

Handbook for Legal Aid Lawyers on Women's Access to Justice in Türkiye



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Acronyms and abbreviations

ADR	▶ Alternative dispute resolution
APOV	▶ Abuse of position of vulnerability
BPfA	▶ Beijing Platform for Action
CCBE	▶ Council of Bars and Law Societies of Europe
CEDAW	▶ Convention on the Elimination of All Forms of Discrimination against Women
CIMER	▶ The Presidency Communication Center
CoE	▶ Council of Europe
CRC	▶ Convention on the Rights of the Child/ Committee on the Rights of the Child
CRPD	▶ Convention on the Rights of Persons with Disabilities
DV	▶ Domestic violence
EBO	▶ Emergency barring order
ECHR	▶ European Convention on Human Rights and Fundamental Freedoms
ECtHR	▶ European Court of Human Rights
EIGE	▶ European Institute for Gender Equality
FGM	▶ Female genital mutilation
FRA	▶ European Union Agency for Fundamental Rights
GBV	▶ Gender-based violence
GREVIO	▶ Group of Experts on Action against Violence against Women and Domestic Violence
HRC	▶ Human Rights Committee
HSK	▶ Council of Judges and Prosecutors
IBA	▶ Istanbul Bar Association
ICCPR	▶ International Covenant on Civil and Political Rights
ICT	▶ Information and Communications Technology
IDLO	▶ International Development Law Organization
IPV	▶ Intimate partner violence
İŞKUR	▶ Turkish Employment Agency
JIR	▶ Judicial Interview Room
KEFEK	▶ Parliamentary Commission on Equal Opportunities of Women and Men
KVKK	▶ Personal Data Protection Board
MoFSP	▶ Ministry of Family and Social Policies
NGO	▶ Non-governmental organisation
OHCHR	▶ UN Office of the High Commissioner for Human Rights
PO	▶ Protection order
PTSD	▶ Post-traumatic stress disorder
SDG	Sustainable Development Goal
ŞÖNİM	Violence Prevention and Monitoring Centers
TBI	▶ Traumatic brain injury
UDHR	▶ Universal Declaration of Human Rights
UNDP	▶ United Nations Development Programme
UNODC	▶ United Nations Office on Drugs and Crime
VERBIS	▶ Data Controllers Registry Information System
WHO	▶ World Health Organization

Glossary¹

Access to justice, in this study means “the ability of people to seek and obtain a remedy through formal or informal institutions of justice, in conformity with human rights standards”. (UNDP, 2005)

Gender means the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men.²

Gender based discrimination is any distinction, exclusion or restriction made on the basis of socially constructed gender roles and norms which prevents a person from enjoying full human rights, resources, opportunities and the right to contribute and influence. Discrimination can be:

Direct discrimination which occurs when a difference in treatment relies directly and explicitly on distinctions based exclusively on sex and characteristics of women or of men, which cannot be justified objectively; or

Indirect discrimination which occurs when a law, policy or programme does not appear to be discriminatory, but has a discriminatory effect when implemented. This can occur, for example when women are disadvantaged compared to men with respect to the enjoyment of a particular opportunity or benefit due to pre-existing inequalities. Applying a gender-neutral law may leave the existing inequality in place or exacerbate it.³

Gender equality means an equal visibility, empowerment and participation of both sexes in all spheres of public and private life. Gender equality is the opposite of gender inequality, not of gender difference, and aims to promote the full participation of women and men in society. It means accepting and valuing equally the differences between women and men and the diverse roles they play in society. Gender equality includes the right to be different. This means taking into account the existing difference among women and men, which are related to class, political opinion, religion, ethnicity, race or sexual orientation. Gender equality means discussing how it is possible to go further, to change the structures in society which contribute to maintaining the unequal power relationships between women and men, and to reach a better balance in the various female and male values and priorities.⁴

De jure equality (sometimes called formal equality or “paper governance”) refers to equality under the law.

De facto equality refers to equality in practice. Equality does not mean that women and men are the same or that they become identical, but rather that their similarities and differences are recognised and equally valued and that their opportunities and their benefits become and remain equal. It means equality for women and men in the allocation of resources or benefits or in access to services and recognising the diversity of different groups of women and men.

Gender blind refers to the failure to recognise that the roles and responsibilities of women/girls and men/boys are given to them in specific social, cultural, economic and political context and background. It means ignoring the different socially determined roles, responsibilities and capabilities of women and men. Gender-blind policies and activities are based on information derived from men’s activities and/or assume those affected by the policy or activity has the same (male) needs and interests.

1 Definitions taken from: EIGE, *Glossary and Thesaurus*, [online]; *Advocates for Human Rights, Stop Violence against women* [online].

2 The Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), Article 3.

3 Council of Europe Committee of Ministers Recommendation CM/Rec (2007) 17 on gender equality standards and mechanisms, Explanatory Memorandum, CM (2007)153-add, Paragraph 20.

4 Council of Europe Committee of Ministers Recommendation CM/Rec (2007) 17 on gender equality standards and mechanisms, Explanatory Memorandum, CM (2007)153-add, Paragraph 20.

Gender neutral refers to anything – a concept, an entity, a style of language - that is un-associated with either the female or male gender. These laws, policies or activities are not specifically aimed at either women or men and are assumed to affect both sexes equally. However, they may actually be gender blind.

Gender-neutral, gender-sensitive and gender-transformative: The primary objective behind gender mainstreaming is to design and implement development projects, programs and policies that:

Do not reinforce existing gender inequalities (Gender-neutral)

Attempt to redress existing gender inequalities (Gender-sensitive)

Attempt to redefine women and men's gender roles and relations (Gender-transformative)

Gender mainstreaming is the (re)organisation, improvement, development and evaluation of policy processes, so that a gender equality perspective is incorporated in all policies at all levels and all stages, by the actors normally involved in policy making. It is a strategy for making women's as well as men's concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetrated.⁵

Gender stereotypes are generic attitudes, opinions or roles applied to a particular gender based on unjustifiably fixed assumptions. Gender stereotypes continue to be widespread and often give rise to bias and gender-based discrimination. Gender stereotypes are governed by society and reflect common social norms and ideas on how a man or woman is expected to behave. These ideas are often reinforced or reproduced by the media, religion and global political and economic processes. Stereotypes play a decisive role in perpetuating gender inequality in societies.

Gender norms are ideas about how women and men should be and should act. People internalise and learn these "rules" early in life, which sets up a life cycle of gender socialisation and stereotyping. Put another way, gender norms are the standards and expectations to which gender identity generally conforms, within a range that defines a particular society, culture and community at that point in time.

Gender-responsive legal aid, in this study means that the relevant legal aid laws, the agencies that deliver legal aid (the bar associations and courts), the legal aid processes and the outcomes do not discriminate against anyone on the basis of gender. It necessitates taking a gender perspective on the right to legal aid itself, as well as the assessment of access and obstacles to the enjoyment of this right and adopting gender sensitive strategies for protecting and promoting the right to legal aid.

Legal aid, in this study includes "legal advice, assistance and representation [...] that is provided at no cost for those without sufficient means or when the interests of justice so require", as well as legal education, access to legal information and other services provided for persons through alternative dispute resolution mechanisms and restorative justice processes".

Women's access to justice, in this study means as: "access by women, in particular from poor and disadvantaged groups, to fair, effective, affordable and accountable mechanism, for the protection of rights, control of abuse of power, and resolution of conflicts. This includes the ability of women to seek and obtain a fair and just remedy through formal and informal justice systems and the ability to influence and participate in law-making processes and institutions." (UN Women et.al, 2018)

5 Review of Economic and Social Council agreed conclusions 1997/2 on mainstreaming the gender perspective into all policies and programmes in the United Nations system. ECOSOC res 1997/2.

1. Introduction

Women engage in the justice system as claimants, victims, defendants or witnesses, in addition to playing roles as judges, prosecutors and legal aid lawyers. Yet, women's experiences are in many aspects different from those of men. Despite women's formal legal equality, in practice they continue to face ongoing barriers and discrimination in accessing justice.

Despite longstanding international obligations and national commitments to improving access to justice for all, serious problems plague institutions across the justice chain in countries around the world, often rendering justice an illusory concept, especially for vulnerable categories of the population. Turkey is no exception.

Comprising more than half of the population, women cannot be considered as “vulnerable” *per se*. Yet, socio-economic structures, discriminatory laws and practices, patriarchal social norms, violence and stigma—all contribute to their social and economic vulnerability, limiting their full enjoyment of rights, including access to justice. According to the Istanbul Bar Association Women's Rights Center, in 2019, 12.101 out of the 13.795 applications to Legal Aid Units of the Bar Association were made by women, signalling greater socio-economic need (IBA Women's Rights Center, 2020).

Women's access to justice is often limited by a range of issues, including: obstacles to their access to courts due to the lack of the protection of their security therein, caregiving obligations and the time and costs of transport to court locations; discriminatory laws, such as the domestic classification of offences and evidentiary rules; the discriminatory application of “neutral” provisions; and the absence of the necessary procedural protections for them as defendants, witnesses and victims in proceedings.

Women are disproportionately affected by certain crimes, such as gender-based violence and the criminalisation of reproduction and sexuality. The failure to fully criminalise all forms of violence against women, and to ensure proportionate and dissuasive sanctions as well as adequate and effective remedies, including compensation, deprives them of access to justice.

The Handbook for legal aid lawyers on women's access to justice in Turkey is prepared within the framework of the European Union and Council of Europe joint action on “Fostering Women's access to Justice in Turkey” implemented under “Horizontal Facility for the Western Balkans and Turkey 2019-2022”. It aims to raise the awareness of legal aid lawyers on the discriminatory impact of the justice system's “business as usual” practices on women. It thus identifies the above-listed issues within Turkish law and practice, as well as strategic entry points for legal aid lawyers to counter or mitigate their discriminatory effects on women, in order to foster women's increased access to justice.

2. Women's access to justice

2.1 Key concepts

This section details key concepts and international instruments pertaining to women's access to justice, definitions, and a brief description of legal and **de facto** barriers to women's enjoyment of their right to access to justice.

2.1.1 Definitions

Broadly speaking, access to justice:

“obliges states to guarantee each individual's right to go to court – or, in some circumstances, an alternative dispute resolution body – to obtain a remedy if it is found that the individual's rights have

been violated. It is thus also an enabling right that helps individuals enforce other rights.” (European Union Agency for Fundamental Rights and Council of Europe, 2016: 16).⁶

As such, it encompasses both the right to a fair trial and to an effective remedy, as guaranteed by Articles 6 and 13 of the European Convention on Human Rights and Fundamental Freedoms (ECHR).

Women’s access to justice has been defined as:

“Access by women, in particular, from poor and disadvantaged groups, to fair, effective, affordable and accountable mechanisms, for the protection of rights, control of abuse of power, and resolution of conflicts. This includes the ability of women to seek and obtain a fair and just remedy through formal and informal justice systems and the ability to influence and participate in law-making processes and institutions.” (UN Women et.al, 2018: 17).

The focus of this Handbook is on women’s access to justice via formal institutions in accordance with international human rights law.

Key international legal instruments pertaining to violence against women

- UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
- General Recommendation Nos. 19 and 35 on violence against women
- CEDAW/CRC, Joint General Recommendation No. 31/General Comment No. 18 on harmful practices
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children
- CoE Convention on Preventing and Combating Violence against Women and Domestic Violence
- CoE Convention on Action against Trafficking
- ILO Convention (C190) on Violence and Harassment

2.1.2 International and national instruments on women’s access to justice

Numerous international human rights treaties and national constitutions establish women’s and men’s equality before the law, thus guaranteeing women’s access to justice free from discrimination based on sex and gender. Several international instruments further elaborate specific standards pertaining to women’s access to justice. At the international level, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and its General Recommendation 33 on women’s access to justice, the Beijing Declaration and Platform for Action (BPfA), the Protocol to Prevent, Suppress and Punishment of Trafficking in Persons, Especially Women and Children, Supplementing the UN Convention on Transnational Organized Crime and the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power—all contain specific provisions related to access to justice for women.

Other UN treaty bodies and special mandate holders, such as the UN Special Rapporteurs on violence against women, its causes and consequences and on the independence of judges and lawyers, as well as special procedures, such as the UN Working Group on Discrimination against Women and Girls, offer detailed guidelines and country-specific reports on the practical implementation of international rights in this field.

⁶ Access to justice is also protected by: Articles 2(3), 14, International Covenant on Civil and Political Rights (ICCPR); Articles 8, 10, Universal Declaration of Human Rights (UDHR), and the Convention on the Rights of Persons with Disabilities (CRPD).

At the regional level, the ECHR, the Council of Europe (CoE) Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), and the CoE Conventions on Action against Trafficking and on Protection of Children against Sexual Exploitation and Sexual Abuse, as well as the European Convention on the Compensation of Victims of Violent Crime, the Directive of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime (EU Victims' Rights Directive)⁷ and the Committee of Ministers Recommendation CM/Rec(2022)17 on protecting the rights of migrant, refugee and asylum-seeking women and girls, among others, also specifically address women's access to justice.

The European Court of Human Rights (ECtHR) has elaborated a rich body of jurisprudence on women's right to access to justice. Its jurisprudence on gender discrimination and impermissible stereotypes covers a range of domains, including employment and family life. It also clearly sets forth States' due diligence obligations with respect to investigating, prosecuting and punishing sexual and gender-based crimes, ensuring protection for victims of such crimes, both in and out of the court room, and highlighting the gender discriminatory elements of violations.⁸ Its caselaw also assures the right to an effective remedy for violations of women's access to justice.

In Turkey, access to justice appears under the heading "freedom of seeking justice" in Article 36 of the Constitution. Everyone in Turkey has the right to access to court and to a fair trial before the courts, pursuant to Article 36 of the Constitution. Article 40 of the Constitution protects the exercise of fundamental rights and freedoms and guarantees the right to request prompt access to the competent authorities.

Article 9 of the Turkish Constitution ensures the independent and impartial exercise of judicial power, which must be exercised with due diligence. Article 10 guarantees equality before the law, including equality between men and women. It requires state organs and administrative authorities to ensure equality before the law in all proceedings.

According to Article 90 of the Constitution, international treaties become enforceable upon ratification, without the need for any separate action or legislation. Moreover, it gives a higher status to international agreements on fundamental rights and freedoms. In cases involving conflicts between national laws and international agreements, international agreements take precedence.

The application of Article 90 is thus critical to the implementation of international standards. Equality and non-discrimination provisions in international human rights conventions are central to equal access to justice for women, including the right to a fair and impartial trial. Judges are constitutionally obliged to implement these principles in their decision making.

- Ensuring a gender-responsive justice system rests on six essential pillars: Justiciability - **Women must be able to claim their rights under CEDAW as legal entitlements. Aspects of this require that legal frameworks can provide adequate legal protection in the law, duty bearers have the capacity to ensure unhindered access to justice by women (for example justice professionals are able to handle cases in a gender sensitive manner) and that rights holders, the women, have the capacity to seek and demand justice which speaks to their ability and empowerment to claim their rights.**
- Availability requires the establishment of justice institutions, such as courts and quasi-judicial bodies, across the whole territory of the State in urban, rural and remote areas, as well as their maintenance and funding. The GR recommends establishing mobile courts for remote areas, providing access to financial aid and social services, and providing oversight by independent inspectors.

⁷ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

⁸ See, e.g., ECtHR, *Opuz v. Turkey*; *A. v. Croatia*; *Talpis v. Italy*; *Halime Kiliç v. Turkey*; *Volodina v. Russia*; *Bâlşan v. Romania*.

- Accessibility requires that all justice systems, both formal and quasi-judicial systems, are secure, affordable and physically accessible to women, and are adapted and appropriate to the needs of women including those who face intersectional or compounded forms of discrimination. Here the GR recommends specifically the removal of economic barriers to justice by providing legal aid AND by ensuring that fees for issuing and filing documents as well as court costs are reduced for women with low income and waived for women living in poverty. It also recommends the establishment of justice access centres, such as ‘one stop centers’ which include a range of legal and social services, such as legal aid, in order to reduce the number of steps that a woman has to take to access justice.
- Good quality requires that all components of justice system adhere to international standards of competence, efficiency, independence and impartiality and provide, in a timely fashion, appropriate and effective remedies that are enforced and that lead to sustainable gender-sensitive dispute resolution for all women. It also requires that justice systems are contextualized, dynamic, participatory, open to innovative practical measures, gender-sensitive, and take account of the increasing demands for justice by women.
- Provision of remedies requires the ability of women to receive from justice systems viable protection and meaningful redress for any harm that they may suffer. So for example, to be meaningful for women, the GR recommends that this include taking full account of unremunerated domestic and caring activities in assessing damages when determining compensation.
- Accountability requires ensuring the functioning of justice systems to guarantee that they are in accordance with the principles of justiciability, availability, accessibility, good quality and provision of remedies. The accountability of justice systems also refers to the monitoring of the actions of justice system professionals and of their legal responsibility in cases in which they violate the law.

2.1.3. Obstacles to access to justice

Obstacles to women’s access to justice are seen as occurring primarily across two intersecting axes: legal and institutional barriers, reflected in discriminatory laws and institutions; and socio-economic and cultural barriers, resulting from structural social and economic discrimination and gender discriminatory social and cultural norms—often maintained through stigma and violence.

Legal/institutional level:

- Discriminatory or insensitive legal frameworks, such as: explicitly discriminatory laws, those that fail to consider women’s **de facto** social and economic position, and gaps related to issues that disproportionately affect women.
- Problematic legal interpretation and implementation that discriminates against women.
- Ineffective or problematic legal procedures that lack gender-sensitivity.
- Poor accountability mechanisms, including corruption.
- Under-representation of women among legal professionals.
- Gender stereotyping and bias by actors across the justice chain.

Socio-economic and cultural level:

- Lack of awareness of their legal rights, legal procedures and how to access legal aid, often stemming from gendered gaps in education, and access to information and digital technology
- Lack of control of or access to family assets

- Lack of financial resources to pay for legal representation, legal fees, judicial taxes, transportation to courts, childcare, bribes, etc.
- Unequal distribution of unpaid care and domestic work within the family.
- Gender stereotypes and bias, discriminatory social and cultural norms and attitudes, and stigma. (adapted from Choudry, 2018: 5-6)

It is widely accepted that it is “on average harder for women to gain access to institutional spaces to negotiate and protect their rights and obtain a fair resolution of their grievances”. At the same time, “many of the barriers limiting access to justice stem from factors other than gender—such as poverty, illiteracy and lack of knowledge of official languages, lack of legal knowledge and awareness—that tend to affect women more than men” (Marchiori, 2016: 6). Apparently gender-neutral obstacles (e.g., the cost of legal procedures, excessive formalism,⁹ evidentiary barriers and the location and working hours of legal aid offices and justice institutions) also disproportionately impact women’s ability to obtain redress in light of their disadvantaged socio-economic positions in society.

2.1.3.1 Gender and compounded stereotypes

Gender bias and stereotypes remain present in all societies to varying degrees and can intersect or be compounded with stereotypes based on race, age or disability, among other grounds. Based on discriminatory social and cultural norms, gender bias and stereotypes underpin patriarchal cultures, defined by their exclusion of women from centres of power.

Common gender stereotypes pertain to the importance of women’s sexual purity and the primacy of women’s roles as mothers. Stereotypes are also based on traditional masculinities and male entitlement, such as: men should be heads of households, boys are more valued than girls, men are entitled to power and to control women and are unable to control their own sexual urges.

The term **gender** can be defined as the socially constructed attributes, relationships and opportunities associated with being male and female and the relationships between women and men and girls and boys. They are learned through socialization processes, and are context and time-specific—and changeable. Gender determines what is expected, allowed and valued in a woman or a man in a given context.

Such understandings of gender can have significant bearing upon cases involving domestic and sexual violence as well as family law (particularly divorce and custody cases) and inheritance law. International human rights instruments, such as CEDAW, the Convention of the Rights of Persons with Disabilities (CRPD) and the Istanbul Convention, explicitly prohibit such stereotyping.¹⁰

Biased stereotypes related to **domestic violence** include:

- Violence against women is a private matter
- Domestic work and caregiving are women’s responsibilities
- Women deserve to be beaten, it shows that the man is in control
- Women should be silent
- Men have biological urges that make them naturally aggressive
- She was asking for it (victim blaming)
- It is inappropriate for women to drink alcohol
- Women are inherently untruthful.

Stereotypes: Generalisations about the perceived “typical” characteristics of a social category. (Cognitive)

Prejudice: How one feels about members of a given social category. (Affective)

Discrimination: How one acts toward members of a given social category. (Behavioural)

⁹ ECtHR, *Poirot v. France*, 15 December 2011, para 46, finding the dismissal of the applicant’s notice of appeal for not stating the grounds of appeal (challenging the dismissal of a rape charge) was overly formalistic, as the Code of Criminal Procedure did not formally require the applicant to make explicit reference to the grounds of her appeal.

¹⁰ The Committee on the Elimination of Racial Discrimination (CERD) has also addressed stereotyping in its jurisprudence.

Stereotypes concerning the “ideal” victim within the criminal justice system are a form of discrimination that often result in violations of victims’ fair trial rights and access to justice. Concepts pertaining to an “ideal victim” suggest that an abused individual warrants support only when they and the crime itself conform to five stereotypical characteristics:

- (1) weak / vulnerable,
- (2) involved in a respectable activity at the time of victimisation,
- (3) blameless in the circumstances of their victimisation,
- (4) are victimized by an obvious offender, and
- (5) the offender is not known by the victim (Christie, 1986).

Victims who are sad, silent, cry or have difficulty in expressing themselves are easily recognised as victims. Yet, few victims actually conform to these stereotypical characteristics. In contrast, the victimisation of determined, knowing and angry persons is often questioned.

Stereotypes commonly arising in cases involving women’s sexuality in the context of **sexual violence** include:

- Women should only have sex within marriage,
- A man cannot rape his wife,
- Women can be assumed to be sexually available,
- Women’s silence reflects their consent,
- Previous sexual experience (lack of virginity) predisposes women to being sexually available, and consent can thus be inferred,
- Women bear the responsibility for sexual assault
 - by being out late,
 - by being in isolated places,
 - by how they are dressed,
- Sex workers cannot be raped,
- Female victims of sexual violence have been dishonoured or shamed and are guilty,
- Female sex workers are immoral, reckless, risky and irresponsible, contravening the stereotype that women should be sexually passive, chaste and modest, and should only have sex within marriage.¹¹

Gender stereotypes in the context of **family law**:

- Men are breadwinners and it is their job to support the family financially
- Mothers who work full time are neglecting their children
- A wife’s infidelity makes her an unfit mother
- Women naturally take better care of children and other family members than men.

Gender bias often intersects with stereotypes based on other identities, such as ethnicity or disability, to form **intersectional** or **compounded stereotypes**. For example:

- Women with disabilities are incapable of parenting,¹²
- LGBTI persons are deviant,

¹¹ See, e.g., Human Rights Council, Interim report of the Special Rapporteur on the independence of judges and lawyers, A/66/289, 2011, para 48.

¹² See, ECtHR, *A.K. and L. v. Croatia*, 8 January 2013, finding a violation of Article 8 where the mother’s parental rights were removed on the grounds that she had a mild intellectual disability and was not able to properly care for her son.

- Trans persons are abnormal, deviant or medically ill,
- Women living with HIV are irresponsible, and
- Women from certain ethnic minorities or women living in poverty are irresponsible and prone to abuse in public social services (OHCHR, 2018: 11).

Stereotypes also abound in cases related to women’s **sexual and reproductive health**:

- Women’s natural role in society is to reproduce and be a mother,
- Married women should not use contraception,
- Women should carry a pregnancy to term at all costs, including if it is harmful to their health and life,
- Women should prioritize protection of the fetus in all instances,
- Women should be chaste,
- The denial of access to contraception information and services to prevent women’s promiscuity,
- Women are emotionally volatile and incapable of making rational decisions about their sexual and reproductive lives,
- Doctors and other medical professions are justified in making decisions for women without their informed consent (“medical paternalism”),
- Women with disabilities should be sterilized because they are:
 - asexual, sexually inactive or over-sexual,
 - cannot provide independent consent to sexual and reproductive health services,
 - need to be protected, including from the repercussions of sexual violence,
- Trans persons should be sterilized to prevent them from reproducing,
- Roma women should be sterilized as they are:
 - irresponsible and promiscuous,
 - “fertile” and unable to make informed decisions about their reproduction.

Stereotypes related to **gender identity** remain deeply entrenched in many countries. The UN Office of the High Commissioner for Human Rights (OHCHR) has noted that traditional understanding of gender identity fell “within the binaries of male and female,” and were based on “sex stereotypes of binary physical and biological differences between males and females at birth, and related sex role stereotypes concerning reproduction and family relations”. These stereotypes result in those falling outside the heteronormative binary, LGBTI, being seen as “outside the ‘natural order’ and are deviant, abnormal and thus, in need of correction” (OHCHR, 2018: 12).

Legal inferences drawn from these stereotypes have prevented the gender identity of trans people from being officially recognised and have conditioned legal changes to gender identity on psychological examinations and medical interventions, including sterilization.

2.1.3.2 Judicial bias

Stereotypes often impact women’s experience throughout the justice chain, from police to corrections, from court clerks and legal aid agencies to bailiffs and enforcement officers. Prior to their seeking legal assistance, women clients may have been abused or ignored in police stations because of their gender or the perceived frivolity of their complaint. Police and investigators may fail to exercise due diligence in investigating and prosecuting crimes that disproportionately affect women, such as femicide,

domestic violence¹³ or child marriage, particularly when it occurs within ethnic minority communities and is perceived as part of that community's "culture". Bias by investigators can result in discriminatory investigations, including in the lines of questioning and the type of evidence gathered.¹⁴

Access to justice requires an independent and impartial judiciary. Independence generally relates to structural concerns and guarantees against outside pressure, such as corruption. Impartiality contains two elements: a subjective element relating to an individual judge's personal prejudices or bias; and an objective element relating to the appearance of bias. International standards require that judges must not "be influenced by personal bias or prejudice, nor harbour preconceptions about the particular case before them, nor act in ways that improperly promote the interests of one of the parties to the detriment of the other".¹⁵

Judicial stereotypes can have a significant impact on women's right to an impartial tribunal. In addition, judicial stereotypes can violate the right to an effective remedy, and further result in the re-victimisation of crime victims. The impact of judicial stereotyping on the right to a fair trial is wide-ranging, and can, for example, influence judges':

- understanding of the nature of the criminal offence
- perceptions of what occurred in a particular situation or the issues to be determined at trial
- vision of who is a victim of gender-based violence
- perceptions of the culpability of the accused, and
- views about the credibility of witnesses.

Judicial stereotyping and bias can also:

- lead judges to permit irrelevant or highly prejudicial evidence to be admitted to court and/or affect the weight judges' attach to certain evidence,
- impede access to legal rights and protections,
- cause judges to misinterpret or misapply laws,
- shape the ultimate legal result. (See, Cusack, 2014: 20, 22).

Judges engage in stereotyping by applying and thus perpetuating stereotypes in their decision-making, and by failing to challenge stereotyping, for example by lower courts or when expressed by the parties to legal proceedings.

In the courtroom, gender-bias may be expressed in comments made by the judge, prosecutor, defence attorney and/or the public. Comments might relate to women's roles as primary care givers, or an undervaluing of domestic work obligations. Legal aid lawyers can lead by example by avoiding remarks or conduct that reflect gender stereotypes and be mindful to avoid gender biased behaviours (verbal and non-verbal) and sexism. Intercede when other legal professionals are replicating gender stereotypes, gender bias or sexism. Failing to challenge stereotypes sends a message that they are acceptable in the courtroom.

Judicial bias can also be adduced through disproportionately low sentencing for certain types of crimes, such as gender-based violence (GBV), that does not reflect the gravity of the offence. Gender bias can also be evidenced in the severe sentencing of female defendants for violence committed against perpetrators in self-defence or for sexuality and pregnancy-related crimes.

13 *ECtHR, Opuz v. Turkey*

14 *ECtHR, Aydin v. Turkey, 1997, paras 24-26.*

15 *HRC, General Comment No. 32, para 21.*

As good practice, judges can proactively identify, challenge and rectify gender stereotyping and bias. They can and should apply contempt measures or report to the bar association incidents in which court-room actors make inappropriate, biased or insulting comments.

3. Legal aid

Given the numerous socio-economic barriers to women's access to justice, the role of legal aid lawyers cannot be over-emphasised. As noted above, the vast majority of applications submitted to the Legal Aid Center of the Istanbul Bar Association were submitted by women (IBA Women's Rights Center, 2020: 4).¹⁶ To do their job effectively, lawyers should have a clear understanding of the gender issues that contextualise cases, including systemic socio-economic discrimination, traditional gender norms, stereotypes and the dynamics of violence against women. Understanding these concepts is very important for ensuring women's access to justice.

This section provides a discussion on the following topics: the right to, and criteria for, accessing legal aid; the role of legal aid institutions and lawyers in ensuring women's access to justice; and tips for working with a diversity of clients.

3.1 Right to legal aid

The right of access to a court and access to necessary legal advice should be effective for all individuals, regardless of their financial means. This requires States to take steps to ensure an accessible, effective, sustainable and reliable legal aid scheme, allowing individuals, including the most vulnerable, to effectively exercise their right to access to justice.¹⁷ Access to legal aid is an essential component of the right to a fair trial,¹⁸ ensuring effective legal representation for those who have insufficient financial resources to cover the costs. Article 6 of the ECHR and Articles 47 and 48(2) of the EU Charter of Fundamental Rights guarantee the right to legal assistance in both civil and criminal proceedings. The CoE qualifies legal aid, not "as a charity to indigent persons but as an obligation" in the elimination of obstacles to access to justice.¹⁹

Legal aid lawyers must be sensitive to the distinct barriers affecting access to justice for a diverse array of persons. Their role enhances both trust in, and the legitimacy of, the justice system. Legal aid lawyers also play a critical role in providing necessary information on rights and on the course of proceedings, in order to ensure the effective exercise of those rights. Access to legal aid is essential for society's most marginalised members, including persons with low levels of income and education, migrants and refugees, who may not speak Turkish, persons with disabilities, and victims of crimes, including violence against women.

3.1.1 Criteria for accessing free legal aid

According to the Article 6(3)(c) of the ECHR and Article 14(3)(d) of the International Covenant on Civil and Political Rights (ICCPR), the right to free legal aid depends on meeting two conditions: insufficient financial means to pay for legal assistance (the means test); and, when the interests of justice so require (the merits test). In Turkey, the criteria for obtaining legal aid differs for civil and criminal procedures. Legal aid is regulated in different laws in the Turkish legal system. It is defined in the Attorneyship Law (Arts. 176-181) and the scope of legal aid is broadly defined as "all attorneyship services". Legal advice is thus indisputably included in the legal aid system. Apart from the Attorneyship Law, the provision of

16 *Noting that the majority of which were related to family law and applications for protection orders.*

17 CoE, Guidelines of the Committee of Ministers on The Efficiency and The Effectiveness of Legal Aid Schemes in the Areas of Civil and Administrative Law, para 3, 31 March 2021.

18 Council of Bars and Law Societies of Europe (CCBE) Recommendations on Legal Aid, I.1.

19 CoE, Committee of Ministers, Resolution 78(8) on legal aid and advice, 2 March 1978.

legal aid is regulated by the Code of Civil Procedure (Articles 334-340), the Code of Criminal Procedure (Articles 150 and 234/1) and the Legal Aid Regulation of the Union of Turkish Bar Associations.

3.1.1.1 Civil cases

In the *Airey v. Ireland* case, the ECtHR held that States must provide free legal aid when it is indispensable for ensuring access to court.²⁰ In the *Airey* case, the applicant sought judicial separation from her husband but was unable to obtain a judicial order because she could not afford to retain a lawyer without free legal aid. The ECtHR held that the key test is whether an individual “would be able to present his case properly and satisfactorily without the assistance of a lawyer”.²¹

In Turkey, the applicant undergoes means and merits tests, evaluated by Legal Aid Offices of Bar Associations. According to Article 176 of the Law of Attorney, “those who cannot afford the attorney’s fee and other litigation costs” can benefit from legal aid. A “means test” is first applied to determine the lack of financial capacity of the person who wants to benefit from free legal aid.

For victims of **domestic violence, it is important that the means test be applied only to the individual applicant’s income, and not to the family income and assets**, as they may not have access to their accounts upon fleeing a violent situation or due to economic violence. According to Guideline 1(f) of the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems:

“Whenever States apply a means test to determine eligibility for legal aid, they should ensure that: ... (f) If the means test is calculated on the basis of the household income of a family, but individual family members are in conflict with each other or do not have equal access to the family income, only the income of the person applying for legal aid is used for the purpose of the means test.”

The “merits test” assesses the importance of the case to the individual, the complexity of the case and the individual’s capacity to represent himself or herself. The merits test requires having a *prima facie* reasonable claim.

For those with limited economic capacity, an exemption from judicial fees is also possible. Pursuant to Article 334 of the Code of Civil Procedure, in order to be exempt from judicial fees, the conditions require being: “partially or completely incapable of paying the required trial or follow-up expenses” and that “the claims should not be manifestly ill-founded”. Therefore, courts will also apply means and merits tests to those who apply for an exemption from court fees.

The number of documents required in the application for free legal aid should be reduced and the bureaucratic burden placed on applicants should be alleviated. The application documents vary from one institution to another, and the information provided is analysed subjectively, rather than by using objective criteria. This results in inconsistencies and arbitrary results. For example, a Bar Association may approve an application for legal aid, and afterwards, the Court may reject the request for coverage of litigation expenses (CFCU et. al, 2018: 22).

Applying clear and objective criteria to all applicants is essential to prevent arbitrary decisions that result in denials to access to justice, particularly for society’s most vulnerable. According to the Committee of Ministers of the CoE, “the use of clear, objective criteria for the appointment of legal aid providers” constitutes a key quality assurance mechanism in legal aid schemes.²² These criteria should also be gender sensitive, in order to contribute to women’s access to justice.

20 *ECtHR, Airey v. Ireland, para 26.*

21 *ECtHR, McVicar v. U.K., para 48.*

22 Guidelines of the Committee of Ministers of the Council of Europe on the efficiency and the effectiveness of legal aid schemes in the areas of civil and administrative law, para 9.

3.1.1.2 Criminal cases

The CoE and EU standards apply a “financial means” and “interest of justice” tests. The interests of justice (merits) test is comprised of three factors: “the seriousness of the offence and the severity of the potential sentence,” “the complexity of the case” and “the defendant’s social and personal situation” (European Union Fundamental Rights Agency and Council of Europe, 2016: 57 – 71).

In Turkey, in criminal cases, the determination of an application for free legal aid is dependent upon whether the person is a suspect/accused or the victim of a crime, the type of crime, and the severity of the foreseen sentence. Financial means is not a factor. Legal aid is thus possible for any suspect/defendant in a criminal case who makes a request, regardless of their economic status.

Victims of crime are also entitled to be appointed with a legal representative for cases involving crimes in which the foreseen sentence is at least five years and for crimes involving sexual violence, child sexual abuse, stalking, willful injury, and torture or torment. The appointment of a legal representative for victims is mandatory when the victim is a child and/or a person with a disability.²³

After the new legislative amendment, victims of GBV and DV can access to legal representation to exercise their procedural rights significantly²⁴. However, for the common crimes such as threats, insults, blackmail, which are not included in the crime types listed for the victims and whose lower limit of sentence does not reach to five years, women victims may need to pay a lawyer.

3.1.2 Scope of legal aid services provided

The concept of “legal aid” in Turkey is provided through three different legal frameworks. “Civil legal aid” refers to the appointment of a lawyer by Bar Associations for free legal services in civil cases on the basis of financial means testing.²⁵ The second involves courts granting an exemption from court fees in civil disputes and administrative procedures, referred to as “judicial assistance”.²⁶ Whether or not represented by a lawyer, an application can be made to the court to request exemption from court fees. Legal aid lawyers should inform their clients of this exemption and apply for judicial assistance in appropriate cases. The third is the provision of a “mandatory public defender,” also referred to as “CPC lawyering”.²⁷ This obligation is foreseen in the Criminal Procedure Code, according to the category of crime or person, including children or persons with disabilities.

The term “legal aid” should be interpreted broadly and comprehensively and should include not only “legal representation” in courts or proceedings before other State tribunals, but also “legal advice” and “legal assistance” services.²⁸ Article 176 of the Code of Lawyers provides for: “the provision of attorneyship services” to those who cannot afford attorney fees and other litigation expenses.” In Turkey due to budgetary limitations, the legal aid service primarily provides legal representation. Legal aid lawyers also rotate in the provision of primary legal assistance. It is also possible to provide “legal advice” and “legal assistance,” since the legislation contemplates all legal services. The provision of a broader scope of services can contribute to fostering women’s increased access to justice.

This Handbook uses the term “legal aid” to refer to both primary and secondary legal assistance as described above, including applications for exemptions from court costs, as well as legal advice, assistance and representation.

23 Article 234, Turkish Code of Criminal Procedure.

24 Law No. 7406 on Amending the Turkish Criminal Code and Other Laws, Official Gazette, 27 May 2022.

25 Turkish Code of Civil Procedure, Law No. 6100; the Code of Lawyers, Law No. 1136; and the Union of Turkish Bar Associations Bylaw on Legal Aid.

26 Article 334, Turkish Code of Civil Procedure.

27 Turkish Code of Criminal Procedure.

28 See: Guidelines of the Committee of Ministers of the Council of Europe on the efficiency and the effectiveness of legal aid schemes in the areas of civil and administrative law, Article 2c/2d/2e, for the definitions of “legal representation”, “legal advice” and “legal assistance”.

3.2 Due diligence

The Basic Principles on the Role of Lawyers (Havana Principles) underscores the “vital role” of legal aid lawyers in “providing legal services to all in need of them, and cooperating with governmental and other institutions in furthering the ends of justice and public interest” (United Nations, 1990). The Turin Principles of Professional Conduct for The Legal Profession further highlight the need to ensure indigent defendants with “the best possible defence,” the failure of which constitutes “a violation of the individual’s fundamental rights”.²⁹

In this context, legal aid lawyers play a vital role in ensuring the availability, accessibility and meaningful possibility of accountability and remedies in women’s access to justice. The fact that the overwhelming majority of applicants for legal aid are women signals a clear need for legal aid lawyers to ensure gender sensitivity in their practice, attention to the specific issues facing women in criminal and civil law and practice and the social and economic determinants that shape their need for legal assistance and access to justice. The following sections detail aspects of lawyers’ due diligence obligations related to client representation.

3.2.1 Obligation to provide information

One of the main barriers to access to justice for women is their lack of adequate information about their rights and legal procedures (UNDP, 2004: 4). This is particularly true in Turkey, where a significant portion of the population has a low level of knowledge about the legal system and their rights therein.³⁰ Increased awareness raising on the availability of legal aid remains necessary. Given this situation, legal aid lawyers should introduce the legal aid system and provide information to make the process more accessible to more women.

In general, lawyers must thus provide information to their clients on their rights and explanations regarding the course of the proceedings. According to the Havana Principles, lawyers are obliged to “advise clients as to their legal rights and obligations, and as to the working of the legal system in so far as it is relevant to the legal rights and obligations of the clients”.³¹ The right of victims to receive information on their rights, legal measures, and available services in a language that they can understand is further provided in the EU Victims of Crime Directive, the Istanbul Convention and is foreseen in the Turkish Criminal Code of Procedure.³²

When providing information on rights, the proceedings, mechanisms for protection and the availability of services, legal aid lawyers must ensure that they do so **in a language that the client can understand, especially for minors, the elderly and persons with disabilities and low levels of education. Interpretation should be available for migrants, refugees and others that do may not speak or fully understand Turkish.**

After familiarising themselves with the case file and interviewing the client, lawyers should immediately provide comprehensive information to the client about his/her rights. Action must also be taken to preserve procedural and other rights with important implications for later stages in the proceedings. For example, ensuring victims of crime the right to participation in the proceedings at the appropriate stage enables their subsequent rights to: exemption from court fees, call witnesses, access the case file, examine the evidence obtained by the investigation, and appeal the decision and the sentence, among others.

29 *Turin Principles of Professional Conduct for The Legal Profession in the 21st Century*, Sydney, 27.10.2002.

30 For a comprehensive study on the subject see Kalem Berk, 2011.

31 *Havana Principles*, para 13(a).

32 Directive 2012/29/EU of the European Parliament and of the Council, establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA; Article 19, Istanbul Convention.

3.2.1.1 Legal options and the course of the proceedings

Upon being informed of their rights, clients must further be given information and explanations related to the litigation process and the legal options available to them. For example, they should be informed of the potential length of the proceedings, any obligation to appear, and the possibility of additional court costs and counter-lawsuits, as well as the right to compensation for victims, and possible sentences for criminal defendants.

Legal proceedings can be challenging for women, especially in cases involving divorce, custody and criminal proceedings against male perpetrators of violence. They should be informed of the realities and risks in a clear and understandable language. In addition to fostering attorney-client trust, a clear understanding of what lies ahead can foster their effective participation and prevent their withdrawal from the proceedings at later stages.

3.2.1.2 Updates on and outcome of the proceedings

Lawyers' obligation to provide information to their clients encompasses periodically providing updated information on the status of the proceedings. Failure to do so has resulted in women contacting NGOs in an attempt to obtain information about an ongoing legal process and their legal rights, citing the lack of information provided by their legal aid lawyer, or the inability to reach him/her (Mor Çatı Women's Shelter Foundation, 2021: 33). Even in cases in which lawyers adequately represent their client in terms of the timely filing of documents, they must regularly share any developments and outcomes with their clients. Despite an often overwhelming workload, they must also remain reachable, in order to maintain client trust.

3.2.1.3 Referrals for services and protection for GBV victims

Legal aid is considered as an essential service for violence against women victims, a subject detailed at greater length below.³³ While the main duty of a lawyer is to provide legal services, for GBV victims it is important to be able to offer information and referrals for other essential services. The client's ability to access psycho-social counselling and social welfare assistance, among others, can have an important bearing on their capacity to effectively participate in the case, as well as on their -being. It is thus important to screen all clients, those seeking assistance in civil and criminal matters, for GBV.

Printed referral materials and brochures should be available in Turkish and other commonly used languages, including Braille. Lawyers should provide explanations as a matter of course for those facing illiteracy and lower levels of education. In some cases, it may be safer for victims not to have written materials that might be found by the perpetrator.

For GBV victims, lawyers should provide information on obtaining precautionary measures³⁴ (emergency barring and protection orders) and explore the need for in-court and out-of-court protection, as set forth in the Criminal Procedure Code. Information should also be provided on the array of available services, including helplines (155-156-157-183), police/gendarmerie, shelter, financial assistance, psychological support, medical care, additional forms of legal aid support, as well as information about the existence of relevant institutions (Violence Prevention and Monitoring Centers (ŞÖNİM), Turkish Employment Agency (İŞKUR) and NGOs).³⁵ If needed, lawyers should make the necessary referrals.

3.2.1.4 Other available complaint mechanisms

Clients should be informed of the possibility of challenging outcomes before higher level courts, in addition to alternative national procedures. Individual applications to the Constitutional Court is one

33 See UN Women et. al., 2015. e

34 Articles 3-5, Law No. 6284.

35 Mor Cati Women's Shelter Foundation, Women's Federation of Turkey, Social Policies, Gender Identity, and Sexual Orientation Studies Association etc.

possibility, but only after the exhaustion of all administrative and judicial remedies. Additional venues should be considered for some clients. Several alternative complaint mechanisms have become widespread in Turkey, such as mediation and reconciliation. (See section 3.2.1.4.1 below). Individual complaints can also be made to the Ombudsperson Institution³⁶ and TİHEK (the National Equality Institution of Turkey).³⁷ Importantly, their decisions are not binding, and neither yet comply with the UN Paris Principles.³⁸

Administrative complaint mechanisms include: The Presidency Communication Center (CIMER), Parliamentary Commission on Equal Opportunities of Women and Men (KEFEK)³⁹ concerning access to justice issues and the High Council of Judges and Prosecutors (HSK). It is thus important for lawyers to have knowledge about other avenues of complaint and application procedures, and to inform their clients about these options.

Clients must also be made aware of the ability to appeal to regional and international tribunals and mechanisms.⁴⁰ Where human rights violations have been committed, after exhausting national remedies, challenges can be filed before the ECtHR and to the individual complaint mechanisms afforded by UN treaty bodies, such as through the CEDAW Committee.

3.2.1.4.1 Limitations on mediation/reconciliation

Alternative dispute resolution (ADR), such as reconciliation and mediation, is expanding in Turkey. These methods provide resolutions faster and at much less cost than judicial proceedings. Significantly, these models are based on conflict resolution, which presuppose equal bargaining power between the parties to negotiate a solution.

Such conflict-resolution methods often pose important barriers to meaningful justice in cases involving violence against women and other situations involving power differentials between the parties.⁴¹ As CEDAW General Recommendation No. 33 explains:

While such processes may provide greater flexibility and reduce costs and delays for women seeking justice, they may also lead to further violations of their rights and impunity for perpetrators due to the fact that these often operate with patriarchal values, thereby having a negative impact on women's access to judicial review and remedies.⁴²

Article 1/2 of the Turkish Code of Mediation in Legal Disputes specifically precludes mediation in disputes involving allegations of domestic violence.⁴³ Lawyers should not advise clients who are victims of any form of violence to engage in mediation or reconciliation with perpetrators.

3.2.2 Equality and intersectionality

Given the fundamental rights at issue, legal aid lawyers should strive to ensure that the same level of sensitivity and professionalism is provided to all clients, irrespective of their age, gender, sexual orientation or behaviour, socio-economic status, substance use, country of origin, mental, physical and language abilities.

³⁶ Act No. 6328, Official Gazette No. 28338, 29 June 2012.

³⁷ Act No. 6701, Official Gazette No. 29690, 20 April 2012.

³⁸ See, *European Network of National Human Rights Institutions (ENNHRI)*, UN Paris Principles and Accreditation, <https://ennhri.org/about-nhris/un-paris-principles-and-accreditation/>.

³⁹ For Parliamentary Commission on Equal Opportunities of Women and Men (KEFEK), please see <https://www.tbmm.gov.tr/ihtisas-komisyonlari/kadin-erkek-firsat-esitligi/anasayfa>.

⁴⁰ Article 21 of the Istanbul Convention requires informing victims on, and ensuring their access to, other existing national, regional and international individual and collective complaint mechanisms.

⁴¹ See, Article 48 of the Istanbul Convention and Article 2 of the Code of Mediation in Legal Disputes.

⁴² CEDAW General Recommendation No. 33, para 57.

⁴³ Law No. 6325, Official Gazette No. 28331, 22.06.2012. Article 48, the Istanbul Convention prohibits mandatory dispute resolution in cases involving violence against women and domestic violence.

Intersectional discrimination occurs when an individual or a group of individuals are discriminated against based on grounds that are intertwined in such a way that they produce a unique and new type of discrimination. For example, women with disabilities, women from specific ethnic groups may face forms of discrimination that do not affect women more broadly. Thus, in addition to gender, legal aid lawyers must be sensitive to the ways in which gender intersects with other categories in order to prevent discrimination.

This section addresses some of the factors to consider when working with a diversity of clients.

3.2.2.1 Persons with disabilities: Accessibility and reasonable accommodations

Having ratified the CRPD, Turkey must ensure the right to access to justice, including the right to accessibility and to reasonable accommodation (Article 5(3)) to persons with disabilities in the justice sector. Turkey has yet to fully align its legislation and practice with the CRPD. The discriminatory language still in use in legislation, the denial of agency to persons with disabilities without reference to their actual capacity, and the failure to foresee diverse means of support in the justice system all violate the CRPD.⁴⁴

Given that the Criminal Procedure Code provides for the automatic right to legal representation for persons who are “deaf or mute or incapable of expressing herself/himself”, solid internal policies and facilities should be established in legal aid offices to ensure the enjoyment of these rights. Three issues likely to be encountered by legal aid lawyers in representing disabled clients are: the lack of legal capacity, the absence of physical accessibility of justice facilities and the need for reasonable accommodations in legal aid offices and in the courtroom, including in the pace and wording of questioning.

Tips for working with persons with diverse disabilities include:

- Arrange meetings at location accessible to clients, if the legal aid office is not; have the client suggest a location;
- Be able to provide documents in alternative formats;
- For clients who are deaf, when using a sign language interpreter, maintain eye contact with the client and speak directly to the client;
- Always ask before assisting the client, don’t assume that they can’t handle the situation independently;
- For clients with mental illness, consider medication side effects when deciding on the best time to meet. They may need frequent breaks because of concentration issues;
- Provide clear information on the coverage by legal aid offices for reasonable accommodations.

3.2.2.2 Translation/interpretation

Engaging interpreters to assist in communication with clients/legal aid applicants who are not fluent in Turkish during meetings requires ensuring that interpreters have the necessary:

1. Linguistic capabilities,
2. Technical understanding of the issues involved in the case,
3. Sensitivity in working with vulnerable persons,
4. Gender sensitivity,
5. Respect for the confidentiality of the victims.

⁴⁴ The CPC provides for the right to the appointment of a legal representative for persons “deaf or mute or incapable of expressing herself/himself”, “on his behalf, without seeking his request”. This provision raises concerns regarding the legal capacity of persons with disabilities and supported decision-making in line with the CRPD.

The gender of the interpreter and particular cultural sensitivity to gender issues within the diverse communities living in Turkey should be considered. The client should give prior consent to the use of interpreters. **Avoid using members of the client's family to serve as an interpreter for the interview or in other communications.**

Lawyers should intervene if there are indications that the interpreter is summarising what the client says rather than convey the details as related by the client. The absence of criteria in contracting interpreters has a reportedly negative effect on the quality of interpretation. Specific details are important. Given that the use of interpreters will extend the length of the meeting, the time scheduled for the meeting should be planned for accordingly.

3.2.3 Proactive lawyering

Proactive lawyering involves identifying the ways in which small technical legal issues may impact upon clients' access to justice. With respect to women's access to justice, it involves identifying the ways in which current legal practice systemically discriminates against women and others and strategies to challenge the relevant law and practice.

3.2.3.1 Strategic litigation

Strategic litigation is defined as the use of the litigation process to achieve a legal or policy development the impact of which extends beyond the applicant's case to create broader policy.⁴⁵ While litigation strategies are both case and issue specific, they usually involve long-term planning. The individual claimant must be carefully selected or identified and receive both ongoing support and protection in the face of adverse personal and professional consequences from challenging the status quo.

Strategic litigation often encompasses concerted media strategies and awareness-raising campaigns and involves close collaboration and coordination with CSOs. Maintaining contact with specialised NGOs to share information on systemic issues affecting women's rights could constitute an important contribution by legal aid organisations to the advancement of human rights in Turkey.

While strategic litigation falls beyond the explicit mandate of legal aid lawyers, they are uniquely poised to identify both systemic barriers to women's access to justice and potential individual cases or groups of cases. Nothing bars them from engaging in strategic litigation in the representation of their clients. Internal data collection can play an important role in the identification of patterns of systemic rights violations.

Strategic litigation occupies an important place in human rights activism and encompasses bringing cases to regional or international fora, such as to the ECtHR and to UN treaty bodies, including the HRC, CEDAW and the Committee on the Rights of the Child (CRC) and the CRPD.⁴⁶

3.3. Organisational structure

3.3.1 Division between criminal and civil issues

The Turkish legal aid system is institutionally divided into civil and criminal departments, with lawyers serving in either one or the other, and only sometimes both. This institutional structure may create obstacles in ensuring the rights of clients who must resolve inter-related civil and criminal legal matters. For example, a victim of domestic violence will likely need to file a criminal complaint and participate in criminal proceedings against the perpetrator, while at the same time, needing a protection order,

45 See, Open Society Justice Initiative, 2017: 14 (Access Date: 22.07.2020); Public Law Project, 2016.

46 Turkey has signed the Optional Protocols to all of these Conventions, enabling individual complaints to be brought to the respective Committees.

a divorce, custody of the children and compensation for damages—all civil law concerns. Under the current structure, this may result in her being appointed two separate lawyers drawn separately from the civil and criminal pool, requiring effective communication and coordination safeguards, in order to prevent compromising the quality of legal representation.

3.3.2 Specialised training

According to the Council of Bars and Law Societies of Europe (CCBE) Recommendations, ensuring the quality of legal aid services, all legal aid providers should have a legal qualification as a minimum and be able to practice as lawyers in the relevant jurisdiction.⁴⁷ Given their critical role in providing legal representation in a wide diversity of cases, the provision of specialised training to legal aid lawyers enhances the quality of the services provided. Working with refugees, persons with disabilities, children and victims of domestic and sexual violence or human trafficking involve sensitive situations, as well as specialised fields of expertise.

International and regional guidelines require taking into account the specialisation of the legal aid provider when allocating cases, and stress the importance that all legal aid providers have the education, training, skills and experience commensurate with the nature of their work, particularly in relation to the gravity of the crimes committed and the rights and needs of women, children and groups with special needs.⁴⁸ The provision of specialised training to ensure effective service provision to diverse categories of clients, and the ability to assign specialised lawyers to cases so requiring are important elements for ensuring the quality component of women's access to justice.

4. Violence against women

Prior to detailing criminal and civil law issues, this Handbook dedicates a section to addressing violence against women, given its centrality to women's access to justice in criminal and family law. Many remedies sought by victims of violence against women require the use of civil proceedings, such as divorce. Given the significant under-reporting of violence, it is important for legal aid lawyers practicing both civil and criminal law to screen for the possible existence of violence in the relationship in order to effectively and comprehensively address clients' legal needs.

It is important to underscore the high prevalence of diverse forms of violence against women in Turkey and the continued impunity enjoyed by too many perpetrators of these crimes. Highlighting violence against women in the context of criminal proceedings is also important due to their ongoing re-victimisation by the very actors obliged to protect their rights and provide assistance in Turkey, as revealed by the numerous cases on this issue to reach the ECtHR.

The steep barriers women face in accessing justice for this category of crimes exacerbates their socio-economic vulnerabilities. Indeed, violence is used to maintain women's social and economic subordination. Improving justice sector responses to violence against women often functions as a central pre-requisite for their enjoyment of other rights.

In light of this priority, international and regional bodies have made important advances in setting standards for ensuring the fair trial rights of victims of gender-based violence. This section provides background information related to the dynamics of GBV and the way it impacts victim engagement with the justice system.

47 Council of Bars and Law Societies of Europe (CCBE) Recommendations on Legal Aid, I.1.

48 *Guidelines of the Committee of Ministers of the Council of Europe on the efficiency and the effectiveness of legal aid schemes in the areas of civil and administrative law*, para 24; UNODC, 2013, Principle 13.

4.1 The forms of gender-based violence

Violence against women takes many forms. The CEDAW and Istanbul Convention both require the prohibition and/or criminalisation of the following forms of violence against women:

- Domestic and intimate partner violence,
- Rape and sexual violence,
- Human trafficking,⁴⁹
- Femicide / gender-related killings,
- Sexual harassment,
- Cyberviolence,
- Forced abortion and forced sterilisation,
- Harmful practices:
 - Early and forced marriage,
 - Honour crimes,
 - Female genital mutilation (FGM),
 - Virginity testing.

As observed by the CEDAW Committee:

“Harmful practices and crimes against women human rights defenders, politicians, activists or journalists are also forms of gender-based violence against women affected by [] cultural, ideological and political factors.”⁵⁰

Violence against women operates on a spectrum, often overlapping, occurring simultaneously or changing form over women’s life course. The forms of VAW are described in more detail in the sections below.

Equal protection of the law dictates that women must enjoy the same fundamental human rights as men. The following basic human rights are violated when women experience diverse forms of violence: the right to life; the right to be free from torture or cruel, inhuman or degrading treatment; the right to liberty and security of person; the right to private and family life; the prohibition of discrimination; and the right to the highest standard attainable of physical and mental health.

4.1.1 ECtHR jurisprudence

The ECtHR jurisprudence on States’ due diligence obligations to investigate, prosecute and punish violence against women cases is extensive. This section highlights a few key cases, including those originating in Turkey.

In the landmark case **Opuz v Turkey**, the Court applied Articles 2, 3 and 14, protecting the **right to life**, the **prohibition on torture and ill-treatment** and **the prohibition on discrimination** to a domestic violence case.⁵¹ In that case, the victims, the wife of the perpetrator and her mother, filed multiple police complaints concerning beatings resulting in serious bodily harm and death threats, and then subsequently withdrew them due to threats of violence by the perpetrator. The Court held that States’ due diligence obligations require them to proceed with prosecutions **ex officio**, even if the victim withdraws the complaint.

49 While human trafficking affects both men and women, women and girls constitute the majority of victims.

50 CEDAW General Recommendation No. 35, par. 14.

51 ECtHR, *Opuz v. Turkey*.

Relying on CEDAW General Recommendation No. 19, which qualifies **gender-based violence as a form of discrimination**, and on statistical evidence that showed that “domestic violence affected mainly women,” the ECtHR found that “the general and discriminatory judicial passivity in Turkey created a climate that was conducive to domestic violence”. It concluded that the victims were discriminated against on account of the authorities’ failure to provide equal protection of law due to its “insufficient commitment to take appropriate action to address domestic violence”.⁵²

In the **Bălșan v. Romania** case, the ECtHR took note of statistics demonstrating the social tolerance of domestic violence in Romania, which was viewed as normal. It further observed that the number of reported cases had continued to grow, in which the majority of victims were women and that only a few of the reported cases were investigated by police. It referred to the Concluding Observations of the CEDAW Committee in finding: a lack of awareness in society generally on gender discrimination, women’s lack of awareness of their rights, the absence of protection and support services for victims, especially in rural areas, the absence of statistics on domestic violence prevalence and the insufficient implementation of existing legislation. The Court opined that:

“the combination of the above factors demonstrates that the authorities did not fully appreciate the seriousness and extent of the problem of domestic violence in Romania and that their actions reflected a discriminatory attitude towards the applicant as a woman.”(para.85)

Considering the application of Article 14 on its own motion, the Court reiterated its holding that the “failure by a State to protect women against domestic violence breaches their right to equal protection under the law and that this failure does not need to be intentional”.(para.72,78)

4.2 The dynamics of gender-based violence

The following sections detail the gendered dynamics underpinning all forms of violence against women, highlighting implications for the justice system. This knowledge is essential for legal aid lawyers to link legal strategies and arguments more closely the victim’s lived experience of violence. It can facilitate lawyers’ abilities to interpret victims’ stories, reticence and needs, improving the quality of advocacy on their behalf.

4.2.1 Coercive control, the power and control wheel and cycle of violence

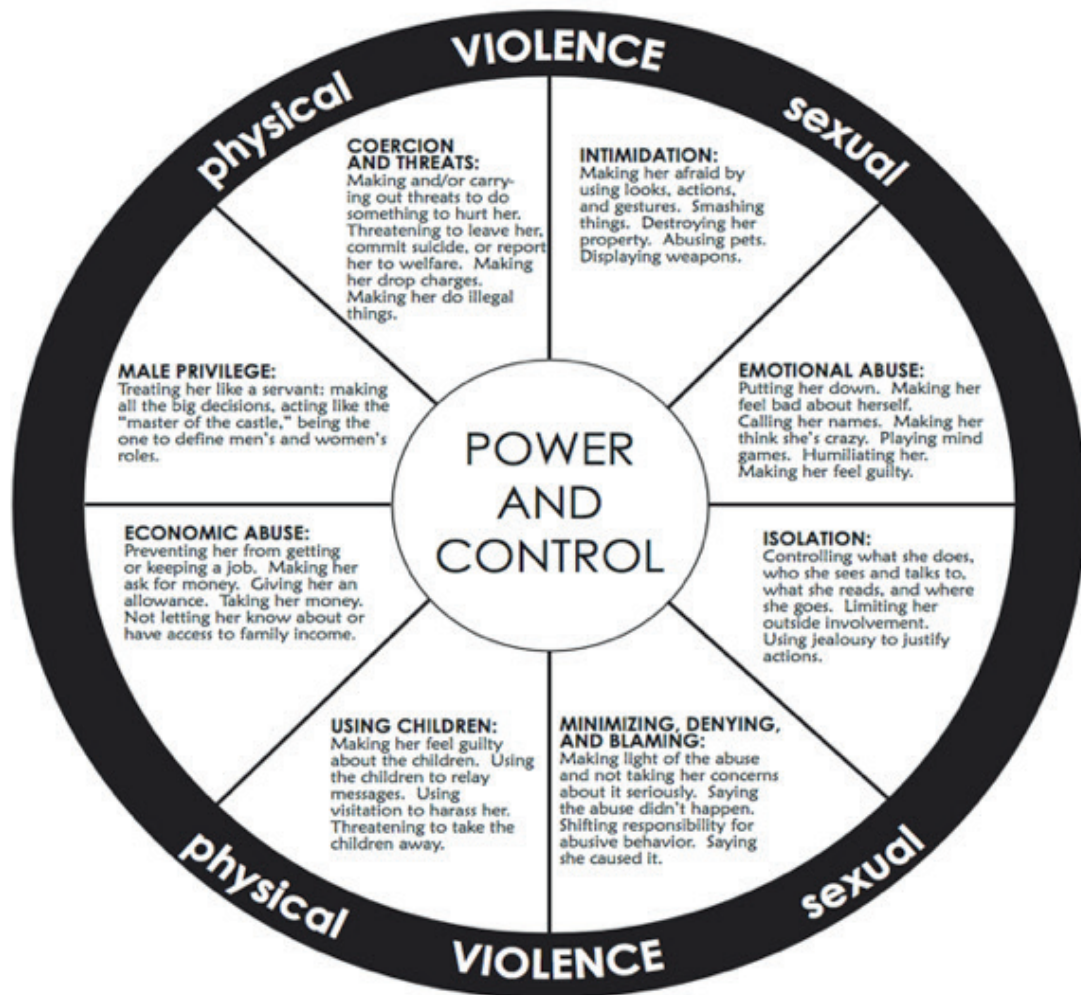
Physical and sexual assaults, or threats to commit them, are the most obvious forms of domestic violence and are usually the actions that reveal the problem. However, regular use of other abusive behaviours, when reinforced by one or more acts of physical violence, make up a larger, less visible system of abuse. Although physical and sexual assaults may occur only once or occasionally, they often instil the threat of future violence, which allows a perpetrator to take control of a woman’s life and circumstances without necessarily engaging in additional acts of physical violence.

The emerging recognition of the concept of coercive control, is increasingly used in the field of domestic and intimate partner violence and sex trafficking, re-conceptualising the understanding of these crimes from a focus on violent incidents to “a pattern of coercion and control” (Stark, 1995: 975). Coercive control has been defined as the use of physical and/or sexual abuse “in combination with tactics to intimidate, degrade, isolate and control victims” (Stark, 2012: 65 – 69).

Focusing on patterns of violence, intimidation and control increases the relevance of “minor” assaults and other tactics, such as “stalking, death threats, isolation, and control over material necessities (food,

⁵² ECtHR, *Opuz v. Turkey*, paras 198, 200. See also, *Talpis v. Italy*, para 145, finding the State’s inaction in response to domestic violence to be discriminatory as established by a prima facie showing and statistical data; *Eremia and Others v. Moldova*, para 89, finding violations of Articles 2, 3 and 14.

transportation, money)” (Stark, 1995: 983). Studies have demonstrated coercive control to be present in the vast majority of domestic violence cases.⁵³ It is the central way men undermine women’s capacities and exercise of independent decision-making. Grounded in women’s structural subordination, male offenders exploit persistent gendered inequalities in society and the economy, as well as how gender roles and responsibilities are distributed. In this way, men use women’s social and economic subordination to both protect and extend their own privileged access to money, sex, leisure time, domestic service and other benefits.



The power and control wheel is a particularly helpful tool in understanding the overall pattern of abusive and violent behaviours, and the ways in which perpetrators establish and maintain control over women. Very often, one or more violent incidents are accompanied by an array of other types of abuse. Although these forms of violence are less easily identified, they effectively establish patterns of intimidation and control in the relationship.

Because violence against women often involves patterns of behaviour, when working with victims, it is important to understand the history of the violence. In the absence of offences specific to domestic violence and violence against women in the Criminal Code in Turkey, these crimes are currently prosecuted as single incidents, failing to account for the continuous nature of the violations. This “gender-neutral” approach results in the justice system’s systematic inability to capture the nature of the harm and ensure an adequate and effective remedy for victims of this category of crimes, the vast majority of which are women.

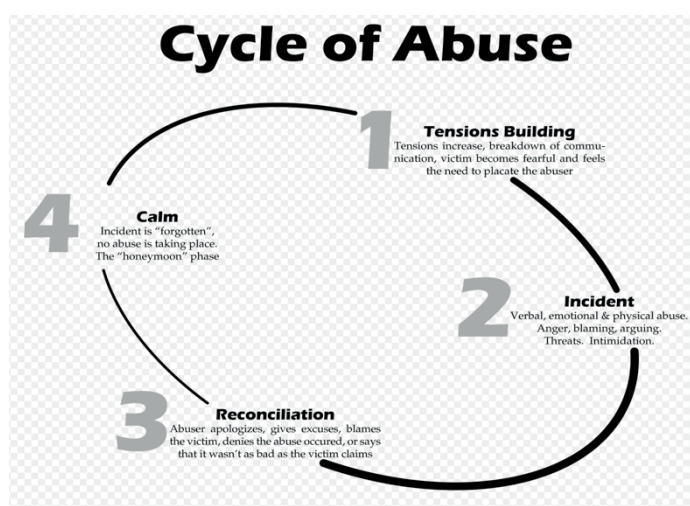
53 The estimates vary between 80-95% of domestic violence cases. See, e.g., New York State, Office for the Prevention of Domestic Violence; Kelly, L., et al. 2014, 19.

The power and control wheel was first developed to describe domestic and intimate partner violence,⁵⁴ but has since been also used to understand the dynamics in human trafficking. (See Annex 8).

4.2.2 The cycle of violence and barriers to escape

Another important characteristic of domestic violence involves the cycle of abuse. Violent behaviour directed at victims occurs often in three distinct and repetitive stages that vary both in duration and intensity depending on the individuals involved.

- Phase one is referred to as the **tension-building stage**, during which the perpetrator engages in minor violent incidents and verbal abuse while the victim, beset by fear and tension, attempts to be as placating and passive as possible in order to stave off more serious violence.
- Phase two of the cycle is the **acute violent incident**. At some point during phase one, the tension between the victim and the perpetrator erupts into violence.
- Phase three is characterised by **extreme contrition and loving behaviour** on the part of the perpetrator. During this period, he will often mix pleas for forgiveness and protestations of devotion with promises to seek professional help, to stop drinking, and to refrain from further violence.
- Phase four is characterised by **calm**.



For some couples, a period of relative calm between the cycles may last as long as several months, but the affection and contrition of the perpetrator will eventually fade and phase one of the cycle will start anew. The cyclical nature of violent behaviour helps explain why more women do not leave their abusers. The loving behaviour demonstrated by the perpetrator during phase three reinforces whatever hopes they might have for their partner's reform and keeps them bound to the relationship. It also explains why victims file complaints and then withdraw them, sometimes on multiple occasions.

Some women may even perceive the cycle of violence as normal, especially if they grew up in a violent household. Or they may simply not wish to acknowledge the reality of their situation. Other women feel so hopeless and degraded by the fact that they cannot predict or control the violence that they sink into a state of psychological paralysis and become unable to take any action at all to improve or alter the situation. There is a tendency in victims to feel that any attempt to resist a perpetrator is hopeless. This functions as a form of psychological entrapment or learned helplessness.

In addition to debilitating psychological impacts, external social and economic factors often make it difficult for some women to extricate themselves from violent relationships. A woman without independent financial resources who wishes to leave her husband often finds it difficult to do so. Due to employment discrimination, women who work typically make less money and hold less prestigious jobs than men and have significantly more unpaid care and domestic work obligations.⁵⁵

54 The Power and Control Wheel was first developed by the Domestic Abuse Intervention Programs in Duluth, Minnesota, United States.

55 Women in Turkey undertake on average five times unpaid care and domestic work as men (UN Women, 2019: 23).

In a violent confrontation where the first reaction might be to flee, women soon realise that there may be no place else for them to go. Shelters may provide temporary relief but are often not sustainable in the long term. Relocation often disrupts children's schooling and women's employment, placing them in an even more precarious financial situation. It can also be traumatising to flee the family home, especially for children. In this regard, it is important that it is the perpetrator who leaves the family home when requesting a protection order.

The stigma that attaches to a woman who leaves the family unit, especially if she leaves without her children, functions as a further deterrent to escape. Women are often unwilling to confide in friends, family or the police, either due to shame and humiliation, fear of reprisal by the perpetrator and realistic concerns about the absence of meaningful protection by criminal justice actors.

In sum, there are thus numerous barriers that impede victims from leaving an abusive relationship: psychological, social and economic. Psychological barriers include the fact that for victims who grew up in violent households, violence is normalised; some victims are in denial; and the humiliation and degrading treatment suffered over time can result in psychological paralysis and depression. Social and economic barriers that prevent victims from escaping violent relationships include:

- Limited financial resources,
- Concern for children,
- Fear of reprisal,
- Shame,
- Nowhere to go,
- Limited social support,
- Lack of trust in law enforcement

4.3 Interviewing VAW victims and other vulnerable persons

This section details techniques and tips for interviewing and working with legal aid recipients using a gender-sensitive, victim-centred, human rights-based approach. Establishing a trusting rapport with victims of human rights abuses can be challenging but constitutes an essential element of successful representation and advocacy on their behalf.

4.3.1 Tips for interviewing

Diverse categories of clients will require a specialised approach, including LGBTI and disabled persons, migrants and refugees and GBV victims, among others.

When preparing to interview violence against GBV victims, it is important to understand that only 11% of women subjected to violence in Turkey seek assistance. The majority of those that do seek help (69%) express doing so because of "not being able to endure the experienced violence anymore" (Hacettepe University Institute of Population Studies, 2015: 173). In other words, victims have usually endured the violence for a significant period of time prior to reporting. It also means that many clients might be unreporting victims.

Decisions not to report the violence are also often impeded by concerns of discriminatory treatment, especially among women from vulnerable groups, such ethnic minorities or women with disabilities. Sensitivity to the personal and institutional challenges faced by victims in their decisions to report violence are critical for effective intervention.

4.3.1.1 Timeliness, possible delays and changes in circumstance

Placing the client at the centre of the process means, whenever possible, scheduling the meeting at a time and location that is suitable to her.⁵⁶ The lack of accessibility to justice-sector institutions due to geographic distance, care-giving obligations and transportation costs can constitute insurmountable barriers to women's access to justice. Such logistical challenges should be considered in offering flexibility when scheduling interviews.

For crime victims, as part of **a victim-centred approach**, a meeting should be scheduled in as "timely" a manner as possible, that is, it should take place as soon as possible after the crime has been reported (Art.22, EU, Victims' Rights Directive). Victims experiencing trauma in the immediate aftermath of the crime may need crisis intervention, and lawyers should be able to refer them directly to specialised health or psychiatric services. Lawyers should be alert to the possibility that victims may experience high levels of stress or re-traumatisation during the interview. Be willing to terminate and reschedule the interview if necessary.

4.3.1.2 The interview setting

Prior to meeting with clients, consideration should be given to the environment and circumstances in which it will take place. Location is an important consideration for interviewing victims of gender-based violence, especially for cases involving sexual violence. Such interviews should not take place in open office areas, but rather in closed locations that protect confidentiality and privacy rights.

If at all possible, lawyers should avoid placing a table or desk between himself/herself or victims and vulnerable clients. The interview space should be free of distractions and made as comfortable as possible. Child-friendly rooms should be used for interviewing children. Other rooms should be available for children of clients, to preclude their overhearing the potentially traumatising content of the interview. Separate facilities for children protect them from re-traumatisation and foster increased accessibility for women clients.

All efforts should be made to ensure that the interview is not interrupted, by phone calls, other tasks or colleagues. The client should not be interrupted or feel ignored.

4.3.1.3 Gender-sensitive approach

A gender-sensitive approach should be adopted in interviewing female clients, and all victims of gender-based crimes.⁵⁷ Gender sensitivity requires listening attentively to the client and allowing her to make decisions, as well as ensuring private spaces in which to discuss the case, if necessary. Gender sensitivity includes providing a separate room for children to be accompanied in age-appropriate activities to ensure that female clients, who often assume caretaking responsibilities in the family or are single mothers, can discuss the nature and facts of their case out of the presence of their children—for the benefit of everyone. The same service should be provided for men with care-taking responsibilities.

Clients, including crime victims, may wish to be accompanied by a support person, and accommodating this practice is considered as a gender-sensitive measure. It should be noted, however, that on occasion the accompaniment by a family member may not be of the client's choice. In cases involving domestic violence, it is important to consider the presence of family members of the victim (and/or the alleged perpetrator) as a possible impediment to the victim's ability to freely express herself. The support of an independent NGO representative should not, in theory, pose a similar problem. The presence and identity of any third-party support persons during client meetings should be noted.

56 UN Women et. al., 2015, Module 4, 15.

57 See Article 18(3) of the Istanbul Convention requiring a gendered understanding of violence against women.

4.3.1.4 Consent and cooperation with victims and building trust

Victims of crime, including GBV victims, often have difficulty trusting others. Every effort should be made to establish a trusting relationship with victims. Clients should feel that their case is being taken seriously. Confidentiality should be ensured at the outset, as well as a clear explanation regarding the limits of confidentiality. Taking a victim-centred approach in cases involving gender-based crimes requires ensuring victims' consent on decisions in the case and their cooperation throughout the process.

Decisions should specifically consider the victim/survivor's social context, including the physical and mental trauma she may have experienced, as well as the potential impacts her act of reporting may have on her, her family (especially children) and others, including a possible escalation of violence.⁵⁸ Make every effort to identify the commission of prior experiences of violence in the client's history by the same or a different perpetrator, even if it is not the subject of the current case. This will provide important information related to her need for security and protection, as well as for referrals for services. Assess potential security risks with the victim in order to request any necessary protection measures, both in- and out-of-court. It is entirely possible that the victim may prefer not to receive services, nor to benefit from protection measures, and due consideration should be given to the victim's wishes. The risk assessment factors employed by the authorities can be found in Annex 9.

4.3.1.5 Trauma-informed approaches

The effects of traumatic events place a heavy burden on individuals, families and communities and create challenges for service providers, including legal aid lawyers (Substance Abuse and Mental Health Services Administration, 2014). A trauma-informed approach is necessary to foster the emotional and physical well-being of crime victims, in order to prevent them from being re-victimised.

Adaptations to standard interview approaches may be necessary in cases in which the victim has experienced trauma. Traumatic events can affect memory of important details about the crime, and events may not be remembered immediately after the incident. Victims may experience longer-term memory gaps and may convey their experiences in fragments. The victim may tend to talk more about unrelated details.

It is important to remain patient and supportive, and to take careful note of what is being said. Do not be insistent if the victim does not want to answer a difficult question. Respect decisions to remain silent. Persons experiencing trauma may respond to questions with seemingly contradictory answers and explanations, which can lead to disbelief and victim blaming. Additional information should be sought through supportive questions. It may be necessary to focus only on the information conveyed by the victim at the first meeting and to agree for a new interview a few days later.

Good practice techniques in working with persons suffering from trauma is to allow them to take control of aspects of the meeting, such as choosing where to sit. Explain at the very beginning that it is okay to take a break if needed. Try to schedule enough time for the meeting with the client to prevent her from feeling rushed.

Describe the subject areas you will discuss together and ask where she wants to start. When meeting with someone who has experienced a traumatic event, let her tell the story without interruption. You can then ask follow-up questions. **Focus on understanding her fears and concerns, not questioning the accuracy of what she is saying.** Focus on what she says, not on what she does not say.

Adopting a trauma-informed approach in working with victims of sexual and gender-based crimes is not accomplished through any single particular technique or checklist. It requires constant attention,

58 *UN Women et al., 2015, Module 3, 17.*

awareness, sensitivity and changes in organisational culture.⁵⁹ The following are considered as good practice, and could be systematically incorporated into working with this category of clients:

Establish emotional safety: Creating a safe environment for victims physically and emotionally. Listen without judgment. Be transparent, informative and repeat explanations when necessary.

Restore choice and control: Return to the victim control over her life. Allow her to express herself freely and ask what she needs.

Facilitate connection: Note any weakening in the victim's social relations with family, friends or peer groups, and support their strengthening.

Support coping: Rather than judging the manifestations of the effects of domestic, sexual or other violence on the victim's life, her traumatic reactions and triggers, be aware of these and support the victim to develop coping strategies to overcome them.

Respond to identity and context: Develop approaches and practices that respond to the diversity of victims' identities and life circumstances.

Build on strengths: Focus on the strengths of the victim, rather than on her challenges, underscoring them and supporting the victim to realize their actualisation (Wilson et. al., 2015).

5. Civil cases

As noted, the majority of requests for legal aid come from women, the majority of which pertain to family and labour law and requests for protection. Legal aid lawyers will likely address the following types of civil cases: family law, inheritance, property and contracts law, civil rights, protection orders, anti-discrimination and employment, among others, in the representation of female clients.

This section details the specific civil matters that pose particular challenges or concerns for women as they navigate the justice system. Lawyers' active consideration of women's experiences in the justice system, including *de jure* and *de facto* forms of discrimination, has the potential to significantly improve their access to justice.

5.1 Anti-discrimination law

The Law on Human Rights and Equality Institution of Turkey ("anti-discrimination law"), adopted in 2016, prohibits discrimination based on sex, among other protected categories, including: age, ethnicity and disability. It prohibits direct, indirect and multiple discrimination, harassment and mobbing, among other forms of discrimination.⁶⁰ It also protects against victimisation, that is, adverse treatment against persons who present claims of discrimination or who support such claims, such as by providing evidence.

Importantly, **anti-discrimination law reverses the burden of proof, requiring the claimant to present only a *prima facie* case of discrimination, and then placing the burden of proving that no discrimination took place on the respondent.** This internationally recognised practice aims to place the burden of proof on the party controlling most of the evidence, such as employers.⁶¹

59 Center for Disease Control, 6 Guiding Principles to A Trauma-Informed Approach, https://www.cdc.gov/cpr/infographics/6_principles_trauma_info.htm

60 Law No. 6701, Official Gazette No. 29690, 20 April 2016.

61 See, e.g., Article 19, EU Gender Equality Directive; Article 10, EU Employment Framework Directive; Article 9, Gender Goods and Services Directive.

With respect to sex/gender discrimination, to date in Turkey claims have primarily been brought in the context of employment, using the Labour Law. Common forms of employment discrimination include: on the grounds of pregnancy, wage discrimination and opportunities for advancement. Notably, the anti-discrimination law fails to provide relief for wage discrimination. This legal gap is concerning given that the gender wage gap in Turkey is 15.6%, and increases with age, especially for those with low levels of education.⁶²

Pursuant to Article 90 of the Turkish Constitution:

“In the case of a conflict between international agreements, duly put into effect, concerning fundamental rights and freedoms and the laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail.”

Thus, while national legislation should be interpreted so as to be consistent with international norms, international standards take precedent where national legislation contravenes such standards. Turkey is party to multiple international conventions that require non-discrimination and equal protection, including the ICCPR, ICESCR and CEDAW. The application of these rights requires that courts do not apply existing legal provisions that discriminate against women and girls.

Discrimination has also been addressed by the ECtHR, including *inter alia*, on cases related to gender stereotypes with adverse employment consequences. The cases **Emel Boyraz v. Turkey**, and **Hülya Ebru Demirel v. Turkey** involved the application of gender stereotypes resulting in the dismissal of, and refusal to hire, women by the State-run electricity company, TEDAŞ. In both cases, the Court found a violation of Articles 8 and 14.⁶³ In the **Konstantin Markin v. Russia** case, the Court found that the Russian military’s rejection of the parental leave request of a radio intelligence operator was discriminatory, as it was based on the policy that only female military personnel were entitled to such leave.

Discrimination against women occurs in numerous other fields, including in education, public accommodations, housing and in their access to justice. Although an emerging practice in Turkey, use of the anti-discrimination law holds important potential for addressing both intentional and systemic discrimination against women in a range of fields.

Discrimination claims can alternatively be presented to the Human Rights and Equality Institution or the Ombudsperson. At the same time, the Turkish Criminal Code prohibits a limited scope of discrimination on the basis of, *inter alia*: race, language, religion, sex and political opinion. It covers only the sale of property, the provision of services, engagement in economic activity or delivery of “nutriments”.⁶⁴

5.1.1 Sexual harassment

Sexual harassment is a specific form of harassment, discrimination and violence that disproportionately affects women.⁶⁵ Sexual harassment occurs in the workplace, educational institutions, public transportation, in public accommodations and public spaces.

Sexual harassment can take the form of a *quid pro quo*, that is when the satisfaction of sexual demands is made the condition of job benefits or continued employment, or is used as the basis for employment decisions regarding the individual.⁶⁶ Alternatively, one or more incidents of sexual harassment can constitute an “an intimidating, hostile, degrading, humiliating or offensive environment”.

62 ILO, TURKSTAT, Gender Wage Gap is 15.6% in Turkey, according to the joint study by ILO Turkey Office and TURKSTAT, 5 October 2020, further noting the deepening of the wage gap due to the pandemic.

63 In the Boyraz case, the ECtHR also found a violation of Article 6(1) based on the excessive length of the proceedings.

64 Article 122, Law No. 5237 Turkish Criminal Code.

65 Article 40 of the Istanbul Convention defines sexual harassment as “any form of verbal, non-verbal or physical conduct of a sexual nature with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment”.

66 See, e.g., CEDAW, Anna Belousova v. Kazakhstan, Communication No. 045/2012, CEDAW/C/61/D/45/2012, 13 July 2015.

In Turkey, sexual harassment is a criminal offence⁶⁷. It is also accepted as a justifiable reason for termination in the Labor Law. Although it is not defined in the Labour Code, it constitutes grounds for justifiable termination of employment.⁶⁸ It is also defined and prohibited by the Law on Human Rights and Equality Institution of Turkey.⁶⁹ The crime of sexual harassment usually takes place in places where no one is present and is based solely on women's accounts. In light of the conservative culture that often impedes women's complaints of sexual harassment, in Turkish legal practice, courts draw a legal inference from a women's allegation of harassment and reverse the burden of proof to the alleged perpetrator to disprove the alleged harassment. Lawyers of women victims of sexual harassment should proceed by presenting their client's *prima facie* claim of harassment, given that the burden of proof is on the respondent. Attention should be paid to preventing the respondent from presenting evidence or arguments that consist of victim blaming, as well as to victim-blaming in the questioning and the reasoning of the court.

Victims of sexual harassment must consider whether to seek criminal sanctions or file a civil suit, in light of the differences in the burden of proof and the scope of available evidence.

5.2 Family law

Article 16 of CEDAW requires State Parties to eliminate discrimination against women in all matters regarding marriage and family.⁷⁰ Marriage and divorce touch upon the heart of one's right to family and private life, protected by Article 8 of the ECHR. The ECtHR has addressed gender discrimination and stereotypes in family relations, including as related to custody arrangements. The Court has stated that: "States are prevented from imposing traditions that derive from the man's primordial role and the woman's secondary role in the family," noting that "references to traditions, general assumptions or prevailing social attitudes in a particular country are insufficient justification for a difference in treatment on grounds of sex."⁷¹

5.2.1. Marriage

The legal and de facto inequality of women in marriage constitutes an important consideration for legal aid lawyers in cases involving family law issues. The Civil Code and Family Law retain discriminatory provisions, despite CEDAW's requirement to eliminate "discrimination against women in all matters relating to marriage and family relations."⁷² For example, the Civil Code requires women to wait for 300 days to remarry after divorce.⁷³ This period is legally concluded by the woman giving birth or obtaining a court order to certify that the woman is not pregnant from her former marriage, underscoring the patriarchal objective of the provision.

CEDAW ensures women's "right to choose a family name."⁷⁴ No legal amendment has been undertaken in Turkey to foresee the possibility for women to maintain their surnames upon marriage despite decisions by the ECtHR,⁷⁵ Constitutional Court⁷⁶ and Court of Cassation.⁷⁷ Therefore, remedies require filing a lawsuit against both the Population Directorate and male spouses.

Attention should be paid to the issue of polygamy, particularly when working with migrant and refugee women and girls. International human rights law considers it as a harmful practice, violating "the dignity

67 Article 94(3), Turkish Criminal Code.

68 Articles 24/2(d), 25/2(c), Labour Code, Law No. 4857.

69 Article 2/1(j), Law on Human Rights and Equality Institution of Turkey, Law No. 6701.

70 HRC, *General Comment No. 28 on the equality between men and women and CEDAW General Recommendation No. 21 on equality in marriage and family relations are useful reference materials on equality and marriage.*

71 ECtHR, *Konstantin Markin v. Russia*, para 127, referencing *Ünal Tekeli v. Turkey*, para 54, regarding women's secondary status, which found gender discrimination related to obstacles for women to use their own surnames.

72 Article 16, CEDAW.

73 Article 132, the Turkish Civil Code.

74 Article 16(1)(g), CEDAW.

75 ECtHR, *Ünal Tekeli v. Turkey*, 16 November 2004.

76 *Sevim Akat Eşki*, App. No. 2013/2187, 19/12/2013.

77 *Court of Cassation 2nd Civil Department*, E. 2014/20471, K. 2015/8704, 28/04/2015.

of women.”⁷⁸ Although criminalised, with the influx of refugees, polygamy has resurfaced in Turkey. The Constitutional Court’s annulment⁷⁹ of the criminalisation of religious marriage⁸⁰ reduced the scope of the State’s power to regulate marriage, and thus loosened control over polygamous practices. Religious marriage precludes women from benefitting from some civil rights. Legal remedies such as a request for non-pecuniary damages should be initiated by lawyers in order to alleviate women’s victimisation in such cases.⁸¹

5.2.1.1 Forced marriage

International human rights law provides for the right to marry freely the spouse of one’s own choice, among other rights.⁸² In a Joint General Recommendation, the CEDAW and CRC Committees described the diverse contexts in which early and forced marriage occurs:

“a forced marriage may occur when a rapist is permitted to escape criminal sanctions by marrying the victim, usually with the consent of her family. Forced marriages may occur in the context of migration in order to ensure that a girl marries within the family’s community of origin or to provide extended family members or others with documents to migrate to and/or live in a particular destination country. Forced marriages are also increasingly being used by armed groups during conflict or may be a means for a girl to escape post-conflict poverty. Forced marriage may also be defined as a marriage in which one of the parties is not permitted to end or leave it.”⁸³

International human rights law instruments prohibit forced and early marriage.⁸⁴ However, neither early, nor forced marriage is criminalised in Turkey. Early marriage is prosecuted as child sexual abuse, as if that were the only harm perpetrated through early marriage.⁸⁵ This gap in the law further impedes the prosecution of the crime of trafficking for the purpose of forced marriage. Civil remedies should also be pursued.

States must thus enact legislation or other measures “to ensure that marriages concluded under force may be voidable, annulled or dissolved without undue financial or administrative burden placed on the victim.”⁸⁶

According to the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) in its review of Turkey:

“On the civil law plane, measures must be in place allowing marriages concluded under force to be voidable, annulled or dissolved without any undue financial or administrative burden placed on the victim. In Turkey, there are no clear provisions in the Turkish Civil Code dealing with forced marriages.”⁸⁷

GREVIO has observed that there are two Civil Code provisions with limited scope of applicability, thus failing “to capture all cases of marriage to which a spouse has not voluntarily consented owing to

78 HRC, *General Comment No. 28, para 24*; see also CEDAW, *General Recommendation No. 21, para 14*, stating “polygamous marriages violate women’s right to equality with men and can have serious emotional and financial consequences for her and her dependents. Therefore, such marriages ought to be discouraged and prohibited”.

79 Turkish Constitutional Court, 27/5/2015 case number 2014/36 E., 2015/51 K.

80 Article 230(5)-(6) of the Turkish Criminal Code.

81 See, 4th Civil Chamber of the Supreme Court Case (2015/6000-2016/5100, 14.04.2006).

82 See, Article 23(2), ICCPR; Article 16, CEDAW; and, CEDAW General Recommendation No. 21, para 16, stating “a woman’s right to choose a spouse and enter freely into marriage is central to her life and to her dignity and equality as a human being”.

83 CEDAW/CRC, *Joint General Recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/ general comment No. 18 of the Committee on the Rights of the Child on harmful practices*, CEDAW/C/GC/31-CRC/C/GC/18, para 23.

84 Article 37, Istanbul Convention; Article 16, CEDAW.

85 Articles 103, 104, Turkish Criminal Code.

86 Article 32, Istanbul Convention.

87 GREVIO, *Baseline evaluation report: Turkey, 2018, para 244*.

psychological and/or physical violence”.⁸⁸ This gap can leave victims of forced marriage without a civil legal remedy.

5.2.2 Divorce

Discriminatory gender stereotypes tend to be prevalent in divorce cases, especially in non-consensual divorce. Allegations often employ gendered stereotypes when attributing fault to the female spouse for her failure to conform to traditional gendered roles, such as cooking, cleaning and caregiving, and/or for transgressing prescribed norms for women’s behaviour, such as drinking alcohol.

Discriminatory stereotypes may also be used to justify requests for an unfair division of marital property, alimony, child support and child custody. Women’s presumed role in the provision of domestic work and care obligations is one example of prevalent discriminatory gender stereotype. **Unpaid care and domestic work contributed by women during the length of the marriage should be attributed with a fair economic valuation in the division of marital assets, as well as the opportunity costs for foregoing a career.** In addition, the Turkish Criminal Code sanctions the failure to fill obligations to provide “care, education or support arising from family law”⁸⁹. This provides another legal avenue to address the lack of financial support in the form of alimony or child support, as well as the duty of care, from partners after divorce proceedings.

Divorce is an important judicial remedy for domestic violence victims. Given that divorce and separation increase the risk of violence against women, risk assessment should be undertaken, as well as an application for precautionary measures, if necessary. (See section 6.1.3, below).

5.2.3 Early marriage

CEDAW and the Convention on the Rights of the Child (CRC) require States to establish the minimum age for marriage at the age of majority for both sexes: 18.⁹⁰ Early marriage results in girls dropping out of school, which negatively affects their future livelihoods and sexual and reproductive health, due to early sexual debut and pregnancy. Data also indicates a clear correlation between early marriage and domestic violence incidence.⁹¹

Turkey has one of the highest rates of child marriage in Europe, with an estimated 15% of girls married before the age of 18 and 2% married before the age of 15. Syrian refugee girls in Turkey are at a heightened risk of child marriage: 45% of Syrian girls in Turkey were married before the age of 18, and 9% before the age of 15.⁹² Early marriages may arise for lawyers representing migrants and refugees, in whose countries of origin child marriage may be legally practiced. Refugees resort to child marriage in their countries of origin and on migration routes, sometimes with the aim of protecting girl children.

Although the age of majority is 18 in Turkey,⁹³ children can legally marry at the age of 17, with the permission of the child’s legal representative. Children at the age of 16 can marry with the permission of the judge in extraordinary circumstances.⁹⁴ These dispensations pave the way for the continued

88 Article 149 of the Turkish Civil Code applies to marriage vitiated by error; Article 151 applies to marriage to which consent was given “under an extremely imminent and grave danger against one’s life or against a relative’s life or health or honour”.

89 Article 233, Turkish Criminal Code.

90 Article 16, CEDAW; CEDAW General Recommendation No. 21, para 36. According to Article 1 of CRC: “For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier”.

91 Approximately one out of every 3 women (31.2%) who married after the age of 18 are subjected to violence, while almost half of women who married before the age of 18 are subjected to physical violence (47.6%) (Hacettepe University Institute of Population Studies, 2015: 102).

92 See, *Girls Not Brides: Turkey*, citing USAID, *Demographic and Health Survey: Turkey, 2018*; see also GREVIO, *Baseline evaluation report: Turkey, 2018*, para 241.

93 Article 11, Turkish Civil Code.

94 Article, 124, Turkish Civil Code.

practice of early marriage in Turkey. Upon marriage, minors obtain the same legal rights as attaining the age of majority.⁹⁵

There are no provisions foreseeing the annulment or dissolution of child or forced marriages in the Turkish Civil Code, which should specifically foresee procedures for annulment that do not place an undue financial or administrative burden on the victims, in particular where the child did not fully consent.⁹⁶ In Turkey, the only recognised remedy for child marriage appears to be prosecution under child sexual abuse provisions, with apparently limited effect.⁹⁷

5.2.4 Alimony/child support

Upon divorce, the division of marital property and determination of alimony and child support are critical issues for women's economic independence and empowerment. As explained by the CEDAW Committee, "the economic advantages and disadvantages related to the relationship and its dissolution should be borne equally by both parties. The division of roles and functions during the spouses' life together should not result in detrimental economic consequences for either party."⁹⁸

Of primary importance is the recognition of women's **unpaid care and domestic work** during the marriage. As underscored by the Beijing +25 Regional Review: "Due to the burden of unpaid domestic and care work, compared to men, women are more likely to work part-time, be employed in lower-paid occupations and less likely to advance in their careers, resulting in a gender pay gap."⁹⁹

Turkey has one of the biggest gaps between men's and women's workforce participation in the region.¹⁰⁰ In contrast to the regional average, in which women engage in twice the amount of unpaid care and domestic work as men, in Turkey, "women spend almost five times as much as men in unpaid work."¹⁰¹ The correlation between these stark figures signals significant structural economic discrimination, which is further perpetuated by discriminatory divisions of marital property and alimony determinations. In practice, alimony and child support orders are both extremely low and difficult to enforce.

Moreover, gendered stereotypes are presented to and often accepted by courts, posing a **de facto** obstacle to equitable distributions of property and just levels of alimony and child support. Discriminatory assessments of marital assets include the lack of recognition of the value of unpaid care and domestic work. The portrayal of women with malicious intent to go after "men's" money after divorce is another common stereotype in this context.

Unregistered work and hiding assets are common practices in Turkey, preventing the implementation of orders for alimony. For this reason, it is very important for lawyers to share the precautions to be taken regarding the assets that can be hidden with their clients, to take the necessary precautions (family residence annotation, etc.) without delay, and to provide the necessary clues for conducting detailed economic research.

A research produced in 2020 found that 50.7% of alimony was not paid in Turkey (KONDA, 2020: 22). Claims for non-payment of alimony should be brought promptly to the enforcement office. Alimony is

95 Article 11, Turkish Civil Code.

96 Article 32 of the Istanbul Convention requires States to enact legislation or other measures "to ensure that marriages concluded under force may be voidable, annulled or dissolved without undue financial or administrative burden placed on the victim". Explanatory Report, para 178.

97 <https://tr.sputniknews.com/20180722/cocuk-istismari-beraat-1034396969.html>; <https://www.dha.com.tr/gundem/suriyede-yasak-yok-dedi-savciyi-ikna-edemedi-1817063>.

98 CEDAW, General Recommendation No. 29 on the economic consequences on marriage, family relations and their dissolution, 2013, para 45.

99 ECE, Beijing +25 Regional Review Meeting, Regional Review of Progress: Regional synthesis, ECE/AC.28/2019/3, 2019, para 20.

100 UN Women, 2019, 18-19, noting women's low levels of participation in Turkey at 32.4%, compared to the regional average of 51.9%, and men's at 79.5%.

101 UN Women, 2019, 23, indicating the regional average at: men (136 minutes/day) compared to women (264.4 minutes/day); and the average in Turkey: women (305 minutes/day) compared to men (67.6 minutes/day).

considered a priority debt, and failure to pay can result in a detention order, the most effective way to force payment. Processing complaints takes three months. Complaints should be made regularly in the event of non-payment.

For victims of domestic violence, alimony can be ordered as a temporary measure within the framework of a protection order under Law No. 6284. It thus can be made available to violence victims prior to filing for a divorce.

5.2.5 Child custody

CEDAW requires States to ensure a legal framework that obliges both parents, regardless of marital status and whether they cohabit with their children, to share equal rights and responsibilities for their care.¹⁰² In all cases the **best interests of the child** shall be paramount. Stereotypes that mothers are responsible for the care of children remain prevalent in Turkey. Consequently, women are often given child custody. The devaluation of care giving results in low awards for child support, which are coupled with difficulties in their effective enforcement, affect women disproportionately. Failure to recognise the value of reproductive labour, performed primarily by women, contributes to systemic discrimination and the feminisation of poverty, including high rates of child poverty.

Women's economic vulnerability is also instrumentalized in divorce. Fathers exert pressure as a divorce tactic by threatening to take custody of the child, especially if mothers do not have regular incomes.

5.2.5.1 Visitation and custody in the perpetration of violence

It is important to note that perpetrators of violence against women often use visitation and custody as a way to gain access to survivors/victims as a means of continuing the abuse. The Istanbul Convention thus requires States to consider incidents of violence in the determination of custody and visitation rights, in addition to implementing measures to ensure that custody and visitation does not **de facto** jeopardise the safety of women and children.¹⁰³ Unfortunately, the failure to do so has led to the murder of women children by perpetrators in numerous cases.¹⁰⁴

There remains an apparent tendency to grant visitation rights to fathers without consideration of the nature and level of violence as determined in protection orders, as deprivation of contact is considered to be a last resort option. This occurred in the **T.A.** case before the Constitutional Court, in which the victim was murdered by her former husband during his visitation with the children.¹⁰⁵ The Constitutional Court found that the authorities had failed to protect the victim, who had requested protection on multiple occasions, demonstrating text messages containing death threats. During prior criminal proceedings for threats and insult before Izmir 4th Criminal Court, T.A. had requested termination of the perpetrator's visitation rights given his violation of all previous protection measures.¹⁰⁶ Her request was denied, and the perpetrator murdered her during the visitation, on the day the protection order expired.

The **T.A.** case clearly demonstrates the shortcomings of the criminal justice sector in Turkey to protect women victims of violence across multiple instances: the failure to consider violence in determining visitation decisions, the failure to effectively implement protection orders and the overall ineffectiveness of criminal convictions as a meaningful remedy in domestic violence cases—all discussed in greater detail in sections below.

102 Article 16(1)(d),(f), CEDAW.

103 Article 31, Istanbul Convention.

104 See, e.g., CEDAW, *González Carreño v. Spain*, Communication No. 47/2012, finding that the "stereotyped conception of visiting rights based on formal equality" without due consideration of domestic violence constituted discrimination under Articles 2 (a-f), 5(a) and 16(1) (d).

105 *Turkish Constitutional Court, Application T.A.*, No. 2017/32792, Date: 29/9/2021, Official Gazette Date and No: 2/12/2021-31677.

106 Article 106 and 125, Turkish Criminal Code.

Lawyers should enquire into the existence of domestic violence, including controlling behaviour in any filings related to custody and visitation. Given that children exposed to violence are victims, a “best interest of the child” analysis should be performed.

5.2.6 Property/inheritance

International human rights law enshrines women’s right to own and inherit property on an equal basis with men, irrespective of marital status, as well as equal rights to marital property, including upon the death of one spouse.¹⁰⁷ The legal framework in Turkey provides for **de jure** equality with respect to ownership of property. Turkish law grants equal inheritance rights to land and non-land assets to female and male children, as well as to female and male surviving spouses.¹⁰⁸ In practice, however, property is often registered in the names of male relatives and inheritance follows a patrilineal pattern. Moreover, cultural or customary norms may exclude daughters who received a dowry from inheriting, in favour of sons.¹⁰⁹ Provisions of the inheritance and anti-discrimination laws should be used to prevent or annul the transfer of inheritance or property that discriminates against women and girls, challenging **de facto** discriminatory practices in this context.

6. Protection and procedural rights

This section pertains to the specific protection mechanisms and procedural rights that should be applied primarily, but not exclusively, to victims of gender-based violence.

6.1 Out-of-court protection

GBV victims and crime witnesses will likely need various forms of out of court protection prior to, during and after the proceedings. Periodic risk assessments are necessary to identify the nature and level of risk as it varies over time. Initiating procedures for protection, divorce or custody, for example, often increases the risk of violence, including lethal violence for GBV victims.

6.1.1 Risk assessments

Lawyers should conduct risk assessments for their clients when indicated by a history of violence or the existence of threats of violence and assist them to develop a safety plan. Reference can be made to the criteria set forth in the *Registration and risk assessment form for domestic violence and violence against women under Law No. 6284*.¹¹⁰ The process should not consist of reading out the list of risk factors to the victim, like a survey, and ticking boxes. Rather, it should involve a conversation. For victims of domestic violence, it is of utmost important to gain an understanding of the **history of the violence**, its **patterns** and **whether it has escalated in frequency and intensity**.

The risk assessment process can be an important indicator of the need for in-court protection measures, such as the use of Judicial Interview Rooms (JIRs) and other protective procedures as set forth in the Criminal Procedure Code.

For GBV victims with children, it is important that the risk to children be assessed separately, and not be assumed to be the same as for the mother. Child protection needs differ from those of adults, and the risk assessment should encompass their exposure as witnesses to violence and as direct victims of violence. Where there is any indication of physical violence being committed against children, child protection authorities should be alerted.

107 Articles 15(2), 16(1)(h), CEDAW; HRC, General Comment No. 28, paras 19, 28.

108 Articles 495, 499, Turkish Civil Code; Article 661, Land Inheritance Law.

109 OECD, Social Institutions & Gender Index.

110 Law to Protect the Family and Prevent Violence against Women.

Police, ŞÖNİM and judges are mandated to conduct risk assessments, which can be subsequently admitted as evidence. Lawyers may thus refer clients to the authorities for the purpose of obtaining an official risk assessment, to trigger an emergency protection order for immediate protection. This serves as the basis for a longer-term protection order. An official risk assessment would also support requests for in-court protection measures.

Depending on the level of risk, with higher risks needing more frequent re-evaluations, risk assessments should be conducted continuously, during each stage of, and after, the proceedings.¹¹¹

6.1.2 Managing the risk

The aim of identifying the risk of future violence and lethality is to be able to manage it, to prevent it from occurring. Two key elements of risk management involve safety planning with victims and the issuance of emergency barring and protection orders.

6.1.2.1 Safety planning

Victims are often the best positioned to understand the risks they face, identify support persons and viable escape routes. Other victims may be in denial. Assisting GBV victims to develop a personalised and realistic safety plan can be both empowering and protective. Legal aid lawyers can engage in safety planning with clients as necessary. Police, ŞÖNİM and other authorities are mandated to conduct safety planning after a risk assessment. Whether developing the safety plan with the client or relying on one performed by another institution, **recourse should be had to the safety plan in the modalities of legal representation to ensure client safety**. Safety planning tips can be found in Annex 6.

Safety plans should be:

- **Personalised.** There is no one-size-fits-all safety plan because every situation is different. Every safety plan needs to reflect the specific details of the individual victim and the nature and level of the risk.
- **Supported by the victim's community.** Work through the plan with the victim, who can identify which family members, friends and community resources they feel comfortable in contacting when they feel in danger.
- **Realistic.** A safety plan won't work if it is difficult to follow. The plan needs to address the reality of the situation. In domestic violence situations, safety planning must recognise that some women will continue to cohabit with an abuser, that others might reunite after an arrest or prosecution and that others will continue to raise children together despite the threat or presence of violence.
- **Holistic.** The safety plan should cover every aspect of the victim's life—at home, at school, at work, in transit, online, in social situations and legal representation.

6.1.3 Emergency barring and protection orders

International instruments require the availability of immediate and longer-term protection orders for victims of GBV **irrespective of the existence of criminal proceedings** related to the perpetration of violence.¹¹² Emergency barring orders (EBOs) constitute one type of order, characterised by their **immediate application** and **short-term duration**. Their issuance should **not be contingent upon**

111 *ECtHR, B. v. Moldova, para 56, finding a violation of the Article 3 prohibition of ill treatment due to the State's failure to take into consideration the ongoing incidents of violence, thus failing to assess the evolving nature of the risk.*

112 Articles 50-53, Istanbul Convention.

the commission of an offence, nor linked to proof of criminal responsibility.¹¹³ Their purpose is “to offer a fast legal remedy to protect persons at risk of any of the forms of violence”.¹¹⁴

International standards also foresee longer-term protection orders (POs) be available for all forms of violence against women.¹¹⁵ POs should be:

- available for immediate protection and without undue financial or administrative burdens placed on the victim,
- issued for a specified period or until modified or discharged,
- where necessary, issued on an **ex parte** basis with immediate effect,
- available irrespective of, or in addition to, other legal proceedings,
- allowed to be introduced in subsequent legal proceedings.

Under the Turkish legal framework, victims of GBV who face a risk of lethal or continuing violence can seek a protective precautionary decision or a preventive cautionary decision under Articles 3-5 of Law No. 6284.

Under Turkish law, protective precautionary decisions are injunctions that can be issued by judges, and in urgent circumstances by a police chief.¹¹⁶ They can be issued on an **ex parte** basis if urgent, and there is no application fee. Like protective precautionary decision, preventive cautionary decisions can be issued on an urgent basis by law enforcement.¹¹⁷ Several of the injunctions aim to restrain the behaviour of the perpetrator. They are:

- removal from the shared home,
- prohibition of additional violent behaviour,
- prohibiting contact with the victim(s), at home, school, work or via information and communication technology (ICT),
- temporarily or permanently removing child visitation rights,
- confiscation of any weapons, and
- temporary order of alimony.¹¹⁸

It is important to note that while Law No. 6284 and implementing bylaws provide for removal of the perpetrator from the home, they also contain options for the removal of the victim(s) from the family home.¹¹⁹ While this may be necessary for victim safety, the disruption to the victim(s)' lives caused by this relocation can have negative employment consequences and impede children's school attendance. The aim of these measures is to foster a “paradigm shift” in which “[r]ather than asking victims to seek a place of safety from violence. It shifts that burden to the perpetrator, who is ordered to leave the residence of the victim or person at risk and not to contact her or him” (Logar and Niemi, 2017: 43).

Judicial injunctions may thus preserve victims' rights to remain in, and their economic interest in their homes, as well as provide highly invasive measures of protection, including changing the victim's

113 Article 52, Istanbul Convention. The Explanatory Report to the Istanbul Convention obliges States “to ensure the possibility for victims to obtain a restraining or protection order whether or not they choose to set in motion any other legal proceedings,” noting that many victims may not be ready to press criminal charges. Explanatory Report, para 273.

114 Explanatory Report to the Istanbul Convention, 2011, para 268.

115 *The Istanbul Convention covers numerous forms of violence against women, including: domestic violence, physical and sexual violence, forced marriage, female genital mutilation, stalking, sexual harassment, forced abortion and forced sterilization. Articles 3, 33-40, Istanbul Convention.*

116 Articles 3, 10, Law No. 6284. Orders issued by a police chief must immediately be reviewed by a judge. They are to be implemented by the police.

117 Article 5(2), Law No. 6284, to be approved by a judge within 24 hours.

118 Article 5, Law No. 6284.

119 See also, Law Enforcement Regulation No. 6284; Regulation on the Opening and Operation of Women's Shelters, and Circular on the Implementation of the Law No. 6284.

employment location and a change in identity,¹²⁰ which should be requested only for seriously life-threatening situations. Importantly, the victim should not be restrained by a protection measure. There are different reasons why the victim may want to contact the perpetrator or does not hinder him from entering the home, including fear. Victims should thus not be sanctioned for breaches of these measures.

In addition to the above-listed options for protective precautionary or protective precautionary presented in Law No. 6284, it also provides for the possibility of implementing “similar measures deemed necessary”. Lawyers thus have the possibility to request specific, tailored measures in light of the actual needs of the victim.

It is important to ensure that measures are included for the payment of alimony or child support during the application of the protective precautionary decision, including if the perpetrator is removed from the home. It is also critical to review any existing visitation and custody arrangements to ensure: i) the safety of the children; and ii) the safety of the mother, as perpetrators often use children as a means of approaching the mother. (See description of the **T.A.** case in section 5.2.5.1, above).

Risks to safety can diminish over time, but they can also be long-term. protective precautionary decisions provide protection for up to a maximum 6 months, they can be extended, modified, abolished or maintained *ex officio* or upon application.¹²¹ In practice, the issuance of preventive cautionary decisions has seen a reduction in length, for only 1 or 2 months, leaving victims in Turkey without meaningful long-term protection from violence.

International standards require that violations of emergency barring orders and protection orders should result in “effective, proportionate and dissuasive criminal or other legal sanctions”. Fines are viewed as counterproductive as they may be paid for out of the family budget and are not an effective deterrent.¹²²

When protection orders are violated by perpetrators in Turkey, preventive detention shall be ordered by a judge (imprisonment from 3 to 10 days). In cases of continued violation, imprisonment ranging from 15 to 30 days shall be imposed, provided that the total period of imprisonment does not exceed six months.¹²³

For clients facing imminent threats to their safety, lawyers can refer to the client to ŞÖNİM or apply to the nearest family court for the purpose of obtaining a protective precautionary measure. Although international standards require that emergency barring and protection orders be admissible as evidence, this is not the case in Turkey, posing a structural obstacle to demonstrating the history of the violence.

6.1.4 Witness protection

The Criminal Procedure Code and Witness Protection Law provide for a series of out-of-court protection measures for witnesses, including testifying victims and their family members—upon meeting specific criteria. The Criminal Procedure Code provides for keeping the identities of the witnesses confidential in cases where their disclosure would pose a grave danger to themselves or their relatives.¹²⁴

The Witness Protection Law foresees witness protection for those facing “grave and serious danger” for participating proceedings related to crimes for which the minimum sentence is 10 years’ imprisonment.¹²⁵ Notably, the criteria set forth in the Witness Protection Law and Criminal Procedure Code tend to

120 Article 4, Law No. 6284.

121 See, Article 8 of Law No. 6284

122 See, CEDAW, *A.T. v. Hungary*, Communication No. 2/2003, CEDAW/C/36/D/2/2003, in which the perpetrator was fined the equivalent of US\$365 for two incidents involving serious bodily harm to the victim.

123 Article 13, Law No. 6284.

124 Article 58, Turkish Criminal Code of Procedure.

125 Law No. 5726, 27 December 2002. Article 4(ç) of Law No. 6284 provides for, *inter alia*, a change of identity in accordance with the provisions of the Witness Protection Law, if there is a life-threatening danger and it is clear that other measures will not provide sufficient protection.

preclude witness protection for testimony for crimes that disproportionately affect women, namely: injury, torment, threat (those commonly used to prosecute domestic violence), stalking and human trafficking.¹²⁶

Legal aid lawyers can take several actions to address threats and intimidation of clients. First, they should document any threats they hear in court. They can consider filing a separate legal action related to the intimidation, threats. If the legal aid lawyer is himself or herself threatened, a criminal complaint should be made to the prosecutor's office and necessary protection measures should be taken. Security measures should be provided inside and outside the court.

6.2 In-court protection and procedural rights

The rights of victims of crimes are set forth in the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, the EU Victims' Rights Directive and the jurisprudence of the ECtHR.¹²⁷ It is important to note that distinct groups of victims (such as victims of trafficking, and victims of domestic violence and child victims of sexual abuse) are subjects of specialised legal frameworks.¹²⁸ The CRPD and the EU Victims' Rights Directive apply these protections to persons with disabilities.

Victims are to be afforded many of the basic fair trial rights, including: the right to privacy and confidentiality in the proceedings, an opportunity at the appropriate stages of the proceedings to present their views and concerns, the right to a determination without unreasonable delays, protection from re-victimisation,¹²⁹ intimidation and retaliation, and to an effective remedy.

Victims' rights in criminal proceedings:

- To privacy and confidentiality,
- To information,
- To determination of rights without unreasonable delays,
- To present views and concerns,
- To interpretation and translation,
- To protection from secondary and re-victimisation, intimidation and retaliation,
- To be free from discrimination, including gender stereotypes,
- To an effective remedy: protection, effective sanctions, damages.

Many in-court protection measures and procedural rights are also found in the Turkish Constitution and Criminal Procedure Code. Victims who plan to testify as witnesses should be provided with information pertaining to recommended in-court protective measures. Information should also be given on procedural rights, such as those listed in Article 234 of the Criminal Code of Procedure, **inter alia**: rights related to free legal representation, procedural interventions, appeals of decisions not to prosecute and motions on the collection of evidence and summoning witnesses.

¹²⁶ The application of aggravating circumstances could raise the sentence to enable witnesses in cases of human trafficking to be eligible for protection.

¹²⁷ Victims can claim violation of their fair trial rights under Article 6 of the ECHR only if they join criminal proceedings to enforce civil law claims within the framework of the criminal procedure.

¹²⁸ See, e.g., CoE, *Convention on Action against Trafficking*, CETS No. 197, 2005; *Protocol to Prevent, Suppress and Punishment of Trafficking in Persons, Especially Women and Children*; CoE *Convention on Protection of Children against Sexual Exploitation and Sexual Abuse*, CETS No. 201, 2007; *Istanbul Convention*.

¹²⁹ ECtHR, *Y. v. Slovenia*, paras 104-107.

6.2.1 The right to privacy and confidentiality

Victims of crime, victims of gender-based violence and children in particular, have a right to privacy and confidentiality in relation to the proceedings. Several measures should be undertaken to ensure this right, including the **protection of their identity** in all court filings, holding **closed hearings** and **precluding the media** from access to the courtroom, among others.

Article 22(3) of the Victims' Rights Directive establishes the victim's right to close hearings to the public. The failure to control media access raised serious concerns related to the ongoing re-traumatisation of the victim.

6.2.2 The prevention of re-traumatisation

Discriminatory legal frameworks and attitudes towards women in the justice sector are a significant barrier to their access to justice. The term **re-victimisation** refers to the behaviours and attitudes of institutional actors and individuals towards victims.¹³⁰ It can be caused intentionally or through unconscious bias by:

- inappropriate or intrusive questioning,
- inappropriate language or insensitive comments,
- disbelief in the victim's account of events,
- lack of empathy, sympathy and indifference, and
- siding with the perpetrator.¹³¹

It can also occur through the absence of gender sensitivity in the application of procedures:

- the victim's repeated exposure to the perpetrator during the proceedings,
- repeated interrogation about the same facts,
- neglecting to provide adequate information, and
- providing conditional services (e.g., requiring law enforcement collaboration to access services) (CoE, 2016).

For example, focusing attention on behavioural changes of the victim, rather than on the accountability of the perpetrator implicitly places the responsibility on the victim to end the violence. Lack of sensitivity and "victim-blaming" re-traumatise victims of violence by those persons charged with their protection and care.

Causes of re-traumatisation

- Victim blaming
- (Repeated) exposure to the perpetrator
- Repeated questioning on the same facts
- Insensitive comments
- Inappropriate language
- Indifference
- Disbelief
- Lack of empathy
- Conditioning offers of assistance
- Failure to provide information

The court's questioning in the [N.Ç. v. Turkey](#) case, in which the minor victim of rape was required to re-enact sexual positions in the court room was found by the ECtHR to constitute a violation of Article 3. It is noteworthy that in both the [N.Ç. v. Turkey](#) and the [Y. v. Slovenia](#) cases some in-court protection measures were applied by the courts to the

130 Council of Europe Committee of Ministers Recommendation [Rec\(2006\)8 of the Committee of Ministers to member states on assistance to crime victims](#).

131 See, *EIGE, Glossary & Thesaurus: Secondary victimization*.

benefit of the victim.¹³²In each case, however, the ECtHR found them to have been insufficient. In other words, multiple in-court protection measures should be provided if necessary to meaningfully prevent re-victimisation. Lawyers should object to irrelevant, hostile and gender stereotyping questions and comments during the proceedings to avoid re-victimisation of their female clients.

6.2.2.1 Investigations and evidence

The investigation, collection and presentation of evidence can also be highly discriminatory in cases involving violence against women. In the ECtHR's *Aydin v. Turkey* and *N.Ç. v. Turkey* cases, the prosecutor and/or court ordered the victims to conduct four and ten forensic medical examinations, respectively. This excessive ordering of gynecological examinations appears to function as a form of sexual harassment of sexual violence victims claiming their rights. The sole aim of these tests in the *Aydin* case was to establish whether she was a virgin prior to the alleged rape, effectively operating as a form of State-sponsored virginity testing.¹³³ The victims' virginity is irrelevant to the commission of sexual violence. Such an inquiry by the court constitutes a form of judicial bias based on gender stereotypes pertaining to women's sexuality.

Legal aid lawyers should be aware of gender discrimination in the context of forensic testing, including forensic doctors lacking gender sensitivity during examinations, which can be a source of re-victimisation.

Apparently neutral evidentiary rules can have a discriminatory impact on the fair trial rights of women. For example, the absence of rules limiting prior sexual conduct evidence, as is the case in Turkey, can have a discriminatory effect as a common entry point for gender stereotypes and bias related to women's sexuality. International standards require the evidence of prior sexual conduct be admitted only when both relevant and necessary.

6.2.2.2 Judicial Interview Rooms (JIRs)

In order to prevent re-traumatisation by the type and number of questions asked by justice actors during the proceedings, lawyers should request the use of specially designated JIRs, the purpose of which is to ensure sensitivity in taking the statements of victims of *inter alia* sexual and domestic violence, children and other vulnerable groups.¹³⁴ The JIRs aim to ensure an appropriate environment to prevent secondary trauma. They are equipped with a video conference system thus enabling their use to prevent the victim's contact with an offender, as well as to prevent repeated and inappropriate questioning by judges and on cross-examination. Legal aid lawyers should request the use of these rooms, in particular for children and victims of sexual violence.

6.2.2.3 Additional recommendations for in-court protection

Article 236(3) of the Criminal Procedure Code provides further protection to psychologically affected victims by requiring the presence of an expert psychologist, psychiatrist or physician during their testimony.

The use of expert testimony related to the effects of gender-based violence constitutes one means of dispelling myths and achieving just outcomes. Expert participation can provide important insight into the victim's beliefs and actions in light of the fact that there is no psychological diagnosis that captures the experiences of victims, and there is no single, uniform response to crimes such as domestic violence, human trafficking, rape and sexual assault. It is very important that legal aid lawyers make the necessary applications to benefit from this opportunity if their clients need it. Turkish law allows the

132 ECtHR, *Y. v. Slovenia*, para 38, in which although the national court provided frequent breaks in the testimony of the minor sexual violence victim and other measures, the perpetrator was permitted to personally ask the victim over one hundred questions, many of which were leading questions.

133 ECtHR, *Aydin v. Turkey*; *N.Ç. v. Turkey*.

134 Article 1, Regulation on Judicial Interview Rooms.

parties to submit an expert opinion to the file as evidence, as well as to request that the expert to be heard as a witness.

7. Criminal cases

Women's experience in the criminal justice system is primarily as victims and witnesses, and increasingly as defendants. With respect to crime victims, it is a key duty of States to criminalise severe human rights violations, given their obligation to eradicate impunity for such crimes.¹³⁵ States must also criminalise all forms of violence against women.

Female defendants face the same obstacles to justice as men, in addition to a "gender neutral" legal framework that fails to reflect their needs and lived experience, and gendered stereotypes and bias that negatively impact decisions affecting them.

This section provides a brief description of the principal issues faced by women in the criminal justice sector. It sets forth basic provisions in the Turkish legal framework and notes *de facto* concerns related to the crimes that disproportionately affect women, as victims and as defendants.

7.1 Women as victims of crime

7.1.1 Forms of domestic and intimate partner violence

The term domestic violence refers to mainly two types of violence: intimate-partner violence between current or former spouses or partners, and inter-generational violence that typically occurs between parents and children. Domestic violence is thus a gender-neutral term that encompasses victims and perpetrators of both sexes. Intimate partner violence (IPV) applies to partners whether or not they are married or cohabitate.

Domestic violence is defined in Law No. 6284 as comprising physical, sexual, psychological and economic violence. However, these are not all found in the criminal code to effectually prosecute the crime. This section details the relevant criminal provisions, identifies gaps and proposes workarounds.

This section details the legal framework and practice related to domestic and intimate partner violence.

7.1.1.1 Psychological violence

Psychological violence is not criminalised in Turkey. Yet, data indicates that psychological violence is the most prevalent form of domestic violence against women in Turkey (with 44% of ever-married women reporting).¹³⁶

Examples of psychological violence include "insults, humiliation in front of other people, intimidation and instigating fear, and threats to hurt the victim or someone else the victim cares about".¹³⁷ Psychological violence also involves controlling behaviour aimed at limiting women's self-determination, such as by controlling their whereabouts, impeding their ability to talk to other men, imposing a dress style, blocking social networks, preventing them from seeing their friends, and controlling access to healthcare.

Psychological violence can be raised through the following offences under the Turkish Criminal Code:

- Threat (Article 106),
- Blackmail (Article 107),

135 CoE, *Guidelines of the Committee of Ministers of the Council of Europe on eradicating impunity for serious human rights violations*, 2011.

136 Cited in GREVIO, *Baseline evaluation report: Turkey, 2018*, p. 74, fn.109.

137 Cited in GREVIO, *Baseline evaluation report: Turkey, 2018*, para 214.

- Coercion (Article 108),
- Defamation (Article 125) and
- Ill-treatment (Article 232).

However, these offences do not address these behaviours as a pattern or course of conduct, but rather target single incidents. Lawyers can consider using the crime of torment to address psychological violence. Article 96 defines torment in general terms as any behaviour which causes suffering. Since the application of this Article to acts of psychological violence may contribute to deterrence, it is important that legal aid lawyers raise this during both the investigation and prosecution phases. They should also place emphasis on “continuity and being systematic,” as established by Supreme Court decisions.

7.1.1.2 Economic violence

Economic violence involves denying and controlling access to resources, including: time, money, transportation, food or clothing. Examples of economic violence include:

- Prohibiting a woman from working,
- Excluding her from family financial decisions,
- Withholding money or financial information,
- Refusing to pay bills or maintenance for her and/or children,
- Destroying jointly owned assets.

In Turkey, 30% of ever-married women reported having been subjected to economic violence (withholding of funds for household expenses, causing them to leave their job, confiscation of income, etc.) Underscoring the ways in which violence reproduces women structural economic vulnerability, of the listed forms of economic violence, preventing employment or causing women to quit was the most common (24%) (Hacettepe University Institute of Population Studies, 2015: 100).

Although Article 233 of the Criminal Code criminalises the failure to provide “care, education or support” for family members, which is one form of economic violence, it does not capture the other forms of economic control and violence exerted by perpetrators of DV and IPV.

7.1.1.3 Physical violence

With respect to physical violence, several offences set forth in the Criminal Code may be applied, including, *inter alia*: ill-treatment, willful injury and deprivation of liberty. Several problems occur with respect to prosecuting violence against women under these provisions. First, these gender-neutral crimes do not effectively capture the nature of the harm, which is often ongoing and involves other concurrent forms of violence not criminalized in Turkey. Secondly, these offences are prosecuted as single incidents, failing to reflect the fact that domestic violence is a continuous crime involving patterns of violence. Application of the provision on successive offences in the Criminal Code might be one option to ensure that the sanction reflects both the continuous nature of the offence and its gravity.¹³⁸

Given that the history of violence is not reflected in the proceedings, the potential remedies, to the extent they are provided, remain inadequate in proportion to the harm suffered. The legal framework, moreover, requires victims to file multiple criminal reports to address ongoing violence. Finally, the emphasis in criminal proceedings on the evidence of physical injury creates a “hierarchy of harm” where non-physical aspects of domestic violence are considered as less serious, not requiring legal intervention and not criminalised.

138 Article 43, Turkish Criminal Code.

7.1.1.4 Sexual violence

International standards require that rape and sexual violence be criminalised based on the consent of the victim, not on the use of force or threat of force, nor on the gravity of the physical harm caused to the victim. "Consent must be given voluntarily as the result of the person's free will assessed in the context of the surrounding circumstances."¹³⁹

The Turkish Criminal Code dedicates a section to crimes involving sexual violence (sexual assault,¹⁴⁰ sexual abuse,¹⁴¹ sexual intercourse with a minor¹⁴² and sexual harassment¹⁴³). The definitions of the crimes of rape and sexual abuse do not make reference to the victim's consent. Sexual assault is defined as the violation of: "the physical integrity of another person, by means of sexual conduct."¹⁴⁴

Article 26/2 of the Criminal Code foresees consent as a defence, (except for children under the age of 15). Whether or not the victim consented is thus a live issue. Lawyers can play a critical role in defending their clients' rights in cases in which consent is at issue, given that it opens the door to gender stereotypes.

Significantly, the use of force to overcome the victim's resistance constitutes an aggravating circumstance, not an element of the crime.¹⁴⁵ References to coercion or use of force not pertaining to an aggravating circumstance by the defence should be considered as irrelevant. Marital rape is explicitly recognised. The Criminal Code provisions do not encompass the crime of causing another person to engage in non-consensual acts of a sexual nature with a third person.¹⁴⁶

Prompt collection of evidence in sexual crimes is of vital importance. Therefore, as soon as a lawyer is appointed, if it has not been collected yet, the collection of evidence (clothes found on the day of the incident, taking samples of body fluids, etc.) should be ensured. For this reason, the immediate appointment of a lawyer is important to change the course of the case. Victims of sexual violence have a right to free legal aid in accordance with Article 234 of the Criminal Procedure Code. It is very important in this respect that a lawyer be appointed to the victim immediately in sexual crimes cases. Lawyers should request in-court protection measures, such as taking the statements of their clients in judicial meeting rooms. Objections should be made against the introduction of prior sexual conduct evidence unless it is specifically relevant and necessary.

7.1.2 Human trafficking

7.1.2.1 Definition of the crime

As defined by the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children Supplementing the UN Convention against Transnational Organized Crime, the crime of human trafficking is comprised of three constituent elements:

Acts: recruitment, transportation, transfer, harbouring or receipt of persons;

Means: threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person;

139 Article 36(2), Istanbul Convention.

140 Article 102 of the Turkish Criminal Code. It penalises diverse forms of sexual violence, including sexual assault and rape.

141 Article 103 of the Turkish Criminal Code.

142 Article 104 of the Turkish Criminal Code.

143 Article 105 of the Turkish Criminal Code.

144 Article 102(1), Turkish Criminal Code.

145 For example, Article 102(4) reads: "Where greater force than is necessary to suppress the resistance of the victim is used during the commission of the offence the offender shall also be sentenced to a penalty for intentional injury in addition."

146 As required by Article 36(1) of the Istanbul Convention.

Purposes: Exploitation, at a minimum: the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

The consent of a victim of trafficking is irrelevant when any of the means have been used. Child trafficking, affecting anyone under the age of 18, is defined by only the acts and purpose elements; the “means” element is inapplicable. Legal aid lawyers should also be aware that despite the inapplicability of the consent of victims of trafficking in the international and national definitions of the crime, in practice consent continues to be raised by the defense and addressed by courts as a live issue (UNODC, 2020).

The Turkish legal framework only partially complies with international standards pertaining to human trafficking. It is criminalised under Article 80 of the Turkish Criminal Code. Some of the key gaps with respect to the definition of human trafficking pertain to the absence of coercion and abuse of position of vulnerability (APOV) as “means” in the definition.

Coercion is critical to the definition of trafficking because, as found by the ECtHR, trafficking involves complex dynamics that include “both overt and more subtle forms of coercion,”¹⁴⁷ including coercive control (UNODC, 2020: 50). Human trafficking occurs as a form of domestic and intimate partner violence, including traffickers that fraudulently pose as “loverboys” as a means of recruiting victims and pressuring them to engage in prostitution and to recruit other victims (UNODC, 2020: 34).

APOV is also an important “means” included in international definitions to ensure that “all the different and subtle ways by which an individual can be moved, placed or maintained in a situation of exploitation [are] captured.”¹⁴⁸ UNODC has set forth vulnerability factors as:

“gender (typically being female, but also transgender); sexuality, religious and cultural beliefs; isolation caused through inability to speak the language, lack of social networks; dependency (on employer, family member, etc); threats to disclose information to family members or others; and abuse of emotional/romantic relationships.”¹⁴⁹

The concept of vulnerability is essential to human trafficking, since it affects society’s most structurally vulnerable. The legislation needs to be amended to address these and other gaps.

7.1.2.2 Stereotypes impeding identification of victims

In Turkey, as in the rest of the world, the majority of identified victims of human trafficking are women and girls.¹⁵⁰ Human trafficking can take place within the borders of one State or may have a transnational character. In Turkey, prevailing stereotypes see victims of trafficking as non-national women trafficked solely for the purpose of exploitation of prostitution. This stereotype likely impedes the identification of Turkish trafficking victims, male trafficking victims and those trafficked for other purposes, including: forced marriage, domestic servitude, begging and forced labour, among others. Significantly, the Criminal Code does not recognise these forms of human trafficking—constituting a legal barrier to prosecution.

Irregular migrants are presumed to be criminals rather than victims of a crime, and often face automatic deportation, resulting in their revictimisation. Despite its legality, sex work is perceived as “immoral” by law enforcement officials. Stereotypes of the “ideal victim” thus prevent detection of victims among irregular migrants, sex workers and those trafficked for the purpose of committing criminal acts.

147 ECtHR, *C.N. v. United Kingdom*, 13 November 2012, para 80.

148 UNODC, Issue Paper: Abuse of a position of vulnerability and other “means” within the definition of trafficking in persons, pp. 2-3, 17, 18 noting that the *travaux préparatoires* to the Protocol define APOV as “any situation in which the person involved has no real or acceptable alternative but to submit to the abuse involved”.

149 UNODC, Issue Paper: Abuse of a position of vulnerability and other “means” within the definition of trafficking in persons, p. 71.

150 They comprise 72% of victims globally. See, (UNODC, 2018: 25).

The unconscious application of stereotypes may also limit legal aid lawyers from identifying trafficking among male migrants for the purpose of labour exploitation, and Turkish nationals, including from ethnic minorities, trafficked for domestic servitude (girls from villages) or children for the purpose of begging and the commission of criminal offences.

7.1.2.3 Confusion with prostitution

The substantial overlap of the constituent elements of trafficking with the crime of prostitution constitutes a significant problem. It perpetuates the stereotype of exploitation of prostitution as the only form of trafficking. It results in the failure to identify victims of trafficking, because they are considered as “prostitutes”. It further results in the prosecution for the crime of prostitution in cases involving trafficking, resulting in lower sentences for traffickers, and skewing statistics on the incidence of trafficking in Turkey.

The ECtHR has held that States’ due diligence obligations require positive operational measures in the investigation, prosecution and punishment of human trafficking.¹⁵¹ However, the ongoing absence of proactive investigation renders most cases of human trafficking undetected, disproportionately affecting highly vulnerable segments of the population.

7.1.3 Femicide

Femicide, or gender-related killing, is a violation of the basic human right to life and is often the last act in an abusive relationship. Most cases of femicide are committed by partners or ex-partners. Femicide also encompasses honour killings, described in more detail below, and pre-natal sex selection. Globally, women were victims in 82% of all homicides committed by intimate partners in 2019 (UNODC, 2019: 29). According to Ministry of Interior data, 304 women were killed in Turkey in 2016; 353 in 2017; 279 in 2018; and 336 in 2019 by their husband or intimate partner.

The numbers of femicide and suspicious female deaths are very high. In the absence of official data, some NGOs report almost equal numbers of suspicious female deaths and incidents of femicide. For example, in 2021, 280 women were killed by men, while 217 women were found suspiciously dead.¹⁵² Suspicious death cases (potential suicides or accidents) are closed without prosecution, resulting in impunity. Indeed, in the face of prosecution, families reportedly incite suicide in order to avoid penalization.

The penalty for murder is life imprisonment.¹⁵³ Aggravated circumstances include “against a direct ascendant, direct descendant, spouse or sibling,” as well as “against a woman”.¹⁵⁴ The listed aggravated circumstances do not cover former spouses or for current or former intimate partners. Considering the prevalence of femicide against ex-spouses or partners, this can be seen as a significant gap in the law. Courts often apply specious mitigating circumstances to limit sentences for male perpetrators, including “good conduct during the proceedings” and “unjust provocation”.

Femicide, including honour killing, is one area in which evidence related to women’s prior sexual conduct is inappropriately presented as evidence to justify the violence. The absence of any rules precluding the admission of prior sexual conduct evidence unless it is necessary and relevant constitutes a barrier to effective justice in these cases.¹⁵⁵ It is important for lawyers to object to the admission of prior sexual conduct evidence that is not relevant and/or necessary.

151 ECtHR, *Rantsev v. Cyprus and Russia*, 7 January 2010.

152 Data of [Kadın Cinayetlerini Durduracağız Platformu](https://kadincinayetleriniDurduracagizPlatformu), <https://kadincinayetleriniDurduracagiz.net/kategori/veriler>.

153 Art. 81-82 of the Turkish Criminal Code.

154 Article 82(1)(f), Law No. 7406 on Amending the Turkish Criminal Code and Other Laws, Official Gazette, 27 May 2022, limiting grounds for discretionary reductions in sentences and requiring legal reasoning.

155 Indeed, many jurisdictions have passed laws imposing strict limitations on or banning, such evidence.

7.1.4 Stalking

Stalking is defined as “the intentional conduct of repeatedly engaging in threatening conduct directed at another person, causing her or him to fear for her or his safety”.¹⁵⁶ It is recognised as a form of domestic and intimate partner violence, but also a form of violence committed by acquaintances and strangers. It is among the forms of violence that the Istanbul Convention requires States to criminalise.

Stalking was only recently criminalised in Turkey, and covers the following actions: the persistent following of someone, physically or contacting them using ICT or third parties that cause “serious unrest” in the victim or cause the victim to be concerned for his/her own safety or the safety of one of his/her relatives.¹⁵⁷ Arguments should be made that the appropriate standard for stalking be interpreted in line with international standards: “arousing, indirectly, directly or virtually, distress, fear or harm in the targeted person”.¹⁵⁸

The Criminal Code foresees a sentence from six months to two years imprisonment for stalking. Where it is committed against a child or former spouse, causes the victim to change her school, workplace, residence or to quit her school or job, where the perpetrator has or remains subject to a protection order, the sentence is to be increased from one to three years. The investigation and prosecution of the crime depends on a complaint by the victim.

Notably, in Turkey, nearly 3 out of every 10 women have been subjected to stalking at least once in their lives (Hacettepe University Institute of Population Studies, 2015: 121). The most common types of stalking reported were: constantly calling (19%), texting, sending letters or e-mails (8%), following through social media (6%), and harassing women at their home or workplace (6%).

The criminal provision on stalking prohibits the following defences:

- (a) the defendant was not given actual notice that the course of conduct was unwanted; and
- (b) the defendant did not intend to cause the victim fear or other emotional distress.

Stalking victims are also eligible for protection orders within the context of the Law to Protect the Family and Prevent Violence against Women (Law No. 6284). A risk assessment (formal or informal) should be conducted and necessary protection measures should be undertaken within the scope of Law No. 6284 to prevent the continuation of stalking. Ensuring the collection of all evidence and promptly notifying the Family Court and/or the Prosecutor’s Office that these violations continue despite the protection order are legal steps that lawyers should take on an urgent basis.

7.1.5 Digital forms of violence

Along with the expansion of technology, new forms of violence have emerged, primarily targeting women. Such forms of violence include, *inter alia*: cyberstalking,¹⁵⁹ sexting,¹⁶⁰ revenge porn, up-skirting,¹⁶¹ and digital threats of rape, sexual assault and murder. In its General Recommendation No.1 on the digital dimension of violence against women GREVIO included:

“non-consensual image or video sharing, coercion, and threats, including rape threats, online sexual harassment, sexualized bullying and other forms of intimidation, impersonation,

156 Article 34, Istanbul Convention.

157 Article 123A of Turkish Criminal Code. Stalking is also defined in the Regulation for the Implementation of Law No. 6284. Article 3(1) (ç), Official Gazette Number: 28532, 18 January 2013. It is mentioned in Article 1 of Law No. 6284.

158 EIGE, Glossary: Stalking [online].

159 Stalking conducted over communications devices and social media platforms.

160 Sexting is the act of sending sexual text messages.

161 Up-skirting is the act of taking a sexually intrusive photograph up someone’s skirt without their permission. Up-skirting is a criminal offence punishable by up to two years in prison England and Wales. Four men have been jailed in the year since the up-skirting law was introduced.

online stalking or stalking via the Internet of Things as well as psychological abuse and economic harm perpetrated via digital against women and girls as falling within the definition of digital violence. Perpetrators can be partners or ex-partners, colleagues, schoolmates and anonymous individuals. Women’s rights defenders, journalists, bloggers, video gamers, public figures and politicians are particular targets” (GREVIO, 2021).

According to the European Union Agency for Fundamental Rights (FRA), one in 10 women (11%) in Europe has faced at least one of two forms of cyber-harassment since the age of 15.¹⁶² It also found that 4% of 18-to 29-year-old women had been affected by cyberstalking at least once (European Union Fundamental Rights Agency, 2015: 4). In a 2021 survey conducted in Turkey, 51% of women had received text, voice or video harassment messages in online environments; 46% had been stalked on ICT (Şener and Abınık, 2021).

Turkish legislation does not contain an explicit provision criminalising digital violence. There are, however, legal provisions that lawyers can invoke on behalf of their clients. Timely interventions can be made on behalf of clients exposed to digital violence, including immediate requests for the removal of the content.¹⁶³ A protection order can also be requested pursuant to Law No. 6284 foreseeing the prevention of the continuation of digital violence.

Criminal complaints can be charged under the following legal provisions: violation of communication secrecy (Art. 132), recording of conversations between individuals (Art. 133), violation of privacy (Art. 134), recording of personal data (Art. 135), unlawful delivery or acquisition of data (Art. 136), defamation (Art. 125), indecency (Art. 226) and sexual harassment (Art. 105).

The collection of data by legal aid organizations on the commission of such offences, the sex/gender and age of the victim and the relationship between the victim and the perpetrator could provide a solid basis to advocate for the passage of more tailored legislation to address this emerging form of violence.

7.1.6 Sexual harassment

Sexual harassment is defined as “any form of unwanted verbal, non-verbal or physical conduct of a sexual nature [occurring] with the purpose or effect of violating the dignity of a person,” creating “an intimidating, hostile, degrading, humiliating or offensive environment.”¹⁶⁴ In addition to being a prohibited form of discrimination, many countries, including Turkey, recognise sexual harassment as a crime.

The Criminal Code penalises sexual harassment.¹⁶⁵ As noted above, sexual harassment can also be addressed through civil law prohibitions as a form of discrimination, requiring a lesser burden of proof than a criminal prosecution. (See section 5.1, above). The Criminal Code also establishes an aggravating circumstance for torture and ill-treatment committed by a public officer involving sexual harassment.¹⁶⁶

7.1.7 Gender-bias crimes

Colloquially referred to as “hate crimes,” bias-motivated crimes are comprised of two elements: i) the underlying crime; and ii) the bias motivation. A hate crime has been committed when “a perpetrator has intentionally targeted an individual or property because of one or more protected characteristics, or expressed hostility towards the protected characteristic(s) during the crime.”¹⁶⁷ The concept of “hate

162 *Defining cyber-harassment as: receiving unwanted, offensive, sexually explicit emails or SMS messages; inappropriate, offensive advances on social networking websites or in internet chat rooms.*

163 *Access blocking and removal of content within the scope of Law No. 5651 on Regulation of Broadcasts Made on the Internet and Combating Crimes Committed through These Broadcasts.*

164 *Article 2(2), EU Employment Framework Directive.*

165 *Article 105, Turkish Criminal Code.*

166 *Article 94(3), Turkish Criminal Code.*

167 *ODIHR, Gender-based hate crime, [online].*

crime” aims to address the discriminatory component of the offence, the objective of which is to instil fear in the targeted community at large, not just the individual victim.

Bias motivation is often identified in crimes targeting women in the public sphere (politicians, journalists, activists), including through digital technology. It is also an element of femicide. Importantly, gender-based hate crimes also target “people or property due to their association, professional affiliation with or activism on gender issues, such as women’s rights groups and civil society organizations working with victims of violence”.¹⁶⁸

Countries recognise a diverse array of bias motivations for crimes, for which increased penalties are imposed, either as separate crimes or as an aggravated circumstance at the penalty phase. Several countries in the European region have added gender and/or sex to the list of bias motivations (UN Women, 2019: 45). The Turkish Criminal Code contains a hate crime provision based on the following grounds “social class, religion, race, sect, or coming from another origin”.¹⁶⁹ It recently added an aggravated circumstance to the commission of crimes against women, which is discussed in greater detail, below.

7.1.8 Forced abortion and sterilisation

CEDAW has defined violations of women’s sexual and reproductive health rights—including: forced sterilizations, forced abortion, forced pregnancy, criminalisation of abortion,¹⁷⁰ denial or delay of safe abortion and post-abortion care, forced continuation of pregnancy, abuse and mistreatment of women and girls seeking sexual and reproductive health information, goods and services—as forms of gender-based violence that, depending on the circumstances, may amount to torture or cruel, inhuman or degrading treatment.¹⁷¹

Forced sterilisation and abortion also violate women’s right to decide on the number and spacing of children.¹⁷² Turkey criminalises both forced abortion¹⁷³ and forced sterilisation, in line with the Council of Europe’s standards.¹⁷⁴ Forced sterilisation tends to disproportionately impact particularly vulnerable women, such as those with mental or physical disabilities or from ethnic minority groups. As such, cases of forced sterilisation may be accompanied by claims of discrimination (on the grounds of race or ethnicity) and/or by claims related to violations of the rights of persons with disabilities.

7.1.9 Harmful practices

The term “harmful practices” has been defined as:

“persistent practices or forms of behaviour that are grounded in discrimination on the basis of sex, gender and age in addition to multiple and/or intersecting forms of discrimination and that often involve violence and cause physical and/or psychological harm or suffering.”¹⁷⁵

Both CEDAW and the CRC call for the elimination of these practices.¹⁷⁶

7.1.9.1 Honour crimes

The CEDAW/CRC Joint General Recommendation defines “crimes committed in the name of so-called honour” as:

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- 168 ODIHR, *Gender-based hate crime*, [online].
 - 169 Article 216, *Turkish Criminal Code*.
 - 170 *Turkey criminalises abortions after 10 weeks. Article 99(2), Turkish Criminal Code*.
 - 171 CEDAW, *General Recommendation No. 35, para 18*.
 - 172 CEDAW, *General Recommendation No. 21*.
 - 173 Article 99(1), *Turkish Criminal Code*.
 - 174 Article 39, *Istanbul Convention*.
 - 175 CEDAW/CRC, *Joint General Recommendation No. 31 on Harmful Practices, 2014, para 15*.
 - 176 Article 5, CEDAW; Article 24(3), CRC.

“acts of violence that are disproportionately, although not exclusively, committed against girls and women because family members consider that some suspected, perceived or actual behaviour will bring dishonour to the family or community. Such forms of behaviour include entering into **sexual relations before marriage, refusing to agree to an arranged marriage, entering into a marriage without parental consent, committing adultery, seeking divorce, dressing in a way that is viewed as unacceptable to the community, working outside the home** or generally **failing to conform to stereotyped gender roles**. Crimes in the name of so-called honour may also be committed against girls and women because they have been victims of sexual violence.”¹⁷⁷ (Emphasis added).

It highlights the fact that honour crimes often involve murder, and are “frequently committed by a spouse, female or male relative or a member of the victim’s community”¹⁷⁸

It is imperative to take measures to prevent honour killings and to take necessary steps to ensure gender equality. The Parliamentary Research Commission¹⁷⁹ was established in 2005 on this subject and a Prime Ministry Circular¹⁸⁰ was also published. Risk assessment and management, emergency barring and protection orders, reporting and the provision of assistance should be adapted for women and girls fearing the commission of honour crimes. Moreover, they should be recognised as a form of gender-based persecution for the purposes of asylum.

7.1.9.2 Female genital mutilation

Female genital mutilation (FGM) or cutting¹⁸¹ is a harmful practice that is widespread in certain parts of the world, with often serious implications for girls’ health, including death. It constitutes a form of violence against women that should be criminalized according to the Istanbul Convention.¹⁸² Although not traditionally practiced in Turkey, FGM is often practiced in some countries of origin of refugee populations in Turkey. It may be performed by traditional practitioners or medical professionals. Family members are usually responsible for coercing and/or procuring the services of women to undergo FGM.¹⁸³ This often poses an obstacle to obtaining evidence for the purpose of prosecution.

The Turkish Criminal Code does not contain any specific offence criminalising FGM. The offences of intentional injury¹⁸⁴ or torment¹⁸⁵ could be applied to prosecute the “excising, infibulating or performing any other mutilation to the whole or any part of a woman’s labia majora, labia minora or clitoris” against the person who performs the cutting.¹⁸⁶

Fear of FGM also constitutes a recognized form of gender-based persecution in numerous countries for the purpose of asylum applications.

177 CEDAW/CRC, Joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/ general comment No. 18 of the Committee on the Rights of the Child on harmful practices, CEDAW/C/GC/31-CRC/C/GC/18, para 29.

178 CEDAW/CRC, Joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/ general comment No. 18 of the Committee on the Rights of the Child on harmful practices, CEDAW/C/GC/31-CRC/C/GC/18, para 30.

179 Turkish Grand National Assembly Research Commission for the Determination of the Measures to be Taken by Investigating the Reasons of Honor Killings and Violence Against Women and Children.

180 Circular on Measures to be Taken to Prevent Acts of Violence against Children and Women and Honor Killings (No. 2006/17), official Gazette 04.07.2006.

181 *FGM comprises all procedures that involve partial or total removal of the external female genitalia, or other injury to the female genital organs for non-medical reasons.*

182 *Article 38, Istanbul Convention.*

183 *As foreseen in Article 38(b),(c), Istanbul Convention.*

184 *Articles 86, 87, Turkish Criminal Code.*

185 *Article 96, Turkish Criminal Code.*

186 *As foreseen in Article 38(a), Istanbul Convention.*

7.2 Women in conflict with the law

Women comprise a relatively smaller portion of criminal defendants and convicted persons in comparison with men. They tend to be detained for low-risk offences, often associated with economic and social challenges, or linked to their relationships with men (UN Women et.al, 2020: 24-25). They also face prosecution for exercising their sexual and reproductive rights, including charges for abortion or the irregular exercise of prostitution. Women are also charged with crimes committed in response to their experience as a victim of violence, victim resistance violence, such as by acting in self-defence or engaging in criminal behaviour to alleviate their own experience of violence and exploitation.

In cases involving female defendants, lawyers should inquire into any possible contemporaneous victimisation, and its extent. **Many female defendants are in fact victims of crimes that were not reported and prosecuted.** In one study of case law involving female defendants of human trafficking, one quarter had been victims of childhood sexual abuse and/or domestic violence; most continued to be sexually exploited by traffickers even as they participated in the acts related to the trafficking of other women and girls for which they were charged (UNODC, 2020). Indeed, international law recognizes the forced commission of crimes, including drug- and sex-related, theft and begging, among others, as the purpose, or the form of exploitation, in human trafficking cases. As noted above, forced criminality is not included in the offence of human trafficking in Turkey.

Stereotypes about the “ideal victim” encompass a simplistic dichotomy between victims and offenders that do not reflect reality.

7.2.1 Gender based violence (GBV) victims as defendants of violent crimes

In cases related to homicide committed by women, evidence suggests “that women killing their male intimate partners often act in self-defence following ongoing violence and intimidation”.¹⁸⁷ As described below, victim resistance violence, predominate aggressor analysis, unjust provocation and post-traumatic stress disorder (PTSD) should be available as mitigating circumstances or as affirmative defences for crimes committed by victims of domestic violence and other forms of violence against women against perpetrators or others.

Lawyers should undertake a predominate aggressor analysis, which includes the following steps:

- Seek and provide evidence to the judge to determine which party was the predominate aggressor and who was the victim, or whether the violence by the defendant in this case was coercive or resistance violence;
- Look beyond the current case and get information about the victim’s and defendant’s entire relationship;
- What has been the pattern of abuse and violence throughout the relationship?
- Is the defendant the one who holds the balance of power in the relationship? For example, who is in control of the finances? Who has dominated the relationship?
- Who controls decision making, such as choice of friends, decisions about clothing and appearances, decisions about types and frequency of sex, etc.
- Who initiated the violence at the outset?
- Is there evidence of coercion and control in the relationship?
- Was the violence out of fear, anger, controlled?

187 WHO, Understanding and addressing violence against women: Femicide, p. 2. https://apps.who.int/iris/bitstream/handle/10665/77421/WHO_RHR_12.38_eng.pdf.

7.2.2 Sex work

As CEDAW has observed:

“Poverty and unemployment force many women, including young girls, into prostitution. Prostitutes are especially vulnerable to violence because their status, which may be unlawful, tends to marginalize them. They need the equal protection of laws against rape and other forms of violence.”¹⁸⁸

Turkey criminalises third-party facilitation of prostitution, but not prostitution itself. While it may seem logical to criminalize the organization of sex work in order to protect sex workers, it is important to distinguish between facilitation that is exploitative, abusive, or coercive, and that which is personal, practical, or for the purposes of safety, including the collaborative organization of sex work among the workers themselves. The regulation of sex work exposes workers to administrative sanctions for “illegal prostitution,” as well as to harassment, threats, extortion and violence, including sexual violence.

The current legal framework in Turkey fosters the presumption of criminalisation, which coupled with social stigma, results in sex workers routinely being suspected and/or accused of criminal conduct, arbitrary and repeated investigations, arrests, detention and harassment by the police, often without due process or other legal protection. The stigmatisation and discriminatory treatment of sex workers, including by law enforcement officers, is based on their transgression of gendered social and sexual norms and/or for not conforming to gender roles specifically because they are sex workers. The degrading treatment to which the minor victim of rape and exploitation of prostitution was subjected by the court in the N.Ç. v. Turkey case attests to the discrimination faced by sex workers and victims of sexual violence by the criminal justice system.

This presumption of criminality and discriminatory treatment has the effect of preventing sex workers from seeking justice when they encounter physical or sexual violence or extortion for fear that they will instead become the focus of a criminal investigation. As a result, aggressors can direct violence at sex workers with relative impunity.

It is important to highlight the issue of consent in cases involving sexual violence against sex workers. Common stereotypes often hold that sex workers cannot be victims of sexual violence as they “always” consent to sex. Consenting to sex does not mean consenting to violence. Rather, sex workers, like other people, can change or rescind their consent to have or sell sex at any point. Where consent is not voluntary and ongoing, failure to respect the change constitutes sexual violence and must be treated as a criminal offence.

The substantial overlap between the crime of prostitution and that of trafficking, raises a significant concern related to the consequences of indiscriminate law enforcement approaches that fail to distinguish between sex workers and victims of trafficking for the purpose of exploitation of prostitution.

7.2.3 Pregnancy-related crimes

The UN Working Group on discrimination against women and girls has stated that the:

“Criminalization of behaviour that is attributed only to women is inherently discriminatory. So is denying women’s autonomous decision-making and access to services that only women require and failing to address their specific health and safety, including their reproductive and sexual health needs.”¹⁸⁹

¹⁸⁸ CEDAW, *General Recommendation No. 19*, para 15.

¹⁸⁹ HRC, Report of the Working Group on discrimination against women and girls, A/HRC/38/46, 2018, para 32. See also HRC, Report of the Working Group on discrimination against women and girls, A/HRC/32/44, 2016, paras 28, 29 stating: “Denying women access to services which only they require and failing to address their specific health and safety, including their reproductive and sexual health needs, are inherently discriminatory and prevent women from exercising control over their own

More specifically, the HRC has stated: “The criminalisation of abortion and the lack of adequate access to services for the termination of an undesired pregnancy constitute discrimination based on sex,” in violation of Article 2(1) of the ICCPR.¹⁹⁰

As observed above, CEDAW further qualifies the criminalisation of abortion as a form of violence against women, which is itself a form of discrimination.¹⁹¹ It has also linked restrictive abortion laws to violations of ill-treatment.¹⁹² Turkey criminalises abortion performed with the woman’s consent after 10 weeks.¹⁹³

Lawyers representing women prosecuted for pregnancy-related crimes can assert that the criminal provision should apply in compliance with international standards, and not amount to a form of discrimination against women.

7.2.4 Affirmative defences

Several affirmative defences have particular relevance for victims of violence against women and domestic violence, and human trafficking. These include the non-punishment principle for victims of human trafficking, provocation, duress and necessity.

7.2.4.1 Predominate aggressor analysis and victim resistance violence

Understanding the history of the violence can be critical for constructing an effective defence for victims of violence prosecuted as perpetrators for crimes committed due to their experience as victims. Perpetrators may try to convince the police that the violence was mutual or that they are the victims. A predominate aggressor analysis can demonstrate to the judge which party was the predominate aggressor and who was the victim, as well as whether the violence by the defendant in this case was coercive or resistance violence. Misidentifying the predominant aggressor could result in additional harmful legal consequences for the victim, including the denial of child custody, immigration rights and eligibility for shelter and other necessary services.

The analysis requires looking beyond the incident at issue to get information about the nature and patterns of abuse during the entire relationship. The aim is to identify who holds the balance of power and has dominated in the relationship, including engaging in coercive controlling behaviour.

7.2.4.2 Post Traumatic Stress Disorder (PTSD)

PTSD has been recognised as a defence in multiple jurisdictions. Prior to invoking the client’s mental health as a defence, consideration must be had as to whether it might impact: her credibility at trial, as well as in a best interest of the child assessment related to custody. Consideration of the stigma related to mental health issues should also be considered, especially when it is internalised.

7.2.4.3 Non-punishment principle for trafficking victims

International standards provide for a non-punishment principle to be applied to victims of human trafficking for crimes committed during the course of being trafficked. UNODC has described the principle as: “The notion that trafficked persons should not be subject to arrest, charge, detention or prosecution, or be penalized or otherwise punished for illegal conduct that they engaged in as a

bodies and lives. . . . Denial of access to essential health services with respect to termination of pregnancy . . . has particularly serious consequences for women’s health and lives. Women may be denied such services through criminalization.”

190 OHCHR Communication, p. 12; see also HRC, General Comment No. 36, CCPR/C/GC/36, 2018, para 8.

191 CEDAW, General Recommendation No. 35, para 18.

192 CEDAW, General Recommendation No. 35, para 18.

193 Article 99(2), Turkish Criminal Code.

Determining the predominate aggressor:

- What has been the pattern of abuse and violence throughout the relationship history?
- Who holds the balance of power in the relationship?
- Who controls the finances?
- Is there evidence of coercion and control in the relationship?
- Who initiated the violent incident?
- Did either party utilize self-defense?
- Does one party fear the other?

direct consequence of being trafficked.”¹⁹⁴ While provided for in numerous regional and international instruments, the legal standards vary.¹⁹⁵

The Turkish legal framework contains no such legal protection from prosecution and punishment for victims of trafficking. The only similar legal remedies available to them are the doctrines of “necessity” and “duress” as reflected in the Criminal Code, which place a significantly higher evidentiary burden on victims.

7.2.4.4 Necessity and duress

Victims of violence who commit crimes may benefit from the defences of “necessity” and “duress” as reflected in the Criminal Code. Both are considered as strict standards essentially requiring a showing of the threat of imminent death or physical violence to the defendant or another person. The defendant must also show that there was no alternative to committing the crime, and no other way to escape the threat. The key difference between necessity and duress is that the latter involves the commission of a crime because someone directly forced the person to do it. Necessity involves a choice between two bad alternatives that could not be avoided arising from circumstances rather than from the actions of a specific person.

7.2.5 Sentencing

Women often experience discrimination in sentencing based on gender stereotypes and implicit judicial bias. Several international instruments address the special sentencing considerations for women convicted of crime. The UN Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (Bangkok Rules) call for diversionary measures and pretrial and sentencing alternatives that take into account the **“history of victimisation of many women offenders,”** as well as their **caretaking responsibilities.**¹⁹⁶ Also relevant are the UN Standard Minimum Rules for Non-custodial Measures (Tokyo Rules)¹⁹⁷, which considers the following vulnerability factors in the context of penalties: “gender, pregnancy, state of health and disability”.¹⁹⁸

For women convicted of crimes, gender-sensitive sentencing should take into account any PTSD resulting from gender-based violence, pregnancy and care-giving obligations for dependent children. Non-custodial sentences should be imposed on pregnant women and women with young children and the special needs of transgender women should be considered.¹⁹⁹

194 UNODC, *Guidance on the issues of appropriate criminal justice responses to victims who have been compelled to commit offences as a result of their being trafficked*, CTOC/COP/WG.4/2020/2, paras 9-11.

195 See, e.g., OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, Principle 7, Guideline 4(5); Article 26, CoE Convention on Action against Trafficking; UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power; UNGA Resolution 64/293; UN Security Council Resolutions 2331 (2016) and 2388 (2017); Article 8, EU Directive 2011/36/EU.

196 See, The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules), 2010, 58, 59, A/Res/65/229, annex.

197 A/Res/45/110, annex.

198 . EU Directive on preventing and combating trafficking in human beings and protecting its victims..

199 See, e.g., Bangkok Rules.

Notably, “provocation” provisions have also been used in some jurisdictions as a defence for women who kill their abusers, albeit less effectively than their use by men. In such cases, it could be applied as a defence where the victim has suffered prior, ongoing abuse. Conversely, it might also be invoked by a perpetrator against a victim who on one or more occasion “fights back”.

For women convicted of crimes, gender-sensitive sentencing should take into account any PTSD or traumatic brain injury (TBI) experienced by victims as a consequence of gender-based violence. Expert witnesses can be called to attest to the scientific evidence documenting the physical and psychological trauma suffered by GBV victims and its impact.

As noted above, it is important to examine any potential risks prior to introducing evidence related to the victim’s mental health, including child custody.

7.2.6 Women in custody

Prisoners and pre-trial detainees require access to court to challenge their detention (including for the involuntary detention of persons with disabilities), to defend themselves in criminal proceedings, as well as to challenge their sentence and their conditions of detention. They also have the right to legal representation in parole and disciplinary hearings. Prisoners and pre-trial detainees may also need to access a court to address a range of civil rights matters and obligations connected to their lives outside of prison, including family matters.

Pursuant to Article 150 of the CPC, a lawyer is appointed upon the request of the suspect or the accused. Therefore, lawyers are appointed for women who are in custody or under arrest without the need for any other criteria to access legal assistance.

There are approximately 12,095 women and girl prisoners in Turkey, many of which experience various human rights violations, including sexual harassment and the lack of adequate food and medical treatment.²⁰⁰ More specifically, women prisoners experience sexual harassment and assault during body searches, accompaniment by men for healthcare referrals, the absence of a complaint procedure and access to legal representation, in particular related to divorce, alimony and custody of their children. Forced to buy supplies from the canteen at elevated prices, they often cannot afford sanitary pads.

Legal aid lawyers should consider the following key issues in relation to women in custody. First, protective custody should not be imposed on gender-based violence victims, especially trafficking victims. Second, women frequently experience diverse forms of gender-based violence in detention facilities around the world, including sexual violence. Presumptions of guilt for a crime should not preclude their access to court to allege sexual violence. Women also face discrimination in carceral institutions, such as in their access to healthcare, including sexual and reproductive healthcare.

8. The right to an effective remedy

The right to an effective remedy is guaranteed by numerous international human rights treaties.²⁰¹ An essential component of access to justice, all victims of human rights violations, including gender-based violence victims, have the right to a remedy that is “effective” in both law and practice. In particular, it must be accessible, capable of providing redress and offer reasonable prospects of success,²⁰² and include compensation for damages.²⁰³

200 According to data by the Civil Society in Penal System Association, Bianet, [Women prisoners lack access to sanitary pads and wax](#), 2 June 2022.

201 This right is provided for in Article 2(3), ICCPR; Article 8, UDHR; Article 13, ECHR; CEDAW, General Recommendation No. 33, paras 1, 14, Article 36&40 of the Turkish Constitution.

202 ECtHR, *Vuckovic and Others v. Serbia*, 25 March 2014, paras 71, 74.

203 Articles 29, 30, Istanbul Convention.

8.1 Right to effective, dissuasive, proportionate sanctions

Victims of crime are entitled to an effective remedy in the form of criminal proceedings, the absence of which may violate Article 13 of the ECHR. Yet, victims’ “access to the criminal justice system is not enough; the state must also ensure that the system is effective. For example, if the defences available to an accused are too broad, the criminal law may not be effective in protecting victims’ rights.”²⁰⁴

In determining an appropriate sanction for GBV victims, courts must take into account the history of violence as a whole, not just a single violent incident.²⁰⁵ The application of fines for violence against women and domestic violence, are not dissuasive, and often come out of the family budget, creating a disincentive to reporting. For this reason, it is important for legal aid lawyers to explain in court the ineffectiveness of fines and their negative consequences for women. Moreover, the contemplation of fines—with no lower limit—for the serious crime of human trafficking constitutes another **de jure** example of a sanction disproportionate to the gravity of the offence.

For victims of crime, the right to an effective remedy also entails the application of effective, dissuasive sanctions “proportional to the gravity of the harm suffered.”²⁰⁶ The absence of criminal provisions in Turkey for several forms of violence against women precludes the application of any sanction for internationally recognised crimes, including forced and early marriage, FGM and digital forms of GBV. This deprives victims of these crimes of any remedy.

At the same time, the largely “gender-neutral” legal framework does not reflect women’s lived experience of violence. As noted above, crimes are incident-based and thus fail to capture the continuous nature of the offence. As a consequence, remedies fail to reflect the gravity of the crime and the extent of the harm. Such examples of systemic failures to ensure meaningful remedies to a specific category of crime victims (women) can be challenged through the use of strategic litigation on carefully selected case.

The absence of the full range of aggravating circumstances for the crimes of violence against women and domestic violence, and the ongoing discriminatory application of mitigating circumstances, such as unjust provocation and good behaviour in court, to perpetrators of sexual and gender-based crimes further impede women’s access to meaningful remedies.²⁰⁷

8.1.1 Aggravating circumstances

This section details the aggravating circumstances that can be applied to perpetrators of violence against women.

8.1.1.1 Standard aggravating circumstances in cases involving VAW

International standards set forth a series of aggravated circumstances that should apply to all violence against women and domestic violence offences. These include:

- the offence was committed against a former or current spouse or partner as recognised by internal law, by a member of the family, a person cohabiting with the victim or a person having abused her or his authority;

204 European Union Agency for Fundamental Rights and Council of Europe, 2016: 160), referring to ECtHR, *M.C. v. Bulgaria*, 4 December 2003, paras 150–151, a case involving the rape of a minor victim.

205 ECtHR, *A. v. Croatia*, 2011, requiring courts to view the case history as a whole, including other proceedings when determining an appropriate sanction.

206 Article 45, *Istanbul Convention*; CEDAW, *General Recommendation No. 33*, para 19(b).

207 ECtHR, *N.Ç. v. Turkey*, 2021.

- the offence, or related offences, were committed repeatedly;²⁰⁸
- the offence was committed against a person made vulnerable by particular circumstances;
- the offence was committed against or in the presence of a child;
- the offence was committed by two or more people acting together;
- the offence was preceded or accompanied by extreme levels of violence;
- the offence was committed with the use or threat of a weapon;
- the offence resulted in severe physical or psychological harm for the victim;
- the perpetrator had previously been convicted of offences of a similar nature.²⁰⁹

The Turkish Criminal Code does not apply all of the above-listed aggravating circumstances to the crimes applicable to domestic violence and violence against women. It does, for example, apply some of them to rape and sexual abuse.²¹⁰ GREVIO underscored the importance of addressing this significant legislative gap.²¹¹

It is important to note in this regard that one of the distinguishing features of many forms of violence against women is that they are perpetrated by persons known to the victim, including their spouses, intimate partners and family members—those closest to them. The Istanbul Convention thus requires the offences therein to “apply irrespective of the nature of the relationship between victim and perpetrator.”²¹² It is thus important to ensure an aggravated circumstance for the perpetration of violence against family members.²¹³ For the crime of murder, aggravated circumstances include “against a direct ascendant, direct descendant, current/former spouse or sibling.”²¹⁴

8.1.1.2 Crimes “against women”

Pursuant to a recent amendment of the Turkish Criminal Code, the sex of the victim can be considered as an aggravated circumstance for crimes committed “against a woman.”²¹⁵ Article 82(1)(f) applies to a specific list of crimes only, including intentional murder and injury, threat, torture and torment—namely, those used to prosecute violence against women and domestic violence.²¹⁶ The amendment also limits the grounds for discretionary reductions in sentences and requires legal reasoning, which can prevent judges from applying gendered stereotypes to limit the sentences applied to perpetrators.

8.1.1.3 Murder motivated by custom

In order to address honour killing, Article 82/1(k) of the Turkish Criminal Code foresees an aggravated life sentence for murders motivated by “custom”. Amendments to the law ensure that members of the “family council” are charged with the crime in addition to the direct perpetrator.²¹⁷ However, in practice, the mitigating circumstance “unfair provocation” is often applied to reduce the sentences in honour killing cases.

208 With respect to domestic violence cases involving multiple incidents, Article 43 of the Turkish Criminal Code establishes an aggravated circumstance for successive commission of the same crime.

209 Article 46, Istanbul Convention.

210 Article 102, Turkish Criminal Code.

211 GREVIO, *Baseline evaluation report: Turkey, 2018, para 266*.

212 Article 43, Istanbul Convention.

213 *In line with Article 46(a) of the Istanbul Convention*.

214 Article 82/1-d, Turkish Criminal Code.

215 Article 82(1)(f), Turkish Criminal Code.

216 Articles 82(f), 86(2), 94(1), 96(1), 106(1), Turkish Criminal Code.

217 GREVIO, *Baseline evaluation report: Turkey, 2018, para 253*.

8.1.2 Mitigating circumstances

Mitigating circumstances are often employed to reduce the sentence of male perpetrators of violence against women, resulting in sanctions that do not reflect the gravity of the crime.

8.1.2.1 So-called “honour” or morals

Criminal and criminal procedural law must not recognise justifications of criminal acts based on the claims that they were committed to prevent or punish a victim’s suspected, perceived or actual transgression of cultural, religious, social or traditional norms or customs. Justifications based on the alleged immoral behaviour of the victims violate both CEDAW and the Istanbul Convention.²¹⁸

8.1.2.2 Provocation

The Turkish Criminal Code contains a mitigating circumstance for “unjust provocation”, reducing prescribed penalties from ¼ to ¾ for offences committed “in a state of anger or severe distress caused by an unjust act”.²¹⁹ Although inapplicable to honour killing (*töre*), it “opens the door for unacceptable justifications of crime victim blaming” for all other crimes involving violence against women, including murder based on “honour” (*namus*).²²⁰ Specifically, “unjust provocation” justifies crimes based on the transgression of the victim. Many jurisdictions consider “heat of passion” or “provocation” defences as inherently discriminatory and have abolished them.²²¹

UNODC has called for States to ensure that legislation “does not include discriminating factors—‘passion’, ‘violent emotion’, ‘honour’ or ‘provocation’—that allow perpetrators to escape criminal responsibility”.²²² However, in Turkish legal practice this mitigating circumstance continues to be applied to reduce sentences for murder in cases involving, for example: “a wife having an affair with another man, an ex-wife remarrying, a female member of the family having a relationship without marriage or marrying without the permission of the family”.²²³

8.1.2.3 Good conduct during the proceedings and family man

Courts frequently reduce the sentences of male perpetrators of violence for “good behaviour” during the proceedings.²²⁴ An example of gender discriminatory sentencing can be seen in the *N.Ç. v. Turkey* case in which the ECtHR observed that the Turkish assise court mitigated the sentences for the male accused of the rape of a minor by 1/6 for good behaviour in court. The male accused were thus sentenced between approximately two and seven years. In contrast, the female accused were sentenced twice that, to 13 years and 7 months, for their mere complicity in the rapes, not the actual perpetration, due to discriminatory gender stereotypes. In its decision, the court employed gendered stereotypes, referencing the sex workers’ involving the victim in “their obscene lives,” presumably referring to their engagement in prostitution.²²⁵

Reduction of sentences for being a “family man” is also a common practice to mitigate the sentences of male convicted persons. Recent legislative amendments provide “the perpetrator’s formal attitudes

218 Articles 12(5), 42, Istanbul Convention; CEDAW, General Recommendation No. 19, para 24(r); CEDAW, General Recommendation No. 35, para 31(b); (UN Women, 2011: 5), stating that any legal provision that allows the behaviour of the victim to serve as a mitigating factor opens the door for stereotypes among law-enforcement officials.

219 Article 29, Turkish Criminal Code.

220 GREVIO, Baseline evaluation report: Turkey, 2018, para 254.

221 For example, New Zealand, Australia and most of the U.S. Where it has been retained, the provocation defence has been amended to ensure a non-discriminatory application.

222 UNODC, Recommendations for action against gender-related killing of women and girls.

223 GREVIO, Baseline evaluation report: Turkey, 2018, paras 77, 254, stating “it will be of the utmost importance that the authorities closely monitor any reduction of sentences granted on account of motives such as ‘unjust provocation’” and citing CEDAW Concluding Observations on Turkey’s seventh periodic report, para 34.

224 GREVIO, Baseline evaluation report: Turkey, 2018, para 77, stating “it will be of the utmost importance that the authorities closely monitor any reduction of sentences granted on account of motives ‘good conduct of perpetrators’”.

225 ECtHR, *N.Ç. v. Turkey*, 2021.

and behaviours aimed at influencing the court at the hearing are not taken into account as grounds for discretionary reduction” in sentencing.²²⁶ This provision should be invoked for the purpose of precluding discriminatory sentencing. The necessary change in mentality affecting the judges’ reasons for discretionary mitigation remains important for eliminating discriminatory sentencing.

8.2 Right to compensation

Criminal sanctions and remedies for civil damages are not mutually exclusive. The term compensation refers to quantifiable damages, pecuniary damages, as well as for unquantifiable loss, such as pain and suffering, referred to as non-pecuniary damages.²²⁷ Victims of crime and discrimination are entitled to civil remedies for the harm suffered from both the perpetrator and the State.²²⁸ These can include restitution (reinstatement); compensation (whether provided in the form of money, goods or services); and rehabilitation (medical and psychological care and other social services). Calculation of damages should also take “full account of the unremunerated domestic and caring activities of women” in all civil, criminal, administrative or other proceedings.²²⁹ It should also include the reimbursement of any expenses.

The CoE Convention on the Compensation of Victims of Violent Crimes contains minimum standards for State compensation for crime victims. In order to claim compensation in Turkey, crime victims must file a separate civil claim, which can cover non-pecuniary and pecuniary damages, including loss of earnings, medical expenses, loss of earning capacity and personal permanent injury.²³⁰ In Turkey, victims of crime and discrimination may be unaware of their entitlement to civil damages or how to seek remedies.²³¹ Lawyers should provide them with basic information on this right and make necessary referrals for compensation case.

It is important to note that the State should provide remedies to victims in cases in which they are not forthcoming from the perpetrator. In this regard, it is crucial that lawyers inform their clients of the right to compensation, recognising that appropriate remedies and compensation are key elements of access to justice.

It is also important that legal aid institutions facilitate continued legal representation of victims from criminal legal proceedings to subsequent civil claims for compensation. Internal structural divisions between civil and criminal law should not prevent victims from obtaining adequate remedies for human rights violations.

8.2.1 Delays and non-enforcement of judgements

The non-execution of court judgements and excessive delays limit access to justice, undermining human rights, judicial protection and the rule of law. Excessive delays and non-enforcement of judgements fall within the protection afforded by Articles 6 and 13 of the ECHR. As the Council of Europe has stated: “It is inappropriate to require an individual who has obtained judgment against a state to bring enforcement proceedings to obtain satisfaction therefrom. It is the state’s duty to act” (European Union Fundamental Rights Agency, 2016: 129). The ECtHR has held that domestic measures to ensure timely enforcement are of the “greatest value,” but that States can also offer compensation for non-enforcement of judgements. Legal aid lawyers can also assist clients in procedures to ensure the enforcement of judgments.

226 Article 62, Turkish Criminal Code.

227 See, UN Women et al., 2015, Module 3, p. 8.

228 EU Victims’ Rights Directive; Istanbul Convention; CEDAW General Recommendation No. 33; UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, GA Res 40/34; UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

229 CEDAW, General Recommendation No. 33, para 19(b),(c).

230 Articles 49, 56, Law of Obligations; GREVIO, Baseline evaluation report: Turkey, 2018, para 204.

231 ECtHR, *Yarashonen v. Turkey*, 24 June 2014, paras 63–66, finding that the State did not establish the capacity of general remedies to provide effective preventive and/or compensatory redress in the instant case.

9. Data collection

The collection of disaggregated data on cases is a critical means to inform improvements in the provision of legal aid, as well as to understand justice-sector phenomena and its impact on specific categories of the population. Legal aid institutions have an important opportunity to collect data to advance evidence-based policy changes across the justice sector.

Collected data should be disaggregated by sex, age and where possible by ethnicity and economic status. With respect to cases involving violence against women, including human trafficking and domestic violence, collected data should also include the **relationship between the perpetrator and the victim**.

Important data that legal aid offices should collect on women's access to justice include, for example:

- Number of legal aid providers who are women,
- Percentage of criminal defendants provided with a lawyer during trial, by sex,
- Percentage of victims of crimes provided with a lawyer during trial, by sex,
- Number of legal aid providers for civil and criminal cases per 100,000 inhabitants, by sex.

Data should be disaggregated by:

- Age
- Sex
- Ethnicity
- Disability
- Relationship between the perpetrator and the victim

Both CEDAW and the Istanbul Convention require States to collect and disaggregate statistical data on all forms of violence against women and to make that data available to the public.²³² Moreover, Sustainable Development Goals (SDGs) 5 and 16, require all countries to collect specific data related to gender equality and access to justice, respectively.

Yet, the collection and dissemination of necessary data, related to gender equality, violence against women and the justice sector more generally, remains lacking.²³³ Among several critical gaps, GREVIO noted a lack of information on the attrition of cases and on sentencing in GBV cases.²³⁴ All agencies providing assistance and protection to victims of violence against women and domestic violence should collect relevant data, including legal aid offices. An increase in the evidence-base would foster the design and implementation of effective laws and policies, including internal policies (Walby, 2016).

9.1 Data protection

Article 4 of the Law on the Protection of Personal Data No. 6698 contains the procedures and principles for the processing of personal data.²³⁵ This Law implements CoE Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data²³⁶ and the European Union Data Protection Directive.²³⁷ According to Article 65 of the CoE Convention, **all processes of collecting, storing and transforming collected data should ensure confidentiality and respect for the**

232 Article 11(1)(a), Istanbul Convention; CEDAW General Recommendation No. 12 on violence against women; see also Article 4(k), UN Declaration on the Elimination of Violence against Women, A/RES/48/104, 20 December 1993.

233 GREVIO, Recommendation on the implementation of the CoE Convention on Preventing and Combating Violence against Women and Domestic Violence by Turkey, IC-CP/Inf(2019)2, 2019, Recommendation 8.

234 GREVIO, Baseline evaluation report: Turkey, 2018, para 77.

235 Published in the Official Gazette on 7 April 2016.

236 ETS. No. 108.

237 95/46/EC.

privacy of victims, perpetrators and other persons involved.²³⁸ This means that in statistics available to the public, data should not contain any personal information.

Although lawyers are exempted from the obligation to register with VERBIS,²³⁹ the Personal Data Protection Board (KVKK) considers them as data controllers after documents are delivered by clients during the establishment of the lawyer-client relationship.²⁴⁰

As data controllers, lawyers have an obligation, *inter alia*, to inform clients regarding their right to data protection, and the lawyer's obligations to ensure data security and to respond to requests for data. In order to process clients' personal data in accordance with KVKK, limited, accurate, complete and up-to-date personal data should be obtained and processed for a specific purpose only.

Clients should be able to access the data related to him/her, upon his/her request, to obtain information about the data and its processing, and to delete the data belonging to him/her if he/she wishes, unless it is obligatory to keep the information.

Full anonymity should be granted to persons whose personal data have been registered, including the requirement that such data should not be shared without their informed consent.²⁴¹ The measures that can be taken to protect client data include:

1. Informing clients that their information will be kept in the electronic database and obtain their consent, indicating a clear time limit for the storage of the data;
2. Keeping data in encrypted form;
3. Restricting user access to data to areas pertaining to their competence, and clearly defining access levels;
4. Preserving backup data;
5. Employing anti-virus and security software;
6. Requiring alphanumeric passwords and a periodic change of passwords;
7. Training users to ensure data security and privacy of applicants.²⁴²

10. Conclusion

Legal aid lawyers play a critical role in ensuring women's access to justice, especially given that their structural social and economic vulnerabilities in Turkish society render them more in need of legal assistance. This Handbook aims to foster the mainstreaming of a gender perspective throughout civil and criminal legal practice, in order to give guidance to legal practitioners in Turkey to facilitate women's access to justice and prevent their re-victimisation by justice-sector actors, in line with international and European standards. The capacity of legal aid institutions to identify and gather data on systemic violations of women's access to justice has enormous potential for evidence-based law reform in this domain.

238 Explanatory Report to the Istanbul Convention, para 80.

239 Data Controllers Registry Information System.

240 [Law on Protection of Personal Data for Lawyers Directory](#), Ankara Bar Association, 2020.

241 See, (Brankovic, 2021).

242 *Mor Çati, A comparative look at data collection methods and models, 2017, available at: <https://www.morcati.org.tr/attachments/article/403/veri-toplama-ve-yonetim-modellerine-karsilastirmali-bakis.pdf>.*

Annex 1

Checklist for cases of gender-based violence

Identifying the occurrence and forms of violence:

1. What is the relationship between the victim and perpetrator?
2. Did the client experience domestic or intimate partner violence?
3. If so, which forms?
 - Economic
 - Psychological
 - Physical
 - Sexual
 - Stalking
4. Are there indications of human trafficking (exploitation)?
5. Did she experience other forms of GBV?
 - Forced marriage?
 - Exploitation?
 - Other harmful practices?

Protection issues:

- Has a risk assessment been conducted?
- Were separate risk assessments conducted for children?
- Has a safety plan been developed for client representation and court appearances?
- Has a civil protection order been requested? Extended?
- Does the protection order temporarily modify rights related to custody and visitation?
- Was economic support (alimony, child maintenance) requested to cover the period of the protection order?
- Was the victim offered reconciliation? If so, were necessary precautionary measures implemented?
- Has the perpetrator been detained?
- Was the victim informed of his release from custody?
-
- Have in-court protection orders been requested?
 - Pre-recorded victim statement
 - Closed hearing
 - Have necessary precautions been taken for privacy and confidentiality?
 - Use of screens or CCTV
 - Anonymity in court documents
 - Use of judicial interview room

Referrals for services

- Has the VAW victim been referred to other essential services?
 - Medical
 - Shelters
 - Psycho-social
 - Social welfare
- Does the victim need assistance with civil law issues?
 - Divorce
 - Child custody
 - Alimony/child maintenance
 - Protection order within the scope of Law No. 6284

Filings, evidence and charges

Has a request been filed for an exemption from court costs?

- Has all the evidence in favor of the victim been collected?
- Considering that evidence of sexual violence may be lost, was evidence collected immediately?
 - If the victim has suffered physical or mental harm, has a forensic report been taken by referring her to the health institution?
 - Has she been informed that this report may serve as evidence in the further stages of the case and be viewed by the defence?
- Has the history of the violence been incorporated into the filings?
- Is it being charged as a continuous offence?
- Has an expert on gender, GBV, disability or other issue been considered?

Remedies: sentencing and compensation

- Has a request for compensation been filed?
- Can the sex-based hate crime be applied?
- Have any of the relevant VAW/DV aggravating circumstances been applied?
- Was discrimination an aspect of this offence?
 - Was the discrimination based solely on gender?
 - On another protected category?
 - Ethnicity?
 - Disability?
- Was the crime gender-based for the purpose of the sex hate-crime provision?

Annex 2

Checklist for the provision of information to women victims of violence

- -Was the client screened for gender-based violence (GBV)?
- -Was information provided to the client on her rights and legal options?
 - Was information provided on the right to compensation?
- -Was the client informed about the course of the proceedings? The possible need to testify?
 - The possibility of a counter-suit?
- -Was the victim referred to the civil section for any related civil law issues?
- -Was the victim informed about other possible options for complaints?
- -Was the GBV victim informed about the options for obtaining a protection order?
- -Were risk assessments performed for the GBV victim and her children? Has a safety plan been developed?
- -Was the GBV victim referred to services?
 - Medical
 - Psychological
 - Shelters
 - Social welfare assistance?

Annex 3

Checklist for cases of women in conflict with the law

- Was the female defendant a prior victim of any form of gender-based violence?
- Who was the predominate aggressor in the case?
- Did she experience violence or exploitation contemporaneous with the crime?
- Did she commit the crime to alleviate the violence/exploitation?
- Does/did she have an intimate or family relationship with another defendant in the case?
- Was there any indication of coercive control?
- Does the victim have Post trauma stress disorder (PTSD)?

Annex 4

Checklist for civil cases: Divorce

- Was the client screened for gender-based violence? (If violence detected, see the checklist above).
- Has a request for an injunction made from the Court related to temporary custody, alimony, allocation of the house, etc.?
- Were traditional gender roles argued as the basis for attributing fault to the female spouse?
- Were calculations made with respect to years of unpaid care and domestic work and/or decisions to forego career or educational opportunities to assume care responsibilities for the purpose of alimony requests?
- Was document disclosure requested related to the scope of marital assets? (e.g., bank loan or mortgage applications)
- Were inquiries made to ensure effective enforcement of alimony and child maintenance payments?

Questions pertaining to appeals:

Discrimination issues:

- Were the in-court or out-of-court protection measures sufficient?
- For divorce/alimony cases, did the amount granted take into consideration unpaid care and domestic work?
- Does the legal framework result in systemic bias against a category protected by anti-discrimination legislation and/or the Constitution?
- Were gender or other stereotypes employed as a basis for the decision?
- Was the remedy considered effective?
 - Was the process and resolution timely?
 - Were the imposed sanctions effective, proportionate and dissuasive?
 - Did the compensation awarded reflect the gravity of the harm?

Annex 5

Checklist for cases involving persons with disabilities

Identification of disability:

- Is the disability physical? Does the person have cognitive impairment, mental health or a neurodiverse condition (ADHD, Autism, Dyspraxia, Dyslexia, Dyscalculia, Dysgraphia or Tourette's syndrome)?
- Issues of discrimination:
- Is the legal framework a guardianship/wardship/trusteeship model involving substitute decision-making? (If so, it violates the CRPD and is **per se** discriminatory).
- Does the legal framework deny persons with disability legal capacity? (If so, it is discriminatory).
- Does legislation continue to use offensive terminology when referring to persons with disabilities? (If so, this is discriminatory).
- Are courtroom facilities accessible for the person with the disability in question? (If not, this is discriminatory).
- Are reasonable accommodations available for the person in the courtroom in light of his/her disability?
- Is decision-making support foreseen?
- If any of the above-listed issues are answered with "no" then there is a claim for discrimination.

Accessibility and reasonable accommodation:

In legal aid offices:

1. Is the office accessible for persons with the disability in question? If not, invite the client to suggest another location.
2. Were informational and legal documents in alternative formats (increased font size, Braille, etc.)?
3. Inquire into any possible side effects of medication for the purpose of timing meetings and hearings.
4. Courtrooms:
 - Is the courtroom accessible for the client?
 - If not, can a request be filed for a change of venue?

Does a sign language interpreter need to be arranged?

- What reasonable accommodations are available for the person in the courtroom in light of his/her disability?
 - Hearing enhancement system
 - Induction loop systems
 - Technology to magnify images
 - Real-time captioning
 - Animal accompaniment

- Does the client wish to exercise his/her right to decision-making support?
 - Support persons (with legal recognition)
 - Peer support
 - Communication assistance
- 5. Substantive rights:
 - Has an expert on disability issues been considered?
 - Is it possible/advisable for the client to testify?
- 6. Judicial/courtroom bias:
 - Were stereotypes regarding persons with disabilities employed by justice actors (lawyers, prosecutors, judges, court staff, etc.) at any stage of the proceedings?
 - Did the court's decision employ stereotypes?
 - Did it employ a "best interests" standard or the "best interpretation of will and preferences" standard?

Annex 6

Safety planning for victims

Effective safety plans should be:

- **Personalised.** There is no one-size-fits-all safety plan because every situation is different. Every safety plan needs to reflect the specific details of the individual victim and the nature and level of the risk.
- **Supported by the victim's community.** Work through the plan with the victim, who can identify which family members, friends and community resources they feel comfortable in contacting when they feel in danger.
- **Realistic.** A safety plan won't work if it is difficult to follow. The plan needs to address the reality of the situation. In domestic violence situations, safety planning must recognise that some women will continue to cohabit with an abuser, that others might reunite after an arrest or prosecution and that others will continue to raise children together despite the threat or presence of violence.
- **Holistic.** The safety plan should cover every aspect of the victim's life—at home, at school, at work, in transit, online and in social situations.²⁴³

Checklists and tips for victim safety planning:

Immediate safety needs

1. Determine who to call for help in a violent situation. Note friends', relatives', neighbours', police and hotline numbers.
2. Memorise emergency phone numbers or keep them on small cards in a safe place or save in mobile phone.
3. If the abuser has a key to the house or apartment, change or add locks on your doors and windows as soon as possible.
4. Practice getting out of your home safely. Identify which doors, windows, elevators, or stairs would be best. Avoid rooms with no exits, like a bathroom, and rooms with weapons, like the kitchen.
5. Decide and plan where to go upon leaving the home in an emergency situation. Have a packed bag ready and keep it in a secret but accessible place in order to leave quickly.
6. Identify a neighbour, family member or friend and ask them to call the police if they hear a disturbance coming from the home. Create a signal for them to call the police—like if a certain light is on or a shade pulled down—or a code word.
7. Get medical attention if hurt in any way.
8. Speak with a social worker or advocate from the local domestic violence program who can provide information on rights and options.

Protection orders

1. Make extra copies of the protective order and keep them with you at all times. Also keep copies in a safe place like: your car, at friends' or relatives' homes, at work, and at your children's day care or school.
2. Inform family, friends, neighbours, employers, your physician or health care provider, and your children's day care or school that you have a protective order in effect.

243 Adapted from: UNODC, *Handbook on effective prosecution responses to violence against women and girls*, 2014, p. 57.

3. Screen calls. Keep a record of all contact a batterer makes, such as phone calls, text messages, voice mail messages, and emails.
4. If moving to another town or state, register the protective order in your new town with the police.
5. Call the police if the perpetrator violates the protective order.

Safety in public and at work

- Change the route from and to work frequently.
- Provide an employer with a current picture of the abuser.
- Determine who can help while at work or in the public. Try to find a “safe” person at work. Provide a picture of the abuser if necessary.
- Get an escort to the car, the bus or train.
- Create a plan for what you would do if something happened while in public.
- Have a co-worker screen incoming telephone calls, and document anything harassing.
- Make sure employer has up-to-date emergency information.
- When you are out in public, be aware of your surroundings.

Digital safety

- Use a public computer instead of personal computers, such as one at a local library, a friend’s computer or a computer at work may prevent the perpetrator from tracking online activities. Clear the browsing history as frequently as possible.
- Consider getting a new phone if it was provided by the perpetrator.
- Check your cell phone settings to see if it has an optional GPS location service, and try to turn it off if it does.
- Change email passwords to something no one will be able to guess or create a new email account.
- If being stalked, the perpetrator might have placed a GPS Tracking device in the car. Routinely check both inside and outside of the car for any suspicious objects.

Annex 7

The PEACE model interviewing for victims of crimes

Developed in the 1990s as a set of guiding principles for designing and conducting interviews with victims of crime “in a way that creates comfortable and supportive space for interviewees and obtains reliable information,” the PEACE model has since been expanded for use in the field of international protection, including for refugee status determinations.²⁴⁴ The PEACE model involves five elements, which are briefly summarized as follows:

- **Plan and prepare** – learn about the interviewee’s particular situation, such as country of origin for non-nationals and asylum seekers; prepare a safe, private and confidential environment, recognising power dynamics and the potential impact of the presence of an interpreter.
- **Engage and explain**—use non-judgmental and non-verbal and verbal communication to convey a welcoming atmosphere and respect, building trust; explain the purpose of the interview or meeting, the confidentiality of the procedures; clarify that they can stop the interview at any time, or signal that a question is too difficult to discuss. Explain through dialogue, not by reciting a rote list of information. Begin the interview with simple, non-sensitive topics.
- **Account and clarifying the account**—Enable the client to give a free account of their claims or story, including on their background, identity, experiences and concerns, with minimal interference. Take a non-judgmental, non-intrusive and non-adversarial approach, asking open-ended questions, and then clarifying with more focused questions.
- **Closure**—After obtaining and clarifying the information, “use active listening and reflection to summarize” the client’s statements and check your understanding, recording any corrections or confirmation. For all interviews, lawyers must:
 - Check with the interviewee to determine if there have been any communication or **implicit bias**²⁴⁵ concerns during the interview.
 - Ensure that the interviewee is satisfied with the way that the interview was conducted, take note of any concerns raised and address them to the extent possible and appropriate.
 - Explain next steps and the timeframe in which they can expect a response, if relevant.
 - Give time and space to the interviewee to process the emotional toll of the interview.
- **Evaluation**—Evaluate the interview to determine whether the objectives were achieved and the information can be relied upon. Assess the impact on your own well-being. Evaluations may involve using a set of indicators, and/or by obtaining feedback from the interviewee or peers, in order to improve interviewing skills.

244 (UNHCR and IOM, 2021: 10).

245 Acting on the basis of prejudice and stereotypes without intending to do so.

Annex 8

The power and control wheel for human trafficking



Annex 9

Risk factors for cases of violence against women based on law enforcement's registration form in Türkiye

Türkiye'de kadına yönelik şiddet vakalarına dair kolluk kuvvetleri tarafından kullanılan kayıt formunda öngörölmüş olan bazı risk faktörleri aşağıda sıralanmıştır:

ŞİDDET MAĞDURU İÇİN RİSK ARTIRICI ÖZEL DURUMLAR:

1. Hamilelik
2. 65 yaş üstü
3. Bedensel engellilik
4. Zihinsel engellilik
5. Uyuşturucu bağımlılığı
6. İntihara teşebbüs
7. Bakıma muhtaç / ağır hastalık
8. Şahıstan olmayan çocuğunun olması
9. Bakmakla yükümlü olduđu küçük çocuklar veya yaşlı ana-baba
10. Diğer

ŞİDDET UYGULAYANA YÖNELİK RİSK ARTIRICI ÖZEL DURUMLAR:

1. Öfkesini kontrol edemiyor
2. Şahsın ekonomik sorunları var
3. Şahıs işsiz
4. Şahsın psikolojik rahatsızlıkları var
5. Şahsın suç kaydı var
6. Şahıs cezaevinden firar etti
7. Şahıs alkol bağımlısıdır
8. Şahıs uyuşturucu madde bağımlısıdır
9. Kumar bağımlılığı var
10. Şahıs ölümle/öldürmekle tehdit etti
11. Şahıs intihara teşebbüs etti
12. Şahıs intihar etmekle tehdit etti

Annex 10

Services for victims of violence in Türkiye

1. Helplines

In Turkey, the police (155), the gendarmerie (156), emergency medical / ambulance service (112), and help line for foreigners - YIMER (157) can be accessed free of charge 24 hours 7 days/week. There is a telephone line specialized for consulting services for women: 183.

Social Support lines affiliated to the Ministry of Family, Labor and Social Services offer support in many areas, including violence against women. In addition, there is an emergency hotline run by a women's organization (Federation of Turkish Women's Associations). ŞÖNİMs affiliated to the Ministry of Family, Labor and Social Services and women's counseling centers of women's organizations and municipalities also provide counseling and guidance over the phone.

Social Support Hotline /183

"Alo 183" Social Support Hotline provides 24/7 guidance and counseling services for families, women, children, disabled, elderly, relatives of martyrs, veterans and relatives of veterans. In addition, this line receives notifications/reports of negligence, abuse and violence cases, including those related to honor killings, and informs the Emergency Response Team and/or law enforcement officers in the province where the case is located. The Emergency Response Team evaluates the case, and, where necessary, intervention is provided swiftly and in coordination with the police or gendarmerie units.

Domestic calls to the "Alo 183" Line are toll-free. The line employs Kurdish and Arabic speaking staff and answers incoming calls in these languages. Those with hearing and speech impairment can use the phone number 0 549 381 0 183, which provides sign language video communication, using 3G compatible devices between 8 am and 12 midnight on weekdays, and between 8 am and 5 pm on Sundays. Free text messages can also be sent to Alo 183 hotline. Hearing and speech impaired persons can send text messages with their names, surnames, (Turkish Republic) identity numbers and their requests to the number "183". Their requests are evaluated by the relevant personnel, and information is provided by phone or text message. Citizens living abroad can reach the Call Center via the phone number +90 312 253 92 00, to access to guidance on the services that fall under the scope of the Ministry's mandate.

Foreigners Communication Center /157

YIMER 157, which started as an emergency line to help victims of trafficking in May 2005, has been providing services under the name of "Foreigners Communication Center" (YIMER 157) since August 2015. The line was transferred to the General Directorate of Migration Management and its network was expanded accordingly. During its initial establishment period, YIMER 157 provided services in 4 languages including Turkish, English, Arabic and Russian. German and Persian were added as of 1 April 2016 and Pashto as of 1 January 2020. Currently, the hotline offers services in 7 languages on a 24/7 basis. YIMER 157 responds to a wide array of questions, including those on visas, residence permits, international and temporary protection. In addition, the hotline provides life-saving service for the victims of maritime migrant smuggling and for human trafficking victims.

Turkish Women's Associations Federation Emergency Hotline / 0549 656 9696 - 0212 656 96 96

The Emergency Hotline, founded by the national newspaper Hurriyet's Domestic Violence Campaign in 2007, has been operated by Women's Federation of Turkey (TKDF) since 2015. One important feature of this hotline is the availability of on duty psychologists and lawyers. The hotline, which can be reached by victims of violence and sexual abuse at 0549 656 9696 and 0212 656 96 96, provides information and

guidance. In cases that require urgent intervention, the police are notified, and the case is followed up.

Social Policies, Gender Identity, and Sexual Orientation Studies Association (SPoD) / 0850 888 5428

Founded in 2011 by a group of academics, lawyers, and activists, SPoD has been working to find lasting and comprehensive solutions to the violence, oppression and discrimination experienced by members of the LGBTI+ community. SPoD provides legal, social, and psychological consulting, and conducts training workshops for mental health and social workers, lawyers, institutions, and municipalities. They also organize academic research, seminars, panels, advocacy meetings, Policy and Activism Schools, election campaigns, and support groups for refugees, trans people, and people with disabilities. The organization is composed of both professional employees and volunteers.

SPoD provides a hotline service to provide accurate information on questions related to gender identity and sexual orientation. Volunteers take a part in this hotline after receiving an extensive training. The hotline provides information on: discrimination and violence based on sexual orientation and gender identity; gender transition processes; HIV and other sexually transmitted diseases; matters related coming out, gender identity and sexual orientation; psychological support and information on LGBTI+ friendly institutions. The hotline only provides support in Turkish.

Ankara Bar Gelincik (Poppy) Hotline / 444 43 06

The Gelincik (poppy) hotline of the Ankara Bar Association was launched in 2011, as a part of a larger project. The hotline can be reached 24 /7 at 444 43 06. Based on Law No.6284, the hotline provides legal aid to individuals, children, LGBTI+ faced with physical, sexual, psychological and economic violence. Fifty board members and 300 volunteer lawyers work in the Gelincik Project. All hotline workers are women. While male lawyers provide voluntary legal assistance, only specialized female lawyers are assigned to sexual violence cases. Volunteer lawyers are required to receive training on legal aid, the Criminal Procedure Code, gender, violence against women and international conventions.

Association of "We Will Stop the Murder of Women Platform" Contact Line / 0505 004 1198

This line can be reached 24/7 for all types of sexual violence, sexual harassment (with or without physical contact), mobbing, stalking (including digitally) and sexual assault (rape - sexual abuse, etc.) It provides emergency intervention (directing the person to the nearest police unit, etc.), legal support and counseling, psychological support and counseling, and referral services for shelter and health care. Applications can be made by the victims and by a relative or friend.

ALO / 170

Alo 170, affiliated with the MoFLSS, provides comprehensive information on employment and social security. It was established to resolve questions, suggestions, criticisms, notices, complaints, applications and requests in an effective and rapid manner. It can be used for mobbing and sexual harassment cases, although to date its use for this purpose has been limited.

2. Shelters and Psycho-Social Support

Women exposed to VAW can apply to **ŞÖNİMs** operated by the MoFLSS, as well as women's CSOs and women's solidarity centers operated by local administrations to receive face-to-face, telephone or on-line counseling and support. While ŞÖNİMs provide services 24/7, women's solidarity centers affiliated to municipalities and women's organizations provide services during weekdays only. All these centers offer support to women and their children in obtaining access to shelters, psychological support, legal counseling, and employment.

Since the addresses of shelters are not made public for security reasons, ŞÖNİM and women's solidarity centers are also application mechanisms for shelters. It is necessary to apply to ŞÖNİM for access to

shelters and guesthouses operated by MoFLSS and municipalities. Applications to the women's shelter operated by the **Mor Çatı** (Purple Roof) Women's Shelter Foundation in Istanbul can be made directly to the organization itself.

Women exposed to violence can access free psychological support provided by **public hospitals** if they have social security coverage. Women without social security can also benefit from this service provided by health institutions free of charge under Law No. 6284. **Medical Social Service Units** have been established in public hospitals with an aim to support psycho-social and socio-economic needs that patients may experience during their treatment process, with a specific focus on the disabled, homeless, poor, health insecure, elderly, refugees, asylum-seekers, victim of domestic violence and out of town patients. These units are in charge of coordinating psycho-social support services. In addition, women can access psycho-social support through ŞÖNİMs and Social Service Centers affiliated with MoFLSS, women's solidarity centers affiliated with municipalities and women's organizations. Victims residing in shelters can also benefit from psychosocial support services free of charge.

Violence Prevention and Monitoring Centers (ŞÖNİMs)

Violence Prevention and Monitoring Centers have become operational pursuant to Law No. 6284 on Protection of Family and Prevention of Violence against Women. These centers provide the following services: accommodation for violence survivors, temporary financial assistance, counselling and guidance, risk assessments, applications for interim protection orders and their follow-up, daycare support, legal assistance, medical assistance, employment support, scholarships for children and education and training for women and children. MoFLSS provides regular trainings on violence against women and other relevant issues for the staff working at ŞÖNİMs.

Some ŞÖNİMs remain operational 24/7 and can be reached by phone or in person. The 183 Hotline, police, gendarmerie, prosecution and women's counseling centers refer VAW cases to ŞÖNİMs. Likewise, ŞÖNİMs can also refer applicants to other institutions and organizations in line with the needs of the victim/survivor. According to ŞÖNİM regulations, a nurse or a health officer is required to accompany the victim/survivor during medical examinations in cases of sexual violence. Similarly, a female professional is obliged to accompany the victim/survivor during legal procedures and proceedings. The regulation also requires the coordination of preventive measures against perpetrators.

Women's Counseling / Solidarity Centers

Turkey's first women counseling center was founded in Istanbul in 1990 by the Mor Çatı (Purple Roof) Women's Shelter Foundation. In 1991, the Women's Solidarity Foundation launched its Women's Counselling Center in Ankara in 1991 - in cooperation with Altındağ Municipality. Since then, women's counseling centers have been established by women's organizations and municipalities in many provinces across the country.

Applications can be made to women's counseling centers by phone, by person or by e-mail. The centers provide services during working hours (mostly between 10.00-18.00 on workdays). The centers provide: counseling and psychological services, legal and support find a job. Applicants are referred to other relevant service providers related to security, shelter, judicial proceedings, and employment agency. Some women's counselling centers operated by municipalities provide household goods support for women leaving shelters.

Universities' sexual harassment and sexual attack prevention units

In order to ensure an academic environment free from any kind of sexual harassment and assault based on gender, sexual orientation, gender identity or on any other basis, discrimination and exploitation, some universities have established special complaints and assistance units for their students and employees. These units evaluate complaints of the victims, provide psychological support, counseling,

and referral to judicial and/or law enforcement institutions (e.g., police, prosecution). Applications to these units can be made in person or electronically. Reflecting their commitment to combat VAW in policy documents and administrative structures, the units also conduct awareness-raising activities within the university.

First Admission Units²⁴⁶

First Admission Units provide up to two-week residence for women and their accompanying children under the auspices of ŞÖNİM. First observations are made, medical examinations and treatment are provided, and their psycho-social and economic conditions are evaluated. The information and documents required for being admitted to the First Admission Unit are: an application form, preliminary interview form, personal identity statement and a letter of undertaking that the woman will comply with the shelter/guesthouse rules.

Women shelters / guesthouses

Women's shelters are residential social service institutions where women exposed to physical, emotional, sexual, economic and verbal abuse or violence can be temporarily accommodated with their children, if any, and their needs are addressed in an environment free from violence. They provide women with support and strength to solve their psycho-social and economic problems. The first public women's shelters were opened in the provinces of Izmir and Ankara in 1990, and were affiliated to the Social Services and Child Protection Agency. Subsequently placed under the responsibility of General Directorate on the Status of Women with Statutory Decree No. 633, there are currently 110 women's shelters operating under the MoFLSS. Two are affiliated with the Ministry of Interior, General Directorate of Migration Management; another is an NGO-run shelter, and 32 shelters are operated by local administrations. A total of 145 shelters across Turkey provide services with a capacity of 3,454 people.

Application for women's shelters affiliated with MoFLSS should be made to ŞÖNİM. When the application is made to another institution, the application must be referred to the ŞÖNİM in that province. Applications for municipal women's shelter can be made to ŞÖNİM or, if available, to the women's counseling center of the municipality. Applications to the Purple Roof (Mor Çatı) Women's Shelter should be made directly to the Purple Roof women's solidarity center.

Women's shelters in Turkey operate under the Regulation for Women's Guesthouses²⁴⁷ Women's organizations also maintain internal operating guidelines. According to the "Guesthouse Regulations," any woman exposed to violence and in need of shelter for herself and her children, if any, can benefit from all services provided by the shelter free of charge. A small amount of pocket money is paid to women and their children during their stay in the shelter if they have no income. The maximum duration for accommodation in a women's shelter is 6 months; however, it can be extended based on need. Women's shelters' addresses are not made public, and visitors are not accepted.

3. Education, employment and empowerment

Turkish Employment Agency (İŞKUR) Programs

The Turkish Employment Agency (İŞKUR), under the scope of its active labor services scheme, provides vocational training courses, on-the-job training programs, community benefit programs, and other courses, programs, projects and special measures with the aim of protecting and increasing employment, supporting skills development of the unemployed, alleviating unemployment and focusing specific attention on the entry into the labour force of specific groups (women, youth, people with disabilities). These programs are provided free of charge with all expenses covered by İŞKUR. A stipend of between 20-100 TL/day is paid to beneficiaries to meet daily expenses, including inner-city travel. Within the

246 Article 3(1)-(f) of the Regulation on Opening and Operating of Women's Shelters.

247 Referred to in the GREVIO report as "Regulation on Opening and Operating of Women's Shelters".

scope of the Community Benefit Programs, these payments are maintained at the minimum wage level. Participants are given a certificate with international validity as a proof professional competence. In the National Action Plan on Violence against Women, İŞKUR is responsible for providing vocational training and employment studies for shelter/guesthouse residents.

Public Education Centers of Ministry of National Education

Illiterate women and those interested in obtaining professional skills can enroll in public education courses provided by the Ministry of National Education. An identity card is sufficient to attend public education courses. Parent's written consent is required for trainees under the age of 18, and a foreigner identification number or temporary foreign identification document is required for foreign nationals. Public Education Center Directorates carry out field studies at the beginning of each academic year to reach out to illiterate citizens to promote literacy courses. No fees are charged for literacy courses and educational materials.

Social Services Centers

They are organizations where protective, preventive, supportive, developing services and guidance and counseling services are provided to children, young people, women, men, the disabled, elderly individuals and their families together and in the most accessible manner, by identifying the needy people, performing social service intervention and monitoring. Recently, ŞÖNİM contact points have been established in Social Services Centers. Thus, specialized services for women exposed to violence have become accessible to more women.

Multi-Purpose Community Centers (ÇATOM)

Based on the findings of "Research on the Status and Integration of Women in the GAP Region," the GAP (Southeast Anatolia Project) Administration established the ÇATOM model in 1995. ÇATOMs are community-based and participatory centers that are established in neighborhoods, district centers and central village settlements. Currently, there are 48 ÇATOMs actively operating in 9 provinces of the GAP Region (ÇATOMs operate in Adıyaman (3), Batman (4), Gaziantep (2), Diyarbakır (7), Kilis (3), Mardin (9), Siirt (4), Şanlıurfa (9) and Şırnak (6)). ÇATOMs target women and girls with the multifaceted aims of: creating opportunities for women to become aware of and address their problems; ensuring greater participation of women in the public sphere and their greater use of public services; increasing women's employment and entrepreneurship; and, contributing to gender equality by empowering women. Both Turkish citizens and refugee women can receive services from these centers. In ÇATOMs, childcare is provided for 3 to 6-year-olds of women participants.

ÇATOMs programmes encompass: i) literacy programmes, preschool education, motherhood training, IT training, nutrition and home economics; ii) health education and health services including mobile out-patient services; iii) skills building programs for handicrafts, knitwear, textile, hairdressing, felt processing, local dolls, silver working and income-generating workshops and programs to support women's entrepreneurship; iv) social and cultural programs that support participation in social life and the empowerment of women; v) social support services to facilitate access to state subventions and services (e.g., scholarships, health cards for uninsured people, HIV/AIDS, and fostering official marriages, etc.)

Vocational Training Courses of Municipalities

Provincial and district municipalities provide vocational skills and hobby courses. At the end of these free courses, the participants receive a certificate. Each municipality announces the course registration deadlines and application criteria on its website. The websites of the municipality can be looked into for more information on the courses offered at these centers.

Social Assistance and Solidarity Foundations

Social assistance in Turkey is managed at the national level by the Social Assistance Directorate General (SADG) under the Ministry of Family, Labour and Social Services, and is implemented by locally based Social Assistance and Solidarity Foundations (SASFs). The SASFs operate under the chairmanship of the provincial and sub-provincial governors.

As stipulated in its legislation, SASFs provide support and aid to women willingly leaving the women's shelter, and their accompanying dependents. In addition, emergent needs of women, in particular the transportation costs of women and their accompanying children in cases where they need to change provinces based on life threatening risks, are covered by provincial / district level SASFs mobilized through Provincial Directorates. Other costs covered in this scope are rent support, furniture support, etc.

Healthy Life Centers

Healthy Life Centers (HLC) are affiliated with the Ministry of Health, and were established in order to protect individuals and society from health risks, to promote a healthy lifestyle, to strengthen primary healthcare services and to facilitate access to these services. HLCs operate as an additional service unit affiliated to the community health center. Free mental health counseling service can be obtained from the centers.

4. Complaint mechanisms

Ombudsman Institution

The Ombudsman Institution²⁴⁸ is affiliated with the Turkish Grand National Assembly and is centrally located in Ankara. It offers a complaint mechanism regarding public services. Natural and legal persons, including foreign nationals, may lodge complaints to the Ombudsman Institution.

Parliamentary Commission on Equal Opportunities of Women and Men (KEFEK)

KEFEK examines applicants' claims on rights violations in the employment sphere, including sexual harassment, mobbing and gender discrimination. Petitions may be sent via mail, email (kefek@tbmm.gov.tr) or fax. Petitions should contain the subject matter of the claim, as well as the name, address, and signature of the applicant. The Committee informs the applicant of the process and result of the application within three months.

CİMER

The Presidency Communication Center (CİMER) collects and resolves complaints. Applications received through CİMER are evaluated and transferred to the relevant institution. CİMER responds to complaints the resolution of which be monitored on the "CİMER application tracking" screen.

Human Rights and Equality Institution of Turkey

The Human Rights and Equality Institution aims to protect and promote human rights, to prevent discrimination, to remedy violations, and to cooperate with international organizations, public institutions and agencies, non-governmental organizations, professional organizations and universities working in the field of protection of human rights. It investigations discrimination complaints, upon application and of its own accord. Complaints can be submitted in person, by mail, email, fax or via its electronic system (<https://ebasvuru.tihек.gov.tr/Giris.aspx>). If an application is made to the institution by e-mail or fax, the original petition must be submitted to the institution within 15 days. The original petition is not required to be submitted for applications made through the website of the institution.

248 Act No. 6328, Law on the Ombudsman, Official Gazette No. 28338, 29 June 2012.

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The Council of Europe is the continent’s leading human rights organisation. It comprises 46 member states, including all 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.

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