

# REPORT ON WOMEN'S ACCESS TO JUSTICE: MOVING CLOSER TO FULL RATIFICATION AND IMPLEMENTATION OF THE ISTANBUL CONVENTION



An International Conference of the Partnership  
for Good Governance II Programme  
Online, 7-8 October 2021

Funded  
by the European Union  
and the Council of Europe



EUROPEAN UNION

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Implemented  
by the Council of Europe



# REPORT ON WOMEN'S ACCESS TO JUSTICE: MOVING CLOSER TO FULL RATIFICATION AND IMPLEMENTATION OF THE ISTANBUL CONVENTION

An International Conference of the Partnership  
for Good Governance II Programme

Online, 7-8 October 2021

Professor Shazia Choudhry,  
Faculty of Law, University of Oxford

This document has been produced as part of the project *Women's Access to Justice: delivering on the Istanbul Convention and other European gender equality standards* co-funded by the European Union and the Council of Europe in the framework of the Partnership for Good Governance II – 2019-2022. The views expressed herein can in no way be taken to reflect the official opinion of either party. The reproduction of extracts (up to 500 words) is authorised, except for commercial purposes as long as the integrity of the text is preserved, the excerpt is not used out of context, does not provide incomplete information or does not otherwise mislead the reader as to the nature, scope or content of the text. The source text must always be acknowledged as follows  
"© Council of Europe, 2021".

All other requests concerning the reproduction/translation of all or part of the document, should be addressed to the Directorate of Communications, Council of Europe (F-67075 Strasbourg Cedex or [publishing@coe.int](mailto:publishing@coe.int)).

All other correspondence concerning this document should be addressed to the Partnership for Good Governance of the Council of Europe.

Partnership for Good Governance  
Office of the Directorate  
General of Programmes  
Council of Europe  
Strasbourg Cedex 67075 FRANCE  
E-mail: [odgp\\_pgg@coe.int](mailto:odgp_pgg@coe.int)

Photo and illustrations: Shutterstock  
Liana Finck, Vanda Kovacs

Design and Layout: Documents and Publications  
Production Department (SPDP), Council of Europe

This publication has not been copy-edited by the DPDP Editorial Unit to correct typographical and grammatical errors.

© Council of Europe, June, 2022.

All rights reserved. Licensed to the European Union under conditions.

# Contents

---

<b>INTRODUCTION</b>	<b>7</b>
<b>MOVING CLOSER TO FULL RATIFICATION AND IMPLEMENTATION OF THE ISTANBUL CONVENTION</b>	<b>8</b>
A – Equal access to justice is a fundamental right	8
B – The importance of States arriving at a common European standard in relation to access to justice and Violence against Women	9
C – The Council of Europe’s current Gender Equality Strategy and many of its joint Action Plans in the Eastern Partnership countries include women’s access to justice as a specific priority	11
D – The Istanbul Convention is the golden standard in the field and as a result of its implementation positive changes have been made to national laws.	12
E – Accession to the Istanbul Convention remains a key priority for the European Commission	13
<b>VIOLENCE AGAINST WOMEN: THE SHADOW PANDEMIC, ITS IMPACT, AND THE BARRIERS FOR WOMEN’S ACCESS TO JUSTICE</b>	<b>14</b>
<b>THE IMPACT OF COVID-19 ON WOMEN’S RIGHTS AND THE INTERSECTIONS BETWEEN VIOLENCE AGAINST WOMEN AND GENDER BIAS AND STEREOTYPES AS MAIN BARRIERS FOR WOMEN’S ACCESS TO JUSTICE</b>	<b>20</b>
The impact of COVID-19 on Access to Justice	20
How can the political response to violence against women be improved so that it is dealt with better, both outside of, and during, situations of crisis?	23
How should we deal with the apparent contradiction between the need for judicial diversity and accusations of interference with the independence of the judiciary?	25
<b>POSITIVE LESSONS FROM COVID-19</b>	<b>27</b>



Illustration: Liana Finck

# Introduction

---

**T**he Council of Europe Gender Equality Strategy 2018-2023 strives to achieve effective gender equality between women and men in all member States and to fulfil the Council of Europe's core mission of safeguarding human rights, upholding democracy, and preserving the rule of law, by strategically focusing on six areas that support and strengthen the implementation of the legal instruments and the *acquis* in the field of gender equality. It also highlights that there is an irrefutable link between sexism and violence against women and girls, and women's ability to have access to justice, to seek redress and fully enjoy their rights. The Strategy aims at obtaining better knowledge of the situation regarding women's access to justice, achieving changes in legislation and practices to better respond to women's needs and situations, ensuring women's equal access to justice, including a fair trial, and encouraging gender-friendly justice systems, free from gender bias and stereotyping. The COVID-19 pandemic has highlighted the urgency for integrating a strong gender equality perspective in all recovery policies, accompanied by appropriate resources, in order to mitigate the disproportionate gendered impact of the crisis on our societies, including a focus on access to justice. Access to justice is a human right and an integral element of the rule of law and a well-functioning democracy. While accessing justice may be difficult for everyone, it is even more so for women due to gender inequality in society and justice systems, persistent economic and social inequalities, gender bias and gender stereotypes and the widespread violence against women. Access to suitable and effective judicial remedies is critical to combating violence against women, one of the worst forms of discrimination against women and the most pronounced expression of unequal power relations between women and men that violate the human rights of women. Guaranteeing equal access of women to justice is one of the six priorities of the Council of Europe Gender Equality Strategy 2018-2023.



# Moving closer to full ratification and implementation of the Istanbul Convention

## A – Equal access to justice is a fundamental right

“Equal access to justice is a fundamental right – a legal right – enshrined in both the European Convention on Human Rights and the European Social Charter. It is not merely something that is desirable. Rather, it is something that every Council of Europe member state is obliged to ensure.”

*Marija Pečiniović Burić, Secretary General, Council of Europe*

Guaranteeing women’s equal access to justice is grounded in four major treaties of the Council of Europe:

- ▶ The European Convention of Human Rights
- ▶ The European Social Charter
- ▶ The Convention on Action against Trafficking in Human Beings
- ▶ The Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)



Yet, gaps persist: women have long experienced specific barriers and discrimination when they seek redress from the justice system. These vary across time, circumstances, and location – and recent examples include budget cuts to specific services, strict migration laws, and the impact of the COVID-19 pandemic. Indeed, necessary lockdowns put in place during the public health crisis resulted in spikes of domestic violence<sup>1</sup> and this in turn has exposed the shortcomings of many justice systems when it comes to protecting women and girls in their homes and providing effective redress where abuse occurs.

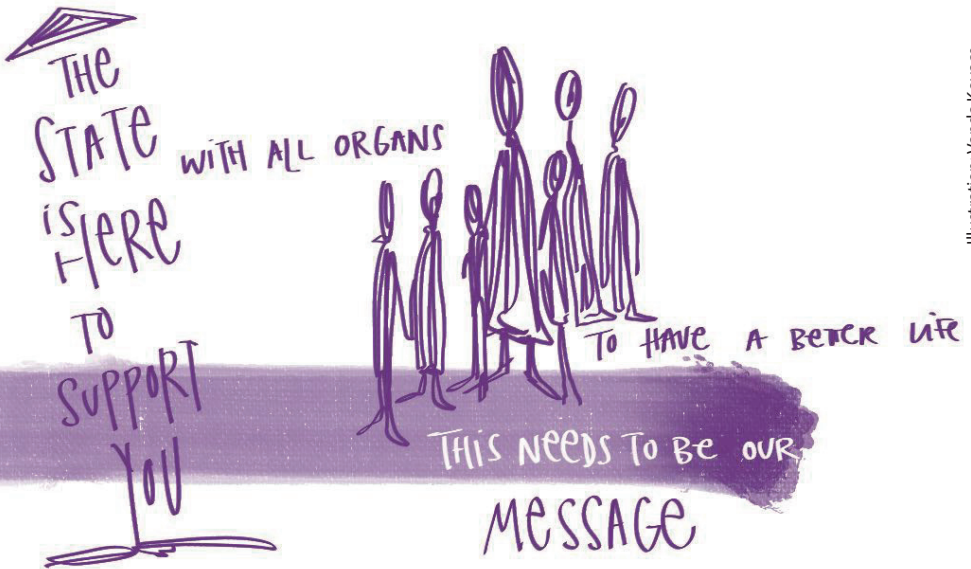
## **B – The importance of States arriving at a common European standard in relation to access to justice and Violence against Women**

**“While governments are primarily responsible for ensuring women’s access to justice, the Council of Europe’s role is to help them meet our common European standards.”**

*Marija Pejčinović Burić, Secretary General, Council of Europe*

The European Court of Human Rights (the European Court) has delivered a significant number of judgments that demonstrate the barriers women experience in accessing legal protection and remedies and that formulate standards in the sphere of women’s access to justice. Key judgments have been issued particularly in cases concerning violence against women, gender equality, and judicial gender stereotyping,<sup>2</sup> in which the European Court has formulated or upheld important principles that lay the foundation for

1. Emerging evidence indicates that the COVID-19 pandemic has led to an increase in the prevalence and intensity of violence against women in some countries, see Moreira, D. N. and Pinto da Costa, M. (2020) The impact of the Covid-19 pandemic in the precipitation of intimate partner violence. *International Journal of Law and Psychiatry*. Vol. 71 (0). Pp. 101606.; UN Women (2020). Impact of COVID-19 on violence against women and girls and service provision: UN Women rapid assessment and findings. Available at: IPOL | Policy Department for Citizens’ Rights and Constitutional Affairs 200 PE 658.648 [www.unwomen.org/en/digital-library/publications/2020/05/impact-of-covid-19-on-violence-against-women-and-girls-and-service-provision](http://www.unwomen.org/en/digital-library/publications/2020/05/impact-of-covid-19-on-violence-against-women-and-girls-and-service-provision); Acosta M. L. (2020) Gender-based violence during the pandemic and lockdown. (2020) *Spanish Journal of Legal Medicine*, [online] 46(3), pp.139–145.
2. For an example of a case dealing with judicial gender stereotyping, see the recent judgment of the European Court in *Carvalho Pinto de Sousa Morais v. Portugal*, Application no. 17484/15, judgment of 25<sup>th</sup> July 2017. The Court found a violation of Article 14 in conjunction with Article 8, in a case in which a woman was originally granted lowered compensation by national courts due to the reasoning that an older women’s sexuality was less important. Gender stereotypes are also discussed in *Emel Boyraz v. Turkey*, Application no. 61960/08, judgment of 2<sup>nd</sup> December 2014; and *Konstantin Markin v. Russia*, Application no. 30078/06, judgment of 7<sup>th</sup> October 2010.



securing equal access to justice for women. The European Court has also significantly increased women’s access to justice by recognizing that forms of violence against women perpetrated by private individuals constitute violations of particular rights protected under the Convention (importantly, the right to life and the prohibition of torture and inhuman or degrading treatment). Furthermore, the European Court case-law illustrates the importance that it assigns to the developing doctrine of positive obligations – a doctrine which applies regardless whether the perpetrator is a private individual or a State official. Several leading cases before the European Court marked significant progress in the way it has understood violence against women and its specific forms and viewed States’ obligations in this area. These standards have also informed the provisions of the Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention) and the interpretation of State responsibilities in this regard by the monitoring body of the convention, GREVIO.<sup>3</sup>

3. See Mid-term Horizontal Review of GREVIO baseline evaluation reports, May 2021.

## **C – The Council of Europe’s current Gender Equality Strategy and many of its joint Action Plans in the Eastern Partnership countries include women’s access to justice as a specific priority**

**“I particularly appreciate the cooperation that exists between the Council of Europe and the European Union, and which makes our Partnership for Good Governance possible.”**

*Marija Pejčinović Burić, Secretary General, Council of Europe*

Making access to justice a specific priority is fundamental for ensuring real equality between women and men. In order to achieve this, the Council of Europe, in cooperation with the European Commission, provides the Eastern Partnership with tailor-made support, the ‘Good Governance Partnership’, to help them bring their legislation and practice in line with the European standards. This has included the provision of legal expertise and capacity-building, and awareness-raising and peer-to-peer reviews through which national authorities and others are informed and empowered to make change to the benefit of their citizens. The Good Governance Partnership has taken the following specific steps:

- ▶ A pioneering mentoring programme, information webinars, and national training courses for legal aid lawyers have expanded the competences of legal professionals in the region.
- ▶ An online HELP course and an interactive checklist tool for gender mainstreaming law schools’ teaching have strengthened knowledge among practitioners and students.

Nonetheless, barriers remain across most member States and in 2017 the Partnership for Good Governance published its “Barriers, Remedies and Good Governance,” based on five country studies, and found the following gaps in anti-discrimination frameworks which leave women more exposed to harm:

1. Limited use of international standards and case law in the reasoning of judicial decisions.
2. Indirect discrimination against women and the persistence of gender stereotypes in the judiciary.
3. Significant procedural barriers and limited access to legal aid.
4. Evidence that legal aid lawyers, like legal counsellors, often lack specific training when it comes to violence against women.

It is also important to recognise that these gaps are not by any means restricted to the five countries involved in the Partnership. The persistence of these gaps has been demonstrated in a wide range of member countries which have ratified the Istanbul Convention, in the evaluation reports published by GREVIO, the independent Expert Body responsible for monitoring and implementing the Istanbul Convention.<sup>4</sup>

**D – The Istanbul Convention is the golden standard in the field and as a result of its implementation positive changes have been made to national laws.**

**“Rest assured the Istanbul Convention remains the gold standard and that I will do everything I can do to ensure that, through the EU’s accession to the Convention, all women have equal access to justice and that no woman is left behind.”**

*Helena Dalli, Equality Commissioner, European Union*

The Istanbul Convention is direct in its aims, which are: to prevent violence against women; to protect those who become victims; to ensure the prosecution of perpetrators; to encourage integrated policymaking. Where it has been implemented, it has worked, with positive changes to national laws. Several features of the Istanbul Convention are particularly relevant. First, the standards for the protection of women that it sets out are higher than national laws in many countries. Second, GREVIO provides a unique, independent, and international monitoring mechanism to evaluate the implementation at national level and assist compliance. Third, only this treaty’s States Parties can benefit from provisions relating to international co-operation in criminal matters and seek co-operation from others to bring perpetrators of crimes against women to justice. The benefits of ratification of the Istanbul Convention to all citizens of the Eastern Partnership Countries are therefore clear. From among the partnership countries, Georgia has ratified, whereas Armenia, Ukraine and the Republic of Moldova have each signed the treaty and each has also gone on to improve aspects of its national laws on gender-based violence. Furthermore, the Moldovan Parliament has now ratified the Istanbul Convention and Armenia and Ukraine have announced their intention to do the same.

---

4. See Mid-term Horizontal Review of GREVIO baseline evaluation reports, May 2021

## E – Accession to the Istanbul Convention remains a key priority for the European Commission

**“The Istanbul Convention is a wonderful tool to ensure women’s access to justice and its accession remains a key priority for the Commission.”**

*Helena Dalli, Equality Commissioner, European Union*

The EU Gender Equality Strategy 2020-2025 confirms that the European Commission will do all it can to prevent and combat gender-based violence, support and protect victims, and hold perpetrators accountable. The Istanbul Convention is the benchmark for international standards in this field. The European Union signed the Istanbul Convention in 2017, signalling the intention to become a party to this most advanced human rights agreement on protecting women from violence. Concluding the European Union’s accession is a key priority for the Commission which also proposed a new directive in March 2022 to prevent and combat gender-based violence against women and domestic violence. The proposal aims to strengthen the actions taken by the Member States by ensuring a minimum level of protection across the European Union, both online and offline. Building upon existing legislation, namely the Victim’s Rights Directive,<sup>5</sup> it will incorporate the added value of the terms of the Istanbul Convention to the national legislation of European Union member states within the European Union competences. In addition, the European Commission is working on a number of non-legislative measures which will bring it closer to the accession of the Istanbul Convention and which have a focus on gender-based violence, violence against women and tackling gender stereotypes. For example, the European Union has recently adopted several key strategies which are relevant to increasing women’s access to justice: the European Union strategy on gender equality, the European Union strategy on LGBTIQ equality, the European Union strategy on the rights of the child and the European Union strategy on victims’ rights. Furthermore, increased funding opportunities have been made available for organisations that are fighting gender-based violence through its Citizenship, Equality, Rights and Values programme. In addition, two of the top ten targets for 2025 of the newly launched Eastern Partnership agenda, ‘Recovery, Resilience and Reform’ are to invest in the rule of law and inclusive, gender equal and diverse societies.

---

5. 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

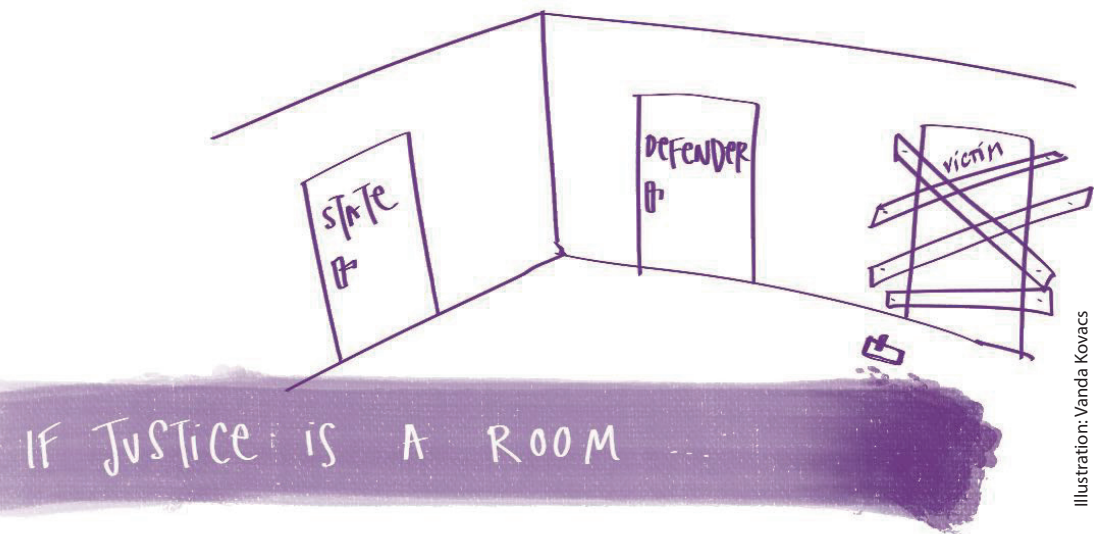


Illustration: Vanda Kovacs

## Violence against women: the shadow pandemic, its impact, and the barriers for women's access to justice

“Access to justice in the context of gender-based violence can be understood as seeking protection and realisation of the right to be free from such violence through legal processes, with States complying with their legal obligations from the first reporting of the violence, or the risk of violence, to law enforcement authorities.”

*Professor Christine Chinkin, Emeritus Professor, London School of Economics, UK*

The Convention for the Elimination of Discrimination against Women (CEDAW) Committee has emphasised that for an individual woman victim of violence to enjoy the practical realisation of equality and human rights, the political will that is expressed through legal and policy framework addressing violence against women is not in itself sufficient but must be supported

by State actors, who adhere to the State Party's due diligence obligations.<sup>6</sup> GREVIO has also consistently expressed the same idea - that the due diligence obligation is an overarching principle of the Istanbul Convention that requires States Parties to organise and co-ordinate their responses to violence against women thereby avoiding the fragmentation across multiple service providers that undermines the effectiveness of them all.<sup>7</sup>

There are a number of legal and practical obstacles that continue to exist for women who fear or who have experienced sexual or gender-based violence:

- ▶ **Gender Stereotyping** - Equality and fairness – due process – are undermined by gender and other stereotypes that pervade the entire justice system, whether the case in question is in the criminal courts against an alleged perpetrator, in the civil tribunals where protective orders are sought, or proceedings in family or administrative bodies relating to such matters as child custody or maintenance payments. Gender stereotypes and prejudices are compounded by stereotypes based on other factors such as race, ethnicity, religion, sexuality, disability – factors that construct the social divisions that operate within existing structures of power that are unfair and inefficient, impact negatively on resource allocation, including the allocation of justice,



Illustration: Liana Finck

6. Committee on the Elimination of Discrimination Against Women, General Recommendation 19 (11th session, 1992); Declaration on the Elimination of Violence Against Women, Art. 4(c), U.N. Doc. A/RES/48/104 (Dec. 20, 1993)
7. See as an example GREVIO's Baseline Evaluation Report on Spain, November 2020, page 16, paragraphs 25-27.

and cause further disadvantage to women from these groups in ways that make it still more difficult for them to secure justice. Such stereotypes and prejudice result in decisionmakers reaching misinformed or discriminatory judgments based on preconceived beliefs and inherent biases rather than on relevant facts, thus undermining the supposed objectivity and gender neutrality of the law, and of the rule of law itself.

### **Case Study – Angela Gonzalez Carreno v Spain CEDAW Communication No. 47/2012**

An individual communication to the CEDAW Committee – The case concerned long term extreme domestic violence by a husband against his wife. After they separated there were many further violent incidents, he disregarded protective orders with impunity, and his only conviction resulted in a fine of 45 euros. He was granted access to their young daughter – sometimes in supervised visits, sometimes unsupervised, despite the child expressing her fear of her father and the mother repeating her concerns. On one such unsupervised visit, he killed his daughter. The Committee concluded that Spain had failed to meet its due diligence obligations since no reasonable steps had been put in place to protect the mother or daughter against the foreseeable risk of further violence. The behaviour of the authorities – the judicial authorities, the social services, and the psychological experts – reflected a stereotyped conception of visiting rights, focusing on normalising the relationship between the father and daughter, itself based on a stereotyped conception of such a relationship. In the pursuit of formal equality between the parents, the facts in the particular case – the violence committed against the mother and her daughter and the danger they were in – were discounted. Although the Committee did not comment on this, it is possible the authorities discounted the mother’s fears as those of a panicky woman or a vengeful former wife. The case is illustrative of embedded and institutionalised sexism across the entire system – police, judicial and social services revealing ‘patriarchal stereotypes of gender roles’ and thus constituting a barrier to justice.

Bias and myths about how a ‘typical’ survivor of domestic abuse, rape or other forms of sexual violence should behave are also prevalent in many jurisdictions. Reliance upon such myths may cause secondary victimisation in the courtroom and fearing this may persuade victims either not to report violence, or to withdraw a complaint. Biases and prejudice do not just emanate from law enforcement personnel but also from others within the system, for instance the interpreters that are often essential to guarantee a fair trial,



especially in cases involving women from minority communities or migrant women. Failure to provide an interpreter from the outset may be a barrier to justice and, even where provided, bias and cultural prejudice in interpretation may not be recognised – the choice of words or nuances in language can distort the case. The Istanbul Convention’s requirement that States Parties seek to eradicate prejudices and practices that are based on stereotyped roles for women and men is developed through the 2019 Committee of Ministers’ Recommendation on Preventing and Combating Sexism. It is thus key to equal access to justice and underpins recommendations that States put in place training programmes for all those working with victims and perpetrators of gender-related and sexual violence, in particular to ensure regular and adequate training for all judges and magistrates on human rights and gender equality, the harms caused by gender bias and the use of sexist language. Such training should also encompass mandatory anti-racism training and an understanding of the white male privilege in the culture of law enforcement and the administration of justice.

- ▶ **Passivity on the part of the law enforcement officials**, for instance through their failure to respond appropriately to reports of violence and abuse, delaying or omitting altogether to carry out adequate and effective investigations. A thorough and effective investigation into allegations of gender-based and sexual violence requires promptness and reasonable expedition, open-mindedness, and unbiased consideration by the investigating authorities of all possible leads.

#### **Case Study – MC v Bulgaria, Application no. 39272/98, judgment of 4 December 2003**

The applicant complained that she had been raped by two men when she was 14 years old. The men were interviewed but it was concluded that they had not used threats or violence and there was no evidence of resistance. The district prosecutor issued a decree terminating the proceedings. The domestic authorities had taken more than fifteen years to investigate the rape, meaning that urgent investigative measures, such as an expert examination of the applicant’s clothes and interviewing witnesses, were taken only many years after the rape. This led to the prosecution becoming time barred. The complainant applied on the twin assertions that Bulgarian law did not provide effective protection against rape and sexual abuse, as only cases in which the victim had actively resisted were prosecuted, and that the authorities had not properly investigated her allegations.

Held: The failure properly to investigate her allegations constituted violation of her rights under ECHR Articles 3 and 8. The second aspect of her complaint – that there was not a proper investigation of her allegations – was a distinct and unconnected ground on which the Court decided that Article 3 had been breached.

The prohibition of torture was described as: ‘a positive obligation. . . to enact criminal-law provisions effectively punishing [serious crime] and to apply them in practice through effective investigation and prosecution.’ and ‘the Court considers that States have a positive obligation inherent in Articles 3 and 8 of the Convention to enact criminal-law provisions, effectively punishing rape and to apply them in practice through effective investigation and prosecution.’

- ▶ **Jurisdictional deficiencies, discriminatory procedural and evidentiary requirements.** Some are either written into the law or are omitted altogether from the law. An example of the former is a time limit – a statute of limitations – after which a claim is extinguished, and which may come into play because of delay on the part of the authorities as discussed above, or again because of trauma – the survivor’s inability or unwillingness to act earlier. The latter – a failure of the legal system – occurs when certain forms of gender-based violence are not criminalised, or are inadequately defined, or protective restraining orders are not provided for or are subject to unrealistic or financially prohibitive conditions. Even definitions that seek to give effect to the reality of a woman’s experience of the violence committed against her – for instance, a consent-based definition of rape rather than one that limits the offence to where the rapist has used force or threats of force, or where the woman must show physical resistance – a failure to understand sexual consent properly, the impact of fear and trauma, gender and other power imbalance and social pressures all contribute to the widespread under-reporting of such crimes and low conviction rates. This has further implications: the failure to introduce age-appropriate, evidence-based, and scientifically accurate and comprehensive sex and sexuality education for girls and boys into school curricula can be understood as a barrier to access to justice.
- ▶ **Lack of financial support for legal assistance** Legal aid and assistance have been drastically cut in some countries throughout austerity. Cuts to legal services are compounded by those to other support services – shelters and other escape mechanisms, as well as by inequality in

access to and delivery of economic and social rights, especially health and counselling services and social security. Lack of legal assistance may be especially harmful to the commencement of civil cases including those relating to protective orders, child custody and immigration rights following violence. Without legal aid a survivor may lack knowledge of the procedures and her rights to special measures and may have no option but to be a litigant in person – possibly faced by lawyers representing the perpetrator. The pandemic has exposed and intensified the inequalities and strains in the justice system that already presented significant obstacles to women victims of violence seeking justice. The situation is aggravated by the diversion of resources away from the justice sector towards more immediate public health and security measures. Justice institutions have introduced different ways of operating including prioritizing “exceptionally urgent” cases and placing restrictions on in-person appearances. The trivialisation of domestic violence reduces the likelihood of these cases being recognised as exceptionally urgent. Other innovations have involved the use of technology such as email, mobile phones, and videoconferencing for filing and hearing of cases by both claimants and judges. This has facilitated the continuation of hearings but disadvantages those without access to such technology or those less able to use it readily, for instance elderly women or women with disabilities, or those where the available outlets – tablets, mobile phones – are controlled by male members of the household. These adverse effects will continue in the aftermath of the pandemic – in addition to the exhaustion and mental stress felt by so many – unless steps are taken to redress the situation.



Illustration: Vanda Kovacs

## The impact of COVID-19 on women's rights and the intersections between violence against women and gender bias and stereotypes as main barriers for women's access to justice

### The impact of COVID-19 on Access to Justice

Access to justice is an essential ingredient of gender equality. The COVID-19 pandemic has illustrated the need to examine the impact of the crisis through a gender lens – from how lockdowns and stay-at-home orders can impinge on the rights of women, including increasing the risks of gender-based violence, to the economic impact of the crisis on women who are more likely to work in the informal sector and are disproportionately impacted by the economic consequences. Furthermore, the COVID-19 crisis has brought the resilience of justice systems into sharp focus. In countries where the justice system “does not guarantee gender equality, where deliberate discrimination

against women persists, and/or legal protection is lacking, justice for women is undermined.”<sup>8</sup> Furthermore, in countries which perform poorly on the Women, Peace and Security Index, a high share of women express legal needs – around 60%.<sup>9</sup> Women report legal issues at a substantially higher rate than men in the areas of social welfare, family, and children – 40% and 75% more women report legal issues relating to domestic violence and child support, respectively.<sup>10</sup> As discussed above, access of domestic abuse victims to support services, including first responders and crisis hotlines which often serve as connecting points to legal channels and housing and financial assistance, have been heavily restricted due to the pandemic.<sup>11</sup> Job losses caused by COVID-19 will also affect spousal maintenance and child support, including potential alteration of case management, decisions, and enforcement, all of which will have a disproportionate effect on women and their children. In addition, as noted by the United Nations Office on Drugs and Crime, “resources are being diverted away from the criminal justice system towards more immediate public health measures to deal with COVID-19.”<sup>12</sup> Other services, such as hotlines, crisis centres, shelters, legal aid and social services, are at risk of being scaled back for the same reason.<sup>13</sup> As a result it can also be seen how pre-existing problems with access to justice have been severely exacerbated, and support services – such as hotlines, crisis centres and legal aid – that were already insufficient have been scaled back. This has also resulted in women being pushed further towards resolving their issues in informal justice settings which often do not guarantee basic standards of justice. This is because informal justice settings evolve or remain stagnant depending on prevailing societal norms, values and power structures and can often reinforce traditional power structures causing disenfranchisement for women and marginalized populations. There is therefore a need to find

---

8. UN Women, IDLO, World Bank and Task Force on Justice. 2019. Justice for Women: High-level Group Report, prepared by Jeni Klugman. Available at: <https://www.unwomen.org/en/digital-library/publications/2020/03/justice-for-women-high-level-group-report>.

9. Ibid.

10. Ibid.

11. Peterman, Amber, Alina Potts, Megan O'Donnell, Kelly Thompson, Niyati Shah, Sabine Oertelt-Prigione, and Nicole van Gelder 2020. “Pandemics and Violence Against Women and Children.” Center for Global Development. 38 Available at: [www.cgdev.org/publication/pandemics-and-violence-against-women-and-children](http://www.cgdev.org/publication/pandemics-and-violence-against-women-and-children).

12. UNODC. 2020. “Coronavirus Disease (COVID-19) Response – UNODC Thematic Brief on Gender-Based Violence against Women and Girls.” United Nations. Available at: [https://www.unodc.org/documents/Advocacy-Section/GBVAW\\_and\\_UNODC\\_in\\_COVID19\\_final\\_7Apr2020.pdf](https://www.unodc.org/documents/Advocacy-Section/GBVAW_and_UNODC_in_COVID19_final_7Apr2020.pdf).

13. Ibid.

ways to engage with these systems in line with human rights standards and not to ignore them.<sup>14</sup>

Simultaneously, after years of progress it was clear that the COVID-19 pandemic resulted in the majority of women having to combine work with childcare, domestic chores and home schooling and that gender stereotypes were reinforced during the lockdown. Thus, despite improvements in the field of employment and economic growth prior to the outbreak of the COVID-19 pandemic, women still lack equal access to employment and equal working conditions compared to men.<sup>15</sup> The gender stereotypes, sexism and the lack of childcare facilities hamper women's participation in the labour market and in entrepreneurship. They may also lead to lower wages, thereby affecting women's living standards, quality of life and social inclusion.<sup>16</sup> Given it is also women who are the majority of workers in care professions<sup>17</sup> and in service sector jobs, such as retail and hospitality industry,<sup>18</sup> they are more at risk of becoming unemployed as a result of lockdown measures when jobs disappear in the wake of the crisis. On the other hand, the number of employees working from home increased to an unprecedented level straight after the outbreak of the pandemic. However, it is questionable whether working from home actually improved work-life balance during a period when schools and childcare institutions were closed and the amount of unpaid work grew massively.<sup>19</sup> Research indicates that women have been shouldering the lion's share of the increase in unpaid care and household work during the pandemic.<sup>20</sup> This includes notably the new task of overseeing children's

- 
14. See IDLO. 2018. Policy and Issue Brief: Navigating Complex Pathways to Justice: Engagement with Customary and Informal Justice Systems on how alignment of these systems with national COVID-19 guidelines and gender equality norms and standards can be ensured.
  15. European Commission, Proposal for a Joint Employment Report 2021 from the Commission to the Council, 2020, p. 62. Available at [ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=8351&furtherPubs=yes](https://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=8351&furtherPubs=yes)
  16. Sevilla, Almudena, 'Gender Economics: An Assessment', IZA of Labor Economics, DP No. 13877, 2020, p.11. Available at: [www.ftp.iza.org/dp13877.pdf](http://www.ftp.iza.org/dp13877.pdf)
  17. 4 EIGE, Gender equality and long-term care at home, Luxembourg: Publications Office of the European Union, 2020. Available at <https://eige.europa.eu/publications/gender-equality-and-long-term-care-home>.
  18. Papadimitriou, E. and Cseres-Gergelyne Blasko, Z., Economic sectors at risk due to COVID-19 disruptions: will men and women in the EU be affected similarly, Publications Office of the European Union, Luxembourg, 2020. Available at: [www.ec.europa.eu/jrc/en/publication/thematic-reports/economic-sectors-risk-due-covid-19-disruptions-will-men-and-women-eu-be-affected-similarly](https://www.ec.europa.eu/jrc/en/publication/thematic-reports/economic-sectors-risk-due-covid-19-disruptions-will-men-and-women-eu-be-affected-similarly).
  19. Blasko, Z., Working from Home when Teachers Do the Same – Teleworking and Work-Family Conflicts during COVID-19 Lockdowns, SSRN, 2020. Available at: [ssrn.com/abstract=3729301](https://ssrn.com/abstract=3729301).
  20. Wenham, C. The gendered impact of the COVID-19 crisis and post-crisis period, Report commissioned by the European Parliament, 2020. Available at: [www.europarl.europa.eu/supporting-analyses](http://www.europarl.europa.eu/supporting-analyses).

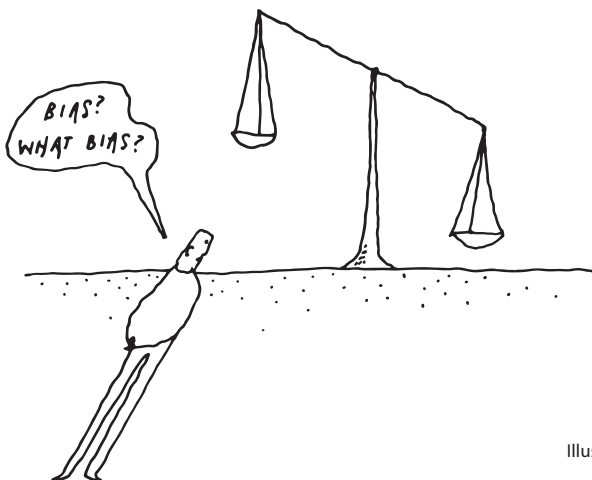


Illustration: Liana Finck

online schooling.<sup>21</sup> Some data suggest that the crisis only accentuated the previous imbalances in that respect: on average, women spent 62 hours per week caring for children (compared to 36 hours for men) and 23 hours per week doing housework (15 hours for men).<sup>22</sup> It is clear that this situation has not only 'rolled back' some of the progress that has been made in these areas but will have a long-term negative impact on access to justice in terms of the implications for gender equality.

### **How can the political response to violence against women be improved so that it is dealt with better, both outside of, and during, situations of crisis?**

The COVID-19 pandemic has amplified existing gender-based violence against women, confirming long-standing research findings that the risk of domestic violence tends to increase in times of crisis.<sup>23</sup> Lockdown measures were set to keep people safe at home. However, home turned out not to be safe for everyone and lockdown measures played a demonstrable role in the significant increase in reports of domestic violence and an increase

21. Gender Equality and Socio-Economic Consequences of the COVID-19 crisis, EIGE's Research note to support the Portuguese Presidency of the Council of the EU (2021, the 1st Semester), forthcoming.
22. Eurofound, Living, working and COVID-19, Publications Office of the European Union, Luxembourg, 2020, p.23-24, data collected in April and July 2020. Available at: [www.eurofound.europa.eu/sites/default/files/ef\\_publication/field\\_ef\\_document/ef20059en.pdf](http://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef20059en.pdf).
23. World Health Organization, Violence and disasters, 2005. Available at [https://www.who.int/violence\\_injury\\_prevention/publications/violence/violence\\_disasters.pdf](https://www.who.int/violence_injury_prevention/publications/violence/violence_disasters.pdf).

in gender-based violence overall.<sup>24</sup> The importance of the role of empowerment of women, either individually or through support services, in accessing their rights or in supporting the women's movement in general, and the civil society movement, is therefore crucial. However, it was also noted that there has been a significant amount of backlash towards the civil society and women's movement in general and the reduction of civil society space in a number of member States in the last decade.<sup>25</sup> The main fields of this include the key areas of institutional and policy framework for gender equality, certain policy fields (such as education, sexual and reproductive health and rights, and preventing and combating violence against women) as well as the working environment/operating space for women's human rights civil society organisations.<sup>26</sup>

Consequently, both the gender equality and women's human rights agenda and the main actors promoting this agenda have faced challenges, including women's rights organisations who have acted as catalysts and progress leaders in legislative and policy developments this last decade. Pre-existing and ongoing challenges to their sustainable operation – e.g., difficulties in accessing funding due to restrictive criteria and administrative burdens – have been further heightened in recent years by measures and initiatives aiming at or resulting in the creation of an unfavourable, or even hostile environment. These have been of varying depth and have taken numerous forms in the countries concerned, such as smear campaigns, legislative measures, or centralization of funding. In some countries, the backlash affects a wider group of civil society organisations with a progressive democracy-development and human-rights agenda. In parallel, other, non-rights-based women's groups and/or initiatives have been supported or favoured by

- 
24. World Health Organization, The rise and rise of interpersonal violence – an unintended impact of the COVID-19 response on families, 2020. Available at: [www.euro.who.int/en/health-topics/diseaseprevention/violence-and-injuries/news/news/2020/6/the-rise-and-rise-of-interpersonal-violence-anunintended-impact-of-the-covid-19-response-on-families](http://www.euro.who.int/en/health-topics/diseaseprevention/violence-and-injuries/news/news/2020/6/the-rise-and-rise-of-interpersonal-violence-anunintended-impact-of-the-covid-19-response-on-families). United Nations, WHO warns of surge of domestic violence as COVID-19 cases decrease in Europe, UN Regional Informational Centre for Western Europe, 2020, available at: [www.unric.org/en/who-warns-of-surge-ofdomestic-violence-as-covid-19-cases-decrease-in-europe/](http://www.unric.org/en/who-warns-of-surge-ofdomestic-violence-as-covid-19-cases-decrease-in-europe/).
  25. See Challenges to women's human rights in the EU – Gender discrimination, sexist hate speech and gender-based violence against women and girls – Contribution to the third Annual Colloquium on Fundamental Rights – November 2017, European Union Agency for Fundamental Rights. p. 3. Available at: [www.ec.europa.eu/newsroom/just/document.cfm?doc\\_id=48258](http://www.ec.europa.eu/newsroom/just/document.cfm?doc_id=48258).
  26. See Women's Rights in Turbulent Times: Conclusions of the 2017 Annual Colloquium on Fundamental Rights. European Commission. Available at [www.ec.europa.eu/newsroom/just/document.cfm?doc\\_id=50219](http://www.ec.europa.eu/newsroom/just/document.cfm?doc_id=50219).



some governments.<sup>27</sup> This has also had a significantly negative impact upon the ability of civil society organisations to support women in accessing their rights during the COVID-19 pandemic. All possible efforts must be taken to counteract such tendencies.

### **How should we deal with the apparent contradiction between the need for judicial diversity and accusations of interference with the independence of the judiciary?**

Women judges, police, prosecutors, lawyers and legal aid providers, and associations of women working in the justice sector, play an important role in shaping the justice-for-all agenda.<sup>28</sup> When women are positioned in the justice sector, their contributions are substantial. The mere presence of women in a legal decision-making role can counteract both actual bias and perceptions of gender bias,<sup>29</sup> as well as public perceptions that justice institutions are out of touch with the overall population.<sup>30</sup> This means that even women judges who are not gender-sensitive play an important role in improving the credibility of the justice system and trust in its capacity to deliver on equality. By their presence they demonstrate to the public that justice, and the judiciary in particular, is not closed to diversity, and is composed of the multitude of groups that make up wider society.<sup>31</sup> Despite gaps in data and research, as their numbers and influence solidify, women are emerging as important justice leaders.

A growing body of empirical research suggests that women judges contribute to improved access to justice for women, by supporting women's specific

- 
27. See 'Backlash in Gender Equality and Women's and Girls' Rights' by Policy Department for Citizens' Rights and Constitutional Affairs Directorate General for Internal Policies of the Union PE 604.955– June 2018.
  28. IDLO, 2018. Women Delivering Justice: Contributions, Barriers and Pathways. Available at: [www.idlo.int/publications/women-delivering-justice-contributions-barriers-pathways](http://www.idlo.int/publications/women-delivering-justice-contributions-barriers-pathways).
  29. Nienke Grossman, "Sex on the Bench: Do Women Judges Matter to the Legitimacy of International Courts", *Chicago Journal of International Law*, vol. 12, No. 2 (2012), page 665.
  30. Joshua Doherty, "Women's Representation in Judiciaries Worldwide: Arguments in Favor of Increasing the Gender Diversity on the Bench" (Institute for Global and International Studies, George Washington University, 2012).
  31. The ICJ report on women in the judiciary echoes this sentiment, and links democratic legitimacy to the notion of equal justice: "for equal justice to be delivered, those administering justice should reflect and embody the diversity of the society they are presiding over". ICJ, "Women and the Judiciary", page 20. As observed by Day O'Connor and Azzarelli, "people are more likely to put their trust and confidence in courts that represent all individuals that constitute a society". Sandra Day O'Connor and Kim K. Azzarelli, "Sustainable Development, Rule of Law, and the Impact of Women Judges", *Cornell Journal of International Law*, vol. 44, No. 3 (2011), page 2.

justice needs across a range of issues. As an example, in the international criminal arena, there are some indications that women have contributed to more informed prosecutions and a better understanding of crimes that target women, thereby developing and strengthening international human rights jurisprudence.<sup>32</sup> It is therefore critical to boost levels of women's participation in justice delivery to promote its transformational potential and the essence of equality before the law. Taking such initiatives therefore does not create any challenges to the independence of the judiciary, but rather it strengthens its legitimacy and the rule of law.

---

32. See Dawuni, "African Women Judges on International Courts", pages 230, 239 and also Kimi Lynn King and Megan Greening, "Gender Justice or Just Gender? The Role of Gender in Sexual Assault Decisions at the International Criminal Tribunal for the Former Yugoslavia", *Social Science Quarterly*, vol. 88, No. 5 (2007).

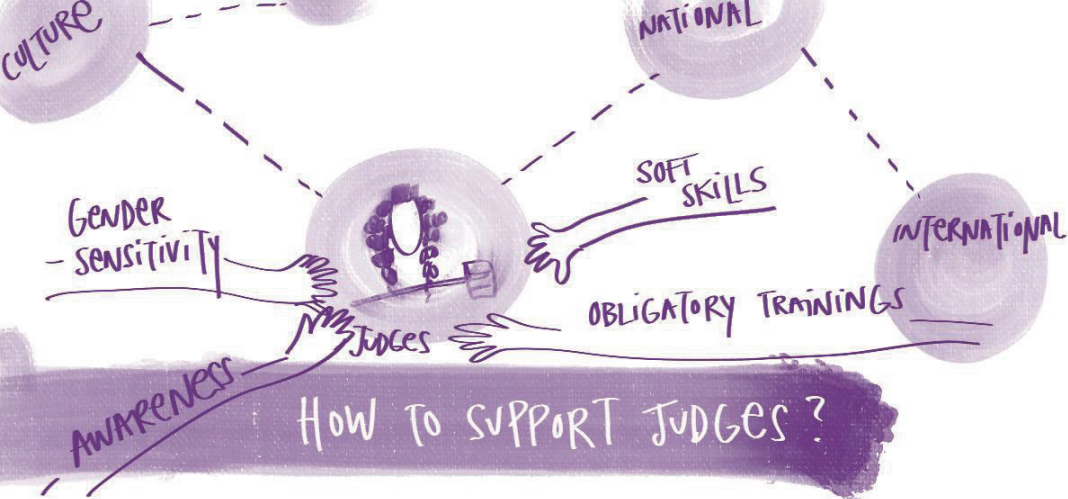


Illustration: Vanda Kovacs

## Positive lessons from Covid-19

**D**espite the difficulties that the pandemic highlighted, and which have been discussed above, Covid-19 has also provided a number of opportunities and reasons for some positivity going forward.

First, the crisis created by the pandemic has provided an opportunity to radically rethink and reshape the approach to access to justice and gender equality. Where some systems were unable to adapt, new and innovative solutions quickly emerged and where possible, existing systems adapted by implementing new ways of engagement, for example, digitizing hearings, online advice, and support, etc. The pandemic has also provided an opportunity to review justice systems and gender equality in a more holistic way, involving a range of organisation(s) and institutions working together.

Second, the pandemic has highlighted the key role that civil society organisations play, particularly so during crises. During Covid-19 it quickly became apparent in a number of member States that civil society organisations, by virtue of being closer ‘to the ground’ were able to draw attention to new and emerging problems and come up with solutions much more quickly than governmental bodies and institutions. As a result, governments which responded well to the needs of their societies during the pandemic were often those which engaged constructively with civil society organisations.

Third, the pandemic has highlighted an opportunity for society to understand vulnerability. On a positive level, it became clear to most that some people can be more vulnerable than others in areas that are often overlooked, such as those with ill health, those suffering from domestic abuse, the homeless and those with other additional vulnerabilities. The visibility of these demographics therefore increased, as did wider societal understanding of the particular challenges that they face. In this sense, the wave of collective solidarity demonstrated in member States has shown that people do care about one another and that there is an opportunity for governments to build upon this new level of understanding and sensitivity in implementing change.

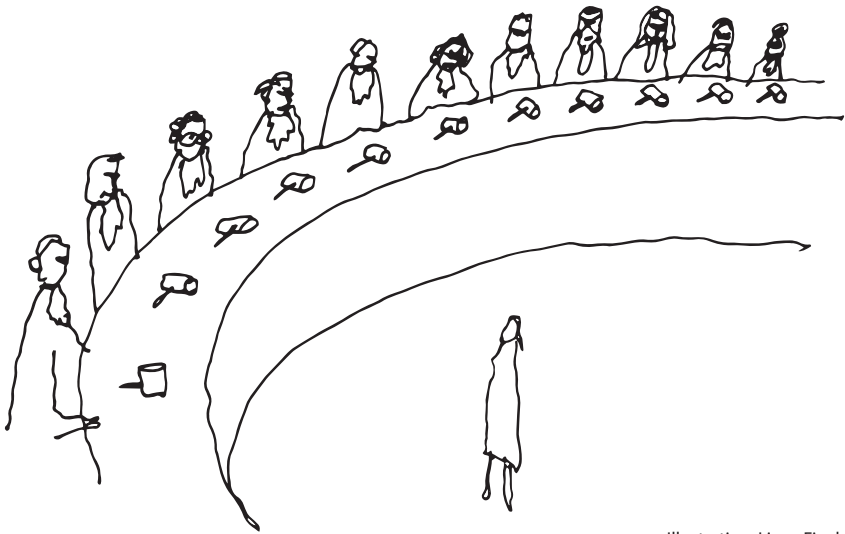


Illustration: Liana Finck

## **Recommendations: Five Crucial Next Steps for Ensuring Women's Access to Justice**

1. Improve training for law enforcement and legal personnel on women's rights and access to justice, particularly on the impact of gender stereotyping and myths.
2. Improve the capacity of justice systems to deal with women's rights to adapt in times of crisis by improved resourcing and ensuring that jurisdictional, discriminatory, procedural and evidentiary deficiencies are removed.
3. Ensure that civil society organisations are seen as a primary partner in the justice chain and as crucial in facilitating the empowerment of women.
4. Ensure a survivor-centred focus in the legal and policy response to victims of gender-based violence.
5. Boost levels of women's participation in justice delivery by supporting women's law networks and reforming legal admission and appointment.

The Member States of the European Union have decided to link together their know-how, resources and destinies. Together, they have built a zone of stability, democracy and sustainable development whilst maintaining cultural diversity, tolerance and individual freedoms. The European Union is committed to sharing its achievements and its values with countries and peoples beyond its borders.

**[www.europa.eu](http://www.europa.eu)**

---

Funded  
by the European Union  
and the Council of Europe



EUROPEAN UNION

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.

**[www.coe.int](http://www.coe.int)**

---

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

---

Implemented  
by the Council of Europe