/magistrates. Monitoring and evaluation of the implementation of the guidelines found that a large number of prosecutorial offices have adopted protocols describing how to handle such cases that cover the investigative stage and set "stringent deadlines as to the maximum duration of enquiries". It also found that a high number of offices have formalised their co-operation with the victim support services that are engaged during judicial proceedings, as well as with others that deal with preventing violence against women. Moreover, GREVIO noted a promising practice adopted by the Prosecutorial Offices of the Court of Tivoli (Eastern Rome), which it suggested should be replicated around the country. More specifically, prosecutors in this court have enacted a series of measures to ensure a prompt and effective response to cases of gender-based violence against women. These measures range from increasing the number of prosecuting attorneys dealing with such crimes and prioritising these investigations, to ensuring the swift adoption of the necessary precautionary protective measures, placing their implementation under the tight supervision of prosecutors and creating a fast-track for the related trials. All these measures take place within a robust interinstitutional network, involving statutory agencies and women's organisations, and are complemented by a wide array of preventive measures (such as training, information for victims, awareness raising and outreach activities in the community).

Improvement of judicial practices

As regards judicial practices, GREVIO has welcomed the ruling from the Supreme Court of Sweden finding that where a victim is considered credible, a conviction may be based solely on her testimony, while noting, however, that this ruling is not always followed by the lower courts. Moreover, the Italian Code of Criminal Procedure provides that evidence relating to the sexual history and conduct of the victim which

111. See GREVIO's baseline evaluation report on Germany, paragraphs 298 and 301.

112. See GREVIO's baseline evaluation report on Italy, paragraphs 218-223.

has no probative value is not permitted, and the Code of Legal Ethics for lawyers requires legal counsels to avoid questions and methods of examination that inflict further humiliation and convey a moral judgment on the victim's experience.¹¹³

Protective measures during investigation and judicial proceedings

As indicated earlier, Article 56 of the convention sets forth a non-exhaustive list of procedures designed to protect victims of violence at all stages of proceedings, during investigations and at trial, covering – but not limited to – victims who are witnesses. A number of good practices have been identified in this area by GREVIO.

Comprehensive measures for victim protection

In its baseline evaluation report on Denmark, while noting that very little information was conveyed on their actual use, GREVIO welcomed the range of protective measures provided under the law to keep victims safe from intimidation and retaliation during court proceedings. These include the hiding of the victims' addresses, occupation and even names of victims and witnesses, as well as the holding of hearings *in camera*; ordering the defendant to leave the courtroom during the testimony of a victim or witness; video recording of children's testimony and, under specific and limited circumstances, those of adults. Law-enforcement agencies may also notify the court and request, for example, the use of separate waiting rooms at court. For all victims of crime asked to testify in court, a specific contact person within law enforcement is provided for any questions and concerns victims may have, and leaflets detailing the different steps of the investigation and criminal proceedings are available in several languages. Moreover, where perpetrators have been sentenced to a prison term for sex offences or other serious offences, victims must be notified of the perpetrator's release or escape and of major media coverage of the perpetrator and his acts.¹¹⁴

The video recording of witness statements or other means to avoid contact between the victim and the perpetrator within court and police premises

GREVIO has consistently observed that ensuring the avoidance of contact between the victim and the perpetrator within court and police premises is a vital element in the protection of victims from secondary victimisation. In the baseline evaluation report on Sweden, GREVIO observed that judges can hear the victim without the presence of the accused, over the telephone or by video link. Similarly, Germany has adopted a range of measures to ensure victim protection, including the use of audiovisual recordings of testimonies for both underage and adult victims.¹¹⁵

Other types of protective measures to avoid secondary victimisation

In Poland, under the Act on the Protection of and Assistance to Victims and Witnesses, hearings of rape victims must take place in a special room, be recorded and conducted

113. See GREVIO's baseline evaluation report on Italy, paragraph 242.

114. See GREVIO's baseline evaluation report on Denmark, paragraphs 216-218.

115. See GREVIO's baseline evaluation report on Germany, paragraph 301.



by a judge in the presence of a psychologist.¹¹⁶ In Romania, in addition to protection measures, such as the holding of *in camera* court trials and the exclusion of the media from courtrooms, in cases of violence, for victims of rape, the additional measure to anonymise victim data can also be taken, including in court summons or judgments when the information is replicated on the courts' web portals.¹¹⁷

The role and importance of rape crisis and sexual violence referral centres

It is of paramount importance that the legislative and institutional reforms underway towards a consent-based definition of sexual violence and rape go hand in hand with the setting up and/or strengthening of specialised services for victims of sexual violence. Such support services are of essence to ensure victims' recovery and to address the consequences stemming from the violence, including self-blame and a sense of shame. They are also essential to facilitate access to justice as they empower victims and provide the needed forensic evidence to enable effective prosecutorial action and an eventual conviction.¹¹⁸

Indeed, victims of sexual violence can suffer multiple and enduring consequences, including possible physical consequences such as injury, sexually transmitted infections, unwanted pregnancies and unsafe abortions, as well as a wide range of psychological consequences, such as anxiety, depression and suicidal thoughts.¹¹⁹ Studies have shown that post-traumatic stress disorder (PTSD) is highly prevalent among victims of sexual violence, with one study finding 94% of rape victims met the PTSD criteria approximately two weeks post-rape, and 47% continued to meet the criteria after three months.¹²⁰ These psychological consequences also raise

116. See GREVIO's baseline evaluation report on Poland, paragraph 303.

117. See GREVIO's baseline evaluation reports on Poland, paragraphs 302-303; and Romania, paragraph 408.

118. See GREVIO's baseline evaluation report on Italy, paragraph 156. For a broader discussion on the methodology, see also Council of Europe (2018), "Mapping Support Services for Victims of Violence against Women in Line with the Istanbul Convention Standards – Methodology and Tools".

119. Peeters L. et al. (2019), "Current care for victims of sexual violence and future sexual assault care centres in Belgium: the perspective of victims", *BMC International Health and Human Rights*, 19:21, p. 2.

120. Several studies listed in Bramsen R. et al. (2009), "A Danish Model for Treating Victims of Rape and Sexual Assault: The Multidisciplinary public approach", *Journal of Aggression Maltreatment & Trauma*. 2009, discuss these findings.

the chances of future drug addiction as well as re-victimisation.¹²¹ Social isolation can also ensue following sexual violence, due to strained relationships with family and friends. Moreover, victims can also experience financial hardship due to costs associated with needed care or linked to absenteeism from work, for example.¹²² In addition, research has highlighted that a rape victim's first encounter with the support system can have very negative long-term consequences in terms of recovery, if the support is not adequate.¹²³ GREVIO has highlighted that sexual violence victims' experiences with the criminal justice system can cause further harm to them, unless certain protection measures are taken and psychological counselling and trauma support is provided in parallel.¹²⁴

To address and minimise the above-mentioned negative consequences, victims of sexual violence need access to a set of holistic services, including immediate medical care and trauma support; forensic examinations; short and long-term psychological counselling and therapy; and legal advice. Under its Article 25, the convention provides states parties with the alternative to set up either a rape crisis centre or a sexual violence referral centre per every 200 000 inhabitants.¹²⁵ Rape crisis centres typically offer long-term help such as face-to-face counselling and therapy, support groups and referrals to other services.¹²⁶ They also support victims during court proceedings by providing woman-to-woman advocacy and other practical help. Sexual violence referral centres, on the other hand, may specialise in immediate medical care, high-quality forensic practice and crisis intervention.¹²⁷ They can, for instance, be set up in a hospital setting to respond rapidly to sexual assaults by carrying out medical checks and referring the victim to specialised community-based organisations for further services. They also may concentrate on the immediate and adequate referral of the victim to appropriate, specialised organisations to provide them with the necessary care. At their core, both types of centres aim to serve victims of rape and sexual violence and inform them of their options in a way that acknowledges that each victim is different, and that the best course of action is thus different for each person.

Whatever form they take, GREVIO has stressed that such measures should be taken within a multisectoral response, giving victims the control over the decisions taken. Victims must be granted services regardless of their willingness to report or testify against the perpetrator, and forensic evidence should be stored for a defined period of time, allowing a court case to be initiated at a later stage, should a victim so decide.

121. Kline N. et al. (2021), "Self-Blame and PTSD Following Sexual Assault: A Longitudinal Analysis", 36 (5-6): NP3153-NP3168.

122. Peeters L. et al. (2019), cited above, p. 2.

123. A summary of the studies confirming the long-term consequences can be found in Bramsen. R et al. (2009), cited above, p. 887.

124. See GREVIO's baseline evaluation report on Montenegro, paragraph 135.

125. Explanatory Report to the Istanbul Convention, paragraph 142.

126. *Ibid.*, paragraph 140.

127. *Ibid.*, paragraph 141.

Moreover, victims should be able to seek these services even several years after the assault has taken place.¹²⁸

Trends and promising practices

In recent years, as a result of states' efforts to comply with Article 25 of the convention, and in response to GREVIO's findings and Committee of the Parties' recommendations, the number of rape crisis centres and/or sexual assault referral centres has risen in a number of states parties, a further illustration of the Istanbul Convention's positive impact in combating violence against women. Indeed, before the entry into force of the Istanbul Convention, a number of Council of Europe member states did not have specialist support service for women victims of sexual violence that could offer medical support, forensic examinations, the storage of DNA and counselling.¹²⁹ Less than a decade later, out of the 29 GREVIO baseline evaluation reports published so far, 19 states parties have either set up rape crisis centres or sexual assault referral centres, or have taken steps towards their setting up, namely in Andorra, Austria, Belgium, Denmark, Estonia, Finland, France, Germany, Iceland, Italy, Malta, the Netherlands, Norway, Portugal, Romania, San Marino, Spain, Sweden and Switzerland.¹³⁰ More specifically, further to specific GREVIO findings and Committee of the Parties recommendations issued in this area, Austria has expanded specialised counselling services for victims of sexual violence to cover all regions in the country.¹³¹ Moreover, Albania has set up its first sexual assault referral centre.¹³² Nevertheless, there is still much room for improvement as GREVIO's monitoring thus far reveals that only Denmark and Iceland comply with the standard of one rape crisis or sexual violence referral centre per 200 000 inhabitants – a standard which aims to ensure proper coverage and easy access for women victims of sexual violence.¹³³

128. See GREVIO's baseline evaluation reports on Albania, paragraph 110; Belgium, paragraphs 130-132; Denmark, paragraphs 121-124; Germany, paragraphs 182-191; Iceland, paragraphs 147-153; Norway, paragraphs 134-138; San Marino, paragraphs 115-119; and Switzerland, paragraphs 146-149.

129. Council of Europe (2022), "Mid-term Horizontal Review of GREVIO baseline evaluation reports", paragraph 278.

130. However, please note that many of them are not yet in full compliance with Article 25 of the convention; see GREVIO's baseline evaluation reports on Andorra, paragraph 128; Austria, paragraphs 100-101; Belgium, paragraphs 130-132; Denmark, paragraphs 121-124; Estonia, paragraphs 129-133; Finland, paragraph 124; France, paragraph 161; Germany, paragraphs 182-191; Iceland, paragraphs 147-153; Italy, paragraph 155; Malta, paragraph 131; the Netherlands, paragraph 174; Norway, paragraphs 134-138; Portugal, paragraph 142; Romania, paragraphs 214-219; San Marino, paragraphs 115-119; Spain, paragraphs 172-175; Sweden, paragraphs 143-144; and Switzerland, paragraphs 146-149.

131. See Committee of the Parties, "Conclusions on the implementation of recommendations in respect of Austria adopted by the Committee of the Parties to the Istanbul Convention" (IC-CP/Inf(2021)5) adopted on 7 December 2021.

132. See Committee of the Parties, "Conclusions on the implementation of recommendations in respect of Albania adopted by the Committee of the Parties to the Istanbul Convention" (IC-CP/Inf(2021)4) adopted on 7 December 2021.

133. See GREVIO's baseline evaluation reports on Denmark, paragraphs 121-124; and Iceland, paragraphs 147-153.

Centres that are based on multidisciplinary collaborative models and holistic approaches

GREVIO has positively noted that Belgium, Denmark, Estonia, Iceland, Norway and Switzerland have established centres that are based on multidisciplinary collaborative models and holistic approaches. For example, the Sexual Assault Centres set up in Belgium offer immediate medical care, psychological support related to trauma and a forensic examination to gather evidence for prosecution. After the care received, victims can, if they wish, file a complaint and be interviewed by a police officer on site. GREVIO considered this as an example of a “one-stop-shop” approach which can significantly reduce secondary victimisation. Reports indicate that the Belgian Sexual Assault Centres have vastly reduced reporting obstacles. Notably, 68% of victims who were supported by such centres reportedly went on to file a complaint, which was significantly higher than the national average of victims who filed complaints.¹³⁴ A non-governmental organisation’s report noted that this was largely because the support offered at the Sexual Assault Centres is focused on providing confidential care to victims and helping them to rebuild their lives. It also enables marginalised groups, such as transgender people and women in prostitution, to report rape in a safer environment.¹³⁵ As regards the reporting process, the Sexual Assault Centres support victims in a way that is sensitive and mindful of the extreme stress they experience and the impact this has on their ability to process information and form memories.¹³⁶

Another noteworthy practice is found in Denmark, where a highly specialised network of 10 centres for victims of rape and sexual violence across the country has been developed. These centres provide residential and non-residential services to women and girls over 15 years of age who are victims of sexual violence, in the form of medical care and trauma support, combined with forensic examinations. GREVIO noted that victims could seek these services any time after the assault and up to several years later. It further observed that the standard procedure for medical and forensic examination is carried out irrespective of whether the victim wants to report and that evidence is collected and stored up to three months or longer if the victims so request it, so that it can be used for future judicial proceedings. Centres also offer psychological treatment for all acute patients, but they have limited availability for longer-term counselling. For victims below the age of 15, a number of additional centres provide child-friendly services.¹³⁷ Another promising practice is found in Iceland, where emergency reception centres for victims of sexual violence are open 24 hours, offering forensic collection of evidence and any necessary medical services, free of charge, irrespective of the victim’s desire to lodge a complaint with the police. The forensic evidence is stored for one year. In addition, the centres arrange for psychological support as well as free legal counselling, and if the victim

134. International Planned Parenthood Federation European, “Belgium’s consent law is clear: absence of no doesn’t mean yes”: <https://europe.ippf.org/stories/belgiums-consent-law-clear-absence-no-doesnt-mean-yes>.

135. Ibid.

136. Ibid.

137. See GREVIO’s baseline evaluation report on Denmark, paragraphs 121-124, as cited in Council of Europe (2022), “Mid-term Horizontal Review of GREVIO baseline evaluation reports”, paragraph 279.

wants to report their case immediately, a police officer is called to the centre or the legal counsel accompanies the victim to the police station.¹³⁸

In Norway, two types of specialist support services are available and have been rolled out across the country to provide holistic and sensitive support to victims of rape and sexual violence, namely Sexual Assault Centres and Centres for Victims of Incest and Sexual Abuse (SMISOs). Sexual Assault Centres are located in medical clinics or hospital facilities and function as sexual violence referral centres. They offer immediate medical support by treating injuries and detecting sexually transmitted diseases and provide forensic examinations to secure evidence and crisis intervention. Forensic examination to secure evidence can be carried out regardless of whether the victim intends to report to the police. Professionals working at the Sexual Assault Centres can also refer victims to lawyers, the police and follow-up services providing more long-term support, including SMISOs and crisis centres. The SMISOs offer low-threshold support to victims of sexual violence and their relatives in the form of free-of-charge, medium-term psycho-social counselling.¹³⁹ In Switzerland, while there are no centres offering a “one-stop-shop” approach, GREVIO has welcomed the integrated approach taken by some hospital-based sexual violence referral centres, which make it possible to provide victims with comprehensive, long-term support. Specifically, these centres provide medical treatment and forensic examination irrespective of whether the victim is lodging a police complaint, and they work in close co-operation with other institutions and organisations, including the police and prosecuting authorities and shelters that victims may be referred to.¹⁴⁰

In response to GREVIO’s findings on the need to set up rape crisis and sexual violence referral centres, Albania set up its first crisis management centre for sexual violence cases in 2018, based in a hospital.¹⁴¹ The centre provides one-stop emergency services, available 24/7, and short-term services (24-72 hours) for victims of sexual violence and their relatives. It is based on a social healthcare model, with an interdisciplinary team of forensic medical professionals, gynaecologists, paediatricians, psychiatrists, clinical psychologists, social workers, representatives from the police, prosecutor’s offices, lawyers and nurses. The centre provides primary services, such as healthcare, forensic medical services, psycho-social support, clothing, food, further referrals, statement taking, initiation of criminal justice procedures and psychological counselling, to help the victim cope with the situation. A case manager conducts an assessment of the victim’s immediate needs and if the victim requires services beyond 72 hours, they are referred to another specialised support services centre. It is also encouraging that other states parties, such as Romania, are also making progress by setting up pilot centres for victims of sexual violence, with the long-term aim of establishing 10 more centres. These centres are based on an integrated services model within a hospital setting and provide adult victims with emergency

138. See GREVIO’s baseline evaluation report on Iceland, paragraphs 147-153.

139. See GREVIO’s baseline evaluation report on Norway, paragraphs 134-138.

140. See GREVIO’s baseline evaluation report on Switzerland, paragraphs 146-149.

141. Report on the implementation of the recommendations addressed to Albania by the Committee of Parties 2018-2020, submitted on 30 June 2021: recommendation about setting up rape crisis centres and/or sexual violence referral centres in the framework of a multi-sectoral response – Recommendation A.9, IC-CP/Inf(2018)3.

medical care, forensic examinations, support to access legal advice and/or report to the police, and information and counselling.¹⁴²

Conclusion

This focus section has shown the evolution in policies and practices in states parties to the Istanbul Convention, as well as the positive impact that GREVIO's monitoring activity has had so far on the legislation on rape and sexual violence. Indeed, many countries have already moved, or are in the process of moving, away from purely force-based definitions of sexual crimes, aligning their criminal laws with the core requirement of Article 36 of the convention: the criminalisation of non-consensual sexual acts. The baseline evaluation procedure has brought to light many promising practices in this area, which states are encouraged to share and adopt within their own jurisdiction. Last but not least, the role of rape crisis and sexual violence referral centres must not be underestimated, as only a holistic approach to supporting women victims of rape and sexual violence, which includes not only an effective criminal justice response but also medical attention, psychological support and legal counselling, can mitigate the trauma inflicted upon victims. As GREVIO starts its first thematic evaluation procedure in 2023, the Group of Experts will have the opportunity to follow up on the above-mentioned points and continue to monitor progress in states' efforts to build the trust of victims by delivering support, protection and justice for women victims of rape and sexual violence.

142. See GREVIO's baseline evaluation report on Romania, paragraphs 214-219.