



**MAPPING SUPPORT SERVICES
FOR VICTIMS OF VIOLENCE AGAINST WOMEN
IN LINE WITH THE ISTANBUL CONVENTION STANDARDS**
Training seminar, Strasbourg, 8 November 2018

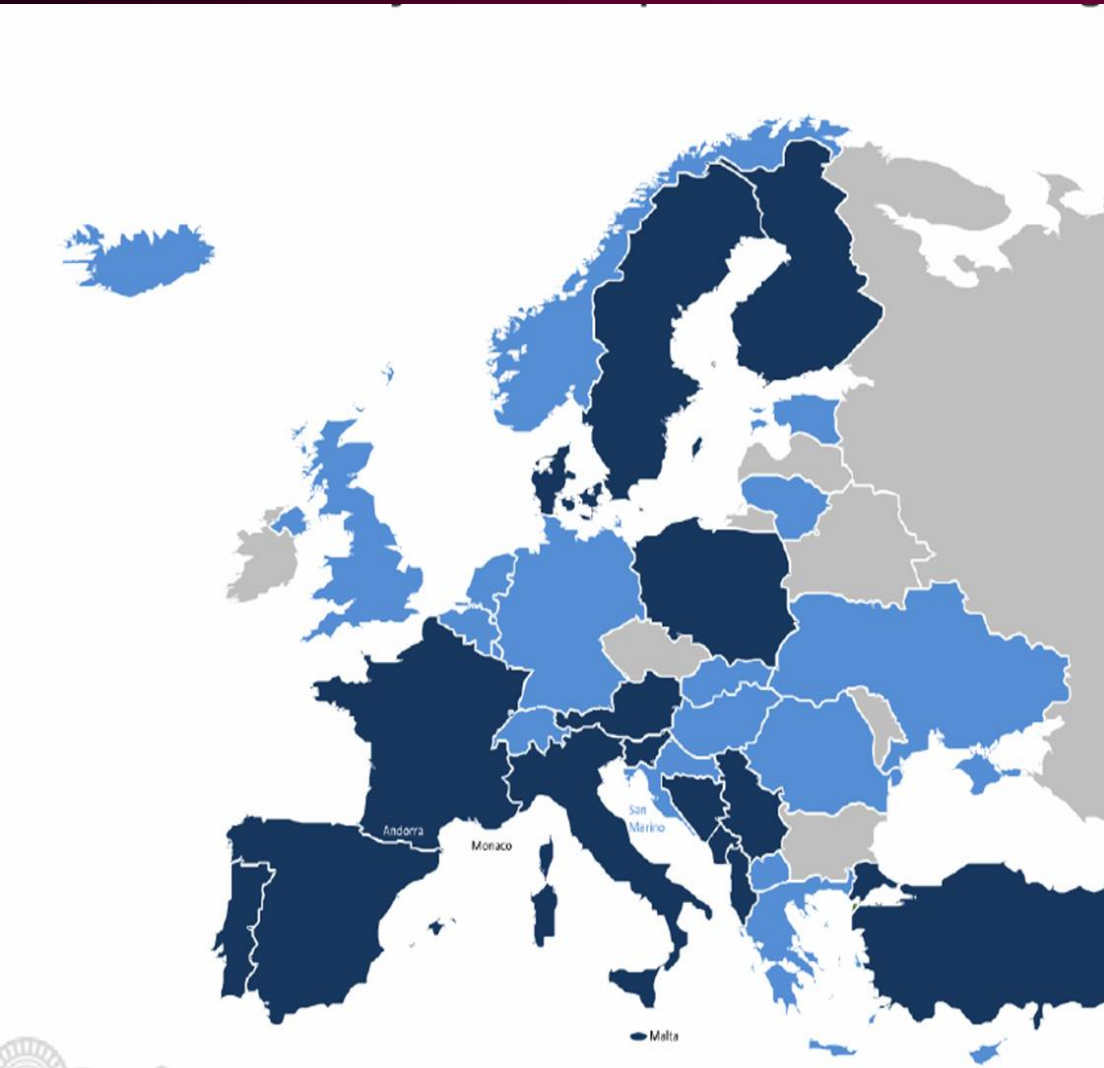
Istanbul Convention: Support services

Biljana Branković,
Independent Researcher - Consultant,
A member of GREVIO (an independent expert body of
Council of Europe responsible for monitoring the
implementation of the Istanbul Convention)

33 states ratified, and 12 states + EU signed (not yet ratified) the Convention

Countries that RATIFIED:

Albania, Andorra, Austria, Belgium, Bosnia and Herzegovina, Croatia, Cyprus, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Iceland, Italy, Luxemburg, Malta, Monaco, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, San Marino, Serbia, Slovenia, Spain, Sweden, Switzerland, FYR Macedonia, Turkey



The Istanbul Convention

introduces a couple of

groundbreaking
features



Crucial contributions of the Istanbul Convention

- The first legally-binding instrument in Europe that offers a comprehensive framework to end violence against women and domestic violence and it is
- the most far-reaching international treaty on this subject

- **Reaffirms gendered understanding of VAW on which many other (non-binding) international documents on VAW are based:**
 - a) **Defines VAW as a form of discrimination against women and a violation of human rights (Art.3a, 3d): *gender-based violence against women shall mean violence that is directed against a woman because she is a woman or that affects women disproportionately* (adopts a crucial part of a definition provided in GR 19 of CEDAW Committee, 1992)**
 - b) **Contains a definition of “gender” (Art.3c): *“gender” shall mean the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men***
 - c) **Recognizes the structural nature of VAW**

- **Reaffirms gendered understanding of VaW on which many other (non-binding) international documents on VAW are based:**

- d) Defines contribution to elimination of all forms of discrimination against women as one of its purposes (Art.1), and contains provisions pursuing this aim as well as empowering women (Articles 4, 6)**
- e) Has a gender perspective throughout: a clear gendered dimension overlaps its various provisions... *requires that gender perspective is applied in a process of implementation of its provisions and evaluation of measures (Art. 6)***
- f) Establishes structural connections between VAW and gender inequality**

Requires:

- **Holistic, comprehensive measures for supporting victims**
- **Multi-agency collaboration + collaboration between state agencies and women's specialist NGOs**

- Integrates “due diligence standard”

Parties shall take the necessary legislative and other measures to exercise due diligence to prevent, investigate, punish and provide reparation for acts of violence covered by the scope of this Convention that are perpetrated by non-State actors (Art. 5b)

- Due diligence standard is integrated into the Istanbul Convention and it should be understood as an **overarching principle**

The interpretation of due diligence principle in the Convention: Explanatory report

- Furthermore, the content of Article 5 reflects the case-law of the European Court of Human Rights. In its recent case law on domestic violence, the Court has adopted the obligation of due diligence (see the judgment of *Opuz v. Turkey*, 2009). It has established that the positive obligation to protect the right to life (Article 2 ECHR) requires state authorities to display due diligence, for example by taking preventive operational measures, in protecting an individual whose life is at risk.

(Explanatory Report to the Istanbul Convention, para. 58)

(relevant in the context of combating femicide)

INCLUDES PROTECTION

The MEANING of due diligence principle in the area of VAW

RESPONSIBILITY OF THE STATE FOR “NON-DOING”

- In the area of VAW, state responsibility arises if a state facilitates, condones, accommodates, tolerates, justifies or excuses private denials of human rights, therefore from a state’s own lack of diligence to prevent, control, correct or discipline such private acts through its own executive, legislative or judicial organs
- Consequently, a state becomes blameworthy for non-doing, for instance by not passing appropriate laws and policies to protect women from domestic violence at home.
- Under this concept, a state’s culpability is also due to perpetuating violence through omission: by not taking appropriate measures to protect vulnerable women.
- A state is also guilty of perpetuating violence when it accepts “honour killing” and grants men impunity for violence in cases where they murder their wives or partners

(Pentikainen, 1996: 96)

The MEANING of due diligence principle in the area of VAW

RESPONSIBILITY OF THE STATE FOR NON-DOING: When an abstract norm becomes concrete...

What does it mean in practice – becomes clear in judgments of the European Court of Human Rights related to domestic violence against women and sexual violence:

- *Aydin v. Turkey, Airey v. Ireland (1979), X and Y v. the Netherlands (1985), Bevacqua v. Bulgaria (2001), M.C. v. Bulgaria (2003), Kontrova v. Slovakia (2007), Branko Tomašić v. Croatia (2009), Opuz v. Turkey (2009), etc.*
- Case-law of ECHRt indicate that a lack of reaction (investigation, prosecution) or improper reaction contradicts a principle of due diligence. The criminal law definition of rape does not require physical resistance of the victim (applied in the case M.C. vs. Bulgaria, 2003)
- Decisions of the CEDAW Committee / Optional protocol: e.g. *AT v. Hungary, V.K. v. Bulgaria, Isatou Jallow v. Bulgaria, Vertido v. Philippines, Cecilia Kell v. Canada, Fatma Jildirim (deceased) v. Austria, Sahide Goekce (deceased) v. Austria*

- **Integrates (and builds on) decisions of the European Court of Human Rights (ECtHR) and the CEDAW Committee (based on Optional Protocol to CEDAW Convention)**
- **Recent cases in which ECtHR made reference to the Istanbul Convention:** *M. and M. v. Croatia* - 10161/13, Judgment 3.9.2015 (failure to promptly investigate allegations of domestic violence against a minor), *Rohlena v. the Czech Republic* [GC] - 59552/08, Judgment 27.1.2015

The Convention defines clear (and hard-to-reach?) standards in the areas of protection and support

- Measures of legal/institutional protection of victims and the establishment & sustainable development of general + specialist services
- Promotes and integrates good practice examples in victims' protection from some EU/CoE countries, including: multi-sectoral co-operation + **principles on which services should be based** (developed by women's movement) such as: empowerment of victims, confidentiality, avoiding re-traumatisation, etc.

- **Recognizes and reaffirms achievements of NGOs, and mentions (in Explanatory Report) women's NGOs as important actors in provision of specialist services and partners in co-ordinated actions**

“The aim of such specialised support is to ensure the complex task of empowering victims through optimal support and assistance catered to their specific needs. Much of this is best ensured by women's organisations and by support services provided, for example, by local authorities with specialised and experienced staff with in-depth knowledge of gender-based violence”

(Explanatory Report, para. 132)

- Incorporates theoretical framing of **intersectionality**: recognizes specific problems of women & girls exposed to multiple or intersectional discrimination, including refugees, migrants, asylum seekers, etc.
- Issues related to intersectional discrimination identified in all reports published by GREVIO

P (2)

PROTECTION and support services: State parties should:

- **Ensure access to general and specialist support services**
- **Ensure that general services support or refer victims of all forms of VAW**
- **Set up shelters + state-wide 24/7 free of charge telephone helplines that ensure confidentiality + rape crisis or sexual violence referral centres**
- **Take due account of the needs and the rights of child witnesses**
- **Improve reporting procedures**

Relevant distinction: General and specialist services

- **General** support services refer to help offered by public authorities such as social services, health services and employment services, which provide long-term help and are not exclusively designed for the benefit of victims only but serve the public at large. By contrast, **specialist** support services have specialised in providing support and assistance tailored to the – often immediate – needs of victims of specific forms of violence against women or domestic violence and are not open to the general public. While these may be services run or funded by government authorities, the large majority of specialist services are offered by NGOs.”

(Istanbul Convention Explanatory Report, para 125)

- Provisions that make a clear distinction between “**general**” and “**specialist**” services are relevant in the context of recognising the role of women’s NGOs as **THE MAIN (CORE) specialist service providers**

EXTENT OF SERVICE PROVISION **(which services should be available)**

- State-wide, 24-hour **telephone helplines**, free of charge, covering all forms of violence (Art. 24)
- **General services are further specified** (Article 20): legal and psychological counselling, financial assistance, housing, education, training and assistance in finding employment, access to health care and social services. Art. 20 also states: it should be ensured that “services are adequately resourced and professionals are trained”
- Appropriate and easily accessible **shelters in sufficient numbers** to provide safe accommodation for and to reach out pro-actively to victims (Art. 23)
- Easily accessible **rape crisis or sexual violence referral centres** that provide “medical and forensic examination, trauma support and counselling for victims” (Art. 25)
- **Legal aid** (Art. 20.1) should be free under the conditions defined in the national law (Art. 57)

Do service providers trust and empower women – survivors?

IMPORTANT:

- **Some principles (developed by European/global women's movement), reviewed in the Council of Europe study on minimum standards for VAW support services (*Kelly & Dubois, 2008*) are incorporated into the Convention (General obligations, Art. 18. para.3)**

General considerations regarding protection and support services + underlying PRINCIPLES of their functioning

(General obligations, Art. 18. para.3)

- “Parties shall ensure that measures taken pursuant to this chapter shall:
- be based on **gendered understanding** of VAW and domestic violence and shall **focus on the human rights and safety of the victim**;
 - be based on **an integrated approach** which takes into account the relationship between victims, perpetrators, children and their wider social environment;
 - aim at **avoiding secondary victimisation**;
 - aim at the **empowerment** and economic independence of women victims of violence;
 - allow, where appropriate, for a range of protection and support services to be located on the **same premises**;
 - address the **specific needs of vulnerable persons**, including child victims, and be made available to them”

Promising practice versus bad practice examples: **WE CAN LEARN FROM BOTH!**

- Good laws are not enough...
- Good intentions are not enough...
- Tendency to COPY-PASTE legislation, policies and (promising) practices from one country to another can have both good and bad implications



Types of specialist services for victims	The main requirements the services should meet
Shelters (Article 23)	Ensuring safe accommodation, safety and security for victims and their children; enabling them to cope with traumatic experience; central role in co-operation and networking; trained staff. Sufficient numbers: one family place per 10 000 head of population
Telephone helplines (Article 24)	State-wide; round-the-clock (24/7); free of charge; for all forms of violence covered by the scope of the Convention; providing crisis support and advice in all relevant languages; trained staff; protecting confidentiality; callers may remain anonymous. At least one national line, in all relevant languages
Support for victims of sexual violence (Article 25)	Rape crisis <u>OR</u> sexual violence referral centres; immediate medical care; forensic examination; crisis intervention; trauma support, psychological counselling and therapy (often: longer-term); trained and specialised staff. At least one per every 200.000 inhabitants, accessible in rural areas as well
Protection and support for child witnesses (Article 26)	Age and developmentally appropriate best evidence-based psychosocial counselling, specifically tailored to children's needs; all support services must give due regard the best interest of the child

The Istanbul Convention

is based on

4P's

1 **P**revention

2 **P**rotection

and support services

3 **P**rosecution

4 **P**olicies
Integrated

Protection and support services cannot reach their aim if other PILLARS are missing/dysfunctional, especially: Prosecution

P2

- **Ensure access to general and specialist support services**
- **Ensure that general services support or refer victims of all forms of VAW**
- **Set up shelters + state-wide 24/7 free of charge telephone helplines that ensure confidentiality + rape crisis or sexual violence referral centres**
- **Take due account of the needs and the rights of child witnesses**
- **Improve reporting procedures**

P3

- **Investigations and judicial proceedings are carried out without undue delay**
- **Law enforcement agencies respond promptly and appropriately**
- **Risk assessment is done and managed properly**
- **Victims are protected at all stages of investigations and judicial proceedings**

Procedural law: Provisions on INVESTIGATION AND PROSECUTION + PROTECTION of victims during legal proceedings


IT IS NOT ENOUGH TO:

- Ensure that investigations and judicial proceedings are carried out without undue delay, while taking into consideration the rights of the victim during all stages of criminal proceedings (Art. 49.1)
- Ensure an effective investigation and prosecution (Art. 49.2)
- Ensure *ex officio* prosecution of severe forms of violence even if the victim withdraws report or complaint (Art. 55.1)

BUT (AT THE SAME TIME) TO:

- Ensure that law enforcement agencies respond promptly and appropriately – by offering adequate/immediate protection to victims + by employing preventive operational measures and the collection of evidence (Art. 50)
- Ensure that risk assessment is done and managed properly: assessment of lethality risk, the seriousness of the situation and the risk of repeated violence + take into account whether perpetrators possess or have access to firearms (Art. 51)
- Provide for emergency barring orders (Art. 52) AND restraining and protection orders (Art. 53)
- Ensure that victims are protected at all stages of investigation/proceedings (Art.56) and govt./NGO counselors assist/support victims during investigations and judicial proceedings (Art. 55.2)

Provisions/standards that are often misunderstood... and have a (negative) impact on service provision (1)

- An insufficient understanding: what gendered nature of violence actually MEANS and what it implies (e.g., prejudices towards victims by professionals, victim-blaming attitude; misconceptions of alternative dispute resolution / mediation) **EXAMPLE!** 
- The same can be said for understanding of due diligence (as an overarching principle)
- Overemphasis on domestic violence in policies; marginalisation of sexual violence and other forms of VAW, such as forced marriage
- The need to carefully balance between the requirements of Art. 18, para. 4 (the provision of services shall not depend on the victim's willingness to press charges or testify against any perpetrator) and Art. 55 (prosecution of several offences may continue even if the victim withdraws complaint or statement)
- Impact of custody/visitation arrangements on safety of the victims and children: a) “automatic” decisions of the courts to grant visitation rights to violent fathers, supposedly in “the best interest of the child” (cases of femicide in Serbia) VERSUS b) joint custody arrangements

Provisions/standards that are often misunderstood... and have a (negative) impact on service provision (2)

- **Position and the role of (autonomous) specialist women's services is often misunderstood**
- **Multi-sectoral collaboration is often a declaration, "wishful thinking"**
- **Different trends: a) Copy-pasting some pieces of the Austrian law on DV leads to wrong conceptualisation of emergency barring orders + EBOs are seen as a replacement for shelters VERSUS b) Over-reliance on EBOs (a replacement for criminal prosecution)**
- **Serious problems in justice sector lead to limited possibilities of specialist services to assist victims**
- **Issues related to confidentiality: favouring centralized database that contains personal data of the victims**
- **Insufficient data collection limits the possibility to create and evaluate evidence-based policies, incl. in the areas of Protection and Prosecution**



De-gendered understanding of VAW by professionals in Serbia: How to define VAW without mentioning women?

- **Some professionals define VAW from crime-based and gender-neutral perspective; equalise VAW with domestic violence ; define VAW by carefully avoiding to mention “women” , although definitions of VAW are provided in General and Specific Protocols that guide their work. At the same time, they claim to know/use the Convention and apply gendered understanding of VAW in their work.**
- *Our service defines VAW as any violent act of one family member against other family members, in a sense that such a person has greater power than other family members and misuses that power to control other family members who have less power and resources. This definition is a “guideline” that we use in our work.*
- *VAW is any behaviour of one family member that jeopardizes in any manner (physical, psychological, economic, sexual) physical integrity and mental tranquillity of another family member.*
- *VAW is any act intended against another person, which harms, damages, or insults another person in such a manner that another person is coerced to do something against his/her own will, or to stop doing something he/she likes to do.*
- *VAW includes any act that is used to coerce another person to do something against her/his own will.*

Inter-connections between “Ps” (Protection and Prosecution)

Emergency barring orders (Art. 52)
and protection orders (Art. 53)

Specialist support
services

Criminal justice
system
+ family courts

Austria: gender-neutral law on DV + gender-sensitive application of the law + proactive support + well-resourced , autonomous specialist services + over-emphasis on EBOs + gaps in criminal justice response!!!

Albania: gender-neutral law on DV + limited availability of shelters, emergency sheltering in hospitals/elderly homes + limited access: only victims benefiting from EBOs/POs can be admitted to shelters + EBOs issued 48 hours following application + ineffective implementation of EBOs: e.g., a victim lives in one part of dwelling, a perpetrator in another (victim’s safety??); passivity of officials (non-compliance with procedural deadlines; the scarce use by the police and prosecution of their power to set in motion the procedure for issuance of EBOs; failure of bailiffs to execute or ensure enforced implementation of EBOs + are such officials brought to justice, in line with due diligence principle? + are perpetrators prosecuted for violation of EBOs/POs?

Links between general and specialist services

Specialist support services

General support services

Weak points in providing long-term help to victims:

- **Under-funded social services cannot respond to long-term needs of victims, such as social housing, access to employment, etc. (Albania)**
- **Intersectional discrimination: victims from minority/marginalised groups have obstacles in approaching both general and special services**
- **Under-staffed and under-resourced social services do not apply gender perspective; the interventions are not focused on empowerment of victims; rarely use their power to require POs on behalf of victims (Montenegro)**

Links between general and specialist services

Specialist support services

General support services

Weak points in providing long-term help to victims:

- **Only mid-term support/counselling provided: rape and sexual violence centres offer up to 5 sessions of counselling per victim, longer-term counselling not available (Denmark)**
- **Services cannot respond to longer-term needs of victims; no funds for longer trauma care counselling (Austria)**
- **Violence Prevention and Monitoring Centres (Şönims): state-run institutions, based on multi-agency approach; “one-stop” stations, but long-term counselling/socio-economic support rarely available; state officials under obligation to report – lack of alternative services (that would NOT be under such obligation and victims would not feel pressured to press charges) further complicates the problem of under-reporting (Turkey)**

Shelters

- **Do not exist in sufficient numbers**
- **Various groups of women who are or may be exposed to intersectional discrimination have problems with access: minorities, especially Roma, women with disabilities, mothers of children with disabilities, undocumented migrants, refugees/asylum seekers, elderly, rural, women with mental disturbances, etc.**

State-wide telephone helplines

- **Round-the-clock; free of charge**
- **Do not provide help to victims of all forms of violence covered by the scope of the Convention, but mostly, or predominantly, to victims of DV (Albania, Montenegro, Monaco, Turkey). Denmark: DV + dating violence + honour-based violence + stalking (not 24/7)**
- **Run by women's NGOs (Denmark, Austria, Albania, Montenegro) or by the state (Turkey: not a dedicated helpline – “ALO 183 Hotline for Social Support to Family, Women, Children, People with Disabilities, Relatives of Martyrs and Veterans”)**
- **Often unclear whether staff members possess skills, knowledge/training on all forms of VAW**
- **Minority/relevant languages (Turkey: Kurdish and Arabic; Montenegro: Albanian, Austria: 8 languages on demand)**

Support for victims of sexual violence

- **Rape crisis centres or sexual violence referral centres are non-existent (Albania, Montenegro, Turkey) or**
- **Do not exist in sufficient numbers; geographic distribution is not adequate (Austria, Denmark)**

Promising practice - **autonomous** specialist services: **SHELTERS (Austria)**

- **SHELTERS**: The first women's shelter established in Vienna in 1978. The Association of Austrian Autonomous Women's Shelters (AOF) established in 1988, and the second network (ZOF) in 2013
- **30 shelters** across the country; all are accessible 24/7, mostly free of charge for women without an income
- Many of them offer counselling in different languages for migrant women; 5 shelters also run counselling centres for women (Vienna, Vocklabruck, Wels, Wr.Neustadt, St.Polten)
- **All shelters aim to fulfill standards: safety, anonymity, confidentiality, empowerment, autonomy and self-determination of women**

Source: GREVIO Shadow Report NGO-Coalition (2016). *Austrian NGO-Shadow Report to GREVIO*

Promising practice - **autonomous specialist services: funding of shelters (Austria)**

- The main funding provided by provincial governments
- Provinces Upper Austria and Burgenland adopted a legal base for funding women's shelters; 4 shelters in Vienna also have relatively secure finding, and an unlimited contract with the City of Vienna. Staff and infrastructure of AOF is funded by: Austrian Federal Ministry for Health and Women's Affairs, Federal Ministry of Families and Youth, and the Municipality of Vienna Dept. 57 for Women's Issues
- Core funding (based on the law, independent from the number of women and children staying) versus "patchwork funding"
- **STILL**, according to the standards of the Istanbul Convention (one family place in shelters per 10 000 head of population), Austria should have 834 family places (68 family places are missing)

Promising practice - autonomous specialist services: TELEPHONE HELPLINES (Austria)

- **The Austrian National Women's Helpline established in 1998, run by AOF**
- **Offers multi-lingual support 6 hours per week and on demand in: Arabic, Bosnian-Serbo-Croatian, English, Farsi/Dari, Persian, Russian, Ukrainian and Turkish**
- **State-wide, operates 24/7 by female trained staff; free of charge and anonymous, pays due regard to confidentiality (no info about callers is passed on to other parties without consent)**
- **In 2015, it received 8252 calls of which 7199 were of women and girls**
- **Funded almost 100% by the Ministry of Health and Women's Affairs, based on three-year contract, yet, multi-lingual services are not fully funded**
- **24/7 helpline for victims of sexual violence run by the City of Vienna**

Promising practice: SUPPORT TO SEXUAL VIOLENCE VICTIMS (Denmark)

- 10 centres, located within hospitals across the country, provide crucial medical and forensic services to women and girls above the age of 15 who have experienced rape or sexual assault (they can seek services any time after the assault, including several years later).
- **Medical examination/help** (immediate examinations, pregnancy tests, treatment for any injuries as well as screening for infections and sexually transmitted diseases) + **forensic examination** (taking of DNA samples and documentation of other evidence such as bruises and injuries) + **reports** on the case prepared by the medical staff (any information obtained from the victim about the circumstances of the rape/sexual assault).
- The procedure for medical and forensic examinations is the same for all victims whether they intend to report the rape or not. There is no involvement of the law enforcement agencies, and the decision to report rests entirely with the victim. Where victims have first turned to the law enforcement agencies, they are often accompanied to the rape centre by an officer who will also draw up a report on the crime. **The DNA evidence is stored for up to three months or longer if so requested by the victim. Should a case come to trial, the centre's report may be used as evidence in addition to the DNA, and medical staff may be ordered to testify in court, for which purpose their obligation of confidentiality may be lifted.**

Austria: Promising practice - **autonomous specialist services:** **INTERVENTION CENTRES (Austria)**

- **INTERVENTION CENTRES/CENTERS FOR PROTECTION FROM VIOLENCE (*Gewaltschutzzentren*): **9 such centres**; one in each province, run by autonomous women's NGOs**
- **Established in 1997, when the first law on protection from violence was adopted**
- **Offer a proactive support: the police officers are obliged to notify the respective regional IC of all cases of domestic violence and stalking within 24 hours. Centres proactively reach out to victims and offer empowering support, including counselling, psycho-social and legal assistance at court, access to justice**
- **In 2015, nine Intervention Centres received **8,261 notifications** by the police and **17,621 victims** were supported, predominantly women and their children.**
- **Relatively secure funding, based on legislation on violence. Funds are obtained by the Federal Ministry for Health and Women's Affairs and the Ministry of Interior.**
- **The budget for the Intervention Centres amounted to **7,32 million EUR** in 2015. Additionally, all Intervention Centres receive funds from the Ministry of Justice within the framework of psycho-social and legal assistance at court**
- **IC Vienna is obliged to serve 5,800 victims of domestic violence and stalking per year. Only 25 staff members (full time) provide support to victims (on average, 5.9 hours per victim per year). This is not enough to provide mid-and long-term support!**

- **The Federal Ministry of Interior and the Federal Ministry of Health and Women's Affairs allocated 7,2 million EUR to Intervention Centres/Centres for the Protection from Violence (*Gewaltschutzzentren*) in 2015**
- **The Ministry of Justice: app. 5,7 million EUR in 2015 for psycho-social and legal support to victims (*Prozessbegleitung*). Services are provided to ALL victims of violent crimes, not only to victims of VAW**
- **The Federal Ministry of Health and Women's Affairs (responsible for implementing the Istanbul Convention) has an annual budget of 10 million EUR for prevention of VAW and all gender-equality measures**

Source: GREVIO Shadow Report NGO-Coalition (2016). *Austrian NGO-Shadow Report to GREVIO*



**Promising practice in the area of funding services
(Austria)**