

SEKUAL
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DOMESTIC
VIOLENCE

GREVIO

Baseline Evaluation Report Montenegro

” Group of Experts
on Action
against Violence
against Women and
Domestic Violence
(GREVIO)



Istanbul Convention

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

GREVIO's (Baseline) Evaluation Report
on legislative and other measures
giving effect to the provisions
of the Council of Europe Convention
on Preventing and Combating
Violence against Women and Domestic Violence
(Istanbul Convention)
Montenegro

Group of Experts
on Action against Violence against Women
and Domestic Violence (GREVIO)

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Foreword

The Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) is an independent human rights monitoring body mandated to monitor the implementation of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (hereafter “the Convention”) by the Parties.

It is composed of 10 independent and impartial experts appointed on the basis of their recognised expertise in the fields of human rights, gender equality, violence against women and/or assistance to and protection of victims.

GREVIO’s statutory activities include country-by-country monitoring of the Convention (evaluation procedure), the initiation of inquiries into specific circumstances within a party to the Convention (inquiry procedure) and the adoption of general recommendations on themes and concepts of the Convention.

This report is the fruit of the first (baseline) evaluation procedure carried out in respect of Montenegro. It covers the Convention in its entirety¹ and thus assesses the level of compliance of Montenegrin legislation and practice in all areas covered by the Convention. In light of the scope of the Convention, as set out in its Article 2, paragraph 1, the baseline evaluation focuses on measures taken in relation to all forms of violence against women, including domestic violence, which affects women disproportionately. The term “violence against women” used throughout this report thus refers to all forms of violence against women criminalised (or, where applicable, otherwise sanctioned) under Chapter V of the Convention, which are psychological violence, stalking, physical violence, sexual violence, including rape, forced marriage, female genital mutilation, forced abortion, forced sterilisation and sexual harassment. It also refers to domestic violence against women, which is defined as physical, sexual, psychological or economic violence which occurs within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim. Hence, the term “victim” used throughout this report is to be understood as referring to a woman or girl victim.

Based on this assessment, it proposes measures to strengthen the implementation of the convention. In proposing such measures, GREVIO has adopted the use of different verbs which correspond to different levels of urgency. These are, in order of priority, “urge”, “strongly encourage”, “encourage” and “invite”. GREVIO uses the verb “urge” where it considers that immediate action is required to bring the party’s legislation or policy into compliance with the Istanbul Convention, or to ensure its implementation. The verb “strongly encourages” is used where GREVIO has noted shortcomings which need to be remedied in the near future in order to ensure a comprehensive implementation of the convention. A third level of urgency is indicated by the use of the verb “encourages”, which is used for shortcomings that require attention, though possibly at a later stage. Lastly, the verb “invites” points to small gaps in implementation which the party is requested to consider closing or to proposals made to provide guidance in the implementation process.

The first (baseline) evaluation procedure is made up of several steps, each of which allows GREVIO to obtain critical information upon which to base its report. It is carried out as a process of confidential dialogue with the aim of offering country-specific proposals and suggestions for improvement developed within the national context of the party. These include the following:

- submission, by the party, of a report drawn up on the basis of GREVIO’s baseline questionnaire (this report is, in general, made public);
- a state dialogue with representatives of the party on issues emanating from the state report;

¹ With the exception of Chapter VIII of the Convention, which GREVIO considered as less relevant in assessing the national situation in each contracting party.

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- an evaluation visit to the party under review to meet with governmental and non-governmental representatives working in this field;
 - comments by the party on GREVIO's draft report;
 - publication of GREVIO's report after its adoption together with any further comments received from the party.

In addition, GREVIO collects additional information from various other sources, including non-governmental organisations (NGOs), other members of civil society, national human rights institutions, Council of Europe bodies (Parliamentary Assembly, Human Rights Commissioner and other pertinent bodies), as well as other international treaty bodies.

The analysis, suggestions and proposals contained in this first baseline evaluation report were drawn up under the exclusive responsibility of GREVIO. It covers the situation as at April 2018. Developments since that date are neither covered in the analysis nor taken into account in the conclusions and proposals therein.

According to the Convention, national parliaments shall receive this report from the national authorities (Article 70 paragraph 2). GREVIO requests the national authorities to translate this report into their official national language(s) and to ensure that it is widely disseminated, not only to the relevant State institutions at all levels (national, regional and local), in particular to the Government, the ministries and the judiciary, but also to NGOs and other civil society organisations which work in the field of violence against women.

Executive Summary

This report provides an assessment of the measures of implementation taken by the Montenegrin authorities with regard to all aspects of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (hereafter “the Convention”).

This assessment has been carried out by the Council of Europe Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), an independent human rights monitoring body mandated to monitor the implementation of the Convention. GREVIO’s findings are based on the information obtained during the various steps of the first (baseline) evaluation procedure set out in Article 68 of the Convention. These include written reports (a state report submitted by the Montenegrin authorities and additional information submitted by several NGOs), a state dialogue between GREVIO and the Montenegrin authorities on selected issues as well as a 4-day evaluation visit to Montenegro. A list of the bodies and entities with which GREVIO held exchanges can be found in Appendices II and III.

The report highlights the overall progress made by the authorities in Montenegro towards building a legislative, policy and institutional framework to prevent and combat violence against women. It welcomes in particular the introduction of important legislation, action plans and strategies which address some forms of violence against women, in particular domestic violence. The most prominent example is the Law on Domestic Violence Protection, which stands central in the Montenegrin approach to combating domestic violence. It introduces a misdemeanor offence of domestic violence with the main aim of allowing statutory agencies to respond more efficiently to domestic violence, as the avenues available under the Criminal Code had been widely considered unsatisfactory. Importantly, it introduces, for the first time, emergency barring and restraining orders as well as other important rights for domestic violence victims, such as the right to legal aid. Recent amendments to the Criminal Code ensure the criminalisation of other forms of violence against women as required by the Convention, namely stalking, female genital mutilation and forced sterilisation.

While GREVIO welcomes these steps towards a more holistic implementation of the Istanbul Convention, it notes that most attention in law and policy-making has focused on domestic violence. Measures addressing other forms of violence against women have yet to reach the same level of comprehensiveness, in particular as regards forced marriage, rape and stalking. Little or no preventive and protective measures seem to exist for victims of rape and sexual violence, sexual harassment and forced marriage, and no specific services such as rape crisis or sexual violence referral centers have been established. Instances of rape seem to be significantly underreported due to the cultural stigma that attaches to victims. Rape victims’ experiences with the criminal justice system indicate deeply ingrained societal attitudes that hamper effective judicial outcomes, adding to the reluctance to report. Victims of rape and sexual assault in Montenegro all too often find themselves on their own in a judicial system which does not appear to be particularly gender-sensitive.

Attitudes among a range of crucial professionals such as law enforcement officers, judges and social workers seem generally to weaken the response to domestic and other forms of violence against women. Despite the introduction of standardised procedures such as the Protocol on Actions, Prevention of and Protection against Family Violence and extensive training efforts, many professionals seem to minimise the violence, undermine women’s confidence in the authorities and frequently display an alarming bias against women and their experiences of gender-based violence. Many seem to be unaware of the dynamics of domestic violence and the impact that witnessing such violence may have on children. Their focus is frequently on the protection of the family unit and many seem guided by their own personal beliefs about women victims of domestic violence.

This report thus points to a number of structural issues which result in insufficient levels of prevention and protection of victims of domestic violence such as the attitudes displayed toward women victims of domestic violence, the frequent attempts at downplaying the violence, the use of dispute resolution processes, delays in handling domestic violence cases and the reluctance to issue protection orders. Overall, there is a limited understanding of the gendered nature of violence which is demonstrated by the perception among members of a wide range of relevant professionals that domestic violence is caused by substance abuse by the perpetrators or their mental health problems. Domestic violence perpetrator programmes that aim to change a perpetrator's attitudes and beliefs regarding gender roles, women and power have yet to be set up and would constitute an important milestone in addressing the underlying reasons why men use violence and control in their intimate relationships. In relation to perceptions and attitudes among the general public, GREVIO notes the widespread need for more long-term and regular awareness-raising campaigns to lift existing taboos around rape and sexual violence, but also to raise awareness more generally of the forms of violence that women in Montenegro, including Roma and Egyptian women, experience at the hands of men. Renewed efforts to develop effective training measures at all stages of professional development are equally called for.

More extensive professional skills in relation to violence against women, its manifestations, causes and consequences would also contribute to a more coherent application of the two parallel legislative frameworks on domestic violence (the Law on Domestic Violence Protection and the Criminal Code). Challenges persist in particular for law enforcement agencies and prosecution services to investigate into, record and fully assess the history of abuse that victims experience at the hands of their abusers, leaving many incidents of domestic violence unaccounted for. The widespread tendency of downplaying domestic violence and encouraging reconciliation results in the fragmented recording of violence incidents and discourages victims from reporting every single incident. As a result, charges are pressed for individual, possibly minor, incidents that do not reflect the real and continuous nature of the abuse a domestic violence victim may have suffered. Most domestic violence offences are prosecuted under the misdemeanor offence which carries extremely low sanctions, leaving those victims that do go through with a case disillusioned with the outcome.

Whilst GREVIO welcomes Montenegro's ratification of the Istanbul Convention and efforts made to date, it has identified a number of priority issues for the Montenegrin authorities to comply fully with the Convention's provisions. In light of the above considerations, these issues relate to the need to:

- develop suitable funding opportunities such as long-term grants based on transparent procurement procedures to ensure sustainable funding levels for women's NGOs which run specialist support services for women victims of all forms of violence;
- ensure that training for all professional groups that come into contact with victims, in particular law enforcement officials, prosecutors, judges, social workers, teachers and health professionals includes systematic and compulsory comprehensive training on the different manifestations of violence against women and their root causes;
- implement regular in-service training that is mandatory and based on protocols and guidelines for intervention in cases of all forms of violence against women;
- expedite work on the national plan for the improvement of specialist support services for victims of violence against women and to ensure counselling and support exists throughout the country and in relation to all forms of violence covered by the Istanbul Convention;
- set up rape crisis and/or sexual violence referral centres, ensuring a sensitive response by trained and specialised staff, in sufficient numbers;
- step up measures to ensure wider levels of awareness of the harmful effects of witnessing domestic violence on children and to provide adequate resources for psycho-social counselling for these children;
- ensure, through all available means such as protocols, training of professionals and legislative change, more operational clarity between the misdemeanour offence of domestic violence and that of a criminal law nature, as well as more dissuasive sanctions for the misdemeanour offence of domestic violence;
- ensure the swift and impartial response of all law enforcement officials to cases of domestic and other forms of violence against women on the basis of full respect for women's right to life and physical integrity;

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- take practical steps such as on-the-job training and mentoring schemes to overcome actively persisting attitudes, beliefs and practices that stand in the way of a law enforcement response to domestic violence;
 - make protection orders available for immediate protection to all victims of domestic violence, irrespective of charging decisions by prosecution services or the institution of misdemeanour proceedings;
 - ensure access to free legal aid for victims of all forms of violence against women as provided for in the Law on Free Legal Aid, in particular by taking active measures to ensure victims' awareness of this right.

Furthermore, GREVIO has identified a number of additional areas in which improvements are necessary in order to comply fully with the obligations of the Convention. They relate, among others, to the full elimination of discrimination faced by Roma and Egyptian women when seeking protection from violence; the appropriate allocation of human and financial resources for any policies, measures and legislation aimed at preventing and combating violence against women; the stepping up of measures to ensure the safety and needs of child victims and witnesses of domestic violence; the full use of disciplinary measures to end impunity of officials who fail to carry out their duties and the ending of the practice of mediation in family disputes with a history of domestic violence; as well as the introduction of comprehensive risk assessment schemes and the effective implementation of a multi-agency approach to ensuring the protection and safety of all victims.

Introduction

Montenegro signed the Istanbul Convention on 11 May 2011, ratified it on 22 April 2013 and was among the first state parties for which it entered into force on 1 August 2014.

The Istanbul Convention is the most far-reaching international treaty to tackle violence against women and domestic violence. Its comprehensive set of provisions spans far-ranging preventive and protective measures as well as a number of obligations to ensure an adequate criminal justice response to such serious violations of human rights. It covers new ground by asking that root causes of violence against women (such as gender stereotyping, traditions harmful to women and general manifestations of gender inequality) be addressed.

The Convention sets up a monitoring mechanism to assess the level of implementation by its parties. This monitoring mechanism consists of two pillars: the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), an independent expert body, and the Committee of the Parties, a political body composed of official representatives of the parties to the Convention.

In accordance with Article 68 of the Convention, GREVIO initiated the baseline evaluation in respect of Montenegro by letter and transmission of its questionnaire on 12 January 2017. The order of reporting to GREVIO is based on a combination of regional groupings and order of ratification. The Montenegrin authorities subsequently submitted their state report on 11 July 2017. Following a preliminary examination of the Montenegrin state report and of the additional information submitted by a coalition of NGOs, GREVIO held a state dialogue with representatives of Montenegro on 10 October 2017 in Strasbourg. A list of representatives of the Montenegrin Government who participated in the state dialogue can be found in Appendix II. As a second step, GREVIO carried out an evaluation visit to Montenegro which took place from 6-9 November 2017. The delegation was composed of:

- Marceline Naudi, First Vice-President of GREVIO
- Helena Leitao, Member of GREVIO
- Andrea Kriszan, Academic, Hungary
- Sanja Elezović, Consultant in the area of gender equality, Montenegro
- Johanna Nelles, Administrator at the Secretariat of the monitoring mechanism of the Istanbul Convention
- Cigdem Kaya, Administrator at the Secretariat of the monitoring mechanism of the Istanbul Convention

During the evaluation visit, the delegation met with a range of governmental and non-governmental representatives working in the area of preventing and combating violence against women, including legal and medical practitioners. A list of the national authorities, non-governmental organisations and others met is set out in Appendix III of this report. GREVIO is grateful for the valuable information provided by all of them.

The state dialogue and evaluation visit was prepared in close co-operation with Jovana Radifković who was appointed as contact person for the evaluation by GREVIO. GREVIO wishes to extend its gratitude for the co-operation and support provided throughout the entire evaluation procedure, and for the constructive approach adopted by the Montenegrin authorities.

As a first baseline evaluation, GREVIO has looked into the measures of implementation taken by the Montenegrin authorities with regard to all aspects of the Convention and reviewed data from the years 2014 and 2015. For the sake of brevity, this report prioritises some provisions over others. While it addresses all chapters of the Convention (except Chapter VIII), it does not present detailed assessments and conclusions on every provision in each of these.

I. Purposes, definitions, equality and non-discrimination, general obligations

A. General Principles of the Convention

1. Chapter I of the Istanbul Convention sets out general principles which apply to all the substantive articles contained in Chapters II to VII. These include, among others, that it is a fundamental human right for everyone, particularly women, to live a life free from violence in both the public and the private sphere, that the Convention must be implemented without discrimination on any ground and that the potential for, and effects of, multiple forms of discrimination should be borne in mind. They also spell out that a gender perspective must be integrated in the implementation of the Convention and the evaluation of its impact.

2. Since its independence in 2006, the authorities in Montenegro have made much progress towards building a legislative, policy and institutional framework to prevent and combat violence against women. Several legislative acts, action plans and strategies now address some forms of violence against women and domestic violence. Their over-arching aim is to break with the widespread perception in Montenegro that violence against women, in particular domestic violence, is a private issue.

3. To this end, Montenegro has co-operated closely with a wide range of intergovernmental organisations present in the country and has welcomed technical assistance and expert advice in this area. Its ratification, in 2013, of the Istanbul Convention has led to more targeted support provided to the Montenegrin authorities by a range of international stakeholders. In addition, the process of accession to the European Union (EU) is contributing to important judicial, administrative, economic and other reforms as well as the alignment of Montenegrin legislation with EU law.

4. GREVIO welcomes the manifold initiatives taken by the Montenegrin authorities to adapt its response to violence against women to international standards. Its present assessment aims to provide a comprehensive review of the measures taken so far and analyse their compliance with the requirements of the Istanbul Convention. The suggestions and proposals GREVIO makes in this report are intended to guide the Montenegrin authorities towards a more sustainable and consolidated implementation of the Convention.

B. Scope of application of the Convention (Article 2)

5. In light of the scope of the Istanbul Convention set out in its Article 2, paragraph 1 the first baseline evaluation focuses on measures taken in relation to all forms of violence against women, including domestic violence, which affects women disproportionately. The term “violence against women” used throughout the questionnaire and throughout this report thus refers to all forms of violence against women criminalised (or, where applicable, otherwise sanctioned) under Chapter V of the Convention. These are psychological violence, stalking, physical violence, sexual violence, including rape, forced marriage, female genital mutilation, forced abortion, forced sterilisation and sexual harassment. It also refers to domestic violence against women, which is defined as physical, sexual, psychological or economic violence which occurs within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim.

6. The ratification of the Istanbul Convention by Montenegro in 2013 came three years after the adoption of the Law on Domestic Violence Protection (LDVP). This law represents important comprehensive legislation specifically addressing a form of violence covered by the Convention. It introduces a misdemeanour offence of domestic violence with the aim of allowing statutory agencies to respond more efficiently to such violence. It also introduces emergency barring and restraining orders as well as other important rights for victims such as the right to legal aid. It is

conceived in a gender-neutral manner and covers domestic violence against a wide range of family members, male or female.

7. Amendments to the Criminal Code in 2017 seek to criminalise other important forms of violence against women covered by the Convention: stalking, female genital mutilation and forced sterilisation. Moreover, important policy documents such as the Action Plan for Gender Equality (2017-2021) and the Strategy for Protection from Domestic Violence (2016-2020) aim at more comprehensive measures to prevent and combat violence against women.

8. GREVIO welcomes these steps towards a more holistic implementation of the Istanbul Convention and notes the increased efforts made to qualify violence against women and domestic violence as gender-based violence. However, despite frequent references to “violence against women and domestic violence” and some references to “gender-based violence”,² most policy documents seem to focus predominantly on domestic violence and address it as a form of family violence. Many interventions by law enforcement agencies and social workers seem to mirror and manifest this approach without much consideration for the underlying power dynamics and gender discrimination inherent in domestic violence (see for example Chapter VI, Section A.1 of this report). GREVIO recalls the importance of recognising the gendered dynamics of abusive relationships and their ties to gender inequality. In order to be successful, domestic violence interventions will require a careful analysis of the patriarchal family models and gender roles present in Montenegro. All measures must therefore be designed to treat domestic violence against women by male partners/spouses as a form of gender-based violence.

9. Notwithstanding the above, domestic violence seems to be the form of violence which has received the most attention in law and policy. Measures addressing other forms of violence against women have yet to reach the same level of comprehensiveness, in particular forced marriage, rape and stalking. This would best be achieved by more comprehensive policy instruments that would cover all forms of violence against women as part of the same phenomenon of gender-based violence and that would address them as such.

10. GREVIO strongly encourages the Montenegrin authorities to step up efforts against violence against women by ensuring that measures taken in accordance with the Istanbul Convention address *all* forms of violence against women in a holistic and comprehensive manner with due regard for their gendered nature.

C. Definitions (Article 3)

11. The Istanbul Convention sets out, in its Article 3, key definitions of concepts that are fundamental to its implementation. “Violence against women” refers to “all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women [...], whether occurring in public or in private life”. The definition of “gender-based violence against women” offered in paragraph d of Article 3 seeks to ensure more clarity regarding the nature of the violence covered by explaining that this is “violence that is directed against a woman because she is a woman or that affects women disproportionately”. Hence, the violence addressed by the Istanbul Convention differs from other types of violence in that the victim’s gender is the primary motive. It is violence that is perpetrated against a woman that is both the cause and the result of unequal power relations based on perceived differences between women and men that lead to women’s subordinate status in the public and in the private sphere.

12. Montenegrin legislation does not define the term “violence against women” but offers, in the Law on Gender Equality, a definition of “gender-based violence” (Article 7, paragraph 7). This definition covers any “act that causes or may cause physical, mental, sexual or economic harm or suffering as well as threats of such acts which seriously impede a person’s enjoyment of his rights and freedoms in public or private life, including domestic violence, incest, rape and human trafficking [...]” It does not provide that the violence is perpetrated for reasons of the victim’s gender as the Istanbul Convention would require. Moreover, the list of examples includes

² See Article 7 of the Law on Gender Equality and the discussion under section “C. Definitions”.

trafficking in human beings and incest. Although there is clearly a gender dimension to these forms of violence, they are not exclusively perpetrated against women and girls for reasons of their gender. GREVIO therefore considers the current definition of gender-based violence offered by the Law on Gender Equality not to be in keeping with the definitions of “violence against women” and “gender-based violence” as set out in Article 3 of the Istanbul Convention. Conceptual clarity is important to ensure the full implementation of the Istanbul Convention based on a proper understanding of the forms of violence it covers.

13. Definitions of domestic violence can be found in both the LDVP (Article 2) and the Criminal Code of Montenegro (Article 220). The LDVP defines it as any “omission or commission by a family member in violating physical, psychological, sexual or economic integrity, mental health and peace of another family member”, irrespective of where the incident of violence has occurred. In terms of defining both *actus reus* (criminal acts) and the scope of possible victims, this provision is in line with the definition of domestic violence as set out in Article 3, paragraph b of the Convention. By contrast, the Criminal Code definition of domestic violence contained in its Article 220 is governed by a slightly different definition. It covers fewer criminal acts (“use of gross violence to harm the bodily or mental integrity”) and operates on a narrower definition of “family member”. While it is a legitimate policy choice to differentiate between different criminal acts on the basis of the type of sanction they shall carry (misdemeanour vs. criminal offence), all domestic violence offences should apply to the same scope of victims. In other words, the definition of family member and family unit contained in the LDVP and the Criminal Code should both be in line with the definition set out in Article 3b of the Istanbul Convention and cover current and former non-married partners – whether or not they share or have shared a residence. The Strategy for Protection from Domestic Violence is an example of full incorporation of the definitions of the Istanbul Convention. Although regretfully not reflected in its title, the body of the text refers to violence against women and domestic violence and uses the definitions of Article 3 of the Convention.

14. GREVIO encourages the Montenegrin authorities to align the definition of gender-based violence in their legislation with the definitions set out in the Istanbul Convention and to ensure its effective application in practice. GREVIO further strongly encourages the Montenegrin authorities to introduce a clear gendered approach to preventing and combating all forms of violence against women, including domestic violence, to fully acknowledge their gendered nature.

D. Fundamental rights, equality and non-discrimination (Article 4)

1. Gender equality and non-discrimination

15. The Constitution of Montenegro, adopted in 2007, guarantees equality between men and women and obliges the state to develop policies on equal opportunities (Article 18). It further prohibits direct and indirect discrimination on any grounds (Article 8). These constitutional provisions are transposed and further defined in the Law on Gender Equality and the Law on the Prohibition of Discrimination. The first re-affirms the principle of gender equality between men and women in the public and private spheres and prohibits discrimination on the basis of sex. It provides for a certain number of general and specific measures targeting both public authorities and private entities in order to promote equal opportunities for women and men.

16. The Law on the Prohibition of Discrimination prohibits discrimination on the basis of an extensive number of grounds, including gender (see Article 2). Anyone who considers themselves to be a victim of discrimination may lodge a complaint either before the civil courts or the Ombudsman (also referred to as Protector of Human Rights and Freedoms), an independent institution charged with protection against discrimination.

2. Intersectional discrimination

17. Article 4, paragraph 3 of the Convention requires parties to secure the implementation of their undertakings under the Convention without any discrimination. This provision provides an open-ended list of grounds of discrimination which draws on that of Article 14 of the European Convention on Human Rights as well as the list contained in its Protocol No. 12³ and, in addition, includes the grounds of gender, sexual orientation, gender identity, age, state of health, disability, marital status, and migrant or refugee status or other status. This obligation stems from the realisation that discrimination of certain groups of women, for example at the hands of law enforcement agencies, the judiciary or service providers, is still widespread.⁴

18. In this vein, GREVIO notes the difficulties faced by Roma and Egyptian women in Montenegro in seeking help to deal with the gender-based violence they experience. Stereotypical beliefs about Roma and Egyptian women often result in insufficient responses from the authorities. Forced marriage, a prevalent form of gender-based violence among the Roma and Egyptian community, is considered to be a norm or a custom specific to their group, hence a cultural practice that does not necessarily entail the state's responsibility to act. Likewise, Roma and Egyptian women seeking help in respect of domestic violence sometimes encounter scepticism and the denial of services due to their poor socio-economic background leading officials to think they are seeking material advantages (free accommodation or food) instead of genuine protection. GREVIO thus welcomes the Strategy for Social Inclusion of Roma and Egyptian Population in Montenegro (2016-2020), and hopes that its component on gender issues will lead to more specific knowledge of the particular barriers that exist against Roma and Egyptian women who seek or wish to seek help.

19. Moreover, women with disabilities experiencing gender-based violence display reluctance towards reporting their situation.⁵ Although a domestic violence shelter exists which is adapted to specific needs of women (and children) with disabilities, GREVIO was informed that no woman with a disability had ever contacted them. It is unclear whether they are simply lacking information regarding the spectrum of support services available to them or whether this is a result of the general unawareness of women with disabilities about their rights when confronted with violence.

20. Moreover, GREVIO notes that women living in rural areas, many of whom are older women, are particularly exposed to gender-based violence and that they have restricted access to protection services.⁶ In Montenegro, non-governmental organisations providing counselling usually actively operate in big cities such as Podgorica or Nikšić; likewise, specialist support services are concentrated in big municipalities. GREVIO notes that the isolation of women living in rural zones contributes to their lack of information about available resources.

21. GREVIO strongly encourages the Montenegrin authorities to eliminate discrimination faced by Roma and Egyptian women, disabled women and women living in rural zones when seeking protection from violence, and hence ensure in this regard the access of all women - on an equal basis - to specialist support services.

E. State obligations and due diligence (Article 5)

22. Aspects in relation to the implementation of Article 5 of the Convention are covered in Chapters V and VI of this report.

³ The discrimination grounds in question include sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

⁴ See paragraphs 52-54 of the Explanatory Report.

⁵ Concluding observations on the initial report of Montenegro, United Nations Committee on the Rights of Persons with Disabilities, 22 September 2017, para 12.

⁶ Concluding Observations on the Second Periodic Report of Montenegro, United Nations Committee on the Elimination of Discrimination against Women, 24 July 2017, para 38.

II. Integrated policies and data collection

Chapter II of the Istanbul Convention sets out the core requirement for a holistic response to violence against women: the need for state-wide effective, comprehensive and co-ordinated policies sustained by the necessary institutional, financial and organisational structures.

A. Comprehensive and co-ordinated policies (Article 7)

23. The Montenegrin authorities have taken initial steps to design a set of policies on all forms of violence against women by adopting the 2016-2020 Strategy for Protection from Domestic Violence. Although the title refers only to domestic violence, its definition of gender-based violence is based on that of Article 3, paragraph d of the Istanbul Convention. However, its measures seem to address violence against women only in as far as it happens within a family context. As such, it does not yet present the type of comprehensive and co-ordinated policy that the Istanbul Convention calls for, which would capture and address all forms of violence against women as part of the same phenomenon of gender-based violence. Additional strategies and action plans exist, in particular the Action Plan for Gender Equality (2017-2021) and the Strategy for Social Inclusion of Roma and Egyptian Population in Montenegro (2016-2020). There is also the Action Plan for implementation of the United Nations Resolution 1325 Women, Peace and Security (2017-2018). None of these, however, close the gap to provide a holistic approach by setting out measures on specific forms of violence against women other than domestic violence. This would be of particular importance in relation to sexual violence and rape, especially outside of the family context, which is a form of violence that currently seems to receive very little policy attention.

24. Women and girls experience gender-based violence in and outside the family, and any holistic response to all forms of violence against women needs to address this. GREVIO is concerned by the focus currently placed on family violence seemingly without much recognition for the gendered nature of the psychological, physical and sexual violence women experience – predominantly by their current or former male partners. No measures seem to be in place to address equally devastating forms of violence against women such as rape and sexual violence outside the family, sexual harassment, stalking, forced marriage, or forced sterilisation and abortion. Although the Criminal Code has recently been amended to criminalise some of these forms of violence and to ensure its further alignment with the Convention, a holistic response would require preventive and protective measures to accompany such legislative change.

25. Another element of Article 7 is that of ensuring the implementation of any adopted policies by way of effective multi-agency co-operation. This may, for example, mean the joining of forces of law enforcement agencies, the judiciary, women's non-governmental organisations, child protection agencies and other relevant partners on a particular case. GREVIO welcomes the significant efforts made to introduce elements of multi-agency co-operation and improve inter-institutional co-ordination at multiple levels although it remains unclear how they co-ordinate among themselves. The Working Group in charge of implementing the Strategy for Protection from Domestic Violence, for example, is responsible for the implementation of the Strategy and its monitoring by issuing yearly reports. Composed of civil servants and NGO representatives, it meets rarely and is focused on implementing the measures on domestic violence as contained in the Strategy rather than continuous policy-making on all forms of violence against women. This seems to be the prerogative of the "Co-ordinating Board for the co-ordination, implementation, monitoring and evaluation of policies and measures to prevent and combat all forms of violence covered by the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence" which was established to serve as the co-ordinating body required by Article 10 of the Convention (see Section D. Co-ordinating Body (Article 10)).

26. In addition to these two national co-ordination structures, the LDVP requires local level co-ordination through multi-disciplinary teams (MDTs). These teams are composed of experts in social and child care, health care professionals, members of the judiciary and law enforcement agencies as well as representatives of NGOs that offer protection. They are mandated to “organise, monitor and promote a co-ordinated and efficient protection” of victims of domestic violence (Article 17 of the LDVP). According to the authorities, they meet on average once every three months or on a needs basis. The purpose of multi-agency coordination at the local level is twofold. On the one hand, it is to develop efficient and smoothly working intervention systems at the local level, where a variety of actors work together on a regular basis to protect victims, prevent violence from re-occurring, restrain perpetrators and change mentalities. On the other hand, the aim is to serve the best interests of individual victims, on a case-by-case basis.

27. MDTs in Montenegro are currently working on both of these objectives, which presents challenges in meeting either of them. The membership of MDTs is very extensive, involving key institutions which are not always represented by those with responsibility for the cases on the agenda. Difficulties in convening MDTs have been reported, including in ensuring the presence of NGO case workers, and they do not always meet in relation to the frequency and urgency of cases. While attention seems to be primarily on individual cases, structural or institutional co-operation issues are also frequently discussed but with little result-orientation.

28. It thus appears that the objectives of the multi-agency co-ordination are not always clearly stated and understood and that the existing structures amalgamate a range of purposes and do not produce the desired effect. GREVIO thus welcomes that discussions are underway to move towards a system of “multi-agency case conferences”. Moreover, GREVIO welcomes the setting up of “operational teams” which have come into effect in March 2018 to enhance the capacity of law enforcement and other agencies to respond to cases of domestic violence. According to the Montenegrin authorities, their aim is to enhance the knowledge base of all operational entities and to ensure improved implementation of the LDVP in a co-ordinated manner.

29. GREVIO strongly encourages the Montenegrin authorities to develop a long-term co-ordinated plan/strategy which places the rights of victims at the centre of all measures, giving due importance to all forms of violence against women and to its co-ordinated implementation. GREVIO encourages the Montenegrin authorities to ensure that the gendered nature of all forms of violence against women is duly reflected in all policy approaches.

B. Financial resources (Article 8)

30. GREVIO has obtained very little information regarding the financial resources that the Government of Montenegro has earmarked for the implementation of its policies, strategies and legislation to prevent and combat violence against women and domestic violence. It seems that most operational costs are to be borne by the regular budgets of the respective line ministries, while some of the specific activities set out in the various action plans and strategies are to be funded by international donors. No information has been provided as to the budget share that the different ministries reserve for measures and action in response to violence against women.

31. GREVIO notes that budgets are generally very modest. In the case of Centres for Social Work, this results in serious underfunding in terms of human and financial resources as well as infrastructure which clearly impacts on the Centres’ ability to serve their clients (see Chapter IV, Section C. of this report).

32. No state funds have been committed to the implementation of the new Strategy on Protection from Domestic Violence. Rather, concern has been voiced that it is for this reason that this Strategy has only been partially implemented and that the report on its implementation, drawn up by the Ministry of Labour and Social Welfare and adopted by the government, mainly lists the activities implemented by NGOs and funded by international donors. This would indicate a limited degree of commitment on behalf of the authorities to the implementation of a comprehensive and co-ordinated approach to preventing and combating violence against women. This is of concern

given the low level of implementation of the previous strategy on domestic violence (2011-2015). According to a report prepared in 2015 by the civil society sector on the implementation of this strategy, only three of the 14 measures had been fully implemented.⁷ An additional four had been implemented partially, while the other half had not been implemented at all. Those that had been implemented were exclusively funded by foreign donors and addressed Roma and Egyptian women and their experiences of violence. GREVIO is concerned that, without any sustained funding allocated from the state budget, the current strategy will similarly not be effectively implemented.

33. GREVIO is aware of the different economic circumstances of state parties to the Istanbul Convention. With the ratification of this Convention, however, the Government of Montenegro has committed itself to ensuring the allocation of appropriate financial and human resources for activities in the area of combating violence against women carried out both by public authorities and relevant non-governmental organisations. GREVIO recalls that the scope of the obligation derived from Article 8 is that of ensuring that the resources allocated are suitable for the target set or measures to be implemented. This would require a cost assessment and budgeting of any new measure and strategy proposed to ensure its effective implementation in the envisaged timeframe.

34. The readiness of international donors to fund measures and projects to prevent and combat violence against women in Montenegro is of valuable help to the Montenegrin authorities. International funding already seems to account for a high share of the expenditure in this area and the process of EU accession offers even more opportunities for financial and technical support. GREVIO welcomes the readiness of the Montenegrin authorities to co-operate with the international community but recalls the importance of contributing, through the allocation of appropriate state funds, to the funding of legislative and policy measures in the area of violence against women in order to discharge their obligation under Article 8 of the Istanbul Convention. GREVIO welcomes the example of government funding envisaged for the new national helpline on domestic violence. Originally exclusively funded by the EU Delegation to Montenegro, the Government of Montenegro has now taken on a 50% share while the other half is covered by donations to the NGO running the helpline. This is a first step towards ensuring that essential services required by the Istanbul Convention are being provided or funded, at least to some extent, by the state. Another example is the intention of the Montenegrin Government to set up state-funded crisis centres to ensure safe accommodation for women who cannot be placed immediately in a women's shelter.

35. GREVIO strongly encourages the Montenegrin authorities to ensure appropriate human and financial resources for any policies, measures and legislation aimed at preventing and combating violence against women and the institutions and entities mandated for their implementation. GREVIO furthermore invites the Montenegrin authorities to gradually reduce its dependency on international donors for activities to combat violence against women and ensure a wider share of funding from the Montenegrin state budget to demonstrate financial responsibility and ownership.

C. Non-governmental organisations and civil society (Article 9)

36. In Montenegro, NGOs play an important role in operating counselling and specialist support services for women victims of violence. These range from helplines and the running of women's shelters to counselling services for domestic violence and forced marriage as well as the provision of legal aid, albeit limited. Based on a victim-centred and feminist approach, they offer services that do not exist elsewhere in the country.

⁷ B. Zeković; *Monitoring of the Strategy of Protection from Domestic Violence 2011- 2015*; available at www.sospodgorica.me

37. The Government of Montenegro clearly recognises the expertise of NGOs generally and seeks to officially involve women's NGOs that run specialist services in multi-agency co-operation (for example the Co-ordinating Board, see above, or Multi-Disciplinary Teams). Policy documents such as the Protocol on Action, Prevention and Protection from Domestic Violence and the Law on Gender Equality envisage co-operation of state actors with NGOs working in this field.

38. Nevertheless, concerns have been shared with GREVIO regarding the shrinking of space and recognition for women's specialist services run by NGOs. Examples range from MDTs that discuss individual cases without informing the woman and/or the relevant counsellor from the shelter, to the introduction of a licensing regime for NGOs operating as service providers for domestic violence victims. They culminate in the plans for mandatory reporting by shelters to the Centres for Social Work as a requirement for official admission by these Centres for women wishing to move to a shelter.

39. The newly introduced licensing regime seeks to ensure quality standards for NGOs operating shelters and other counselling services by linking the provision of funding to criteria that women's specialist support services may find difficult to comply with in terms of size and staff ratio. An additional difficulty is the lack of licensed training courses that staff are required to complete in order to qualify as a licensed NGO service provider. Women's NGOs that have been providing vital services for victims of domestic violence for years and which operate on the basis of a gendered understanding of violence against women and a victim-centred approach fear being replaced by more generalist NGOs with less of a women-centred approach and less experience in this field.

40. In addition, the government's plans to introduce a system of mandatory referrals by Centres for Social Work would further weaken the role of women's specialist support services in providing women-centred counselling, shelter accommodation, advocacy and support to women with a view to protecting their human rights as individuals. It would bar women from turning to independent counselling services before turning to a statutory agency such as the Centre for Social Work or a law enforcement agency. GREVIO is concerned by this development since this might prevent some women from coming forward to seek help due to possible lack of trust in authorities as well as possibly not wishing to take formal steps at that point in their situation. It further diminishes a woman's possible choice and control and thus self-determination.

41. In this context, GREVIO wishes to emphasise that the provision of specialist support services for women victims of violence in Montenegro is already lacking in terms of geographic distribution and the forms of violence they address. As discussed in detail in section G of Chapter IV, there are no services for victims of rape and sexual violence, neither are there any counselling services and shelters for women and girls fleeing forced marriage. As far as the situation of existing specialist support services run by NGOs is concerned, their funding situation is precarious and currently not sustainable as it is mainly dependent on the funding of international donors. It is only the national helpline run by the SOS Helpline in Nikšić that is partially funded by the state on an annual basis. Although a positive sign in terms of demonstrating government responsibility, including financial responsibility, this cannot be seen as an example of sustainable funding.

42. All in all, GREVIO notes that the current developments in Montenegro regarding the role and recognition afforded to women's NGOs that run specialist support services fall short of the active encouragement and government support required by Article 9 of the Istanbul Convention.

43. **GREVIO urges the Montenegrin authorities to ensure appropriate funding through suitable funding opportunities such as long-term grants based on transparent procurement procedures to ensure sustainable funding levels for women's NGOs which run specialist support services for women victims of all forms of violence.**

44. **GREVIO further strongly encourages the Montenegrin authorities to maintain their efforts in ensuring an independent role for women's NGOs in providing essential services such as counselling, shelter accommodation, advocacy etc. to women victims of domestic violence irrespective of referrals made by Centres for Social Work.**

D. Co-ordinating body (Article 10)

45. In response to the requirement of this article, the "Co-ordinating Board for the co-ordination, implementation, monitoring and evaluation of policies and measures to prevent and combat all forms of violence covered by the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence" was set up in its current composition in May 2017. Whereas its predecessor was headed by the Deputy Prime Minister, it is now headed by the Minister of Labour and Social Affairs and composed of high-level representatives of the Ministry of Justice, the Ministry of Internal Affairs, the Ministry for Human and Minority Rights, the Ministry of Health, as well as representatives of the Supreme Court, the State Prosecutor's Office and the Association of Municipalities. Plans exist to include up to three representatives of NGOs, but a recent public call issued to that end did not produce any applications.

46. Given its high-level members, the Co-ordinating Board is a powerful entity and is key to progress in this area. Violence against women is a complex policy field that concerns a wide variety of sectors and stakeholders at multiple levels. Therefore, both horizontal and vertical co-ordination are indispensable to address it in ways that are sustainable and offer long-term solutions with regard to structural issues. Unfortunately, the Co-ordinating Board – although a permanent body - is dependent on political mandates, as most if not all its members are replaced after elections. It is thus ill-suited to assure the continuity of policies beyond one government mandate. Dependency on political mandates may also stand in the way of the objective of monitoring policy measures introduced by a previous government. The fact that it has neither been assigned a separate budget nor permanent staff further reduces its ability to carry out continuous policy work and monitoring.

47. Moreover, GREVIO queries the co-existence of this Co-ordinating Board and the Working Group set up to ensure and monitor the implementation of the Strategy for Protection from Domestic Violence (see Chapter II, Section A. Comprehensive and co-ordinated policies). It remains unclear to what extent and how these two co-ordinate among themselves and exchange information. Reporting lines do not seem to exist and no information was provided as to whether the Co-ordinating Board may instruct the Working Group to follow up and serve the objectives defined by the Board.

48. **With a view to ensuring continuous policy setting regarding all forms of violence against women and the effective monitoring of measures taken, GREVIO strongly encourages the Montenegrin authorities to:**

- **clarify the roles and responsibilities of each of the two national co-ordinating structures;**
- **fully institutionalise the Co-ordinating Board and ensure continuity in human and financial resources beyond government mandates; and**
- **set up separate bodies for, on the one hand, the co-ordination and implementation of policies and measures, and on the other hand for their monitoring and evaluation, in order to ensure objectivity in the evaluation of policies.**

E. Data collection and research and surveys (Article 11)

1. Data collection

49. Preventing and combating violence against women and domestic violence requires evidence-based policy-making. The collection of systematic and comparable data from all relevant administrative sources is crucial in this regard, as is information on the prevalence of all forms of violence against women.

a. Administrative data collection

50. Law enforcement agencies in Montenegro record the number of registered offences by type of offence. Data on the number and type of protective measures issued by law enforcement is also recorded. In cases of domestic violence, they also record the sex of the victim as well as that of the perpetrator but not the nature of the relationship between the two. Both the Criminal Code and the LDVP contain a specific offence of domestic violence, but the fact that the data collected in relation to these does not specify the relationship of the perpetrator to the victim masks the extent of victimisation of women by male partners/spouses.⁸ Moreover, no adequate electronic system for the collection of misdemeanour domestic violence cases currently exists. While work is underway to establish one, all data is currently recorded manually without any supervision to ensure systematic and consistent data collection. Although data on action taken by law enforcement agencies is regularly recorded in response to incidents of domestic violence classified as a criminal offence, it is unclear whether the same is done in relation to domestic violence offences that are classified as a misdemeanour offence (see Chapter V, Section 2. Criminal law).

51. The State Prosecutor's Office also collects data on the number of investigations opened per type of offence. This data is not, however, broken down by sex of the perpetrator or that of the victim, nor is there an indication of the relationship between the two. Moreover, the data does not give any information regarding the outcome of investigations, rendering it difficult to draw conclusions as to the number of cases sent to court.

52. As regards data collected by the judiciary, all courts (High Courts, Basic Courts and Misdemeanour Courts) collect data on the number of cases classified by type of offence. In addition, the Misdemeanour Courts also record the type and number of protective measures imposed with the sanctions. The data collection system PRIS allows a case to be tracked at all stages of the judicial procedure and thus provides information on the outcome of cases per offence. For example, the number of convictions for domestic violence under the criminal offence (Article 220 of the Criminal Code), including the type of conviction (fine, prison sentence, etc.) are available online.⁹

53. Another important source of administrative data, at least on domestic violence, are the Centres for Social Work. They collect data on the number of cases of domestic violence reported to the Centres and the type of action taken in response. These data are disaggregated by sex and age group of victims and whether the violence is physical, emotional, sexual or economic.¹⁰

54. The health sector manually collects data on the basis of the 10th revision of the International Statistical Classification of Diseases and Related Health Problems (ICD-10 Codes) developed by the World Health Organisation. Medical staff are trained to identify victims of domestic violence, including victims of psychological violence, and have the duty to report any suspicion of a crime to the law enforcement agencies.

⁸ Data on the relationship of the perpetrator to the victim was, however, made available in Annex I to the second periodic report on the implementation of the CEDAW Convention submitted by the Government of Montenegro in 2015. It is, however, unclear whether the percentages provided therein refer to the number of perpetrators convicted or other.

⁹ *Women and Men in Montenegro 2016*, published by the Ministry of Human and Minority Rights and the Statistical Office of Montenegro, p.132 and 133.

¹⁰ *Ibid.*, p.130 and 131.

55. The above examples of data collection represent important initial steps in the collection of administrative data on the different forms of violence against women. GREVIO welcomes in particular the data collection obligations on domestic violence in relation to the LPDV which the Action Plan on Gender Equality (2017-2021) places on the Ministry for Human and Minority Rights. These have led to the publication of two consecutive reports by the Department for Gender Equality for the years 2015 and 2016.¹¹

56. GREVIO also notes that the Co-ordinating Body established pursuant to Article 10 of the Convention (see above) is mandated to collect data. While it is unclear whether this will lead to an expansion of data categories and type of administrative data collected in the future, GREVIO notes with interest the stated aim of the Government of Montenegro to further develop the collection of data by introducing “a single database”. This database would store information on the number of cases that are processed by the different actors in the system (law enforcement, Centres for Social Work, health sector, etc.). In drawing up such a unified database, GREVIO recalls the importance of paying due regard to data protection, which in Montenegro is apparently still weak.¹²

57. GREVIO also notes that MONSTAT, the statistical office of Montenegro, collects data from prosecution services and criminal courts on the number of perpetrators indicted on domestic violence charges and those convicted. From this information, the number of female victims can be derived but not the perpetrator’s relationship to them. No data is collected with regard to any other form of violence against women for lack of human resources. All information collected is made publicly available.

58. GREVIO strongly encourages the Montenegrin authorities to pursue their efforts to introduce harmonised data categories such as sex, age, type of violence and type of relationship of the perpetrator with the victim to be collected at regular intervals by all sectors of the administration, including the law enforcement agencies, the judiciary, the relevant social services, the public health sector and other relevant public services.

2. Population-based surveys

59. In Montenegro, several population-based surveys focusing specifically on domestic violence were carried out between 2012 and 2017. Among these, the two major sources of information are the biennial publication “Women and Men in Montenegro”¹³ and the 2017 survey entitled “Violence in the family and violence against women”.¹⁴

60. Both provide important insights into the prevalence of domestic violence, perceptions and attitudes in society, the cost of such violence as well as information about the multidisciplinary responses. GREVIO notes, however, that the survey results presented in “Women and Men in Montenegro every two years break down data on victimisation per age rather than sex. Consequently, its focus is on the differences in prevalence rates of domestic violence per age group (e.g. domestic violence against children compared to elderly abuse). It does not provide information regarding the exposure of women to domestic violence and thus seems to follow an intergenerational definition of domestic violence rather than a gendered one.

¹¹ Annual Report on Data related to Domestic Violence, Ministry of Human and Minority Rights, years 2015 and 2016, available at: <http://www.minmanj.gov.me/biblioteka/izvjestaji>

¹² European Commission Montenegro 2016 Report, 9 November 2016, Chapter 23: Judiciary and fundamental rights, p.63.

¹³ *Women and Men in Montenegro 2016*, p. 126-130.

¹⁴ *Percepcija predstavnika pravosuđa o nasilju nad ženama i porodičnom nasilju*, 2017, (hereafter quoted as “Research on the prevalence, perceptions, costs and multidisciplinary response to domestic violence”, 2017). Research carried out as part of the project “Support to anti-discrimination and gender equality policies”, financed by the Delegation of the EU to Montenegro and implemented by UNDP in co-operation with the Ministry for Human and Minority Rights, available at <http://www.me.undp.org/content/dam/montenegro/docs/publications/si/Gender/Istrazivanje%20o%20nasilju%20u%20porodici%20i%20nasilju%20nad%20zenama%202017.pdf>.

61. Moreover, GREVIO notes that the scope of these surveys is restricted to domestic violence only, without covering any other types of gender-based violence (such as forced marriage, rape or stalking). In this respect, GREVIO emphasises that the aim of Article 11, paragraph 2 is to assess, through regular surveys, the prevalence of all forms of violence against women covered by the scope of the Istanbul Convention. This would include attempts at identifying the prevalence of such violence among women belonging to particularly marginalised or disadvantaged groups who are more frequently at risk of violence. Although the 2017 survey deals with women living in rural areas, GREVIO points to the need to enlarge population-based surveys to groups such as Roma and Egyptian women and disabled women in order to gain specific insights into their experience of (multiple forms of) violence and any difficulties they encounter in seeking protection.

62. GREVIO encourages the Montenegrin authorities ‘to carry out prevalence surveys on all forms of violence against women and domestic violence including the (multiple forms of) violence experienced by Roma and Egyptian community and women with disabilities.

3. Research

63. From 2011 to 2015, several research projects were carried out on violence against women in Montenegro. These were studies related to specific topics such as the attitude of institutions towards women facing domestic violence, the role of non-governmental organisations in the fight against violence against women, the situation of Roma and Egyptian women subjected to domestic violence and forced marriage and the issue of economic violence against women. In addition, the Ministry of Justice carried out research to evaluate the implementation of the LDVP six years into its existence.¹⁵

64. GREVIO appreciates that the above-mentioned research projects, conducted almost annually, have revealed important insights into specific aspects of violence against women. However, GREVIO notes that they focus predominantly on domestic violence and only briefly touch upon any other forms of violence against women. For instance, there is no research that would explore the reasons for the low reporting rates of women who experience sexual violence and rape from a non-partner or that would assess any difficulties law enforcement and the judiciary might encounter in handling rape cases.

65. GREVIO notes that the large majority of research projects is funded by foreign donors and carried out by non-governmental or international organisations with little direction and support from the Montenegrin authorities.

66. GREVIO encourages the Montenegrin authorities to step up efforts to support research into manifestations of violence against women that are not currently explored, including by setting research priorities and offering financial support. GREVIO also encourages the Montenegrin authorities to continue to evaluate existing policies and legislative measures to assess their level of implementation, efficacy and victim satisfaction.

¹⁵ *Izveštaj o sprovođenju Zakona o zaštiti od nasilja u porodici za period 2010–2015* (Report on the Implementation of the Law against Domestic Violence for the period 2010-2015), September 2016, Ministry of Justice, available at <http://www.gov.me/biblioteka/izvjestaji?query=nasilja&sortDirection=desc>.

III. Prevention

67. This chapter contains a number of general and more specific obligations in the area of prevention. These include early preventive measures such as changing social and cultural patterns of behaviour of women and men, eradicating prejudices and gender stereotypes, and measures to involve all of society, including men and boys, in achieving gender equality and prevention of violence against women. It also includes more specific preventive measures such as awareness raising and campaigning, ensuring the adequate training of all professionals, education in schools and other settings, and, last but not least, measures such as perpetrator programmes to prevent further victimisation.

68. In Montenegro, public perception of violence against women is shaped by patriarchal attitudes and stereotypes regarding the roles, responsibilities and the expected behaviour of women and men in society and in the family. Respect for the traditional family is strong, including among professionals mandated to intervene in families. Women are frequently ascribed traditional gender roles as mothers and wives. Although more and more women seem to seek more economic empowerment and greater autonomy, tolerance of domestic violence against women seems to persist – among both men and women. At the same time, awareness of what constitutes domestic violence seems to be high, including psychological violence. Respondents to surveys frequently report experiences of psychological violence (controlling behaviour, isolation, creating financial dependency, etc.). The 2017 survey “Violence in family and violence against women” mentioned above shows that psychological violence is the form of domestic violence most frequently experienced by women in Montenegro: 38% of women who had experienced domestic violence at least once in their lifetime had experienced psychological violence compared to 17% who had experienced physical violence and 7% who had experienced sexual violence.¹⁶

69. At the same time, half the respondents (48%) believed that domestic violence is a family matter and need not always be reported and two-thirds (67%) believed that reporting such violence would lead to divorce. This indicates a tendency to favour maintaining the family unit over the wellbeing of its individual members. Most respondents attribute domestic violence to substance abuse, gambling or poverty of the perpetrator, which paves the way for justifications on these grounds.¹⁷

70. Professionals in key institutions such as the Centres for Social Work, law enforcement and the judiciary seem to share such perceptions. There is very little recognition for the gendered dynamics of domestic violence nor for the fact that it is caused by gender inequality and patriarchal attitudes towards women and their role in family and society.¹⁸ Personal beliefs and attitudes of professionals impact decisions taken in respect of domestic violence victims and the perceptions noted above thus continue to shape the response to domestic violence.¹⁹ This suggests that the training dispensed so far has not had the desired effect and would need to tie in with larger scale awareness-raising efforts targeted at society at large.

71. In light of these recent findings, GREVIO notes the importance of carefully designing awareness-raising and educational measures to address the prevailing attitudes and perceptions on domestic violence and other forms of violence against women. Preventive measures and any interventions will inevitably fail if large segments of society and professionals do not fully embrace the notion that domestic violence and other forms of violence are unacceptable manifestations of the power of men over women.

¹⁶ Research on the prevalence, perceptions, costs and multidisciplinary response to domestic violence, 2017, slide 36 of the English summary.

¹⁷ Ibid., slide 10.

¹⁸ Ibid., slide 17.

¹⁹ Ibid., slide 18.

A. Awareness raising (Article 13)

72. The Montenegrin authorities report on awareness raising activities that are carried out annually within the framework of the 16 Days of Activism against Gender-Based Violence, an international campaign that runs from 25 November to 10 December every year. During these 16 days, numerous events and activities are organised throughout the country around the theme of preventing and combating violence against women. NGOs and intergovernmental organisations are active partners in this campaign.

73. As regards longer-term awareness raising campaigns, no information was provided on large-scale public campaigns to reach all or particular sectors of society, for example through the use of public service announcements on television or radio or poster campaigns. It seems that in Montenegro most awareness-raising activities are carried out by NGOs or intergovernmental organisations and that their scope is defined by the available funds and the area of specialisation of the actors involved. As a result, attention is not on all forms of violence against women but on a select few, mainly domestic violence.

74. In this context, GREVIO notes with concern that rape, as a particularly serious form of violence against women, seems to be highly underreported. A total of four rape cases were handled by the prosecution services in three years (2014-2016).²⁰ From the information gathered, very little work seems to be done to lift any existing taboos around rape and sexual violence and to encourage rape victims to report. Awareness-raising activities in this area are thus of crucial importance both in order to empower victims but also as a preventive measure.

75. Important steps have been taken with regard to awareness-raising activities that seek to specifically address Roma and Egyptian women and their heightened exposure to domestic violence, forced marriage and rape. Over the course of 2017, the Montenegrin authorities have, together with international partners, conducted campaigns in twelve Roma and Egyptian settlements to raise awareness of violence against women and child marriage. Most previous initiatives seem to have been ad hoc and mainly conducted by Roma women's NGOs. Regular and government-backed awareness-raising activities are important to step up efforts to raise awareness of harmful traditions and practices that exist and must be overcome. Such efforts should be embedded in community-based work that is empowering and that seeks to create change from within. Any such awareness-raising measures should be adapted to reach Roma and Egyptian women who are often illiterate and with limited access to information.

76. **GREVIO strongly encourages the Montenegrin authorities to :**
- **carry out long-term and regular awareness-raising campaigns that address the attitudes and perceptions around domestic violence that prevail in Montenegro;**
 - **continue to address, through specific awareness-raising efforts, forms of violence such as rape and particularly vulnerable groups of women who may experience multiple forms of violence and discrimination;**
 - **monitor the impact of any awareness-raising campaign.**

B. Education (Article 14)

77. Attitudes, convictions and behavioural patterns are shaped very early in life. Educational establishments therefore have an important role to play in promoting gender equality, mutual respect in interpersonal relationships and non-violent conflict resolution. Article 14 therefore requires the design of teaching material that promotes such values and that enlightens learners with respect to the various forms of violence covered by the scope of this Convention. GREVIO thus welcomes the initiative taken by the Montenegrin Institute of Education in raising awareness of teachers through the programme "Gender equality in education with special emphasis on gender-based violence, non-violent forms of behaviour and conflict resolution". It is unclear, however, whether this is a mandatory programme and how many teachers in Montenegro have benefited from it. Additional efforts are made at training kindergarten teachers on how to give due

²⁰ Data provided on p.48 of the Montenegrin state report.

regard to the principle of gender equality in helping children to develop at pre-school level. Since the academic year 2016/2017, the professional training of teachers includes a programme entitled “Educating the employees of educational institutions on acting, prevention and protection of children and the youth against domestic violence”, originally developed by NGOs and now fully endorsed by the National Council for Education.

78. As far as teaching material for students is concerned, the cross-curricular subject programme on “Civic Education” which is taught both at primary school level (grade 1-9) and high-school level (grade 1-3 or 1-4) contains modules, among others, on gender equality, domestic violence, sexual and reproductive health and the prevention of sexual violence, but it is currently an elective subject.

79. A project led by the NGO Women’s Safe House called “Educating Youth for a Life Beyond Violence” assessed the attitudes of high-school students across Montenegro prior to running educational workshops on violence in intimate relationships. Some of the findings show the dire need for more widespread efforts to change attitudes among young people in Montenegro in order to raise the level of respect for girls in relationships and their right to say no to unwanted sexual advances.²¹

80. While GREVIO recognises the important steps taken by the Montenegrin authorities in heightening the respect among teachers and students for gender equality, mutual respect in inter-personal relationships and non-violent conflict resolution, GREVIO encourages the Montenegrin authorities to make the existing teacher training programmes and school subjects mandatory for all teachers and students.

C. Training of professionals (Article 15)

81. The standard set by the Convention in its Article 15 is that of systematic initial and in-service training of the relevant professionals who deal with victims or perpetrators of all acts of violence. The training that is required must cover the prevention and detection of such violence, equality between women and men, the needs and rights of victims and the prevention of secondary victimisation. The questionnaire drawn up by GREVIO lists, in the table appended to it, the professional groups which GREVIO considers relevant and in need of such training.²²

82. In Montenegro, there is evidence of many singular training initiatives that cover one or more of the above aspects. The NGO Women’s Rights Centre plays an active role in carrying out such trainings in co-operation with the Centre for Judicial Training and Public Prosecution. Funding for training seems to be provided exclusively by the international community present in Montenegro (UNDP, UNICEF, foreign embassies, EU Delegation to Montenegro), and some of these actors also contribute with technical assistance and conceptual support. The professional groups which have benefited from these trainings, seminars and conferences are mainly judges and public prosecutors. No information on similar initiatives in relation to law enforcement officials or to social workers at the Centres for Social Work was provided. Moreover, GREVIO notes that all training events referred to in the state report focussed on domestic violence with no particular emphasis or discussion of other forms of violence covered by the Istanbul Convention.

83. Following the adoption of the Law on the Training Centre for Judges and Prosecutors in 2015, GREVIO notes that the Judicial Training Centre has become an independent institution and is taking on a more prominent role in offering training for judges and prosecutors on the Istanbul

²¹ According to the survey of 580 high-school students of both sexes, every other respondent believed that forcing someone into sexual intercourse does not represent violence. Every third respondent did not consider isolating a girl-friend/boy-friend from their friends as violence in an intimate relationship. The large majority did, however, consider any slapping, punching or pushing a girl-or boy-friend to constitute unacceptable physical violence.

²² These are, at a minimum, police and other law enforcement officials, prosecutors, judges, social workers, medical doctors, nurses and midwives, psychologists (in particular counsellors and psychotherapists), immigration and asylum officials, educational staff and school administrators, journalists and other media professionals, servicemen and women.

Convention and the handling of domestic violence cases. It has adopted an in-service training programme for judges and prosecutors who have completed four years of work experience. This programme contains a six-day module that covers domestic violence (application of the misdemeanour offence of domestic violence vs. the criminal offence of domestic violence, protection orders, taking victims' testimony, domestic violence and the Istanbul Convention, etc.).²³

84. GREVIO welcomes these training efforts and notes that domestic violence now also forms part of the initial training programme for judges and prosecutors. However, numerous concerns have been raised with GREVIO regarding the attitudes many judges and prosecutors display towards women victims of domestic violence, their frequent attempts at downplaying the violence, delays in handling such cases and their overall reluctance to issue protection orders.²⁴ These attitudes play out particularly persistently at the level of the misdemeanour courts where judges seem to understand even less the gendered dynamics of domestic violence and what causes it. Problematic assumptions which attribute domestic violence to alcohol addiction, personality disorders or poverty seem to persist across all professions and must be more thoroughly addressed. The similarly widespread tendency of encouraging women to reconcile with abusive partners must be addressed with equal determination.

85. In view of such persistent concerns, the need for a more systematic approach towards training on domestic violence, its causes and consequences, including its gendered dynamics is all too apparent. This new approach must be result-oriented and lead to a real change in professional and judicial practices. Mandatory protocols for judges and prosecutors on how to handle cases of domestic violence, rape and other forms of violence against women must form part of the training for it to have lasting effect. Any training initiatives of the judiciary and public prosecutors on violence against women should form part of the wider efforts made at professionalising the administration of justice that are currently being made as part of Montenegro's bid to accede to the EU.

86. As far as law enforcement officials are concerned, the training for members of the units that specialise in domestic and sexual violence seems to be helpful, as fewer and fewer complaints surface in relation to the 34 officers who serve these units across the country (predominantly women). It is unclear, however, to what extent patrol officers who first respond to the crime scene receive similar levels of training. The "*Research on the prevalence, perceptions, costs and multidisciplinary response to domestic violence*" revealed that most law enforcement officials are trained on the formal aspects of dealing with a domestic violence case but are much less well-equipped to approach victims with the necessary sensitivity and respect for difficult psycho-social circumstances they may be in.²⁵ As recently as in 2015, a large number of victims of domestic violence indicated, in a survey, their distrust of institutions responsible for protecting victims of domestic violence and their reluctance to report their situation.²⁶ This distrust is not limited to law enforcement but includes Centres for Social Work as another state institution responsible for domestic violence. Social workers at these centres are another professional group who seem to receive very little initial or on-the-job training on the prevention and detection of all forms of violence against women, on adequate responses that centre on the needs and rights of victims as well as on the prevention of secondary victimisation. Frequent concerns have been raised

²³ *In-service Training Programme for Judges or State Prosecutors holding their office for more than four years, Module V*, adopted on 1 February 2016 by the Steering Committee of the Centre for Training in Judiciary and State Prosecution Service at the proposal of the Programme Council pursuant to Article 14 paragraph 1 item 13 of the Law on the Centre for Training in Judiciary and State Prosecution Service, available at: <http://en.sudovi.me/cenp/the-training-programmes/>.

²⁴ *Implementation of Montenegro's Domestic Violence Legislation*, July 2017, co-authored by the Advocates for Human Rights, the SOS Hotline for Women and Children Victims of Violence Nikšić, and the Women's Rights Centre, p.86; Similar complaints were raised during GREVIO's evaluation visit to Montenegro.

²⁵ *Research on prevalence, perceptions, costs and multidisciplinary response to domestic violence*, 2017, slide 32 of the English summary.

²⁶ *Percepcija predstavnika pravosuđa o nasilju nad ženama i porodičnom nasilju* (Perceptions of representatives of the judiciary), November 2015, p.18. Research carried out in the framework of the project "Access to Justice for Victims of Domestic Violence", UNDP Office Montenegro in partnership with the Center for Women's Rights and the Ministry of Human and Minority Rights.

regarding the quality of interventions by Centres for Social Work.²⁷ While there may be several reasons for this, lack of training would clearly appear to be one of them.

87. Similar concerns seem to exist regarding the ability of professionals in educational institutions to recognise and act upon indications of domestic violence which students are exposed to at home – as victims or witnesses. Fear of interfering in a family matter, breaking the trust of the child and other reasons were given by the educational professionals interviewed in the “*Research on the prevalence, perceptions, costs and multidisciplinary response to domestic violence*”.²⁸ More effective training on recognising domestic violence as a human rights violation, not a family matter and how to deal with suspicions of domestic violence would help to alleviate such fears. The Protocol on Actions, Prevention of and Protection Against Family Violence (hereafter “the Protocol”), in existence since 2011, assigns educational facilities an important role in identifying victims of domestic violence. Some steps have been taken to increase teacher’s familiarity with the measures set out in the Protocol and the role of education facilities in reporting domestic violence and other relevant forms of violence against women. These are worth pursuing to enable staff in all educational facilities to identify and respond appropriately to child victims and witnesses of domestic violence.

88. Health care staff seem to be a professional group that has been extensively trained on their reporting obligations in relation to any violent act they may find suspicions upon examining or treating a patient for injuries. As regards sexual violence, each hospital includes a staff member trained to collect gynaecological and forensic evidence. Despite the training on offer, there seems to be much room for improvement regarding the role of the health sector in referring victims of domestic violence to relevant services and the need to act in accordance with the Protocol.²⁹

89. **GREVIO urges the Montenegrin authorities to ensure that training for all professional groups that come in contact with victims, in particular law enforcement officials, prosecutors, judges, social workers, teachers and health professionals, include:**

- **systematic and compulsory initial training on the different manifestations of violence against women, their detection and root causes, as well as the prevention of secondary victimisation;**
- **regular in-service training that is mandatory and based on protocols and guidelines for intervention in cases of all forms of violence against women.**

D. Preventive intervention and treatment programmes (Article 16)

1. Programmes for perpetrators of domestic violence

90. In Montenegro, programmes for perpetrators of domestic violence have been set up following the adoption of the LDVP. This law mandates misdemeanour judges to order a perpetrator of domestic violence as defined in the LDVP to attend mandatory addiction treatment (Article 20, paragraph 4) or mandatory psycho-social therapy (Article 20, paragraph 5). The focus of all relevant institutions has since been on the mandatory addiction treatment programmes which are intended for perpetrators of violence who have acted under the influence of alcohol, drugs or psychotropic substances. Detailed rules on the implementation of such programmes were developed by the Ministry of Health in April 2012. These programmes are hospital-based and are administered either for in- or outpatients. Victims must be informed when perpetrators are discharged and follow-up visits are paid by the hospital staff soon after. The approach these programmes seem to take is one of medical treatment of addiction and mental health issues – with

²⁷ *Implementation of Montenegro’s Domestic Violence Legislation*, p.33-35; Similar complaints were raised during GREVIO’s evaluation visit to Montenegro.

²⁸ *Research on the prevalence, perceptions, costs and multidisciplinary response to domestic violence*, 2017, slide 26 of the English summary.

²⁹ *Ibid.*, slide 27.

much less focus on addressing the violent behaviour as such. They do not seem to focus on achieving behavioural change in perpetrators of domestic violence by emphasising the need to take responsibility for their violent behaviour but seem to suggest that overcoming addiction and mental health issues will, in and of itself, put an end to the violence.

91. Although defined as a priority in both the previous and the current strategy on protection from violence, psycho-social therapy for perpetrators of domestic violence as envisaged by the LDVP has not yet become available. As a result, orders to attend perpetrator programmes seem to have only been issued with regard to perpetrators of domestic violence with addiction or mental health issues. This situation reinforces the unfortunate perception that domestic violence is caused by substance abuse or mental health problems. To comply with Article 16 of the Istanbul Convention, GREVIO points to the urgent need to set up adequate perpetrator programmes that incorporate the core elements set out in the Explanatory Report to Article 16 of the Istanbul Convention.³⁰ Among these is the need to ensure that programmes encourage perpetrators to take responsibility for their actions and examine their attitudes and beliefs towards women. A core principle of perpetrator programmes is their close co-operation with women's specialist support services. To protect women from further violence and avoid giving victims a false sense of security, priority consideration must be given to the needs and safety of victims, including their human rights.

92. The existing hospital-based perpetrator programmes in Montenegro lack respect for some or all of the above core elements and need to be revised to ensure greater attention is paid towards changing a perpetrator's attitudes and beliefs regarding gender roles, women and power. They must also pay greater attention to the safety of women and children, especially where they still live with the abuser.

93. According to information received during the evaluation visit to Montenegro, work is underway to introduce a different type of programme for domestic violence perpetrators. The first voluntary group-based perpetrator programme will soon become operational at the guidance clinic in Nikšić. This programme is based on a Norwegian model and will include risk assessment and other safeguards for victims. For further guidance on the essential principles of domestic violence perpetrator programmes, GREVIO points to the collection of papers on the Istanbul Convention, one of which addresses what works in setting up domestic and sexual violence perpetrator programmes.³¹

94. **GREVIO strongly encourages the Montenegrin authorities to move away from perpetrator programmes based exclusively on medical treatment for substance abuse and mental health problems and to set up mandatory psycho-social treatment programmes as required by Article 20, paragraph 5 and Article 25 of the LDVP. Moreover, GREVIO encourages the Montenegrin authorities to expand their work in also setting up voluntary perpetrator programmes and to ensure that all programmes are in line with the core elements as set out in the Explanatory Report to Article 16 of the Istanbul Convention.**

2. Programmes for sex offenders

95. Sex offender programmes seem to exist for convicted offenders serving a prison term. No information as to the nature of such programmes or their attendance rates was provided.

³⁰ See paragraphs 103 and 104 of the Explanatory Report to the Istanbul Convention.

³¹ *Domestic and sexual violence perpetrator programmes: Article 16 of the Istanbul Convention*, Council of Europe, Strasbourg 2014, available at: <https://rm.coe.int/168046e1f2>.

E. Participation of the private sector and the media (Article 17)

96. Two legislative acts exist in Montenegro that are of relevance to this article: (1) the Law on Media which prohibits any content that incites discrimination, hatred and violence because of a person's sex or sexual orientation (Article 23), and (2) the Law on Gender Equality which prescribes the media to promote gender equality (Article 13). The latter also envisages mandatory training on gender equality for media professionals (Article 13a) as well as sanctions for the use of language that is not gender-sensitive (Article 33a). All media (TV, radio, print and online media) are bound by these provisions. Compliance is supervised by the Agency for Electronic Communication in as far as radio and TV broadcasters are concerned. No compliance mechanism exists regarding print and online media. Acting upon complaints filed by viewers or *ex officio*, this agency has the power to remove content that is in violation of the provisions that ensure programme standards as set out in the Rulebook on Programme Standards in the Electronic Media.³² One example is the removal of security camera footage of the murder of a woman by her partner aired by a TV broadcaster.

97. GREVIO welcomes the sensitivity in relation to the portrayal of victims of violence against women which the Agency for Electronic Media displays. It notes with regret, however, that the above-mentioned rules on programme standards and their enforcement mechanisms are not applicable to print and online media. Although complaints in relation to media content produced by print and online media can be made to the courts and the Ombudsman, it would be important to ensure that all media are subject to the same standards and quality control or enforcement mechanisms.

98. Despite the above steps and some progress made in curbing the sensationalist approach pursued by some broadcasters and media outlets, reports on incidents of rape and domestic violence are rarely balanced and tend to blame victims for what has happened to them.³³ Ethical standards for journalists that exist in the form of self-regulatory standards do cover guidance on how to report on violent acts and to refrain from any prejudice against victims.³⁴ This Codex was signed by several professional associations of journalists and prohibits any media content that engenders or is likely to engender hostility towards a person on the ground of gender, among others (Principle 5), but does not address issues around the stereotypical portrayal of women. Journalistic work that is based on stereotypes of women and which reflects patriarchal values may not necessarily engender hostility towards women but it does perpetuate attitudes around women and their victimisation that are equally harmful. It is thus essential to involve the media in larger efforts to raise awareness of the different forms of violence that women are exposed to because of their gender, patriarchal attitudes and gender roles. Media professionals are thus both a target group for awareness-raising and potential agents for change in this important work in order to change sexist attitudes that seem to prevail in Montenegrin society. In this context, GREVIO regrets the fact that the training of journalists on how to report on incidents of violence against women was one of the measures of the previous Strategy on Protection from Domestic Violence that was not implemented.

99. The obligation contained in Article 17 of the Istanbul Convention requires parties actively to encourage the media and the private sector as a whole to engage in the prevention of violence against women, through self-regulation and codes of ethics, both as employers and as producers of media content, goods and services. No information was provided regarding any measures taken to this effect by the Montenegrin authorities. GREVIO therefore recalls the guidance provided in the collection of papers on the Istanbul Convention to enable state parties to tap into the potential

³² Montenegro Council of the Agency for Electronic Media, Rulebook on Programme Standards in the Electronic Media, "Official Gazette of Montenegro", No 035/11 of 21 July 2011, 007/16 of 29 January 2016.

³³ Information provided by media activists during the evaluation visit.

³⁴ Codex of Montenegrin Journalists, 2002, available at: http://ethicnet.uta.fi/montenegro/codex_of_montenegrin_journalists.

offered by the private sector in changing attitudes of the public at large and overcoming gender stereotypes.³⁵

100. GREVIO encourages the Montenegrin authorities to step up efforts to train journalists on the different forms of violence against women and gender-based violence and how to report on them. GREVIO further encourages the Montenegrin authorities actively to encourage the private sector to take an active part in preventing and combating violence against women in all its forms.

³⁵ *Encouraging the participation of the private sector in the prevention of violence against women and domestic violence: Article 17 of the Istanbul Convention*, Council of Europe, Strasbourg 2016, available at: <https://rm.coe.int/16805970bd>.

IV. Protection and support

101. Chapter IV of the Istanbul Convention aims at a multi-faceted, professional and victim-oriented support structure for any woman who has experienced any of the forms of violence covered by the Convention.

A. General obligations (Article 18)

102. In line with the general multi-agency and comprehensive approach promoted by the Istanbul Convention, Article 18, paragraph 2 requires parties to ensure that there are appropriate mechanisms in place that provide for effective co-operation among the judiciary, public prosecutors, law enforcement agencies, local and regional authorities and NGOs. This would require the establishment of any structure such as round tables, case conferences or agreed protocols that would enable a number of professionals to co-operate on individual cases in a standardised manner. According to the Istanbul Convention, such co-operation must be based on a gendered understanding of violence against women and domestic violence and focus on the human rights and safety of the victim. Specialist women's support services play an important role in guaranteeing that the rights of victims are safeguarded in multi-agency co-operation.

103. Many initiatives have been taken in Montenegro to institutionalise co-operation around domestic violence cases. The LDVP recognises that the duty to provide victims of domestic violence with full and co-ordinated protection extends to many governmental institutions, including the police, misdemeanour courts, prosecutors, Centres for Social Work, health care institutions, and other institutions that act as care providers. Those institutions must prioritise dealing with cases of domestic violence and ensure mutual communication and provide assistance in order to prevent and detect violence, address its causes, and provide assistance to victims in rebuilding their lives (see Article 5 of LDVP). In addition, the law introduces multi-disciplinary teams to "organise, monitor and promote co-ordinated and efficient protection" from domestic violence (see Chapter II, Section A Comprehensive and co-ordinated policies).

104. The Protocol on Actions, Prevention of and Protection Against Family Violence (the Protocol), in existence since 2011, seeks to equip all relevant actors with practical guidance to ensure, in their daily work, a co-ordinated approach to cases of domestic violence. It sets out specific measures to be taken by responsible institutions in each sector and further identifies a set of obligations for all authorities: law enforcement agencies, Centres for Social Work, the health sector, judiciary, and the educational sector (where children are concerned). It thus represents an important checklist on how to handle a domestic violence case in a co-ordinated manner and is of great value in professionalising the response by all relevant institutions. GREVIO notes, however, that specialist women's support services are not included, excluding an important sector of support in Montenegro. Furthermore, the Protocol does not promote any co-operation of statutory agencies with women's support services in the support of victims. For example, the list of specific actions to be taken by law enforcement agencies when a case of domestic violence is reported does not recommend referring victims to women's support services or even informing them of their existence. GREVIO welcomes that these concerns are being addressed and that plans exist to review the Protocol with a view to incorporating a higher degree of co-operation of all relevant agencies and NGOs as service providers as well as the Protector of Human Rights.

105. Despite the above, GREVIO notes with concern that women victims of domestic violence frequently experience obstacles in reporting the abuse, ensuring their own security and establishing viable solutions for their future and that of their children. Women's economic dependence on male breadwinners frequently dissuades them from reporting domestic violence as they risk losing custody over their children if unable to provide for them or when they move to a shelter. Many interventions by professionals from all sectors prioritise the protection of the family as a unit and do not place the rights and needs of women at their centre. Attitudes and beliefs around gender roles and patriarchy persistently stand in the way of interventions that would support and empower women to lead a life free from violence - with their children. Examples of secondary victimisation of women who report domestic violence are widespread and can be

quoted from all sectors. These range from charging victims for injuries inflicted upon the abuser in self-defence, the tendency to downplay the violence and suggest reconciliation, the insistence on mediation in divorce proceedings between victim and abuser and the lack of proper risk assessment and management throughout the process. Although addressed in detail throughout the report, GREVIO wishes to recall the importance of avoiding secondary victimisation by treating victims with sensitivity and full respect for the devastating effects of domestic violence and the length of the recovery process.

106. Furthermore, GREVIO draws attention to the fact that the above efforts to ensure co-ordination and co-operation, however weak in their implementation, are limited to domestic violence as one form of violence covered by the Istanbul Convention. Similar measures do not exist in relation to any other form of violence against women this Convention addresses.

107. GREVIO strongly encourages the Montenegrin authorities to step up efforts to ensure compliance, among all relevant institutions, with the existing obligations to cooperate on domestic violence cases with a view to making interventions more effective and respectful of the rights and needs of victims. Furthermore, GREVIO strongly encourages the Montenegrin authorities to continue to pursue efforts to institutionalise co-operation of all relevant institutions among themselves and with women's support services run by NGOs in relation to cases of rape and sexual violence, forced marriage, stalking, sexual harassment and other forms of violence covered by the Istanbul Convention.

B. Information (Article 19)

108. Very little information on support services and legal measures is systematically made available to women victims of violence.³⁶ A recent publication issued by the Supreme Court of Montenegro informs victims of domestic violence and trafficking in human beings of their rights as witnesses in court proceedings and posters exist to advertise the number of the new national telephone helpline on domestic violence (see Section F. Telephone helplines). Additionally, women's support services produce (and fund) their own leaflets in order to inform victims of the services they provide. The availability of leaflets and other information material is particularly important in rural areas where specialist support services are scarce, and are thus not visible. Where information is provided, it is usually in relation to domestic violence. Information targeting victims of other forms of violence does not seem to be available, even where some services exist (see for example forensic services that are provided to victims of rape and sexual violence).

109. GREVIO notes with concern that, nevertheless, victims of domestic violence are not always aware of their rights. For example, statutory agencies rarely inform them of their right to obtain a protection order against their abuser,³⁷ nor of their right to legal aid. Neither do they provide information on women's specialist support services nor do they actively refer victims to such services.³⁸ Centres for Social Work also frequently fail to inform victims of the full range of options available to them, in particular those which women can pursue on their own initiative (such as applying for a protection order, initiating misdemeanour proceedings and choosing a "confidant" to support her throughout the process). This lack of a pro-active approach to providing information to victims runs counter to the measures set out in the Protocol. It curtails victim autonomy and is disempowering. Efforts must thus be stepped up to ensure that women who experience all forms of violence covered by the Istanbul Convention know that it is not a private matter and that specialist support services are available to provide professional support and counselling.

³⁶ See also *Supporting the Sustainability and Autonomy of Women's Organisations providing Services in Eastern Europe for Women and Children survivors of Domestic Violence*, WAVE, 2014, p.120, available at: http://files.wave-network.org/researchreports/Supporting_Eastern_Europe_2_2015.pdf.

³⁷ *Implementing Domestic Violence Legislation in Montenegro*, p.23.

³⁸ *NGO Report on the implementation of the Council of Europe Convention on preventing and combating violence against women and domestic violence in Montenegro*, 2017, co-authored by the Women's Rights Centre, Women's Safe House, SOS Hotline for Women and Children Victims of Violence in Nikšić and the SOS Hotline for Women and Children Victims of Violence Podgorica, p.112; and *Implementing Domestic Violence Legislation in Montenegro*, p.24.

110. **GREVIO encourages the Montenegrin authorities to ensure the wider dissemination of information on the support services and legal measures available to victims of domestic and other forms of violence against women. This would include measures such as the dissemination of posters and leaflets as well as the intensification of efforts to ensure that professionals of all relevant institutions take a more pro-active approach towards informing victims of the available legal measures and support (provided by specialist support services or statutory agencies).**

C. General support services (Article 20)

111. Social services have an important role in providing social and child protection. Domestic violence victims are specifically listed among the range of clients that may benefit from assistance from the Centres for Social Work (see Article 4 of the Law on Social and Child Protection). Assistance can take on many forms, including material benefits, emergency accommodation, urgent interventions, and psycho-social counselling. It is unclear to what extent Centres for Social Work are mandated to work on other forms of violence against women and girls.

112. The assistance provided to domestic violence victims by Centres for Social Work forms part of a wider co-ordinated system set out by the LDVP and in which the Centres for Social Work play a leading role. This role includes preventing and detecting violence, ending its causes and providing assistance (including accommodation) to victims. Together with law enforcement agencies, the Centres for Social Work are mandated to act as first responders to domestic violence cases, although they are rarely the first choice of most victims.³⁹

113. The information obtained during the evaluation procedure revealed extensive criticism of the Centres for Social Work from a wide range of governmental and non-governmental actors. Indeed, it appears that their track record in discharging their role to protect and support victims of domestic violence is mixed, although GREVIO notes the high level of personal investment and sincere wish to improve that was evident among staff members of those Centres GREVIO met with during its evaluation visit.

114. Among the well-documented shortcomings of the Centres for Social Work, GREVIO wishes to highlight the serious level of under-staffing and under-resourcing as well as the wide range of tasks they are expected to fulfil. Responsibilities seem to have increased with every attempt at improving the government response to combating domestic violence but this has not translated into an increase in staff and budget. Social workers at the Centre in Podgorica act as case managers for as many as 70 families with complex social needs, including issues of domestic violence. The portfolio of all social workers is mixed, meaning there are no specialised social workers on domestic violence who would approach the issue from a gendered understanding and with a view to women's need for safety, protection and empowerment. Specialisation exists only with regard to children, which would seem to explain the focus on children noticeable in many domestic violence interventions.

115. This situation often leads to interventions which fail to result in protection orders, although Centres for Social Work may obtain such orders for their clients. Similarly, women are frequently not informed of their right to legal aid provided for under the LDVP nor of the possibility of applying for a protection order in their own right.

116. Despite many training initiatives, social workers do not always seem to be aware of the dynamics of domestic violence, and the impact that witnessing such violence may have on children. Their focus is frequently on the protection of the family unit, and widespread societal attitudes and personal beliefs about women victims of domestic violence may all too often affect

³⁹ Data collected by Centres for Social Work indicates that very few victims of domestic violence seek help from social services. Most seem to prefer support services provided for by NGOs. See *Implementing Domestic Violence Legislation in Montenegro*, p.31

decisions taken. Although obliged by law to draw up victim safety plans, this is not always done, or it is done without consultation of the victim and without any proper risk assessment.⁴⁰

117. The reports drawn up by the Centres for Social Work have great authority in family law courts as well as in criminal proceedings. Thus their assessment of the situation is a crucial element for criminal justice and will impact a woman's right to live free from violence but with her children.

118. Levels of co-operation with other statutory agencies and NGO-run specialist support services vary, and Centres for Social Work are repeatedly criticised for not calling MDT meetings.

119. GREVIO strongly encourages the Montenegrin authorities to provide adequate resources to allow the Centres for Social Work to discharge their responsibilities in an effective manner. It further invites the authorities to provide training for the social workers specifically on the gendered nature of violence against women, including domestic violence, and to appoint specialised social workers in this field.

D. Specialist support services (Article 22)

120. The aim of 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 against women. It is important to ensure that these services are sufficiently spread throughout the country and accessible to all victims. Moreover, these services and their staff need to be able to address the different types of violence covered by the scope of the Istanbul Convention and to provide support to all groups of victims, including hard-to-reach groups.

121. The types of support that such dedicated services need to offer include providing shelter and safe accommodation, immediate medical support, the collection of forensic medical evidence in cases of rape and sexual assault, short and long-term psychological counselling, trauma care, legal counselling, advocacy and outreach services, telephone helplines to direct victims to the right type of service and specific services for children as victims or witnesses.⁴¹

122. In Montenegro, most specialised services are currently provided by NGOs, most of which operate on feminist principles and a gendered understanding of violence against women. They do not, as of yet, provide counselling and support in relation to the full range of violence against women covered by the Istanbul Convention and do not operate across the country.⁴² The counselling service for domestic violence victims in Nikšić has set up mobile teams to reach out to women victims of domestic violence in rural communities to make up for the lack of services in these regions. Most NGOs however operate in urban areas.

123. The Government of Montenegro is aware of the need to further expand the number and types of services. To this end, the current Strategy on Domestic Violence Protection lists, among its measures, the development of a national plan for the improvement of specialist support services to heighten compliance with the standards of the Istanbul Convention. GREVIO welcomes the needs assessment which is to serve as a basis for proposals to be made as to the expansion of services. GREVIO points to the urgent need of specialist support services for forms of violence such as rape and sexual violence that are not yet available to victims in Montenegro.

124. The plans announced by the Government of Montenegro to introduce a licensing scheme for NGOs is creating some momentum to diversify and expand the spectrum of support services available. At the same time, it is creating opportunities for service providers that operate on a more

⁴⁰ *Implementing Domestic Violence Legislation in Montenegro*, p.33.

⁴¹ See paragraph 132 of the Explanatory Report to the Convention.

⁴² Apart from the Centre for Roma Initiative in Nikšić, which addresses forced marriage among other social issues affecting members of the Roma communities, all specialist services offer support only to victims of domestic violence.

family-focussed approach instead of the empowerment of women as individuals with human rights. A new counselling service for women with children who are victims of domestic violence has recently been set up in Bijelo Polje which offers support exclusively to women with children in order to solve their family problems.⁴³

125. Recalling the importance of specialist support and counselling for women who have experienced any of the forms of violence covered by the Istanbul Convention, GREVIO urges the Montenegrin authorities to expedite work on the national plan for the improvement of specialist support services for victims of violence against women and to ensure counselling and support exists throughout the country and in relation to all forms of violence covered by the Istanbul Convention.

E. Shelters (Article 23)

126. In Montenegro, three domestic violence shelters exist (Podgorica, Nikšić and Berane) with a total capacity of 38 (women and children). They provide emergency and longer-term accommodation for women and children fleeing from domestic violence. Additionally, they offer support in the following areas: legal advice, psychological support and counselling services, legal representation, accompaniment to court and mediation sessions as well as finding employment. Their assistance is of crucial relevance in all official procedures, and considerably increases women's chances of obtaining an emergency barring or protection order. GREVIO welcomes the comprehensive support offered by these women's organisations.

127. No shelters exist for girls and women fleeing from or at risk of a forced marriage. To ensure emergency accommodation where the need arises, victims of forced marriage are, at times, admitted to the shelter for victims of trafficking in human beings run by the state.

128. The domestic violence shelters in Montenegro are often filled to capacity, and many women seeking refuge cannot be accommodated. Although efforts have been made in the past to reach out to Roma women to ensure they benefit from the services offered by shelters, Roma rights services point to difficulties Roma women have in finding safe accommodation. The small overall number of shelter places available might easily contribute to this situation.

129. GREVIO recalls that the Istanbul Convention requires shelters in "sufficient numbers", referring to the standards set out in the Final Activity Report of the Council of Europe Task Force to Combat Violence against Women, including Domestic Violence which recommended one family place per 10 000 head of population.⁴⁴ According to this standard, Montenegro would require an additional 25 shelter places. GREVIO welcomes the endeavours by the authorities of Montenegro to fund NGO-run and licensed domestic violence shelters in the Northern part of Montenegro, where such services currently do not exist.

130. Aware of the need to increase the availability of emergency accommodation for victims of domestic violence, the authorities are considering the setting up of state-run crisis centres but no plans seem to exist regarding the expansion of longer-term accommodation. Plans do exist, however, to ensure, through a licensing scheme for providers of accommodation for women and children in need of social protection and support, higher quality support. The Ministry of Labour and Social Welfare thus seeks to introduce a system of accreditation which the existing domestic violence shelters would need to comply with to continue their work. GREVIO notes that this is done for the purpose of ensuring quality support and to keep in line with the requirements of the Law on Social and Child Protection, but is concerned that this will result in more control. This may negatively impact the existing NGO services operating on a gendered understanding of violence against women, shifting the focus away from being women-centred.

⁴³ The full title of the service is "Public Institution for Support to Children and Family Bijelo Polje".

⁴⁴ See paragraph 135 of the Explanatory Report to the Convention.

131. **GREVIO strongly encourages the Montenegrin authorities to ensure that the introduction of the licensing scheme for service providers does not affect the quality of the services currently provided to victims of domestic violence. To this end, GREVIO strongly encourages the Montenegrin authorities to include in the accreditation the requirement to ensure all services are carried out on the basis of a gendered understanding of domestic violence and with a view to empowering women victims and their children.**

F. Telephone helplines (Article 24)

132. In 2015, the Government of Montenegro introduced a single national helpline (free of charge and available 24/7) for women and children victims of domestic violence. Originally exclusively funded by the EU Delegation to Montenegro, the Government of Montenegro has now taken on a 50% share of the costs while the other half is covered by donations to the NGO running the helpline. It is run by the SOS line for women and children victims of violence, Nikšić, which has existed for some time, thus ensuring quality counselling with specialist knowledge in the area of violence against women and human rights. Its services are offered in Montenegrin and Albanian and often include follow-up on cases, especially if victims are from regions where local specialist services do not exist and referrals cannot be made.

133. GREVIO welcomes the existence of this helpline but notes that its scope is limited to domestic violence. It is unclear to what extent victims of rape, forced marriage, sexual harassment or stalking would receive support and counselling. Furthermore, GREVIO notes the existence of five local helplines in parallel to the national line.

134. **GREVIO encourages the Montenegrin authorities to provide resources for and promote an agreement between the existing help-lines to work in unity, ensuring consistency and to expand their remit to all forms of violence covered by the Convention.**

G. Support for victims of sexual violence (Article 25)

135. There are no rape crisis or sexual violence referral centres in Montenegro. Upon reporting a rape or any other act of sexual violence to the law enforcement agencies, women are taken to hospital (a general hospital or the Clinical Centre of Montenegro) for a medical and forensic examination. Standard procedure requires a thorough general examination to document injuries and secure forensic evidence for storage until the victim has taken a decision on whether or not to report the incident. Instances of rape seem to be significantly underreported due to the cultural stigma that attaches to victims (see Chapter III).⁴⁵ Rape victims' experiences with the criminal justice system indicate deeply ingrained societal attitudes that hamper effective judicial outcomes, which only adds to the reluctance to report. In the absence of any psychological counselling and trauma support or any other support for victims of rape, they are entirely alone with their experience. GREVIO is therefore concerned that although victims are under no obligation to report, law enforcement officials are so obliged. Prosecution of rape is then initiated *ex officio*, within a seemingly insensitive system that offers little or no support to rape victims.

136. GREVIO recalls the particularly traumatic nature of sexual violence, including rape, and the importance of ensuring a sensitive response by trained and specialised staff. Victims of this type of violence need immediate medical care and trauma support combined with immediate forensic examinations to collect the evidence needed for prosecution. Furthermore, there is often a great need for psychological counselling and therapy – often weeks and months after the event.⁴⁶

⁴⁵ See also *Multi-country study on violence against women support services*, National Report: Montenegro, UN Women report (unpublished), 2016, p.46.

⁴⁶ Explanatory Report to the Convention, paragraph 138.

137. **GREVIO urges the Montenegrin authorities to set up rape crisis and/or sexual violence referral centres, ensuring a sensitive response by trained and specialised staff, in sufficient numbers, recalling that one such centre should be available per every 200 000 inhabitants and that their geographic spread should make them accessible to victims in rural areas as much as in cities.**⁴⁷

H. Protection and support for child witnesses (Article 26)

138. The obligation set out in this article is to ensure that whenever children have witnessed domestic violence, rape, sexual harassment or other forms of violence covered by the Convention, the services provided to direct victims are also equipped to address the needs and rights of any children who were present. While this is most relevant to domestic violence cases, it is important to bear in mind that other forms of violence may also be witnessed by children.

139. Research has shown that children who witness one parent's assaults on another in the home often develop emotional problems, cognitive functioning disorders and accept attitudes around violence that need to be addressed in the long term.⁴⁸

140. GREVIO thus welcomes the recognition afforded to the harmful effect of witnessing domestic violence in the legislation and official documents in Montenegro. Article 36, paragraph 2 of the LDVP sets out a higher penalty for any act of domestic violence committed in the presence of a child, and the Protocol clearly equals witnessing domestic violence with experiencing it directly in terms of the action it requires from statutory agencies.

141. However, difficulties seem to persist in how statutory agencies assess the level of risk to a child who has witnessed violence by his or her father. Many law enforcement officials and social workers at the Centres for Social Work consider, in actual practice, child witnesses of domestic violence to be in less danger compared to children who experience violence directly and frequently recommend contact with the father (see Chapter V, Section on Article 31). Awareness among the judiciary is low as to the harmful effect that witnessing violence by a father against a mother can have on the child. Victim assistance plans drawn up by the Centres for Social Work for victims of domestic violence shall include child protection measures where the victim is a minor child (Article 11 of the LDVP). It is unclear, however, if the definition of "victim" in this context includes a child who has witnessed, not experienced, domestic violence.

142. As regards counselling services for child witnesses of domestic violence, Centres for Social Work rarely offer or require counselling for children, and if so, for direct victims only. These Centres generally lack the capacity to offer such services although this type of work would fall within their area of responsibility.

143. Specialist support services for women victims of domestic violence generally aim at including children in their counselling services⁴⁹ but frequently lack the resources to do so in a sustained manner.

144. **GREVIO urges the Montenegrin authorities to step up measures to ensure wider levels of awareness of the harmful effects of witnessing domestic violence on children and to provide adequate resources for psycho-social counselling for these children.**

⁴⁷ Explanatory Report to the Convention, paragraph 142.

⁴⁸ *Problems associated with children's witnessing of domestic violence*, Jeffrey L. Edleson, VAW Net, available at http://vawnet.org/sites/default/files/materials/files/2016-09/AR_Witness.pdf and last accessed on 11 January 2018.

⁴⁹ See also *Multi-country study on violence against women support services*, National Report: Montenegro, UN Women report (unpublished), 2016, p.47.

I. Reporting (Article 28)

145. Montenegrin legislation envisages extensive reporting obligations for professionals who may, in the course of their work, come in contact with victims of domestic violence.

146. Article 9 of the LDVP requires a member of any state administration or public agency, health, educational and other institution to report any (confirmed) incident of domestic violence which they discover in the discharge of their duties. Failure to report gives rise to a misdemeanour offence under Article 39 of the LDVP and is punishable by a fine.

147. Suspicions of domestic violence are to be reported, without delay, to the law enforcement agencies under the Protocol. Social workers at the Centres for Social Work, health professionals and, where children are suspected to be subjected to or witnessing domestic violence, education staff at all levels must take immediate action to report their suspicion to the law enforcement agencies. Although the Protocol is limited to measures to be taken in cases of domestic violence, those hospital staff interviewed by GREVIO have confirmed that they systematically report cases of sexual violence (including outside the family) to law enforcement, although this practice may not be uniform throughout Montenegro.

148. Extensive reporting obligations for health care staff raise issues around victim autonomy. A fundamental element of the doctor-patient relationship is that of confidentiality, and health care professionals are generally required to respect patient confidentiality. This is based on the notion that individuals should not be prevented from seeking medical treatment for fear of a disclosure of his or her condition to a third party. A confidential relationship is a prerequisite to providing patients with a correct diagnosis and the best possible medical care. This is even more important for victims of domestic violence, rape, sexual violence or other forms of violence covered by the Convention. At the same time, health care staff, in particular general practitioners, play an important role in identifying victims of domestic violence and may very well be the only professional to know about a woman suffering from abuse.

149. The obligation entailed by Article 28 of the Convention is thus carefully worded in order to allow health care staff, where they have reasonable grounds to believe that a serious act of violence has been committed and that further serious acts of such violence are to be expected, to report their suspicion to the competent authorities without risking to be sanctioned for breaching their professional duty of confidentiality. The Explanatory Report explicitly states that this provision does not impose an obligation on such professionals to report.⁵⁰

150. As regards Roma and Egyptian girls at risk of forced marriage, specialist support services have reported a certain reluctance among teachers and other educational professionals to report longer absences from school. In some instances, such absences indicate an urgent need to act as girls might be kept home for wedding preparations or because marriages have already been concluded. This demonstrates the need to explore measures to report on and prevent forms of violence other than domestic violence.

151. **GREVIO encourages the Montenegrin authorities to ensure that the duty to report is tempered by full and sensitive information being provided to the victim to allow her to make an informed decision herself and maintain autonomy, whilst also ensuring the safety of all, especially minors.**

⁵⁰ Explanatory Report to the Convention, paragraph 147.

V. Substantive law

152. Chapter V of the Istanbul Convention covers a range of provisions related to substantive law, both in the area of civil and criminal law. Their aim is to help create, in all parties to the Convention, the necessary legislative framework to prevent violence against women, protect them from further victimisation and to ensure robust intervention and prosecution by law enforcement agencies. In the interest of prioritisation, this section of the report addresses several but not all provisions of Chapter V of the Convention.

A. Civil law

1. Civil remedies against the state – ensuring due diligence (Article 29)

153. A core aim of the Convention is to end impunity for acts of violence against women. This not only requires that individual perpetrators be held accountable through criminal law and other measures, but also that legal avenues be available to challenge and address any wrong-doing by state actors. If a state agency, institution or individual official has failed diligently to prevent, investigate, and punish acts of violence (Article 5 of the Convention), victims and/or their relatives must be able to hold them accountable.

154. The evaluation procedure in respect of Montenegro has not revealed the existence of any civil remedies which a victim of violence against women, including domestic violence, may take against the perpetrator or the state officials that have failed in their duty to take the necessary preventive or protective measures within the scope of their powers.

155. However, a range of administrative and disciplinary measures as well as criminal offences exists to enforce the diligent discharging of professional obligations. For example, Article 10 of the Law on Social and Child Protection envisages the possibility of filing a complaint to the public administration authority competent for social protection affairs if an individual is dissatisfied with the service provided by the Centres for Social Work or the procedure or behaviour encountered. The LDVP establishes misdemeanour offences for (i) public officials, including staff in health care, social care institutions and education who fail to report an incident of violence or a violation of a protection order (Article 39, paragraph 1 and Article 32), and (ii) for a person, who discovers a violation of a protection order in the discharge of his duties but fails to report. Articles 416 and 417 of the Criminal Code set out penalties for refraining to perform official duties, including supervision, and for other improper behaviour in an official capacity. Article 386 of the Criminal Code criminalises the failure to report a serious criminal offence which carries a prison sentence of more than five years.

156. Disciplinary action is, in principle, possible against judges and prosecutors for breaches of their respective codes of ethics. However, the track record of the Judicial Council (and the Prosecutorial Council) of handling disciplinary proceedings is mixed.⁵¹ Mechanisms to enforce disciplinary penalties are not yet effective and public awareness of existing complaint mechanisms seems to be low.⁵²

157. Disciplinary action against law enforcement agents may be taken on the basis of Article 106, paragraph 1, item 4 of the Law on Internal Affairs for violation of the Code of Police Ethics. GREVIO is aware of two cases in which the Ministry of Interior conducted disciplinary proceedings against law enforcement officials who had physically abused their wives (and, in one case, the son). Both were ordered to pay a percentage of their monthly salary as a fine but no other disciplinary measures were taken. More importantly, no criminal or misdemeanour charges seem to have been pressed. GREVIO is concerned by such a lenient approach towards public officials

⁵¹ European Commission Montenegro 2016 Report, 9 November 2016, Chapter 23: Judiciary and fundamental rights, p.54-55.

⁵² *Ibid.*, p.55.

who are perpetrators of violence against women. The Istanbul Convention calls for zero tolerance towards all acts of violence against women, in particular committed by public officials. Allowing perpetrators of domestic violence to continue to serve as law enforcement officials only adds to the widespread sense of impunity among domestic violence perpetrators.

158. Individual complaints about the failure of public officials to act in cases of domestic violence or other forms of violence may also be brought to the Ombudsman (Protector of Human Rights and Freedoms) under the Law on the Prohibition of Discrimination, the Law on Gender Equality and the Law on the Protector of Human Rights and Freedoms. Cases brought before it have dealt with, among others, the inaction of state officials that has led to the murder of a woman. Its decisions and recommendations are addressed to the parties concerned and aim to pinpoint poor institutional practice and structural issues but are not legally binding. The Ombudsman may also initiate or intervene in court proceedings initiated in civil litigation with the consent of the persons discriminated against.

159. GREVIO strongly encourages the Montenegrin authorities to ensure the full use of disciplinary measures as well as misdemeanour and criminal offences in relation to cases of misconduct or failure of state officials to take appropriate action in relation to cases of domestic violence with the aim of ending impunity for officials who fail to carry out their duties.

2. Compensation (Article 30)

160. In Montenegro, compensation may be obtained from the perpetrator as part of the criminal proceedings provided that such action does not “substantially delay the proceedings”. Where this is believed to be the case, or where evidence is insufficient for a conviction, compensation may be sought separately through civil proceedings. Court fees may be waived for this purpose, and free legal aid is available for victims of domestic violence. Civil courts are required to ensure an expeditious handling of compensation claims, although the available data suggest otherwise.⁵³ No information as to the extent of compensation paid has been provided. GREVIO notes that the general indication from women’s support services is that very few women victims of domestic violence receive adequate compensation from perpetrators.⁵⁴

161. Where compensation cannot be obtained from the perpetrator, the Law on Compensation for Damages to Victims of Violent Crimes envisages compensation for physical and psychological damage as well as for loss of earnings to be provided by the state. This law sets out substantial compensation, including, in cases of particular urgency, upfront payments by the state ahead of any claims against the perpetrator. GREVIO notes with concern that this law will only take effect as of full EU membership of Montenegro and that it is not yet in force. GREVIO wishes to draw attention to the fact that the availability of a state compensation scheme to alleviate the absence of compensation paid for by the perpetrator is an obligation not only under the Istanbul Convention, but under the Council of Europe Convention on Action against Trafficking in Human Beings (Article 15) and the European Convention on Compensation of Victims of Violent Crimes (Article 2). Montenegro is a state party to all of these and thus under an obligation to set up a state compensation scheme irrespective of its membership in the EU.

162. GREVIO strongly encourages the Montenegrin authorities to introduce a state compensation scheme as envisaged by the Law on Compensation for Damages to Victims of Violent Crimes irrespective of its accession to the EU.

⁵³ According to the state report (p.23), 12 claims for compensation have been brought by women in 2014. Only four cases are closed (two successfully, two rejected), while one was withdrawn and seven are still pending.

⁵⁴ *NGO Report on the implementation of the Council of Europe Convention on preventing and combating violence against women and domestic violence in Montenegro, 2017*, p. 139.

3. Custody, visitation rights and safety (Article 31)

163. Custody and visitation decisions in relation to families with a history of abuse require a careful balancing of the different interests at stake. Article 31 of the Convention seeks to ensure that incidents of violence covered by the Convention, in particular domestic violence, are taken into account in decisions on custody and visitation rights to ensure that the exercise of these rights do not harm the rights and safety of the victim or children.

164. Montenegrin Family Law mandates courts to limit a child's right to live with his or her parents if it is in the child's best interests, in particular for reasons of domestic violence (Article 63, paragraph 3). The term used in the law is that of "family violence" and it is unclear whether this would include the witnessing of violence by one parent against another. Courts are obliged to cooperate with "custody agencies and other professional services which deal with marriage and family" (Article 363 of the Family Law) and shall ensure that custody and visitation decisions "do not threaten the safety of either a child or victim" (Article 363, paragraph 4 of the Family Law).

165. In practice, judges in family proceedings rarely seek to investigate violence in the family and procedures seem to be lacking to ensure information flows across institutions. Judges are not routinely aware of protection orders (past and present) issued by another court. The information provided by Centres for Social Work appears to be frequently limited to reports that prioritise contact with both parents over a full assessment of the risks this might present to a child.⁵⁵ In particular, it seems that recognition of the harmful effects of witnessing domestic violence on children is low among social workers and members of the judiciary in Montenegro. GREVIO recalls that incidents of violence by one parent against another have a severe impact on children. Exposure to such violence breeds fear, causes trauma, adversely affects children's development⁵⁶ and is recognised as a form of mental violence.⁵⁷

166. Moreover, GREVIO notes with concern that although facilities exist, supervised visitation is not frequently ordered by judges to ensure the safety of children and women. Moreover, the human and financial resources of Centres for Social Work do not allow for visitation to be adequately supervised. Several cases of children abducted by their fathers during supervised visitation at Centres for Social Work have been reported to GREVIO, suggesting gaps in the way supervision is provided in practice.⁵⁸ Failure to respect court orders to ensure the safety of women and children who have been ordered to comply with visitation decisions may lead to dramatic consequences for women and their children and must be avoided.

167. At the same time, Centres for Social Work are under an obligation to monitor the exercise of any parental rights and react promptly should any indication arise of abuse and/or neglect. GREVIO is concerned by the many reports of negative bias displayed by staff of Centres for Social Work towards women victims of domestic violence as mothers. Very little support is actively offered to women who wish to protect themselves and their children from further violence while going through the difficult process of obtaining a divorce or separating from the abuser. The complex power dynamics that shape an abusive relationship, as well as its gendered nature, do not seem to be clearly understood. Most steps taken by Centres for Social Work seem to be driven out of concern for the family unit with preference for the rights and traditional role of the male as head of the family. GREVIO recalls the need for more intensified in-service training on the gendered nature of domestic violence, its impact on children as direct victims and witnesses, and the importance of ensuring adequately supervised visitation in a wider variety of cases.

⁵⁵ NGO Report on the implementation of the Council of Europe Convention on preventing and combating violence against women and domestic violence in Montenegro, 2017, p.27.

⁵⁶ Explanatory Report to the Istanbul Convention, paragraph 143.

⁵⁷ UN Committee on the Rights of the Child, General Comment No.13, adopted on 18 April 2011, paragraph 21e, CRC/C/GC/13, which lists exposure to domestic violence as a form of mental violence as prohibited by Article 19, paragraph 1 of the United Nations Convention on the Rights of the Child.

⁵⁸ Information provided by NGOs during the evaluation visit. See also *Implementing Domestic Violence Legislation in Montenegro*, p.105.

168. GREVIO strongly encourages the Montenegrin authorities to make more use of and professionalise the supervised visitation scheme for children who have witnessed or experienced domestic violence. Recalling the importance of Article 31 of the Istanbul Convention, GREVIO also strongly encourages the Montenegrin authorities to step up measures to ensure that the safety and needs of child victims and witnesses of domestic violence are guaranteed in all child custody and visitation decisions. To this end,

- a. all applications to family courts should include a mandatory question on whether violence has been an issue in the relationship and whether it has been reported to law-enforcement officials or Centres for Social Work;
- b. where violence has been reported, family courts should ask for the disclosure of the risk assessment and safety plans drawn up by law-enforcement agencies and/or Centres for Social Work and take them into account when determining any issue involving a party who has alleged violence;
- c. where there is an ongoing criminal investigation and/or where a protection order has been issued, family courts should seek the opinion of law-enforcement agencies and the prosecution, and give reasons as to why they choose to either follow or disregard those opinions;
- d. if the criminal investigation is closed or suspended, family courts must conduct their own investigation as to whether violence occurred and what effect the violence has had on the child;
- e. safeguards should be built into the procedures, such as offering the parents separate appointments and creating separate waiting areas in courts, to take into account the imbalance of power between the victim and the perpetrator and to prevent the risk of revictimisation.

Such measures should be accompanied by the provision of appropriate training and the development of professional guidelines, aimed at raising awareness among the professionals concerned as to the harmful effects of violence on children, including child witnesses, and at familiarising them with the requirements of the Istanbul Convention related to the settlement of custody and visitation rights.

B. Criminal law

169. In Montenegro, both the Criminal Code and the LDVP contain provisions that give effect to Articles 33-40 of the Istanbul Convention. As a *lex specialis*, the LDVP introduces specific provisions for the prevention of and the protection from domestic violence in all its forms. It also contains sanctions in the form of a misdemeanour offence. Issues around its co-existence with criminal law offences of domestic violence, coercion and physical assault are discussed in this chapter, while differences in respect of the personal scope of their respective definitions are discussed in Chapter I of this report.

170. Recent amendments to the Criminal Code of Montenegro introduce entirely new offences such as female genital mutilation and stalking and thus align the Criminal Code more closely with the requirements of the Istanbul Convention. GREVIO welcomes these steps, in particular the newly introduced criminal offence of female genital mutilation (Article 151a of the Montenegrin Criminal Code), but notes that it does not cover the inciting, coercing or procuring of a girl or woman to undergo the procedure. GREVIO also welcomes the steps taken to criminalise stalking outside the family context in the new Article 168a. GREVIO recalls Article 34 of the Istanbul Convention defines stalking as the “conduct of repeatedly engaging in threatening conduct directed at another person, causing her or him to fear for her or his safety”. GREVIO thus calls for the terminology of Article 168a of the Montenegrin Criminal Code (“endangering the life, health, body or life habits of another person”) to be interpreted in line with the Istanbul Convention.

1. Domestic violence

171. Montenegrin legislation contains two specific offences of domestic violence: Article 36 of the LDVP lists acts that incur a family member's liability as a misdemeanour offence (minor offence) while Article 220 of the Criminal Code, entitled "Domestic Violence", imposes the criminal liability of family members. While the LDVP includes current or former non-married partners (whether or not they share or have shared a residence), the criminal offence does not (see definition of family members contained in Article 149 paragraph 31 of the Criminal Code and discussion in Chapter I).

172. According to the information provided to GREVIO, the LDVP and its misdemeanour offence of domestic violence were originally introduced to ensure a higher rate of reporting of domestic violence cases by offering victims a more efficient and responsive system compared to that of the criminal justice system. Additionally, it introduces a range of protective measures (such as emergency barring and restraining orders) that are more easily obtained than those available under criminal law. According to the Montenegrin authorities, the introduction of the LDVP has indeed led to an increase in the number of domestic violence cases reported. GREVIO also notes that cases that come before the misdemeanour courts are generally dealt with swiftly and without any particular delay. Moreover, the behaviour sanctioned under the LDVP is broader than that captured by the criminal offence of domestic violence. Criminal liability is incurred for "gross violence that violates the bodily and mental integrity of a family member" (Article 220, paragraph 1), and aggravated sentences are applicable if such violence was committed through the use of weapons or dangerous tools and, even more so, if it resulted in serious bodily injury, was committed against a minor or if it resulted in the death of a family member. Based on the conduct listed in Article 36 of the LDVP, the misdemeanour offence of domestic violence seems to cover a more broadly defined range of behaviours with a focus on controlling, coercive and threatening behaviour rather than physical violence.⁵⁹ As such, GREVIO welcomes this initiative to capture domestic violence in all its elements. From the information obtained during the evaluation procedure, however, GREVIO notes several difficulties that arise from the co-existence of two domestic violence offences and wishes to address these in some detail.

173. First, there are no uniform criteria that are being applied consistently to distinguish between a misdemeanour offence and a criminal offence of domestic violence. It would appear from the wording of the respective legal provisions that the criminal code provision is reserved for more severe cases of domestic violence perpetrated with more severe violence, while the misdemeanour offence is intended to cover mainly psychological violence in all its forms. Information provided to GREVIO by the authorities does suggest that this may have been the original intention.⁶⁰ However, the terminology chosen in the two legal texts does not support such a precise distinction between the two. Article 220 of the Criminal Code also applies where the behaviour in question has violated the "mental integrity" of the victim. At the same time, the misdemeanour offence as stipulated in the LDVP may be invoked for any physical violence as well. It has been brought to GREVIO's attention that frequently even serious cases of physical violence are charged under the misdemeanour offence,⁶¹ and that in turn, cases of psychological violence have, led to convictions under the Criminal Code.⁶²

174. The LDVP also covers the "sexual abuse" of a family member, suggesting that it does seek to address more than the psychological element of domestic violence. Examples exist of cases of

⁵⁹ Article 36 includes, for example, the use of physical force irrespective of whether it actually inflicts a bodily injury. It also includes verbal assaults and insults, rude behaviour, the damaging of property or controlling and coercive behaviour such as prohibiting communication with third parties, stalking, and denying means of subsistence.

⁶⁰ The Montenegrin authorities stated on several occasions that the decisive factor to refer a case to the jurisdiction of the Basic Court instead of that of the Misdemeanour Courts was the existence of a bodily injury.

⁶¹ *Implementation of Montenegro's Domestic Violence Legislation*, p.79-80. Similar information was provided by civil society representatives during the evaluation visit.

⁶² Meeting with judges during GREVIO's evaluation visit to Montenegro.

sexual violence in the family, including marital rape, which have been prosecuted under misdemeanour proceedings in accordance with Article 36, paragraph 6 of the LDVP.⁶³

175. In practice, the determination of the legal nature of the act is decided during the pre-trial stage: law enforcement officials called to the incident consult the prosecutor on duty over the phone regarding the qualification of the act as a misdemeanour or a crime. Depending on the severity of the incident, prosecutors do not always assess the available evidence themselves nor do they request that additional evidence be collected before qualifying the case as a misdemeanour or a criminal offence. Often, charging decisions are taken without access to previous police reports on, or information on previous convictions of, the perpetrator in question. Inconsistent and manual data collection at the level of law enforcement on measures taken in response to domestic violence complaints by victims makes useful information unavailable. In GREVIO's view, this practice is unsuitable to assess the real level of severity of the case and the impact it has had on the victim, for example whether or not it has negatively impacted her "mental integrity" (which would make it a criminal offence). Moreover, the fact that charging decisions lie with the prosecution service without direct access to police records and that they may be done over the phone can easily lead to unjustified decisions.⁶⁴

176. On a more general note, GREVIO notes with concern that little effort is made by law enforcement and prosecution services to investigate into, record and fully assess the history of abuse that victims experience at the hands of their abusers. The widespread tendency of minimising domestic violence and encouraging reconciliation results in fragmented recording of violent incidents and discourages victims from reporting every single incident. As a result, charges are pressed for individual, possibly minor, incidents that do not reflect the real and continuous nature of the abuse to which a woman may be exposed. This defeats the very purpose of specific domestic violence offences, which is to capture the continuous nature of domestic violence. Article 49 of the Montenegrin Criminal Code offers an additional possibility for prosecutors to press charges against domestic violence offenders who abuse their victims over years and this should be used.

177. Second, the disparity between the sanctions imposed by the two laws raises questions regarding the effectiveness of parallel sanctioning regimes. The LDVP gives rise to either a fine or a maximum prison sentence of 60 days. In practice, most perpetrators receive a fine of 150 euros and a suspended sentence. The criminal offence of domestic violence, however, carries a fine or a prison sentence of up to one year – a much more dissuasive sanction. Victims and legal professionals have expressed their dissatisfaction with this discrepancy and advocate for penalties under the misdemeanour offence that better reflect the gravity of the acts in question, are more aligned with the types of sanction imposed for other misdemeanour offences and that avoid creating a hierarchy of domestic violence offences. GREVIO notes that the penalties carried by Article 36 of the LDVP fall short of the maximum set by the Law on Misdemeanours and are in stark contrast to the fines that may be imposed for other misdemeanours, such as failure to use gender-sensitive language or traffic offences.⁶⁵

178. GREVIO urges the Montenegrin authorities to ensure, through all available means such as protocols, training of professionals and legislative change, more operational clarity between the misdemeanour offence of domestic violence and that of a criminal law nature. In addition, GREVIO urges the Montenegrin authorities to ensure more dissuasive sanctions for the misdemeanour offence of domestic violence.

⁶³ See the examples from the Podgorica Misdemeanour Court as provided on p. 152 of the *NGO Report on the implementation of the Council of Europe Convention on preventing and combating violence against women and domestic violence in Montenegro*, 2017.

⁶⁴ *Implementation of Montenegro's Domestic Violence Legislation*, p. 79-81.

⁶⁵ Article 24, paragraphs 2 and 4 of the Law on Misdemeanours allow fines up to 4000 euros but judges generally impose only the minimum fine of 150 euros. See also *Implementation of Montenegro's Domestic Violence Legislation*, p.71.

2. Sexual violence, including rape (Article 36)

179. Sexual offences are criminalised in several provisions of the Criminal Code (Articles 204 – 208). The recent amendment to Article 204 has brought important changes to the criminal offence of rape with a view to aligning it with the requirement of the Istanbul Convention: the criminalisation of all non-consensual sexual acts. Rape and sexual violence provisions must be based on the notion that consent must be given voluntarily as the result of a woman's free will and assessed in the context of the surrounding circumstances. The new Article 204 seeks to ensure this by adding, to its paragraph 1, an offence of rape and other non-consensual sexual acts without the qualifier of the use of force or threat to life or limb. Paragraph 1 thus criminalises "anyone who performs sexual intercourse or a sexual act of equivalent nature without the person's consent". GREVIO welcomes this important step towards holding perpetrators accountable, who, for any number of reasons, did not have to resort to violence or threat to make their victim compliant. The prison term this carries ranges from one to 10 years and is thus slightly less than the existing offence of rape and sexual acts perpetrated with the use of force or threat to life or limb (two – ten years). The merit of this new provision will depend heavily on its rigorous application by prosecution services and courts. However, GREVIO notes that this new provision only covers non-consensual sexual acts over a certain threshold, that is penetration or equivalent. Non-consensual sexual acts of a lesser nature seem to be, in principle, criminalised by Article 208, which envisages the punishment of any other sexual acts that are committed under the conditions referred to in Article 204, paragraph 1.

180. An intentional conduct not currently covered by Montenegrin legislation in the area of sexual violence is that of causing another person to engage in non-consensual acts of a sexual nature with a third person (Article 36, paragraph 1c). This paragraph covers scenarios in which the perpetrator is not the person who performs the sexual act but who causes the victim to engage in sexual activity with a third person, for example as part of the control and abuse in intimate-partner violence. The scope of criminal intent is wider than that under the crime of aiding and abetting. It would not only cover the intent to help the commission of an offence, for example a rape, and the intent of the rape as such, but would also extend to the intent of causing both. In other words, the intentional conduct covered by Article 36, paragraph 1c aims at capturing more than the instigation or facilitating of a crime but the malevolent behaviour of abrogating a woman's sexual self-determination.

181. GREVIO invites the Montenegrin authorities to introduce criminal legislation that would cover the intentional conduct set out in Article 36, paragraph 1 c of the Istanbul Convention.

182. Moreover, GREVIO notes with concern that cases of rape and sexual violence within marriage or intimate relationships seem to be systematically routed to the misdemeanour courts and handled under Article 36, paragraph 1 (6) of the LDVP (sexual abuse of a family member). While GREVIO welcomes the existence of a comprehensive domestic violence offence that covers all elements (psychological, physical, sexual and even financial to some extent), the extremely low sanctions it imposes do not appear commensurate with the gravity of sexual violence offences. Relegating offences of sexual violence and rape within marriage to a regime of minor offences suggests a lesser gravity. This is not in line with the Istanbul Convention which, in Article 36, paragraph 3 spells out the obligation of ensuring that the criminal offences of sexual violence and rape established in accordance with this Convention are applicable to all non-consensual sexual acts, irrespective of the relationship between the perpetrator and the victim.⁶⁶ Sexual violence and rape are a common form of exerting power and control in abusive relationships and are likely to occur during the relationship and after its break-up. It is crucial to ensure that there are no exceptions to the criminalisation and prosecution of such acts when committed against a current or former spouse or partner. GREVIO thus considers Article 36 of the LDVP ill-suited to prosecute sexual violence and rape within intimate relationships.

⁶⁶ See paragraph 194 of the Explanatory Report to the Convention.

3. Forced marriage (Article 37)

183. Although it is difficult to establish the prevalence of forced marriage in Montenegro, it appears that the practice of arranging early marriages that border on forced marriage is frequent among the Roma and Egyptian communities. Girls in these communities are raised in the knowledge that they will marry at an early age, with or without their consent, as a result of a customary practice transmitted from one generation to the next. In many cases it is difficult to establish the actual use of force or threat, but the young age of most brides would point to a probable lack of consent to a marital union.⁶⁷ Nonetheless, GREVIO wishes to distinguish clearly between arranged marriages and forced marriages. While the first category does not fall within the scope of Article 37 of the Istanbul Convention because of the existence of an “implicit” acceptance, the second one does.

184. The early and forced marriages among Roma and Egyptians in Montenegro are usually perpetrated by parents and the wider family and are concluded by a *Council of Elders* as unregistered and unofficial marriages. GREVIO notes that the unofficial character of such unions is not an impediment to their criminalisation in the sense of Article 37 of the Istanbul Convention. As de facto marriages concluded according to traditional principles, to which one of the parties has not voluntarily consented, they have the same negative consequences on young women and girls as any registered marriage would have (dropping out of school, early/unwanted pregnancies etc). A *stricto sensu* requirement of a civil solemnisation of the union may jeopardise the protection afforded to forced marriage victims by the Istanbul Convention. GREVIO thus welcomes the existence of several forced marriage provisions in the Criminal Code of Montenegro, one of which clearly seeks to address the specific form of forcing a person into a customary marriage.

185. Article 216 of the Montenegrin Criminal Code is the most relevant in this context, as it punishes persons in a position of authority or trust, including parents, adoptive parents and guardians, who force or threaten a juvenile to cohabit in a customary marriage with an adult. This provision would thus apply to Roma and Egyptian girls who are forced into a customary marriage with an adult groom. However, prosecution of such acts is not possible if the customary marriage was or is being turned into a legally concluded marriage (Article 216, paragraph 4). GREVIO is concerned that this may lead to pressure being exerted on girls to agree to a formal conclusion of marriage in order to avert the prosecution of the perpetrators.

186. Article 214, paragraph 1 expressly criminalises the act of forcing or threatening a person to conclude a marriage. The initiation of criminal proceedings, however, requires any such marriages to be declared null and void before criminal procedures start. Annulment of marriages may be obtained under the Montenegrin Family Law, but Article 53, paragraph 2 limits this to the period of one year after the coercion ceased and the spouses continue to live together. GREVIO is concerned that many victims who marry young and lack the confidence to challenge their situation in the first years of their marriage would be statute barred from having their marriage annulled, let alone seeking criminal justice for the act. GREVIO therefore believes that such procedural requirements constitute legal and practical barriers that place an undue burden on the victims in a way that obstructs their right to access to justice. Moreover, GREVIO notes that Article 214 applies only to legally recognised marriages and is thus not adapted to the reality of customary forced unions prevalent among the Roma and Egyptian communities in Montenegro.

187. Third, the criminal offence of trafficking in human beings contained in Article 444 of the Montenegrin Criminal Code has been amended through the insertion of the words “concluding an unlawful marriage” - as a purpose of exploitation. In its 2nd evaluation report on Montenegro, the Group of Experts on Action against Trafficking in Human Beings (GRETA) expressed its view that including the term “unlawful marriage” in the list of forms of exploitation goes beyond those

⁶⁷ According to research conducted by the Centre for Roma Initiatives, 72,2% of Roma girls entered into marriage between 12 and 18 years of age. In half of these cases, the groom was chosen by the parents, and in 42%, bride and groom had not met prior to their marriage.

specifically mentioned in the Convention on Action against Trafficking in Human Beings and reflects new trends.⁶⁸

188. GREVIO recognises the potential overlap between forced marriage and trafficking in human beings. Forced marriage may be linked to sexual exploitation, labour exploitation and to financial and other benefits to the wider family, such as immigration sponsorship. It should also, however, be a stand-alone offence. Article 444 of the Montenegrin Criminal Code allows cases of forced marriage that are strongly linked to exploitation to be captured as such by initiating prosecution as a case of trafficking in human beings.

189. In view of three criminal code provisions covering forced marriage, however, GREVIO stresses the need for conceptual clarity and an operational distinction between the three. Thorough investigations into each individual case can help to assess fully the circumstances of the case and the purposes for which women and girls have been forced to marry.

190. In practice, this seems to be presenting challenges as prosecutions for forced marriage have yet to be brought in Montenegro. None of the three existing criminal provisions have been applied to date. GREVIO points to the need to assess the reasons therefore.

191. Furthermore, GREVIO draws attention to the fact that none of the above criminal provisions cover the criminal behaviour to be sanctioned under Article 37, paragraph 2 of the Istanbul Convention (the luring of an adult or a child to the territory of a party or state other than Montenegro for the purpose of forcing this adult or child to enter into a marriage).

192. **GREVIO encourages the Montenegrin authorities to:**

- **remove procedural obstacles and limitations to the criminal prosecution of acts of forced marriage (in particular the requirement to first seek the annulment of a forced marriage under Article 214 and the time limit placed on the possibility of having a forced marriage annulled under Article 216);**
- **criminalise the intentional conduct of forcing an adult to enter into a customary union;**
- **criminalise the intentional conduct of luring an adult or a child to the territory of another state with the purpose of forcing this person into a marriage as required by Article 37, paragraph 2.**

4. Sexual harassment (Article 40)

193. The offence of sexual harassment defined in Article 40 of the Istanbul Convention captures any unwanted behaviour of a sexual nature that affects or might affect the dignity of a person. Sexual harassment is neither limited to the workplace nor to the family and can occur in multiple contexts. Accordingly, the context or setting in which it occurs does not constitute an element of the offence as defined in the Convention.

194. In Montenegrin legislation, there is no criminal offence of sexual harassment. Instead, the approach is that of “other legal sanction” as set out in Article 40. Several legislative acts thus provide different types of sanctions for sexual harassment – each of which limits it to a particular context. The Labour Law and the Law on the Prevention of Harassment at the Workplace provide for a fine for sexual harassment.⁶⁹ These two laws thus cover the area of employment. The Law on the Prohibition of Discrimination prohibits sexual harassment as a special form of discrimination by a legal or natural person.⁷⁰ Complaints can be made to the courts of Montenegro or to the Ombudsman, which both have jurisdiction to decide on sanctions. The Law on Gender Equality,

⁶⁸ Report concerning the implementation of the Convention on Action against Trafficking in Human Beings by Montenegro, Second Evaluation Report, 2016, GRETA(2016)19, p. 31.

⁶⁹ See for example Article 8 of the Labour Law.

⁷⁰ See Article 7, paragraph 2.

Article 4, paragraph 4 also defines sexual harassment as a form of discrimination but does not set out any sanctions. It refers to a special law but it is unclear which.

195. All existing definitions contain most or all elements of Article 40 of the Istanbul Convention, which GREVIO welcomes. In the absence of any data on the prevalence of sexual harassment in the workplace or elsewhere, and without any information on the number of cases brought under the different laws, it is difficult to assess the effectiveness of the existing legal framework on sexual harassment.

196. From the information GREVIO has obtained, GREVIO notes that a number of stakeholders in Montenegro (government authorities and NGOs) do not clearly distinguish between sexual harassment and sexual violence, including rape, especially where family members are concerned. GREVIO thus wishes to draw attention to the difference between the two. Sexual violence and rape as defined by Article 36 of the Istanbul Convention refer to sexual acts performed on another person without her or his freely given consent and cover sexual acts with or without penetration. Sexual harassment refers to somewhat less invasive but still harmful conduct such as verbal, non-verbal or physical conduct of a sexual nature that is unwanted by the victim. This includes words or sounds expressed or communicated by the perpetrator, jokes, questions or remarks, by email or orally expressed, but also facial expressions, hand movements or symbols. Physical contact of a sexual nature that comes under the remit of sexual harassment (as opposed to sexual violence) is any sexual behaviour of the perpetrator that involves contact with the body of the victim, for example touching, stroking or rubbing against the victim.⁷¹

197. GREVIO encourages the Montenegrin authorities to ensure that sexual harassment experienced in all areas of life is subject to a legal sanction. GREVIO further encourages the Montenegrin authorities to increase their efforts in ensuring higher levels of awareness of sexual harassment as opposed to sexual violence among the general public and professionals concerned.

5. Sanctions and measures (Article 45)

198. In Montenegro, the introduction of a parallel misdemeanour offence of domestic violence has led to a sharp decline in cases of domestic violence prosecuted under the Criminal Code.⁷² Most cases of domestic violence are now brought before the Misdemeanour Courts, including cases of sexual violence against intimate partners. The sentences imposed under this regime are very light, ranging from a fine to a maximum of 60 days in prison. Fines and suspended sentences seem to be more often imposed than prison terms,⁷³ reducing the impact on the perpetrators. Instead, such sentences create additional insecurities for women and children as victims – around their personal safety as well as creating financial difficulties in the case of fines. The low use made of protection orders under the LDVP mean women do not benefit from any protection schemes after reporting their abusive partners/husbands (see Chapter VI, section C. Emergency barring and protection orders). This is extremely worrying as it is well documented that reporting and/or leaving an abusive partner can trigger serious violence.

199. The predominance in the handling of domestic violence cases by the Misdemeanour Courts effectively means a drastic shift towards much more lenient sentences for domestic violence than to before. Intentional or not, this is a trend that needs to be reversed. Article 45 calls for sanctions that are “effective, proportionate and dissuasive”. The wide use that is made of suspended sentences and admonitions as warning measures available under the Misdemeanour Law does not suggest that sanctions are dissuasive.

200. Even within criminal law, there seems to be a widespread tendency among prosecution services and the judiciary to route cases involving intimate partners (psychological, sexual and physical violence, including lethal violence) towards a milder possible offence. The penalties

⁷¹ For more information see paragraphs 207-209 of the Explanatory Report to the Convention.

⁷² This decline is confirmed by the data provided on p.48 of the state report which shows that in 2014, 122 cases of domestic violence were dealt with under the Criminal Code, compared to 95 in 2016.

⁷³ *Implementation of Montenegro's Domestic Violence Legislation*, p.71-72.

foreseen by Article 220, the domestic violence offence, are lower compared to similar offences committed outside the family context. The basic offence of domestic violence (Article 220, paragraph 1: using gross violence to violate the bodily and mental integrity of his family member) carries a fine or a one-year prison term. Serious bodily injury inflicted upon another person outside the family context (Article 151, paragraph 1), however, carries a prison term of six months to five years.⁷⁴ Where convictions for the criminal offence of domestic violence are obtained, most lead to suspended sentences, warnings, fines and community work.⁷⁵

201. GREVIO strongly encourages the Montenegrin authorities to ensure - through legislative measures and the effective training of members of the judiciary and prosecution services - that sentences and measures imposed for domestic violence offences are effective, proportionate and dissuasive and that they do not harm victims and their children.

6. Aggravating circumstances (Article 46)

202. Some of the aggravating circumstances required by Article 46 of the Istanbul Convention form part of the elements of the crime in the Montenegrin Criminal Code, thus qualifying them as more serious offences punishable by harsher sentences. In addition, Articles 42-46 of the Montenegrin Criminal Code set out mitigating and aggravating circumstances. The LDVP also envisages aggravating circumstances for domestic violence offences committed in the presence of or against a child (Article 36, paragraphs 2 and 3), thus complying with Article 46 (d).

203. At the same time, however, the requirement of Article 46 (a) of the Istanbul Convention to introduce aggravated sentences for offences committed against a former or current spouse or partner, family members and persons cohabiting with the victim is less well complied with. First, the definition of family or family community provided for in Article 142, paragraph 31 of the Montenegrin Criminal Code does not cover intimate partners who have never shared a household - unless they have or are expecting a child together. As a result, aggravating circumstances or crimes that carry a harsher penalty if committed against a family member do not apply to such unions. Second, the murder of a family member, including intimate partners, as set out in Article 144 of the Criminal Code, will only qualify as an aggravated homicide if the family member has previously been abused. Such restrictive conditions limit the scope of application in a way that is incompatible with the Istanbul Convention.

204. GREVIO notes that no particular effort seems to have been made to inform the members of the judiciary of the set of aggravating circumstances as laid out by Article 46 of the Istanbul Convention and that no sentencing guidelines exist for the judiciary. In a recent survey of Montenegrin judges, 78% reported that they do not apply international conventions in their work⁷⁶ – despite a constitutional requirement to do so.⁷⁷ Coupled with poor recording of and investigation into complaints made by victims to law enforcement agencies, this would appear to explain the existing tendency to apply mitigating factors to domestic violence cases. It has been brought to GREVIO's attention that judges do not always assess the factors surrounding a case of violence against women on the basis of the principles of the Istanbul Convention. Instead, judges appear to be guided by stereotypical gender roles and respect for the family as a fundamental unit of society. The full range of aggravating circumstances is thus not frequently resorted to and sentences are often mitigated. GREVIO recalls the urgent need to ensure the necessary training on and full application of the principles of the Istanbul Convention, without which the application of aggravating circumstances will remain flawed.

⁷⁴ The qualified offences committed with the use of a weapon lead to similar differences in criminal sentences. See Article 151, paragraphs 2-5.

⁷⁵ See *NGO Report on the implementation of the Council of Europe Convention on preventing and combating violence against women and domestic violence in Montenegro*, p.157.

⁷⁶ *Perceptions of representatives of the judiciary*, November 2015, p.18.

⁷⁷ Article 9 of the Constitution of Montenegro.

7. Prohibition of mandatory alternative dispute resolution processes or sentencing (Article 48)

205. In Montenegro, mediation serves as a voluntary measure to settle a family law dispute (divorce, custody, alimony, etc.) but Article 326 of the Family Law prohibits it in cases of domestic violence. The first step in mediation in family matters is reconciliation with a view to ending the family dispute (Article 328 of the Family Law). Family mediators are required by law to pay due attention to any signs of domestic violence in the past that have not been disclosed and to assess whether violence is likely to arise in the future (Article 43 of the Law on Mediation). In the affirmative, mediators must assess whether it is appropriate to continue with the mediation procedure.

206. According to the Montenegrin authorities, mediators receive training on various aspects of mediation, including on the procedure to apply in cases where information regarding domestic violence has emerged. The judicial practice reported to GREVIO, together with the widespread lack of information of domestic violence victims about its voluntary nature seem, however, to have turned family mediation into a widely used process, including for women wishing to divorce their abusive spouses. Several contributing factors seem to exist, all of which raise concern and need to be addressed in the near future.

207. First, judges are either unaware of the prohibition of ordering mediation in cases where there is evidence of domestic violence or feel compelled to do so notwithstanding such evidence on the basis of a misinformed interpretation of the law.⁷⁸ Second, there is no obligation placed on judges and mediators to actively screen family law cases for domestic violence. Instead, the onus of disclosing incidents of domestic violence is on the victim. Research has shown that victims have difficulty in doing that, for fear of being disbelieved, of not having sufficient evidence or simply because they are unaware of how important it is.⁷⁹ Third, some mediators believe mediation is mandatory in all cases and will persistently schedule meetings – so that the victim would have to decline. Unaware of their right to refuse, many victims will simply comply, hoping to settle the divorce and the payment of alimony more expeditiously than before the court. The fact that victims of domestic violence are not informed of their rights is of grave concern (see Chapter IV, Section B. Information) and points to the need of ensuring, among members of the judiciary, higher levels of acceptance of “confidants”, lawyers and NGO representatives in formal procedures.

208. GREVIO strongly encourages the Montenegrin authorities to ensure that mediators and judges are fully aware of the prohibition of mediation in domestic violence cases as set out in Article 326 of the Family Law and to end the practice of mediation in family disputes and divorce proceedings where there is a history of domestic violence.

⁷⁸ *NGO Report on the implementation of the Council of Europe Convention on preventing and combating violence against women and domestic violence in Montenegro*, p.29; and *Implementation of Montenegro’s Domestic Violence Legislation*, p.104 and p.107.

⁷⁹ *Implementation of Montenegro’s Domestic Violence Legislation*, p.102.

VI. Investigation, prosecution, procedural law and protective measures

209. Full accountability for all acts of violence against women requires an adequate response from law enforcement agencies and the criminal justice sector. Chapter VI of the Istanbul Convention establishes a set of measures to ensure criminal investigations, prosecutions and convictions of the various forms of violence covered therein.

A. Immediate response, prevention and protection (Article 50)

1. Reporting to and investigations by law enforcement agencies

210. Law enforcement agencies are responsible for receiving reports of violence and responding at the scene. In relation to domestic violence, the LDVP sets out the specific requirement to take immediate action and measures to protect the victim, in other words, to put an end to the violence and ensure the victim's safety. The Protocol further details the necessary action to take in domestic violence cases and serves as an important checklist for law enforcement officials.

211. In the course of the evaluation procedure, GREVIO received information on numerous accounts of failure to take the above measures, mainly in relation to domestic violence cases. The reasons are manifold but share the same underlying cause: attitudes towards women, gender roles and relationships that are based on the notion of male superiority and patriarchy.⁸⁰ Such attitudes lead to inaction because individual officials minimise the violence and seek justification either in the victim's behaviour (provocation) or that of the perpetrator (substance abuse, mental illness, poverty). This leads to wrong assumptions regarding the cause and consequence of the violence, at times resulting in evidence being collected and charges pressed against both, victim and perpetrator.⁸¹ Lastly, they lead to the denial of basic human rights of women such as the protection of their right to life and physical integrity. In sum, they present a worrying challenge to Montenegro's ability to comply with its due diligence obligation to prevent, investigate, punish and provide reparation for acts of violence covered by the scope of the Istanbul Convention (see Article 5, paragraph 2).

212. The training dispensed so far by a wide range of actors has not led to any fundamental change in how domestic violence is viewed by law enforcement agencies as first responders. There are some law enforcement units specialised in dealing with domestic violence and these seem to be the notable exception. The Department for Internal Oversight is actively seeking to improve the response of law enforcement officials to domestic violence. GREVIO welcomes such endeavours but notes that issues persist at the investigative stage and the routing of cases onto the misdemeanour track rather than the criminal law track.

213. For example, it seems to remain a challenge for regular officials to collect, record and assess evidence that would allow conclusions to be drawn as to the cycle of violence, the severity of the violence and the level of risk to the victim. Despite specific legislation on domestic violence, investigations often focus on one incident of violence rather than looking for the larger picture, repeated violence being a common element in domestic violence cases. Consequently, cases may appear less serious and may not lead to any charges or be routed to the misdemeanour track, after which the violence frequently continues. One way of improving this would be the systematic and impartial recording of all incidents reported to the police, the adequate documentation of any injuries, however slight, by the health sector and the willingness to make wider use of other sources of evidence to reduce the over-reliance on victim's statements (for example, photographic evidence, witness testimony, reports from the Centres for Social Work, etc.).⁸²

⁸⁰ See the examples provided in *Implementation of Montenegro's Domestic Violence Legislation*, p.17-20.

⁸¹ *Ibid.*, p. 81.

⁸² *Ibid.*, p. 82.

214. **GREVIO urges the Montenegrin authorities to ensure the swift and impartial response of all law enforcement officials to cases of domestic and other forms of violence against women on the basis of full respect for women's right to life and physical integrity. GREVIO further urges the Montenegrin authorities to take practical steps such as on-the-job training and mentoring schemes to actively overcome persisting attitudes, beliefs and practices that stand in the way of a law enforcement response to domestic violence which focuses on the victim's safety, the collection of evidence and the full accountability of the perpetrator.**

2. The role of the prosecution services and the judiciary

215. The LDVP and its misdemeanour offence of domestic violence represent a fast-track procedure for domestic violence cases. GREVIO welcomes in particular that the President of the Misdemeanour High Court has directed judges to handle all domestic violence misdemeanour offences expeditiously. The misdemeanour system is thus generally considered to be efficient, as clear-cut cases of physical abuse move quickly through the system and frequently result in convictions within several days/weeks. GREVIO notes, however, that most sanctions under this regime are extremely light and generally not of a dissuasive nature (see Chapter V, Section B.5 Sanctions and Measures).

216. GREVIO also notes the high level of dissatisfaction among victims and those representing their interests with charging decisions made by the prosecution services merely on the basis of evidence collected by law enforcement agencies, often communicated verbally and over the phone (see Chapter V, Criminal Law, Section B.1 Domestic Violence). Additional investigations are rarely ordered by prosecution services, and although some prosecutors are aware of the need to assess the situation in light of the history of the abuse, many frequently classify domestic violence cases, even those with physical injuries, as a misdemeanour offence.⁸³ Threats, including serious threats against life and limb of victims and their children, made in the context of domestic violence, and ex-partner stalking are often not considered to constitute criminal behaviour and are rarely prosecuted.⁸⁴

217. The trend of prosecuting domestic violence cases as misdemeanour offences has been steadily growing. Although the overall number of domestic violence cases reported to the authorities has been rising, the percentage of cases prosecuted under criminal law is dropping (from 14% in 2012 to 11,89% in 2015). GREVIO welcomes the fact that more and more victims of domestic violence are disclosing their abuse to law enforcement agencies, but is concerned that their dissatisfaction with the process and its outcomes might reverse this trend in the long term.

218. In this context, GREVIO notes that criminal proceedings are not necessarily more effective in holding perpetrators accountable – despite the more severe sentences that are in principle available. Proceedings are slow to be opened, and often they are based solely on the victim's testimony. In the absence of any additional robust evidence, cases often fail if victims decide not to testify in court. GREVIO notes that in addition to reasons referred to elsewhere in this report (family pressure, economic dependence on the perpetrator, common children) the absence of protection orders, even temporary ones, until a judgement is rendered, makes it particularly difficult for women to go through with lengthy criminal proceedings against their abusers.⁸⁵ Women in Montenegro have also indicated re-victimising investigative practices such as lengthy questioning, demeaning comments and assumptions, pressure to reconcile and the possibility of charges pressed for acts of self-defence.⁸⁶

219. Swift investigations based on a sensitive and professional approach to victims of gender-based violence, in particular domestic and sexual violence, and the prompt opening of criminal proceedings, significantly reduces the risk of victims abandoning the case. GREVIO points to the

⁸³ *Implementation of Montenegro's Domestic Violence Legislation*, p. 80.

⁸⁴ *Ibid.*, p.81.

⁸⁵ *Ibid.*, p.86.

⁸⁶ *Ibid.*, p.25 and p.91.

need to enhance the quality and competence of all professionals involved to ensure more satisfactory outcomes for all.

220. GREVIO notes that the urgent need to increase the level of awareness of domestic violence and professional capacities also applies to judges.⁸⁷ Legislative changes that strengthen the rights of victims are slow to be applied and many judges seem to remain unaware of important developments in their field of law. Moreover, 78% of judges interviewed for a survey in 2016 reportedly do not apply the Istanbul Convention or other international treaties despite a constitutional requirement to do so.⁸⁸ Despite the institutionalisation of the Judicial Training Academy and the increasing amount of training on offer, not all judges seem to have a full understanding of the dynamics of domestic violence, the pressure and trauma victims may be suffering from, their need for safety and right to protection – all of which is frequently exacerbated by the high level of economic dependence of women in Montenegro on their abuser. Interviews with judges revealed alarming tendencies to assess the credibility of victims on the basis of harmful methods such as “confrontations” between victims and perpetrators which do not instil trust in the system.⁸⁹ Judges also seem to rely heavily on medical evidence of a mental illness or substance addiction of the perpetrator for a conviction. Such practices reflect a lack of knowledge of domestic violence and insensitivity towards its victims..

221. Lastly, GREVIO notes that very little information was made available on how law enforcement agencies, prosecution services and the judiciary fare in relation to other forms of violence against women, in particular rape and sexual violence outside the context of an intimate relationship. Reporting rates seem to be extremely low, as very few women come forward. Despite the possibility of obtaining forensic evidence, very few cases make it to the trial stage. The same is to be said in relation to forced marriage. Out of the 50 cases that have come to the attention of the Centre for Roma Women’s Initiative and/or the authorities, none have led to an indictment. GREVIO is aware of the difficulties that generally surround investigations and prosecutions of such a sensitive issue but recalls the need to diligently prevent, investigate, punish and provide reparation for all acts of violence covered by the scope of the Convention. Knowledge of successful intervention strategies in relation to girls at risk of forced marriage seems to have gradually risen among the law enforcement officials in recent times. It would be important to ensure equal levels of capacity among all other relevant institutions, in particular prosecution services and Centres for Social Work.

222. GREVIO strongly encourages the Montenegrin authorities to increase the level of awareness among all professionals involved, including judges and prosecutors, of all the forms of violence covered by the Istanbul Convention, in order to diligently prevent, investigate, punish and provide reparation for all acts of violence covered by the scope of this Convention.

⁸⁷ GREVIO draws attention to the on-going efforts to reform and strengthen the capacity of the Montenegrin judiciary and to the EU Progress Report on Montenegro, noting on p.12 that the new legislative framework for increasing the independent, accountability and professionalism of the judiciary has not yet been fully implemented.

⁸⁸ *Percepcija predstavnika pravosuđa o nasilju nad ženama i porodičnom nasilju* (Perceptions of judges on violence against women and domestic violence), November 2015, Ipsos Strategic Marketing, unpublished; cited in *Implementation of Montenegro’s Domestic Violence Legislation*, p.86.

⁸⁹ For example by using the method of “confrontation” between victim and perpetrator, or by considering a victim’s unwillingness to testify or act as third party to constitute a mitigating factor. See *Implementation of Montenegro’s Domestic Violence Legislation*, p. 90.

B. Risk assessment and risk management (Article 51)

223. Concern for the victim's safety must lie at the heart of any intervention in cases of all forms of violence covered by the Istanbul Convention. Article 51 thus establishes the obligation to ensure that all relevant authorities, not just law enforcement, effectively assess and devise a plan to manage the safety risks a particular victim faces on a case-by-case basis, according to standardised procedures and in co-operation with each other. Several internationally recognised tools exist, for example the Spousal Assault Risk Assessment (SARA) or the Multi-agency Risk Assessment Conference (MARAC), and are applied to assess the risk, including the lethality risk, which perpetrators of domestic violence pose to their victims. Many perpetrators threaten their victims with serious violence, including death, and have often subjected their victims to serious violence in the past. It is therefore essential that any risk assessment and risk management consider the probability of repeated violence, especially lethal violence, and adequately assess the seriousness of the situation. Moreover, if risk management is not reliable and on-going, victims may be lulled into a false sense of security, exposing them to greater risk.

224. In Montenegro, the Protocol on Actions, Prevention and Protection against Domestic Violence instructs the Centres for Social Work to carry out a risk assessment and devise individual safety plans for victims of domestic violence. The same Protocol requires law enforcement agencies to establish whether a known perpetrator of domestic violence possesses firearms or other weapons. Law enforcement agencies are also instructed to draft a safety plan for victims of domestic violence who have obtained an emergency barring or protection order. Although multi-agency co-operation is generally promoted by the LDVP, the instructions contained in the Protocol currently in force do not specifically call for risk assessment and safety plans to be drawn up in co-operation with and on the basis of information obtained by other statutory agencies. Moreover, GREVIO is unaware of any standardised risk assessment tool in use by the different statutory agencies in Montenegro. GREVIO welcomes that these concerns are being addressed and that plans exist to review the Protocol with a view to incorporating a higher degree of co-operation of all relevant agencies.

225. Rather, information from the Ministry of Justice seems to indicate that Centres for Social Work carry out risk assessment less and less⁹⁰ and that safety plans, where they are drawn up, are often devised without proper risk assessment and without the involvement of the victim.⁹¹ Institutions in Montenegro seem to operate in isolation and without a uniform risk assessment tool. To discharge their task under the Protocol adequately, however, Centres for Social Work would have to co-operate with law enforcement agencies to obtain any relevant information and assessments made (for example in relation to the possession of firearms) and to co-operate actively with women's support services and the victims themselves. Accurate risk assessment would also support law enforcement agencies and the courts in issuing emergency barring and protection orders.

226. GREVIO recalls that the obligation to ensure risk assessment extends to all forms of violence against women and thus includes cases of forced marriage. Where statutory agencies such as law enforcement and Centres for Social Work learn of girls and/or women at risk of being forced into a marriage, the risks they may face when opposing the union must be thoroughly assessed and managed.

227. GREVIO strongly encourages the Montenegrin authorities to introduce comprehensive and mandatory risk assessment and management, in co-operation with relevant women's specialist support services, for all institutions handling cases of violence against women, including domestic violence.

⁹⁰ *Izveštaj o sprovođenju Zakona o zaštiti od nasilja u porodici za period 2010–2015* (Report on the Implementation of the Law against Domestic Violence for the period 2010-2015), September 2016, Ministry of Justice, available at <http://www.gov.me/biblioteka/izvjestaji?query=nasilja&sortDirection=desc>.

⁹¹ *Implementation of Montenegro's Domestic Violence Legislation*, p. 33-34.

C. Emergency barring and protection orders (Articles 52 and 53)

228. Emergency barring and protection orders are regulated by the two different regimes in place in Montenegro: the LDVP for the misdemeanour offence of domestic violence and the Criminal Code for the criminal offence of domestic violence.

229. Important differences exist. Under the LDVP, such orders may be issued at all stages of the proceedings and function both as emergency barring orders issued by the law enforcement officials without delay for a maximum of three days (Article 28, paragraph 1) and as a longer-term measures issued by a misdemeanour court (Articles 26 and 29). The types of measure that may be ordered include the eviction from a shared residence or other premises, a restraining order, the prohibition of harassment and stalking, mandatory addiction treatment and mandatory psycho-social therapy (Article 20 LDVP).

230. Under criminal law, eviction and restraining orders may be issued by the criminal courts but only at the very end of the proceedings, i.e. upon conviction (see Articles 77a and 77b). For the duration of the proceedings and in the event of an acquittal no protection orders may be granted.

231. GREVIO is concerned at the lack of any interim or temporary protection orders for victims of domestic violence whose case is prosecuted under criminal law. This is all the more worrying as these cases are typically more serious in nature and may entail high levels of risk to the victim. GREVIO recalls that Article 53, paragraph 2 of the Istanbul Convention requires protection orders to be “available for immediate protection” and “irrespective of, or in addition to, other legal proceedings”. The aim of this provision is to ensure protection without the need for lengthy court proceedings.

232. Regarding the protection orders available under the misdemeanour regime, GREVIO is concerned at their dependence on the initiation of misdemeanour proceedings by the victim. Article 29, paragraph 3 of the LDVP requires the victim to initiate misdemeanour proceedings within five days of requesting a protection order. Failure to do so will result in the suspension of the protection order granted. This is contrary to the requirements of Article 53 of the Istanbul Convention which clearly seeks to distinguish between a victim’s right to protection and holding the perpetrator accountable.

233. GREVIO urges the Montenegrin authorities to make protection orders available for immediate protection to all victims of domestic violence, irrespective of charging decisions by prosecution services or the institution of misdemeanour proceedings by victims.

234. With a view to the implementation of the available protection orders, GREVIO notes a certain reluctance to issue such orders among law enforcement officials, prosecution services and the judiciary at all levels. The data provided by the authorities show that under the LDVP very conservative use is made of the possibility of evicting a perpetrator of domestic violence from the family home or of issuing a restraining order. In 2014, law enforcement agencies handled 1347 cases of domestic violence under the misdemeanour regime, leading to 1249 charges under Article 36 of the LDVP.⁹² Emergency barring orders (evictions under Article 28 LDVP) were issued in only 22 cases. The figures for 2015 are similar,⁹³ but evictions seem to have dropped even lower in 2016 despite a rise in reported cases. The emergency barring orders issued in 2016 evicted 19 perpetrators of domestic violence against 1458 reported cases and 1335 charges of misdemeanour domestic violence offences.⁹⁴ The number of restraining orders issued on the basis of Article 22 LDVP and prohibitions on harassment and stalking issued on the basis of Article 23 LDVP have also dropped over the past years. The type of order that seems to be most frequently issued is the prohibition of harassment and stalking, not eviction.

⁹² See the Montenegrin state report, p.6

⁹³ Under the LDVP, 24 emergency barring orders were issued, while the overall number of reported domestic violence offences handled as misdemeanours was 1326.

⁹⁴ See the Montenegrin state report, p.7.

235. The reasons for this low use of emergency barring and protection orders seem to be manifold. Although statutory agencies such as law enforcement agencies and the Centres for Social Work are mandated to apply for such orders on behalf of victims, they rarely do so, and frequently fail to inform victims of the possibility of filing an application themselves. As a result, many victims are still unaware of these measures and do not actively pursue them.

236. Moreover, the attitudes of law enforcement officials, prosecutors and members of the judiciary towards domestic violence, gender roles and relationships discussed above also impact on the individual professional's willingness to evict the male abuser as the perceived head of household from his own residence.

237. Moreover, the absence of systematic methods to determine and record the history of abuse masks the extent and seriousness of the violence and does not allow a proper assessment of the situation, leading individual officers to erroneously consider the event in question as an isolated incident. The low number of protective measures taken also suggests misperceptions around the legal obligation of all state authorities to exercise due diligence to prevent, investigate, punish and provide reparation for acts of violence covered by the Istanbul Convention (Article 5, paragraph 2).

238. GREVIO strongly encourages the Montenegrin authorities to ensure that emergency barring and protection orders are effectively applied by all relevant authorities.

D. Measures of protection during investigations and judicial proceedings (Article 56)

239. Some measures exist to ensure that victims' rights and interests are protected during investigations and proceedings, although these may not always be implemented systematically.

240. The Criminal Procedural Code of Montenegro expressly limits the obligation to testify for child witnesses and offers the possibility of doing so via video-link (see Article 113). Additional measures of protection of children as victims and witnesses during judicial proceedings are set out in the Protocol.

241. The Protocol also sets out measures to be taken by the judiciary to protect women victims of domestic violence from harm during judicial proceedings, for example by securing special waiting areas for victims and offering security measures upon entering the court building. In practice, court buildings are frequently ill-equipped for such measures. Most Misdemeanour Court rooms are extremely small and waiting areas limited, meaning victims and perpetrators often spend time in close proximity to one another. Some judges seek to ensure the safety of victims by ordering a law enforcement officer to sit in on the proceedings and to physically separate the two. Sometimes this role falls onto 'confidants', who, as a consequence, may experience threats and violence from the perpetrator.⁹⁵

242. Confidants' are envisaged by the LDVP (Article 16) to act in support of victims by attending all procedures and actions. A 'confidant' may be a member of the family or a representative of an institution or NGO or any other person whom the victim trusts. Several women's support services offer such services but report difficulties in assuming this role fully, due to attitudes of the judiciary. Not all judges seem to be familiar with the vital support these confidants provide to victims and issues persist with admitting confidants to trial or allowing them to communicate with the victim.

⁹⁵ *Implementation of Montenegro's Domestic Violence Legislation*, p.8.

243. In criminal proceedings, women victims of domestic violence and other forms of violence against women may benefit, under certain circumstances, from witness protection measures. These include the right not to state personal information or to have their testimony taken from behind a screen or via video-link (Article 121 of the Criminal Procedural Code). Although in practice most judges will require victims to testify in the presence of the perpetrator without a screen or the help of technical devices, some more readily exclude the accused from the court room for the duration of the testimony, but seem to proceed conversely for the testimony of the accused. GREVIO stresses that ensuring victims' rights in criminal proceedings will prevent their abandonment of the case as witnesses and is thus in the interest of the judiciary and prosecution services. GREVIO thus points to the need to ensure that more widespread use is made of existing protective measures and that current practices such as the use of "confrontations" undermine any efforts taken elsewhere to ensure the safety of victims and prevent their re-victimisation.

244. Effective victim protection includes the systematic provision of information to victims regarding progress of the investigation or proceedings. In Montenegro, courts have no obligation to notify victims of convictions and acquittals, thus leaving victims unaware of the outcome of their case. GREVIO notes, however, that victims must be informed of perpetrators discharged from inpatient, court-ordered treatment programmes.

245. GREVIO strongly encourages the Montenegrin authorities to ensure that more effective use is made of existing victim protection measures and to introduce the obligation of law enforcement, prosecution services and the judiciary to inform victims of follow-up given and outcomes of their case.

E. Legal Aid (Article 57)

246. In Montenegro, the Law on Free Legal Aid sets out the right to free legal aid for victims of domestic violence and human trafficking. For cases of domestic violence, this includes criminal and misdemeanour proceedings (see also Article 5 of the LDVP). Leaflets explaining the availability of free legal aid have been made available by the Association of Judges and are displayed at the information counters of all municipalities. Available data indicate, however, that very few women benefit from free legal assistance in practice, owing primarily to their lack of knowledge about their entitlement to such aid (see Chapter IV, Section B. Information). Although required by the Protocol, law enforcement officials do not seem to routinely inform victims of domestic violence of their right to legal aid with far-reaching consequences for their course of action.

247. Although widely trusted by victims of domestic violence, NGOs that offer highly specialised legal representation as part of their services are not considered to be eligible as legal aid lawyers under the law. As a result, women victims of domestic violence frequently turn to the pool of legal aid lawyers although not all possess any particular experience in this area. Moreover, the legal representation and counselling that NGO-affiliated lawyers provide is more comprehensive as it encompasses the various administrative procedures and civil proceedings such as divorce, child custody disputes and the non-payment of alimony.

248. GREVIO urges the Montenegrin authorities to ensure access to free legal aid for victims of all forms of violence against women as provided for in the Law on Free Legal Aid, in particular by taking active measures to ensure victims' awareness of this right.

VII. Migration and asylum

249. In the area of migration and asylum, the main requirement of the Istanbul Convention is to ensure that residence status laws and asylum procedures do not turn a blind eye to the realities of women living in abusive relationships or subjected to sexual violence and exploitation and other forms of gender-based violence. Residence status laws shall provide for the possibility of obtaining autonomous residence permits for women in specific circumstances (Article 59). Asylum procedures, on the other hand, must be gender-sensitive and allow women to disclose their stories in full, and grounds for persecution shall be interpreted in a gender-sensitive manner. This can only be achieved if, in turn, reception procedures and support services for asylum-seekers are sensitive to the needs of women victims or at risk of violence (Article 60).

A. Residence status (Article 59)

250. In Montenegro, the granting of temporary and permanent residence permits to foreigners is regulated in the new Foreigners Law. Temporary residence may be granted for different reasons, including family reunification (Articles 44 and 45) and humanitarian grounds (Article 52).

251. A foreigner may be granted temporary residence for a term not exceeding one year under a family reunification scheme (Article 44 of the new Foreigners Law). Where abusive marriages end, such permits can be extended only if the marriage lasted three years (Article 45, paragraph 1). GREVIO notes that foreign victims of domestic violence may request a temporary residence permit for humanitarian reasons (Article 52 of the new Foreigners Law). It may be granted where “appropriate” evidence of the abuse is presented by service providers (NGOs, state authorities or international organisations) or where victims co-operate with the authorities for the purposes of criminal investigations or proceedings. GREVIO welcomes this possibility but calls for an interpretation of the conditions set that take into account the difficulties which migrant women may experience in seeking help from the authorities or other service providers for reasons of their isolation by and dependency on their abuser.

252. GREVIO notes that no provisions exist to prohibit the expulsion of domestic violence victims who have joined their spouses under a family reunification scheme and who face repatriation because of expulsion proceedings initiated against their abusive spouse or partner.

253. Moreover, a permanent residence permit will become invalid if the holder leaves Montenegro for a period longer than twelve months (Article 94, paragraph 1 item 5). GREVIO recalls Article 59, paragraph 4 of the Convention which sets out the obligation to ensure that migrant women and girls may regain their residence status if it is lost as a result of a forced marriage abroad.

254. **GREVIO invites the Montenegrin authorities :**

- **to ensure that the practical implementation of Article 52 of the Foreigners Law allows migrant women victims of gender-based violence to receive, on humanitarian grounds, an autonomous residence permit irrespective of the duration of the marriage on the basis of standards of proof that they are able to meet;**
- **to ensure that migrant women victims of gender-based violence have the right to be granted an autonomous residence permit in the event of expulsion of the abusive spouse or partner;**
- **to ensure that women and girls who lost their residence status in Montenegro as a result of being forced into marriage abroad may regain their residence status.**

B. Gender-based asylum claims (Article 60)

255. Since its independence in 2006, Montenegro became a party to various international instruments on the protection of refugees, including the 1951 Convention relating to the Status of Refugees, and strengthened its efforts to find durable solutions in order to address the issue of internally displaced people. Today, Montenegro appears to be predominantly a transit country, thus hosting a low number of asylum-seekers and refugees. According to the authorities, a total of 803 women have submitted applications for asylum in Montenegro since 2007. The conditions and procedures for obtaining asylum and temporary protection are set out in the Law on International and Temporary Protection of Foreigners, enacted in 2017.

256. Although gender-based violence is not explicitly recognised as a ground for persecution giving rise to the right to asylum or international protection (Article 3 and 23 of the Law on International and Temporary Protection of Foreigners), GREVIO welcomes the legal requirement to consider claims on the grounds of membership of a particular social group with due regard to features related to gender identity, including sex (Article 23, paragraph 3). Furthermore, physical, psychological and sexual violence, as well as “acts of persecution specifically related to sex” are respectively listed as “acts of persecution” under Article 24, paragraph 2 items 1 and 6. GREVIO considers that such a classification implicitly implies that women asylum-seekers subjected to certain forms of gender-based violence are entitled to request asylum on the basis of membership of a particular social group.

257. Moreover, GREVIO notes that persons subjected to “rape or other serious forms of psychological, physical or sexual violence (such as victims of female genital mutilation)” are qualified as “vulnerable groups” under Article 10 of the Law on International and Temporary Protection of Foreigners, but is unsure whether members of this group benefit from any special measures of protection and/or support.

258. According to the authorities, the asylum procedure lasts up to 90 days. A new reception centre for up to 80 asylum-seekers was opened in 2014. GREVIO welcomes the development of gender-sensitive reception procedures, such as the provision of separate accommodation for single men and women or the treatment of gender-based violence victims with particular care. With regard to the latter, victims of gender-based violence are provided certain procedural safeguards such as exemption from detention at the border or in a transit area upon arrival (Article 36). Furthermore, they are placed in separate accommodation and informed of their right to file an individual asylum application – in addition to those filed by a spouse or any male member of the family. In terms of support services, they also have access to healthcare services (Article 66, paragraph 2) and are offered accommodation and financial support until they are reasonably able to take care of themselves (Article 77, paragraph 2). However, GREVIO notes that there are no specific gender-sensitive guidelines intended to enhance awareness among asylum case managers of special protection needs which women asylum-seekers who have been victims or are at risk of gender-based violence may have.

259. As regards interpreters, asylum seekers have the right to request to be interviewed by officials and with the help of interpreters of the same sex, although this would seem difficult to ensure in practice in relation to the wide range of languages required.

260. GREVIO invites the Montenegrin authorities to develop gender-sensitive guidelines intended to enhance relevant actors’ awareness of special protection needs for women asylum-seekers who have been victims or are at risk of gender-based violence. GREVIO invites the Montenegrin authorities to continue the efforts made to identify women asylum-seekers who have experienced or are at risk of gender-based violence by developing and disseminating gender guidelines for refugee status determination.

Concluding remarks

261. GREVIO welcomes the many steps taken by the Montenegrin authorities, since its independence in 2006, to align its laws and policies with international standards in the area of promoting gender equality and combating violence against women. More specifically, a range of targeted efforts supported by and in co-operation with the international community present in Montenegro, have led to significant achievements in implementing many of the requirements of the Istanbul Convention.

262. GREVIO recognises the political willingness displayed by the authorities in Montenegro to intensify the level of compliance with the Istanbul Convention and notes the high level of technical and financial support to this effect provided by intergovernmental organisations and international donors. It welcomes the extensive range of research projects, technical assistance and capacity-building exercises in areas of relevance to the Convention, past and present, and carried out and/or funded by the international community. While GREVIO is mindful of the varying economic circumstances of state parties to the Convention and that progress can only be achieved over time, it recalls that the obligation to implement conventional requirements lies with the state party. Essential policies, measures and services must therefore be allocated appropriate state funding. Although some steps are being taken by the Montenegrin authorities to this extent (for example the 50% funding for the new national helpline on domestic violence), many important measures, including the Strategy on Protection from Domestic Violence, do not seem to receive any funding from the government. Almost all NGOs providing essential services for victims of domestic violence are still funded by international donors. The limited financial support available from public funds is further being reduced following the recent changes to the Law on Non-Governmental Organisations. New and more sustainable funding opportunities for the existing women's specialist support services are not envisaged, despite the evident need to close gaps in terms of their geographical distribution and the forms of violence currently addressed.

263. While a number of women's support services exist for victims of domestic violence, these are not readily available in rural areas, and the existing domestic violence shelters are usually filled to capacity. Moreover, GREVIO notes with concern that there are no services for victims of rape and sexual violence nor are there any counselling services and shelters for women and girls fleeing forced marriage.

264. Regarding the legislative framework in the area of violence against women, GREVIO welcomes the adoption of the Law on Domestic Violence Prevention (LDVP) but notes that it pre-dates the entry into force of the Istanbul Convention in Montenegro and that a number of issues prevail regarding its effective implementation. While it introduces important concepts called for by the Istanbul Convention, such as that of multi-agency co-operation and emergency barring and protection orders, it sets out extremely low sanctions for domestic violence. Introduced with a view to ensuring higher rates of reporting of domestic violence, most domestic violence cases are now prosecuted as misdemeanour offences under the LDVP instead of criminal offences. Criminal convictions are thus rare, and cases prosecuted under the LDVP usually lead to fines or suspended sentences. Incoherence in applying the two parallel legislative frameworks (the LDVP and the Criminal Code) is widespread. At the same time, efforts made by law enforcement agencies and prosecution services to investigate into, record and fully assess the history of abuse that victims experience at the hands of their abusers are low, leaving many incidents of domestic violence unaccounted for. Victims frequently feel disillusioned with the outcome of cases, and there is a widespread tendency among all relevant professionals to encourage victims to reconcile instead of pursuing criminal justice.

265. Such tendencies seem to be the result of generally low levels of awareness of the gendered dimension of domestic violence (as well as those of the other forms of violence covered by the Convention). It is not viewed as a manifestation of unequal power relations between men and women but is frequently linked to alcohol addiction, personality disorders or poverty of the perpetrator. Efforts must be stepped up to address such assumptions and attitudes, in particular where they exist among front-line professionals. GREVIO notes the wide range of training and capacity-building initiatives around domestic violence organised by a variety of actors in the past,

and thus calls for a more practical approach involving on-the-job training, training based on protocols and guidelines and incentive schemes to ensure real and lasting change.

266. Lastly, GREVIO points to the need to ensure higher levels of awareness, sensitisation and capacity-building not only in relation to domestic violence, but in relation to all forms of gender-based violence covered by the Convention, particularly in relation to sexual violence, including rape. This seems to be an area surrounded by taboos as reporting rates for sexual violence are extremely low.

267. With a view to facilitating the implementation of its suggestions and proposals, GREVIO requests the Montenegrin authorities to translate this report into their official national language(s) and to ensure that it is widely disseminated, not only to the relevant state institutions at all levels (national, regional and local), in particular to the government, the ministries and the judiciary, but also to NGOs and other civil society organisations which work in the field of violence against women.

Appendix I: List of proposals and suggestions by GREVIO

I. Purposes, definitions, equality and non-discrimination, general obligations

B. Scope of application of the Convention (Article 2)

1. GREVIO strongly encourages the Montenegrin authorities to step up efforts against violence against women by ensuring that measures taken in accordance with the Istanbul Convention address all forms of violence against women in a holistic and comprehensive manner with due regard for their gendered nature (paragraph 10).

C. Definitions (Article 3)

2. GREVIO encourages the Montenegrin authorities to align the definition of gender-based violence in their legislation with the definitions set out in the Istanbul Convention and to ensure its effective application in practice. GREVIO further strongly encourages the Montenegrin authorities to introduce a clear gendered approach to preventing and combating all forms of violence against women, including domestic violence, to fully acknowledge their gendered nature (paragraph 14).

D. Fundamental rights, equality and non-discrimination (Article 4)

2. Intersectional Discrimination

3. GREVIO strongly encourages the Montenegrin authorities to eliminate discrimination faced by Roma and Egyptian women, disabled women and women living in rural zones when seeking protection from violence, and hence ensure in this regard the access of all women - on an equal basis - to specialist support services (paragraph 21).

II. Integrated policies and data collection

A. Comprehensive and co-ordinated policies (Article 7)

4. GREVIO strongly encourages the Montenegrin authorities to develop a long-term co-ordinated plan/strategy which places the rights of victims at the centre of all measures, giving due importance to all forms of violence against women and to its co-ordinated implementation. GREVIO encourages the Montenegrin authorities to ensure that the gendered nature of all forms of violence against women is duly reflected in all policy approaches (paragraph 29).

B. Financial resources (Article 8)

5. GREVIO strongly encourages the Montenegrin authorities to ensure appropriate human and financial resources for any policies, measures and legislation aimed at preventing and combating violence against women and the institutions and entities mandated for their implementation. GREVIO furthermore invites the Montenegrin authorities to gradually reduce its dependency on international donors for activities to combat violence against women and ensure a wider share of funding from the Montenegrin state budget to demonstrate financial responsibility and ownership (paragraph 35).

C. Non-governmental organisations and civil society (Article 9)

6. GREVIO urges the Montenegrin authorities to ensure appropriate funding through suitable funding opportunities such as long-term grants based on transparent procurement procedures to ensure sustainable funding levels for women's NGOs which run specialist support services for women victims of all forms of violence (paragraph 43).

7. GREVIO further strongly encourages the Montenegrin authorities to maintain their efforts in ensuring an independent role for women's NGOs in providing essential services such as counselling, shelter accommodation, advocacy etc. to women victims of domestic violence irrespective of referrals made by Centres for Social Work (paragraph 44).

D. Co-ordinating body (Article 10)

8. With a view to ensuring continuous policy setting regarding all forms of violence against women and the effective monitoring of measures taken, GREVIO strongly encourages the Montenegrin authorities to:

- a. clarify the roles and responsibilities of each of the two national co-ordinating structures;
- b. fully institutionalise the Co-ordinating Board and ensure continuity in human and financial resources beyond government mandates; and
- c. set up separate bodies for, on the one hand, the co-ordination and implementation of policies and measures, and on the other hand for their monitoring and evaluation, in order to ensure objectivity in the evaluation of polices (paragraph 48).

E. Data collection and research (Article 11)

1. Administrative data collection

9. GREVIO strongly encourages the Montenegrin authorities to pursue their efforts to introduce harmonised data categories such as sex, age, type of violence and type of relationship of the perpetrator with the victim to be collected at regular intervals by all sectors of the administration, including the law enforcement agencies, the judiciary, the relevant social services, the public health sector and other relevant public services (paragraph 58).

2. Population-based surveys

10. GREVIO encourages the Montenegrin authorities 'to carry out prevalence surveys on all forms of violence against women and domestic violence including the (multiple forms of) violence experienced by Roma and Egyptian community and women with disabilities (Paragraph 62).

3. Research

11. GREVIO encourages the Montenegrin authorities to step up efforts to support research into manifestations of violence against women that are not currently explored, including by setting research priorities and offering financial support. GREVIO also encourages the Montenegrin authorities to continue to evaluate existing policies and legislative measures to assess their level of implementation, efficacy and victim satisfaction (paragraph 66).

III. Prevention

A. Awareness raising (Article 13)

12. GREVIO strongly encourages the Montenegrin authorities to:
- a. carry out long-term and regular awareness-raising campaigns that address the attitudes and perceptions around domestic violence that prevail in Montenegro;
 - b. continue to address, through specific awareness-raising efforts, forms of violence such as rape and particularly vulnerable groups of women who may experience multiple forms of violence and discrimination;
 - c. monitor the impact of any awareness-raising campaign (paragraph 76).

B. Education (Article 14)

13. While GREVIO recognises the important steps taken by the Montenegrin authorities in heightening the respect among teachers and students for gender equality, mutual respect in interpersonal relationships and non-violent conflict resolution, GREVIO encourages the Montenegrin authorities to make the existing teacher training programmes and school subjects mandatory for all teachers and students (paragraph 80).

C. Training of professionals (Article 15)

14. GREVIO urges the Montenegrin authorities to ensure that training for all professional groups that come in contact with victims, in particular law enforcement officials, prosecutors, judges, social workers, teachers and health professionals, include:
- a. systematic and compulsory initial training on the different manifestations of violence against women, their detection and root causes, as well as the prevention of secondary victimisation;
 - b. regular in-service training that is mandatory and based on protocols and guidelines for intervention in cases of all forms of violence against women (paragraph 89).

D. Preventive intervention and treatment programmes (Article 16)

1. Programmes for perpetrators of domestic violence

15. GREVIO strongly encourages the Montenegrin authorities to move away from perpetrator programmes based exclusively on medical treatment for substance abuse and mental health problems and to set up mandatory psycho-social treatment programmes as required by Article 20, paragraph 5 and Article 25 of the LDVP. Moreover, GREVIO encourages the Montenegrin authorities to expand their work in also setting up voluntary perpetrator programmes and to ensure that all programmes are in line with the core elements as set out in the Explanatory Report to Article 16 of the Istanbul Convention (paragraph 94).

E. Participation of the private sector and the media (Article 17)

16. GREVIO encourages the Montenegrin authorities to step up efforts to train journalists on the different forms of violence against women and gender-based violence and how to report on them. GREVIO further encourages the Montenegrin authorities actively to encourage the private sector to take an active part in preventing and combating violence against women in all its forms (paragraph 100).

IV. Protection and support

A. General obligations (Article 18)

17. GREVIO strongly encourages the Montenegrin authorities to step up efforts to ensure compliance, among all relevant institutions, with the existing obligations to co-operate on domestic violence cases with a view to making interventions more effective and respectful of the rights and needs of victims. Furthermore, GREVIO strongly encourages the Montenegrin authorities to pursue efforts to institutionalise co-operation of all relevant institutions among themselves and with women's support services run by NGOs in relation to cases of rape and sexual violence, forced marriage, stalking, sexual harassment and other forms of violence covered by the Istanbul Convention (paragraph 107).

B. Information (Article 19)

18. GREVIO encourages the Montenegrin authorities to ensure the wider dissemination of information on the support services and legal measures available to victims of domestic and other forms of violence against women. This would include measures such as the dissemination of posters and leaflets as well as the intensification of efforts to ensure that professionals of all relevant institutions take a more pro-active approach towards informing victims of the available legal measures and support (provided by specialist support services or statutory agencies) (paragraph 110).

C. General support services (Article 20)

19. GREVIO strongly encourages the Montenegrin authorities to provide adequate resources to allow the Centres for Social Work to discharge their responsibilities in an effective manner. It further invites the authorities to provide training for the social workers specifically on the gendered nature of violence against women, including domestic violence, and to appoint specialised social workers in this field (paragraph 119).

D. Specialist support services (Article 22)

20. Recalling the importance of specialist support and counselling for women who have experienced any of the forms of violence covered by the Istanbul Convention, GREVIO urges the Montenegrin authorities to expedite work on the national plan for the improvement of specialist support services for victims of violence against women and to ensure counselling and support exists throughout the country and in relation to all forms of violence covered by the Istanbul Convention (paragraph 125).

E. Shelters (Article 23)

21. GREVIO strongly encourages the Montenegrin authorities to ensure that the introduction of the licensing scheme for service providers does not affect the quality of the services currently provided to victims of domestic violence. To this end, GREVIO strongly encourages the Montenegrin authorities to include in the accreditation the requirement to ensure all services are carried out on the basis of a gendered understanding of domestic violence and with a view to empowering women victims and their children (Paragraph 131).

F. Telephone helplines (Article 24)

22. GREVIO encourages the Montenegrin authorities to provide resources for and promote an agreement between the existing help-lines to work in unity, ensuring consistency and to expand their remit to all forms of violence covered by the Convention (Paragraph 134).

G. Support for victims of sexual violence (Article 25)

23. GREVIO urges the Montenegrin authorities to set up rape crisis and/or sexual violence referral centres, ensuring a sensitive response by trained and specialised staff, in sufficient numbers, recalling that one such centre should be available per every 200 000 inhabitants and that their geographic spread should make them accessible to victims in rural areas as much as in cities (paragraph 137).⁹⁶

H. Protection and support for child witnesses (Article 26)

24. GREVIO urges the Montenegrin authorities to step up measures to ensure wider levels of awareness of the harmful effects of witnessing domestic violence on children and to provide adequate resources for psycho-social counselling for these children (Paragraph 144).

I. Reporting (Article 28)

25. GREVIO encourages the Montenegrin authorities to ensure that the duty to report placed on social workers, health care professionals, and educational staff is tempered by full and sensitive information being provided to the victim to allow her to make an informed decision herself and maintain autonomy, whilst also ensuring the safety of all, especially minors (Paragraph 151).

V. Substantive law

A. Civil law

1. Civil remedies against the state – ensuring due diligence (Article 29)

26. GREVIO strongly encourages the Montenegrin authorities to ensure the full use of disciplinary measures as well as misdemeanour and criminal offences in relation to cases of misconduct or failure of state officials to take appropriate action in relation to cases of domestic violence with the aim of ending impunity for officials who fail to carry out their duties (paragraph 159).

⁹⁶ Explanatory Report to the Convention, paragraph 142.

2. Compensation (Article 30)

27. GREVIO strongly encourages the Montenegrin authorities to introduce a state compensation scheme as envisaged by the Law on Compensation for Damages to Victims of Violent Crimes irrespective of its accession to the EU (Paragraph 162).

3. Custody, visitation rights and safety (Article 31)

28. GREVIO strongly encourages the Montenegrin authorities to make more use of and professionalise the supervised visitation scheme for children who have witnessed or experienced domestic violence. Recalling the importance of Article 31 of the Istanbul Convention, GREVIO also strongly encourages the Montenegrin authorities to step up measures to ensure that the safety and needs of child victims and witnesses of domestic violence are guaranteed in all child custody and visitation decisions. To this end,

- a. all applications to family courts should include a mandatory question on whether violence has been an issue in the relationship and whether it has been reported to law-enforcement officials or Centres for Social Work;
- b. where violence has been reported, family courts should ask for the disclosure of the risk assessment and safety plans drawn up by law-enforcement agencies and/or Centres for Social Work and take them into account when determining any issue involving a party who has alleged violence;
- c. where there is an on-going criminal investigation and/or where a protection order has been issued, family courts should seek the opinion of law-enforcement agencies and the prosecution, and give reasons as to why they choose to either follow or disregard those opinions;
- d. if the criminal investigation is closed or suspended, family courts must conduct their own investigation as to whether violence occurred and what effect the violence has had on the child;
- e. safeguards should be built into the procedures, such as offering the parents separate appointments and creating separate waiting areas in courts, to take into account the imbalance of power between the victim and the perpetrator and to prevent the risk of revictimisation.

Such measures should be accompanied by the provision of appropriate training and the development of professional guidelines, aimed at raising awareness among the professionals concerned as to the harmful effects of violence on children, including child witnesses, and at familiarising them with the requirements of the Istanbul Convention related to the settlement of custody and visitation rights (paragraph 169).

B. Criminal law

1. Domestic violence

29. GREVIO urges the Montenegrin authorities to ensure, through all available means such as protocols, training of professionals and legislative change, more operational clarity between the misdemeanour offence of domestic violence and that of a criminal law nature. In addition, GREVIO urges the Montenegrin authorities to ensure more dissuasive sanctions for the misdemeanour offence of domestic violence (paragraph 178).

2. Sexual violence, including rape (Article 36)

31. GREVIO invites the Montenegrin authorities to introduce criminal legislation that would cover the intentional conduct set out in Article 36, paragraph 1 c of the Istanbul Convention (paragraph 181).

3. Forced marriage (Article 37)

32. GREVIO encourages the Montenegrin authorities to:
- a. remove procedural obstacles and limitations to the criminal prosecution of acts of forced marriage (in particular the requirement to first seek the annulment of a forced marriage under Article 214 and the time limit placed on the possibility of having a forced marriage annulled under Article 216);
 - b. criminalise the intentional conduct of forcing an adult to enter into a customary union;
 - c. criminalise the intentional conduct of luring an adult or a child to the territory of another state with the purpose of forcing this person into a marriage as required by Article 37, paragraph 2 (paragraph 192).

4. Sexual harassment (Article 40)

33. GREVIO encourages the Montenegrin authorities to ensure that sexual harassment experienced in all areas of life is subject to a legal sanction. GREVIO further encourages the Montenegrin authorities to increase their efforts in ensuring higher levels of awareness of sexual harassment as opposed to sexual violence among the general public and professionals concerned (paragraph 197).

5. Sanctions and measures (Article 45)

34. GREVIO strongly encourages the Montenegrin authorities to ensure - through legislative measures and the effective training of members of the judiciary and prosecution services - that sentences and measures imposed for domestic violence offences are effective, proportionate and dissuasive and that they do not harm victims and their children (paragraph 201).

7. Prohibition of mandatory alternative dispute resolution processes or sentencing (Article 48)

35. GREVIO strongly encourages the Montenegrin authorities to ensure that mediators and judges are fully aware of the prohibition of mediation in domestic violence cases as set out in Article 326 of the Family Law and to end the practice of mediation in family disputes and divorce proceedings where there is a history of domestic violence (paragraph 208).

VI. Investigation, prosecution, procedural law and protective measures

A. Immediate response, prevention and protection (Article 50)

1. Reporting to and investigations by law enforcement agencies

36. GREVIO urges the Montenegrin authorities to ensure the swift and impartial response of all law enforcement officials to cases of domestic and other forms of violence against women on the basis of full respect for women's right to life and physical integrity. GREVIO further urges the Montenegrin authorities to take practical steps such as on-the-job training and mentoring schemes to actively overcome persisting attitudes, beliefs and practices that stand in the way of a law enforcement response to domestic violence which focuses on the victim's safety, the collection of evidence and the full accountability of the perpetrator (Paragraph 214).

2. The role of the prosecution services and conviction rates

37. GREVIO strongly encourages the Montenegrin authorities to increase the level of awareness among all professionals involved, including judges and prosecutors, of all the forms of violence covered by the Istanbul Convention, in order to diligently prevent, investigate, punish and provide reparation for all acts of violence covered by the scope of this Convention (paragraph 222).

B. Risk assessment and risk management (Article 51)

38. GREVIO strongly encourages the Montenegrin authorities to introduce comprehensive and mandatory risk assessment and management, in co-operation with relevant women's specialist support services, for all institutions handling cases of violence against women, including domestic violence (paragraph 227).

C. Emergency barring and protection orders (Articles 52 and 53)

39. GREVIO urges the Montenegrin authorities to make protection orders available for immediate protection to all victims of domestic violence, irrespective of charging decisions by prosecution services or the institution of misdemeanour proceedings by victims (paragraph 233).

40. GREVIO strongly encourages the Montenegrin authorities to ensure that emergency barring and protection orders are effectively applied by all relevant authorities (paragraph 238).

D. Measures of protection during investigations and judicial proceedings (Article 56)

41. GREVIO strongly encourages the Montenegrin authorities to ensure that more effective use is made of existing victim protection measures and to introduce the obligation of law enforcement, prosecution services and the judiciary to inform victims of follow-up given and outcomes of their case (paragraph 245).

E. Legal aid (Article 57)

42. GREVIO urges the Montenegrin authorities to ensure access to free legal aid for victims of all forms of violence against women as provided for in the Law on Free Legal Aid, in particular by taking active measures to ensure victims' awareness of this right (paragraph 248).

VII. Migration and asylum

A. Residence status (Article 59)

43. GREVIO invites the Montenegrin authorities:

- a. to ensure that the practical implementation of Article 52 of the Foreigners Law allows migrant women victims of gender-based violence to receive, on humanitarian grounds, an autonomous residence permit irrespective of the duration of the marriage on the basis of standards of proof that they are able to meet;
- b. to ensure that migrant women victims of gender-based violence have the right to be granted an autonomous residence permit in the event of expulsion of the abusive spouse or partner;

- c. to ensure that women and girls who lost their residence status in Montenegro as a result of being forced into marriage abroad may regain their residence status (paragraph 254).

B. Gender-based asylum claims (Article 60)

44. GREVIO invites the Montenegrin authorities to develop gender-sensitive guidelines intended to enhance relevant actors' awareness of special protection needs for women asylum-seekers who have been victims or are at risk of gender-based violence. GREVIO invites the Montenegrin authorities to continue the efforts made to identify women asylum-seekers who have experienced or are at risk of gender-based violence by developing and disseminating gender guidelines for refugee status determination (Paragraph 260).

Appendix II: List of representatives of Montenegro present at the state dialogue with GREVIO

Božidarka Krunić, Ambassador Extraordinary and Plenipotentiary, Permanent Representative of Montenegro to the Council of Europe

Ms Ana Radusinović, Deputy to the Permanent Representative of Montenegro to the Council of Europe

Goran Kušević, Director General for Social Welfare and Child Protection, Ministry of Labour and Social Welfare of Montenegro

Jovana Radifković, Independent Adviser on Social Welfare and Child Protection, Ministry of Labour and Social Welfare of Montenegro

Maja Jović, Independent Adviser, Gender Equality Department, Ministry for Human and Minority Rights

Senka Klikovac, Head of Health Department, Ministry of Health

Bojan Bugarin, Independent Adviser, Asylum Directorate, Ministry of Internal Affairs

Ms Milivoje Rašović, President of the Supreme Court of Montenegro

Bojana Bandović, Adviser, Supreme Court

Jelena Protić, State Prosecutor

Snezana Vujović, Senior Police Inspector for the repression of Juvenile Delinquency and Domestic Violence

Ms Sonja Nikčević, President of the Municipal Assembly of Nikšić

Appendix III: List of the national authorities, other public bodies, non-governmental organisations and civil society organisations with which GREVIO held consultations

National authorities

- Ministry of Labour and Social Welfare
- Ministry of Justice
- Ministry of Interior
- Ministry of Education
- Ministry of Health
- Ministry of Human and Minority Rights

Local authorities

- Social Welfare Centre Podgorica
- Social Welfare Centre Nikšić
- Institute for Social and Children's Protection

Public bodies

- Agency for Electronic Communication
- Centre for Mediation
- High Misdemeanour Court of Montenegro
- Basic Public Prosecutor's Office
- Clinical Centre of Montenegro
- Kotor Psychiatric Hospital

Non-governmental organisations

- Women's Rights Centre
- Center for Roma Initiatives
- SOS Hotline for Women and Children Victims of Violence Niksic
- SOS Helpline Podgorica

Civil society organisations and other organisations

- Association of Court Experts of Montenegro
- Ombudsman of Montenegro - Protector of Human Rights and Freedoms of Montenegro
- Montenegro Media Institute (MMI)
- Bojana Franović, attorney at law
- Jovana Pavlović, attorney at law
- Duška Pejović, journalist and editor, consultant in the field of gender equality

International Organisations

- UNDP
- Delegation of the European Union to Montenegro

Members of Parliament

- Ms Nada Drobnjak, Head of the Committee for Gender Equality, Democratic Party of Socialists

GREVIO, the *Group of Experts on Action against Violence against Women and Domestic Violence*, is an independent human rights monitoring body mandated to monitor the implementation of the *Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence* (Istanbul Convention) by the Parties.

The Istanbul Convention is the most far-reaching international treaty to tackle violence against women and domestic violence. Its comprehensive set of provisions spans far-ranging preventive and protective measures as well as a number of obligations to ensure an adequate criminal justice response to such serious violations of human rights.

This report contains an overall analysis of the implementation of the provisions of the Istanbul Convention. It highlights positive initiatives in preventing and combating all forms of violence against women at national level and provides suggestions and proposals to improve the situation of women facing such violence.

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The Council of Europe is the continent's leading human rights organisation. It comprises 47 member states, 28 of which are members of the European Union.

All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law.

The European Court of Human Rights oversees the implementation of the Convention in the member states.