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Council of Europe Project “The Istanbul Convention: a tool to advance in fighting violence against women and domestic violence in Ukraine”

Istanbul Convention: NEWS FROM THE FUTURE

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- *Note: Biljana Brankovic made this presentation in her capacity as International Consultant; therefore, attitudes and opinions expressed herein should not be attributed to GREVIO as a whole

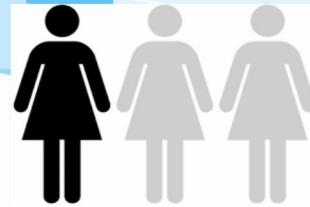
The sad reality is....

Why the Council of Europe
Convention on
Preventing and Combating
Violence against Women
and Domestic Violence
(Istanbul Convention)
is so important – why it
was developed and
adopted?



Source: EU Fundamental Rights Agency Survey on violence against women in EU countries, 2014

- * 1 in 3 women has experienced some form of physical and/or sexual abuse since the age of 15



- * 2 in 5 have women experienced some form of psychological abuse



- * 75% of working women have experienced some form of harassment in their lifetime



Women are disproportionately affected by domestic violence, rape, forced marriage, and sexual harassment

...

because of unequal power relations between women and men

...

rooted in social and cultural structures, norms and values

Low conviction rates for

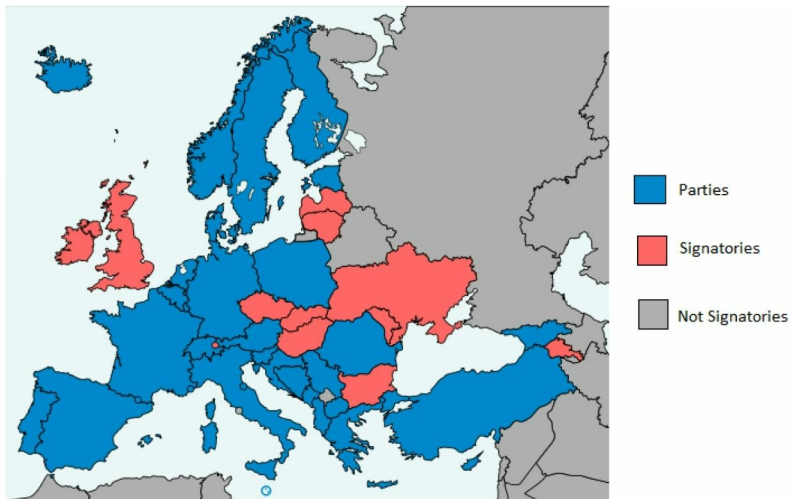
- domestic violence,
- sexual violence (incl rape),
- stalking,
- forced marriage,
- etc.

Negative and discriminatory attitudes towards women victims

from the police, judiciary or social services at the domestic level

Lack of multi-agency co-operation

Which countries ratified the Istanbul Convention so far?



- * **34 states ratified**, and 11 states + EU signed (but not yet ratified) the Convention
- * It is open to non-member states of Council of Europe

So far, only two states have not signed: Russian Federation and Azerbaijan

The Istanbul Convention

introduces a couple of
groundbreaking
features

It outlaws the elimination
or discrimination against women
at one of its purposes
(Article 1)

and commits member states to
do so by all appropriate means
(Article 1, 2)

Recognizes the structural nature
between violence against women,
gender inequality and human rights

Recognizes violence against women
as a violation of human rights
and a form of discrimination
(Article 3a)

Contains
– as the first international treaty –
a definition of gender
(Article 3a)

Integrates the
„due diligence standard“
(Article 5)

Asks for a gender perspective
to be taken when
implementing the Convention
and evaluating measures
(Article 6)

Establishes new forms
of violence

- Stalking
- Cyberstalking
- Forced marriage
- Forced sterilization
- Forced abortion and forced sterilization

Does not make
cultural, religious,
or a justification for
violence against women
or domestic violence

Crucial contributions of the Istanbul Convention

1. The first regional (European) legally-binding instrument that specifically addresses violence against women (VAW) – it offers a comprehensive framework for preventing and combating VAW, and it is **the most far-reaching international treaty on this subject**
2. Re-affirms **gendered understanding of VAW** on which other many previous (non-binding) international documents on VAW are based
3. Integrates **due diligence standard**, which should be understood as an overarching principle
4. Integrates (and builds on) decisions of the European Court of Human Rights (ECHR) and the CEDAW Committee (based on Optional Protocol to CEDAW Convention)

Crucial contributions of the Istanbul Convention

5. Sets clear (and hard-to-reach?) standards in the areas of “3 Ps”: **P**revention, **P**rotection of victims, as well as for efficient **P**rosecution and punishment of perpetrators, and also defines specific “guidelines” for development of legislative and policy framework
6. Promotes and integrates good practice examples in victims’ protection from some EU/CoE countries, including the model of **multi-agency cooperation** – requires multi-agency coordinated actions. State agencies (the police, judiciary, social services, etc.) as well as NGOs should cooperate in addressing cases of VAW. It also integrates principles and standards of service provision (developed by global & European women’s movement), such as: empowerment of victims

Crucial contributions of the Istanbul Convention

- 7. Recognizes and reaffirms achievements of NGOs, and mentions (in Explanatory Report) women's NGOs as important actors in provision of specialist services to victims and partners in coordinated actions**
- 8. Incorporates theoretical framing of intersectionality: recognizes specific problems of women and girls exposed to intersectional discrimination, including refugees, migrants, asylum seekers, etc.**

Provisions of the Convention that should be understood as OVERARCHING PRINCIPLES

- * 1. Due diligence standard
- * 2. Gendered understanding of VAW; gender perspective in implementation and evaluation of policies/measures Since Article 6 (Gender-sensitive policies) is placed under Chapter I which also deals with general obligations of Parties, its application extends to all other articles of the Convention
- * 3. Comprehensive and coordinated policies

1. Due diligence standard

- * Due diligence standard is integrated into the Istanbul Convention and it should be understood as **an overarching principle**: “Parties shall take the necessary legislative and other measures to exercise due diligence to prevent, investigate, punish and provide reparation for acts of violence covered by the scope of this Convention that are perpetrated by **non-State actors**” (Art. 5b)
- * Interpretation of this standard in Explanatory report (para.58): “Furthermore, the content of Article 5 reflects the case-law of the European Court of Human Rights. In its recent case law on domestic violence, the Court has adopted the obligation of due diligence (see the judgment of Opuz v. Turkey, 2009). It has established that **the positive obligation to protect the right to life** (Article 2 ECHR) requires state authorities to display due diligence, for example by taking preventive operational measures, in protecting an individual whose life is at risk”.
(relevant in the context of combating femicide)
- * Explanatory report (para. 59): “Violence against women perpetrated by non-state actors crosses the threshold of constituting a violation of human rights as referred to in Article 2 insofar as Parties have the obligation to take the legislative and other measures necessary to exercise due diligence to prevent, investigate, punish and provide reparation for acts of violence covered by the scope of this Convention, **as well as to provide protection to the victims**, and that failure to do so violates and impairs or nullifies the enjoyment of their human rights and fundamental freedoms”
(includes protection of victims)

The MEANING of due diligence standard in the area of VAW

RESPONSIBILITY OF THE STATE FOR “NON-DOING”

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

The MEANING of due diligence standard in the area of VAW

RESPONSIBILITY OF THE STATE FOR

NON-DOING: When an abstract norm becomes concrete...

- What does it mean in practice – becomes clear in judgments of the **European Court of Human Rights** related to domestic violence against women and sexual violence: *Aydin v. Turkey*, *Airey v. Ireland* (1979), *X and Y v. the Netherlands* (1985), *Bevacqua v. Bulgaria* (2001), *M.C. v. Bulgaria* (2003), *Kontrova v. Slovakia* (2007), *Branko Tomašić v. Croatia* (2009), *Opuz v. Turkey* (2009), *Hajduová v. Slovakia* (2010), *Eremia v. Moldova* (2013), *Durmaz v. Turkey* (2014), *Y. v. Slovenia* (2015), *Talpis v. Italy* (2017), *Kurt v. Austria* (2019)
- Case-law of ECHRt indicate that a lack of reaction (investigation, prosecution ...) or improper reaction of state authorities contradicts a principle of due diligence
- Decisions of the CEDAW Committee based on Optional Protocols to CEDAW: for example, *AT v. Hungary*, *V.K. v. Bulgaria*, *Isatou Jallow v. Bulgaria*, *Vertido v. Philippines*, *Cecilia Kell v. Canada*, *Fatma Jildirim (deceased) v. Austria*, *Sahide Goekce (deceased) v. Austria*

2. Gendered understanding of VAW; gender perspective should be applied in implementation and evaluation of policies/measures

- a) **Defines VAW as a form of discrimination against women and a violation of human rights** (Art.3a, 3d): *“gender-based violence against women shall mean violence that is directed against a woman because she is a woman or that affects women disproportionately”* (adopts a crucial part of a definition provided in **GR 19 of CEDAW Committee, 1992**)
- b) **Contains a definition of “gender”** (Art.3c): *“gender shall mean the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men”*
- c) **Recognizes the structural nature of VAW**
- d) **Defines contribution to elimination of all forms of discrimination against women as one of its purposes** (Art.1), and contains provisions pursuing this aim as well as empowering women (Articles 4, 6)
- e) **Has a gender perspective throughout: a clear gendered dimension overlaps its various provisions... requires that *gender perspective should be applied in a process of implementation of its provisions and evaluation of measures*** (Art. 6)
- f) **Establishes structural connections between VAW and gender inequality**

3. Comprehensive and coordinated policies

- * Defines the core requirement for a holistic response to VAW: the need for state-wide, effective, comprehensive and coordinated policies sustained by the necessary institutional, financial and organisational structures
- * (States should devise and implement policies – numerous measures to be taken by different actors and agencies, which, taken as a whole, offer a holistic response to VAW)
- * (Individual level): States should ensure that the adopted policies are implemented through **effective multi-agency cooperation**. Good practice examples show that results are enhanced when law enforcement, judiciary, women's NGOs, child protection agencies and other relevant partners join forces on a particular case (*for example, to carry out an accurate risk assessment or devise a safety plan*). The cooperation should rely on clear **guidelines and protocols**
- * (Policy level): Various actors (such as government agencies, the national, regional and local parliaments and authorities, national human rights institutions and civil society organisations) should be involved in policy-making (*for example, creating **national action plan***)

The Convention requires criminalization of:

- * **Psychological violence (Art. 33)**
- * **Stalking (Art. 34)**
- * **Physical violence (Art. 35)**
- * **Sexual violence, including rape (Art. 36)**
- * **Forced marriage (Art. 37)**
- * **Female genital mutilation (Art. 38)**
- * **Forced abortion and forced sterilisation (Art. 39)**
- * **Sets out the principle that sexual harassment can be subject to criminal or “other” legal sanction**

The
Istanbul
Convention
is based on

4 “Ps”

4 “PILLARS”:

1 **P**revention

2 **P**rotection
and support services

3 **P**rosecution

Integrated
4 **P**olicies



State parties should...

PREVENTION P (1)

- * Promote or conduct awareness-raising campaigns
- * Tackle (through teaching material) attitudes, prejudices and stereotypes on gender roles
- * Provide or strengthen appropriate training for professionals dealing with victims or perpetrators
- * Establish perpetrator programmes
- * Work in cooperation with media and private sector

PROTECTION P (2)

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

Do protection services for victims achieve the aim?

“FIRE-FIGHTING” and
“RISK-REDUCTION”
approach

versus

LONGER-TERM SUPPORT
AND EMPOWERMENT

Services for victims should:

- * be based on gendered understanding of VAW and domestic violence and shall focus on the human rights and safety of the victim;
- * be based on an integrated approach;
- * aim at avoiding secondary victimisation;
- * aim at the empowerment and economic independence of women victims of violence;
- * **IMPORTANT: We should move away from focusing on “crisis intervention” and “high-risk” cases to long-lasting empowerment and change**



State parties should...

PROSECUTION P (3)

- * Ensure that investigations and judicial proceedings are carried out effectively and without undue delay
- * Ensure that law enforcement agencies respond promptly and appropriately
- * Ensure that risk assessment is done and managed properly
- * Ensure protection measures (emergency barring orders, restraining or protection orders) and legal aid for victims
- * Ensure that exercise of custody and visitation rights does not jeopardise safety of the victim and children
- * Ensure that victims are protected at all stages of investigations and judicial proceedings

Integrated POLICIES P (4)

- * Set up or designate a national coordinated body
- * Create **integrated, comprehensive** national action plans
- * Allocate appropriate funding
- * Provide support to civil society
- * Ensure effective cooperation between all relevant actors (government institutions, NGOs...)
- * Collect disaggregated data on all forms of VAW + conduct population surveys and research to assess efficiency of implementation of laws/policies with the aim to ensure evidence-based policy-making

Ensuring investigation and prosecution

- * Investigation and prosecution in cases of: physical violence, sexual violence including rape, forced marriage, FGM, forced abortion and forced sterilisation
- * Article 55: Investigation and prosecution should not be wholly dependent upon report or complaint filed by the victim (**the proceedings may continue even if the victim withdraws statement or complaint**)



IMPLEMENTATION OF THE CONVENTION IN PRACTICE

Examples and experiences from:

- 1. Reports on countries in which
GREVIO carried out baseline
evaluation**

(based on published reports of GREVIO)

+

- 2. Research studies**

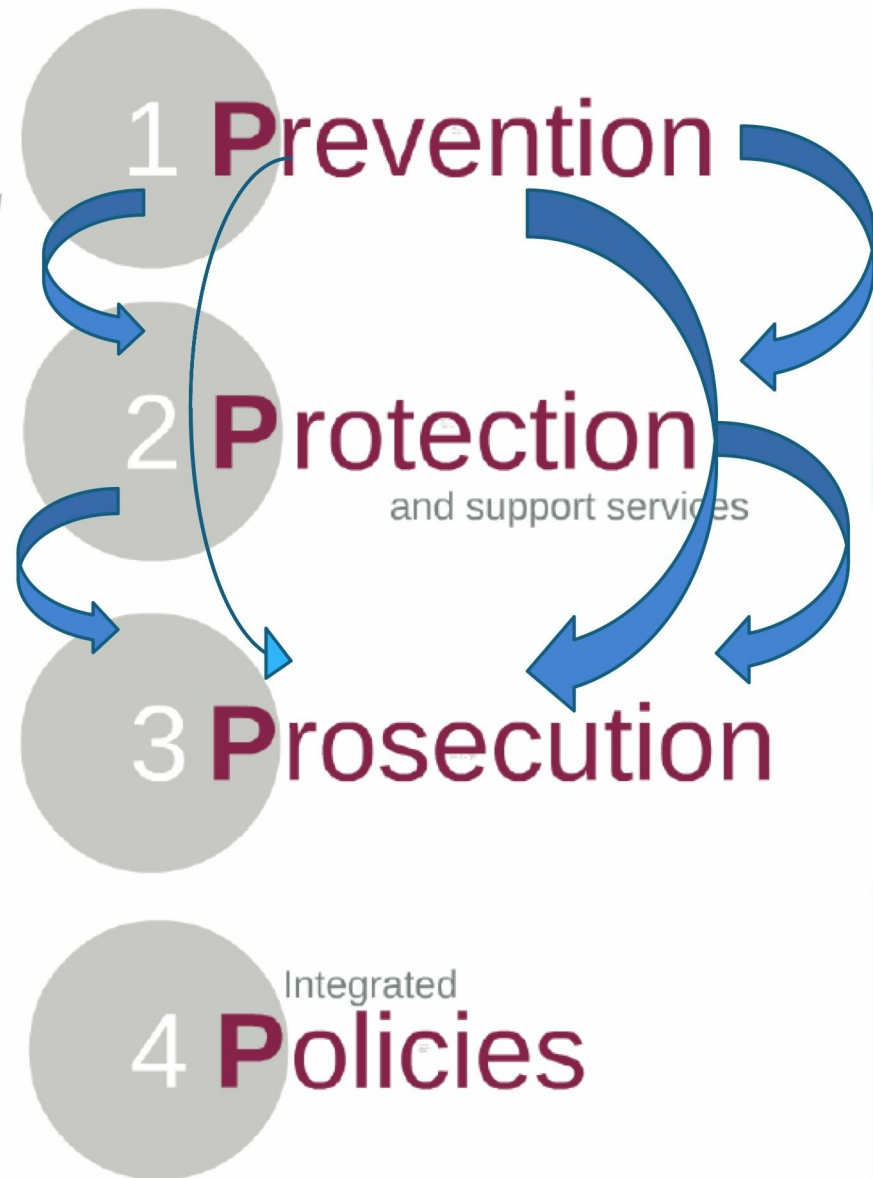
Inter-relations between “PILLARS” **versus**... disconnection

The Istanbul Convention

is based on

4 “PILLARS”

For example, **Protection and support services** cannot reach their goal (empowerment of victims) if other “PILLARS” are dysfunctional, especially: **Prosecution**



Fragmentation versus integration???

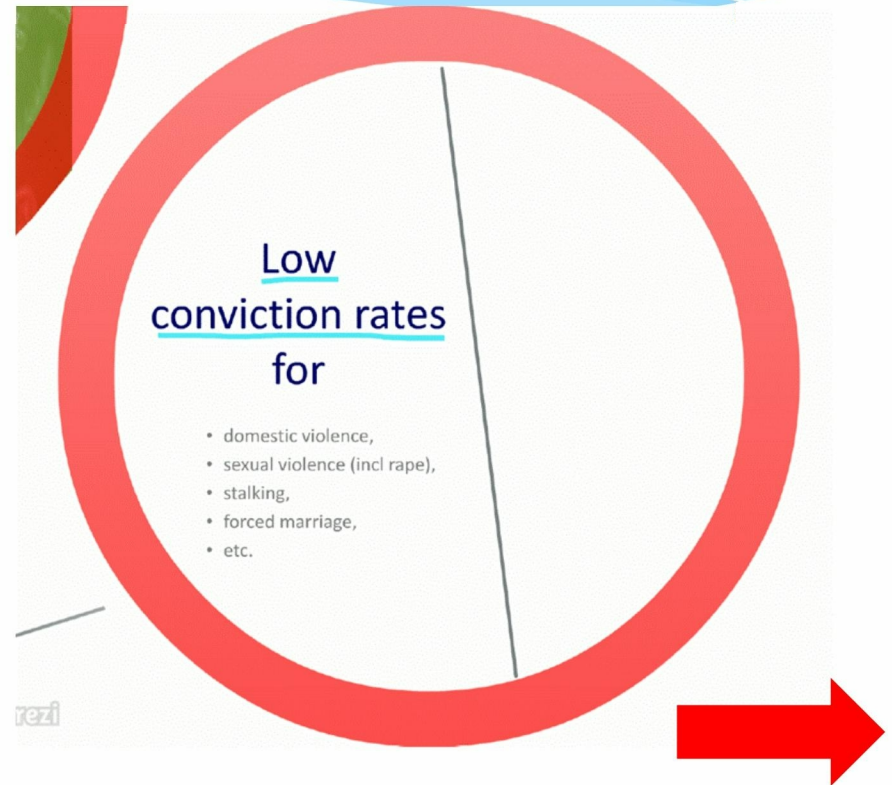
- Are measures and policies related to different “Ps” (**P**revention, **P**rotection, **P**rosecution) consistent and coordinated?
- For example, do policies in the area of Prosecution **complement** (or **contradict**?) those in the areas of Protection?

In most countries, main gaps in the implementation exist in the areas of Prosecution and Punishment



Fragmentation versus integration???

- **Inconsistencies** in polices across 3 “Ps”: **P**revention, **P**rotection, **P**rosecution
- **Typical pattern** in many countries: there is an increase in reporting rates (women are encouraged, through **P**revention campaigns, to report violence to institutions), but **P**rotection of victims is insufficient, while **SIGNIFICANT** shortcomings are identified in **P**rosecution/Punishment of perpetrators – *for example, conviction rates remain (very) low!*



ATTRITION = Proportion of cases that were reported to institutions, but did not result in any legal sanction

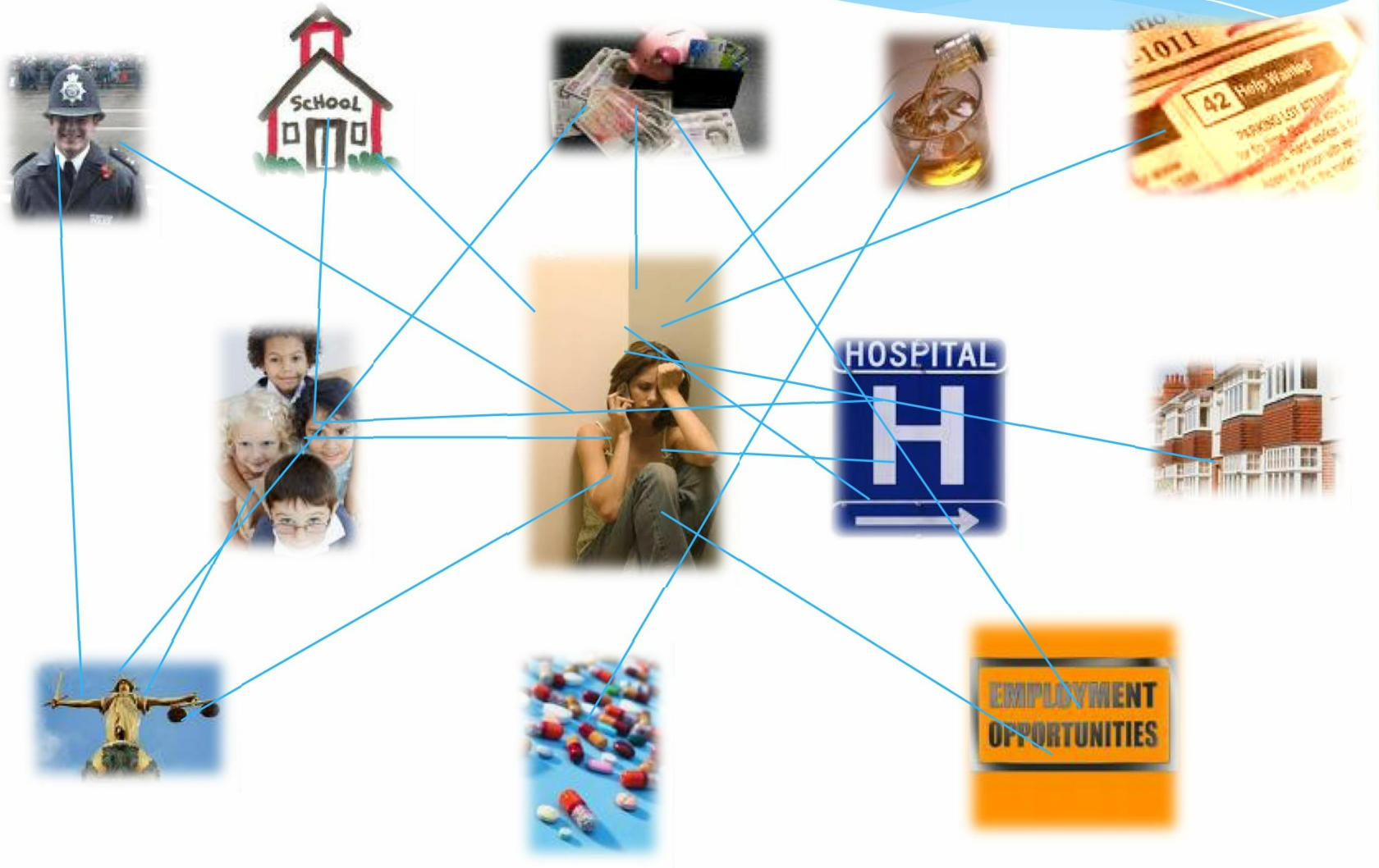
Policies across “3 Ps” (**P**rotection, **P**rosecution and **P**revention) **are (too often) not harmonised and complementary**

Empowerment or re-traumatisation of victims/survivors?

IN MANY COUNTRIES:

- * A strong emphasis on Prevention (e.g., media campaigns aimed at encouraging women to report) leads to increase in reporting rates
 - * On the other hand, victims (too often) face:
 1. Obstacles in general services that do not meet their long-term needs
 2. Re-traumatisation in justice sector, incl. improper child custody and visitation arrangements + poorly enforced POs/EBOs fail to stop violence (even, they are rarely granted);
 - * Specialist services contribute to empowerment, but provision is insufficient
- * (Very) low conviction rates **send a strong “social message”**- victims might become aware that their claims do not reach a proper consideration in courts, and could lose trust in the system, which **could further lead to decrease in reporting rates**
- * A need to identify root causes of the gaps in the “chain” police – prosecutors – courts. Often, causes are:
 1. Lack of pro-active investigation by police
 2. “Informal reconciliation” between victims and perpetrators
 3. Prosecutors drop charges when the victim withdraws complaint or refuses to testify, even in serious cases (contrary to Art.55)
 4. Judges impose mild sanctions for acts of VAW (too often: perpetrators receive only suspended sentences!)

Multi-agency cooperation: one of crucial requirements of the Convention



MULTI-AGENCY COOPERATION: what does the Convention prescribe?

- * Eliminating violence requires extensive multi-agency co-operation as part of an INTEGRATED approach (Art.1)
- * Convention requires comprehensive and coordinated policies (Art. 7)
- * States should ensure that adopted policies are implemented by **effective multi-agency cooperation**. This type of co-operation should not rely on individuals convinced of the benefits of sharing information but requires **guidelines and protocols** for all agencies to follow, as well as sufficient **training of professionals** on their use and benefits (*Explanatory report to the Convention, para.64*)
- * In line with the general multi-agency and comprehensive approach of the Convention, Art. 18, para. 1 requires states to take the necessary legislative or other measures to protect all victims from any further acts of violence. Art. 18, para. 2 requires parties to: ensure appropriate mechanisms for effective cooperation among the judiciary, prosecutors, law-enforcement agencies, local and regional authorities and NGOs - **structures such as round tables and agreed protocols** that would enable a number of professionals to cooperate in **addressing individual cases in a standardised manner**
- * Such cooperation must be based on a gendered understanding of VAW and focus on the human rights and safety of the victim (Art. 18, para. 3)

IN SHORT: VAW is best addressed by coordinated efforts of numerous state agencies and NGOs

Promising practice in multi-agency cooperation: case conferences (Austria)

- * A practice of multi-agency case conferences (MARACs), **usually in high-risk cases** of intimate partner violence: representatives of institutions (police, judiciary, social services, child protection services, sometimes schools or medical care centres), and women's NGOs gather to analyse the case, conduct risk assessment and propose measures of protection (which should be later revised, as appropriate, since the risk is a dynamic category)
- * Important: it should be done with **a consent of the victim** + the victim should be represented by a specialist women's NGO. These conferences might reduce the risks of further violence (WAVE, 2012). Victims' personal data should be shared only with her consent
- * Good example of **institutionalized cooperation** in cases of DV and stalking; conferences are regularly organized in Vienna, while rural / less populated areas have a system of cooperation that bring state agencies and NGOs together based on needs rather than on monthly basis. Cooperation seems to work best when it is placed on **a legal basis** (GREVIO report on Austria, 2017)
- * **Factors that contribute to efficiency**: well-developed, experienced women's NGO services (Violence Intervention Centres, Gewaltschutzzentren), funded by the state; they provide (proactive) support to victims + 20 years of practice in using emergency barring orders (EBOs) + police officers are legally obliged to inform the centres each time they issue an EBO, and afterwards these centres reach out to women and children concerned

Promising practice in multi-agency cooperation (Finland)

- * Since 2010, social services, health care and police professionals are trained to assess the risks of intimate partner violence in individual cases, using the standardized tool (MARAC). The tool has been in use in 90 municipalities
- * The case becomes eligible for discussion in the working group if professionals have identified a person at risk or if more than three police call-outs within 12 months have been made to the same family. Working groups, composed of various professionals from state institutions and victim-support organisations, assess the situation with the express consent of the victim. The aim is to improve the victim's safety
- * An evaluation showed that, although working groups exist widely, the use of such risk assessment and safety management needs to be established systematically and comprehensively (*Piispa and October, 2017*). Possession of firearms is very common in Finland and it is important to ensure that protective measures include the **monitoring of a perpetrator's possession of or access to firearms**. MARACs are most widely used in municipalities where multi-agency cooperation forms part of the local actors' response to domestic violence. In over 80% of the cases dealt with by MARAC, the violence had stopped six months after the process

The **PURPOSE** of Article 11 (data collection): data should be used as **TOOLS** to **GUIDE** **POLICY-MAKING**

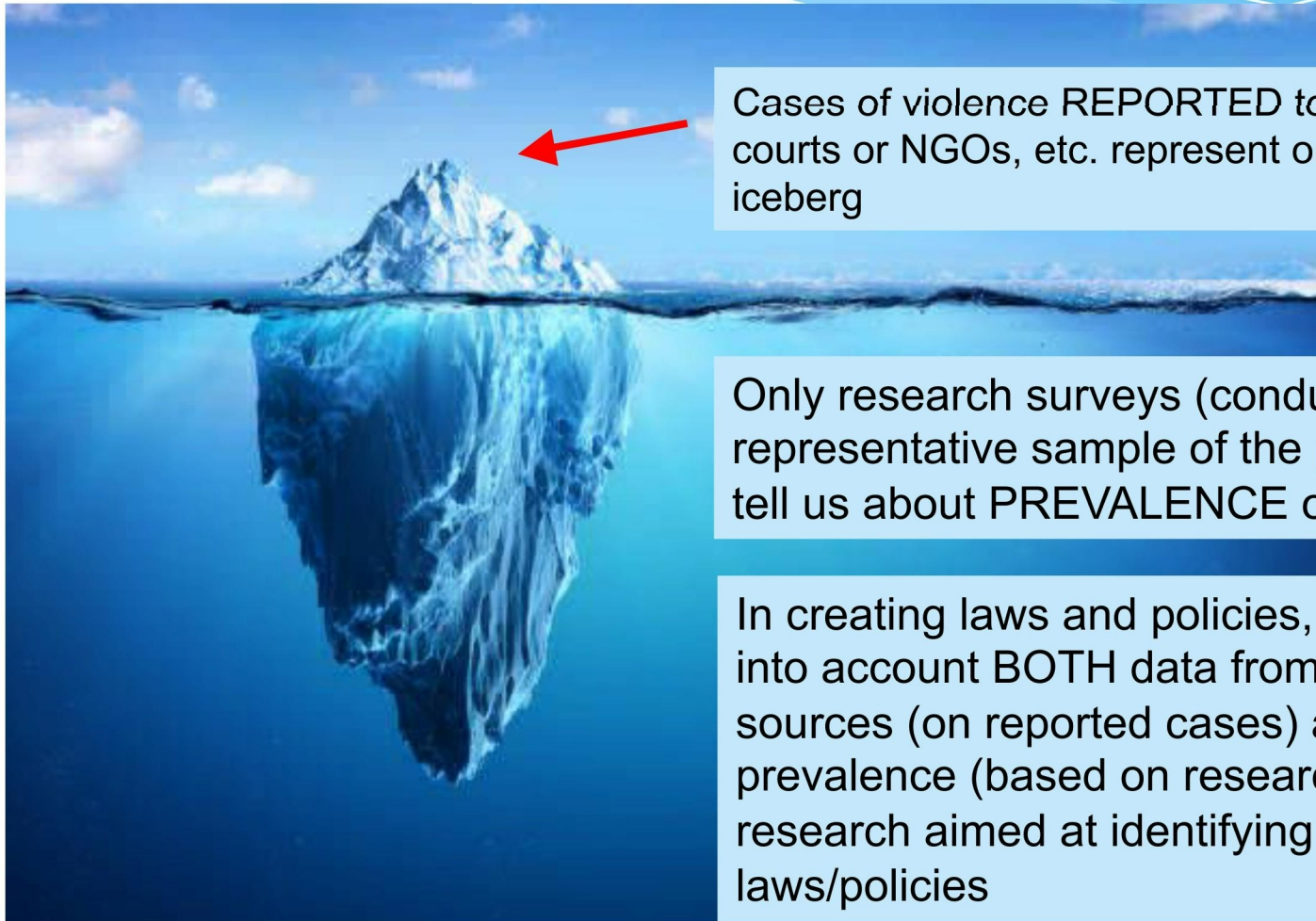
- * Preventing and combating violence against women, including domestic violence, requires **evidence-based policy-making**
- * This means that data-collection models **ARE JUST TOOLS**. Data should be collected **IN ORDER TO**:
 - * 1. **Identify gaps** in implementation of laws and policies
 - * 2. **GUIDE POLICY-MAKING**: create proposals for improving application of laws, as well as for revising policies (for example, national action plans)

Requirements of Article 11 (data collection) + Article 10 (role of national coordinating body in coordinating data collection)

- * **Article 11 requires:**
- * **Crucial: To systematically collect statistical data on reported cases of ALL FORMS OF VIOLENCE covered by the Convention, from all relevant administrative sources** (the police, prosecution, courts, health-care centres, social services, specialist services, such as shelters, national helpline, etc.). Data from administrative sources should be **COMPARABLE** across different sectors (for example, police and judiciary) and **AVAILABLE TO PUBLIC**
- * To collect information on the **prevalence** of all forms of violence against women (based on population surveys) + to conduct **research on efficiency of measures (laws, policies..)** taken to implement the Convention (*for example, research on conviction rates*)
- * National coordinating body has a role in implementing the Convention, and monitoring/evaluation, but its role also includes: **coordinating the collection and analysis of data and their dissemination** (Article 10, paragraph 1)

Reminder: the difference between:

- 1) REPORTED CASES of violence and
- 2) PREVALENCE of violence in the population



Cases of violence REPORTED to the police, helplines, courts or NGOs, etc. represent only the tip of the iceberg

Only research surveys (conducted on a representative sample of the population) can tell us about PREVALENCE of violence

In creating laws and policies, states should take into account BOTH data from administrative sources (on reported cases) and data on prevalence (based on research) + results of research aimed at identifying gaps in laws/policies

Requirement to provide disaggregated data

Article 11 further requires (**MINIMUM requirements**):

- * Statistics from administrative sources (for example, police, prosecution, courts) should have gendered perspective - All data should be disaggregated by:
- * Sex of the victim (*male or female*)
- * Sex of the perpetrator (*male or female*)
- * Age group of the victim (*adult or child - up to 18 years of age*)
- * Age group of the perpetrator (*adult or child - up to 18 years of age*)
- * Relationship between the victim and the perpetrator (*for example: husband, ex-husband, intimate partner, father, a person unknown to the victim, etc.*)
- * Type of violence (*for example, physical violence, psychological violence, rape, etc.*)
- * Geographical location (*for example, in which region of the country an incident of violence occurred*)
- * Other relevant factors (*for example, disability*)

Data should allow calculation of CONVICTION RATES for perpetrators of all forms of VAW covered by Convention + number of protection orders.

Confidentiality and privacy should be ensured: statistics available to public should not include PERSONAL data

Promising practices in data-collection - identifying femicide cases (Spain)

- * Spanish authorities collect data on women killed by their male partners (husbands) or ex-partners in the context of domestic violence; make these data available to public (publish them) regularly, and use them to conduct **analyses**. It was revealed that 872 women were murdered by their partners or ex-partners in Spain between 2003 and 2016, and many of these women were not of Spanish nationality: 30% (*Annual Report of the State Observatory of Violence on Women for the year 2016, published in 2019*)
- * **This practice is rare in Europe** (usually, police record data on all homicides, but the relationship between the killer and the victim is not recorded in police statistics, so it is not possible to extract FEMICIDES that occurred in the context of intimate partner relationship from all other homicides)
- * **GREVIO recommended to many countries to record cases of femicide!**
- * UN Special Rapporteur on Violence against Dubravka Šimonovic also recommended to UN member states to establish Femicide Watch – bodies that would collect data on femicide cases and analyse them (*SRVAW, 2015; 2016; 2017*)

The need to USE data on femicide for analysis of (possible) systemic gaps in institutional response to violence: DHR

- * GREVIO recommended to various countries to publish and use data on femicide to conduct **STUDIES/ANALYSES** with the aim to: 1) Assess possible systemic gaps in the institutional responses to violence and 2) To provide proposals on how to prevent such femicides in the future. *This analysis should include, for example: whether repeated risk assessment was made; whether the victim was under protection order, whether the perpetrator violated such an order; what was the outcome of investigation and prosecution; whether measures of protecting the victim were properly applied; whether pre-trial detention of offender was applied, etc. (see, for example, GREVIO report on Turkey, 2018).*
- * In these recommendations, GREVIO referred to practice of so-called **DOMESTIC HOMICIDE REVIEW (DHR)**: in the United Kingdom, various institutions (state agencies) are obliged by the law to review each homicide that appears to have resulted from violence by a person to whom they were related or with whom they were, or had been, in an intimate personal relationship, or a member of the same household as themselves. Outcomes of these reviews serve as input for further analyses that are published regularly (*Home Office, Domestic Homicide Reviews: Key Findings from Analysis of Domestic Homicide Review, 2016*)

Promising practice in data collection systems by the police: Portugal

- * Police officers use **a standardized form** for recording the criminal offence of domestic violence, which includes information regarding the age and sex of the victim and of the offender, their relationship (including any form of economic dependency), the presence (if any) of children at the scene of the crime, the use of firearms to commit the crime, any addictive behaviour of the perpetrator, medical treatment of the victim and a risk assessment.
- * Every 6 months, police send data to the national coordinating body. National annual report on DV reveals: DV is the second most frequently reported crime after theft, represents 8% of all crimes; it has gendered nature (84% of victims were female, and 86% of perpetrators were male); most of DV cases are committed by current or ex partners (78%); it has a repetitive nature (in 23% of the cases, previous episodes of DV were recorded) and it has a negative impact on children (DV was witnessed by children in 35% of the cases)

(GREVIO report on Portugal, 2019)

Promising practice in collecting data on the criminal justice response: Portugal

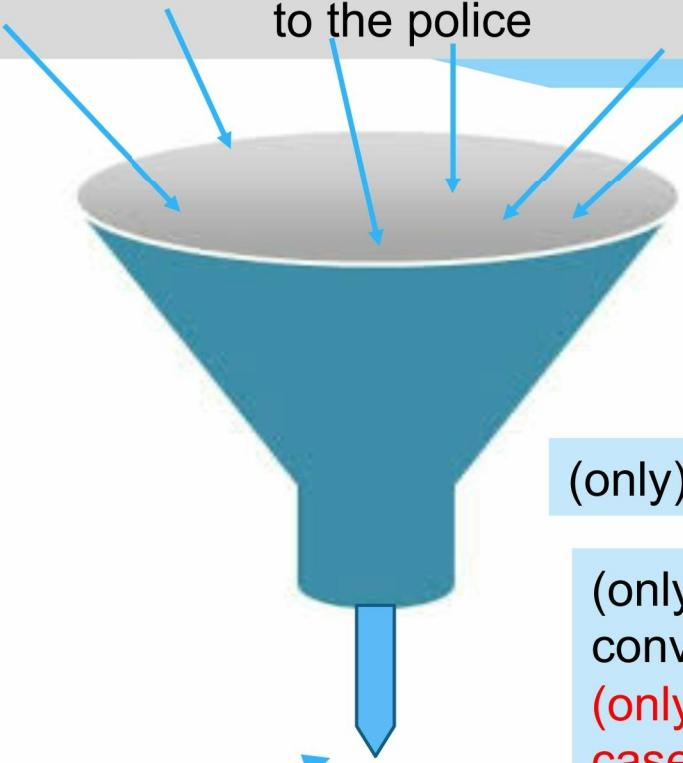
- * In 2009, Portugal introduced an obligation (by Law) to collect data from law-enforcement (police + National Guard) and the judiciary so as to **reconstruct the entire criminal proceedings chain**, from a moment the victim has filed the complaint/report to the police to the delivery of the judgment by the court
- * GREVIO, in many of its reports, recommended to numerous countries to do the same
- * **Why is this so important?** Because only in such a manner we can **identify gaps in implementation of the laws/policies** and understand underlying factors that contribute to the shortcomings - *for example:*
 - * *Do the police dismiss some reports? Do many reports of victims never reach courts?*
 - * *Does prosecution drop too many charges (due to over-reliance on victims' statements)?*
 - * *Is cooperation between institutions too weak?*
 - * *Do courts primarily impose suspended sentences?*
 - * *Is penalizing policy of the courts too mild (do courts sentence perpetrators only to 1 year imprisonment instead of using a harsher sentence)?*



Criminal justice system as a funnel

Data are used from: GREVIO report on Portugal, 2019

27005 reports of domestic violence
to the police



2796 cases ended in provisional
suspension of criminal
proceedings (during
investigation phase)

(only) 3646 cases led to opening of a trial

(only) 1984 cases resulted in the
conviction at courts of first instance
(only 7% out of the total number of
cases reported to the police)

When offenders are convicted, they (almost)
never go to prison: 90% of prison sentences
were suspended (out of those cases where
the conviction is reached)

USING data to calculate conviction rates: Portugal

- * Criminal justice sector (courts of first instance) recorded CONVICTIONS for domestic violence, rape, as well as crimes recently introduced into the Criminal Code of Portugal (forced marriage, stalking, female genital mutilation). Data are available to public (website of Justice Statistical Information System)
- * Data and analysis imply that **sexual abuse mostly remains INVISIBLE to criminal justice**: rape and other similar crimes (sexual coercion) are rarely reported and rarely lead to conviction - only 49 convictions for rape, 17 for sexual coercion in 2016
- * Data-collections system enables authorities to track cases from reporting to the police until judgment of the court. Data reveal **extremely low conviction rates for DV: 7% of cases resulted in a conviction!** In 2016: out of 27005 reports of DV, only 3646 led to opening of a trial, and (only) 1984 led to conviction at courts of first instance. Factors that contribute to low conviction rates: out of 4163 investigations, 2796 resulted in provisional suspension of criminal proceedings (which can be requested during the investigation phase by the public prosecutor on his/her own initiative or upon the request of either the offender or the victim). Out of those cases in which conviction is reached - more than 90% of prison sentences were suspended

(GREVIO report on Portugal, 2019)

Using data to conduct a comprehensive research on the implementation of the Convention

* **BASELINE EVALUATION + CONTINUOUS EVALUATION (Brankovic, 2013a; 2013b; 2018; 2019):**

* **Objectives:**

1. To analyse **how the due diligence standard is implemented in practice in Serbia** (based on specifically-designed indicators) in the areas of:

a) **Prevention**

b) **Protection of victims**

c) **Prosecution/punishment of perpetrators**

relying on theoretical/methodological sources (Maria da Penha Maia Fernandes v. Brazil, 2001; case law of ECHR; Kelly and Regan, 2001; Regan and Kelly, 2003; Kelly, Lovett & Regan, 2005; HMCPSI, 2002; Lovett & Kelly, 2009; Ertürk, 2006, EWL, 2012; UN DAW, 2005a; 2005b; Walby, 2005; Economic Commission for Europe, Statistical Commission, Conference of European Statisticians - Group of Experts on Gender Statistics, 2006; Walby, 2006; Kelly, Kennedy and Horvath, 2006; UNECE, 2006; Walby, 2007; Ertürk, 2006; 2008; UN Statistical Commission, 2009; UN Statistical Commission and UN Statistics Division, 2010; ; Abdul Aziz and Moussa, 2014, etc.)

2. To analyse **TRENDS** related to these “**3 Ps**” in the last 10-15 years. **FORMS OF VAW COVERED: DOMESTIC VIOLENCE, SEXUAL VIOLENCE, EARLY/FORCED MARRIAGE**

I will provide just a few illustrations/findings from these research studies in the area of Prosecution

MAIN CHALLENGE: To create indicators that are **both internationally comparable and adapted to the national context** (in total, **70 INDICATORS** were created)

Problems in measuring institutional response to VAW:

- Analyses often rely only on „check-lists“ of services and interventions **✓✓✓✓**
- In addition to analysing what state institutions **do**, we should focus on **what institutions fail to do** (although they should be doing, in line with the *due diligence* principle) **XXXX**

*

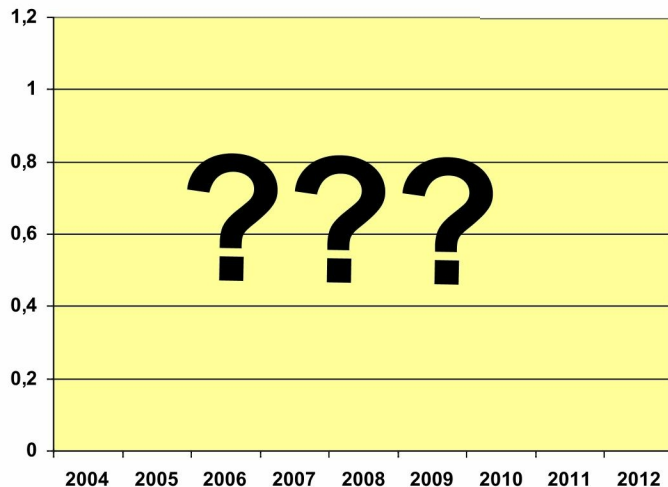
Measuring ATTRITION:

When we measure attrition, we should have in mind the following (Ertürk, 2008):

- Increased reporting - an indicator of decreased social tolerance towards VAW and increased confidence of victims in the justice system
- Rates of investigation, prosecution and conviction: high rates of investigation/prosecution indicate that state policies for combating VAW were effective

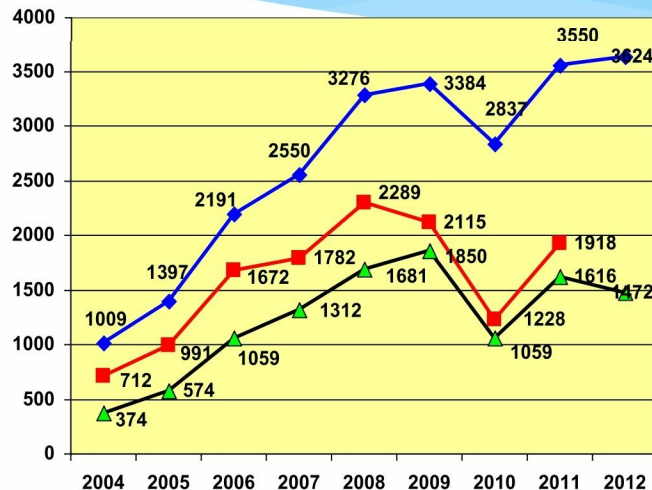
HOW MANY (reported) CASES OF DOMESTIC VIOLENCE WERE INVESTIGATED, PROSECUTED, AND LED TO CRIMINAL SANCTIONS AGAINST PERPETRATORS

Step 1. of the analysis: POLICE RESPONSE



— Cases reported to the police

Step 2. of the analysis: JUDICIAL RESPONSE



— Criminal charges

— Indictments

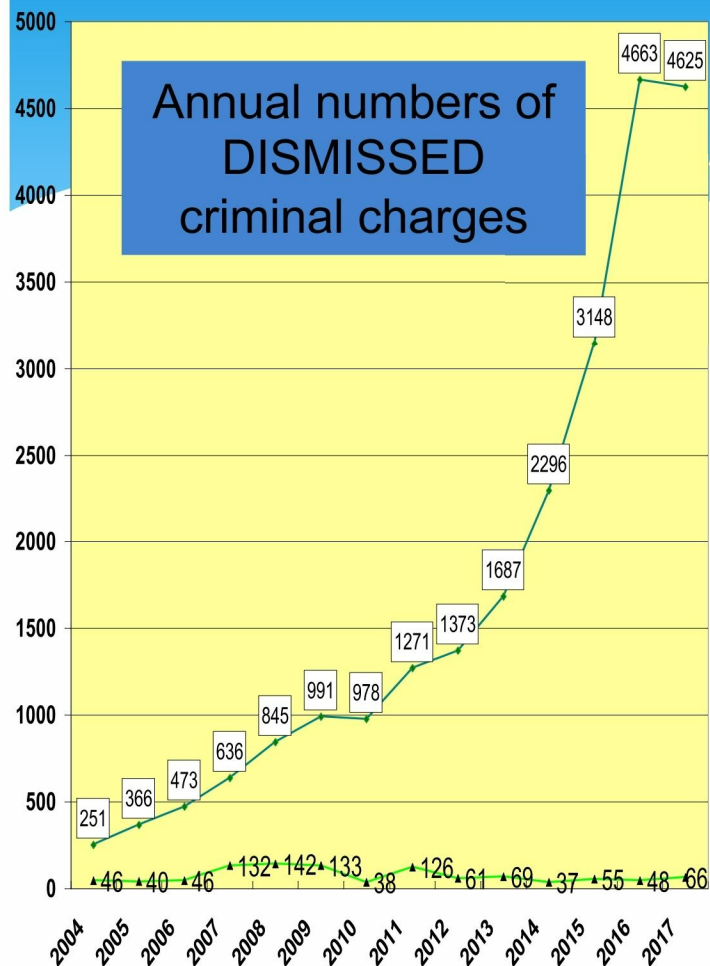
— Convictions



Step 1: From reporting to criminal charges (police response)

- * Data on police interventions are not collected/systematized and published at the national level, but some research studies revealed:
- * The police response has significantly improved in recent years
- * Only a small proportion of DV cases reported to the police (around 15%) result in filing criminal charges

Step 2: Is investigation (and prosecution) efficient? (2004-2017)



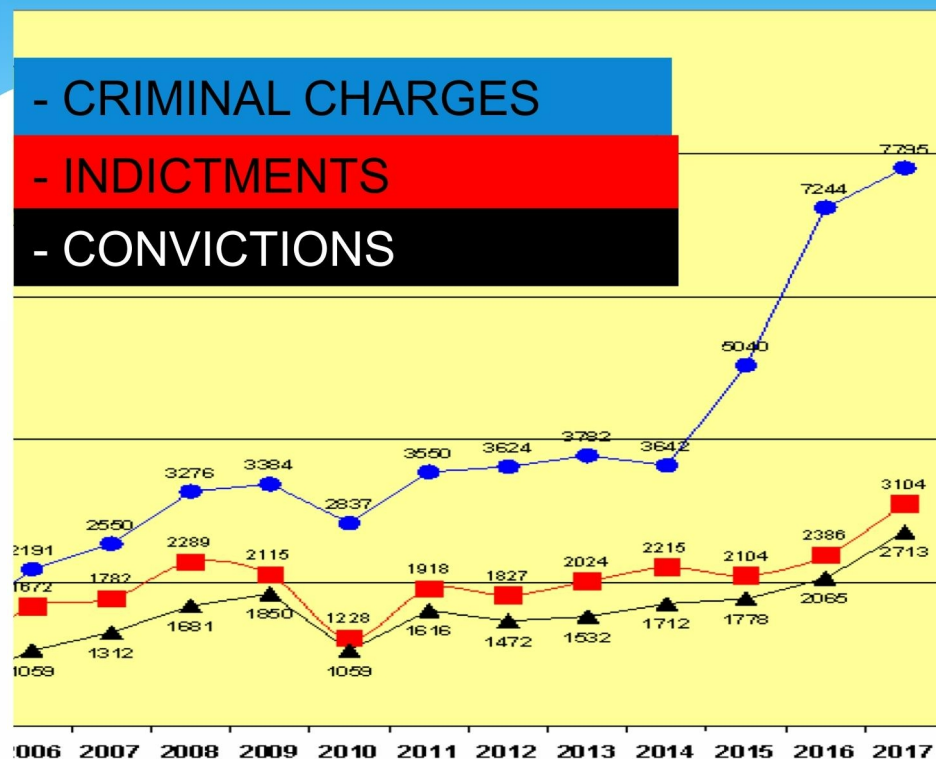
Created using sources: Statistical Office of Serbia, Criminal Charges for domestic violence, 2004-2017

Rates of criminal prosecution in cases of DV are decreasing!

- Practice of prosecutors is not harmonized with the Convention (Art.55): for 13 consecutive years, prosecutors have become more and more inclined to dismiss criminal charges for domestic violence
- The main reason: when a victim decides to withdraw her statement or refuses to testify, prosecutors automatically dismiss the charges (instead of gathering other evidence, testimonies of witnesses, etc.) (revealed in research on judicial practice)
- In 2016, they dismissed **64,4%** (out of the total number of criminal charges) !!!



Step 2: Criminal charges, indictments and convictions for domestic violence in Serbia (2004-2017)

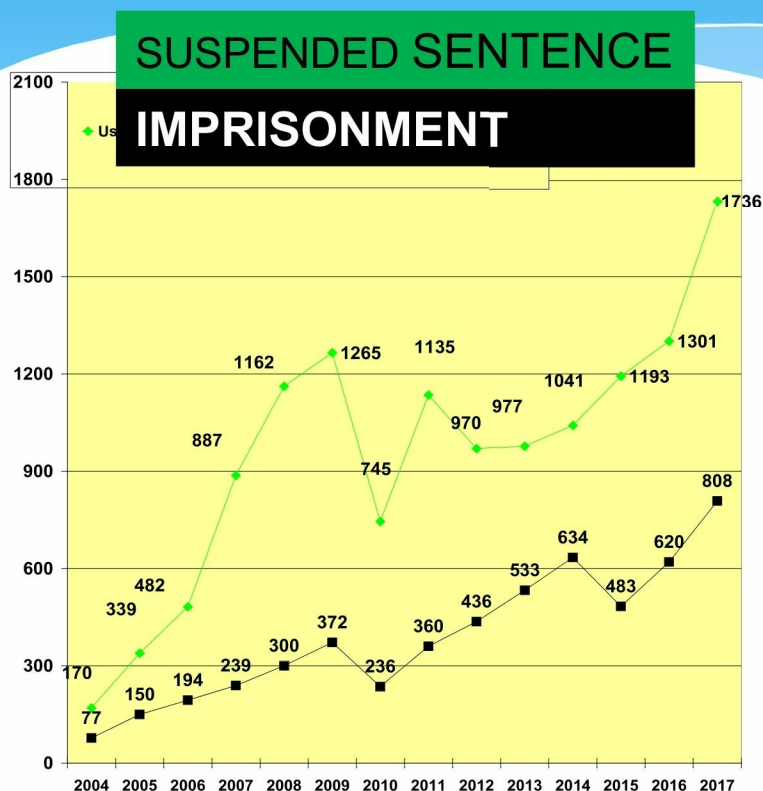


- Annual numbers of criminal charges against perpetrators have steadily **INCREASED** in this period
- But annual numbers of convictions remain (more or less) the same!

Created using sources: Statistical Office of Serbia, Criminal Charges, indictments and convictions for domestic violence, 2004-2017



Step 2: Penalties imposed by the courts in cases of domestic violence in Serbia: Suspended sentences versus imprisonment (2004-2017)



- Penalizing policy of the courts has remained very mild throughout this period

- Less strict sanctions were applied in comparison to other violent crimes (as indicated in case-law analyses)

- Mostly, perpetrators receive only SUSPENDED SENTENCES

- **Do perpetrators get the message that they should not repeat the offence?**

- **Does the criminal justice system actually discourage victims to bring cases to court?**

Created using sources: Statistical Office of Serbia, Criminal sanctions imposed in cases of domestic violence, 2004-2017

Review of research on judicial practice imply MORE BAD NEWS...

Penalizing policy of the courts indicate prejudice towards women – victims:

-Suspended sentences are the most common, while imprisonment is often imposed at the prescribed minimum (in some cases, even below the minimum prescribed in legislation!)

-A perpetrator of violence against a (female) partner/wife is more likely to receive a suspended sentence than a perpetrator of violence against parent(s)

(Konstantinovic-Vilic and Petrusic, 2004; 2008; Jovanović, Simeunović-Patić and Macanović, 2012; Judicial Academy, 2013)

Court proceedings lead to re-traumatization of victims:

- Victims of DV and rape are exposed to high level of re-traumatization, due to long proceedings (app. 2 years). In cases of rape, the criminal proceedings lasted from 2 to 4 years

(analysis of conduct of professionals in judiciary, based on cases of DV and rape in the period of 3 years; Judicial Academy, 2013)

- Courts do not use legal mechanisms to prevent traumatization of the victims during court proceedings

(Konstantinovic-Vilic and Petrusic, 2004; 2008; Jovanović, Simeunović-Patić and Macanović, 2012; Judicial Academy, 2013)



Conclusions of this part of reserach: Lack of harmonisation of practice with the requirements of the Convention in the area of Prosecution/Punishment of perpetrators

- * *Ex officio* prosecution of domestic violence cases has not reached proper results in practice:
- * Police officers have become more and more inclined to press criminal charges, but prosecutors and judges have failed to meet due diligence obligation in prosecution and punishment
- * Criminal justice system is not efficient (as the Convention requires), and it does not use legal mechanisms to protect victims during investigation and trails. In addition, victims are further exposed to re-traumatisation because trials last too long
- * **CRIMINAL JUSTICE SYSTEM (too often) FAILS VICTIMS**

An ultimate goal of Article 11:

Using data and research to assess the implementation of laws/policies and create proposals FOR IMPROVEMENT

Sweden

- * All statistical data (not only those related to the Convention) are BY LAW disaggregated by sex
- * A strong focus on evidence-based policy-making
- * Lots of funds invested in research – many surveys/analyses with the aim to identify shortcomings in responses to VAW by the police, social services and judiciary: a solid knowledge base on VAW has been created
- * The Government established a research centre dedicated exclusively to the study of men's violence against women: the National Centre for Knowledge on Men's Violence against Women (funded by the state).

(GREVIO report on Sweden, 2019)

- * **VISION AND DREAMS...**
- * **POLICY MAKERS MUST HAVE A VISION**
- * **THE CONVENTION OFFERS THE VISION. It can change lives. It can (potentially) save lives.**
- * **But, for that vision to be achieved, we need a full implementation and research studies aimed at CREATING AND IMPROVING LAWS AND POLICIES**