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## **THE IMPACT OF COVID-19 ON WOMEN'S ACCESS TO JUSTICE**

**Gender Equality Commission**

**THE IMPACT OF COVID-19 ON  
WOMEN'S ACCESS TO JUSTICE**

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## Acronyms and abbreviations

BPfA	Beijing Platform for Action
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CEPEJ	European Commission for the Efficiency of Justice
CIS	Commonwealth of Independent States
COURT	European Court of Human Rights
Covid-19	Coronavirus
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CRPD	Convention on the Rights of Persons with Disabilities
CRSV	Conflict-related sexual violence
DRR	Disaster-risk reduction
EBO	Emergency barring order
ECA	Europe and Central Asia
ECE	Economic Commission for Europe
ECHR	European Convention on Human Rights and Fundamental Freedoms
EIGE	European Institute for Gender Equality
ENCJ	The European Network of Councils for the Judiciary
EU	European Union
GEC	Gender Equality Committee (Council of Europe)
GIWPS	Georgetown Institute for Women, Peace and Security
HRC	Human Rights Committee
ICCPR	International Convention on Civil and Political Rights
ICESCR	International Convention on Economic, Social and Cultural Rights
ICJ	International Commission of Jurists
ICRSE	International Committee on the Rights of Sex Workers in Europe
IEC	Information, education and communication
ILO	International Labour Organization
IPU	Inter-Parliamentary Union
OHCHR	United Nations Office of the High Commission for Human Rights
PACE	Parliamentary Assembly of the Council of Europe
PO	Protection order
RSF	Reporters without Borders
SGBC	Sexual and gender-based crimes
SME	Small and medium enterprise
SRH	Sexual and reproductive health
SRHR	Sexual and reproductive health and rights
UN	United Nations
UNDP	United Nations Development Programme
UNFPA	United Nations Population Fund
UNODC	United Nations Office on Drugs and Crime
WHO	World Health Organization
WHRD	Women's human rights defender

## **Executive summary**

This report explores the impact of Covid-19 restrictions on women's access to justice in Europe, with particular attention to Eastern Partnership countries. It is divided into two parts: the first sets forth the applicable international and regional standards on, and provides a generalised description of barriers to, women's access to justice. The second part describes each type of barriers in Eastern Partnership countries.

The second part sets forth the relevant international standards governing the imposition of restrictions to or derogations from human rights, with a focus on the non-discrimination and judicial review components of the standards as related to women's rights and access to justice. It examines the absence of women's participation in decision-making bodies charged with pandemic response, and details both the pre-existing inequalities that were exacerbated by the disproportionate impact on women across sectors stemming from the pandemic response. Finally, it demonstrates the resulting impediments to women's ability to exercise a range of rights, including their access to justice.

When assessing the impact of governmental measures to respond to the Coronavirus (Covid-19) outbreak on women's access to justice, a few key themes emerge. The first relates to the extent of pre-existing gender inequality that was then perpetuated and exacerbated by gender-blind judicial decision-making related to the pandemic in most countries. The second pertains to insufficient women's participation and the lack of gender expertise in the relevant national decision-making bodies. This gender-blind policymaking resulted in women disproportionately bearing the burden of emergency measures.

Nowhere was this more evident than in the dramatic rise of domestic violence resulting from the widespread application of lockdowns. "Restrictions on movement imposed in order to contain the Covid-19 pandemic [] left thousands of women and girls trapped at home, a place of fear, where psychological, sexual, physical and economic abuse are rampant".<sup>1</sup> The extent of the discriminatory impact on women calls into question the legality of many emergency decrees and sweeping legislative reforms.

### ***Women's access to justice in the region***

The region has experienced significant advances in the development of international standards pertaining to the rights of victims of violence against women, culminating in the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) in 2011. Efforts by Council of Europe and other regional actors to support national implementation of these standards in the European region has been considerable, with many successes to date.

Yet, much remains to be accomplished. In most countries in the region, domestic violence continues to be prosecuted as a singular incident without reference to the history of violence and thus the nature of the harm. In the European region, only Ireland and the United Kingdom have criminalised coercive control. Proactive evidence gathering in cases involving violence against women continues to be rare, contributing to prosecutorial declination and an over-reliance on victim testimony. Not all forms of violence against women and domestic violence have been criminalised in countries across the region. Psychological and economic violence have yet to appear in most criminal codes in Eastern Partnership countries. The majority of countries in the region have yet to harmonise sexual violence legislation with the consent-based standard set forth in the Istanbul Convention.

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<sup>1</sup> UN Special Rapporteur on violence against women its causes and consequences, Rape as a grave, systematic and widespread human rights violation, a crime and a manifestation of gender-based violence against women and girls, and its prevention, A/HRC/47/26, 2021, para 41.



The effective implementation of protection orders remains a challenge, especially in Eastern Partnership countries. Harmonised and disaggregated data collection across the justice chain remains rare, especially data on the relationship between the victim and the perpetrator. Gender and compounded stereotypes continued to be invoked with frequency by actors across the justice chain, affecting perceptions about what occurred, the nature of the criminal offence and the culpability of the accused. Sentences do not always reflect the gravity of the crime, and in many countries, victims rarely receive compensation for damages, rendering the right to an effective remedy illusory for most.

Access to justice for women in conflict with the law has received less attention from the international community. The prosecution of victims remains too common. For example, documentation of the extent to which victims of trafficking have been prosecuted for acts they were compelled to commit while being trafficked has not yet translated into their increased identification prior to or during criminal proceedings, nor to the increased application of the non-punishment principle. The operative dichotomy between victims and perpetrators, in addition to stereotypes related to the “ideal victim,” impede courts from adequately addressing victim resistance violence. Deeply rooted gender stereotypes related to women’s sexuality and morality, combined with gaps in legislation and its implementation, render sex workers subject to frequent criminal sanctions even in countries where prostitution is legalised.<sup>2</sup>

Within the context of civil law, discriminatory distributions of marital assets in divorce proceedings and the ongoing failure to consider the value of women’s unpaid care and domestic work continue to perpetuate women’s economic vulnerability. Women still face challenges in enforcing alimony and child maintenance orders, particularly in the Eastern Partnership and Western Balkan regions, further contributing to the feminisation of poverty.

### ***The impact of Covid-19 restrictions on justice systems***

The impact of Covid-19 restrictions on the criminal justice system reveals limited judicial review of emergency measures and related legislation, despite their direct effect on fundamental human rights. Many governments used a punitive and carceral approach to policing the imposed restrictions. The heightened criminal justice approach taken in several countries exacerbated the already concerning economic, social and health impact of the pandemic given its inherently discriminatory impact on marginalised communities.

Court closures and restrictions on movement precipitated the widespread use of ICT in judicial proceedings. The widespread use of video and telephone hearings raised multiple fair trial rights concerns, including for specific vulnerable categories of persons, such as those with disabilities and victims of gender-based violence.

### ***Legality of emergency measures***

The public health emergency prompted immediate responses from governments around the world that resulted in restrictions to human rights and fundamental freedoms, including the freedom of movement, expression and assembly. In many instances, these emergency measures were initially imposed without or with limited effective judicial review. International standards require restrictions to and derogations on fundamental human rights to be, *inter alia*, necessary, proportional and non-discriminatory. Given the overwhelming discriminatory impact of pandemic-related restrictions on women and other protected categories, an analysis of the discrimination component of the applicable standard begs sustained inquiry.

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<sup>2</sup> Prostitution constitutes an administrative offence in Azerbaijan, Georgia and the Republic of Moldova. National research: Azerbaijan, Georgia.

### ***Women's participation in pandemic-related decision-making***

When considering the discriminatory impact of pandemic restrictions, it is significant to note the level of gender parity among decision makers. Across sectors, governmental responses pandemic simply replicated pre-existing practices and policies, both good practices and blind spots, with the resultant limited ability to systemically ensure both women's effective participation in decision-making processes and the protection of their rights.

Decision-making committees and task forces were established largely without women's meaningful inclusion and often without any gender expertise. Some national task forces had no female members; others had only one or two. National gender equality machinery and tools designed to ensure the mainstreaming of women's needs and rights into national decision-making processes were side-lined with very few exceptions. The systemic, and in many countries, longstanding exclusion of women and consideration of gender and diversity issues set the stage for their shouldering a disproportionate share of the burdens imposed by pandemic policymaking. The reproduction of these systems has had the effect of perpetuating and exacerbating discrimination, violence and socio-economic marginalisation.

Where good practice was already in place, women's disproportionate burden of the impact of the crisis was mitigated. Countries with robust legal and institutional gender equality frameworks, and active civil society organisations (CSOs) on women's rights, were among the first to identify and respond to systemic violations of women's rights, including the skyrocketing of domestic violence, and the double burden of unpaid care and domestic work along with employment obligations and home-schooling.

### ***The rise in domestic violence prevalence***

The absence of a gender lens in pandemic-related decision-making resulted most notably in what has been referred to as the "shadow pandemic" or the "pandemic within the pandemic," namely the exponential rise of domestic and intimate partner violence caused by restrictions on freedom of movement.<sup>3</sup> It is noteworthy that women faced increased violence during the pandemic while meaningful access to justice or to needed services were simultaneously curtailed by decision makers. The dramatic rise of violence through forced isolation with perpetrators constituted only one of several systemic judicial, economic and social problems generated by gender-blind decision-making that disproportionately affected women and vulnerable persons.

### ***Women's lack of access to justice mirrors structural social and economic discrimination***

All crises disproportionately impact the most vulnerable, and the outbreak of Covid-19 was no exception. While women are not considered as an inherently vulnerable group in need of protection,<sup>4</sup> discriminatory social norms, practices and structures assign them lower economic status, limited political influence, the bulk of unpaid care and domestic work. Additionally, they face increased prevalence of gender-based violence that impacts them disproportionately and impedes the exercise of other rights, resulting in their increased vulnerability during crises.

The slow advance of meaningful access to justice for women in the region reflects the limited progress in women's economic empowerment and political participation to date. As recognised in the Beijing +25 regional review in 2019, most progress in women's rights and gender equality "has been

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<sup>3</sup> See, UN Women, [The Shadow Pandemic: Violence against women during COVID-19](#), [online].

<sup>4</sup> CEDAW, General Recommendation No. 37, CEDAW/C/GC/37, 2018, para 7, noting that broadly considering women as vulnerable constitutes a gender stereotype.

incremental, rather than structural and transformational”.<sup>5</sup> Women’s lack of access to justice cannot be divorced from their socio-economic status in justice systems increasingly designed for elites.<sup>6</sup> The impact of pandemic-related policies, exacerbating women’s social and economic inequality, has important bearing on their access to justice.

The systemic discrimination and violence women encounter within the justice system reflects their experience in other domains of their life: in the workforce, political and economic systems, educational and health systems, and online. Indeed, the function of violence against women, from whatever source in whatever domain, is to maintain their structural subordination.

The period leading up to the pandemic and onward was marked by a co-ordinated opposition to women’s rights and gender equality especially within the Eastern Partnership region, but extending beyond.<sup>7</sup> In some countries, the justice sector has contributed to the substantive roll-back of women’s rights, in co-operation with other branches of government.

### ***Justice during and since the pandemic***

In many countries, pandemic-related policymaking in the justice sector also limited the extent to which it considered gender issues. Justice was not considered as an “essential service” for the purposes of operating during the pandemic. Widespread court closures and limitations to “urgent” cases functioned as a barrier to access to justice for all, but especially for women who disproportionately seek recourse for social welfare and family issues, categories that were not typically deemed “urgent” by judicial authorities. Priority was given to protection orders and their appeals.

Although not initially considered in initial emergency measures, the gender-based violence response was subsequently prioritised in several countries in the region. This is likely the result of sustained awareness raising by international and national actors over many years, coupled with the institutional and legal frameworks established at the national level in accordance with the Istanbul Convention. Yet, in many places the system broke down, critical human and financial resources were diverted and remote case handling proved ineffective in ensuring protection, especially in countries where the implementation of prevailing standards was already weak.

The expansion of the use of remote proceedings, and the intention to continue to broaden and institutionalise the use of ICT, has and will have an enormous impact on those already facing multiple barriers to their access to justice. In addition to concerns about technical and connectivity limitations to parties’ effective participation in remote hearings, including the issue of confidentiality of lawyer-client communication, the extended use of video and telephone hearings has to address digital divides that principally affect women, persons with disabilities, the poor and persons in rural areas.

Nor has sufficient attention been paid to the ways in which remote hearings in the context of domestic and intimate partner violence have jeopardised women’s safety and privacy protections. Women’s familial and intimate relationships with both co-defendants and those who perpetrate violence against them render them particularly vulnerable to pressured testimony as witnesses in remote proceedings. Equally concerning are the barriers remote hearings create in identifying persons with cognitive impairment, mental health and neuro diverse conditions, and the absence of measures

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<sup>5</sup> UN Women, Regional assessment of implementation of the Beijing Declaration and Platform for Action in Europe and Central Asia, 2020.

<sup>6</sup> UN Special Rapporteur on the independence of judges and lawyers, The coronavirus disease (COVID-19) pandemic: impact and challenges for independent justice, 9 April 2021, para 114.

<sup>7</sup> UN Women, Regional assessment of implementation of the Beijing Declaration and Platform for Action in Europe and Central Asia, 2020, p. 12.

foreseen to address this issue, especially given such persons' over-representation in criminal justice systems.

### ***The punitive approach to enforcing pandemic-related restrictions***

Several countries in Europe took a highly punitive approach to enforcing pandemic restrictions, expanding police powers and imposing both high fines and imprisonment. These policies had a disproportionate impact on the economically and socially marginalised communities most frequently subjected to policing, including migrant, LGBTI, racial and ethnic minorities, as well as sex workers and women human rights defenders (WHRDs)—vulnerable categories already facing the brunt of the economic impact of lockdowns. Moreover, the potentially serious health risks associated with incarceration call into question this choice of method for combating a public health crisis. Like men, women faced increased pre-trial detention during the pandemic, while they were less likely than men to be granted exceptional release from detention.

### ***Looking forward***

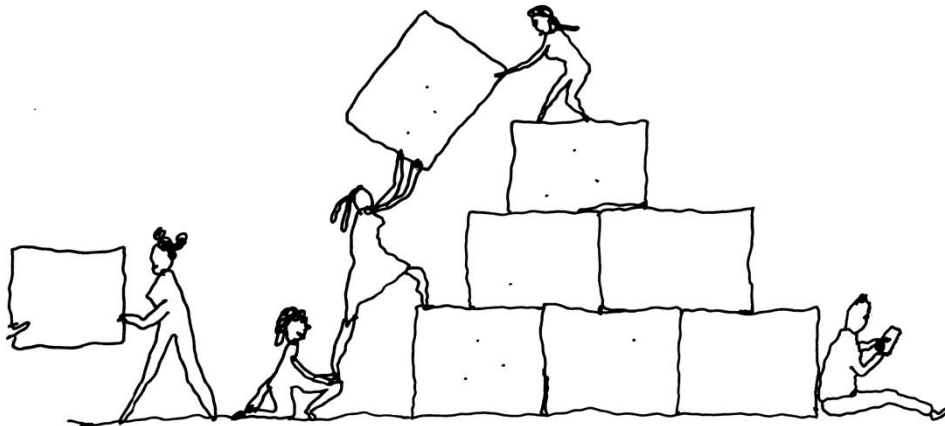
All issues addressed in the report reflect long-standing cross-sectoral failures to meaningfully address gender and other forms of discrimination, which were exacerbated by gender-blind and discriminatory pandemic-related policies.

The crisis produced by the outbreak of the Covid-19 pandemic and the governmental response constitute the latest in a series that have resulted in questions concerning institutional legitimacy that encompass justice sector institutions. Attention to the ongoing barriers to access to justice for women – half of the population – and their re-victimisation by judicial actors is necessary because they reflect the legitimacy of the justice sector as a pillar of democracy. As the Council of Europe Commissioner for Human Rights stated in a speech on International Human Rights Day in 2020:

While, increasingly, commitment to upholding human rights standards has been faltering all over the continent for several years, the Covid-19 pandemic has accelerated the erosion of the democratic fabric of our society, on which protection of human rights ultimately depends.

Pre-existing legal and institutional frameworks had important implications for the gender responsiveness of the justice sector in the face of pandemic-related restrictions. The comprehensive standards established by the Council of Europe, and the provision of institutional capacity building across the region in this domain, constitute invaluable resources for progress moving forward.

## 1. Introduction



*Illustration: Liana Finck*

Access to justice constitutes both a basic human right, as well as a means of protecting or restoring the exercise of other universally recognised human rights that have been violated.<sup>8</sup> Women's access to justice has been defined as:

Access by women, in particular, from poor and disadvantaged groups, to fair, effective, affordable and accountable mechanisms, for the protection of rights, control of abuse of power, and resolution of conflicts. This includes the ability of women to seek and obtain a fair and just remedy through formal and informal justice systems and the ability to influence and participate in law-making processes and institutions.<sup>9</sup>

When examining women's access to justice, the rights of victims of gender-based violence (GBV) are often the first and only rights considered. This can be attributed to the considerable effort by the international community, human rights bodies and some national governments, to improve the outcomes and experiences of GBV victims in the criminal justice sector. Such efforts have culminated in a rich body of international law, in particular the Council of Europe Convention on combating violence against women and domestic violence (Istanbul Convention), as well as European Court of Human Rights' jurisprudence and soft-law standards.

Despite significant advances in these widely recognised rights to access to justice for GBV victims across the region, a cursory review of media reports of individual cases issued just prior to, and during

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<sup>8</sup> UN Special Rapporteur on the independence of judges and lawyers, Report of the Special Rapporteur on the independence of judges and lawyers, A/HRC/17/30, 2011, para 37

<sup>9</sup> UN Women, UNODC, UNDP and OHCHR, A practitioner's toolkit on women's access to justice programming, 2018, p. 17.

the pandemic reveals stark examples of dismal failures to protect women’s rights, and their continued re-victimisation by actors across the justice chain.

One notable example was the prosecution and conviction of Sarah (a pseudonym to protect her anonymity), a British woman who filed a police complaint after being gang-raped by 12 Israeli men and boys in 2019. Her report of the rape to the police resulted in a six-hour interrogation during which her status changed “from victim to suspect”. She was imprisoned for almost one month before being released on bail and was not permitted to leave Cyprus for another six months. She was subsequently prosecuted and convicted by a Cypriot court for making a false allegation (“public mischief”). The judge refused to admit any evidence related to the rape. Her conviction was affirmed on appeal, despite the fact that she was denied a lawyer and interpreter during the process.<sup>10</sup>

Another example is the conviction of Valérie Bacot by a French court in 2021 for murdering her husband, who began to sexually abuse her at the age of 12 years-old and impregnated her when she was 17 as her stepfather. Then as her husband, he forced her to prostitute herself with other men over a period of 14 years. After 25 years of abuse, she murdered him when he suggested abusing their daughter. Rather than clearing her of the charges, prosecutors called for her to be convicted and requested a five-year sentence, causing her to collapse in court. The court sentenced her to four years imprisonment, with three years suspended, thus imposing a criminal record with consequent social and economic implications. Having served one year on remand, she was released. “I’m not relieved... [I’m] completely shattered physically and mentally,” she stated.<sup>11</sup>

In a final example, “*La Manada*” (wolf pack) case in Spain involved the gang-rape of an 18-year-old during the San Fermín celebrations in 2018 by a group of men that included members of Spain’s military and *Guardia Civil*. Underscoring the increased use of ICT to perpetuate violence against women, the perpetrators stole the victim’s mobile phone to record seven videos and two photos of the rape, which they disseminated on social media. A provincial-level court requalified the crime, including on appeal, reducing it from rape to the lesser crime of sexual abuse. The initial decision contained a separate, concurring opinion interpreting the evidence as uninhibited sexual “revelry and glee”.<sup>12</sup> On a positive note, the public outcry resulted in a change of legislation redefining the crime of rape in August 2022, bringing it in line with the Istanbul Convention,<sup>13</sup> which Spain had ratified in 2014.<sup>14</sup>

These cases, along with others cited throughout this report, provide a merely anecdotal illustration of the current distance justice systems in Europe must travel to end their re-victimisation of women and girls who seek justice after suffering horrifying violations of their most basic human rights.

In fact, the justice sector has been slow to effectively ensure access to justice for women—who constitute half of the population.<sup>15</sup> Women’s access to justice is often limited by a range of issues, including: obstacles to their access to courts due to the lack of the protection of their security therein; disproportionate caregiving obligations that limit their time and the financial resources necessary to cover the costs of court fees, transport and legal representation; discrimination in the domestic classification of offences and evidentiary rules; the discriminatory application of “neutral” provisions;

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<sup>10</sup> The Guardian, [Cypriot police urged to reinvestigate gang rape of British woman](#), 1 February 2022; see also, Fair Trials, *How criminal justice systems across Europe are failing women: Sarah’s case*, 2022.

<sup>11</sup> BBC, [Valerie Bacot: Freedom for abused French woman who killed husband](#), 25 June 2021.

<sup>12</sup> El País, [De “jolgorio sexual” a “humillación y menosprecio.”](#) 5 December 2018.

<sup>13</sup> New York Times, [Spain Passes Law Requiring “Freely Expressed” Consent for Sex](#), 25 August 2022.

<sup>14</sup> Council of Europe, [Chart of signatures and ratifications of Treaty 210](#), [online].

<sup>15</sup> UN Special Rapporteur on the independence of judges and lawyers, Report of the Special Rapporteur on the independence of judges and lawyers, A/HRC/17/30, 2011.

and the failure to apply necessary procedural protections for women and girls as defendants, witnesses and victims in proceedings.

Cases can too often be characterised by the absence of due diligence in investigations, implicit bias and the application of gender and other stereotypes. Women tend to be charged with crimes committed in response to their experience as a victim of violence, such as for victim resistance violence and/or engaging in criminal behaviour to alleviate their own experience of violence and exploitation. Women in conflict with the law comprise a relatively small portion of criminal defendants and convicted persons in comparison with men. They tend to be detained for low-risk offences, often associated with economic and social challenges, or linked to coercive relationships with men.<sup>16</sup>

The above-listed phenomena contribute to the lack of an effective remedies afforded to women by court systems around the world. The absence of gender disaggregated data harmonised across justice-sector institutions in most Council of Europe countries constitutes a critical and ongoing institutional barrier to evidence-based policy making in this domain.

Within a short time after the implementation of lockdowns, a staggering rise in violence against women was reported. Informal and front-line health workers, the majority of which are women, disproportionately faced an array of challenges, including exposure to the virus, a lack of social protection and violence in the workplace. The dramatic increase in the rise of domestic violence cases during confinement was likely the most widely recognised gender issue related to the pandemic. This was exemplified in the responses of several member States to a Council of Europe Gender Equality Committee (GEC) questionnaire administered for the purpose of this report that equated women's access to justice with the rights of domestic violence victims. The conflation of women's access to justice more broadly with access to justice of a specific category of female litigants reflects gender stereotyped understanding and limits the scope of the former.

Indeed, for victims of violence the situation was dire. The UN Special Rapporteur on violence against women, its causes and consequences decried:

Timely access to justice for some women is a matter of life and death, while access to justice for women in the midst of the global COVID-19 pandemic has been put on hold, with the consequences to be revealed at a later stage if comparable data are available.<sup>17</sup>

Beyond the increase in violence and already facing unequal unpaid care and domestic work burdens, women were often simultaneously charged with home-schooling children and caring for ill family members, in addition to their employment obligations. As characterised by UN Secretary General Guterres, the measures taken to address the outbreak of Covid-19 created “an economic crisis. A social crisis. And a human crisis that is fast becoming a human rights crisis”.<sup>18</sup> “We have seen how the virus does not discriminate, but its impacts do,” he affirmed.

Pandemic measures exacerbated the multiple systemic gaps that ensure effective access to justice continues to elude women. As observed by UN Women, prior to the pandemic:

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<sup>16</sup> UN Women, et. al., Justice for women amidst COVID-19, 2020, pp. 24-25; National research: Ukraine.

<sup>17</sup> UN Special Rapporteur on violence against women, its causes and consequence, Intersection between the coronavirus disease (COVID-19) pandemic and the pandemic of gender-based violence against women, with a focus on domestic violence and the “peace in the home” initiative, A/75/144, 2021, para 66.

<sup>18</sup> Guterres, A., UN Secretary General, [COVID-19 and Human Rights, We Are All in This Together](#), UN, 23 April 2020.

Persistent under-investments in gender equality and women's empowerment in the pre-COVID-19 era already hindered women's gender-equal development and undervalued their contributions to their families' and communities' socio-economic development.<sup>19</sup>

Several reports suggested that the pandemic threatened “to wipe out progress from 25 years of efforts dedicated to increasing gender equality”.<sup>20</sup>

Pre-existing and post-Covid structural discrimination and violence against women constitute critical barriers to women's access to justice, given that intersecting forms of vulnerability and socio-economic marginalisation function as barriers to justice for all. Such barriers to access to justice result in further entrenching social and economic marginalisation.

Consistent with pre-pandemic policymaking, UN Women found that socio-economic policies implemented to respond to the pandemic within the region were not gender responsive.<sup>21</sup> It concluded that, “states are unlikely to be able to ensure that their current and future emergency policy responses will be gender-sensitive if they do not address systemic and pre-existing gender inequalities”.<sup>22</sup>

The UN Special Rapporteur on the independence of judges and lawyers has explained the link between women's lack of access to justice and economic vulnerability:

Unsatisfactory divorce settlements, courts' refusals to grant emergency financial relief when victims of domestic violence apply for a civil court protection order, and judicial decisions that do not recognize, for example, women's rights to an effective judicial remedy, contribute to an increase in the feminization of poverty.<sup>23</sup>

The inability to access justice for many women is thus compounded by multiple disadvantages, including poverty, ethnicity, disability and migrant status, as detailed throughout this report.<sup>24</sup>

The absence of a gender perspective, despite its relevance and implications for women's rights, in the research and data collection in the context of the pandemic cannot be downplayed. Ongoing weak or absent disaggregated data collection practices within, and harmonised across, national justice-sector institutions obscure the reality and the evidence-base. This was obvious in many of the Council of Europe member State responses to the GEC questionnaire designed to provide data for this report.

Many of the studies cited throughout this report reveal the myriad challenges faced by justice systems in ensuring access to justice to all prior to, during and beyond the pandemic. While highlighting specific or systemic gaps, at the same time, their existence sometimes reflects a vibrant and independent civil society sector, progress in data collection practices and a human and financial resource commitment to monitoring and evaluation policies and practices.

In this way, the identification of systemic gaps in such studies should not be solely perceived as signs of institutional failure. Rather, this information constitutes a critical prerequisite to addressing

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<sup>19</sup> UN Women, *One year of COVID-19: A gender analysis of emergency COVID-19 socio-economic policy responses adopted in Europe and Central Asia*, 2021, p. 6.

<sup>20</sup> UN Secretary-General's Policy Brief: *The Impact of COVID-19 on Women*; UN Women, *One year of COVID-19: A gender analysis of emergency COVID-19 socio-economic policy responses adopted in Europe and Central Asia*, 2021, p. 6.

<sup>21</sup> UN Women, *One year of COVID-19: A gender analysis of emergency COVID-19 socio-economic policy responses adopted in Europe and Central Asia*, 2021, p. 8.

<sup>22</sup> UN Women, *One year of COVID-19: A gender analysis of emergency COVID-19 socio-economic policy responses adopted in Europe and Central Asia*, 2021, p. 12.

<sup>23</sup> UN Special Rapporteur on the independence of judges and lawyers, *Report of the Special Rapporteur on the independence of judges and lawyers*, A/HRC/17/30, 2011, para 23.

<sup>24</sup> World Bank Blogs, [Data, laws and justice innovations to address violence against women during COVID-19](#), 7 December 2020.



ongoing barriers to justice through evidence-based policy making. The absence of reporting, internal assessments and an engaged civil society in many countries within the region does not indicate an absence of problems, but rather a tendency to mask them at the expense, sometimes devastating, of affected populations. It is the aim of the report to constructively contribute to assessing important institutional challenges in order to address them more effectively.

## 2. Methodology



*Illustration: Vanda Kovacs*

This report is based on the findings of a three-pronged research strategy. The first prong entailed a comprehensive desk review on gender equality and women's access to justice in the context of the Covid-19 pandemic, with a focus on the European region. It drew on global and regional reports issued by diverse intergovernmental and non-governmental organisations, assessing the impact of pandemic-related restrictions on access to justice from a gender perspective.

The second prong of the research involved collecting and analysing input from Council of Europe member States through a questionnaire to the Gender Equality Commission (GEC). Thirty-one member States and Morocco replied, for a total of 32 responses. Questions related to women's participation in pandemic-related policy making, the consideration of gender and diversity issues in justice-sector COVID-19 response measures, including human and financial resource allocation.

The third prong of the research involved drafting a comprehensive questionnaire on the impact of pandemic response on gender equality and women's access to justice for four Eastern Partnership countries: Azerbaijan, Georgia, Republic of Moldova and Ukraine. The questionnaire was designed to support national researchers in reviewing national-level legislation and policy covering the full justice chain, in addition to significant gendered socio-economic impacts. The national research component was conducted as a follow-up to Studies on Barriers, Remedies and Good Practices for Women's Access to Justice, which were undertaken in 2015 in the Eastern Partnership countries: Armenia, Azerbaijan, Georgia, Republic of Moldova and Ukraine.

Findings under all three components were assessed in light of international standards as set forth in international and regional human rights and rule of law instruments. They were particularly enriched by the most recent evaluation of judicial systems by the European Commission for the Efficiency of Justice (CEPEJ).

Given the bidirectional causality between women’s socio-economic status and their access to justice, as well as the significant impact of pandemic restrictions on gender equality, information on gender equality was deemed relevant. The Beijing +25 review process was conducted in 2019, just prior to the outbreak of Covid-19, and provides an important source of pre-pandemic cross-sectoral data.

In line with the SDG commitment to “leave no one behind,” an intersectional approach and diversity perspective was employed to ensure that all women were covered by the research. These include: women with disabilities, of different ethnicities, ages, sexual orientations and gender identities, languages, migrant status, educational and income levels, persons living in rural and urban areas, victims of gender-based violence and women’s human rights defenders (WHRDs).

Given the comprehensive scope of issues covered by the research, this report does not reflect all of the findings, but rather highlights specific issues of concern, trends, good practice examples and challenges.

### 3. Standards and barriers to women’s access to justice



Illustration: Liana Finck

The following sections set forth the key international and regional instruments on fair trial standards, gender equality, women’s and victims’ access to justice. They also outline key aspects of the barriers women face in their attempts to access justice.

#### 3.1 International fair trial standards

International law and standards on the right to a fair trial and access to justice are derived from Article 14 of the International Covenant on Civil and Political Rights (ICCPR) and the Human Rights Committee’s (HRC) General Comments. Numerous international human rights treaties and national constitutions further establish women’s and men’s equality before the law.<sup>25</sup> The UN Declaration of

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<sup>25</sup> Articles 2, 15, CEDAW.

Basic Principles of Justice for Victims of Crime and Abuse of Power elaborates standards for crime victims generally.

At the regional level, fair trial rights are enshrined in Article 6 of the European Convention on Human Rights and Fundamental Freedoms (ECHR). The European Convention on the Compensation of Victims of Violent Crime addresses victims' rights in the criminal justice system. A series of EU Directives further elaborate fair trial rights standards. These include:

- Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime (Victims' Rights Directive);<sup>26</sup>
- Directive 2016/343 on the presumption of innocence and the right to be present at the trial in criminal proceedings (Presumption of Innocence Directive);<sup>27</sup>
- Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings (Access to a Lawyer Directive);<sup>28</sup>
- Directive 2012/13/EU on the right to information in criminal proceedings (Information Directive);<sup>29</sup>
- Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings (Interpretation Directive).<sup>30</sup>

### 3.2 International standards on gender equality and women's access to justice

In addition to the standards on fair trial rights, several international human rights conventions elaborate specific standards pertaining to women's access to justice. CEDAW and the Beijing Platform for Action (BPfA) establish gender equality standards that cover all domains of women's lives, including rights related to public and political participation, employment and economic empowerment and health, among others.

CEDAW General Recommendation No. 33 on women's access to justice sets forth six interrelated elements of access to justice that are considered key for gender-responsive justice systems, namely: justiciability, availability, accessibility, good quality, accountability and the provision of remedies.

The Protocol to Prevent, Suppress and Punishment of Trafficking in Persons, Especially Women and Children<sup>31</sup> addresses the rights of victims of human trafficking, the majority of which are women and girls. International gender equality and access to justice standards for women are also generated by UN special mandate holders, namely: the UN Special Rapporteurs on violence against women, its causes and its consequences; on the promotion of truth, justice, reparation and guarantees of non-recurrence; and on the independence of judges and lawyers, as well as by the UN Working Group on discrimination against women and girls.

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<sup>26</sup> 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.

<sup>27</sup> Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings,

<sup>28</sup> Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty

<sup>29</sup> Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings

<sup>30</sup> Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings

<sup>31</sup> Supplementing the UN Convention on Transnational Organized Crime.

Within the European region, the Istanbul Convention continues to represent the “gold standard” for addressing violence against women and domestic violence.<sup>32</sup> The Council of Europe Convention on Action against Trafficking sets out rights to access to justice specific to trafficking victims.

Significantly, the majority of the above-listed instruments focus on access to justice for victims of crime, with a specific focus on sexual and gender-based crimes (SGBC). These standards mark an inflection point in international and regional efforts to address women’s access to justice in the field of criminal law.<sup>33</sup> These efforts have culminated in a rich body of international law, standards and European Court of Human Rights’ jurisprudence on protecting the rights of SGBC victims.<sup>34</sup> For this category of victims, access to justice involves these key components:

- The legislative framework **criminalises all acts of violence** against women and foresees effective, **dissuasive and proportionate sanctions**
- The availability of immediate and durable **protection from violence**
- Appropriate **gender-sensitive procedures** for investigations and prosecutions are in place
- Victims’ effective **access to remedies and reparations**.

While improving, the practical implementation of these international standards in national courts remains wanting in most countries. Moreover, parallel efforts to ensure access to justice for women in conflict with the law have not received parallel attention. International standards related to civil law have largely focused on family law and gender discrimination, particularly in the context of the employment. Several of the key gaps in these areas are described in the section below.

With respect to pandemic responses, CEDAW has affirmed that State parties continue to:

have an obligation to ensure that measures taken to address the Covid-19 pandemic do not directly or indirectly discriminate against women and girls. States parties also have an obligation to protect women from, and ensure accountability for, gender-based violence, enable women’s socio-economic empowerment and guarantee their participation in policy and decision making in all crisis responses and recovery efforts.<sup>35</sup>

The Sendai Framework for Disaster Risk Reduction sets forth relevant standards for women’s involvement in disaster risk reduction (DRR), covering governance, prevention and recovery.

### 3.3 Barriers to women’s access to justice

The principal obstacles to women’s access to justice occur on two inter-related levels: the legal and institutional level and the socio-economic level.<sup>36</sup> This section provides a generalised description of these barriers, which are detailed in specific country contexts below. In particular, they offer the background for understanding the ways in which pandemic restrictions have exacerbated women’s access to justice.

#### 3.3.1 Legal and institutional barriers

Discriminatory and insensitive legal frameworks persist across the region, including explicitly discriminatory laws, that fail to consider women’s *de facto* social position and legislative gaps related

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<sup>32</sup> OSCE, [On the 10<sup>th</sup> anniversary of the Istanbul Convention, OSCE leaders stress its importance for progressing towards gender equality](#), 11 May 2021.

<sup>33</sup> Marchiori, T., A framework for measuring access to justice, including specific challenges facing women, UN Women/Council of Europe, 2015, fn.6, noting the increased attention to access to justice for victims of gender-based violence.

<sup>34</sup> See, e.g., *Opus v. Türkiye, A. v. Croatia, Talpis v. Türkiye, Halime Kiliç v. Türkiye, Volodina v. Russia, Bălşan v. Romania*,

<sup>35</sup> CEDAW, [Guidance note on CEDAW and COVID-19](#).

<sup>36</sup> Adapted from Council of Europe, *Women’s Access to Justice: A Guide for Legal Practitioners*, 2018, pp. 5-6.

to issues that disproportionately affect women. Examples of discriminatory laws include provisions within many criminal (procedure) codes that foresee mitigating circumstances based on honour or morals and/or unjust provocation. The absence of evidentiary rules limiting the introduction of prior sexual conduct evidence to when it is relevant and necessary is a legal gap that disproportionately affects women.

Laws that fail to consider women's *de facto* legal and social position are "gender neutral". The continued practice of incident-based domestic violence prosecutions that account neither for the history and patterns of violence, nor for the multiple forms that it takes are a result of "gender neutral" legislation. Many countries, particularly in the Eastern Partnership region, prosecute only physical forms of domestic violence, requiring a minimum level of physical injury to the victim.<sup>37</sup>

Other manifestations of legal and institutional barriers include problematic legal interpretations and implementation of the law in a way that discriminates against women. Prosecutors in one jurisdiction under study reportedly interpret the definition of domestic violence as a continuous crime as requiring multiple incidents of violence to be committed before prosecuting. Despite the fact that international standards preclude raising the issue of consent in trafficking cases once the means have been established, the victim's consent remains a live issue in cases around the world.

The lack of gender-sensitive procedures also create barriers to women's access to justice. Examples include subjecting victims of traumatic crimes, such as sexual violence, to questioning by multiple actors across the justice chain. In the *Y. v. Slovenia* case, the minor victim of rape was subjected to direct questioning by the perpetrator himself who posed more than 100 questions, many of which were leading.<sup>38</sup> Investigations can also be highly discriminatory. Many are not proactive and the type of evidence gathered evinces a gender discriminatory understanding of the case.

Poor accountability mechanisms function as another barrier. Many jurisdictions fail to effectively monitor and implement protection and emergency barring orders as a standard practice, leaving it to the victim to report violations. Not all countries have criminalised violations of protection and barring orders. The lack of enforcement of alimony and child maintenance orders has a disproportionate impact on women and perpetuates their economic vulnerability, also contributing to the feminisation of poverty.

Additional institutional barriers include corruption, which erodes both confidence in and access to justice-sector institutions.<sup>39</sup> The under-representation of women among legal professionals impedes the application of a gender perspective and sends a strong signal to women about the prevailing organisational culture.

Barriers to claiming and receiving compensation remain common due to procedural barriers that limit claims to civil proceedings and place the burden on crime victims to initiate additional proceedings. Enforcing awards for compensation is also a challenge, and delays are common. The legislation in some countries does not foresee compensation for victims of gender-based crimes, and few countries have established trust funds for this purpose, as set forth in international law.

Gender stereotyping and implicit bias by justice actors constitute deeply rooted barriers to women's access to justice, as they cannot be addressed by a technical change in laws or procedures. Gender stereotypes violate women's right to an impartial tribunal and can result in their re-victimisation. Some gender stereotypes include: women should be chaste and women bear the responsibility for

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<sup>37</sup> National research: Azerbaijan.

<sup>38</sup> *Y. v. Slovenia*, Application No. 41107/10, 2015, paras 104-107.

<sup>39</sup> National research: Azerbaijan, noting corruption to be a major barrier to women's access to justice.

sexual assault by being out late, in an isolated place, or because of how they are dressed.<sup>40</sup> The stereotype that domestic work and caregiving are women's responsibilities often justify unfair decisions in the distribution of marital property and alimony determinations upon divorce.

Gender stereotypes also apply to men, perpetuating traditional masculinities and male entitlement. These include: men should be heads of households, boys are more valued than girls, men are entitled to power and are unable to control their own sexual urges. Compounded stereotypes result when gender bias is combined with other stereotypes. Examples include: women with disabilities are incapable of parenting; sex workers cannot be raped; and child marriage is part of Roma culture.

From a diversity perspective, justice systems remain far from ensuring access to justice for persons with disabilities in line with the requirements of the CRPD. They continue to face barriers to their physical entry into courtrooms, use of restrooms, and a limited, sometimes non-existent, possibility of obtaining a reasonable accommodation, including supported decision-making. Questions remain as to whether mental health issues and learning disabilities are identified and assessed by justice-sector actors in order to ensure rights protection to this vulnerable category of persons.

### **3.3.2 Socio-economic and cultural barriers**

In addition to the legal and institutional barriers impeding women's access to justice, they face a range of social, economic and cultural barriers that prevent them from engaging with justice institutions. These include a disproportionate lack of awareness of their legal rights, basic legal procedures and how to access legal aid. This lack of awareness often stems from gendered gaps in education and access to information, including digital access.

Women also disproportionately lack financial resources to pay for legal representation, legal fees and judicial taxes. For low-income women, the time and costs required for transportation to courts, including parking, the unequal distribution of unpaid care and domestic work within the family, and the lack of money to pay for bribes, where required, all prevent them from filing criminal complaints or seeking remedies. Women's economic dependence on perpetrators also impedes them from even attempting to escape from the violence.

Gender stereotypes and bias, social and cultural norms and attitudes, social stigma operative in society at large also prevent women from accessing justice mechanisms. These might include: domestic violence is a private matter; men have biological urges that make them naturally aggressive; women deserve to be beaten, it shows that the man is in control. Indeed, the normalisation of gender-based violence and exploitation result in many victims not recognising their own victimisation.

The UN Special Rapporteur on the independence of judges and lawyers has observed that "socio-economic conditions and, sometimes stereotyping, are obstacles faced by the great majority of women around the globe when attempting to enforce their rights".<sup>41</sup> As described by one justice reform specialist:

the fact that it is, on average, harder for women to gain access to institutional spaces to negotiate and protect their rights and obtain a fair resolution of their grievances, is widely accepted. While many of the barriers limiting access to justice stem from factors other than

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<sup>40</sup> National research: Republic of Moldova, observing that how the woman was dressed continues to mitigate criminal responsibility for sexual violence.

<sup>41</sup> UN Special Rapporteur on the independence of judges and lawyers, Report of the Special Rapporteur on the independence of judges and lawyers, A/HRC/17/30, 2011, para 23.



gender – such as poverty, illiteracy and lack of knowledge of official languages, lack of legal knowledge and awareness – they tend to affect women more than men.<sup>42</sup>

In continuation, she underscores the intersectional nature of such barriers, as well as their specifically gendered elements:

Indeed, a combination of social with institutional barriers aggravates women’s difficulty to access justice institutions, across income quintiles, education levels and ethnic groups, creating higher barriers at entry, high attrition, and making women more vulnerable during the judicial process. In addition, barriers such as discriminatory laws and social stigma are gender specific and increase dramatically the access gap.<sup>43</sup>

The two-way causal relation between women’s socio-economic inequality and the obstacles they face within the justice systems means that the negative impact of pandemic-related restrictions on gender equality will affect women’s ability to access to justice.

#### 4. Women’s access to justice



*Illustration: Vanda Kovacs*

The right of access to justice for women is essential to the realization of all the rights protected under the Convention on the Elimination of All Forms of Discrimination against Women. It is a fundamental element of the rule of law and good governance, together with the independence, impartiality, integrity and credibility of the judiciary, the fight against impunity and corruption, and the equal participation of women in the judiciary and other law implementation mechanisms.<sup>44</sup>

This section aims to provide a current overview on key gaps and good practice examples on women’s access to justice in national contexts, with a focus on Eastern Partnership countries. It focuses on legal and institutional barriers to justice. It does not cover every issue of concern, nor does it provide

<sup>42</sup> Marchiori, T., A framework for measuring access to justice, including specific challenges facing women, UN Women/Council of Europe, 2015, p. 6.

<sup>43</sup> Marchiori, T., A framework for measuring access to justice, including specific challenges facing women, UN Women/Council of Europe, 2015, pp. 6-7.

<sup>44</sup> CEDAW, General recommendation No. 33 on access to justice, CEDAW/C/GC/33, 2015, para 1.

extensive detail related to the challenges in the application of international standards. It addresses the implementation of international standards to women's access to justice in criminal and civil proceedings. It also examines the negative impact of gender stereotypes and corruption.

Countries have made important progress, particularly related to the implementation of regional and international standards pertaining to access to justice for women victims of violence. In spite of this, a very large gap still prevents women from meaningful access to justice for multiple reasons across the region. The systemic discrimination women face in the justice sector reflects their experience in other areas, all of which was exacerbated by pandemic-related restrictions.

#### 4.1 Gender stereotypes

Gender stereotyping compromises the impartiality and integrity of investigations and judicial proceedings, and thus violates the right to an impartial tribunal. At the same time, some "constitutional provisions, laws, regulations, procedures, customs and practices [] are based on traditional gender stereotypes and norms and are therefore discriminatory".<sup>45</sup> Both the European Court of Human Rights and CEDAW jurisprudences have found the evidence of the application of gender stereotypes in justice processes to constitute a violation of the prohibition on discrimination.<sup>46</sup>

Gender stereotypes are a cross-cutting theme, covering all stages of the justice chain. While prevalent in all societies, they remain open and overt in many Eastern Partnership countries. It therefore affects the treatment of victims and their re-victimisation by criminal justice actors, the seriousness of related crimes against women, the type of and scope of evidence gathered, the perception of and the weight given to women's testimony, as well as the understanding related to the nature of the crime and the culpability of the accused, among other elements of proceedings.

There is no dearth of examples of gender stereotyping by judges in all Council of Europe member States. In addition to the few examples provided below, stereotyping is often combined with numerous other gaps identified in this report.

One judge's description of a gang rape that took place during a local celebration in Spain as uninhibited sexual "revelry and glee,"<sup>47</sup> as described above, offers a striking example of the way in which gender stereotypes can distort judges' perceptions of what occurred in a particular situation and its consequent implication for the culpability of the accused.

How a victim of sexual violence was dressed continues to bear upon the culpability assigned to the perpetrator by judges in the Republic of Moldova.<sup>48</sup> Recent examples in Azerbaijan include: police telling a victim and her lawyer that they were "too emotional" when each attempted to request an Emergency Barring Order (EBO); a judge telling a domestic violence perpetrator that "a man does not enter into dialogue with a woman;" and, a legal professional telling a victim of stalking: "If he stalks you, it means he loves you."<sup>49</sup>

CEDAW notes the need for "awareness-raising and capacity-building for all actors of justice systems and for law students to eliminate gender stereotyping and incorporate a gender perspective in all aspects of the justice system".<sup>50</sup> Yet, there remains limited training on gender to justice sector actors in Eastern Partnership countries, except in Georgia and Ukraine. Gender is not an element of regular

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<sup>45</sup> CEDAW, General Recommendation No. 33 on women's access to justice, CEDAW/C/GC/33, 2015, para 21.

<sup>46</sup> Konstantin Markin v Russia, Application No. 30078/06, 2012, concerning Russia's refusal to grant parental leave to a military serviceman; Karen Tayag Vertido v The Philippines, CEDAW/C/46/D/18/2008 (2010), addressing stereotypical beliefs concerning rape

<sup>47</sup> El País, [De "jolgorio sexual" a "humillación y menosprecio."](#) 5 December 2018.

<sup>48</sup> National research: Republic of Moldova.

<sup>49</sup> National research: Azerbaijan.

<sup>50</sup> CEDAW, General recommendation No. 33 on access to justice, CEDAW/C/GC/33, 2015, para 29(a).



in-service training of judges and prosecutors in the Republic of Moldova, and is only offered through donor-supported projects.

## 4.2 Women's access to justice in civil proceedings

Women experience the same barriers to justice faced by similarly situated men, as well as challenges unique to them as women, such as gender stereotypes. In the civil law context, barriers include: the systemic inability to enforce maintenance and child support orders, mandatory reconciliation processes prior to divorce, unfair divisions of marital property, challenges in obtaining long-term protection orders and their effective implementation (discussed in the section on Protection below) and access to compensation for damages (addressed in the section on Effective Remedies below).

### 4.2.1 Family law

"Inequality in the family underlies all other aspects of discrimination against women and is often justified in the name of ideology, tradition and culture."<sup>51</sup> This section details a few key aspects of family law, citing examples that emerged from national-level research to highlight remaining equality gaps in the field of justice.

#### 4.2.1.1 Marriage

Legislative frameworks related to family law in Eastern Partnership countries contain gender discriminatory provisions. Common law spouses do not have pension survivorship rights in Azerbaijan. They cannot exercise inheritance rights and there is no law regulating the division of common property upon separation.

Early/child marriage is practiced in Azerbaijan through religious marriages (*kabin*),<sup>52</sup> and continues to be practiced in Georgia and Türkiye. Yet, there are no accessible civil law remedies foreseeing annulment of the marriage and compensation in Azerbaijan and Türkiye.<sup>53</sup>

Significantly, court fees in paternity cases (AZN 1300-2000 on average) are three to four times higher than the country's nominal average wage (AZN 525 in 2020) in Azerbaijan, impeding access to such procedures for women with limited financial resources.<sup>54</sup> This seems to violate the accessibility component of women's access to justice that requires judicial procedures to be affordable.<sup>55</sup>

#### 4.2.1.2 Divorce, alimony and child maintenance

Courts impose a reconciliation period in divorce cases in Ukraine and Azerbaijan. A legal provision was added in 2021 requiring mandatory mediation in all family law cases in Azerbaijan, including divorce cases. These provisions contain no exemptions for cases involving domestic violence. Mediation and reconciliation periods extend the length of the process and introduce additional fees and taxes. The introduction of mandatory mediation with the accompanying fees has resulted in an eight-fold increase in the cost of divorce in Azerbaijan, again resulting in barriers to accessibility. Similarly, the complainant must pay the court costs in divorce cases in Ukraine, which tends to disadvantage women. Courts do not respect established legal time limits for this category of cases.<sup>56</sup>

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<sup>51</sup> CEDAW, General recommendation No. 33 on women's access to justice, CEDAW/C/GC/33, 2015, para 45.

<sup>52</sup> National research: Azerbaijan.

<sup>53</sup> National research: Azerbaijan, Georgia; Council of Europe, Handbook for legal aid lawyers on women's access to justice in Türkiye, 2022.

<sup>54</sup> National research: Azerbaijan.

<sup>55</sup> CEDAW, General recommendation No. 33 on women's access to justice, CEDAW/C/GC/33, 2015, para 14(c).

<sup>56</sup> National research: Azerbaijan, Ukraine.

While laws in the Eastern Partnership region, such as those in Ukraine and Azerbaijan, foresee the equal division of joint property, no specific provisions specifically address the valuation of unpaid care and domestic work, in line with CEDAW requirements.<sup>57</sup> In Azerbaijan, court fees can increase by 20 times upon the filing of a claim for a division of marital property, depending on the property value in question. There is no fee exemption for victims of domestic violence, whose experience of economic violence can limit their access to financial resources.<sup>58</sup>

The enforcement of orders for alimony and child maintenance constitutes a serious challenge in the Eastern Partnership region and beyond, as the enforcement mechanisms in place function ineffectively.<sup>59</sup> In Azerbaijan, there are no court fees for alimony and child maintenance claims, but the claimant bears the costs of a compulsory mediation process. Azerbaijan does not maintain a state fund for this purpose.<sup>60</sup> This systemic problem that spans across many countries in the region contributes to the feminisation of poverty.

Domestic violence is not considered for the purpose of visitation and custody decisions upon divorce in Azerbaijan. As in most countries, perpetrators use visitation as a means of contacting the victim and place children in grave danger. Children who witness domestic violence are not considered as victims. Consideration of domestic violence in determinations on visitation and custody rights is not required in Georgia.<sup>61</sup>

#### **4.2.2 National anti-discrimination legal frameworks**

Anti-discrimination law and practice remain relatively weak in Eastern Partnership countries. For example, there is no comprehensive anti-discrimination legislation in Armenia and Azerbaijan.<sup>62</sup> Anti-discrimination legislation was passed in the Republic of Moldova in 2012. In Georgia, the anti-discrimination law is more advanced than in the rest of the region, but reversal of the burden of proof remains a challenge in practice. In Ukraine, anti-discrimination law does not foresee a shifting of the burden of proof, which is considered as essential by international standards, given that respondents usually have access to data indicating discriminatory treatment.<sup>63</sup>

The absence of anti-discrimination law leads to criminal provisions imposing a significantly higher burden of proof for cases involving diverse forms of discrimination, including sexual harassment. The lack of comprehensive anti-discrimination laws renders constitutional provisions on equality virtually unenforceable without tailored provisions, such as the reversal of the burden of proof, and a designated list of protected categories.

A common and ongoing challenge for Eastern Partnership countries is the establishment of effective internal complaint mechanisms in schools and workplaces for reporting and addressing sexual harassment. In some countries, such as Ukraine, sexual harassment is not prohibited or is limited to a declarative provision in the Labour Code and in gender equality laws.<sup>64</sup>

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<sup>57</sup> National research: Azerbaijan, Ukraine. See, CEDAW, General recommendation No. 33 on women's access to justice, CEDAW/C/GC/33, 2015, para 19(c), requiring a full accounting of "unremunerated domestic and caring activities of women in assessments of damages for the purposes of determining appropriate compensation for the harm, in all civil, criminal, administrative or other proceedings".

<sup>58</sup> National research: Azerbaijan.

<sup>59</sup> National research: Azerbaijan, Georgia, Republic of Moldova, Ukraine.

<sup>60</sup> National research: Azerbaijan.

<sup>61</sup> National research: Azerbaijan, Georgia.

<sup>62</sup> National research: Azerbaijan; Council of Europe, Armenia's hate crime, hate speech and discrimination data collection system, 2020.

<sup>63</sup> National research, Azerbaijan, Georgia, Ukraine.

<sup>64</sup> National research: Ukraine.

The establishment of complaint mechanisms remains a challenge even in countries where anti-discrimination laws are in place. This gap raises the issue of lack of accessibility, which requires that “all justice systems, both formal and quasi-judicial systems, are secure, affordable and physically accessible to women, and are adapted and appropriate to the needs of women”.<sup>65</sup>

### 4.3 Access to justice for violence against women and domestic violence

Given the significant developments in standards related to the rights of crime victims generally, and victims of gender-based violence, an examination of the application of these standards in national contexts reveals ongoing systemic problems that impede women’s access to justice.

Given its significance as a measure of women’s access to justice, this section focuses on addressing issues related to violence against women. It covers the extent of violence prevalence prior to and as a direct result of pandemic-related restrictions on movement. It describes the implementation of access to justice standards for victims of violence against women and domestic violence in Europe, with a strong focus on Eastern Partnership countries. It also describes States’ efforts and gaps in their response to the pandemic, such as shifts in reporting, response and financial resources and the availability of protection orders as elements of effective access to justice. Finally, it addresses workplace and ICT-related violence.

#### 4.3.1 Violence against women prevalence and reporting

Globally, prior to the pandemic, it was estimated that “1 in 3 (30%) of women worldwide have been subjected to either physical and/or sexual intimate partner violence or non-partner sexual violence in their lifetime”.<sup>66</sup> Prevalence data varies, reflecting reporting practices in each country, and violence is considered to be significantly under-reported. Prior to the pandemic, fewer than one in 10 cases of violence were reported in developing countries; approximately 14% were reported across Europe.<sup>67</sup>

In Europe and Central Asia, approximately 22-28% of women are subjected to intimate partner violence during their lifetimes.<sup>68</sup> In France, 220,000 report being a victim of violence annually and more than 100 are killed.<sup>69</sup> A 2019 OSCE survey in Ukraine found 67% of women reported having “experienced psychological, physical or sexual violence at the hands of a partner or non-partner since the age of 15”.<sup>70</sup>

Violence against women tends to increase during emergencies, including during epidemics. Women who are displaced, refugees and living in conflict-affected areas are particularly vulnerable. Older women and those with disabilities experience distinct risks and needs.<sup>71</sup> Stay-at-home orders were issued in approximately 162 countries, affecting an estimated 2.73 billion women. As a result, intimate partner and domestic violence, as well as violence in institutional settings, including nursing homes, penitentiary and psychiatric facilities increased.

The confinement measures dramatically increased the risks of exposure to violence for women and children, including a 40% rise or higher in some countries.<sup>72</sup> In Azerbaijan, 2020 saw a 34% increase in

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<sup>65</sup> CEDAW, General recommendation No. 33 on women’s access to justice, CEDAW/C/GC/33, 2015, para 14(c).

<sup>66</sup> WHO, Fact sheet: [Violence against women](#), [online].

<sup>67</sup> European Union Agency for Fundamental Rights, Violence against Women: An EU-wide Survey, 2015.

<sup>68</sup> See, OSCE/ODIHR, Human Rights and Gender Equality During Public Emergencies, 2020, p. 20, citing diverse sources.

<sup>69</sup> Council of Europe, [Simplified hospital complaints procedure for victims of domestic violence: French Ministry of Justice wins the Council of Europe Crystal Scales of Justice Prize](#), 2021, PPT.

<sup>70</sup> OSCE, [Well-being and safety of women](#), 2019.

<sup>71</sup> WHO, [COVID-19 and violence against women: What the health sector/system can do](#), 2020, p. 1.

<sup>72</sup> UN Women, [As COVID-19 exposes the fault lines of gender equality, a strong focus on violence against women at the UN General Assembly](#), 29 September 2020; National research: Ukraine, reporting a rise by 30%.

domestic violence cases resulting in femicide.<sup>73</sup> In Türkiye, 21 women were murdered during quarantine between 11 and 31 March 2020.<sup>74</sup> France recorded two cases of domestic abuse resulting in murder in the first two weeks of the lockdown.<sup>75</sup> NGO reports in The Netherlands indicated that the violence that occurred was more severe during the pandemic.<sup>76</sup>

At the same time, pandemic restrictions impeded women's contact with family members and friends who may have provided support and protection from violence, further increasing their isolation. Indeed, perpetrators may have used "restrictions due to Covid-19 to exercise power and control over their partners to further reduce access to services, help, and psychosocial support from both formal and informal networks".<sup>77</sup> They may also have spread misinformation about the disease and stigmatise partners.

In addition to the increased risk of physical violence during lockdowns, women and their children were "particularly vulnerable to economic abuse and associated deprivations". Coupled with other economic stressors associated with the pandemic, victims of violence may have been unable to "purchase essential goods (food and medicine) because they are prevented by an abusive partner from leaving their home, or fear leaving their children with the abusive partner, or are denied the funds for those purchases".<sup>78</sup> Morocco noted that during the pandemic, 10% of the domestic cases reviewed during the pandemic involved economic violence.<sup>79</sup> The increased economic hardship caused by the pandemic further impeded victims of violence from being able to leave.<sup>80</sup>

Although the available statistics under-represent the phenomenon, the UN Special Rapporteur on violence against women, its causes and consequence explained: "women will be deterred from reporting if protection orders barring perpetrators and removal orders are either non-existent or inadequate, and if police intervention is not gender-sensitive or if there is no risk assessment".<sup>81</sup>

This description characterises domestic violence response in Azerbaijan, where hotlines remain externally funded and violence is under-reported, given the reluctance by authorities to intervene in what is considered a "private" matter.<sup>82</sup> Moreover, reports of domestic violence are registered by police in a separate book of crimes that must be further verified by police, which can take up to 10 days.<sup>83</sup> Violence against disabled women and girls is often invisible due to the lack of their ability to report it.

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<sup>73</sup> National research: Azerbaijan.

<sup>74</sup> UN Women, Voices of women's organizations on COVID-19, 2020, p. 4. Official statistics indicated nine cases. Council of Europe member State responses to GEC questionnaire.

<sup>75</sup> France 24, [France to put domestic violence victims in hotels as numbers soar under coronavirus lockdown](#), 30 March 2020.

<sup>76</sup> Council of Europe member State responses to GEC questionnaire.

<sup>77</sup> WHO, [COVID-19 and violence against women: What the health sector/system can do](#), 2020, p. 1.

<sup>78</sup> UNODC, Coronavirus Disease (COVID-19) Response—[UNODC Thematic Brief on Gender-Based Violence against Women and Girls](#), 2020, p. 1; Jhumka Gupta, What does coronavirus mean for violence against women?, Women's Media Centre, 2020.

<sup>79</sup> Council of Europe member/observer State responses to GEC questionnaire.

<sup>80</sup> National research: Republic of Moldova.

<sup>81</sup> UN Special Rapporteur on violence against women, its causes and consequence, Intersection between the coronavirus disease (COVID-19) pandemic and the pandemic of gender-based violence against women, with a focus on domestic violence and the "peace in the home" initiative, A/75/144, 2021, para 44.

<sup>82</sup> National research: Azerbaijan. Hotlines are also externally funded in Bulgaria. Council of Europe member State responses to GEC questionnaire.

<sup>83</sup> National research: Azerbaijan.

#### 4.3.1.1 Pandemic-related changes to domestic violence reporting

Data on reporting during the pandemic is indicative of trends in violence prevalence and the ways in which the realities of the pandemic and the closures and limitations of available services for victims had an impact on reporting.

Italy reported an annual rise in the number of hotline calls by 181.8% when compared with 2019, and 250% increase in requests for assistance by chats. Spain indicated a 57.9% rise in assistance offered to victims from March – June 2020, and a 457.9% rise in online consultations. Greece reported a 277.4% increase in hotline calls during March and April of 2020. In the first week of the lockdown in the United Kingdom, there was a 25% rise in phone calls to the National Domestic Abuse Helpline and visits to their website were 150% higher than the last week in February.<sup>84</sup> Outside of the region, the number of domestic violence cases reported to a police station in Jingzhou, a city in Hubei Province, tripled in February 2020, compared with the same period the previous year.<sup>85</sup>

Several countries, including Andorra, Denmark, Malta and the Republic of Moldova observed a decrease in reporting during lockdown and then a subsequent increase in reporting upon the lifting of restrictions. In Croatia, the subsequent increase was attributed to a national media, including social media, campaign.<sup>86</sup> According to the OSCE, this initial decrease in reporting “suggests a high degree of control over survivors, an increase in first-time incidents and the fact that information about still-available services had not been effectively communicated to domestic violence survivors”.<sup>87</sup>

Norway reported a decrease in the number of persons seeking shelters during the confinement. Other countries, including Azerbaijan, Croatia and Monaco reported no change in data.<sup>88</sup>

While a few Council of Europe member States noted that violence reported during the pandemic often involved two or three forms of co-occurring violence, some also observed low reporting of sexual violence.<sup>89</sup> The UN Special Rapporteur on violence against women, its causes and consequences also reported that:

France was awarded the Council of Europe Crystal Scales of Justice Award in 2021 for the creation of simplified complaint procedures for domestic violence victims that can be directly filed from hospitals to investigation authorities.

Source: Council of Europe, [Simplified hospital complaints procedure for victims of domestic violence: French Ministry of Justice wins the Council of Europe Crystal Scales of Justice Prize, 2021.](#)

Data compiled by the United Nations Office on Drugs and Crime showed a reduction in March and April 2020 of reported cases of sexual violence in a group of 21 countries and stability in intimate partner femicides in 8 countries. In some countries, such as Italy, a substantial increase in calls to helplines was accompanied by a reduction in reports of sexual violence.<sup>90</sup>

#### 4.3.1.2 Limitations and innovations to reporting

Both the Istanbul Convention and the UN Essential Services Package for Women and Girls Subjected to Violence (“UN Essential Services Package”) require hotlines to be available for reporting violence

<sup>84</sup> UN Women, UNODC, UNDP, IDLO, et al., Justice for women amidst COVID-19, 2020, p. 19.

<sup>85</sup> Bethany Allen-Ebrahimian “China’s Domestic Violence Epidemic,” Axios, 7 March, 2020.

<sup>86</sup> Council of Europe member State responses to GEC questionnaire; National research: Republic of Moldova, noting a four-fold reduction in the number of calls to hotlines during lockdown.

<sup>87</sup> OSCE/ODIHR, Human Rights and Gender Equality During Public Emergencies, 2020, p. 36.

<sup>88</sup> Council of Europe member State responses to GEC questionnaire.

<sup>89</sup> Council of Europe member State responses to GEC questionnaire; National research: Republic of Moldova.

<sup>90</sup> UN Special Rapporteur on violence against women, its causes and consequence, Intersection between the coronavirus disease (COVID-19) pandemic and the pandemic of gender-based violence against women, with a focus on domestic violence and the “peace in the home” initiative, A/75/144, 2021, para 77.

against women. Confinement measures reduced the ability of GBV victims to report violence and to seek assistance, due to limitations in accessing police stations, and the challenges in placing phone calls, or accessing hotlines given the privacy restraints while living with perpetrators 24/7.<sup>91</sup>

In light of these challenges, the means of reporting was expanded in several Council of Europe member States. Albania, Austria, Cyprus, France, Luxembourg, Malta, Spain and Ukraine increased remote reporting options including online and email in addition to the pre-existing telephone hotlines. Denmark, the Netherlands and Spain initiated reporting options by chat. In the Netherlands, 350 conversations take place on the chat each week. Spain's WhatsApp service was staffed by psychologists with specialised training in GBV. An NGO in Georgia launched a reporting app for victims during confinement, but the police refused to co-operate.<sup>92</sup>

As noted above, while the development and expansion of online platforms may increase access for some women, it excludes others. The UN Special Rapporteur on violence against women, its causes and consequences has also made clear that "submitting the paperwork online has proved challenging, in particular for those women with low socioeconomic status. In many contexts, the access of women and girls to technology is limited, as phones or computers are often controlled by male relatives".<sup>93</sup>

The Commission for Ensuring Gender Equality of the Oliy Majilis, the national parliament in Uzbekistan, "launched a dedicated hotline offering free psychological and legal consultations to survivors of domestic violence for a three-month period, to coincide with the imposition of quarantine measures".<sup>94</sup> Cyprus launched a hotline to report human trafficking during the pandemic. In May 2020, Estonia began operating a hotline for perpetrators seeking help to control their violent behaviour. Several countries, including Belgium, Cyprus and Denmark noted the accessibility of reporting mechanisms to persons with disabilities. Belgium, France, Monaco and the Netherlands also incorporated pharmacies to receive domestic violence complaints through the use of a code word.<sup>95</sup> Pop-up counselling centres also opened in supermarkets in France as another innovation to reach victims.<sup>96</sup>

During the pandemic, Luxembourg's Ministry of Equality between Women and Men conducted a bi-monthly monitoring process on domestic violence cases, in order to stay abreast of the number of police interventions, the forms of violence and access to services. It launched a national domestic violence hotline during the pandemic that has become permanent in line with its obligations under the Istanbul Convention.<sup>97</sup>

Several Council of Europe member States reported increasing financial support to hotlines in the face of unprecedented spikes in the number of calls, including Belgium and Sweden.<sup>98</sup>

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<sup>91</sup> UN Women, Voices of women's organizations on COVID-19, 2020, p. 4, noting challenges for victims to report violence in Kazakhstan.

<sup>92</sup> National research: Georgia.

<sup>93</sup> UN Special Rapporteur on violence against women, its causes and consequence, Intersection between the coronavirus disease (COVID-19) pandemic and the pandemic of gender-based violence against women, with a focus on domestic violence and the "peace in the home" initiative, A/75/144, 2021, para 66.

<sup>94</sup> OSCE/ODIHR, Human Rights and Gender Equality During Public Emergencies, 2020, p. 38.

<sup>95</sup> Council of Europe member State responses to GEC questionnaire; France 24, [France to put domestic violence victims in hotels as numbers soar under coronavirus lockdown](#), 30 March 2020.

<sup>96</sup> France 24, [France to put domestic violence victims in hotels as numbers soar under coronavirus lockdown](#), 30 March 2020.

<sup>97</sup> Council of Europe member State responses to GEC questionnaire.

<sup>98</sup> Council of Europe member State responses to GEC questionnaire.



### Good practice: *Mascarilla-19*

During pandemic lockdowns, when victims of domestic violence remained confined with their abusers, and only pharmacies and supermarkets open to the public, Spain’s Ministry of Equality initiated *Mascarilla-19* (Mask-19). This system enabled women who could not call for assistance in their own home to request a *mascarilla-19* in pharmacies, a code word signaling the need to call emergency services. The initiative was available in 16,000 pharmacies across Spain and replicated in other countries around the world, including 12,000 pharmacies in Argentina. The relevant protocol was developed by the Equality Institute of the Canary Islands, and thus is directly attributable to gender equality mechanisms at national and subnational levels.

## 4.4 Implementation of international standards

The Istanbul Convention is exemplary in establishing a framework for States to effectively combat and prevent violence against women and domestic violence. Its entry into force in 2014 marked a major advance of standards in the region, dovetailing with the jurisprudence of the European Court of Human Rights. Since then, countries around the region took steps to align national legislation with the Convention provisions and to establish the institutional co-ordination and data collection frameworks it requires.

### 4.4.1 National legislation criminalising violence against women and domestic violence

Despite clear progress in domestic legal frameworks on violence against women and domestic violence across the region, legal gaps remain affecting the justiciability element of women’s access to justice.<sup>99</sup> The Istanbul Convention requires the criminalisation of several forms of violence, including all forms of domestic violence, stalking and harmful practices, such as FGM and child marriage.

Ukraine and Georgia both made comprehensive changes to their legislative frameworks in 2017, aligning laws with most of the requirements of the Istanbul Convention, constituting important good practice examples in the region.

However, many countries, including Eastern Partnership countries, have not brought their legislative frameworks into alliance.<sup>100</sup> For example, some countries recognise economic and psychological violence within the definitions of domestic violence legislation, but these forms of violence are not referenced in the criminal code for the purpose of prosecution. Azerbaijan has criminalised all harmful practices or stalking; Türkiye has not criminalised all harmful practices. Sexual harassment and stalking were not criminalised in Ukraine during the 2017 legal reforms.<sup>101</sup>

Council of Europe member States who have not ratified the Istanbul Convention	
Armenia Azerbaijan Bulgaria Czech Republic Hungary	Latvia Lithuania Slovak Republic
Council of Europe member States who have denounced/issued limiting declarations to the Istanbul Convention	
Croatia Poland	Türkiye (withdrew in March 2021)

The criminal codes of Georgia and Ukraine have separate, tailored articles criminalising domestic violence, which include economic and psychological violence. The provision in Ukraine, however, is

<sup>99</sup> CEDAW, General recommendation No. 33 on women’s access to justice, CEDAW/C/GC/33, 2015, para 14(a).

<sup>100</sup> National research: Azerbaijan, Republic of Moldova.

<sup>101</sup> National research: Azerbaijan, Georgia, Republic of Moldova, Ukraine. Türkiye has not yet criminalized economic and psychological violence, nor any harmful practices. Council of Europe, Handbook for legal aid lawyers on women’s access to justice in Türkiye, 2022.

rarely invoked, and in some regions of the country has never been invoked. Other countries in the Eastern Partnership region have taken a “gender-neutral” approach to combating violence against women, precluding the application of criminal provisions tailored to violence against women. For example, despite a law on combating domestic violence, Azerbaijan does not have separate provisions on domestic violence in the criminal code. Common assault provisions are used to prosecute domestic violence in Azerbaijan and Türkiye, to limited effect given that domestic violence is not a single incident phenomenon.<sup>102</sup>

Countries adopting this approach continue to prosecute domestic violence cases only where there is evidence of physical violence, as demonstrated through required evidence of physical injury and sentencing structures based on the extent of the physical injury.<sup>103</sup> In Azerbaijan, if the physical violence does not result in grave injury, a fine is imposed.<sup>104</sup> In France, domestic violence offences are only considered criminal offences if they result in a “complete inability to work”.<sup>105</sup> In particular, gender-neutral criminal provisions fail to adequately capture psychological forms of domestic violence. The result of this slow evolution of national legislation is justice systems remain unsuitable to effectively address violence against women and provide an effective remedy to victims, again contravening the accessibility element of women’s access to justice.

Mandatory reconciliation processes in cases involving violence against women are in place in Azerbaijan.<sup>106</sup> In Georgia, mediation is prohibited for all criminal cases including domestic violence, which is criminalised in a stand-alone provision in the Criminal Code<sup>107</sup>.

Important advances include the Republic of Moldova’s criminalisation of stalking in 2016.<sup>108</sup> The United Kingdom recently criminalised non-fatal strangulation, foreseeing a sentence of up to five years’ imprisonment, in light of the fact that “studies have shown that victims are seven times more likely to be murdered by their partner if there had been non-fatal strangulation beforehand”.<sup>109</sup> The criminalisation of coercive control in Ireland, and in England, Wales and Scotland in the United Kingdom and in Hawaii and California in the United States, constitutes a good practice shift in focus to the nature of the multiple and mutually reinforcing forms of violence that reflect victims’ lived experience.

States across the whole region have been slow to revise sexual violence legislation to bring it into line with the consent-based standard set forth in the Istanbul Convention. As noted above, Spain ratified the Istanbul Convention in 2014, and amended sexual violence legislation to adopt the consent-based standard in 2022. Ukraine’s criminal provision on rape is defined solely in terms of consent, which is “considered to be voluntary, if it is the result of the free will of a person, taking into account the accompanying circumstances”. Increased penalties are foreseen for rape committed in a close relationship. In Georgia, Azerbaijan and the Republic of Moldova, the constituent elements of rape include both the use of force or threat of force and consent, as in many other countries in Europe.<sup>110</sup>

Georgia was a pioneering country in expanding hate crime legislation to include gender bias, creating an aggravating circumstance for gender discriminatory crimes, such as femicide and other forms of

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<sup>102</sup> National research: Azerbaijan.

<sup>103</sup> National research: Azerbaijan, Republic of Moldova, Ukraine; see also *T.M. and C.M. v. Moldova*, Application No. 26608/11, 7 January 2014, para 47.

<sup>104</sup> National research: Azerbaijan.

<sup>105</sup> Council of Europe, [Simplified hospital complaints procedure for victims of domestic violence: French Ministry of Justice wins the Council of Europe Crystal Scales of Justice Prize](#), 2021, PPT.

<sup>106</sup> National research: Azerbaijan, Ukraine.

<sup>107</sup> National research: Georgia.

<sup>108</sup> National research: Republic of Moldova

<sup>109</sup> Gov. UK, [New non-fatal strangulation offence comes into force](#), 7 June 2022.

<sup>110</sup> National research: Azerbaijan, Georgia, Republic of Moldova, Ukraine; Council of Europe, [Sex without consent is rape: European countries must change their laws to state that clearly](#), 2020.



violence against women. After initial challenges in implementing the provision, dramatic improvements saw its application to 732 cases in 2021 compared with 208 in 2020.<sup>111</sup> Legislation passed in 2022, in the Republic of Moldova and in Türkiye, to expand legislation to include a qualification for gender-bias motivation.<sup>112</sup> Azerbaijan recently established aggravated penalties for sexual violence committed against minors.<sup>113</sup>

#### **4.4.1.1 Domestic violence legislation**

It remains common in the Eastern Partnership region for the scope of domestic violence laws to be limited to family members only, thus excluding non-cohabitating couples or intimate partners.<sup>114</sup> In Azerbaijan, the scope of application is even more limited to only co-habiting family members; it applies to former spouses.<sup>115</sup> This resulted in one woman being subject to violence by her brother-in-law without being able to invoke the domestic violence law.

The domestic violence laws in some Eastern Partnership countries also impose reconciliation processes on domestic violence complainants, including Azerbaijan and Armenia, creating additional barriers for women to escape violent perpetrators. Bans on mediation were introduced by an order of the Ministry of Social Protection after they were included in domestic violence legislation in Ukraine.<sup>116</sup> OSCE trial monitors in Azerbaijan noted the repeated attempts by a judge to get a victim to say the word “reconcile” for the court record despite her reluctance to do so.<sup>117</sup> Although not official policy, police also attempt to reconcile victims of violence in Ukraine and Türkiye.<sup>118</sup>

#### **4.4.2 Evidence**

The failure to engage in proactive investigations related to crimes involving gender-based violence limits the scope of evidence that can be presented on which to base a conviction. It also creates an over-reliance on victim testimony, which frequently results in re-victimisation. NGOs in Georgia have reported on failures to investigate, ineffective investigations, including the failure to use audio-visual recordings and the persistence of stereotypical attitudes. Long pre-trial investigations and gender stereotypes are also common in Ukraine.<sup>119</sup>

Seemingly neutral, rules and decisions concerning the admissibility of evidence can invite implicit bias and gender stereotypes into decision making. Many countries in the region have no rules set forth in criminal procedure codes limiting the introduction of prior sexual conduct evidence to cases in which it is relevant and necessary.<sup>120</sup>

##### **4.4.2.1 Forensic evidence**

Victims of gender-based violence face ongoing challenges with forensic testing, including access and a lack of gender sensitivity.<sup>121</sup> As the UN Special Rapporteur on violence against women, its causes and consequences observed: “Another worrisome practice is virginity testing, which is still being reported in some States. For example, in Armenia, an ordinance by the Minister of Health provides for forensic

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<sup>111</sup> National research: Georgia.

<sup>112</sup> National research: Republic of Moldova

<sup>113</sup> National research: Azerbaijan.

<sup>114</sup> National research: Georgia, Ukraine.

<sup>115</sup> National research: Azerbaijan, Georgia.

<sup>116</sup> National research: Ukraine.

<sup>117</sup> National research: Azerbaijan.

<sup>118</sup> National research: Ukraine; Council of Europe, Handbook for legal aid lawyers on women’s access to justice in Türkiye, 2022.

<sup>119</sup> National research: Georgia; Ukraine.

<sup>120</sup> National research: Azerbaijan, Ukraine.

<sup>121</sup> National research: Azerbaijan, Republic of Moldova, Georgia, noting a “serious problem,” including lack of gender sensitivity.

medical examinations, including the identification of the sexual condition, sexual integrity and virginity or otherwise of the victim”.<sup>122</sup>

This practice was apparent in two cases before the European Court of Human Rights. In the *Aydin v. Türkiye* and *N.Ç. v. Türkiye* cases, the victims were ordered to undergo four and ten forensic medical examinations, respectively. This excessive ordering of what amounted to gynaecological examinations appears to function as a form of sexual harassment of sexual violence victims claiming their rights. The sole aim of tests in the *Aydin* case was to establish whether she was a virgin prior to the alleged rape, rather than to gather forensic evidence related to rape by a police officer.

The absence of gender sensitivity among forensic doctors, who are primarily men, remains a concern in Eastern Partnership countries.<sup>123</sup> In the Republic of Moldova, forensic medical centres are open only during normal working hours from Monday to Friday, and are not present in all geographic areas, requiring victims to travel significant distances. The centres do not provide information to rape and sexual violence victims of available services. National research in Azerbaijan revealed the refusal of a forensic doctor to examine a marital rape victim because he did not consider it a crime.<sup>124</sup>

Fearing contagion, forensic doctors were reportedly unable or unwilling to document physical and sexual abuse, complicating the gathering of evidence during the pandemic.<sup>125</sup> In Georgia and the Republic of Moldova, travel bans and lockdowns resulted in a decrease in the number of forensic examinations, and the reports being delayed.<sup>126</sup>

#### 4.4.2.2 Privacy violations during evidence collection

Practices involving privacy rights violations in investigations of sexual violence cases have arisen as a worrying concern. In the United Kingdom, police have required victims to turn over their mobile data and personal records (in one case, up to seven years of data), and to sign agreements effectively giving police “free reign” to extract data.<sup>127</sup> According to journalist reports:

Data extracted may include all of the complainants’ texts, messaging apps, emails, call records, photos, videos, social media messages and deleted data, which can all be retained by police. The volume of material involved in each case can be enormous. Campaigners have estimated that information routinely sought from a victim in rape investigations amounts to 30,000 pages.<sup>128</sup>

This vast amount of personal data is only being requested of rape and sexual violence victims. It can be kept for up to 100 years and be disclosed to the Crown Prosecution Service. Victims who refuse to provide the requested data see their cases dropped.<sup>129</sup>

In the United States, DNA samples gathered from victims’ rape kits have been used by police to identify them as suspects in other, unrelated crimes in what was identified as a widespread practice.<sup>130</sup>

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<sup>122</sup> UN Special Rapporteur on violence against women its causes and consequences, Rape as a grave, systematic and widespread human rights violation, a crime and a manifestation of gender-based violence against women and girls, and its prevention, A/HRC/47/26, 2021, para 97.

<sup>123</sup> National research: Azerbaijan, Georgia.

<sup>124</sup> National research: Azerbaijan.

<sup>125</sup> UN Women, UNODC, UNDP, IDLO, et.al., Justice for women amidst COVID-19, 2020, p. 19.

<sup>126</sup> National research: Georgia, Republic of Moldova.

<sup>127</sup> The Guardian, [We are facing the ‘decriminalisation of rape’ warns victims’ commissioner](#), 14 July 2020.

<sup>128</sup> The Guardian, [Police in England and Wales dropping rape inquiries when victims refuse to hand in phones](#), 17 June 2020.

<sup>129</sup> The Guardian, [Police demands for potential rape victims’ data sparks privacy fears](#), 25 September 2018.

<sup>130</sup> New York Times, [Victim’s rape kit was used to identify her as a suspect in another case](#), 15 February 2022.

### 4.4.3 Protection

The risks to women's physical and psychological safety and well-being during their engagement with justice sector actors cannot be underestimated as a barrier to their access to justice. From the performance of risk assessments to the issuance of protection orders and in-court protection measures, women continue to lack meaningful protection, despite increased recognition of their importance and implementation across the region. The inability of women to receive from justice systems viable protection is considered as a violation of the right to an effective remedy component of women's access to justice.<sup>131</sup> The European Court of Human Rights has issued several judgments finding violations of Articles 3 and 8 (prohibition on ill-treatment and right to family life, respectively), for failing to issue protection orders in appropriate cases or for failure to monitor and ensure compliance.<sup>132</sup>

The Istanbul Convention requires the availability of emergency barring (EBOs) and longer-term protection orders (POs). EBOs and POs are to be issued irrespective any criminal complaint or charges. As described in the Explanatory Report to the Convention:

many victims who want to apply for a restraining or protection order may not be prepared to press criminal charges (that would lead to a criminal investigation and possibly criminal proceedings) against the perpetrator. Standing to apply for a restraining or protection order shall therefore not be made dependent on the institution of criminal proceedings against the same perpetrator.<sup>133</sup>

In some countries, the legal framework establishing such orders remains inadequate, while in others the implementation remains very weak. Eastern Partnership countries face continued challenges in effectively identifying, responding to and preventing ongoing violence through the use of risk assessments, EBOs and protection orders, as detailed in the sections below.

#### 4.4.3.1 Risk assessments

The performance of a risk assessment is a necessary precondition for the issuance of an EBO or protection order in order to ascertain the level of threat and to identify the specific measures to be employed in the individual case. Risk assessments also enable law enforcement to concentrate limited resources to those facing the highest threat, as well as to identify low-risk cases for which prevention interventions can prevent higher risks in the future.

In Azerbaijan, legislation does not foresee the performance of risk assessments, nor the issuance of EBOs. Rather, national legislation provides for a written warning to be issued to perpetrators.<sup>134</sup> Risk assessments are performed in Ukraine, but not as a systematic practice as required by law.<sup>135</sup> In Ukraine and Georgia, risk assessments are performed once by police, but not repeated as necessary.<sup>136</sup> Given the increased risks posed to victims during legal proceedings, this gap significantly reduces protection for victims who seek to access justice mechanisms to ensure their protection from violence.

It is mandatory that an assessment is conducted for each victim, including children who are direct or indirect victims of domestic violence. In practice, few countries perform separate risk assessments for

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<sup>131</sup> CEDAW, General recommendation No. 33 on women's access to justice, CEDAW/C/GC/33, 2015, para 14(e).

<sup>132</sup> E.S. v. Slovakia, B. v. Republic of Moldova, Kalucza v. Hungary; Eremia v. Republic of Moldova; Civek v. Türkiye; Murdic v. Republic of Moldova; Halime Kilic v. Türkiye;

<sup>133</sup> Council of Europe, Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, 2011, para 273.

<sup>134</sup> National research: Azerbaijan.

<sup>135</sup> National research: Ukraine; Council of Europe, RISK ASSESSMENT

<sup>136</sup> National research: Georgia, Ukraine.

children. In Georgia and Ukraine, assessing the risk of children is not required. In Azerbaijan, child witnesses to violence are not considered as victims.<sup>137</sup>

#### **4.4.3.2 EBOs and removing perpetrators from the home**

The Istanbul Convention “establishes the obligation of equipping the competent authorities, with the power to order, a perpetrator of domestic violence to leave the residence of the victim and to bar him or her from returning or contacting the victim”.<sup>138</sup> In the case *A.T. v. Hungary*, CEDAW affirmed that the victim’s right to life must be given precedent over the property rights of the perpetrator.<sup>139</sup>

In Azerbaijan, perpetrators are not removed from the home in deference to their property rights, despite clear international legal standards to the contrary. Police refused to remove perpetrators from their homes during the pandemic in the Republic of Moldova.<sup>140</sup>

In Ukraine there has been no systemic monitoring of police response to domestic violence, and they are reportedly not very effective for ensuring meaningful protection. To address this problem a recent notification system was created for cases in which police did not respond to calls for assistance.<sup>141</sup>

#### **4.4.3.3 Longer-term protection orders**

Longer-term protection is required for victims, given that threats to their life and physical integrity can be lifelong. Many countries in the region make longer-term protection orders available through civil proceedings. They are addressed here given their close connection to protection from violence in a criminal context. Except in countries like Spain, with specialised domestic violence courts that have the competence to address both civil and criminal issues related to the case, placing long-term protection within the civil law framework creates additional obstacles for victims by requiring them to seek legal representation and bear the costs and evidentiary burdens of filing for protection. It also poses obstacles with respect to accessing free legal aid, as in some countries legal aid offices are divided into civil and criminal sections with lawyers practicing only in one or the other, as well as in countries where related civil issues are not covered by legal aid.<sup>142</sup>

Several EU countries offer long-term or even permanent protection for victims in such cases, given the persistence of the threat and the continuous burden placed on victims to continue to reapply for protection. Eastern Partnership countries do not offer extended long-term protection for victims of domestic violence. In Ukraine, protection orders can be ordered for from only one to six months. They can be extended to no longer than 12 months during criminal proceedings.<sup>143</sup>

In Azerbaijan, protection orders can be issued for a maximum of 180 days, irrespective of the actual threat of violence to the victim. Furthermore, they can only be issued if the perpetrator first violates a short-term order. In practice, victims must write a written request for a short-term order and present evidence to support the request.<sup>144</sup> In 2020, only 32 short-term orders were issued and no long-term orders. In 2019, 38 short-term orders were issued and two long-term orders. In practice protection

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<sup>137</sup> National research: Azerbaijan, Georgia, Ukraine.

<sup>138</sup> Council of Europe, Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, 2011, para 264.

<sup>139</sup> CEDAW, *A.T. v. Hungary*, Communication No. 2/2003, 2005.

<sup>140</sup> National research: Republic of Moldova.

<sup>141</sup> National research: Ukraine.

<sup>142</sup> Council of Europe, Handbook for legal aid lawyers on women’s access to justice in Türkiye, 2022; National research: Azerbaijan.

<sup>143</sup> National research: Ukraine.

<sup>144</sup> National research: Azerbaijan, citing instances in which police refused to remove the perpetrator. See, CEDAW, *A.T. v. Hungary* 2005.

orders cannot be issued immediately, as they are conditioned on criminal liability and the process can take months or years.<sup>145</sup>

In Ukraine, despite their irrelevance to criminal responsibility, judges deny requests for protection in the absence of criminal complaint in violation of the national legislative framework, and as such “favour the principle of presumption of innocence of the perpetrator over the safety of the victim”. They also often reveal the victim’s name or identifying information, violating her right to privacy. A large percentage (approximately 70%) of requests for protection are denied in Ukraine.<sup>146</sup> As noted, when they are issued, no measures are taken to ensure their enforcement.<sup>147</sup>

Judges in other countries, including in the Republic of Moldova, Ukraine and Türkiye, tend to limit the temporal coverage of both EBOs and protection orders, despite the already limited temporal coverage set forth in the law.<sup>148</sup>

In the Republic of Moldova, the number of requests for civil protection orders stayed the same during lockdowns, but the police reported a doubling in the number of EBOs issued. The decline in civil protection orders was also attributed to the fact that during confinement the police refused to remove perpetrators from the home.<sup>149</sup> Similarly, the number of EBOs issued during the pandemic rose in Georgia, with the number of protection orders issued by the courts declined.<sup>150</sup>

#### **4.4.3.4 Protection orders for other forms of VAW**

A few countries in Europe have expanded and tailored the application of protection orders to other crimes of violence against women. Denmark created specialised temporary restraining orders for stalking, and the United Kingdom established FGM and forced marriage protection orders. Albania extended emergency protection orders to survivors of intimate partner violence. These can be seen as good practice examples of tailoring and extending the application of existing mechanisms of protection to a broader category of persons.<sup>151</sup>

#### **4.4.3.5 In-court protection**

In-court protection encompasses both procedural and physical elements. Designated waiting areas in court buildings to prevent the re-traumatisation that occurs when women are forced to confront their abusers in the hallways prior to and after proceedings, security personnel to accompany victims within the building, the use of screens or video technology to allow the victim to testify from a separate room and allowing witnesses to be accompanied by a support person are examples of ensuring the physical conditions for the safety of victims during proceedings. Procedural adjustments include, *inter alia*, closing hearings to the public, barring the media, protecting the identity of the victim.

Eastern Partnership countries do not have designated safe waiting areas for victims within court facilities.<sup>152</sup> In a good practice example, Türkiye recently introduced judicial interview rooms with

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<sup>145</sup> National research: Azerbaijan, citing instances in which police refused to remove the perpetrator. See, CEDAW, *A.T. v. Hungary* 2005.

<sup>146</sup> Council of Europe, *Court considerations on issuing restraining or protection orders in cases of domestic violence: International standards and overview of Ukrainian national practice*, 2020, pp. 14, 57, 61, concluding with an extensive list of the inappropriate application of the national legal framework by first instance and appellate judges.

<sup>147</sup> Council of Europe, *Risk assessment standards and methodologies for diverse stakeholders in Ukraine*, 2020.

<sup>148</sup> National research: Republic of Moldova; Council of Europe, *Handbook for legal aid lawyers on women’s access to justice in Türkiye*, 2022.

<sup>149</sup> National research: Republic of Moldova.

<sup>150</sup> National research: Georgia.

<sup>151</sup> UN Women, *Regional assessment of implementation of the Beijing Declaration and Platform for Action in Europe and Central Asia*, 2020.

<sup>152</sup> National research: Georgia, Ukraine.

specially trained staff to be present with vulnerable victims in order to protect them from re-victimisation by other court actors who may lack gender sensitivity.

While courts do invoke procedural protections for victims, they are not always sufficient to actually protect victims from re-victimisation. In the *Y. v. Slovenia* case, the judge had ordered some in-court protection measures, and ensured breaks in testimony when the minor victim of rape became emotional. However, the judge did not protect the victim from being subjected to direct questioning by the perpetrator himself who posed more than 100 questions, many of which were leading.<sup>153</sup>

The court's questioning in the *N.Ç. v. Türkiye* case, in which the minor victim of rape was required to re-enact sexual positions in the court room was found by the Court to constitute a violation of Article 3. The Court found a violation based on the fact that the judge in the case had refused requests for out-of-court protection, despite the fact that the victim and her counsel were unable to leave the court premises for hours, as it was surrounded by family members of the accused who threatened their physical security after the proceedings.<sup>154</sup>

#### 4.4.4 Prosecution and adjudication

Effective prosecution and adjudication of violence against women and domestic violence cases remain a challenge, even for countries in the region with advanced legal frameworks and practice. In the UK, rape prosecutions and convictions are at their lowest levels in a decade, despite record increases in the number of cases reported. From 2018 to 2019, rape prosecutions dropped by 33% and convictions by 26%.<sup>155</sup> Of the 63,136 cases of alleged rape reported between January to September 2021, only 820 of the alleged rapists were charged.<sup>156</sup> The decline has been attributed to a reduction in the allocation of financial resources, as well as the increase in time required to sort through the vast amount of digital data currently gathered. The lack of data from justice-sector institutions in Eastern Partnership country does not permit a meaningful assessment of the effectiveness of prosecution and adjudication in this domain.

Positive trends include a 10-fold increase in domestic violence prosecutions in Georgia since 2014, when it went from 550 to 5144 in 2021. However, the conviction rate is only 12%. Prosecutors leave sexual violence cases under investigation for years, rather than drop the case.<sup>157</sup> In another good practice example, judges in Ukraine cite to the Istanbul Convention in their decisions.<sup>158</sup>

#### 4.4.5 Access to effective remedies

The lack of access to an effective remedy remains one of the biggest challenges for victims of violence against women and domestic violence, despite being protected by Article 13 of the ECHR, the Istanbul Convention and the EU Victims' Rights Directive. Adequate and effective remedies include, *inter alia*, effective, proportionate and dissuasive sanctions that reflect the gravity of the crime,<sup>159</sup> as well as compensation for pecuniary and non-pecuniary damages from the perpetrator or in the absence thereof, from the State. Article 30(2) of the Istanbul Convention provides:

Adequate State compensation shall be awarded to those who have sustained serious bodily injury or impairment of health, to the extent that the damage is not covered by other sources such as the perpetrator, insurance or State-funded health and social provisions. This does not preclude

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<sup>153</sup> *Y. v. Slovenia*, Application No. 41107/10, 2015, paras 104-107.

<sup>154</sup> *N.Ç. v. Türkiye*, Application No. 40591/11, 2021.

<sup>155</sup> The Guardian, [Rape prosecutions in England and Wales at lowest level in a decade](#), 12 September 2019.

<sup>156</sup> The Guardian, [Rape victims failed by UK criminal courts are being forced to seek justice elsewhere](#), 19 April 2022; The Guardian, [We are facing the 'decriminalisation of rape' warns victims' commissioner](#), 14 July 2020.

<sup>157</sup> National research: Georgia.

<sup>158</sup> National research: Ukraine.

<sup>159</sup> Article 45, Istanbul Convention.



Parties from claiming regress for compensation awarded from the perpetrator, as long as due regard is paid to the victim's safety.

CEDAW General Recommendation No. 33 also recommends the establishment of victim compensation funds for this purpose. No such victims' compensation funds exist in Azerbaijan, Ukraine and Türkiye.<sup>160</sup>

While appropriate penalties might be foreseen by law, implicit bias and the application of stereotypes in sentencing results in perpetrators being given low sentences, including through the discriminatory application of mitigating circumstances, such as those based on honour or morals,<sup>161</sup> for good behaviour in court, being a "family man" or "sincere repentance".<sup>162</sup> In many countries in the region, judges impose fines in cases involving gender-based violence, which have not been found to be dissuasive and often come out of the family budget, constituting a disincentive to reporting.<sup>163</sup> In addition, most countries in the region have not integrated the full list of aggravating circumstances to be applied in cases involving violence against women and domestic violence, as foreseen in Article 46 of the Istanbul Convention.<sup>164</sup>

Victims' inability to claim compensation can often be attributed to their not being properly informed of their rights, in order to be able to intervene as a party at the appropriate stage of the proceedings to claim compensation. Many legal systems often require victims to file for compensation in separate civil proceedings, requiring a fresh set of proceedings, and a different lawyer, one specialising in civil law. This is the case in Georgia and in Azerbaijan, where free legal aid does not cover separate civil proceedings for compensation.<sup>165</sup> Significant delays in the enforcement of orders for compensation are also common. The implementation of judicial decisions in Ukraine remains a challenge, with the burden falling on the injured party.<sup>166</sup>

In Ukraine and Azerbaijan, legislation does not foresee compensation for victims by the State in the absence of compensation by perpetrators.<sup>167</sup> Most national legal frameworks provide for compensation by the State for any failure to act with due diligence. In Azerbaijan, the relevant provisions cannot be invoked by crime victims.<sup>168</sup>

#### **4.4.6 Violence and harassment at work**

The ILO Convention (C190) on Violence and Harassment opened for signature in 2019, marking an important recent advance in the international legal framework in the field of labour rights. It defines violence and harassment as "a range of unacceptable behaviours and practices" that "aim at, result in, or are likely to result in physical, psychological, sexual or economic harm," thus encompassing physical and verbal abuse, bullying and mobbing, sexual harassment, threats and stalking, among other behaviours.

Taking into account that work can occur at a non-physical workplace, C190 covers work-related ICT communications. It applies to all workers, irrespective of contractual status, including informal

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<sup>160</sup> National research: Azerbaijan, Ukraine; Council of Europe, Handbook for legal aid lawyers on women's access to justice in Türkiye, 2022.

<sup>161</sup> In violation of Article 42 of the Istanbul Convention.

<sup>162</sup> National research: Azerbaijan, Ukraine; Council of Europe, Handbook for legal aid lawyers on women's access to justice in Türkiye, 2022.

<sup>163</sup> National research: Ukraine.

<sup>164</sup> National research: Ukraine; Council of Europe, Handbook for legal aid lawyers on women's access to justice in Türkiye, 2022.

<sup>165</sup> National research: Azerbaijan, Georgia, Ukraine. Victims in Ukraine can receive compensation through both civil and criminal procedures

<sup>166</sup> National research: Ukraine.

<sup>167</sup> National research: Azerbaijan, Ukraine.

<sup>168</sup> National research: Azerbaijan.

workers. The Convention is thus applicable to psychological, sexual or economic harm perpetrated even when workers remained at home during the pandemic.

GBV constitutes an important pillar of the new ILO Convention. The Convention encompasses the actions of third parties, including clients, customers, service providers and patients—all of whom can be victims as well as perpetrators. It is thus an important tool to address the increased forms of violence perpetrated against front-line workers during the pandemic, especially that occurring in the healthcare sector, as well as GBV perpetrated against women working at home and informal workers. Since the ILO Convention was adopted, the pandemic further highlighted the issue, with many forms of work-related violence and harassment being reported across countries since the outbreak began, particularly against women and vulnerable groups.

Numerous reports indicated a surge in violence committed against healthcare workers during the pandemic, placing them in the untenable position of fearing contagion to themselves and their families, but also a fear of abuse.<sup>169</sup> Malta and Georgia reported an unquantified increase in verbal assault against healthcare workers, while the Netherlands reported a 15% rise in violence committed against police, firefighters and ambulance staff during the pandemic. Spain's Ministry of Health collects data annually on violence committed against health workers, which observed an increase in

#### **ILO Convention on Violence and Harassment (C190)**

A total of [20 countries](#) have ratified C190. In the European region these are: **Albania, Greece, Italy, San Marino, Spain and the United Kingdom**, and **France** recently passed a bill approving its ratification. Of these, it has only entered into force in Greece.

2019 and a larger increase in 2020. Analysis of data indicated that the reduction in the incidence of physical violence in 2020 was due to the suspension of in-person consultations.<sup>170</sup> In some places, front-line providers dealing with Covid-19 also experienced stigmatisation, isolation, and social ostracisation.

Given that women make up an estimated 70% of the health and social sector

workforce, violence and harassment affected them disproportionately.<sup>171</sup> The problem becomes exacerbated when health systems are under stress. At the same time, health workers may be at risk for violence in their homes in addition to in the workplace.<sup>172</sup>

An uptick in violence against migrant workers, was also identified. For example, unsafe working conditions and the absence of monitoring of a pre-existing situation involving labour exploitation and sexual violence led Women's Link Worldwide to request a UN investigation into deteriorating working conditions for seasonal migrant women workers in the strawberry fields in Huelva, Spain.<sup>173</sup> Three

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<sup>169</sup> See, EJD, [Joint statement on violence against doctors during the COVID-19 crisis](#), 2020; European Agency for Safety and Health at Work, [European Medical organisations call for protection of healthcare professionals](#), 2021; see also, Alsuliman, T., Mouki, A., Mohaman, O., Eastern Mediterranean Health Journal, Prevalence of abuse against frontline health-care workers during the COVID-19 pandemic in low and middle-income countries, Vol. 27, 2021; BMJ, US hospitals tighten security as violence against staff surges during pandemic, 2021;375:n2442, doi: <https://doi.org/10.1136/bmj.n2442>.

<sup>170</sup> Ministerio de Sanidad, Informe técnico de agresiones a profesionales del sistema nacional de salud, 2019-2020: [Resumen ejecutivo](#), 2021.

<sup>171</sup> Boniol, M., Mclsaac M., Xu L., Wulujji T., Diallo K. et. al., Gender equity in the health workforce: Analysis of 104 countries, WHO, 2019; see further, Santarone, K., McKenney, M., Elkbuli, A. (2020). Preserving mental health and resilience in frontline healthcare workers during COVID-19. American Journal of Emergency Medicine, 38(7), 1530-1531, <https://doi.org/10.1016/j.ajem.2020.04.030>.

<sup>172</sup> WHO, [COVID-19 and violence against women: What the health sector/system can do](#), 2020, p. 2.

<sup>173</sup> Women's Link Worldwide, Press Release, [Women's Link Worldwide urges the UN to investigate human rights violations against migrant women performing seasonal farm work in Spain's strawberry industry](#), 3 June 2020.



separate NGOs reported an uptick in violence against women migrants from the Republic of Moldova living abroad.<sup>174</sup>

Concerns were also raised regarding women prisoners working for long hours with little to no pay sewing masks, uniforms for healthcare workers and other protective equipment, possibly rising to the level of inhumane treatment and/or forced labour.<sup>175</sup>

WHRDs and female journalists faced high levels of cyber violence prior to the pandemic.<sup>176</sup> (See section below on ICT violence). The incidence of violence against them further increased during the pandemic. The OSCE noted cases of “harassment and abuse following investigations by journalists and human rights defenders into government responses to the crisis”.<sup>177</sup> As noted above, Serbian journalist Ana Lalić was targeted by a hate campaign there. She was sued by a hospital after having reported that it lacked medical equipment and the Serbian Prime Minister accused of her spreading “fake news”. Reporters without Borders also noted the harassment of news anchor Ana Pastor by the far-right party Vox in Spain.<sup>178</sup>

With a baseline prevalence from 45-75% of lifetime violence in the workplace, and 32-55% chance of experiencing violence in a given year, sex workers in Europe also noted an increased in violence against them during the pandemic, in addition to increased health risks.<sup>179</sup> Violence committed against them is perpetrated by clients, people posing as clients, police, immigration officials and the judiciary. (This issue is also addressed in the section on Criminal justice response to the public health crisis, below).

Significantly, the ILO Convention on Violence and Harassment covers the impact of domestic violence on workers in addition to workplace violence. An accompanying Recommendation lays out practical measures to be provided by employers to victims, including leave, flexible work arrangements and awareness raising. Given the increase in domestic violence that occurred during lockdowns, the Convention has an important role to play in potential employer response.

#### 4.4.7 ICT violence

Along with the expansion of technology, new forms of violence have emerged, and they primarily target women. Such forms of violence include, *inter alia*: cyberstalking,<sup>180</sup> sexting,<sup>181</sup> revenge porn, up-skirting,<sup>182</sup> and digital threats of rape, sexual assault and murder. In its General Recommendation No.1 on the digital dimension of violence against women GREVIO included:

non-consensual image or video sharing, coercion, and threats, including rape threats, online sexual harassment, sexualized bullying and other forms of intimidation, impersonation, online stalking or stalking via the Internet of Things as well as psychological abuse and economic harm perpetrated via digital against women and girls

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<sup>174</sup> National research: Republic of Moldova.

<sup>175</sup> OSCE/ODIHR, Human Rights and Gender Equality During Public Emergencies, 2020, p. 65.

<sup>176</sup> National research: Georgia; RSF, [Ukraine: Two women journalists harassed and threatened online over their reporting](#), 2020, observing women journalists are more frequently subject to online harassment than their male counterparts.

<sup>177</sup> OSCE/ODIHR, Human Rights and Gender Equality During Public Emergencies, 2020, p. 70.

<sup>178</sup> RSF, [Platforms urged to prevent harassment of journalists covering COVID-19](#), [online].

<sup>179</sup> ICRSE, [Policy Demands: The impact of COVID-19 on sex workers in Europe and Central Asia and recommendations for policy makers, 2020](#), pp. 1, 7; National research: Ukraine, noting high levels of violence against sex workers by law enforcement and charging with administrative offences “without legal grounds”.

<sup>180</sup> Stalking conducted over communications devices and social media platforms.

<sup>181</sup> Sexting is the act of sending sexual text messages.

<sup>182</sup> Up-skirting is the act of taking a sexually intrusive photograph up someone's skirt without their permission. Up-skirting is a criminal offence punishable by up to two years in prison England and Wales. Four men have been jailed in the year since the up-skirting law was introduced.

as falling within the definition of digital violence.<sup>183</sup> Perpetrators can be partners or ex-partners, colleagues, schoolmates and anonymous individuals. Women’s rights defenders, journalists, bloggers, video gamers, public figures and politicians are particular targets.<sup>184</sup>

According to the European Union Agency for Fundamental Rights (FRA), one in 10 women (11%) in Europe has faced at least one of two forms of cyber-harassment since the age of 15.<sup>185</sup> It also found that 4% of 18-to 29-year-old women had been affected by cyberstalking at least once.<sup>186</sup>

Quarantine measures reportedly increased internet usage between 50% to 70%, with a suspected increase in ICT violence against women. For example, a 2021 survey conducted in Türkiye revealed, 51% of women had received text, voice or video harassment messages in online environments; 46% had been stalked on ICT.<sup>187</sup> Yet Türkiye, like Eastern Partnership countries, have not yet promulgated specific legislation to address ICT violence.<sup>188</sup>

The consequences of online violence include women experiencing “higher levels of anxiety, stress disorders depression, trauma, panic attacks, loss of self-esteem and a sense of powerlessness in their ability to respond to the abuse”. Women reportedly tend to restrict their online access because of violence committed while connected, thus potentially limiting their access to online services.<sup>189</sup>

#### 4.5 Women in conflict with the law

Women tend to be detained for low-risk offences, often associated with economic and social challenges, or linked to coercive relationships with men. They face offences for the exercise of prostitution, even where it is legal, and for victim resistance violence, such as by acting in self-defence. They are also coerced into engaging in criminal behaviour by abusive partners, and/or to alleviate their own experience of violence and exploitation, such as the crimes committed by trafficking victims.<sup>190</sup>

Many female defendants are in fact victims of crimes that were not reported and prosecuted. In one study of case law involving female defendants of human trafficking for the purpose of sexual exploitation, one quarter had been victims of childhood sexual abuse and/or domestic violence; most continued to be sexually exploited by traffickers even as they participated in the acts related to the trafficking of other women and girls for which they were charged.<sup>191</sup>

Justice systems often operate upon an unstated dichotomous conceptual framework between victims and criminals, reflecting the “complex ways in which normative ideas of gender, sexuality and victimhood subsume processes of distinguishing between ‘victims’ and ‘criminals’”.<sup>192</sup> Technically, the failure to effectively recognise defendants as concurrent or prior victims in a criminal scenario can be attributable in part to temporal requirements that the victimisation be contemporaneous with the crime. Criminal justice systems rarely acknowledge the history of abuse in definitions of self-defence. The ongoing application of the gendered stereotypes of the “ideal victim” also contributes to the criminalisation of victims.

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<sup>183</sup> GREVIO, General Recommendation No.1 on the digital dimension of violence against women, 24 November 2021.

<sup>184</sup> National research: Georgia, Republic of Moldova.

<sup>185</sup> FRA, Violence against Women: an EU-wide survey. Main results report, 2014, p. 104, defining cyber-harassment as: receiving unwanted, offensive, sexually explicit emails or SMS messages; inappropriate, offensive advances on social networking websites or in internet chat rooms.

<sup>186</sup> FRA, Violence against Women: an EU-wide survey. Main results report, 2014, p. 4.

<sup>187</sup> KONDA-UNFPA, [Digital Violence Report](#), 2021.

<sup>188</sup> National research: Georgia, Ukraine.

<sup>189</sup> UN Women, [Online ICT facilitated violence against women and girls during COVID-19](#), 2020.

<sup>190</sup> UN Women, et. al., Justice for women amidst COVID-19, 2020, pp. 24-25; National research: Ukraine.

<sup>191</sup> UNODC, *Female victims of trafficking for sexual exploitation as defendants*, 2020.

<sup>192</sup> Sine Plambech, Between “Victims” and “Criminals”: Rescue, Deportation, and Everyday Violence among Nigerian Migrants, *Social politics*. Vol. 24. No. 3, 2014, p. 385.

In cases related to homicide committed by women, evidence suggests “that women killing their male intimate partners often act in self-defence following ongoing violence and intimidation”.<sup>193</sup> Most studies of incarcerated women have observed high rates of victimisation that link the violence to their entry into the criminal justice system as defendants.<sup>194</sup> In depth studies in the United States have revealed that nearly all incarcerated women and girls have experienced sexual and physical abuse throughout their lives.<sup>195</sup>

Women in marginalised ethnic and racial groups, living in poverty and/or with drug addiction and sex workers are disproportionately affected. As CEDAW has observed:

Poverty and unemployment force many women, including young girls, into prostitution. Prostitutes are especially vulnerable to violence because their status, which may be unlawful, tends to marginalize them. They need the equal protection of laws against rape and other forms of violence.<sup>196</sup>

The stigmatisation and discriminatory treatment of sex workers, including by law enforcement officers, is based on their transgression of gendered social and sexual norms and/or for not conforming to gender roles specifically because they are sex workers. A presumption of criminality and discriminatory treatment has the effect of preventing sex workers from seeking justice when they encounter physical or sexual violence or extortion for fear that they will instead become the focus of a criminal investigation. As a result, aggressors can direct violence at sex workers with relative impunity.

International standards provide for a non-punishment principle to be applied to victims of human trafficking for crimes committed during the course of being trafficked. UNODC has described the principle as: “The notion that trafficked persons should not be subject to arrest, charge, detention or prosecution, or be penalized or otherwise punished for illegal conduct that they engaged in as a direct consequence of being trafficked.”<sup>197</sup> However, many countries in the Europe region have limited its application to status-related offences, such as irregular migration or holding forged documents, despite the fact that traffickers intentionally coerce victims into engaging in acts proximate to the exploitation that are more exposed to law enforcement in order to shield themselves from liability.<sup>198</sup>

Once convicted, women prisoners experience sexual harassment and assault during body searches, accompaniment by men for healthcare referrals, the absence of a complaint procedure and access to legal representation, in particular related to divorce, alimony and custody of their children. Often forced to buy supplies from the canteen at elevated prices, they often cannot afford sanitary pads.

Women also frequently experience diverse forms of gender-based violence in detention facilities around the world, including sexual violence. Presumptions of guilt for a crime should not preclude their access to court to allege sexual violence. Women also face discrimination in carceral institutions, such as in their access to healthcare, including sexual and reproductive healthcare.<sup>199</sup>

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<sup>193</sup> WHO, *Understanding and addressing violence against women*, p. 2.

<sup>194</sup> Arnold, R.A., Processes of victimization and criminalization of Black women, *Social Justice*, 17, 153-166, 1990; Browne, A., When battered women kill, 1987; Browne, A., Miller, B., Maguin, E., Prevalence and severity of lifetime physical and sexual victimization among incarcerated women, *International Journal of Law and Psychiatry*, 22, 301-322.

<sup>195</sup> Gilfus, M.E., [Women’s experiences of abuse as a factor for incarceration](#), VAWNet, 2002.

<sup>196</sup> CEDAW, General Recommendation No. 19, para 15.

<sup>197</sup> UNODC, Guidance on the issues of appropriate criminal justice responses to victims who have been compelled to commit offences as a result of their being trafficked, CTOC/COP/WG.4/2020/2, paras 9-11.

<sup>198</sup> UNODC, *Female victims of trafficking for sexual exploitation as defendants*, 2020.

<sup>199</sup> See also the CPT factsheet on women in prisons, <https://www.coe.int/en/web/cpt/women-in-prison>

Incarcerated persons for non-violent crimes and those close to completing their sentences should have enjoyed early release during the pandemic. Violations in relation to the right to health and healthcare were also a significant concern during the pandemic. These issues are addressed in more detail in the section on Criminal justice response to the public health crisis below.

#### 4.6 Corruption

Corruption is an important barrier to women’s access to justice. It erodes trust in the justice sector in providing just outcomes, which tends to have a disproportionate impact on women considering their re-victimisation and consistent gender discriminatory outcomes. Corruption also impedes those without financial resources from filing claims if they cannot afford to pay bribes in addition to court costs.

Corruption in the justice sector continues to be a significant problem in Eastern Partnership countries. It was noted as a significant concern by researchers in both the Republic of Moldova and Azerbaijan.<sup>200</sup> In contrast, a 2019 trust and user-satisfaction survey in Georgia indicated that 84% of respondents trusted the courts and were satisfied with the services received.<sup>201</sup>

#### 4.7 The effect of the pandemic on women’s access to justice

In its guidance on COVID-19 response, the CEDAW Committee reiterated States’ ongoing

due diligence obligation to prevent and protect women from, and hold perpetrators accountable for, gender-based violence against women. They should ensure that women and girls who are victims or at risk of gender-based violence, including those living in institutions, have effective access to justice, particularly to protection orders, medical and psycho-social assistance, shelters and rehabilitation programmes.<sup>202</sup>

The UN Special Rapporteur on the independence of judges and lawyers observed that “[w]hile some countries have designed and implemented special procedures and remedies” to address the rise in violence against women and domestic violence “these have been insufficient”.<sup>203</sup>

The UN Special Rapporteur on violence against women, its causes and consequence described that:

Even in those countries where courts remain open, other barriers may prevent women from having their applications for domestic violence orders heard. In Ireland, for example, it was noted that, as public transport routes were significantly reduced, if not completely suspended, during the lockdown period, women who were living in rural areas or outside of towns where courthouses were located were restricted from attending the courts unless they had access to their own transport. Lack of childcare is also a significant issue hindering access to the courts.<sup>204</sup>

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<sup>200</sup> National research: Azerbaijan, Republic of Moldova.

<sup>201</sup> National research: Georgia, citing

[http://hcoj.gov.ge/files/სასამართლოს%20მომხმარებელთა%20კმაყოფილების%20კვლევა\\_3.pdf](http://hcoj.gov.ge/files/სასამართლოს%20მომხმარებელთა%20კმაყოფილების%20კვლევა_3.pdf).

<sup>202</sup> CEDAW, [Guidance note on CEDAW and COVID-19](#); see also, UN Special Rapporteur on violence against women, its causes and consequence, Intersection between the coronavirus disease (COVID-19) pandemic and the pandemic of gender-based violence against women, with a focus on domestic violence and the “peace in the home” initiative, A/75/144, 2021, para 4, stating “the due diligence obligation to prevent and combat gender-based violence against women at the hands of private individuals, including family members,” remain “fully applicable in the context of the COVID-19 pandemic”.

<sup>203</sup> UN Special Rapporteur on the independence of judges and lawyers, The coronavirus disease (COVID-19) pandemic: impact and challenges for independent justice, 9 April 2021, para 103.

<sup>204</sup> UN Special Rapporteur on violence against women, its causes and consequence, Intersection between the coronavirus disease (COVID-19) pandemic and the pandemic of gender-based violence against women, with a focus on domestic violence and the “peace in the home” initiative, A/75/144, 2021, para 70.

Restrictions imposed to curb the Covid-19 pandemic curtailed the ability to respond to VAW cases and to hold perpetrators accountable. Overburdened with the demands posed by the pandemic, in some countries, law enforcement and health professionals de-prioritised VAW complaints and support services, shifting priorities towards enforcing quarantine, monitoring social distancing and other related measures.<sup>205</sup> In addition to having less time and resources to respond to GBV incidents, police and other law enforcement agencies often lacked specific skills on how to respond to such incidents during the emergency.

In two good practice examples, Norway developed a specific plan to address domestic violence in the context of pandemic restrictions. In other countries, including Albania and Andorra, authorities sent circulars and other communications to law enforcement requesting prioritised treatment of victims of domestic violence.<sup>206</sup> Spain’s contingency plan adapted the modalities of the means of ensuring compliance with protection orders.

The UN Special Rapporteur on violence against women, its causes and consequences called attention to the way in which pandemic response measures “exposed pre-existing gaps and shortcomings in the prevention of violence against women as a human rights violation that had not been sufficiently addressed by many States even before the onset of the Covid-19 pandemic”.<sup>207</sup> In addition to exposing existing gaps, the Covid-19 response measures exasperated the problem, augmenting the level of discrimination women experience in attempting to access justice.

## 5. Justice and “essential” services and data collection

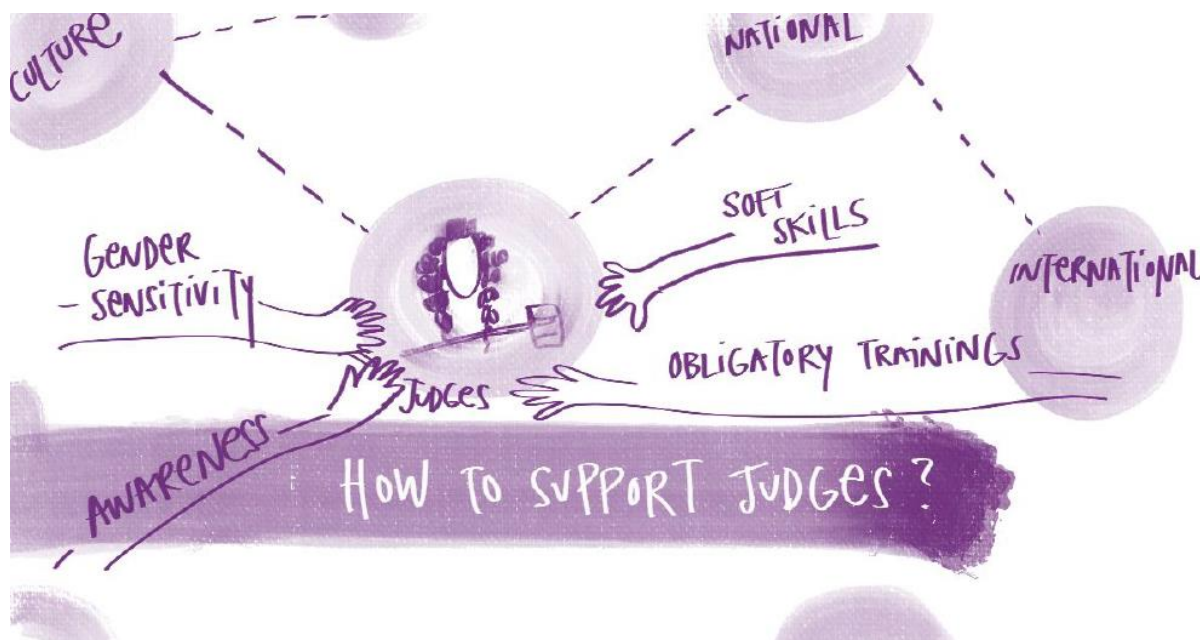


Illustration: Vanda Kovacs

Access to an array of justice services prior to, during and after any trial is a necessary prerequisite for ensuring that those services are fair, as well as for ensuring needed protection and other services to victims of crime, including survivors of gender-based violence. These justice services include, *inter alia*: information on how to contact the police and report a crime, legal aid, and assistance in obtaining

<sup>205</sup> UN Women, UNODC, UNDP, IDLO, et.al., Justice for women amidst COVID-19, 2020, p. 15; World Bank Blogs, [Data, laws and justice innovations to address violence against women during COVID-19](#), 7 December 2020.

<sup>206</sup> Council of Europe member State responses to GEC questionnaire.

<sup>207</sup> UN Special Rapporteur on violence against women, its causes and consequence, Intersection between the coronavirus disease (COVID-19) pandemic and the pandemic of gender-based violence against women, with a focus on domestic violence and the “peace in the home” initiative, A/75/144, 2021, para 3.



necessary documentation, such as the replacement of national identification. Victims of gender-based violence should have access to a package of “essential services,” including: hotlines, crisis centres, shelters and protection services, in addition to medical treatment and psychological support, among other assistance.

Limited access to the above-listed array of services had a significant impact on access to justice, prior to and beyond access to court and fair trial guarantees. This section addresses the diverse country responses to maintaining the full array of services during the pandemic in light of the restrictions imposed on the general population.

### 5.1 Access to legal assistance and legal aid

Both criminal defendants and victims of crime have a right to free legal aid.<sup>208</sup> Access to legal aid is an essential component of the right to a fair trial,<sup>209</sup> ensuring effective legal representation for those who have insufficient financial resources to cover the costs. Article 6 of the ECHR and Articles 47 and 48(2) of the EU Charter of Fundamental Rights guarantee the right to legal assistance in both civil and criminal proceedings. The Council of Europe qualifies legal aid, not “as a charity to indigent persons but as an obligation” in the elimination of obstacles to access to justice.<sup>210</sup>

Laws and practices vary in Eastern Partnership countries with respect to women’s access to legal aid. In Republic of Moldova, women facing discrimination have a right to free legal aid. However, the cumbersome bureaucracy impedes women’s access to this service, especially those with disabilities.<sup>211</sup> In Türkiye and Ukraine, domestic violence victims have an automatic right to legal aid, but this aid does not automatically cover court costs.

In contrast, in Azerbaijan, perpetrators of crimes have a right to legal aid, but victims do not.<sup>212</sup> While the Azerbaijani Law on Prevention of Domestic Violence provides the right to free legal aid for the victims of domestic violence, they are unable to take advantage of this right in practice as the Cabinet of Ministers decision listing the categories of cases eligible for legal aid does not include domestic violence cases or applications for protection orders.<sup>213</sup>

The quality of legal aid in Azerbaijan is also reportedly a concern, given the extremely low remuneration provided to legal aid lawyers. Further, with the exception of cases involving minors, alimony and migrants and refugees, among others, legal aid coverage does not cover court costs, which are often prohibitive.<sup>214</sup> Legal aid is poorly remunerated in other countries in the region as well.<sup>215</sup>

Another obstacle to access to legal aid for women in the Eastern Partnership region is the limited geographical accessibility of legal aid offices, which are located in urban areas.<sup>216</sup> A common theme to emerge in the region is the fact that legal aid lawyers tend to represent perpetrators as defendants.

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<sup>208</sup> Article 6, ECHR; Article 13, EU Victims’ Rights Directive.

<sup>209</sup> Council of Bars and Law Societies of Europe (CCBE) Recommendations on Legal Aid, I.1.

<sup>210</sup> Council of Europe, Committee of Ministers, Resolution 78(8) on legal aid and advice, 2 March 1978.

<sup>211</sup> National research: Republic of Moldova.

<sup>212</sup> National research: Azerbaijan. Azerbaijan is not party to the Istanbul Convention, and the Victims’ Rights Directive is not binding.

<sup>213</sup> National research: Azerbaijan, citing the Cabinet of Ministers decision “On the Amount to be Paid to Lawyers, Translators, Specialists and Experts”, 01.02.2001, No. 31.

<sup>214</sup> National research: Azerbaijan, citing Huseynli and Others v. Azerbaijan, Applications Nos. 67360/11, 67964/11 and 69379/11, 11 February 2016, para 132.

<sup>215</sup> National research: Ukraine.

<sup>216</sup> National research: Azerbaijan, Georgia, Republic of Moldova.

They therefore lack experience working with victims and they tend to employ gender discriminatory stereotypes.<sup>217</sup>

As observed by the UN Special Rapporteur on the independence of judges and lawyers, “[i]n almost all countries, the suspension of judicial services affected free legal aid services for administrative and judicial proceedings, despite the introduction of online or telephone services to replace in-person assistance”.<sup>218</sup> At the same time:

To be able to perform their work, lawyers have had to obtain ad hoc authorizations. In countries such as France and Spain, a formal self-declaration by lawyers was sufficient to be able to travel, while in other places the authorities were responsible for issuing travel permits, which constituted de facto authorisation to work.<sup>219</sup>

The Special Rapporteur noted, in particular, the challenges in obtaining legal assistance for victims of domestic violence, human trafficking—disproportionately women—as well as for persons with disabilities and those who were ill.<sup>220</sup>

In some countries, “the work of lawyers and the courts was not defined as an essential service, thereby impeding the provision of certain legal services”.<sup>221</sup> Finland and Ukraine were among the countries to ensure the accessibility of legal aid during lockdowns. Azerbaijan developed a mobile notary app that included features of power of attorney.<sup>222</sup>

## 5.2 Government administration

Legal identity is a pre-requisite to accessing “public services such as health care, humanitarian assistance, financial aid and other social services”. Identity documentation also affects rights related to residency, citizenship, healthcare and voting. Administrative documents can also be a prerequisite for obtaining legal aid. The UN Legal Identity Task Force has underscored the importance of ensuring civil registration as an “essential service” to ensure continuity during the pandemic.<sup>223</sup> It indicated that

### Good practice

The Macedonian Young Lawyers Association and the Free Legal Aid Centre of the Kosovo\* Law Institute provided legal assistance during lockdown by establishing dedicated telephone lines for detainees and asylum seekers. Through awareness-raising campaigns on television and social media and the use of toll-free numbers, the organisations provided people with information about their rights and means of obtaining legal support during COVID-19 lockdowns.

*UN Special Rapporteur on the independence of judges and lawyers, The coronavirus disease (COVID-19) pandemic: impact and challenges for independent justice, 9 April 2021, para 66.*

\*All reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

<sup>217</sup> National research: Georgia; Council of Europe, Handbook for legal aid lawyers on women’s access to justice in Türkiye, 2022.

<sup>218</sup> UN Special Rapporteur on the independence of judges and lawyers, The coronavirus disease (COVID-19) pandemic: impact and challenges for independent justice, 9 April 2021, para 63; National research: Ukraine.

<sup>219</sup> UN Special Rapporteur on the independence of judges and lawyers, The coronavirus disease (COVID-19) pandemic: impact and challenges for independent justice, 9 April 2021, para 59.

<sup>220</sup> UN Special Rapporteur on the independence of judges and lawyers, The coronavirus disease (COVID-19) pandemic: impact and challenges for independent justice, 9 April 2021, para 61.

<sup>221</sup> UN Special Rapporteur on the independence of judges and lawyers, The coronavirus disease (COVID-19) pandemic: impact and challenges for independent justice, 9 April 2021, paras 30-33, noting restrictions of lawyers’ visits to penitentiaries in the Russian Federation, lengthy and warrantless detentions of lawyers in centres with high levels of COVID-19 in Egypt, and government harassment of members of the legal profession in Türkiye.

<sup>222</sup> Council of Europe member States’ responses to GEC questionnaire.

<sup>223</sup> UN Legal Identity Agenda Task Force, [Maintaining Civil Registration and Vital Statistics During the COVID-19 Pandemic](#), 9 April 2020, para 4.

the “registration of births, deaths, foetal deaths and recording of causes of death, should continue as a priority.”<sup>224</sup>

Yet, in most countries of the region, State administrative functions were considered as “non-essential”. Consequently, the administrative processing of citizenship, births, deaths, marriage, and divorce, were suspended or limited to on-line services.<sup>225</sup> Some countries provide for this service on-line, which can result in an additional barrier in the face of digital divides across the population.<sup>226</sup>

Women were also impacted in their ability to access legal aid and ensure their property and inheritance rights. This was true for those with unregistered marriages, especially affecting women in rural areas, in the context of increased mortality incidence among men from Covid-19. Civil and identity registration documents can have an impact on early marriage, or instance in the context of school closures and increased economic insecurity, including the ability to access to a remedy.

Children unregistered at birth are particularly vulnerable to human trafficking and other forms of violence and exploitation. Such risks increase during disruptions caused by crisis times. The effects of the absence of civil registration on Roma and migrant communities has been long-standing, widely documented, increasing their levels of vulnerability. The lack of civil registration documents can have a disproportionate effect on women, who are “more likely than men to have *gaps in legal identity*”. This restricts their rights to property, housing, marriage and the registration of children’s births, as well as their right to benefits and social services.<sup>227</sup>

### 5.3 Victim support services

The international instruments establishing standards for the provision of support services to victims of crime include the EU Victims’ Rights Directive, and for victims of violence against women and domestic violence, the Istanbul Convention and the UN Essential services package for women and girls subject to violence.

The EU Victims’ Rights Directive sets forth the scope and types of assistance that must be offered to victims of crime generally, inclusive of victims of violence against women and domestic violence. The Directive affords crime victims and their family members free and confidential support services before, during and after criminal proceedings. Access should not be conditioned on filing a formal complaint.

Pursuant to all three instruments, victims have a right to information on multiple aspects of support, including on the procedures necessary to obtain compensation, as well as shelters, psychological support and specialised services for victims of sexual and other forms of violence against women that ensure a trauma-informed approach and counselling.<sup>228</sup> The Istanbul Convention and UN Essential Services Package provide for a range of what are considered “essential” services to victims of violence against women and domestic violence, including, *inter alia*: legal aid, psychological, medical and social welfare assistance, and shelters.

A 2020 report on the implementation of the Directive found that many Council of Europe member States limit support services only to victims of domestic violence and human trafficking, and “have failed to transpose the obligation of competent authorities to refer victims to support services”.

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<sup>224</sup> UN Legal Identity Agenda Task Force, [Maintaining Civil Registration and Vital Statistics During the COVID-19 Pandemic](#), 9 April 2020, para 2.

<sup>225</sup> OSCE/ODIHR, Human Rights and Gender Equality During Public Emergencies, 2020, p. 42; National research: Ukraine.

<sup>226</sup> OSCE/ODIHR, Human Rights and Gender Equality During Public Emergencies, 2020, p. 45.

<sup>227</sup> OSCE/ODIHR, Human Rights and Gender Equality During Public Emergencies, 2020, p. 44.

<sup>228</sup> Article 9, EU Victims’ Rights Directive.



Consequently, in those States, “victims are either not referred to victim support services or only a certain category of victims is referred (e.g., victims of domestic violence)”.<sup>229</sup> The report further found that in several States victims were required to report the crimes to the police as a precondition for receiving services, among other problems with implementation. Finally, it found that, in practice, “victims of domestic violence do not receive effective support and protection in several Member States”.<sup>230</sup>

According to recent CEPEJ data, out of 44 Council of Europe member States and three observer States, only 4 countries have no information mechanism for victims of domestic violence, and 5 have none for victims of rape. An information mechanism might include, variously: a free, personalised information system to enable victims to obtain information on the status and follow-up of their complaints; an obligation to inform the victim prior to the release of an offender; or, more basically, the obligation of a judge to inform victims of their rights.<sup>231</sup>

#### **5.4 Essential services for women and girls subject to violence**

The services described below are considered as “essential” because they are necessary for victims to be able to have meaningful access to justice. The right to information ensures that they are aware of their rights, a necessary prerequisite to exercising them. Without medical and psychological assistance, they remain deprived of their physical and mental integrity, without which a fair and meaningful participation in justice processes would likely be impossible. Similarly, shelter and access to social assistance may constitute the only means of escaping the violence and starting to rebuild their lives.

This section provides information on access to services for victims of violence against women and domestic violence prior to the pandemic and how it was affected by pandemic restrictions.

##### **5.4.1 The right to information and awareness-raising campaigns**

The right to information is also covered by the Victims’ Rights Directive, the Istanbul Convention and the UN Essential services package. Effective information campaigns for victims of domestic violence were a challenge in some Eastern Partnership countries even prior to the pandemic.<sup>232</sup> In Ukraine, a 2018 survey found that 20% of women believed they were well-informed about what to do in response to an incidence of violence; 48% indicated being poorly informed.<sup>233</sup> Ensuring victims’ access to information related to their rights and services has not been achieved with any measure of success in Azerbaijan.<sup>234</sup>

It is important to recall that the right to freedom of expression entails the right to seek and receive information. Articles 10 and 19(2) of the ECHR and ICCPR, respectively, require States to “proactively put in the public domain Government information of public interest. States parties should make every effort to ensure easy, prompt, effective and practical access to such information”.<sup>235</sup> States’ requirement to inform the population about emergency measures entails making information available about the scope of limitations on essential services.

For women already facing obstacles to accessing essential services, such as those with disabilities, living in rural areas and/or who do not speak the national or regional language, barriers to access

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<sup>229</sup> European Commission, Report on the implementation of Directive 2012/29/EU, COM(2020) 188, 2020, para 3.4.

<sup>230</sup> European Commission, Report on the implementation of Directive 2012/29/EU, COM(2020) 188, 2020, para 3.4.

<sup>231</sup> CEPEJ Evaluation Report - 2022 Evaluation cycle

<sup>232</sup> National research: Azerbaijan.

<sup>233</sup> OSCE, Well-being and safety of women, 2019.

<sup>234</sup> National research: Azerbaijan.

<sup>235</sup> HRC, General Comment No. 34, para 19.

increased.<sup>236</sup> The OSCE found many examples of States in the region “implementing lockdowns without initially providing explicit information to the public about protection for survivors of domestic violence, as evidenced by the fact that these states later took measures to provide such information”.<sup>237</sup> Guidelines and information on how to contact police, access medical treatment, psychological support, or access to shelters were also limited in many countries.<sup>238</sup> The OSCE stated:

Specifically, women were not informed about the fact that they would be permitted to leave their homes to escape domestic violence, without being subjected to penalties for violating quarantine. When such information is not provided, women will remain with abusive partners, which can lead to further infringements of their basic rights (e.g., the right to be free from violence; the right to physical and psychological integrity).<sup>239</sup>

This exemplifies the way in which one human rights violation can result in multiple additional rights violations.

Several Council of Europe member States implemented campaigns to raise awareness on how to access the new modalities for receiving assistance. Austria, Belgium, Denmark, Monaco, The Netherlands, Romania and Sweden engaged in extensive public-awareness campaigns to ensure people knew where to seek assistance. Good practice examples are: Sweden included a focus on reaching persons with disabilities; Austria increased its capabilities of on-line counselling to victims.<sup>240</sup> “Information on State-provided services for survivors of violence against women and domestic violence was displayed in quarantine hotels” for citizens returning to Georgia.<sup>241</sup> The Ministry of Equality between Women and Men of Luxembourg revised its website on domestic violence to provide up-to-date information in multiple languages.<sup>242</sup>

CSOs in Croatia played a critical role in obtaining updated information regarding the availability, location and hours of operation for essential, including health and justice, services for victims in need. They remained operational throughout the pandemic, if at times only virtually. Restriction prohibited them from accompanying victims into court.<sup>243</sup>

#### **5.4.2 Availability and co-ordination of essential services**

The UN Essential Services Package sets forth a comprehensive set of services that should be available to women and girls subject to violence. These include, *inter alia*, hotlines, free legal aid, psychological and medical services, shelters and social welfare support. The Package further calls for national and local co-ordination mechanisms. The Istanbul Convention also requires the establishment of a national co-ordination body.

Even prior to the pandemic, the full range of services for victims of gender-based violence, as envisioned in the UN Essential Services Package remained unavailable, inaccessible, unco-ordinated or of low quality.

The situation is particularly concerning in Eastern Partnership countries. The Republic of Moldova, Georgia and Ukraine, for example, continue to lack specialised services, including rape crisis centres,

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<sup>236</sup> OSCE/ODIHR, Human Rights and Gender Equality During Public Emergencies, 2020, p. 28.

<sup>237</sup> OSCE/ODIHR, Human Rights and Gender Equality During Public Emergencies, 2020, p. 29.

<sup>238</sup> ICJ, [State measures to address COVID-19 must be gender responsive](#), 2020.

<sup>239</sup> OSCE/ODIHR, Human Rights and Gender Equality During Public Emergencies, 2020, p. 29.

<sup>240</sup> Council of Europe member State responses to GEC questionnaire.

<sup>241</sup> UN Special Rapporteur on violence against women, its causes and consequence, Intersection between the coronavirus disease (COVID-19) pandemic and the pandemic of gender-based violence against women, with a focus on domestic violence and the “peace in the home” initiative, A/75/144, 2021, para 37.

<sup>242</sup> Council of Europe member State responses to GEC questionnaire.

<sup>243</sup> Council of Europe member State responses to GEC questionnaire.

and services are not available for victims in all geographic areas. On the other hand, GBV victims in Georgia and Ukraine are entitled to free medical care, among other services.<sup>244</sup>

The Republic of Moldova and Azerbaijan both lack effective co-ordination mechanisms.<sup>245</sup> In a good practice example, Georgia established a high-level co-ordination body within the executive branch in line with Article 10 of the Istanbul Convention, the Inter-Agency Commission for Gender Equality, Violence against Women and Domestic Violence. The national institutional framework in Ukraine has also been strengthened since 2017, and a national co-ordination body has been designated.<sup>246</sup>

With the outbreak of COVID, many States failed “to consider measures to combat gender-based violence against women as essential services and as basic human rights that should not be restricted”.<sup>247</sup> As a consequence, during the pandemic, survivors faced barriers to essential services, such as crisis centers, shelters and hotlines. The lack of such services “violates women’s right to social protection, in conjunction with their right to be free from violence. It also puts their right to access to justice in jeopardy.”<sup>248</sup>

In numerous countries many services were available only online.<sup>249</sup> Yet, in the case of Austria, online counselling services were expanded to meet increased need. The OSCE observed that many countries in the region took steps to address gaps in service provision only *after* imposing emergency measures. Only Canada, of its 57 participating States, included funding for GBV services *in* its emergency measures.<sup>250</sup>

Council of Europe member State responses to the GEC questionnaire provided several good practice examples. Spain enacted a contingency plan that in part designated GBV services as “essential” for pandemic purposes. Georgia and Switzerland also maintained services for GBV victims throughout the pandemic. In Malta, social work units remained operational.

It should also be noted that several Council of Europe member States remain at the early stages of implementing international standards related to co-ordinated victim support. For example, increased inter-sectoral co-operation is needed in North Macedonia, including expanding the practice to additional municipalities. Co-operation with disability organisations is also needed in the field of violence and concerns were expressed regarding discrimination against persons with disabilities in pandemic response.<sup>251</sup>

### 5.4.3 Shelters

Even prior to the pandemic, “despite some recognition that domestic violence forces women and children to relocate for safety, too often Governments do not provide national planning or funding to establish sufficient numbers, capacity or distribution of shelters around the country”.<sup>252</sup> This remains true in many countries in the region, including Georgia and Republic of Moldova.<sup>253</sup> Azerbaijan

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<sup>244</sup> National research: Georgia.

<sup>245</sup> National research: Azerbaijan, Georgia, Republic of Moldova.

<sup>246</sup> National research: Georgia, Ukraine.

<sup>247</sup> UN Special Rapporteur on violence against women, its causes and consequence, Intersection between the coronavirus disease (COVID-19) pandemic and the pandemic of gender-based violence against women, with a focus on domestic violence and the “peace in the home” initiative, A/75/144, 2021, para 3; National research: Republic of Moldova; Ukraine.

<sup>248</sup> OSCE/ODIHR, Human Rights and Gender Equality During Public Emergencies, 2020, p. 60.

<sup>249</sup> Council of Europe member State responses to GEC questionnaire. National research: Republic of Moldova.

<sup>250</sup> OSCE/ODIHR, Human Rights and Gender Equality During Public Emergencies, 2020, pp. 60-61; Council of Europe member State responses to GEC questionnaire.

<sup>251</sup> Council of Europe member State responses to GEC questionnaire.

<sup>252</sup> UN Special Rapporteur on violence against women, its causes and consequence, Intersection between the coronavirus disease (COVID-19) pandemic and the pandemic of gender-based violence against women, with a focus on domestic violence and the “peace in the home” initiative, A/75/144, 2021, para 40.

<sup>253</sup> National research: Georgia, Republic of Moldova; Council of Europe member State responses to GEC questionnaire.

contains only one State-funded shelter in Baku, and three shelters total. Only five shelters are operating in Georgia. Ukraine has 38 shelters, but they do not cover all regions.<sup>254</sup>

Thus, “even before COVID-19 hit, many shelters were already under-resourced and had limited capacity, and with the pandemic and the increase in cases of gender-based violence, almost all shelters are full and overstretched”.<sup>255</sup> Few were accessible to persons with disabilities. Pandemic restrictions thus exposed and exacerbated this pre-existing gap in the number of adequate and available shelters.

Additional obstacles to shelters were posed by pandemic restrictions including, for example, limits on accepting new residents due to social distancing requirements, restrictions on movement preventing travel, the requirement of a 14-day quarantine before being admitted, or proof of not having the disease in the form of negative test results.<sup>256</sup> In the Republic of Moldova, shelters were closed for the first two months of the pandemic, and then required a Covid-19 test, the price of which was out of reach for many women.<sup>257</sup>

Denmark and France funded hotel rooms to shelter victims, in order to meet demand. Switzerland also rented additional accommodations, in order to ensure social distancing for victims residing in shelters.<sup>258</sup> Italy reported a growth in the number of available services and shelters. It indicated that in 2020, “12 new Shelters and 11 Anti-Violence Centres were opened. However, strong territorial differences persist, with a higher concentration of Shelters (70.2%) and Anti-Violence Centres (41.7%) in the North”.<sup>259</sup> The Government in Portugal also opened two new shelters with a capacity for 100 women, and Azerbaijan increased the capacity of shelters and safe spaces.<sup>260</sup> In Republic of Moldova, extra shelter space was rented by donors.<sup>261</sup>

#### 5.4.4 Support to women’s NGOs

Women’s NGOs have long played a critical role in providing support to victims of violence against women, stepping in before governments do and where governments do not. However, some governments in the region provide little to no financial support for NGOs offering critical services that fall within States’ due diligence obligations. Georgia provides some – but minimal – support, for example.<sup>262</sup>

In response to the pandemic, resources were diverted from criminal justice systems, as well as from legal aid, shelters, hotlines, crisis centres and protection services.<sup>263</sup> As observed by the UN Special Rapporteur on violence against women, its causes and consequences, shifts in funding priorities due to the pandemic meant “many NGOs and women’s groups have lost funding and their members have

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<sup>254</sup> National research: Azerbaijan, Georgia, Ukraine.

<sup>255</sup> UN Special Rapporteur on violence against women, its causes and consequence, Intersection between the coronavirus disease (COVID-19) pandemic and the pandemic of gender-based violence against women, with a focus on domestic violence and the “peace in the home” initiative, A/75/144, 2021, para 53.

<sup>256</sup> UN Special Rapporteur on violence against women, its causes and consequence, Intersection between the coronavirus disease (COVID-19) pandemic and the pandemic of gender-based violence against women, with a focus on domestic violence and the “peace in the home” initiative, A/75/144, 2021, para 53. National research: Republic of Moldova, Ukraine.

<sup>257</sup> National research: Republic of Moldova.

<sup>258</sup> Council of Europe member State responses to GEC questionnaire, noting the extra shelter space would be available for four months; France 24, [France to put domestic violence victims in hotels as numbers soar under coronavirus lockdown](#), 30 March 2020, indicating the provision of up to 20,000 hotel nights.

<sup>259</sup> Council of Europe member State responses to GEC questionnaire.

<sup>260</sup> UN Special Rapporteur on violence against women, its causes and consequence, Intersection between the coronavirus disease (COVID-19) pandemic and the pandemic of gender-based violence against women, with a focus on domestic violence and the “peace in the home” initiative, A/75/144, 2021, para 61.

<sup>261</sup> National research: Republic of Moldova.

<sup>262</sup> National research: Georgia.

<sup>263</sup> UN Women, UNODC, UNDP, IDLO, et.al., Justice for women amidst COVID-19, 2020, p. 15.

been forced to adapt to new ways of working, including by offering their services remotely, while also ensuring their own health and safety and that of their families”.<sup>264</sup> The Rapporteur stated:

measures also included the redirection of resources towards fighting the COVID-19 outbreak by scaling down all services considered non-essential, including services and/or protection mechanisms for women against gender-based violence, such as shelters, helplines, protection orders and reproductive health services, many of which have been reduced or suspended.<sup>265</sup>

The CEDAW Committee further observed that “[g]ender bias in the allocation of resources and diversion of funds during pandemics worsen existing gender inequalities”.<sup>266</sup> UN Women noted that “due to the crisis, many women’s organisations, crisis centers, helplines and shelters have had severe funding cuts and are struggling to continue service delivery”.<sup>267</sup> Civil society groups were also affected by lockdown and/or the reallocation of resources. Some domestic violence shelters were full, had to close or were repurposed as health centres.<sup>268</sup>

In the UK, for example, one quarter of the 25 organisations helping domestic violence victims reported not being able to effectively support them.<sup>269</sup> Funds were diverted in Republic of Moldova from gender-based violence services to the health sector during the pandemic.<sup>270</sup> In Azerbaijan, the exclusion of non-governmental organisations (NGOs) and human rights defenders from the list of organisations permitted to work during the pandemic in 2020 reduced the number of services available to women “to zero”.<sup>271</sup>

As a good practice example, Sweden increased its support to NGOs working on gender-based violence during the pandemic.<sup>272</sup> The UK launched the “You Are Not Alone” campaign and allocated £37 million in emergency funding to the gender-based violence against women sector for six months.<sup>273</sup> France granted an extra 1 million Euros to CSOs working on domestic violence in light of the increase in incidence.<sup>274</sup>

## 5.5 Data collection

As the UN Special Rapporteur has recalled, “detailed data are required to gauge the magnitude and dimensions of the problem, to establish baselines, to identify groups at high risk, to focus intervention

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<sup>264</sup> UN Special Rapporteur on violence against women, its causes and consequence, Intersection between the coronavirus disease (COVID-19) pandemic and the pandemic of gender-based violence against women, with a focus on domestic violence and the “peace in the home” initiative, A/75/144, 2021, para 28.

<sup>265</sup> UN Special Rapporteur on violence against women, its causes and consequence, Intersection between the coronavirus disease (COVID-19) pandemic and the pandemic of gender-based violence against women, with a focus on domestic violence and the “peace in the home” initiative, A/75/144, 2021, para 7.

<sup>266</sup> CEDAW, [Guidance note on CEDAW and COVID-19](#).

<sup>267</sup> UN Women, [As COVID-19 exposes the fault lines of gender equality, a strong focus on violence against women at the UN General Assembly](#), 29 September 2020.

<sup>268</sup> UN, Policy Brief: The Impact of COVID-19 on Women, 2020.

<sup>269</sup> ICJ, [State measures to address COVID-19 must be gender responsive](#), 2020.

<sup>270</sup> National research: Republic of Moldova.

<sup>271</sup> National research: Azerbaijan.

<sup>272</sup> Council of Europe member State responses to GEC questionnaire.

<sup>273</sup> UN Special Rapporteur on violence against women, its causes and consequence, Intersection between the coronavirus disease (COVID-19) pandemic and the pandemic of gender-based violence against women, with a focus on domestic violence and the “peace in the home” initiative, A/75/144, 2021, para 35.

<sup>274</sup> France 24, [France to put domestic violence victims in hotels as numbers soar under coronavirus lockdown](#), 30 March 2020.

and prevention efforts where they are needed most, to monitor changes over time, to assess the effectiveness of interventions and to address the harm to victims of violence”.<sup>275</sup>

Explaining that “[s]ystematic and adequate statistical data collection is recognised as an essential component of effective policymaking in the field of rights set out in this Directive,” Article 28 of the EU Victims’ Rights Directive requires member States to report every three years “available data showing how victims have accessed the rights set out in this Directive”. This includes “at least the number and type of the reported crimes and, as far as such data are known and are available, the number and age and gender of the victims” by judicial and law enforcement agencies.<sup>276</sup> Article 11 of the Istanbul Convention further requires the collection of “disaggregated relevant statistical data at regular intervals on cases of all forms of violence covered by the scope of this Convention”.

The UN Special Rapporteur on violence against women, its causes and consequences has observed “a lack of comparable administrative data on gender-based violence, which makes it difficult to evaluate the extent of the increase in gender-based violence during the COVID-19 pandemic”.<sup>277</sup>

Despite regional data collection requirements, many Council of Europe member States indicated an absence of justice sector data related to the impact of the measures taken on justice outcomes for women.<sup>278</sup> Out of 37 Council of Europe member and observer States, the majority (26) do not collect data disaggregated by sex on court users, claimants, victims or accused.<sup>279</sup> With respect to Eastern Partnership countries, data in Ukraine is disaggregated by sex and reveals a low number of judicial decisions on domestic violence, though prosecutions are increasing. However, the statistics do not disaggregate by the form of violence, and data is not harmonised across justice-sector institutions.<sup>280</sup>

Azerbaijan does not disaggregate justice-sector data by sex.<sup>281</sup> It is interesting to note the lack of data transparency in some countries. In Republic of Moldova, for example, data on the relationship between the perpetrator and the victim in cases of femicide is considered confidential, and there is no publicly available disaggregated data on sexual violence.<sup>282</sup> At the same time, concerns have been raised over “the complete lack of information and statistics regarding the impact of the pandemic on people with disabilities”.<sup>283</sup> Türkiye has established a cross-sectoral data sharing protocol to improve baseline studies for the purpose of improving services.<sup>284</sup>

Given the slow advances in meeting data collection standards, the absence of data collection during the pandemic is not surprising. This has led the Special Rapporteur to call for greater emphasis on: “[e]vidence-based gender analysis and documentation on gender-specific human rights impacts of the virus and the measures adopted in response”.<sup>285</sup>

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<sup>275</sup> UN Special Rapporteur on violence against women, its causes and consequence, Intersection between the coronavirus disease (COVID-19) pandemic and the pandemic of gender-based violence against women, with a focus on domestic violence and the “peace in the home” initiative, A/75/144, 2021, para 76.

<sup>276</sup> Recital 64, EU Victims’ Rights Directive.

<sup>277</sup> UN Special Rapporteur on violence against women, its causes and consequence, Intersection between the coronavirus disease (COVID-19) pandemic and the pandemic of gender-based violence against women, with a focus on domestic violence and the “peace in the home” initiative, A/75/144, 2021, para 78.

<sup>278</sup> OSCE/ODIHR, Human Rights and Gender Equality During Public Emergencies, 2020, p. 6, observing limited disaggregated data on the impact of the pandemic and a lack of baseline sex-disaggregated data prior to the pandemic; National research: Azerbaijan.

<sup>279</sup> CEPEJ Evaluation Report - 2022 Evaluation cycle, with one State indicating the question was inapplicable.

<sup>280</sup> National research: Ukraine.

<sup>281</sup> National research: Azerbaijan.

<sup>282</sup> National research: Republic of Moldova, citing the [national statistics database](#).

<sup>283</sup> UN Women, Voices of women’s organizations on COVID-19, 2020, p. 5.

<sup>284</sup> Council of Europe member State responses to GEC questionnaire.

<sup>285</sup> UN Special Rapporteur on violence against women, its causes and consequence, Intersection between the coronavirus disease (COVID-19) pandemic and the pandemic of gender-based violence against women, with a focus on domestic



## 6. The legality of pandemic-related restrictions

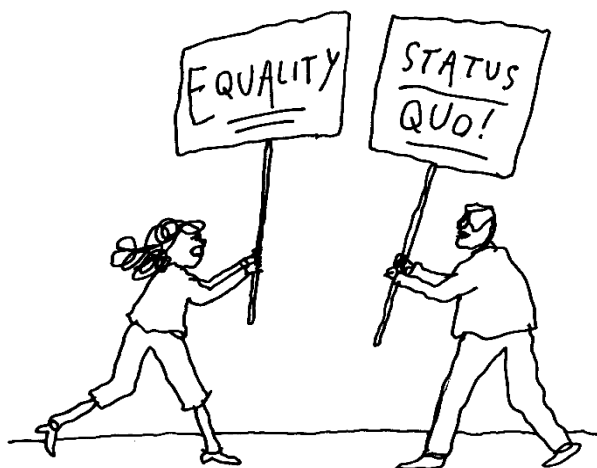


Illustration: Liana Finck

In response to the pandemic, governments faced “formidable challenges in seeking to protect their populations from the threat of COVID-19”.<sup>286</sup> As an initial response, many countries introduced sweeping measures, including declarations of a state of emergency. They imposed restrictive infectious disease control measures on a large scale, including national-level quarantines, social distancing requirements and lockdown measures, which were often enforced by significant criminal and punitive penalties. Such measures involved restrictions on civil and political rights, including freedom of movement, assembly and expression.

### 6.1 International standards on human rights restrictions and derogations

With respect to the derogation or restriction of human rights and fundamental freedoms, Article 4 of the ICCPR, Article 15 of the ECHR and the Siracusa Principles on the Limitation and Derogation Provisions in the ICCPR impose a series of requirements. For example, derogations must follow notification procedures outlined in Article 4 of the ICCPR and Article 15 of the ECHR, respectively, which require that the state of emergency be publicly proclaimed and appropriately communicated. Many countries in the region failed to abide by the notification requirements.<sup>287</sup> Other Conventions, such as the Istanbul Convention, the International Convention on Economic, Social and Cultural Rights (ICESCR), CEDAW and the CRPD do not contain derogations clauses, and the rights set forth therein are thus not considered as derogable. CEDAW further requires that new State constitutions “guarantee that women’s human rights are not subject to derogation in states of emergency”.<sup>288</sup>

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violence and the “peace in the home” initiative, A/75/144, 2021, para 79; see also, CEDAW, [Guidance note on CEDAW and COVID-19](#).

<sup>286</sup> Council of Europe, Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis, SG/Inf(2020)11, 7 April 2020, p. 2.

<sup>287</sup> Council of Europe, Venice Commission, Observatory of situations of emergency in Venice Commission member States.

<sup>288</sup> CEDAW, General Recommendation No. 30, CEDAW/C/GC/30, 2013, para 73(c).

Article 4 of the ICCPR and the Siracusa Principles require that restrictions to human rights: **i) be prescribed by law, ii) pursue a legitimate aim, iii) be strictly necessary and proportionate, iv) non-discriminatory, v) of limited duration and vi) subject to review.**

A number of countries, including within Council of Europe membership, did not abide by the prescribed standards in devising pandemic-related measures.<sup>289</sup> Addressing the full scope of legality issues concerning pandemic restrictions and derogations is beyond the scope of this report. It does, however, consider the legality of the restrictions imposed where they had a particularly discriminatory impact on women and their access to justice.

Even in the context of an emergency, some basic human rights cannot be derogated, including, *inter alia*, the right to life, the prohibition of torture and inhuman or degrading treatment or punishment, the prohibition of slavery and servitude and the rule of “no punishment without law”.<sup>290</sup> Importantly, the Human Rights Committee (HRC) has included as examples of non-derogable rights not listed in Article 4 of the ICCPR: the fundamental principles of legality, rule of law, “the fundamental requirements of a fair trial” and the right to an effective remedy, which inheres to the Convention as a whole.<sup>291</sup>

In March 2020, the UN Office of the High Commissioner on Human Rights (OHCHR) issued a statement that “urged States to avoid overreach of security measures in their response to the coronavirus outbreak,” and “urgently” reminded them that “any emergency responses to the coronavirus must be proportionate, necessary and non-discriminatory”.<sup>292</sup> It signalled:

Some States and security institutions may find the use of emergency powers attractive because it offers shortcuts, the experts said. To prevent such excessive powers to become hardwired into legal and political systems, restrictions should be narrowly tailored and should be the least intrusive means to protect public health.

As the European Commission for Democracy through Law (Venice Commission) has observed: “The historical evidence is that during emergencies the abuse of human rights is the greatest.”<sup>293</sup> Indeed, concerns have emerged about “violations of the principles of rule of law, democracy, and fundamental human rights more broadly”.<sup>294</sup>

The following sections focus on two of the six elements of the required standard: non-discrimination and subject to judicial review.

### 6.1.1 Non-discrimination

Sex is listed among the protected categories for the purpose of the prohibition on discrimination in emergency response in Article 4 of the ICCPR and the HRC’s General Comment 29 on states of emergency. This is consistent with Article 26 of the Convention, which provides for equal protection of the law and prohibits discrimination based on, among other categories, sex. However, General Comment No. 29 contains no additional reference to sex or gender discrimination.

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<sup>289</sup> Sun N, Christie E, Cabal L, et al. Human rights in pandemics: criminal and punitive approaches to COVID-19. *BMJ Global Health* 2022;7:e008232. doi:10.1136/bmjgh-2021-008232.

<sup>290</sup> See, Article 4(2), ICCPR; Article 15(2), ECHR.

<sup>291</sup> HRC, General Comment No. 29 on States of Emergency (Article 4), CCPR/C/21/Rev.1/Add.11, paras 14-16.

<sup>292</sup> OHCHR, [Press Release](#), COVID-19: States should not abuse emergency measures to suppress human rights—UN experts, 16 March 2020.

<sup>293</sup> Council of Europe, Venice Commission, [Respect for democracy, human rights and the rule of law during states of emergency: Reflections](#), CDL-AD(2020)014, para 49.

<sup>294</sup> UN Women, UNODC, UNDP, IDLO, et.al., Justice for women amidst COVID-19, 2020, p. 13.



With respect to the “potential discriminatory consequences” of pandemic-related emergency measures, the European Court of Human Rights has signalled that:

When assessing whether derogating measures were “strictly required” under Article 15 of the Convention, the Court examines whether the measures discriminate unjustifiably between different categories of persons. Moreover, the fact of not taking into account the specific needs of persons belonging to a disadvantaged group may result in discrimination. The prohibition of discrimination may thus entail obligations to take positive measures to achieve substantive equality.<sup>295</sup>

The Court’s jurisprudence on discrimination during emergency measures to date has focused only on ethnic and nationality discrimination. As OSCE/ODIHR has rightly observed:

The international instruments and guidance that address states of emergency and derogation are gender blind; they do not foresee differential impacts of states of emergency on women and men, boys and girls, nor do they describe any heightened requirements concerning the potential violation of the rights of women or girls due to emergency measures.<sup>296</sup>

The non-discrimination principle functions as a critical lens through which to assess the impact of emergency measures on women, given the ongoing documentation of the ways in which crises impact women and girls distinctly and disproportionately as compared with men and boys. It would appear that the non-discrimination component of Article 4 constitutes an under-utilised tool to begin to address the disproportionate impact on women of the pandemic restrictions and with which to seek a remedy.

CEDAW expressed its “deep concern about exacerbated inequalities” as well as women’s heightened risk of discrimination in its Guidance note on COVID-19.<sup>297</sup> The note affirmed that States parties to the Convention “have an obligation to ensure that measures taken to address the COVID-19 pandemic do not directly or indirectly discriminate against women and girls”.<sup>298</sup>

With respect to the requirement that the measures be non-discriminatory, of the 32 Council of Europe member and observer States that responded to the questionnaire, only Italy affirmed explicit reference to non-discrimination and/or human rights in the emergency provisions related to the pandemic. Despite non-discrimination being an explicit element of the legality of such provisions, no reference was made in other emergency provisions, not even boilerplate language. A few, such as Albania, Austria and the Netherlands, indicated that these issues were considered. A large majority of respondent States left the question blank.

Some examples of systemic disproportionate impact on women by pandemic restrictions, include, *inter alia*:

- The surge in domestic violence, violating the right to life and the prohibition on ill-treatment, among other rights;<sup>299</sup>
- A significant increase in unpaid care and domestic work due, in part, to school closures and caring obligations for those whose healthcare needs were deemed “non-essential;”

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<sup>295</sup> Council of Europe, European Court of Human Rights, Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis: A toolkit for member States, SG/Inf(2020)11, 2020, pp. 7-8, referencing LGBTI persons, but not otherwise sex/gender discrimination.

<sup>296</sup> OSCE/ODIHR, Human Rights and Gender Equality During Public Emergencies, 2020, p. 12.

<sup>297</sup> CEDAW, [Guidance note on CEDAW and COVID-19](#).

<sup>298</sup> CEDAW, [Guidance note on CEDAW and COVID-19](#).

<sup>299</sup> National research: Ukraine.

- Facing employment problems related to burn-out due to extended working hours and low pay, given their disproportionate representation as lower-level frontline healthcare workers who remain underrepresented at decision-making levels;<sup>300</sup>
- Disproportionate job losses among women due to discriminatory employment practices and the lack of assistance to women engaged in micro-enterprises, and the resultant economic impacts;<sup>301</sup>
- The classification of medical services used primarily or exclusively by women, including sexual and reproductive health services, as “non-essential;”<sup>302</sup>
- The classification as “non-essential” of health services and harm-reduction programmes used by persons with disabilities, living with HIV, with chronic illnesses or substance addictions, as well as for sex workers;<sup>303</sup>
- The disproportionate effect on girls of school closures, particularly within minority groups, in rural communities, with disabilities, and from low-income households, in terms of impact to their educational opportunities, as well as their increased exposure to sexual and other forms of violence, including early marriage and other harmful practices.<sup>304</sup>

Many of the above-listed issues are beyond the scope of this report. However, they all constitute instances of direct or indirect forms of gender discrimination. Yet, there has been an overall absence of any consideration of discriminatory impact based on sex under Article 4 of the ICCPR and the Siracusa Principles. The impact on ethnic minorities, persons with disabilities, LGBTI persons and those made vulnerable through intersecting inequalities should also be overtly addressed.

The above-listed and other examples reveal an exacerbation of pre-existing forms of systemic and intentional discrimination that have been documented for decades by the international community and civil society organisations. At the same time, it is important to further consider that, in many instances “emergency measures are being extended into long-term reform, or may be reintroduced in the event of a new wave of the pandemic”.<sup>305</sup>

Finally, when assessing the discriminatory impact of pandemic-related restrictions, it is important to consider the very limited participation of women in national decision-making bodies and task forces in most countries. According to UN Women, globally:

Of the 262 task forces with membership data, women make up only 24% of members and are absent from 10% of all task forces. Women are excluded from leadership at even higher rates, leading only 18% of 414 task forces across 186 countries. In total, just 7% of task forces achieve gender parity while 83% of task forces are dominated by men.<sup>306</sup>

Within the Europe region, Ireland had the highest level of women’s representation: 57%. This issue is addressed in greater detail in the section on Pandemic-related decision making below.

In addition to posing challenges to the legality requirement and violating other human rights, the discriminatory social and economic impact of the restrictions have direct bearing on women’s access to justice. Care obligations and the lack of financial resources constitute barriers to women’s access

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<sup>300</sup> National research: Georgia, Ukraine.

<sup>301</sup> OSCE/ODIHR, Human Rights and Gender Equality During Public Emergencies, 2020, p. 51, citing multiple sources; National research: Ukraine, Republic of Moldova, noting forced leaves and firing.

<sup>302</sup> See, e.g. Bardutsky, S., Limits in Times of Crisis: on Limitations of Human Rights and Fundamental Freedoms in the Slovenian Constitutional Order, Central European Journal of Comparative Law, p. 25, DOI: <https://doi.org/10.47078/2020.2.9-3>, noting the limitation of the provision of health care in Slovenia to urgent cases and pregnant women.

<sup>303</sup> National research: Ukraine.

<sup>304</sup> OSCE/ODIHR, Human Rights and Gender Equality During Public Emergencies, 2020, p. 47, 57-58.

<sup>305</sup> Fair Trials, Beyond the emergency of the COVID-19 pandemic: Lessons for defence rights in Europe, 2020, p. 10.

<sup>306</sup> UN Women, [Covid-19 Global Gender Response Tracker](#) (version 2), 2021, [online].

to representation, travel expenses and, critically, the time required to engage with the justice process. At the same time, the restrictions impeded access to the programmes and institutions that assist women who experience violence and other rights violations.

### 6.1.2 Subject to judicial review

The judiciary has a critical role to play in ensuring that the use of emergency measures conform to the ICCPR and ECHR.<sup>307</sup> It can fulfil three main functions: resolve individual disputes over emergency policies; serve as a check on the executive; and clarify likely imperfect emergency policies.<sup>308</sup> According to the Venice Commission, the judiciary play a role in deciding:

on the legality of a declaration of a state of emergency as well as reviewing the legality of specific emergency measures. Judicial control of the declaration of state of emergency may be limited to the control of the procedural aspects of the declaration. If, however, emergency measures involve derogations from human rights, the substantive grounds for the state of emergency shall be subject to judicial review as well.<sup>309</sup>

Some countries consulted with the judiciary prior to enacting a state of emergency, including in Albania, Georgia, Hungary, Republic of Moldova and the United Kingdom. In others, judicial review followed the emergency measures or Covid-specific legislation, including the Czech Republic, Ireland, Malta, Republic of Moldova,<sup>310</sup> Romania,<sup>311</sup> and Slovenia.<sup>312</sup> In other countries, such as Andorra and Azerbaijan, the emergency measures were never subject to judicial review.<sup>313</sup>

During states of emergency people must also have “access to legal advice and fair and effective judicial procedures, including the ability to challenge the legality of measures taken as a result of declarations of exceptional situations”.<sup>314</sup> Judicial systems must also:

provide individuals with effective recourse in the event that government officials violate their human rights. Courts should exercise control so that the derogatory measures do not – either in general or in specific cases – exceed the boundaries of legality and the limits of what is strictly required to deal with the emergency situation, and do not infringe non-derogable rights.<sup>315</sup>

As observed by the European Court of Human Rights and others, judicial review of emergency pandemic measures was not effective in all Council of Europe member States, signalling a “missed

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<sup>307</sup> See, HRC, General Comment No. 29.

<sup>308</sup> Petrov, J., (2020) The COVID-19 emergency in the age of executive aggrandizement: what role for legislative and judicial checks?, *The Theory and Practice of Legislation*, 8:1-2, 71-92,80; DOI: 10.1080/20508840.2020.1788232.

<sup>309</sup> Council of Europe, Venice Commission, [Respect for democracy, human rights and the rule of law during states of emergency: Reflections](#), CDL-AD(2020)014, paras 85, 86.

<sup>310</sup> Council of Europe member State responses to GEC questionnaire, noting a Constitutional Court review finding lack of proportionality, (CC Decision No. 17/2020, No. 15/2021); see also National research: Republic of Moldova, noting the Constitutional Court removed the minimum fine for violating pandemic restrictions, which was approximately USD \$1300.

<sup>311</sup> UN Special Rapporteur on the independence of judges and lawyers, *The coronavirus disease (COVID-19) pandemic: impact and challenges for independent justice*, 9 April 2021, paras 13, 19, fn.10; Council of Europe member State responses to GEC questionnaire.

<sup>312</sup> Petrov, J., (2020) The COVID-19 emergency in the age of executive aggrandizement: what role for legislative and judicial checks?, *The Theory and Practice of Legislation*, 8:1-2, 71-92,80; DOI: 10.1080/20508840.2020.1788232, noting that the petitioners often criticised the lack of reasoning on the part of the government and the disproportionate, inconsistent and discriminatory nature of some of the measures; Council of Europe member State responses to GEC questionnaire.

<sup>313</sup> National research: Azerbaijan.

<sup>314</sup> UN Special Rapporteur on the independence of judges and lawyers, *The coronavirus disease (COVID-19) pandemic: impact and challenges for independent justice*, 9 April 2021, para 102.

<sup>315</sup> Council of Europe, Venice Commission, [Respect for democracy, human rights and the rule of law during states of emergency: Reflections](#), CDL-AD(2020)014, para 87.

opportunity”. Courts rejected cases on procedural grounds, failed to consider alternative measures or reversed the burden of proof on petitioners to assert scientific evidence to support their arguments.<sup>316</sup>

The right to judicial review of pandemic-related restrictions on the exercise of the rights to freedom of assembly and expression was invoked in the United Kingdom related to the holding of a vigil for the kidnap, rape and murder of Sarah Everard by a London Metropolitan Police Service (MPS) Officer. Significantly, the MPS was the very institution mandated to decide on the proposed vigil. (See Text Box, below).

**The Sarah Everard vigil: Judicial review of the exercise of the rights to freedom of expression and assembly in the context of pandemic restrictions**

Sarah Everard went missing on 3 March 2021 while walking home in London, from Clapham to Brixton Hill. Her remains were found on 10 March and on 12 March Officer Wayne Couzens of the London Metropolitan Police Service (MPS), was charged with her kidnap and murder. At the time, Covid-19 regulations restricted gatherings of 30 persons or more in London, making it a crime to contravene them “without a reasonable excuse” and giving police power to arrest and impose a fine of £10,000 for their contravention.

The collective #ReclaimTheseStreets planned to hold a vigil on Clapham Common on 13 March in Ms. Everard’s memory and for “all women who feel threatened on our streets”.<sup>317</sup> Based on its internal guidance, MPS categorised the proposed vigil as “unlawful,” which it communicated to the organisers along with the possibility of imposing a £10,000 fine.

In its review of the MPS decisions and statements, the High Court found that none of the MPS statements and decisions were in accordance with the law.<sup>318</sup> More specifically, it found that the MPS had failed to consider the possibility that the rights to freedom of expression and assembly might have constituted a “reasonable excuse,” resulting in a “blanket prohibition”.<sup>319</sup>

With respect to the necessity and proportionality requirements, the High Court observed that the “concept of necessity carries with it a requirement that the interference be proportionate, going no further than is necessary”.<sup>320</sup> In particular, it held that MPS failed to conduct a **“fact-specific proportionality assessment,” the burden of which fell upon the State.** It acknowledged that the required public health risk assessment was “somewhat onerous”.<sup>321</sup> In his concurring opinion, Justice Holgate observed that the MPS “repeatedly emphasised the large size of the gathering, the

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<sup>316</sup> European Court of Human Rights, [The Role of Courts in Times of Crisis: A Matter of Trust, Legitimacy and Expertise](#), noting that: “In France and Belgium, the Council of State was criticized for deferring cases and neglecting its monitoring role;” see also, Jan Petrov (2020) *The COVID-19 emergency in the age of executive aggrandizement: what role for legislative and judicial checks?*, *The Theory and Practice of Legislation*, 8:1-2, 71-92; DOI: 10.1080/20508840.2020.1788232, describing the response in the Czech Republic; Council of Europe member State responses to GEC questionnaire; *Verfassungsblog*, Slovenia: Second Wave of Challenges to Constitutionalism, 19 March 2021, noting only formalistic judicial review.

<sup>317</sup> High Court of Justice, *Leigh v. The Commissioner of Police of the Metropolis* [2022] EWHC 527 (Admin) 11 March 2022, para 41.

<sup>318</sup> Judiciary of England and Wales, Press Summary, *Leigh v. The Commissioner of Police of the Metropolis* [2022] EWHC 527 (Admin) 11 March 2022, para 86.

<sup>319</sup> High Court of Justice, *Leigh v. The Commissioner of Police of the Metropolis* [2022] EWHC 527 (Admin) 11 March 2022, paras 95, 97, stating: “There is no indication that the author(s) considered whether mitigations could make it reasonable and hence lawful to conduct the vigil, even if large numbers turned out on the day”.

<sup>320</sup> High Court of Justice, *Leigh v. The Commissioner of Police of the Metropolis* [2022] EWHC 527 (Admin) 11 March 2022, para 10.

<sup>321</sup> High Court of Justice, *Leigh v. The Commissioner of Police of the Metropolis* [2022] EWHC 527 (Admin) 11 March 2022, paras 78, 80.

location, and how people attending would travel to and from it, as if those matters were sufficient to determine the risk to public health and the issue of proportionality”.<sup>322</sup>

The High Court found that MPS decisions and communications had a “chilling effect,” resulting in the organisers’ decision to cancel the vigil. It referred, in this regard, to the jurisprudence of the European Court of Human Rights, finding that:

The notion of interference goes beyond conduct which directly prevents a person from exercising their rights, such as censorship, confiscation of written material or the apparatus required to publish that material, or physically preventing people from meeting one another. It extends to the imposition of sanctions after the event and encompasses conduct which has a tendency to “chill” the exercise of the right in question. An instance of this is conduct which falls short of prosecution but induces the citizen to exercise self-restraint for fear of a future investigation or prosecution.<sup>323</sup>

Notably, the High Court required MPS take into account the nature of the “ ‘cause’ at stake in a protest and may need to give greater weight to some causes than to others”.<sup>324</sup> It stated:

There is nothing to indicate that the importance of the cause had been factored in, and every reason to believe it had been deliberately left out of account. There is no indication that the author(s) considered whether mitigations could make it reasonable and hence lawful to conduct the vigil, even if large numbers turned out on the day.<sup>325</sup>

The case concerning the Sarah Everard vigil demonstrates the importance of judicial review for the exercise of the fundamental rights of freedom of expression and assembly related to the violation of a woman’s right to life perpetrated by a law enforcement officer during the pandemic.

Nonetheless, an event took place without the participation of the organisers, which started peacefully and ended with disturbing images of MPS officer interventions to break up the crowd.<sup>326</sup>

In its review of the legality of Coronavirus measures, the Council of State in Belgium invalidated only one out of 32 judgments, finding that “the Brussels mayor order to prohibit prostitution was deemed *ultra vires*,” that is, exceeding the scope of its power.<sup>327</sup>

## 6.2 Restrictions on human rights and fundamental freedoms

As observed by the Council of Europe Commissioner for Human Rights, “Covid-19 has [] had dramatic implications for the exercise of human rights in Europe, notably for the freedom of movement, freedom of assembly and the rights to education and private and family life”.<sup>328</sup> Basic human rights and fundamental freedoms, such as the freedoms of expression, assembly and movement, can be restricted during a public emergency for the protection of national security, public order or public

<sup>322</sup> High Court of Justice, Leigh v. The Commissioner of Police of the Metropolis [2022] EWHC 527 (Admin) 11 March 2022, para 114.

<sup>323</sup> High Court of Justice, Leigh v. The Commissioner of Police of the Metropolis [2022] EWHC 527 (Admin) 11 March 2022, para 9.

<sup>324</sup> High Court of Justice, Leigh v. The Commissioner of Police of the Metropolis [2022] EWHC 527 (Admin) 11 March 2022, para 94.

<sup>325</sup> High Court of Justice, Leigh v. The Commissioner of Police of the Metropolis [2022] EWHC 527 (Admin) 11 March 2022, para 94.

<sup>326</sup> See, e.g., BBC, [Sarah Everard: What went wrong at the Clapham vigil?](#) 14 March 2021.

<sup>327</sup> European Court of Human Rights, [The Role of Courts in Times of Crisis: A Matter of Trust, Legitimacy and Expertise](#), p. 8, citing Bou-Oudi, No 248.541, 9 October 2020.

<sup>328</sup> Council of Europe, Commissioner for Human Rights, [COVID-19 and human rights](#), [online].

health. However, pursuant to Article 4 of the ICCPR, restrictions must be provided by law, conform to the strict tests of necessity and proportionality and be non-discriminatory.<sup>329</sup> The following sections detail a few of the ways in which States restricted these freedoms, and their often-discriminatory impact on women.

### 6.2.1 Freedom of expression

The right to freedom of expression is protected by Article 19(2) of the ICCPR and Article 10 of the ECHR. The *Leigh v. The Commissioner of Police of the Metropolis* case from the United Kingdom, detailed above, considered freedom of expression in conjunction with the right to freedom of assembly in the context of taking part in civic activism related to women's rights. It is interesting to note that although the High Court substantively rejected the decision-making of the MPS related to Covid-19 restrictions, communications from the MPS related to the threat of sanctions led the organisers to cancel the vigil. As both the High Court in that case and the Council of Europe have observed "interferences with the right to freedom of expression arise not only from sanctions that are actually imposed, but also from the fear of sanction and the broader legal and regulatory climate for journalists and the media".<sup>330</sup>

Emergency measures were also applied to limit the freedom of expression of frontline health workers—the large majority of whom are women—"to voice criticism of government responses to the pandemic and to expose weaknesses in healthcare systems (such as shortages of protective equipment)".<sup>331</sup> In Poland and the UK, nurses and home carers — the majority of whom are women — "lost their jobs for raising alarm about understaffing and the lack of protective equipment".<sup>332</sup> Several countries in the region passed both temporal and permanent legislation restricting freedom of expression. For example, Armenia introduced a regulation foreseeing a €1,000 fine for the publication in the media of information about Covid-19 from non-official sources.<sup>333</sup>

Such measures impact upon the public's **right to seek and receive information**, also protected by Article 19(2) of the ICCPR and Article 10 of the ECHR. In this regard, the failure of several States in the region to effectively provide information related to accessing essential services for victims of domestic violence had a disproportionate impact on women and resulted in their suffering additional human rights violations, as detailed in the section on Essential Services above.

Female journalists and WHRDs also faced the threat of criminal sanctions for voicing criticisms in violation of Article 19 of the ICCPR and Article 10 of the ECHR. The Council of Europe noted that "Serbian journalist Ana Lalić was charged with causing panic and unrest for reporting that medical staff at the Vojvodina Clinical Centre lacked sufficient protective gear". Lalić was subsequently "subjected to a prolonged smear campaign by government media, even after the government had dropped charges and issued an apology".<sup>334</sup> As described below, WHRD Nurcan Baysal, of Kurdish

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<sup>329</sup> HRC, General Comment No. 34, para 22.

<sup>330</sup> Council of Europe, COVID and free speech, 2020, p. 8.

<sup>331</sup> OSCE/ODIHR, Human Rights and Gender Equality During Public Emergencies, 2020, p. 29, citing LSE, [COVID-19 and free speech](#): COVID-19—bewilderment and candour, *The Lancet*, Vol. 395, Issue 10231, 2020, stating: "The *Lancet* is receiving many messages from front-line health workers reporting 'bullying'—bullying National Health Service (NHS) staff by threatening disciplinary action for raising concerns about workplace safety, testing, and access to personal protective equipment."

<sup>332</sup> Council of Europe, COVID and free speech, 2020, p. 11, citing The Guardian, [UK carers who lost jobs after raising safety fears consider legal action](#), 30 April 2020; and, [Transparency International, Protection of Whistleblowers during Covid-19](#), 2020, referring to the case of a Polish nurse and midwife fired for posting an image of her homemade surgical mask.

<sup>333</sup> Council of Europe, COVID and free speech, 2020, p. 6, noting that 22 media outlets were ordered to take down information.

<sup>334</sup> Council of Europe, COVID and free speech, 2020, p. 11.



origin, faced interrogation by Turkish authorities for social media posts calling into question prison conditions due to pandemic health risks.<sup>335</sup>

## 6.2.2 Freedom of movement

The right to freedom of movement, protected by Article 12 of the ICCPR and Article 2 of the ECHR, includes the right to move freely within one's country, the right to leave any country, and the right not to be arbitrarily denied entry into one's own country. Restrictions on the right to freedom of movement can result in violations of a series of other rights.

### 6.2.2.1 Increased incidence of domestic violence

Restrictions on movement resulted in serious violations of women's fundamental human rights due to the consequent increase in domestic violence, namely: the right to life, the prohibition of inhuman or degrading treatment, the prohibition on discrimination and the right to respect for private and family life, pursuant to Articles 2, 3, 14 and 8, respectively. It is important to recall that pursuant to Article 4 of the ICCPR and Article 15 of the ECHR, the prohibition on torture and ill-treatment and the right to life are non-derogable, as are the rights set forth in the Istanbul Convention.

The widespread imposition of lockdowns as a restriction on freedom of movement led to increased imminent danger for women exposed to violence. The rise in cases of domestic violence was widely documented. As an illustration, the OSCE found that:

the rate of increase in reports of domestic violence has ranged from around 25% to 30% (Cyprus, France, Republic of Moldova, United Kingdom) to 62% (Kyrgyzstan), 74% (the Russian Federation) to as high as 400% (Canada), depending on specifics of the country and available reporting mechanisms.<sup>336</sup>

It is important to recall that domestic violence reporting very likely underestimates the problem, and that the vast majority of victims of domestic violence are women and girls.

The clearly discriminatory impact of restrictions of movement on women raises significant concerns related to whether they were in line with the standards set forth in Article 4 of the ICCPR and the Siracusa Principles, in particular considering the impact on women's right to life and the prohibition on torture and ill-treatment, both non-derogable rights during a public health emergency. Moreover, the States' due diligence obligations remain in effect during emergencies. Significantly, in Türkiye, 21 women were murdered during a three-week period of lockdown in March of 2020; in the United Kingdom, 16 domestic homicides were reported in the first three weeks of lockdown.<sup>337</sup> Azerbaijan saw a 34% increase in domestic violence incidents resulting in femicide.<sup>338</sup>

At a minimum, in future, those violations of the right to life, physical integrity and private and family life which disproportionately affect women must be meaningfully addressed and prevented prior to the imposition of lockdown orders as an emergency measure.

### 6.2.2.2 Livelihoods, care obligations and asylum seekers

The OSCE stated that "imposing restrictions on the freedom of movement denies [people] access to their livelihoods, social protection, safety and, for some, to asylum procedures".<sup>339</sup> With respect to

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<sup>335</sup> Front Line Defenders, [Nurcan Baysal investigated for social media posts on COVID-19 and prison conditions](#), 22 April 2020.

<sup>336</sup> OSCE/ODIHR, Human Rights and Gender Equality During Public Emergencies, 2020, p. 36.

<sup>337</sup> OSCE/ODIHR, Human Rights and Gender Equality During Public Emergencies, 2020, p. 36. Official statistics for Türkiye indicated only nine instances of femicide. Council of Europe member State responses to GEC questionnaire.

<sup>338</sup> National research: Azerbaijan.

<sup>339</sup> OSCE/ODIHR, Human Rights and Gender Equality During Public Emergencies, 2020, p. 31.

their impact on women, restrictions on movement and reductions in public transport, “create specific and additional burdens on women” given their “complex care obligations, encompassing child care, care for elderly relatives and care for family members who are ill or who have disabilities”.<sup>340</sup> Disparities between women’s and men’s engagement in unpaid care and domestic work must be considered in this context.

Border closures left migrants stranded, and many migrant women working in the informal domestic care sector, such as those from the Republic of Moldova working in Italy or those from Romania and Slovakia working in Austria, were unemployed without any social protection.<sup>341</sup> Women’s Link Worldwide requested an urgent UN investigation into deteriorating working conditions for seasonal migrant women workers in the strawberry fields in Huelva, Spain, as they had reportedly faced exploitation and sexual violence at work prior to the pandemic.<sup>342</sup> Border closures also denied migrants the right to seek asylum and required their return to countries in which they faced persecution in violation of the international right to *non-refoulement*.

Given that women comprise the majority of the elderly population and have less access to assistance, “[s]trict self-isolation and ‘shielding’ requirements that severely limit the movement of people over the age of 65 have had a discriminatory impact on women”.<sup>343</sup>

### 6.2.3 Freedom of assembly

The right to Freedom of assembly is protected by Article 21 of the ICCPR and Article 11 of the ECHR. States in the region took different approaches to restrictions on public gatherings, with some banning all public gatherings (Latvia, Kyrgyzstan) for a limited period, and others restricting gatherings by limiting the number of persons (United Kingdom). “Denmark explicitly exempted meetings with an ‘opinion-sharing purpose’, such as demonstrations and political meetings, from the ban on gatherings of more than ten people.”<sup>344</sup>

In the *Communauté genevoise d’action syndicale (CGAS) v. Switzerland* case, the European Court of Human Rights found a violation of the right to freedom of assembly and association in the context of pandemic restrictions, based on, *inter alia*, the blanket nature and length of the ban, as well as the nature and severity of possible penalties, finding these not proportionate to the aims.<sup>345</sup>

As the OSCE has highlighted, given that women remain under-represented in formal political positions, “alternative channels through which they can advocate for their rights are vital”.<sup>346</sup> Yet, in early March 2020, prior to any declaration of emergency, several countries in the region, including Kyrgyzstan, Türkiye and Poland, impeded International Women’s Day marches through police use of teargas, blockades, detentions and threats of criminal liability.<sup>347</sup> Right wing politicians in Spain publicly blamed participants in the International Women’s March in Spain for causing the spread of the virus, and publicly called for the 8<sup>th</sup> of March to be declared as a day of recognition for Coronavirus victims.<sup>348</sup> These restrictions on women’s freedom of assembly and expression occurred within the context of a

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<sup>340</sup> OSCE/ODIHR, Human Rights and Gender Equality During Public Emergencies, 2020, p. 35.

<sup>341</sup> OSCE/ODIHR, Human Rights and Gender Equality During Public Emergencies, 2020, p. 31.

<sup>342</sup> Women’s Link Worldwide, Press Release, [Women’s Link Worldwide urges the UN to investigate human rights violations against migrant women performing seasonal farm work in Spain’s strawberry industry](#), 3 June 2020;

OSCE/ODIHR, Human Rights and Gender Equality During Public Emergencies, 2020.

<sup>343</sup> OSCE/ODIHR, Human Rights and Gender Equality During Public Emergencies, 2020, p. 37; National research: Republic of Moldova.

<sup>344</sup> OSCE/ODIHR, Human Rights and Gender Equality During Public Emergencies, 2020, p. 39.

<sup>345</sup> [Communauté genevoise d’action syndicale \(CGAS\) v. Switzerland](#), Application No. 21881/20, 2022.

<sup>346</sup> OSCE/ODIHR, Human Rights and Gender Equality During Public Emergencies, 2020, p. 40.

<sup>347</sup> OSCE/ODIHR, Human Rights and Gender Equality During Public Emergencies, 2020, p. 40.

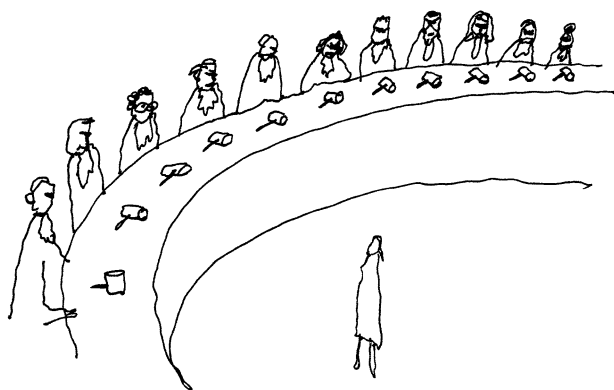
<sup>348</sup> La Vanguardia, [Vox insiste en declarar el 8M día de las víctimas del coronavirus y tilda de “violento” y “enloquecido” al movimiento feminista](#), 8 March 2021.



concerted backlash against women’s rights and an attendant shrinking space for women’s organisations.<sup>349</sup>

The OSCE expressed consequent concern “that the COVID-19 pandemic has been used as a justification ‘to attack gender justice’”.<sup>350</sup> In Azerbaijan, police detained approximately 20 protesters during an 8 March protest in 2021 on the grounds that it violated quarantine measures. In contrast to the decision by the United Kingdom High Court, judicial review of their case did not find a violation of the right to freedom of assembly.<sup>351</sup> In Kazakhstan, women were detained for demonstrating against the emergency measures and calling for increased State assistance to families.<sup>352</sup>

## 7 Criminal justice response to the public health crisis



*Illustration: Liana Finck*

Pandemic-related restrictions severely limited the enjoyment of personal freedoms “to an extent that was unprecedented in democratic countries in times of peace”.<sup>353</sup> The following sections address their enforcement and questions related to the extent and effectiveness of judicial review and possible violations of the non-discrimination requirement. They also touch upon the necessity and proportionality components of the applicable international standard.

In order to enforce the restrictions on fundamental freedoms, many States in Europe and around the world enacted new criminal offences and extended police powers. The Council of Europe has listed among the problematic practices to emerge from the pandemic response: “[h]eavy-handed and discriminatory action by the police, including flagrant racial profiling, towards Roma in enforcing

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<sup>349</sup> UN Women, Regional assessment of implementation of the Beijing Declaration and Platform for Action in Europe and Central Asia, 2020.

<sup>350</sup> OSCE/ODIHR, Human Rights and Gender Equality During Public Emergencies, 2020, p. 41.

<sup>351</sup> National research: Azerbaijan.

<sup>352</sup> OSCE/ODIHR, Human Rights and Gender Equality During Public Emergencies, 2020, p. 41

<sup>353</sup> Spadaro, A., [COVID-19: Testing the limits of human rights](#), 2020, p. 1.

quarantine and lockdown measures”.<sup>354</sup> Heavy-handed policing tactics tend to disproportionately impact marginal communities, which are already heavily policed.

The Venice Commission observed:

Certain groups of individuals might be particularly vulnerable to human rights abuses in times of emergency. These include journalists or bloggers, minorities (particularly those that might be somehow associated with the exceptional situation), human rights defenders and whistle-blowers and members of political opposition. It is important to make sure that members of these vulnerable groups are not specially targeted (de jure or de facto) by emergency measures.<sup>355</sup>

## 7.1 The imposition of punitive sanctions

The Council of Europe has advised that while heightened restrictions to human rights may be fully justified in a time of crisis:

harsh criminal sanctions give rise to concern and must be subject to a strict scrutiny. Exceptional situations should not lead to overstatement of criminal means. A fair balance between the compulsion and prevention is the most appropriate, if not the only way, to comply with the Convention **proportionality** requirement.<sup>356</sup>

The JUSTICIA European Rights Network also issued a statement concerning States’ response to Covid-19 “by extending law enforcement powers and creating new criminal offences”. While recognising the important role of law enforcement in supporting public health officials, the JUSTICIA Network noted that “there have been many reports of disproportionate and arbitrary law enforcement action, including unlawful arrests, charges and convictions. Normal oversight mechanisms have been halted.”<sup>357</sup>

UNAIDS and Amnesty International signalled an over-emphasis on punitive sanctions in lieu of providing support to assist their compliance, which “had a grossly disproportionate effect on those who already faced systematic discrimination.”<sup>358</sup>

In the Eastern Partnership region, the declaration of the state of emergency in Georgia foresaw the imposition of fines for violations, with up to three years’ imprisonment for repeat offenders. Azerbaijan sanctioned violations of pandemic restrictions with three years’ imprisonment and fines from 100-5000 AZN, although the minimum monthly subsistence was at 190 AZN. Between 17 March and 21 July, approximately 195,000 people were fined for violating the quarantine regime; 788 of them were detained, and 193,560 people were issued fines, including 7,820 people for not using a medical mask. In other words, one out of every 52 people in the country was sanctioned.<sup>359</sup>

The Republic of Moldova also established high fines, from approximately \$1300-\$4300 USD while the average monthly salary is about \$460 USD. It also reduced the time period for appeal from 15 days to

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<sup>354</sup> Council of Europe, The anti-discrimination, diversity and inclusion dimensions of the response to COVID-19, 2020, p. 3

<sup>355</sup> Council of Europe, Venice Commission, [Respect for democracy, human rights and the rule of law during states of emergency: Reflections](#), CDL-AD(2020)014, para 44.

<sup>356</sup> Council of Europe, Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis, SG/Inf(2020)11, 7 April 2020, p. 6. Emphasis added.

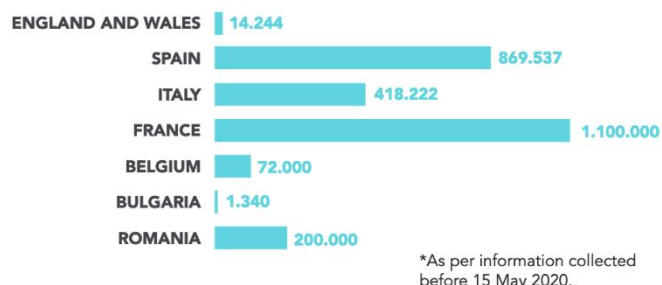
<sup>357</sup> JUSTICIA European Rights Network, [JUSTICIA calls for action against disproportionate COVID-19 criminalisation](#), 29 May 2020.

<sup>358</sup> Amnesty International, [Covid-19: Pandemic restrictions magnified discrimination against most marginalized groups](#), 31 May 2022, [online], reporting findings from a global study; UNAIDS, [COVID-19 responses must uphold and protect the human rights of sex workers](#), 24 April 2020.

<sup>359</sup> National research: Azerbaijan.

48 hours.<sup>360</sup> Ukraine established criminal and administrative sanctions with fines ranging from 17,000 to 32,000 UAH and deprivation of liberty for up to three years. The police issued 76,215 administrative sanctions for quarantine violations and 128,075 for violations of mask requirements, but fines were imposed in few cases.<sup>361</sup> Greece maintained an expedited prosecution policy against people violating mask requirements.<sup>362</sup>

#### NUMBER OF FINES ISSUED



Source: [JUSTICIA European Rights Network](#)

Notably, women’s CSOs in Eastern Partnership, Western Balkan and Central Asia subregions characterised social distancing requirements, while medically indicated, as “policies of privilege,” unachievable “for those whose very survival depends on being in close proximity to others,” and for the CSOs:

whose choice to serve others brings them into constant contact with the disease and heightened risk of infection. For them, the great need is personal protective equipment, guidance on appropriate protection procedures, and increased funding so that they can meet the demand for their services.<sup>363</sup>

## 7.2 Controversial policing tactics

Law enforcement serves as the public’s first contact with the justice sector. Police actively enforced new and pre-existing rules related to lockdowns and other health measures. Multiple reports indicated stepped up controversial policing tactics in the wake of pandemic restrictions. The UN High Commissioner for Human Rights, Michelle Bachelet, issued a statement:

Emergency powers should not be a weapon governments can wield to quash dissent, control the population. There have been numerous reports from different regions that police and other security forces have been using excessive, and at times lethal, force to make people abide by lockdowns and curfews. Such violations have often been committed against people belonging to the poorest and most vulnerable segments of the population. Shooting, detaining, or abusing someone for breaking a curfew because they are desperately searching for food is clearly an unacceptable and unlawful response. So is making it difficult or dangerous for a woman to get to hospital to give birth. In some cases, people are dying because of the inappropriate application of measures that have been supposedly put in place to save them.<sup>364</sup>

The OSCE underscored that when “police or military are in charge of enforcing physical and social distancing, and curfews in particular, the increased presence of security personnel heightens the

<sup>360</sup> National research: Republic of Moldova; Mirza, R., The rule of law in Moldova’s age of COVID-19, Justice First, 2021.

<sup>361</sup> National research: Ukraine.

<sup>362</sup> Council of Europe member State responses to GEC questionnaire.

<sup>363</sup> UN Women, Voices of women’s organizations on COVID-19, 2020, p. 4.

<sup>364</sup> OHCHR, COVID-19: [Exceptional measures should not be cover for human rights abuses and violations – Bachelet](#), 2020.

vulnerability of women and girls”. It further recalled that “in previous emergency situations, security forces have perpetrated gender-based violence ... or sexually exploited women in return for providing access to goods or services”.<sup>365</sup>

Sex workers, homeless and LGBTI persons were among those most affected by the trend of governments “failing to address the human rights consequences of the restrictions and introducing punitive sanctions”.<sup>366</sup> Police harassment, high levels of surveillance, the issuance of fines and house raids, in particular against sex workers and the LGBTI community, were reported in several countries. Europe was no exception. In France, Germany, Italy, Norway, Poland and the United Kingdom, sex workers had to “break the rules of lockdown and work under increased risks of police violence, blackmail, detention and penalties, as well as potential exposure to the virus” to survive.<sup>367</sup> Indeed, those working in the informal economy were particularly vulnerable, especially sex workers, the majority of whom are “(undocumented) migrants, poor, women, people of colour and LGBTIQ people”.<sup>368</sup> They tend to have little access to social protection.<sup>369</sup>

The pandemic appeared to be used as a pretext for “harassing sex workers, resulting in arrests, detentions, heavy fines and deportations of sex workers who are foreign nationals”.<sup>370</sup> The decision by the mayor of Brussels to prohibit prostitution, determined to be *ultra vires* upon judicial review, should be considered in this context.<sup>371</sup> In that case, the applicants, affected sex workers, were able “to establish both the irregularity of the measure, inferred from the incompetence of the author of the act, and the extreme emergency required to justify the immediate suspension of the disputed order by the administrative court”.<sup>372</sup>

The treatment of sex workers throughout the criminal justice chain in countries around the world, including in Europe, constituted a serious pre-existing cause for concern.<sup>373</sup> Gender stereotypes and deeply held social norms related to sexuality and morality result in their discriminatory treatment from police to corrections. With sex workers’ access to justice “historically compromised,” by discriminatory stereotypes, they “are afraid of the police and immigration authorities and do not report cases of abuse and violence to them due to the well-founded fear that they will either receive no support, or even get fined, detained or deported”.<sup>374</sup> This demonstrates the way gender

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<sup>365</sup> OSCE/ODIHR, Human Rights and Gender Equality During Public Emergencies, 2020, p. 37.

<sup>366</sup> UNAIDS, [COVID-19 responses must uphold and protect the human rights of sex workers](#), 24 April 2020; Amnesty International, [The impact of States’ Covid-19 responses on groups affected by unjust criminalisation](#), 2022, p. 4; see also, ICRSE, [Policy Demands: The impact of COVID-19 on sex workers in Europe and Central Asia and recommendations for policy makers, 2020](#), p. 8, adding drug users and minority populations to the list.

<sup>367</sup> Amnesty International, [The impact of States’ Covid-19 responses on groups affected by unjust criminalisation](#), 2022, p. 30, citing Sex Workers’ Rights Advocacy Network and International Committee on the Rights of Sex Workers in Europe, COVID-19 crisis impact on access to health services for sex workers in Europe and Central Asia Assessment, June 2020 and International Committee on the Rights of Sex Workers in Europe, Sex workers on the frontline: The role of sex worker rights groups in providing support during the COVID-19 crisis in Europe, March 2021.

<sup>368</sup> UN Women, [COVID-19: Emerging gender data and why it matters](#), [online]; ICRSE, [Policy Demands: The impact of COVID-19 on sex workers in Europe and Central Asia and recommendations for policy makers, 2020](#), p. 1.

<sup>369</sup> UNAIDS, [COVID-19 responses must uphold and protect the human rights of sex workers](#), 24 April 2020.

<sup>370</sup> Amnesty International, [The impact of States’ Covid-19 responses on groups affected by unjust criminalisation](#), 2022, p. 30, citing Sex Workers’ Rights Advocacy Network and International Committee on the Rights of Sex Workers in Europe, COVID-19 crisis impact on access to health services for sex workers in Europe and Central Asia Assessment, June 2020 and International Committee on the Rights of Sex Workers in Europe, Sex workers on the frontline: The role of sex worker rights groups in providing support during the COVID-19 crisis in Europe, March 2021.

<sup>371</sup> European Court of Human Rights, [The Role of Courts in Times of Crisis: A Matter of Trust, Legitimacy and Expertise](#), p. 8, citing Bou-Oudi et Akhoun, No 248.541, 9 October 2020.

<sup>372</sup> Renders, D., [Belgium—The Council of State’s control of measures taken in the context of the COVID-19 pandemic](#), 2021.

<sup>373</sup> National research: Ukraine, noting police abuse of sex workers prior to the pandemic.

<sup>374</sup> ICRSE, [Policy Demands: The impact of COVID-19 on sex workers in Europe and Central Asia and recommendations for policy makers, 2020](#), p. 7.

stereotypes operate as barriers to access to justice and support and thereby increase vulnerability and exposure to victimisation.

WHRDs were similarly targeted through the pretext of the implementation of pandemic-related restrictions. Police violence against LGBTI and sex worker human rights defenders for violations of pandemic restrictions were documented in 13 countries.<sup>375</sup> In one example, Nurcan Baysal, of Kurdish origin, was called into the Diyarbakir police station in Türkiye for interrogation as part of a criminal investigation after having questioned authorities' response to the pandemic and prison conditions, including calling for prisoner release due to health risks, in online posts.<sup>376</sup> The activities for which she was questioned fall under the protection of freedom of expression.<sup>377</sup> Stepped-up harassment against WHRDs was also reported in Azerbaijan.<sup>378</sup>

The rest of the justice sector followed through with this active police engagement “prosecuting an unprecedented number of criminal cases and punishing people with high fines”.<sup>379</sup> Such excessive criminalisation raised concerns related to “abuse of power, unnecessary punitiveness and the discriminatory application of laws against minorities and vulnerable people”. At the same time, the “[p]rosecutions, sanctions and fines imposed during the pandemic may subject people to insurmountable debts; they may also be left with a criminal record that impedes their ability of finding a job or housing”.<sup>380</sup>

It appears difficult to qualify this law enforcement approach to containing a virus as either “necessary” or “proportionate”. Nor is there evidence of such policies being “assessed on a case-by-case basis, and ultimately by the courts,” as to whether they are “the least restrictive means to achieve the desired aim of limiting hospitalisations, grave illness, and death”.<sup>381</sup> In the case concerning the Sarah Everard vigil, the United Kingdom High Court held that an application of the “necessary” and “proportionate” standard required a “fact-specific proportionality assessment,” acknowledging that the required public health risk assessment was “somewhat onerous” for the police service.<sup>382</sup> Moreover, it appears unlikely that the harassing and discriminatory tactics cited above were undertaken after a “fact-specific proportionality assessment,” a burden borne by States, with respect to the impact on vulnerable populations whose very survival was jeopardised by pandemic restrictions.

### 7.3 Imprisonment, pre-trial detention and exceptional release

In its Guidance Note on the pandemic, the CEDAW Committee has urged States to consider:

alternatives to detention for women deprived of liberty, such as judicial supervision or suspended sentences with probation, in particular for women detained on grounds of administrative or other non-severe offences, low-risk offenders and those who can safely be reintegrated into society, women nearing the end of their sentences, pregnant or sick women, older women and women with disabilities.<sup>383</sup>

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<sup>375</sup> Front Line Defenders, [Defenders at risk during COVID-19](#), 2020.

<sup>376</sup> Front Line Defenders, [Nurcan Baysal investigated for social media posts on COVID-19 and prison conditions](#), 22 April 2020.

<sup>377</sup> See, Council of Europe, Venice Commission, [Respect for democracy, human rights and the rule of law during states of emergency: Reflections](#), CDL-AD(2020)014, para 50, stating: “Free, accurate, responsible and timely reports on all aspects of the crisis cannot but help the public decide for itself and monitor the actions of the government.”

<sup>378</sup> Amnesty International, Azerbaijan: Stop the vicious campaign of gendered smears and reprisals against women activists. 12 May 2021; see also Front Line Defenders: [Azerbaijan](#), [online].

<sup>379</sup> Fair Trials, Beyond the emergency of the COVID-19 pandemic: Lessons for defence rights in Europe, 2020, p. 6.

<sup>380</sup> Fair Trials, Beyond the emergency of the COVID-19 pandemic: Lessons for defence rights in Europe, 2020p. 6.

<sup>381</sup> Council of Europe, Commissioner for Human Rights, [COVID-19 and human rights](#), [online].

<sup>382</sup> High Court of Justice, Leigh v. The Commissioner of Police of the Metropolis [2022] EWHC 527 (Admin) 11 March 2022, paras 78, 80.

<sup>383</sup> CEDAW, [Guidance note on CEDAW and COVID-19](#).

When considering issues related to incarceration, it is important to note that despite the upward trend in the imprisonment of women globally, in Europe it has declined by 29% since 2010.<sup>384</sup> Women constitute approximately 5% of the prison population in Europe.<sup>385</sup> The profile of women prisoners differs substantially from that of men. Women tend to be imprisoned for low-level offences, involving petty economic crimes, often committed to support another person's drug addiction.<sup>386</sup>

Women have faced increased hardship where pandemic-related changes to prison regimes failed to account for their specific needs. For example, changes to visitation regimes cutting off in-person contact with children had a significant impact on women's mental health.<sup>387</sup>

This section details three aspects of detention practices during the pandemic: imprisonment as punishment for the violation of restrictions; pre-trial detention practices; and exceptional release measures.

### 7.3.1 Imprisonment for violations of pandemic-related restrictions

The UN High Commissioner for Human Rights issued the following statement in April 2020:

In some countries, thousands have [] been detained for curfew violations, a practice that is both unnecessary and unsafe. Jails and prisons are high risk environments, and states should focus on releasing whoever can be safely released, not detaining more people.<sup>388</sup>

OHCHR further highlighted that "States have a greater duty to prevent violations of the rights of persons deprived of their liberty, avoiding overcrowding and ensuring hygiene and sanitation in prisons and other detention centers".<sup>389</sup>

Given that incarceration poses a serious health risk to detained persons and those who work in detention facilities, the choice of imprisonment as a sanction appears directly at odds with the stated aims of health protection. Indeed, given that existing overcrowding in prisons precludes social distancing and isolation, and the limited access to health and sanitation facilities, this potentially life-threatening approach raises particular concerns over the non-derogable right to life.<sup>390</sup>

At the same time, in many countries administrative procedures governing migration were halted. In some, migrants and refugees were placed in immigration detention facilities while their status determinations were pending.<sup>391</sup> Such policy decisions were taken purportedly in response to the pandemic, despite the fact that Covid-19 protection, such as social distancing, was unfeasible. Placing women in immigration detention facilities in the face of delayed status determination not only heightened the risk of Covid-19 contagion, but also increased their exposure to violence and exploitation.

Incarcerated women face particular health concerns. For example: "High numbers of women also enter prisons pregnant or having recently given birth, as drug users and/or with serious physical and

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<sup>384</sup> Penal Reform International, Global prison trends 2021: [Women](#), [online].

<sup>385</sup> Council of Europe, [Coronavirus: Health and Safety in Europe's Prisons](#), [online]; National research: Azerbaijan (6%); Georgia (4%).

<sup>386</sup> National research: Azerbaijan, Georgia, Republic of Moldova, Ukraine.

<sup>387</sup> Penal Reform International, Global prison trends 2021: [Women](#), [online]; National research: Azerbaijan.

<sup>388</sup> OHCHR, COVID-19: [Exceptional measures should not be cover for human rights abuses and violations – Bachelet](#), 2020.

<sup>389</sup> OHCHR, [Information Note: COVID-19, prison overcrowding, and serving sentences for serious human rights violations](#), [online].

<sup>390</sup> In the United States, the Covid-19 death rate was 5.5 times higher than among the general population. JAMA Network, COVID-19 Cases and Deaths in Federal and State Prisons, 8 July 2020.

<sup>391</sup> Vilá Sánchez, E., Boland, C. & Cottone, L. (2022) COVID-19 Implications for migrant care workers. A gender perspective. *Quaderns IEE: Revista de l'Institut d'Estudis Europeus*, 1 (1), 145-153, doi: <https://doi.org/10.5565/rev/quaderns.iee.9>



mental effects of violence and related trauma.”<sup>392</sup> In this regard, “women are more likely than men to enter correctional facilities with mental illness and pre-existing health conditions, which not only raises their risk of Covid-19 complications but also makes them susceptible to significant psychological harm”.<sup>393</sup>

Significantly, numerous researchers have reported the absence of gender disaggregated data on women’s health in prisons during the pandemic, a “grave indicator of the lack of consideration for women in prison amongst decision-makers”.<sup>394</sup> Reports issued by CSOs working on prison reform issues in Europe related to the pandemic also provided minimal disaggregated data by gender.

### 7.3.2 Pre-trial detention

Already prior to the pandemic, there has been a concerning over-reliance on pre-trial detention in many countries, despite international standards requiring that it be taken as a measure of last resort.<sup>395</sup> In Europe, pre-trial detention has increased by 28% since 2000, and currently one in five people in prison within the EU are in pre-trial detention.<sup>396</sup> Despite the serious and potentially deadly health risks, in 2020 pre-trial detention rates actually rose across EU Member States.<sup>397</sup> France and Germany enacted measures that resulted in increases in pre-trial detention.<sup>398</sup> This “tough on crime” approach conflicts with purported efforts to protect the health of the population during a pandemic, as well as the basic human rights principles that pre-trial detention should only be used as a measure of last resort and for the shortest period possible.

It is striking that although legally innocent, this category of prisoners was often overlooked in the application of early release measures.<sup>399</sup> Only 43% of the 53 jurisdictions considered in one study “released adult pre-trial detainees despite pre-trial detainees making up large portions of prison populations”.<sup>400</sup> Data on women in pre-trial detention is sparse, as noted above. “Most data officially or unofficially available on Covid-19 in places of detention fails to provide any accurate information on women or disaggregated data by sex”.<sup>401</sup>

Women face distinct challenges with respect to pre-trial detention. Female suspects, disproportionately from low-income groups, often cannot meet financial guarantee requirements (bail) for release pending trial as applied in common law countries. Most female offenders are the sole

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<sup>392</sup> Penal Reform International, [Coronavirus and women in detention: A gender-specific approach missing](#), 4 June 2020.

<sup>393</sup> The 19<sup>th</sup> News, [Few incarcerated women were released during COVID. The ones who remain have struggled](#), 17 August 2021.

<sup>394</sup> See, e.g., Penal Reform International, [Coronavirus and women in detention: A gender-specific approach missing](#), 4 June 2020, citing a study from Pakistan; The 19<sup>th</sup> News, [Few incarcerated women were released during COVID. The ones who remain have struggled](#), 17 August 2021, citing a UCLA COVID Behind Bars study that found that across 80 state, federal and county agencies in the United States, “not a single prison, jail or detention system consistently reported relevant COVID-19 health data” disaggregated by gender; DLA Piper, A global analysis of prisoner releases in response to Covid-10, December 2020, p. 4, noting that “only a quarter of [53] jurisdictions published up-to-date, disaggregated data on prisoner releases;” see also, OSCE/ODIHR, Human Rights and Gender Equality During Public Emergencies, 2020, p. 66, noting the unavailability of sex-disaggregated prisoner-release data; National research: Azerbaijan.

<sup>395</sup> Article 9(3) of the ICCPR, makes explicit the presumption against pre-trial detention. See also, HRC, General Comment No. 8.

<sup>396</sup> Penal Reform International, [Pre-trial detention](#), [online]; CIV10, [One in five people in EU prisons are in pre-trial detention](#), 10 May 2022.

<sup>397</sup> Fair Trials, [Pre-trial detention rates and the rule of law in Europe](#), 26 April 2021, updated 25 May 2022, [online].

<sup>398</sup> For example, in France, under a COVID-19 ordinance, pre-trial detainees could have their detention extended under a series of conditions. [Ordonnance n° 2020-303 du 25 mars 2020 portant adaptation de règles de procédure pénale sur le fondement de la loi no. 2020-290 du 23 mars 2020 d’urgence pour faire face à l’épidémie de COVID-19](#), Article 16.

<sup>399</sup> Fair Trials, Beyond the emergency of the COVID-19 pandemic: Lessons for defence rights in Europe, 2020, p. 6.

<sup>400</sup> DLA Piper, [A global analysis of prisoner releases in response to COVID-10](#), December 2020, p. 5.

<sup>401</sup> Penal Reform International, Global prison trends 2021: [Women](#), [online] citing DLA Piper, A global analysis of prisoner releases in response to COVID-10, December 2020, p. 4, noting that “only a quarter of [53] jurisdictions published up-to-date, disaggregated data on prisoner releases”.

or primary caregivers of minor children. In addition to the extremely negative emotional impacts of separation, the loss of employment or accommodation due to pre-trial detention sometimes results in children being taken into care facilities. Concerns related to children contribute to the high incidence of mental health problems among female detainees.

Attention should also be called to women and girls held in already over-crowded asylum-seeking centres “that are not fit for purpose,” placing them “at increased risk not only of contracting the virus but, owing to limited staffing, they may also be exposed to sexual exploitation and abuse”.<sup>402</sup> Migrants and asylum seekers were placed in closed and crowded detention facilities in Bosnia and Herzegovina, France and Greece, reportedly offering limited possibilities for self-isolation and access to adequate hygiene facilities.<sup>403</sup>

### 7.3.3 Exceptional release measures

Most countries applied three key eligibility criteria for early release during the pandemic: i) the offence committed by convicted and pre-trial detainees; ii) the status or nature of the sentence being served by convicted persons; and iii) vulnerability of convicted or pre-trial detainee.<sup>404</sup> Significantly, women did not benefit from exceptional release measures to the same degree as men, despite many women in prison being of low risk. In research covering 53 jurisdictions, only a quarter of release mechanisms applied criteria to enable the release of women under the vulnerability criteria, benefiting, namely, those who were pregnant, breastfeeding or had young children in prison. Among the countries that included such women within the eligibility criteria, “implementation was patchy”.<sup>405</sup>

Of the 32 Council of Europe member State responses, only Albania and Ukraine provided data on its application of early release measures to female prisoners, and the number of women released. Luxembourg did not impose imprisonment on pregnant and elderly women, nor to persons experiencing ill health. Five countries indicated having no early release policies, and six did not specifically apply them to women as a category, and did not offer data on any that were released.<sup>406</sup> Several countries left the question blank. The overwhelming absence of data corresponds to overall concerns related to the lack of publicly available disaggregated data on incarcerated women.

Moreover, in a global survey conducted by DLA Piper, release schemes in at least 28 out of the 53 jurisdictions examined excluded drug-related offences, which disproportionately impacts women in countries where high numbers are in prison for low-level drug offences, including in Europe.<sup>407</sup> Important questions relate to the level of women’s participation in exceptional release decision-making that largely excluded them, which was undertaken by presidents, governors, ministers, senior civil servants within corrections or prison administrations and judges.<sup>408</sup>

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<sup>402</sup> UN Special Rapporteur on violence against women, its causes and consequence, Intersection between the coronavirus disease (COVID-19) pandemic and the pandemic of gender-based violence against women, with a focus on domestic violence and the “peace in the home” initiative, A/75/144, 2021, para 88; National research: Azerbaijan.

<sup>403</sup> New Humanitarian, [The COVID-19 excuse? How migration policies are hardening around the globe](#), 2020.

<sup>404</sup> DLA Piper, A global analysis of prisoner releases in response to COVID-10, December 2020, pp. 20-21.

<sup>405</sup> DLA Piper, A global analysis of prisoner releases in response to COVID-10, December 2020, p. 5; Penal Reform International, Global prison trends 2021: [Women](#), [online]; The 19<sup>th</sup>, [Few incarcerated women were released during COVID. The ones who remain have struggled](#), 17 August 2021.

<sup>406</sup> Council of Europe member State responses to GEC questionnaire.

<sup>407</sup> DLA Piper, A global analysis of prisoner releases in response to COVID-10, December 2020; Council of Europe, [Coronavirus: Health and Safety in Europe’s Prisons](#), [online]. Italy, for example, excluded drug trafficking offences from exceptional release schemes. Council of Europe member State responses to GEC questionnaire.

<sup>408</sup> DLA Piper, A global analysis of prisoner releases in response to COVID-10, December 2020, pp. 17-19; Council of Europe member State responses to GEC questionnaire.



Good practice examples include Spain, where the release of women prisoners and their children was accelerated, and Türkiye where female prisoners with children up to the age of six were released to serve their sentences at home.<sup>409</sup>

For the majority who were overlooked for early release, emergency measures that imposed physical isolation and suspended or limited in-person visits and activities effectively increased women's isolation, as the limited number of facilities for women often mean that they are imprisoned far from their families and communities.<sup>410</sup> Childcare centres were also closed in some places, resulting in the confinement of women with their children.<sup>411</sup> Women prisoners with COVID have been placed in solitary confinement and others have been confined to their cells for 23 hours/day as all activities, libraries and gyms have closed, raising issues of inhuman treatment, non-derogable during emergencies.<sup>412</sup>

Only a quarter of the 53 jurisdictions studied “expressly excluded prisoners at risk of, charged with, or convicted of domestic violence related offences from release,” although most excluded sexual offenders from eligibility.<sup>413</sup> In Europe, this included, *inter alia*: Scotland, France, Italy, Georgia and Portugal. Of the responses to the Council of Europe member State questionnaire, only France and Sweden specifically indicated excluding domestic violence perpetrators from early release. Albania observed that only those posing low risk to the community were released; other countries, such as Slovenia and Ukraine, noted that it was a matter for judicial discretion. Spain indicated that perpetrators were eligible for release with notification to the victim.<sup>414</sup> England and Wales went even farther to exclude possibility of release for prisoners where there was a *risk* of domestic violence being committed upon release.<sup>415</sup>

It is also of note that several countries, including England and Wales, Scotland and France, deemed as ineligible for early release prisoners who had been convicted of a Covid-19-related offence.<sup>416</sup> According to the DLA Piper study, “[o]nly a handful of jurisdictions [] implemented new programmes to specifically support prisoners released in response to COVID-19,” although Covid-19 related enhanced social safety nets were often in place.<sup>417</sup>

Finally, in line with concerns expressed in other sections of this report related to transparency, research found that:

in most jurisdictions that implemented new release measures, the relevant COVID-19 laws, regulations or decrees were unavailable for public review. This lack of transparency undermines confidence and prevents scrutiny of the release measure, including whether it has been legally, fairly and appropriately applied by the government.<sup>418</sup>

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<sup>409</sup> OSCE/ODIHR, Human Rights and Gender Equality During Public Emergencies, 2020, p. 67.

<sup>410</sup> National research: Georgia.

<sup>411</sup> European Prison Observatory, [COVID-19: What is happening in European Prisons](#), 17 April 2020, p. 13.

<sup>412</sup> OSCE/ODIHR, Human Rights and Gender Equality During Public Emergencies, 2020, pp. 64-65.

<sup>413</sup> DLA Piper, A global analysis of prisoner releases in response to COVID-10, December 2020, pp. 4-5, 22, noting that not all jurisdictions in the study had penal codes with specific domestic violence offences; National research: Georgia.

<sup>414</sup> Council of Europe member State responses to GEC questionnaire.

<sup>415</sup> DLA Piper, p. 22.

<sup>416</sup> DLA Piper, pp. 23, 32. In some countries, such as England and Wales and Ireland, restrictions were placed on a prisoners' freedom of expression after being released.

<sup>417</sup> DLA Piper, p. 40.

<sup>418</sup> DLA Piper, p. 16

## 8. Access to court and a fair trial during the pandemic



Illustration: Vanda Kovacs

As affirmed by the Venice Commission, during states of emergency: “the judicial system must continue to ensure the right to fair trial”.<sup>419</sup> This requires, *inter alia*, ongoing access to court and the protection of fair trial guarantees. The HRC has included as examples of non-derogable rights not listed in Article 4 of the ICCPR: the fundamental principles of legality, rule of law, including “the fundamental requirements of a fair trial”.<sup>420</sup> The Venice Commission also observed that “[f]undamental judicial guarantees are also increasingly seen as non-derogable.”<sup>421</sup> The right to equal protection ensures women these rights on par with men.

### 8.1 International standards

The right to a fair trial is set forth in Article 14 of the ICCPR and Article 6 of the ECHR. With slightly varying language, these two provisions provide for the following rights at issue:

- 1) a public hearing
- 2) “to be informed promptly, in a language which he/she understands and in detail, of the nature and cause of the accusation against him/her”<sup>422</sup>
- 3) the right to legal assistance
- 4) adequate time and facilities for the preparation of the defence
- 5) “to examine or have examined witnesses against him/her and to obtain the attendance and examination of witnesses on his/her behalf under the same conditions as witnesses against him/her”<sup>423</sup>
- 6) the free assistance of an interpreter.

<sup>419</sup> Council of Europe, Venice Commission, [Respect for democracy, human rights and the rule of law during states of emergency: Reflections](#), CDL-AD(2020)014, para 89.

<sup>420</sup> HRC, General Comment No. 29 on States of Emergency (Article 4), CCPR/C/21/Rev.1/Add.11, paras 14-16.

<sup>421</sup> Council of Europe, Venice Commission, [Respect for democracy, human rights and the rule of law during states of emergency: Reflections](#), CDL-AD(2020)014, para 41.

<sup>422</sup> Article 6(3)(a), ECHR.

<sup>423</sup> Article 6(3)(d), ECHR.

As summarised by the European Court of Human Rights:

Article 6, read as a whole, guarantees the right of an accused to participate effectively in a criminal trial. In general, this includes, inter alia, not only his or her right to be present, but also to hear and follow the proceedings. Such rights are implicit in the very notion of an adversarial procedure and can also be derived from the guarantees contained in sub-paragraphs (c), (d) and (e) of paragraph 3 of Article 6. Accordingly, poor acoustics in the courtroom and hearing difficulties could give rise to an issue under Article 6.<sup>424</sup>

Victims also have fair trial rights. Victims have a right to be heard during proceedings and to give evidence. Victims also have the right to interpretation and translation, including “for their active participation in court hearings and any necessary interim hearings”.<sup>425</sup>

The EU Victims’ Rights Directive<sup>426</sup> “establishes minimum standards on the rights, support and protection of victims of crime,” providing “access to justice to ensure that victims are aware of their rights and understand them, and are able to participate in proceedings”.<sup>427</sup> Pursuant to the Directive, victims also have the right to the provision of information on the full range of rights, including assistance “to understand and to be understood,” through communications that are “given in simple and accessible language, orally or in writing,” taking into account specific needs, such as for persons with disabilities.<sup>428</sup>

States must also ensure measures to protect victims and their family members from “secondary and repeat victimisation, from intimidation and from retaliation . . . including against the risk of emotional or psychological harm, and to protect the dignity of victims during questioning and when testifying”.<sup>429</sup> Finally, States must ensure the protection of privacy “including personal characteristics of the victim,” as well as “images of victims and of their family members”.<sup>430</sup>

The following sections discuss specific fair trial guarantees: the right to be present at trial, the right to participate in the proceedings, the right to a public trial, the right to privacy, the rights related to the protection and security of crime victims, and the right to accessibility and a reasonable accommodation.

They address the impact of the measures taken within the justice sector on women, including victims of gender-based violence, those with disabilities and from communities with disproportionate representation in the criminal justice sector. The aim is to identify any limits on the effectiveness of guaranteeing a fair trial for these groups. As underscored by the UN Special Rapporteur on the independence of lawyers and judges, “[r]estrictions on access to justice must be decisively addressed to prevent the marginalisation of the most disadvantaged social groups and the “‘elitisation’ of justice systems”.<sup>431</sup>

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<sup>424</sup> European Court of Human Rights, Guide on Article 6 of the European Convention on Human Rights: [Right to a fair trial \(criminal limb\)](#), 2022, para 152.

<sup>425</sup> Articles 7(1), 10, EU Victims’ Rights Directive.

<sup>426</sup> 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.

<sup>427</sup> European Commission, [Victims’ Rights in the EU](#), [online].

<sup>428</sup> Articles 3-5, EU Victims’ Rights Directive.

<sup>429</sup> Article 18, EU Victims’ Rights Directive.

<sup>430</sup> Articles 19-21, EU Victims’ Rights Directive.

<sup>431</sup> UN Special Rapporteur on the independence of judges and lawyers, The coronavirus disease (COVID-19) pandemic: impact and challenges for independent justice, 9 April 2021, para 114.

## 8.2 Designating justice as an “essential service”

While in some countries, such as Ukraine, courts by law must remain operational, even during martial law, in others the courts were ordered to close and cases were adjourned to prevent transmission of the virus during in-person hearings. The UN Special Rapporteur on the independence of lawyers and judges recommended that the “[a]dministration of justice should be considered an essential public service and its personnel should be considered as essential personnel during pandemics”.<sup>432</sup>

A large majority (26) of the 32 respondents to the GEC questionnaire to Council of Europe member States indicated that courts maintained at least a minimal level of operationalisation during pandemic-related movement restrictions for “urgent” cases. In at least eight of these, courts were closed for approximately two months during the initial phase of the pandemic. Others continued to process cases that could be resolved based only on the written submissions of the parties. In several countries courts remained open throughout the pandemic without any closures. These include: Estonia, Finland, Germany, Latvia, Slovenia, Sweden and Ukraine, which did not institute lockdowns.<sup>433</sup>

A few countries explicitly indicated that justice had been included as an “essential service” during lockdowns, such as Bulgaria, Estonia, Germany and Spain, which maintained its 24/7 specialised domestic violence courts open. In The Netherlands, justice was not initially considered as an essential service, but was eventually requalified as such for the purpose of addressing urgent cases.<sup>434</sup>

## 8.3 Measures restricting justice services

The Venice Commission has clarified with respect to such situations: “The functioning of the judiciary should not be restricted except when absolutely necessary or when the functioning is factually impossible”.<sup>435</sup> Whether employed immediately, such as in Cyprus, Italy, Türkiye and Romania, or in later phases of pandemic responses, States undertook a range of measures to operationalise court proceedings and to protect the rights of the defence. These included:

- ◇ the suspension of time limits
- ◇ partial suspension of the provision of certain judicial services
- ◇ leaving a minimum service only
- ◇ rescheduling of hearings
- ◇ use of virtual hearings
- ◇ prioritization of certain cases
- ◇ and suspension of proceedings that required those involved to be physically present in court.<sup>436</sup>

While taken to keep courts going, these measures constituted restrictions on access to court and the right to a fair trial. The following sections explore the impact of these measures on fair trial rights generally and their often disparate impact on women, especially those from vulnerable groups.

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<sup>432</sup> UN Special Rapporteur on the independence of judges and lawyers, The coronavirus disease (COVID-19) pandemic: impact and challenges for independent justice, 9 April 2021, para 110.

<sup>433</sup> Council of Europe member State responses to GEC questionnaire.

<sup>434</sup> Council of Europe member State responses to GEC questionnaire.

<sup>435</sup> Council of Europe, Venice Commission, [Respect for democracy, human rights and the rule of law during states of emergency: Reflections](#), CDL-AD(2020)014, para 89.

<sup>436</sup> See, UN Special Rapporteur on the independence of judges and lawyers, The coronavirus disease (COVID-19) pandemic: impact and challenges for independent justice, 9 April 2021, para 14, citing European Commission, Directorate-General for Justice and Consumers, “Comparative table on COVID-19 impact on civil proceedings”; Council of Europe member State responses to GEC questionnaire.

### 8.3.1 Temporary suspension of hearings

The UN Special Rapporteur on the independence of lawyers and judges recommended that the “suspension of judicial services must be subject to strict scrutiny because it is a fundamental pillar of human rights protection”. Pursuant to international standards, “restrictions on judicial activity must abide by the principles of legality and proportionality and be necessary for the common good in a democratic society”.<sup>437</sup>

Judicial review was critical to the exercise over restrictions to access to court. Of the responding Council of Europe member States, only the Netherlands and the Republic of Moldova noted judicial review of justice-related restrictions, and of emergency measures more generally, in their questionnaire responses. Several countries indicated that consultation with judges and the justice sector guided the approach taken.<sup>438</sup>

Of the Council of Europe countries that completely closed courts to the public during lockdowns, such as Belgium, Denmark, France, Greece, Italy, Malta, Monaco, the Netherlands, such closures varied in length and were temporary, principally from March – May 2020, during the initial stage of the pandemic, with some re-opening and then closing again for a few to several months.<sup>439</sup> These suspensions had the effect of impeding immediate judicial protection (e.g., the issuance of emergency or interim measures like protection and restraining orders; pre-trial release; and alimony and child maintenance payments). One effect of emergency measures resulting in court closures was the postponement of court proceedings and decisions on cases of violence against women. This prevented women from seeking protection and exercising their rights, resulting in at least temporary impunity for perpetrators of violence against women.<sup>440</sup> They also created a backlog of cases that affected the effectiveness and quality of justice responses in the longer term, including for GBV cases.<sup>441</sup>

Austria and Ireland developed a “‘traffic light’ system to reduce the number of hearings held in person.”<sup>442</sup> “The Republic of Moldova and Romania have kept courts open on weekends and holidays to limit delays” and a standing committee was established in North Macedonia to address urgent cases coming before the Supreme Court.<sup>443</sup> The Netherlands instituted court in the evenings and temporarily reinstated retired judges and Luxembourg limited vacations for judicial staff.<sup>444</sup>

### 8.3.2 Prioritising categories of “urgent” cases

Both in the context of generalised court closures and in countries that kept courts open from the outset, many Council of Europe member States established categories of priority cases that would be addressed. They adopted different approaches on “classifying limited in-person appearances in ‘exceptional’ or ‘urgent’ cases. The list of what constitutes ‘exceptional’ or ‘urgent’ varie[d] widely”.<sup>445</sup>

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<sup>437</sup> See, UN Special Rapporteur on the independence of judges and lawyers, The coronavirus disease (COVID-19) pandemic: impact and challenges for independent justice, 9 April 2021, para 111.

<sup>438</sup> Council of Europe member State responses to GEC questionnaire.

<sup>439</sup> Council of Europe member State responses to GEC questionnaire.

<sup>440</sup> See, e.g., UN Women, Voices of women’s organizations on COVID-19, 2020, p. 4.

<sup>441</sup> UNODC, Coronavirus Disease (COVID-19) Response—[UNODC Thematic Brief on Gender-Based Violence against Women and Girls](#), 2020, p. 2.

<sup>442</sup> UN Special Rapporteur on the independence of judges and lawyers, The coronavirus disease (COVID-19) pandemic: impact and challenges for independent justice, 9 April 2021, para 46.

<sup>443</sup> See, UN Special Rapporteur on the independence of judges and lawyers, The coronavirus disease (COVID-19) pandemic: impact and challenges for independent justice, 9 April 2021, para 68.

<sup>444</sup> Council of Europe member State responses to GEC questionnaire.

<sup>445</sup> UNODC, [The Gendered Face of COVID-19: Women and Access to Justice](#), [online].

Moreover, “the authority responsible for deciding which should be classified as such differed from one country to another”.<sup>446</sup>

The OSCE reported that a majority of its participating States, most of which are in the ECA region, addressed “cases that concern gender-based violence, divorce, child custody, division of property and alimony remotely”.<sup>447</sup> It further noted that the designation of “specific legal matters as ‘non-urgent’ and the closure of courts under emergency measures ha[d] a discriminatory impact on women seeking justice”. In this regard, it observed that typically women recur to courts more frequently for social welfare and family issues, such as child support and domestic violence.<sup>448</sup> In Azerbaijan, the Plenum of the Supreme Court postponed for months “consideration of civil claims for divorce, division of property, custody of children, alimony, protection orders and other claims”.<sup>449</sup>

While most Council of Europe country respondents indicated that gender was not considered as a factor in establishing the list of priority cases, Andorra being one exception, the inclusion of domestic and sexual violence cases signalled some gender considerations. A few stated that vulnerability was a principal consideration.<sup>450</sup> Some countries, including Ireland, Kazakhstan and Norway “adopted specific guidelines and policies to address domestic violence during the initial phase of the pandemic”.<sup>451</sup> The prioritisation of cases related to the voluntary termination of pregnancy by minors in Italy also reflects consideration of gender.<sup>452</sup>

This was true for some, but not all Council of Europe member States. In their responses to the questionnaire, Austria, Belgium, Finland, Germany and Hungary indicated not having established criteria for the prioritisation of cases. A few countries, including the Netherlands and Ukraine, left prioritisation determinations to judicial discretion. Azerbaijan, Georgia and Hungary indicated that time-sensitive cases were given priority.<sup>453</sup>

### **8.3.2.1 Criminal cases**

Not all countries prioritised domestic violence cases.<sup>454</sup> Several Council of Europe member State respondents, including France, Monaco and Romania, noted the prioritisation of protection orders, including the challenges of implementing such orders, while others, such as Bulgaria, Denmark, Slovenia and the Republic of Moldova, indicated prioritising cases involving domestic violence more broadly.<sup>455</sup>

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<sup>446</sup> See, UN Special Rapporteur on the independence of judges and lawyers, The coronavirus disease (COVID-19) pandemic: impact and challenges for independent justice, 9 April 2021, para 16.

<sup>447</sup> OSCE/ODIHR, Human Rights and Gender Equality During Public Emergencies, 2020, p. 43.

<sup>448</sup> OSCE/ODIHR, Human Rights and Gender Equality During Public Emergencies, 2020, p. 43.

<sup>449</sup> National research: Azerbaijan.

<sup>450</sup> Council of Europe member State responses to GEC questionnaire.

<sup>451</sup> See, UN Special Rapporteur on the independence of judges and lawyers, The coronavirus disease (COVID-19) pandemic: impact and challenges for independent justice, 9 April 2021, para 18; Council of Europe member State responses to GEC questionnaire.

<sup>452</sup> Council of Europe member State responses to GEC questionnaire.

<sup>453</sup> Council of Europe member State responses to GEC questionnaire; National research: Georgia. In the Czech Republic, the courts remained open for a limited category of cases. Petrov, J., (2020) The COVID-19 emergency in the age of executive aggrandizement: what role for legislative and judicial checks?, *The Theory and Practice of Legislation*, 8:1-2, 71-92,89; DOI: 10.1080/20508840.2020.1788232

<sup>454</sup> See, UN Special Rapporteur on the independence of judges and lawyers, The coronavirus disease (COVID-19) pandemic: impact and challenges for independent justice, 9 April 2021, para 18, stating “cases involving pretrial detention, domestic violence, gender-based violence and sexual violence were treated as urgent;” but see, UN Special Rapporteur on violence against women, its causes and consequence, Intersection between the coronavirus disease (COVID-19) pandemic and the pandemic of gender-based violence against women, with a focus on domestic violence and the “peace in the home” initiative, A/75/144, 2021, para 65, stating: “many countries, domestic violence cases are not prioritized by the courts”.<sup>454</sup>

<sup>455</sup> Council of Europe member State responses to GEC questionnaire. Slovenia considered non-contentious domestic violence cases.



Azerbaijan and Ukraine were two exceptions, no specific provision was made for applying for protection orders during lockdowns. In Ukraine, delays were due to suspensions in public transport and court closures. In such cases, victims had to request protection orders by mail, and the time frames for response (72 hours) were disregarded. This resulted in a majority of cases (68%) not being addressed within the legally required 72-hour deadline, but rather within a few days, or even a month, sometimes due to an individual judge's lack of understanding of the nature of this category of cases. There was also a risk that the documents would be lost in the mail. No provision was made in Azerbaijan to ensure the possibility of implementing protection orders during lockdowns.<sup>456</sup>

While the majority of prosecutors' offices in Italy interpreted the emergency measures to indicate that the 72-hour review period for EBOs was not suspended, there was an evident lack of a harmonised approach and 11 offices suspended the temporal requirement. Italy did not prioritise domestic violence investigations and trials, given the need for investigation in these cases that was not possible during the pandemic. Spain's specialised domestic violence courts remained open, but required a prior appointment that could only be obtained online.<sup>457</sup> One country reported not prioritising cases involving domestic violence, except in locations where these were addressed by a specialised unit. This decision was attributed to the delicate nature of the offence as well as to a much higher need to address cases involving pre-trial detention.<sup>458</sup>

### 8.3.2.2 Civil cases

While criminal cases tended to take precedent over civil cases,<sup>459</sup> some responding Council of Europe member States, including Belgium, Bulgaria, Italy and Luxembourg, explicitly mentioned family law cases, including, custody, visitation and economic maintenance. In countries within the Western Balkans, Eastern Partnership and Central Asia subregions, family law cases were not always prioritised, resulting in, *inter alia*, the non-payment of alimony, contributing to women's economic vulnerability during the pandemic.<sup>460</sup>

Countries in the region also took distinct approaches to asylum seekers. Some suspended the process, while others continued to process asylum applications. In a good practice example, Portugal temporarily treated "all foreigners with pending immigration applications, including asylum seekers, as residents to ensure they have access to the national healthcare service".<sup>461</sup>

## 8.4 Remote hearings

Countries around the world sought ways to keep the courts running through information and communications technology (ICT) for remote access, including via video or telephone hearings.<sup>462</sup> Remote hearings constituted one of the key strategies in many countries to enable cases to be heard while at the same time preventing exposure of judicial staff and the general public to Covid-19.

Previously considered as unlawful, States have enabled online proceedings to go forward with the person's consent, (i.e., Austria, Belgium, Finland, Germany, Romania, Slovenia and Switzerland) and/or by exempting specific categories of persons, such as minors or persons with disabilities from

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<sup>456</sup> National research: Azerbaijan, Ukraine.

<sup>457</sup> Council of Europe member State responses to GEC questionnaire.

<sup>458</sup> Council of Europe member State responses to GEC questionnaire.

<sup>459</sup> OSCE/ODIHR, Human Rights and Gender Equality During Public Emergencies, 2020, p. 42.

<sup>460</sup> UN Women, Voices of women's organizations on COVID-19, 2020, p. 4.

<sup>461</sup> New Humanitarian, [The COVID-19 excuse?](#) How migration policies are hardening around the globe, 2020.

<sup>462</sup> [Remote Courts Worldwide](#) was one resource launched in March 2020, the website of which noted its use or potential use in all of the Eastern Partnership countries of focus; National research: Ukraine.



such proceedings.<sup>463</sup> In Austria, the judiciary was granted discretionary power to decide how to ensure a fair trial using technological means.<sup>464</sup> In Georgia, all criminal cases were required to be heard remotely by Presidential Decree.<sup>465</sup> In Romania, they can be imposed on persons deprived their liberty without their consent.<sup>466</sup>

This section examines the implications and effectiveness of this approach. One benefit was the introduction and use of e-communication platforms, which coupled with videoconferencing, enabled teleworking by justice-sector actors. Morocco noted that given the difficult circumstances, teleworking staff needed increased forms of support. Fair trial concerns are particularly relevant in light of the continued use of remote hearings even after the pandemic restrictions were lifted.

#### 8.4.1 International standards on remote hearings

The right to be present at trial is a recognised element of international and regional fair trial standards, including Article 14(3)(d) of the ICCPR, Article 6(3)(c) of the ECHR and Article 8 of the Presumption of Innocence Directive. The right to be physically present at court can be waived.<sup>467</sup> The European Court of Human Rights has summarised its jurisprudence on the matter as follows:

As regards the use of a video link in the proceedings, the Court has held that this form of participation in proceedings is not, as such, incompatible with the notion of a fair and public hearing. However, recourse to this measure in any given case must serve a legitimate aim and the arrangements for the giving of evidence must be compatible with the requirements of respect for due process, as laid down in Article 6. In particular, it must be ensured that the applicant is able to follow the proceedings and to be heard without technical impediments, and that effective and confidential communication with a lawyer is provided for.<sup>468</sup>

The UN Special Rapporteur on the independence of judges and lawyers has noted that judiciaries around the world have “expressed some concerns regarding the potential impact of using technical means of communication to transmit images and sound, in criminal and civil proceedings, on the rule of law and fundamental rights”.<sup>469</sup>

The right to a fair trial requires that people charged with offences and the public be allowed to attend court and to participate effectively in a trial. This enables the court to interact with them and allows the person to hear and respond to the accusations. It also ensures that there is adequate public oversight of criminal proceedings. The right to be present at trial is essential not only for the parties to civil and criminal hearings, but is also of fundamental importance to public scrutiny of the justice system. With respect to the transparency of the proceedings and the right to a public hearing, in

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<sup>463</sup> UN Special Rapporteur on the independence of judges and lawyers, The coronavirus disease (COVID-19) pandemic: impact and challenges for independent justice, 9 April 2021, para 92; Council of Europe member State responses to GEC questionnaire.

<sup>464</sup> UN Special Rapporteur on the independence of judges and lawyers, The coronavirus disease (COVID-19) pandemic: impact and challenges for independent justice, 9 April 2021, para 92.

<sup>465</sup> National research: Georgia.

<sup>466</sup> Council of Europe member State responses to GEC questionnaire.

<sup>467</sup> *Dijkhuizen v. The Netherlands*, Application No. 61591/16, 2021, para 58, recognizing that nothing in Article 6 “prevents a person from waiving of his own free will, either expressly or tacitly, the entitlement to the guarantees of a fair trial”, which “must be established in an unequivocal manner and be attended by minimum safeguards commensurate to its importance. A waiver need not be explicit, but it must be voluntary and constitute a knowing and intelligent relinquishment of a right”.

<sup>468</sup> European Court of Human Rights, Guide on Article 6 of the European Convention on Human Rights: [Right to a fair trial \(criminal limb\)](#), 2022, para 152.

<sup>469</sup> UN Special Rapporteur on the independence of judges and lawyers, The coronavirus disease (COVID-19) pandemic: impact and challenges for independent justice, 9 April 2021, para 82.

various jurisdictions, “only the parties and their lawyers have access to the virtual courtroom” while the public and the media are often not permitted to attend.<sup>470</sup>

Fair trial standards encompass attorney-client consultations, the effectiveness of which are often compromised through the use of remote hearings. Furthermore, Article 6(3)(a) of the ECHR requires that criminal defendants be informed “in a language which [s/he] understands and in detail, of the nature and cause of the accusation against him/her,” with important implications for the remote participation of interpreters and intermediaries.

As noted, the European Court of Human Rights has not found remote hearings to constitute a *per se* violation of the right to be present at trial, having addressed the issue in distinct legal contexts, including family and criminal law.<sup>471</sup> Among the factors it has considered are the nature and importance of the hearing. In the *Jallow v. The Netherlands* case, the Court emphasised that the decision related to the applicant’s parental responsibility over his son and was not a hearing to determine custody. It stated, “the decision on parental responsibilities in this case did not to a decisive extent depend on the judges’ immediate impression of the parties through their physical presence”.<sup>472</sup> In the *Dijkhuizen v. The Netherlands* case, it distinguished the importance of a criminal trial hearing as compared to proceedings on appeal.<sup>473</sup>

The European Court of Human Rights has also considered the manner in which the person’s interests “were actually presented and protected, particularly in the light of the nature of the issues to be decided by it and of their importance to the appellant”.<sup>474</sup> In the *Jallow* case, it observed that the applicant’s counsel was physically present in the courtroom while the applicant was in the same room with the interpreter, and that he had been given ample opportunity to present his case during case preparation and at the hearing.<sup>475</sup>

It is interesting to keep in mind during the following sections that in the *Jallow* case, examining the issue in terms of equality of arms, the Court considered several factors, including connectivity problems (the applicant had been unable to connect to a significant portion of the hearings) as well as the possibility for confidential lawyer-client communications.<sup>476</sup> The case also involved an interpreter.

In recalling its prior holdings on the issue, in the *Jallow* case, the Court reiterated the applicable standards on remote hearings: “in different contexts, the appearances by video-link are as such not necessarily problematic, as long as this measure in any given case serves a legitimate aim and that the arrangements are compatible with the requirement for due process”.<sup>477</sup> It gives States “wide discretion as regards the choice of the means put in place to ensure that their legal systems are in compliance with the requirements of Article 6.”<sup>478</sup> At the same time, these standards and safeguards should be considered as remote hearings become increasingly expanded in the future.

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<sup>470</sup> Fair Trial, Beyond the emergency of the COVID-19 pandemic: Lessons for defence rights in Europe, 2020; UN Special Rapporteur on the independence of judges and lawyers, The coronavirus disease (COVID-19) pandemic: impact and challenges for independent justice, 9 April 2021, paras 50-51, 91; Council of Europe member State responses to GEC questionnaire.

<sup>471</sup> *Jallow v. Norway*, Application No. 36516/19, 2021; *Dijkhuizen v. The Netherlands*, Application No. 61591/16, 2021.

<sup>472</sup> *Jallow v. Norway*, Application No. 36516/19, 2021, para 65.

<sup>473</sup> *Dijkhuizen v. The Netherlands*, Application No. 61591/16, 2021, para 51.

<sup>474</sup> *Dijkhuizen v. The Netherlands*, Application No. 61591/16, 2021, para 51.

<sup>475</sup> *Jallow v. Norway*, Application No. 36516/19, 2021, para 62.

<sup>476</sup> *Jallow v. Norway*, Application No. 36516/19, 2021, para 66.

<sup>477</sup> *Jallow v. Norway*, Application No. 36516/19, 2021, para 64; see also, *Dijkhuizen v. The Netherlands*, Application No. 61591/16, 2021, para 53.

<sup>478</sup> *Dijkhuizen v. The Netherlands*, Application No. 61591/16, 2021, para 52.

### 8.4.2 The expansion and institutionalisation of remote hearings

During the pandemic, video and telephone links were employed in civil proceedings as well as for both pre-trial and trial proceedings in criminal cases. They were used in first appearances from police stations and for remand and interim hearings, with links between prisons and courts, as well as in consultations between prisoners and their lawyers. Video-conferenced hearings were either introduced or expanded in nearly all of the 32 States to respond to the GEC questionnaire.<sup>479</sup> Significantly, not all States that employed videoconferencing during hearings have adopted a specific legislative framework for doing so in civil, criminal and administrative proceedings.<sup>480</sup>

Expansions of remote hearings encompassed technically equipping more court facilities to conduct hearings by video, expanding the legality for the scope of its use, (i.e., from witnesses only to encompass criminal defendants, as in Albania and Estonia) as well as an overall expansion of its usage. For example, although Sweden issued no restrictions on court hearings, the use of remote hearings increased 40% during the pandemic.<sup>481</sup>

Countries in which digital systems were not in place prior to the pandemic faced particular challenges in the transition, demonstrating the need for sufficient allocation of resources to complete the transition.<sup>482</sup> A few countries, such as Bulgaria, Cyprus, Türkiye and Ukraine, prepared the legal and technical terrain to have the technical capacity and legal basis for conducting remote hearings starting in 2021. Several countries signalled in their questionnaire responses not only an expansion of the pre-existing use of remote proceedings, but the intention to continue with remote judicial proceedings into the future, beyond the context of the pandemic.<sup>483</sup>

In addition to efficiency and long-term cost-effectiveness (secure remote hearings require a substantial initial investment), positive aspects of the use of remote hearings have been identified, which include increased convenience and minimising costs for participants, as well as facilitating the balance between family and work obligations.

### 8.4.3 Convenient, timesaving, cost-effective and work-life balance

Online dispute resolution has the potential to “reduce the cultural, physical and time related barriers to accessing the justice system for parties as well as observers”.<sup>484</sup> It can increase efficiency and inclusivity, particularly for persons with mobility challenges, or for those with time and resource constraints that make travel to courts difficult. Barriers to women’s access to justice include the costs of taking time off from work, childcare and transportation costs—all of which are mitigated through the use of virtual proceedings. Survivors of domestic violence can also have visible and painful injuries that limit their mobility. In some jurisdictions, the move to virtual hearings has streamlined what had prior been a painstaking and time-consuming process.<sup>485</sup>

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<sup>479</sup> Council of Europe member State responses to GEC questionnaire.

<sup>480</sup> CEPEJ Evaluation Report - 2022 Evaluation cycle.

<sup>481</sup> Council of Europe member State responses to GEC questionnaire.

<sup>482</sup> UN Special Rapporteur on the independence of judges and lawyers, The coronavirus disease (COVID-19) pandemic: impact and challenges for independent justice, 9 April 2021, para 94.

<sup>483</sup> Council of Europe member State responses to GEC questionnaire; see also CEPEJ, [The functioning of courts in the aftermath of the COVID-19 pandemic](#), 2020.

<sup>484</sup> OECD, Virtual roundtable on accessible and people-centred justice, 2021, p. 16.

<sup>485</sup> Johnson, M., The impact of COVID-19 on domestic violence hearings in Washington, D.C.: Weighing the pros and cons of virtual hearings for domestic violence survivors, 2022.

Legal professionals and defendants also had positive responses to holding remand hearings via video as “less disruptive” as “prisoners don’t have to spend all day travelling in uncomfortable conditions or waiting in court”.<sup>486</sup>

#### 8.4.4 Fair trial rights concerns with remote hearings

The UN Special Rapporteur on the independence of judges and lawyers observed that digital communications tools “can be imprecise or even counterproductive in terms of access to justice, due process and judicial guarantees,” and underscored that “what is critical is that all technologies used should be equally capable of delivering a fair trial”.<sup>487</sup> The OSCE specifically called into question whether remote hearings in domestic violence cases meet international due diligence obligations and standards of fairness.<sup>488</sup> The European Network of Councils for the Judiciary (ENCJ) established minimum standards for judiciaries in times of crisis, which stated:

remote means of communication are not the most accurate solution to any situation. Indeed, beyond the fact that file management by videoconferencing is often described as more stressful, some disputes cannot be dealt with in this way and require a physical appearance before a judge (e.g., hearings relating to urgent cases or those requiring complex methods of taking evidence).<sup>489</sup>

Numerous reports have emerged highlighting critical rights concerns that have come to light with the use of remote hearings in response to the pandemic. Remote hearing have potentially adverse effects on defendants’ access to legal advice and assistance, to effectively participate in the proceedings and to understand and challenge the information and evidence presented.<sup>490</sup> Additional concerns relate to the digital divide, problems in connectivity, confidential lawyer-client communications, violations of the right to privacy, public access, pressured and instructed witness testimonies and expert statements, visual and aural impediments in the examination of evidence, and protection and security concerns, especially for children and violence victims.<sup>491</sup>

While remote facilities may be established to link prisons and police stations to courtrooms, individual lawyers have also faced technological barriers, including connectivity problems resulting in sound and image distortion, impeding the effective exercise of their profession.

#### 8.4.5 Digital divides

The Committee on Equality and Non-discrimination of the Parliamentary Assembly of the Council of Europe (PACE) underscored the impact of Covid-19 on accelerating the process of digitalisation. It stated:

More and more companies and governments are moving to provide services exclusively online, and digital literacy has become almost as important as traditional literacy. Gender, age, disability, socio-economic circumstances and ethnic origin are already major factors of

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<sup>486</sup> Equality and Human Rights Commission, *Inclusive justice: A system designed for all*, 2020, p. 9.

<sup>487</sup> UN Special Rapporteur on the independence of judges and lawyers, *The coronavirus disease (COVID-19) pandemic: impact and challenges for independent justice*, 9 April 2021, paras 50-51, 91.

<sup>488</sup> OSCE/ODIHR, *Human Rights and Gender Equality During Public Emergencies*, 2020, p. 43.

<sup>489</sup> ENCJ Report on Minimum Standards for guaranteeing Access to Justice in times of crisis 2020-2021, p. 6.

<sup>490</sup> Fair Trials, [Policing Bill](#): Fair Trials and disability charities warn of discrimination and injustice from expansion of audio and video links in criminal proceedings, 10 January 2022.

<sup>491</sup> Fair Trials, *Beyond the emergency of the Covid-19 pandemic: Lessons for defence rights in Europe*, 2020; UN Special Rapporteur on the independence of judges and lawyers, *The coronavirus disease (COVID-19) pandemic: impact and challenges for independent justice*, 9 April 2021, paras 50-51, 91; see also OSCE/ODIHR, *Human Rights and Gender Equality During Public Emergencies*, 2020, p. 43.

discrimination in this field, and those with the least access to digital technologies face increasing inequalities in accessing and exercising their rights.<sup>492</sup>

The digital divide constitutes “a crucial issue,” when discussing remote hearings, given that it “objectively hampers the widespread use of virtual means in the administration of justice”.<sup>493</sup> The UN Special Rapporteur on the independence of judges and lawyers explained, “a lack of access to information technology and the Internet means that many people, including members of the legal profession, have been left particularly exposed to legal difficulties in defending or upholding rights”.<sup>494</sup> Incomplete geographical coverage, the lack of access by those with “scarce resources,” accessibility to persons with disabilities and digital divides based on gender, age and other factors constitute four broad areas of concern.<sup>495</sup>

An assessment on remote hearings conducted in family courts the United Kingdom found that:

Regional differences in the availability of equipment and connectivity are evident. Wi-Fi access, broadband and phone reception varies widely by region, and by specific location within a region, which limits access to video conferencing for some, and can interfere with sound quality and participation in video conferencing.<sup>496</sup>

The above-cited United Kingdom assessment further found access to technology to be a particular concern for low-income families. It stated:

many parents do not have sufficient phone credit, Wi-Fi, or data allowance to participate in telephone or video conferences, or necessary equipment such as smartphone, laptop, tablet, or desktop computer, and there have been examples to barriers to participation as a result.<sup>497</sup>

A report from the United States found that without equitable connectivity, “barriers to legal and civil participation will continue to pose insurmountable obstacles for already disadvantaged residents”.<sup>498</sup> The impact of the digital divide was addressed in Switzerland, for example, by enabling in-person hearings for those without access to the required technology.

### ***Gender digital divides***

Women access ICT less than men and use it for different purposes, due to multiple factors that include limited economic resources, lower education levels and adverse gender norms. The gender digital divide is greater for older, less educated, poor women and those living in rural areas and developing countries.<sup>499</sup> In Eastern Partnership, Western Balkan and Central Asian countries, “[o]nline platforms and mobile phone providers are frequently unavailable in rural areas, and most rural women do not

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<sup>492</sup> PACE, [Closing the digital divide: promoting equal access to digital technologies](#), 2020.

<sup>493</sup> UN Special Rapporteur on the independence of judges and lawyers, *The coronavirus disease (COVID-19) pandemic: impact and challenges for independent justice*, 9 April 2021, para 83.

<sup>494</sup> UN Special Rapporteur on the independence of judges and lawyers, *The coronavirus disease (COVID-19) pandemic: impact and challenges for independent justice*, 9 April 2021, paras 47, 85, specifically observing the lack of Internet coverage to vulnerable groups in Moldova.

<sup>495</sup> National research: Ukraine.

<sup>496</sup> Nuffield Family Justice Observatory, [Remote hearings in the family justice system: A rapid consultation](#), 2020, p. 26.

<sup>497</sup> Nuffield Family Justice Observatory, [Remote hearings in the family justice system: A rapid consultation](#), 2020, p. 25.

<sup>498</sup> Government Technology, [Report: Remote Courts Must Consider Digital Literacy, Access](#), 2022, citing the report of New Century Cities, *Cut off from the courthouse: How the digital divide impacts access to justice and civic engagement*.

<sup>499</sup> OECD, [Bridging the Digital Gender Divide](#): Include, Upskill, Innovate, 2018.

have access to electronic devices or knowledge of how to use information technology”.<sup>500</sup> Women’s digital exclusion is further exacerbated in humanitarian settings.<sup>501</sup>

Women face a digital divide in Europe. In the EU, a Gender Equality Index reported: “31% of women (versus 36% of men) have ‘above basic digital skills’ (more specifically, 71% for information skills, 67% for communication skills, 56% for problem-solving skills, and 39% for software skills)”.<sup>502</sup> It is noteworthy that in a 2020 survey, while 63.1% of women in the EU used the Internet for online banking and 13,1% of women used it for participating in social or professional networks, only 0.94% of women participated in on-line civic consultations or voting and only 0.63% of women sent filled forms to public authorities over the internet.<sup>503</sup>

Concerns related to digital divides remain particularly poignant given the intention as expressed by several States to continue remote hearings beyond the crisis, including as a response to “massive case backlogs”.<sup>504</sup>

### *Use of email*

Several Council of Europe member States reported expanding options for the email submissions of filings as a positive measure to keep justice systems operational during the pandemic.<sup>505</sup> Yet, “online systems that require using an email address for registering or for receiving email can be exclusionary,” given they are not the centre of communication in underserved communities.<sup>506</sup> It is important to recognise that systems using email as the principle point of contact constitute a systemic barrier to multiple groups of persons from low-income communities. Email inboxes were also reportedly full.

### **8.4.6 Lack of sufficient training**

The UN Special Rapporteur on the independence of lawyers and judges noted that the lack of training for administrators and users also impeded effective use of technology.<sup>507</sup> Countries in which digital systems were not in place prior to the pandemic faced particular challenges in the transition, demonstrating the need for sufficient allocation of resources to complete the transition.<sup>508</sup> The importance of training was emphasised by the ENCJ in its report on minimum standards on access to justice during crises.<sup>509</sup>

### *Gender and technology usage and design*

Gendered differences in capabilities related to and the use of ICT at work are also relevant to documented concerns related to the limited IT support and training provided.<sup>510</sup> In a 2020 study, the EIGE found significant differences between men and women in the use of ICT for professional

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<sup>500</sup> UN Women, Voices of women’s organizations on COVID-19, 2020, p. 5.

<sup>501</sup> UN Women, UNODC, UNDP, IDLO, et.al., Justice for women amidst COVID-19, 2020, p. 17, observing that almost 500 million women were not connected in 2017; OSCE/ODIHR, Human Rights and Gender Equality During Public Emergencies, 2020, p. 43.

<sup>502</sup> EIGE, Gender Equality Index: [Digitalisation in the world of work in European Union](#), 2020.

<sup>503</sup> European Commission, [Women in Digital \(WiD\) Scoreboard](#), 2020.

<sup>504</sup> Fair Trials, Beyond the emergency of the COVID-19 pandemic: Lessons for defence rights in Europe, 2020, p. 6.

<sup>505</sup> Council of Europe member State responses to GEC questionnaire.

<sup>506</sup> Government Technology, [Report: Remote Courts Must Consider Digital Literacy, Access](#), 2022, citing the report of New Century Cities, Cut off from the courthouse: How the digital divide impacts access to justice and civic engagement.

<sup>507</sup> UN Special Rapporteur on the independence of judges and lawyers, The coronavirus disease (COVID-19) pandemic: impact and challenges for independent justice, 9 April 2021, para 83.

<sup>508</sup> UN Special Rapporteur on the independence of judges and lawyers, The coronavirus disease (COVID-19) pandemic: impact and challenges for independent justice, 9 April 2021, para 94.

<sup>509</sup> ENCJ Report on Minimum Standards for guaranteeing Access to Justice in times of crisis 2020-2021.

<sup>510</sup> Nuffield Family Justice Observatory, [Remote hearings in the family justice system: A rapid consultation](#), 2020, p. 1.

purposes, with the difference increasing among the highly educated.<sup>511</sup> While the data precedes the pandemic, during which the differences likely diminished significantly, such gendered differences in work modalities should be considered.

Attention should also be paid to both explicit and implicit gender biases embedded in digital services and products, including in the area of software development. Research has shown that the needs of users whose characteristics match those of the designers (in terms of gender, age, disability) tend to be best served by the software. In this regard, women make up approximately 20% of ICT graduates compared to 80% men.<sup>512</sup>

#### 8.4.7 Connectivity challenges

Article 6(3)(b) mandates both “adequate time and facilities” for the preparation of the defence. At the purely technical level, numerous technological and connectivity challenges were encountered in the rapid transition from in-person to remote hearings, excepting possibly those countries in which such technologies were already operational. Given the urgency of the situation, in many jurisdictions, the use of video hearings increased although up-to-date video technology had not been installed.

Experiences included video links with poor sound and image quality, links that worked intermittently or not at all and time delays in audio links. Audio delays “caused individuals to repeat themselves,” resulting in people speaking over one another. Communications problems often resulted where the defendant or a party had language difficulties, or in cases in which an interpreter was used.<sup>513</sup> Delays also resulted in the short time slots assigned for each hearing running out, which further limited the time for consultations and questions between lawyers and clients.

#### 8.4.8 Barriers to non-verbal communication

Despite the obvious benefits related to sufficiency and maintaining social distancing, significant concerns have emerged related to the use of remote (video or telephone) hearings in both civil and criminal contexts. Specifically, the absence of in-person contact impeded justice actors’ ability to read reactions and to communicate in a humane and sensitive manner. The importance of non-verbal communication cannot be overstated in assessments of defendants, witnesses and parents for the purposes of child welfare determinations, and for the purpose of examining the evidence of injuries in cases involving domestic violence.<sup>514</sup>

Current technology is an inherently limited tool for the purpose of reading body language and other subtle, non-verbal forms of communication. As noted above, it limits judges’ abilities to assess whether participants, including criminal defendants, are able to effectively follow the proceedings and/or want to make an intervention.<sup>515</sup>

According to some justice actors, “the human element is missing,” rendering it harder to build rapport and trust.<sup>516</sup> For example, in an assessment on remote family court hearings in the United Kingdom:

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<sup>511</sup> EIGE, [Gender Equality Index 2020: Digitalisation and the future of work](#), 2020, p. 72.

<sup>512</sup> EIGE, [Gender Equality Index 2020: Digitalisation and the future of work](#), [online], identifying three key forms of bias: in understanding who the user is and how they might use the software; in the data used to enable the software, which may then deliver incorrect or biased suggestions to the user; and in the design of the product, making it unappealing or impractical for certain categories of users.

<sup>513</sup> Nuffield Family Justice Observatory, [Remote hearings in the family justice system: A rapid consultation](#), 2020, p. 7.

<sup>514</sup> OSCE/ODIHR, [Human Rights and Gender Equality During Public Emergencies](#), 2020, p. 43.

<sup>515</sup> Fair Trials, [Beyond the emergency of the COVID-19 pandemic: Lessons for defence rights in Europe](#), 2020, p. 17; see also, Fielding, N., Braun, S., Hieke, G., [Video Enabled Justice Evaluation](#), 2020, p. 71, noting that “video court reduced the level of non-verbal communication (e.g., eye contact) with those appearing over the link. This made it more difficult to assess body language and inhibited the ability of participants to pick up on any issues the defendant might be experiencing”.

<sup>516</sup> Equality and Human Rights Commission, [Inclusive justice: A system designed for all](#), 2020, p. 8.



“Many respondents noted that it is extremely difficult to conduct the hearings with the level of empathy and humanity that a majority of those responding thought was an essential element of the family justice system.”<sup>517</sup>

A challenge was noted in Italy regarding decisions as to whether to suspend or proceed with hearings for both adult and child victims that required “an empathetic, serene and natural approach on the part of the judge” in order to ensure comfort and prevent re-traumatisation, as well as to enable the judge and appointed expert “to grasp the psycho-emotional conditions of the child, to observe his/her non-verbal attitudes and to follow him closely in a direct and colloquial conversation, appropriate to the child's age and development”. These cases were often suspended, unless urgent, “given the necessarily 'depersonalised' modalities, such as the adoption of a personal distance between the child and his/her interlocutors and the use of masks that covers the face could seriously jeopardise the necessary genuineness of the narrative,” even when in-person.<sup>518</sup>

A family court judge in the United Kingdom described: “Remote hearings are impersonal and transactional rather than humane.”<sup>519</sup> In a distinct example, one legal adviser reported realising that a strange sound he had been hearing was someone sobbing, namely the mother in a family law case: “Had she been in court I could have noted her distress sooner and given her time to settle herself.”<sup>520</sup>

#### **8.4.9 Confidential lawyer-client communication**

As stated by the UN Special Rapporteur on the independence of judges and lawyers: “Privacy for meetings between clients and their lawyers must be strictly guaranteed, which is not the case with the digital tools currently in widespread use.”<sup>521</sup> As described above, confidential lawyer-client communication is a factor the European Court of Human Rights has considered in assessing whether remote hearings conform to Article 6 requirements.

The absence of confidential lawyer-client communication impedes clients from ensuring that they understand all aspects of the proceedings by asking questions of their lawyers, as well as from giving timely instructions to them, implicating the right to effective participation.

The inability in most of the platforms used for virtual hearings to be able to consult privately with counsel is one key concern. The UN Special Rapporteur on the independence of judges and lawyers observed that States:

claimed to have made available suitable means and infrastructure for the holding of private meetings between lawyers and their clients, either through videoconferencing or in person. However, information received by the Special Rapporteur indicates that, in many cases, the pandemic served as a pretext for introducing severe restrictions on the proper exercise of the legal profession.<sup>522</sup>

For criminal defendants, remote access to lawyers, in courts, police stations and prisons, has severely restricted effective and confidential communication with their clients, undermining the quality of legal assistance, as well as the prevention of coercion and ill-treatment during custody.<sup>523</sup> Similar concerns

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<sup>517</sup> Nuffield Family Justice Observatory, [Remote hearings in the family justice system: A rapid consultation](#), 2020, p. 13.

<sup>518</sup> Council of Europe member State responses to GEC questionnaire.

<sup>519</sup> Nuffield Family Justice Observatory, [Remote hearings in the family justice system: A rapid consultation](#), 2020, p. 10.

<sup>520</sup> Nuffield Family Justice Observatory, [Remote hearings in the family justice system: A rapid consultation](#), 2020, p. 14.

<sup>521</sup> UN Special Rapporteur on the independence of judges and lawyers, *The coronavirus disease (COVID-19) pandemic: impact and challenges for independent justice*, 9 April 2021, para 51.

<sup>522</sup> UN Special Rapporteur on the independence of judges and lawyers, *The coronavirus disease (COVID-19) pandemic: impact and challenges for independent justice*, 9 April 2021, para 60.

<sup>523</sup> Fair Trials, *Beyond the emergency of the COVID-19 pandemic: Lessons for defence rights in Europe*, 2020, p. 6.

were expressed about the use of remote hearings in cases involving gender-based violence, as victims were unable to privately consult their lawyer during the proceedings.<sup>524</sup>

Some lawyers indicated that they communicated with some clients via WhatsApp during hearings, resolving communication challenges in a manner that required sharing their personal phone numbers.<sup>525</sup>

In a related issue, logistical arrangements have further precluded opportunities for lawyer-client consultation. Video and phone hearings were arranged for short periods of time (i.e., 15 minutes)<sup>526</sup> and were conducted without breaks to offer the opportunity for consultation, leaving no time for posing questions to counsel or for them to explain to their clients what was happening.

In a good practice example, in Estonia, separate virtual chambers were set up, in order to facilitate private meetings and discussions between lawyers and their clients.<sup>527</sup>

#### **8.4.10 The right to interpretation and the use of intermediaries**

Article 6(3)(e) of the ECHR provides for “the free assistance of an interpreter” for defendants that “cannot understand or speak the language used in court”. This right is particularly important in cases in which an intermediary or interpreter is required, such as those involving migrants or refugees. For persons with disabilities, closed caption and/or sign language interpretation should be available. The right to interpretation must also be afforded to crime victims, including victims of gender-based violence.<sup>528</sup>

With respect to the use of ICT, Article 7(2) of the EU Victims’ Rights Directive provides that “communication technology such as videoconferencing, telephone or internet may be used, unless the physical presence of the interpreter is required in order for the victims to properly exercise their rights or to understand the proceedings”.

Justice actors expressed many concerns “about the difficulty in conducting remote hearings when interpreters were involved, particularly if more than one interpreter was required”.<sup>529</sup> Vulnerable women in the United Kingdom for whom English is not their first language were reportedly placed in traumatic situations.<sup>530</sup>

Similar challenges were experienced in relation to the participation of intermediaries. One judge in the United Kingdom observed “intermediaries are generally very unhappy with remote hearings. I have had two cases involving deaf participants with learning difficulties which have had to be relisted as it was not possible to have a fair hearing”.<sup>531</sup> For vulnerable persons, stress or anxiety may result in their needing a support person in the room with them in order to participate effectively.

#### **8.4.11 The right to privacy**

The right to privacy is protected by Article 8 of the ECHR and Article 17 of the ICCPR. As a baseline measure, a 2020 European Commission report on the implementation of the Victims’ Rights Directive

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<sup>524</sup> OSCE/ODIHR, Human Rights and Gender Equality During Public Emergencies, 2020, p. 43; Independent, [Remote court hearings putting vulnerable women in traumatic situations “which place them at unjust disadvantage”](#), 2 May 2020.

<sup>525</sup> Nuffield Family Justice Observatory, [Remote hearings in the family justice system: A rapid consultation](#), 2020, p. 11.

<sup>526</sup> Equality and Human Rights Commission, Inclusive justice: A system designed for all, April 2020.

<sup>527</sup> UN Special Rapporteur on the independence of judges and lawyers, The coronavirus disease (COVID-19) pandemic: impact and challenges for independent justice, 9 April 2021, para 92.

<sup>528</sup> EU Victims’ Rights Directive; OSCE/ODIHR, Human Rights and Gender Equality During Public Emergencies, 2020, p. 43.

<sup>529</sup> Nuffield Family Justice Observatory, [Remote hearings in the family justice system: A rapid consultation](#), 2020, p. 12.

<sup>530</sup> The Independent, [Remote court hearings putting vulnerable women in traumatic situations “which place them at unjust disadvantage”](#), 2 May 2020.

<sup>531</sup> Nuffield Family Justice Observatory, [Remote hearings in the family justice system: A rapid consultation](#), 2020, p. 46.

found that a couple of member States had not transposed the right to privacy requirement at all, and less than half had only partially transposed it.<sup>532</sup>

Remote hearings created further challenges in ensuring the right to privacy and confidentiality in proceedings. Although commercial video-conferencing platforms are not secure, several Council of Europe member States noted their use during the pandemic. Issues were also identified with “other people being present in the room with a party, listening to the hearing taking place, and possibly recording what was said, even though this was denied by the party”.<sup>533</sup> One judge indicated: “I have on several hearings had to stop as it has become clear that the party has someone else listening on the line. The hearings are not therefore secure.”<sup>534</sup>

This was a particular concern in the context of hearings involving survivors of gender-based violence and family law matters. In the family law context, a United Kingdom assessment observed that:

While there is clear law and guidance on who can be present in a physical courtroom during family law matters, this is difficult to monitor and enforce in a virtual environment. Concerns were raised about other people being present in the room with a party, listening to the hearing taking place, and possibly recording what was said, even though this was denied by the party.<sup>535</sup>

Women in the United Kingdom further reported challenges in speaking of the abuse during a remote hearing when their children are also in the home.<sup>536</sup> In particular, there are concerns of children overhearing “the evidence and allegations of abuse,” raising child protection issues.<sup>537</sup> One judge observed: “The likelihood of parents involved in care proceedings having a private space from which to attend remote hearings seems low”.<sup>538</sup>

The inability to control recordings of the proceedings by one of the parties was also cited.<sup>539</sup> One female family court litigant stated:

My husband has a history of recording and circulating photos and audio of court proceedings and I am concerned he will record and circulate this hearing. He is a professional video editor and I am worried that he will edit the hearing to misrepresent what was said, and perhaps even show the proceedings to our children when they are older.<sup>540</sup>

The possibility of recording testimony and evidence should also be considered for testifying victims of crimes involving sexual violence, including human trafficking and other crimes involving violent male perpetrators or organised criminal groups.

#### **8.4.12 Safety and security**

The European Commission 2020 report on the implementation of the Victims’ Rights Directive found that several member States had not implemented or only partially implemented the requirement that victims receive an individualised assessment as to their protection needs. In particular, it found that

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<sup>532</sup> European Commission, Report on the implementation of Directive 2012/29/EU, COM(2020) 188, 2020, para 3.6.

<sup>533</sup> Nuffield Family Justice Observatory, [Remote hearings in the family justice system: A rapid consultation](#), 2020, p. 15.

<sup>534</sup> Nuffield Family Justice Observatory, [Remote hearings in the family justice system: A rapid consultation](#), 2020, p. 15.

<sup>535</sup> Nuffield Family Justice Observatory, [Remote hearings in the family justice system: A rapid consultation](#), 2020, p. 25.

<sup>536</sup> The Independent, [Remote court hearings putting vulnerable women in traumatic situations “which place them at unjust disadvantage”](#), 2 May 2020; Nuffield Family Justice Observatory, [Remote hearings in the family justice system: A rapid consultation](#), 2020, p. 15, noting hearings during which children were coming in and out of the room.

<sup>537</sup> Nuffield Family Justice Observatory, [Remote hearings in the family justice system: A rapid consultation](#), 2020, p. 16.

<sup>538</sup> Nuffield Family Justice Observatory, [Remote hearings in the family justice system: A rapid consultation](#), 2020, p. 19.

<sup>539</sup> OSCE/ODIHR, Human Rights and Gender Equality During Public Emergencies, 2020, p. 43.

<sup>540</sup> Nuffield Family Justice Observatory, [Remote hearings in the family justice system: A rapid consultation](#), 2020, p. 17.

“in several Member States communication technologies are not used effectively during court proceedings as means to avoid contact between victims and offenders”.<sup>541</sup>

Assessments related to the relative safety and security provided by remote hearings are mixed, in particular for victims/survivors of gender-based violence. On the positive side, some have found the use of virtual hearings to limit their in-person exposure to perpetrators, thus minimising the potential for retraumatisation and enabling them to feel more emotionally and physically secure. One survivor stated of a virtual family court hearing:

I suffer PTSD as a result of domestic abuse. The hearing was just 10 minutes. It was more professional. I felt heard and respected.... I believe my perpetrator enjoys continuing the hearings. I believe he feels a level of control, his anger is clear, and he enjoys the drama. I preferred this way of conducting difficult family law hearings.<sup>542</sup>

The fact that remote hearings can be conducted from almost anywhere can also prevent perpetrators from knowing victims' whereabouts. In-person hearings, in contrast, enable perpetrators to know where the victim will be located and for how long.<sup>543</sup> Exposure to threatening behaviour by perpetrators in and out of the courtroom has been a long-standing problem that countries around the world have failed to effectively address.<sup>544</sup>

One of the key challenges of the use of virtual hearings in the context of domestic and intimate partner violence is the increased ability for perpetrators to exert coercive control tactics over victims without detection. In one telling incident in the United States, in a hearing over Zoom, an astute prosecutor suspected that the perpetrator and victim were engaging in the hearing from the same location despite a no-contact order, and raised concerns about the immediate safety of the victim.<sup>545</sup> “This is an issue we didn't have when we had live court,” the judge observed.<sup>546</sup> The police were dispatched to the location, and placed him in custody. In this regard, in-person hearings can offer women victims of violence increased physical protection.

Other domestic violence survivors were distressed by having to participate in remote proceedings while at home alone. Questions have been raised about the measures offered to assist vulnerable and intimidated witnesses to relieve stress and to facilitate their best evidence.<sup>547</sup>

Other concerns have been expressed regarding the ability of perpetrators to control the testimony of victims and experts. The United Kingdom family court assessment of remote hearings cites one barrister as stating: “There is a real risk that the truth will not surface if we insist on proceeding remotely and indeed, in my view, it is at real risk of being suppressed and manipulated.”<sup>548</sup>

Challenges were also cited related to remote hearings concerning children going into State care, given that it is increasingly common for children to be placed into State care due to the mother being a

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<sup>541</sup> European Commission, Report on the implementation of Directive 2012/29/EU, COM(2020) 188, 2020, para 3.6.

<sup>542</sup> Nuffield Family Justice Observatory, [Remote hearings in the family justice system: A rapid consultation](#), 2020, p. 17.

<sup>543</sup> Meredith Johnson, The impact of COVID-19 on domestic violence hearings in Washington, D.C.: Weighing the pros and cons of virtual hearings for domestic violence survivors, 2022.

<sup>544</sup> See, e.g., *N.Ç. v. Türkiye*, Application No. 40591/11, 2021, in which the judge had declined to issue an out-of-court protection order for a minor rape victim, and she and her counsel were forced to remain inside the courthouse due to threats of assault by associates of the defence until the mayor sent an escort to enable them to leave the building.

<sup>545</sup> See, Meredith Johnson, The impact of COVID-19 on domestic violence hearings in Washington, D.C.: Weighing the pros and cons of virtual hearings for domestic violence survivors, 2022.

<sup>546</sup> WDIV, [Prosecutor catches accused abuser in same home as victim during zoom court hearing](#), 10 March 2020.

<sup>547</sup> Nuffield Family Justice Observatory, [Remote hearings in the family justice system: A rapid consultation](#), 2020, p. 16.

<sup>548</sup> Nuffield Family Justice Observatory, [Remote hearings in the family justice system: A rapid consultation](#), 2020, p. 10.

victim of domestic violence, as the burden of responsibility is placed on the victim rather than on the perpetrator.<sup>549</sup>

#### 8.4.13 Persons with disabilities

The European Court of Human Rights has recognised that “lack of effective participation in the proceedings may also arise with regard to a failure of the domestic authorities to accommodate the needs of vulnerable defendants,” in particular defendants with intellectual impairments.<sup>550</sup>

The CRPD sets forth standards for persons with disabilities, including related to their access to justice. It should be noted that in many countries, particularly in the Eastern Partnership region, little progress has been made to ensure universal design, physical accessibility and the availability of reasonable accommodations. Guideline 8 of the *CEPEJ Guidelines on videoconferencing in judicial proceedings* states: “The court should consider the situation and challenges of persons in vulnerable positions, such as children, migrants, or persons with disabilities in the decision to have a remote hearing and its modalities.”

Ensuring access to justice for persons with disabilities constitutes a particular concern with respect to the use of remote hearings, especially for those with cognitive impairments and mental health and neuro-diverse conditions (namely: ADHD, Autism, Dyspraxia, Dyslexia, Dyscalculia, Dysgraphia, and Tourette's syndrome). It was noted in this regard that “both people and behaviours can be easily misunderstood over remote technology”.<sup>551</sup>

Of particular importance is the fact that the use of virtual hearings significantly reduces opportunities to identify impairments and to make adjustments. Despite being over-represented in the criminal justice system, existing practices are inadequate in ensuring adjustments for the effective participation of persons with disabilities. Legal professionals often lack guidance or the needed training to be able to recognise impairments, their impact, and how adjustments can be made.<sup>552</sup> Fundamental accessibility features should include: closed captioning, keyboard accessibility, automatic transcripts, and screen reader support—as a minimum. Courts in Eastern Partnership countries do not generally ensure accessibility and reasonable accommodations for persons with disabilities, for remote and in-person hearings.<sup>553</sup>

As one practitioner stated, “it is less easy for the court to identify if somebody is confused, or unable to pay attention, or whatever else it may be, because you are a little remote figure on a TV screen”.<sup>554</sup> The situation can be significantly exacerbated with connectivity problems resulting in poor sound or image quality, which remains a common occurrence.

Significantly, this type of screening rarely occurs even in the context of in-person hearings in the region. The absence of concerted attention seems to have been carried over to the new technology. One legal professional stated:

I have not seen any real thought given where people appear from the police station to the court as to whether or not that person is suitable to go over the link or not. It's more a case of they've got the orders to do all first appearances by video link and that's what we're going

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<sup>549</sup> Independent, [Remote court hearings putting vulnerable women in traumatic situations “which place them at unjust disadvantage,”](#) 2 May 2020.

<sup>550</sup> European Court of Human Rights, Guide on Article 6 of the European Convention on Human Rights: [Right to a fair trial \(criminal limb\)](#), 2022, para 155.

<sup>551</sup> Equality and Human Rights Commission, *Inclusive justice: A system designed for all*, 2020, p. 8.

<sup>552</sup> Equality and Human Rights Commission, [Does the criminal justice system treat disabled people fairly?](#) [online].

<sup>553</sup> National research: Georgia, Republic of Moldova, Ukraine, noting no designated procedures for requesting reasonable accommodation.

<sup>554</sup> Equality and Human Rights Commission, *Inclusive justice: A system designed for all*, 2020, p. 8.

to do. There's no real consideration being given to children or people who may have learning difficulties or mental health problems.<sup>555</sup>

Video hearings appear to be unsuitable for persons with cognitive impairments and mental health and neuro-diverse conditions.<sup>556</sup> Yet, Italy and Romania required persons in detention to participate in remote hearings regardless of their consent. In Croatia, the use of remote hearings was decided exclusively by the court; representing lawyers could request “to be present in a common room where the hearing was conducted via video link”.<sup>557</sup> Of the Council of Europe member States that responded to this question, a few indicated that persons with disabilities could attend in-person hearings (Estonia, Latvia, Finland, Switzerland). Austria, Slovenia and Sweden indicated that such issues were considered in the initial design of remote hearing technology, which occurred prior to the outbreak of the pandemic. Only two countries indicated prior existing regulations regarding disabled users. Hungary updated its electronic case registry system and judiciary website to ensure accessibility.<sup>558</sup>

One study found that video hearings can significantly impede communication and understanding for disabled persons with learning disabilities, autism spectrum disorders and mental health conditions—persons who tend to be over-represented in criminal justice systems.<sup>559</sup>

#### **8.4.14 Effective participation**

All of the above sections have a critical impact of the right to effective participation. For criminal defendants, effective participation involves the ability to understand the charges, the evidence upon which they are based. It is critical that this information is communicated in a way that they understand. Effective participation also involves the ability to give both their account and instructions to their legal representative. Victims also have the right to be heard in preliminary and trial hearings.

In sum, there is a need to ensure that:

technological innovations are people-centred and accessible to all, to prevent the risk of creating a new class of marginalised groups (those without access to internet or lacking digital skills), reinforcing barriers to equal access to justice, or undermining fairness.<sup>560</sup>

There is concern where States leave fair trial rights safeguards up to the discretion of individual judges, as is the case in Slovenia, or in Italy, where safeguards appear to have been put into place with respect to the rights of the defence (e.g., cross examination) and minors, but not comprehensively, such as for victims of gender-based violence, the prison population and/or persons with disabilities.<sup>561</sup>

#### **8.5 Backlogs and delays**

All jurists are familiar with the refrain: “Justice delayed is justice denied.” With backlogs “impossible to quantify,” the UN Special Rapporteur on the independence of judges and lawyers observed that delays “increased in almost all areas, especially in criminal, family, civil, labour, bankruptcy and insolvency proceedings”.<sup>562</sup>

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<sup>555</sup> Equality and Human Rights Commission, *Inclusive justice: A system designed for all*, 2020, p. 11.

<sup>556</sup> Equality and Human Rights Commission, *Inclusive justice: A system designed for all*, 2020, p. 10.

<sup>557</sup> Council of Europe member State responses to GEC questionnaire.

<sup>558</sup> Council of Europe member State responses to GEC questionnaire.

<sup>559</sup> Equality and Human Rights Commission, *Inclusive justice: A system designed for all*, April 2020.

<sup>560</sup> OECD, *Virtual roundtable on accessible and people-centred justice*, 2021, p. 16; see also, [Government Technology, Report: Remote Courts Must Consider Digital Literacy, Access](#), 2022, citing the report of New Century Cities, *Cut off from the courthouse: How the digital divide impacts access to justice and civic engagement*.

<sup>561</sup> Council of Europe member State responses to GEC questionnaire.

<sup>562</sup> See, UN Special Rapporteur on the independence of judges and lawyers, *The coronavirus disease (COVID-19) pandemic: impact and challenges for independent justice*, 9 April 2021, para 67.



As courts struggled to manage proceedings, significant delays resulted in issuing restraining orders and adjudicating divorce and child custody proceedings, particularly if domestic violence and family law matters were not prioritised. For example, the Plenum of the Supreme Court in Azerbaijan postponed for months “consideration of civil claims for divorce, division of property, custody of children, alimony, protection orders and other claims”.<sup>563</sup>

“Plans for reducing backlogs, as part of the streamlining of judicial services, must be transparent and comply with standards for safeguarding judicial independence and human rights.”<sup>564</sup> The UN Special Rapporteur on the independence of judges and lawyers recommended that:

As justice systems resume full operations, they will need to adapt and plan their activity to take into account not only the accumulated backlog, but also the new workload arising from the changing pattern of some of the illicit behaviours that emerged during the pandemic.<sup>565</sup>

The justice sector be afforded the proper resources to do so. Cyprus reported on the impact of delays caused by backlogs on victims of domestic violence, noting increased stress associated with the case, especially those facing high levels of risk whose case was not considered as “urgent”.<sup>566</sup>

Several countries reported not facing backlogs, particularly those in which courts remained operational; in others the absence of backlogs is in part due to the use of remote hearings.<sup>567</sup>

## 9. Pandemic-related decision making

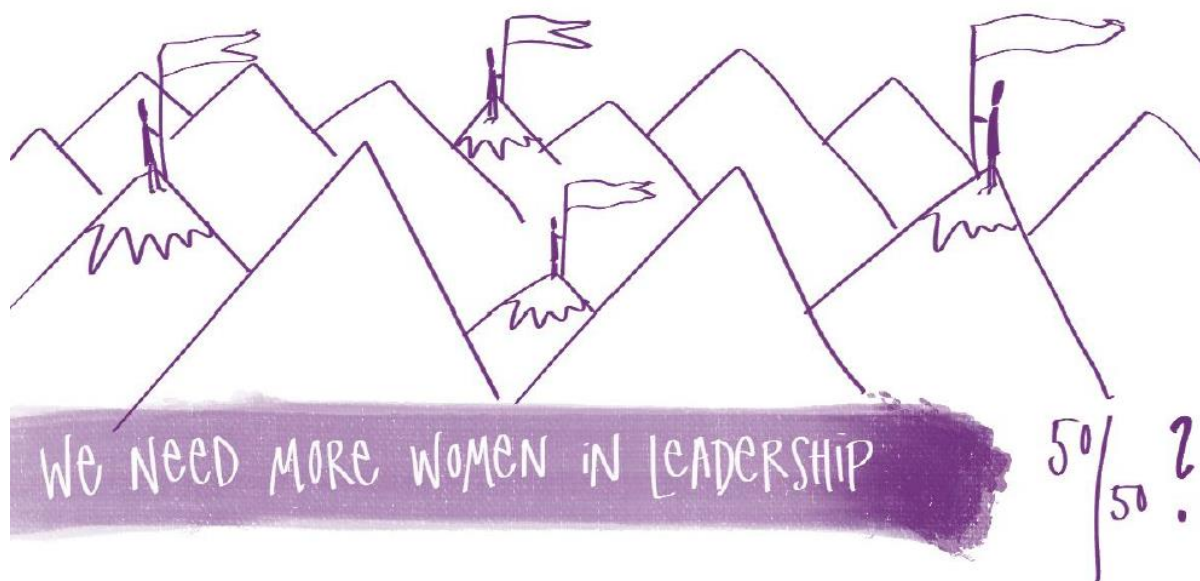


Illustration: Vanda Kovacs

<sup>563</sup> National research: Azerbaijan.

<sup>564</sup> See, UN Special Rapporteur on the independence of judges and lawyers, The coronavirus disease (COVID-19) pandemic: impact and challenges for independent justice, 9 April 2021, para 113.

<sup>565</sup> See, UN Special Rapporteur on the independence of judges and lawyers, The coronavirus disease (COVID-19) pandemic: impact and challenges for independent justice, 9 April 2021, para 119.

<sup>566</sup> Council of Europe member State responses to GEC questionnaire.

<sup>567</sup> Council of Europe member State responses to GEC questionnaire.



When considering the impact of pandemic response measures, it is important to recognise the absence of women in national task forces and decision-making bodies. The rapid spread of the virus and initial high death tolls required rapid decision-making by unprepared governments with limited evidence base to guide them. Questions have been raised regarding the composition of the decision-making structures with respect to women’s representation. In many countries, it appears that pre-existing deficits of women in leadership positions served to perpetuate policies that failed to adequately address women’s rights and concerns.

As the UN Special Rapporteur on violence against women, its causes and consequences observed: “women are largely absent from local, national and global Covid-19 response teams, policy spaces and decision-making, reflecting the low number of women Members of Parliament and leaders at the global and national levels”.<sup>568</sup> The CEDAW Committee has urged:

Governments, multilateral institutions, the private sector and other actors should ensure women’s equal representation, including through women’s rights organisations, meaningful participation and leadership in the formulation of Covid-19 response and recovery strategies, including social and economic recovery plans, at all levels and recognise women as significant agents for societal change in the present and post Covid-19 period.<sup>569</sup>

### 9.1 Women’s political participation and pandemic decision-making

Women’s low levels of political participation in many countries limit their political influence. As a consequence of their under-representation in political leadership, their views and priorities are often overlooked in decision-making, resulting in gender blind policymaking.

#### Gender-responsive Disaster Risk Reduction entails:

- Gender-responsive governance and policy making
- Gender-responsive programming, monitoring and evaluation
- Integration of gender into vulnerability, risk and capacity assessments
- The collection and use of sex- and age-disaggregated data
- Facilitating and leveraging actual and potential contributions and leadership of women in resilience building, and
- Promoting women’s participation, leadership and voice in disaster risk reduction processes.

Women’s lack of parity in decision-making bodies at every level in the majority of countries in the region is a manifestation of discrimination.

#### 9.1.1 International standards and the *de facto* situation on women’s political participation

Women’s equal participation in decision-making constitutes a pre-condition of democracy, as it more accurately reflects the composition of society. As the BPfA observes, it is also “a necessary condition for women’s interests to be taken into account”.<sup>570</sup> Article 7(b) of CEDAW specifically requires women’s participation “in the formulation of government policy and the implementation thereof,” and in the performance of “all public functions at all levels of government”. The Sendai Framework for Disaster Risk Reduction, also calls for women’s participation in disaster risk management (DRR).<sup>571</sup> Clear parallels can be seen across DRR, governance (including on climate change) and justice frameworks.

<sup>568</sup> UN Special Rapporteur on violence against women, its causes and consequence, Intersection between the coronavirus disease (COVID-19) pandemic and the pandemic of gender-based violence against women, with a focus on domestic violence and the “peace in the home” initiative, A/75/144, 2021, para 26.

<sup>569</sup> CEDAW, [Guidance note on CEDAW and COVID-19](#).

<sup>570</sup> BPfA, para 181.

<sup>571</sup> Sendai Framework for Disaster Risk Reduction (2015-2030), para 36(a)(i).

Yet, at the time of the outbreak of the pandemic, globally only 25% of global seats in parliaments were occupied by women; 75% were occupied by men. In Europe and Central Asia, women represented 29% of members of national parliaments in 2020 and 30.8% in 2021.<sup>572</sup>

Only 21.3% of the world's ministers were women, and women comprised 40% of ministers in only 30 of the world's national cabinets. In 2019, in the ECE region:

women made up more than 30% of ministers in only 14 ECE countries and more than 50% in only five, ranging from only 0% in Lithuania and Azerbaijan to 64.7% in Spain. The proportion of women ministers was the lowest in the countries of South Caucasus, Central Asia and Western CIS and the highest in the Nordic countries.<sup>573</sup>

Women's participation in the health sector is no different.<sup>574</sup>

Women's under-representation as health ministers is especially concerning: while women make up 70% of health sector workers, only 24.7% of the world's health ministers are women,<sup>575</sup> and they hold just 25% of senior roles in health institutions. Meanwhile, 72% of executives of global health organisations are men.<sup>576</sup>

In the European region, WHO estimated that in 2019, women comprised 53% of physicians and 84% of nurses, while comprising only 30% of health ministers.<sup>577</sup>

The above-cited exemplifies the way in which women's ongoing structural inequality in decision-making spheres perpetuates gender discrimination in policy making.

### 9.1.2 Gender parity in the judiciary

It is worth noting advances and gaps in gender parity within the judiciary. Women have achieved and/or surpassed gender parity among the total of professional judges in most Council of Europe member States. According to CEPEJ data for 2018, the average share of female judges was 63% in first instance courts and 54% in second instance courts. Yet, significant gaps emerge in high-level courts. Women comprised 36% of supreme courts in 2018.<sup>578</sup> According to the OECD, these gaps are explained by:

several persistent barriers to access to judicial positions for women, such as gender stereotypes and biases and challenges in reconciling work and life due to a culture of long working hours. Lack of empowerment, mentoring, networking and professional development opportunities can also hamper women's presence in the pool of senior judicial positions.<sup>579</sup>

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<sup>572</sup> IPU, [Parline](#): Global data on national parliaments, [online].

<sup>573</sup> UNECE, Women's leadership in decision-making in the ECE region, ECE/AC.28/2019/12, 2019, para 12, further noting only a 5% increase from 2014-2019.

<sup>574</sup> UN Women, Briefing Paper No. 18: [COVID-19 and women's leadership: From an effective response to building back better](#).

<sup>575</sup> Women of the global South hold less than 5%. BMJ Global Health, *Symptoms of a broken system: the gender gaps in COVID-19 decision-making*, vol. 5, Issue 10, <http://dx.doi.org/10.1136/bmjgh-2020-003549>.

<sup>576</sup> UN Women, Briefing Paper No. 18: [COVID-19 and women's leadership: From an effective response to building back better](#).

<sup>577</sup> WHO, Gender equity in the health workforce, 2019, pp. 1, 3, further finding women less likely than men to be employed full time and an average 28% gender pay gap.

<sup>578</sup> CEPEJ, European judicial systems: [Data tables](#) [online]

<sup>579</sup> OECD (2021), "Gender equality in the judiciary", in *Government at a Glance 2021*, OECD Publishing, Paris. DOI: <https://doi.org/10.1787/2f520410-en>.

## 9.2 Women's participation in pandemic-related decision-making bodies

When considering the discriminatory impact of pandemic restrictions on women, insight can be gained from considering the composition of the decision-making structures with respect to women's representation. In many countries, it appears that pre-existing deficits of women in leadership positions served to perpetuate policies that failed to adequately address women's rights and concerns.

As UN Women has underscored, “[w]omen's participation and influence are needed in the design, implementation and monitoring of Covid-19-related laws, policies and budgets at all levels of decision-making: local, national, regional and international”.<sup>580</sup> Women's participation in decision-making structures responding to the Covid crisis was an essential avenue for ensuring women's concerns would be addressed. Yet, globally only “7% of task forces achieve gender parity while 83% of task forces are dominated by men”.<sup>581</sup> A few national emergency task forces were initially formed without any women's representation, such as Azerbaijan and the United Kingdom. In other countries, women were minimally represented, such as in Uzbekistan, which included only one woman among 25 members.<sup>582</sup> The same is true at the international level, as “WHO's first, second and third International Health Regulations Emergency committees consisted of 23.8%, 23.8% and 37.5% women, respectively”.<sup>583</sup>

Responses by Council of Europe member States on women's participation on Covid-19 decision-making bodies also give rise to serious concerns related to women's participation in related policy making. Out of 32 Council of Europe member States' (including Morocco) responses to the questionnaire, more than half (20) provided no actual data related to gender breakdowns on the respective centralised committees, with some highlighting the participation of a particular female minister, but without any information on the proportion of women.<sup>584</sup> This lack of data and/or transparency among Council of Europe member States is striking.

Of the Council of Europe member States that provided information: in Croatia, 5 women were members of the Civil Protection Headquarters, out of a total of 27 members; in Denmark, three out of the 11 members of the Epidemic Commission were women; women comprised 10 out of 33 members of the central committee in Türkiye. In Azerbaijan, for example, one female minister was added to the national operational task force in June 2020.<sup>585</sup> A few Council of Europe member States explained that the committees were comprised of the persons occupying a specific post, which inadvertently resulted in women's unequal representation given that the particular position was filled by a man.

Of the countries that provided full or partial responses to the question, a few provided information on health-sector or communications committees. As observed by UN Women, “women are better represented on task forces that provide expert advice (35%) compared to those with decision-making authority (25%)”.<sup>586</sup>

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<sup>580</sup> UN Women, Briefing Paper No. 18: [COVID-19 and women's leadership: From an effective response to building back better](#).

<sup>581</sup> UN Women, [Covid-19 Global Gender Response Tracker](#) (version 2), 2021, [online].

<sup>582</sup> OSCE/ODIHR, Human Rights and Gender Equality During Public Emergencies, 2020, p. 25, noting that all key government decision-makers on coronavirus in the UK were men; National research: Azerbaijan.

<sup>583</sup> BMJ Global Health, *Symptoms of a broken system: the gender gaps in COVID-19 decision-making*, vol. 5, Issue 10, <http://dx.doi.org/10.1136/bmjgh-2020-003549>, finding that: “Expert groups, compared with decision-making committees, more frequently had higher proportions of women or gender parity, reflecting potential societal biases and stereotypes in terms of gender roles.”

<sup>584</sup> Council of Europe member State responses to GEC questionnaire.

<sup>585</sup> National research: Azerbaijan.

<sup>586</sup> UN Women, [Covid-19 Global Gender Response Tracker](#) (version 2), 2021, [online].

Council of Europe member States in which women participated decision-making bodies at 40% or higher included: Austria, Belgium, Estonia, Finland, Ireland, Malta and the Netherlands.<sup>587</sup> The Netherlands constituted a good practice example with eight out of ten permanent members of the Outbreak Management Team were women.<sup>588</sup>

Representatives of women's and other community-based organisations were also excluded from crisis planning in many contexts. In a UN Women sub-regional consultation, "[w]omen's organisations from the Western Balkans and Türkiye and the Eastern Partnership countries reported that none of the countries in the sub-region called for inputs from civil society in drawing up their national pandemic plans".<sup>589</sup>

It is worth observing in this regard that "countries governed by female leaders experienced much fewer Covid-19 deaths per capita and were more effective and rapid at flattening the epidemic's curve, with lower peaks in daily deaths".<sup>590</sup> More specifically, "countries with women in positions of leadership suffered six times fewer deaths from Covid-19 as countries with governments led by men".<sup>591</sup>

Concern related to women's participation in pandemic decision making reflects simultaneous, ongoing and broader inclusion issues related to the lack of representation based on other factors, such as: geography, race, socio-economic status, disability sexual orientation and disciplines. Gender intersects in multiple ways with the full range of diversities, thus requiring an intersectional lens.

### 9.2.1 Mandate and subject matter expertise

Increasing women in leadership positions does not necessarily translate into the needed gender-responsive, gender-mainstreamed policies. Participants with gender expertise were also necessary to ensure the relevant policy analysis with respect to women.<sup>592</sup> Another issue to be considered with respect to national decision-making bodies relates to the scope of their mandate and subject matter expertise. Some took a narrow epidemiological approach, while others took into account broader social considerations. For example, the representative of gender equality machinery was excluded from participation in Ukraine's national task force, despite repeated calls for her inclusion. Human rights, child rights and disability rights Commissioners were also excluded.<sup>593</sup>

The links between composition and mandate can be seen, for example, in local emergency response teams that "tend to predominantly recruit from police, fire and transport services —where few

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<sup>587</sup> Council of Europe member State responses to GEC questionnaire; UN Women, [Covid-19 Global Gender Response Tracker](#) (version 2), 2021, [online].

<sup>588</sup> Council of Europe member State responses to GEC questionnaire; National research: Ukraine, noting six women out of 33 members, and one woman out of 17 on the Co-ordination Council.

<sup>589</sup> UN Women, *Voices of women's organizations on COVID-19*, 2020, p. 3. CSOs were not consulted in Slovenia. Council of Europe member State responses to GEC questionnaire.

<sup>590</sup> Coscieme L, Fioramonti L, Mortensen LF, et al. [Women in power: female leadership and public health outcomes during the COVID-19 pandemic](#), doi: <https://doi.org/10.1101/2020.07.13.20152397>, identifying structural and contingent factors, and observing that "[s]ome of the countries currently led by women are also those with the highest global standards in terms of social progress".

<sup>591</sup> Coscieme L, Fioramonti L, Mortensen LF, et al. [Women in power: female leadership and public health outcomes during the COVID-19 pandemic](#), doi: <https://doi.org/10.1101/2020.07.13.20152397>.

<sup>592</sup> See, Wenham, C. and Herten-Crabb, A., 2021. Why we Need a Gender Advisor on SAGE. *LSE Public Policy Review*, 1(4), p.7. DOI: <http://doi.org/10.31389/lseppr.25>, observing the absence of a gender adviser on the UK's Scientific Advisory Group for Emergencies (SAGE), the group of experts that advised the government on scientific and technical aspects of emergency response and recovery.

<sup>593</sup> National research: Ukraine.

women are in leadership positions—and typically include few women experts from health, education, social affairs or national gender equality mechanisms”.<sup>594</sup>

The limited mandates, narrowing the scope of issues to be considered, coupled with limited women’s participation and an absence of gender and other subject matter expertise, meant that existing evidence related to gender in the context of prior pandemics, such as Ebola and Zika, was not immediately considered. UNDP and UN Women’s Covid-19 Global Gender Response Tracker found that as of September 2020, 20% of the countries analysed had “no gender-sensitive measures in response to COVID-19 at all”.<sup>595</sup>

Covid-19 bodies made decisions that tended to disregard the multiple implications they would have for women, including *inter alia*: women’s higher levels of income loss, their increased unpaid family care responsibilities and the consequent impact on gendered poverty rates, women’s increased exposure to domestic and sexual violence, the loss of access to essential health services, and the need to ensure maternal and reproductive health services as essential care.

The disproportionate burden of the impact of government-imposed restrictions borne by women illustrates the critical importance of advancing women’s equal political participation as a baseline standard, and underscores the way in which systemic discrimination in women’s political participation begets and deepens women’s structural discrimination across a range of fields in violation of the non-discrimination requirement set forth in the ICCPR and the Siracusa Principles, as well as Article 7 of CEDAW and the Sendai Framework for Disaster Risk Reduction.

### 9.3 National and local gender machinery and tools

One of the twelve critical areas in the Beijing Platform for Action are institutional mechanisms for the advancement of women, the very purpose of which is to ensure that gender concerns are mainstreamed into law and policy, and their implementation.<sup>596</sup> These mechanisms are often sidelined in policy making. A year before the outbreak of the pandemic, a Beijing +25 regional assessment for the Europe and Central Asia (ECA) region found them to be marginalised within government structures, under-staffed and lacking in sufficient data and resources.<sup>597</sup>

Nine of the 31 responding Council of Europe member States answered affirmatively with respect to consulting national gender equality machinery and/or women’s NGOs in the development of Covid-19 policies. For example, in Belgium, the Federal Secretary of State of Equal Opportunities commissioned the Institute for Equality between Women and Men to draft a policy note on the gender dimension of the Covid-19 crisis.

Only a few of the responses indicated systemic consultation. Albania’s good practice example can be linked to ongoing efforts to strengthen national and local level gender equality mechanisms. Its gender equality machinery is led by the Ministry of Health and Social Protection and contains focal points in ministries and at the local level, which work in sustained collaboration with women’s NGOs. This pre-existing active framework facilitated consultation during rapid assessments and the development of

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<sup>594</sup> UN Women, Briefing Paper No. 18: [COVID-19 and women’s leadership: From an effective response to building back better](#).

<sup>595</sup> UN Women, [COVID-19: Only one in eight countries worldwide have measures in place to protect women against social and economic impacts, new data shows](#), 29 September 2020, assessing the provision of the provision of helplines, shelters, or judicial responses to counter the surge in violence against women and girls during the pandemic, cash transfers directly targeted at women, the provision of childcare services or paid family and sick leave.

<sup>596</sup> Beijing Platform for Action, para 201.

<sup>597</sup> UN Women, Regional assessment of implementation of the Beijing Declaration and Platform for Action in Europe and Central Asia, 2020, p. 62.

protocols on Covid-19. For countries with established, properly placed supported gender equality machinery, the subject matter expertise on gender would have been easily accessible.

### 9.3.1 Gender impact assessments

Gender impact assessments have been defined as “an *ex ante* evaluation, analysis or assessment of a law, policy or programme that makes it possible to identify, in a preventative way, the likelihood of a given decision having negative consequences for the state of equality between women and men”.<sup>598</sup> According to EIGE, the “central question of the gender impact assessment is: Does a law, policy or programme reduce, maintain or increase the gender inequalities between women and men?”<sup>599</sup>

Several countries in the region already engage in conducting gender impact assessments of proposed legislation, including Georgia, Luxembourg, Spain and the United Kingdom, and the applicable legal framework has been established in Ukraine.<sup>600</sup> While in the United Kingdom such assessments are conducted systematically, the Government declined “to publish its Equality Impact Assessment of COVID policy, despite being required to do this for all policy by law,”<sup>601</sup> signalling transparency concerns. It remains unclear whether national emergency powers permit legislated gender assessment processes to be bypassed in crisis situations.<sup>602</sup>

In an attempt to bridge this gap, UN Women conducted a series of gender assessments on the impact of COVID policies in CIS, Western Balkan and Central Asia. For example, gender assessments were performed by UN agencies in Azerbaijan, Georgia and Ukraine.<sup>603</sup>

OSCE/ODIHR identified a critical missing element of pandemic response, in addition to the response to previous emergencies, namely: a “gender-sensitive and multi-dimensional vulnerability analysis,” which, “would have shed light on the potential gender-specific risks associated with COVID-19 and with the measures that were adopted to address the crisis, specifically the impact of those measures on human rights and fundamental freedoms”.<sup>604</sup>

### 9.3.2 Gender responsive budgeting

The absence of sufficient financing for gender equality constitutes one of the biggest barriers impeding its achievement. Gender-responsive budgeting (GRB) is a tool to analyse governmental budgets for their differential effect on women and men. The aims of GRB are:

1. to promote accountability and transparency in fiscal planning;
2. to increase gender responsive participation in the budget process, for example by undertaking steps to involve women and men equally in budget preparation;
3. to advance gender equality and women’s rights.<sup>605</sup>

While many countries in Western Europe remain in the early stages of developing GRB methodologies, and ensuring that the exercise is meaningful, in Eastern Europe, “States are not implementing gender-responsive budgeting and are failing to assure transparency, accountability and equitable distribution

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<sup>598</sup> EIGE, [Gender impact assessments](#) [online].

<sup>599</sup> EIGE, [Gender impact assessments](#) [online]. (Emphasis in original).

<sup>600</sup> National research: Georgia, Ukraine. In Georgia, GIAs have been used, but they are not mandatory by law.

<sup>601</sup> [Gender and Covid-19](#) [online]. See also, House of Commons, Women and Equalities Committee, Unequal impact? Coronavirus and the gendered economic impact: Government response to the Committee’s fifth report of Session 2019-21, 11 May 2021, p. 10, stating “the Government rejects the call to publish this information”.

<sup>602</sup> OSCE/ODIHR, Human Rights and Gender Equality During Public Emergencies, 2020, p. 25.

<sup>603</sup> National research Azerbaijan, Georgia, Ukraine.

<sup>604</sup> OSCE/ODIHR, Human Rights and Gender Equality During Public Emergencies, 2020, p. 17.

<sup>605</sup> EIGE, [Gender budgeting](#) [online].



of public finances for women’s and men’s needs”.<sup>606</sup> Both Georgia and Ukraine have passed legislation enabling the application of GRB in legislative processes. GRB has been conducted in both countries, but it is not mandatory.<sup>607</sup>

While it is widely recognised that the pandemic has widened the gender poverty gap, “economic policy measures have largely been gender non-responsive”.<sup>608</sup> Data from the UN Women/UNDP Covid-19 Global Gender Response Tracker revealed that “of 2,280 fiscal, labour market and social protection measures identified in the tracker, only 287 explicitly address women’s economic security,” mostly in the form of cash transfers to women entrepreneurs and informal traders.<sup>609</sup>

In contrast, only 11% of social protection and labour market measures addressed the critical issue of unpaid care to “strengthen care services for children, older persons or persons with disabilities through, for example, childcare and maternity allowances, wage subsidies or unemployment benefits for workers with family responsibilities”.<sup>610</sup> It is essential that GRB be applied to Covid-19 support and recovery packages.

Expenditure tracking is another tool that can capture actual spending compared to planned spending. Real-time tracking can be important during a crisis in which rapid decision-making processes, the re-allocation of resources and disbursement of funds create real risks of misdirection or misappropriation. The pandemic saw governments revise budgets, diverting resources to the Covid-19 response. This posed a significant danger to services on which women tend to rely, including pre- and post-natal care and sexual and reproductive health services, as well as to CSOs that serve women’s needs, including GBV response. Indeed, women’s organisations faced threats of closure during the pandemic “due to funding constraints and shifts in donor priorities”.<sup>611</sup>

Despite the array of tools and legislative advances in some countries with respect to gender equality architecture, these mechanisms were almost completely side-lined during the pandemic response by largely male decision makers, resulting in women suffering many of the effects of pandemic restrictions disproportionately. CEDAW—the obligations of which are non-derogable during emergencies—obliges States to ensure women’s *de facto* in addition to *de jure* equality with respect to decision making.

As explained in the section above on Barriers to women’s access to justice, institutional barriers include both discriminatory laws that deny women the same rights as men, and of gender-neutral laws that negatively impact women. Discriminatory and gender-neutral laws can be directly attributable to both the absence of women in decision-making positions and the absence of gender expertise in decision making.

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<sup>606</sup> UN Women, Regional assessment of implementation of the Beijing Declaration and Platform for Action in Europe and Central Asia, 2020, p. 65.

<sup>607</sup> National research: Georgia, Ukraine.

<sup>608</sup> UN Women, Policy Brief No. 21: [COVID-19 and fiscal policy](#), April 2021, p. 2.

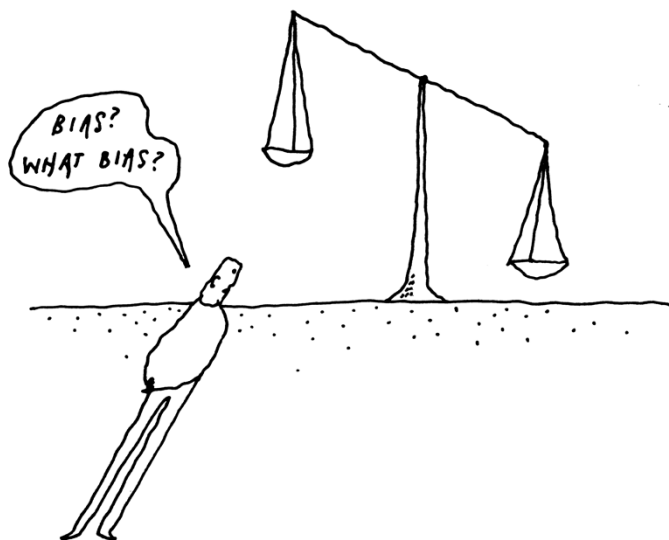
<sup>609</sup> UN Women, Policy Brief No. 21: [COVID-19 and fiscal policy](#), April 2021, p. 2.

<sup>610</sup> UN Women, Policy Brief No. 21: [COVID-19 and fiscal policy](#), April 2021, p. 2.

<sup>611</sup> UN Women, Briefing Paper No. 18: [COVID-19 and women’s leadership: From an effective response to building back better](#).



## 10. Gendered social and economic impacts



*Illustration: Liana Finck*

Prior to the pandemic, as the world was gearing up for the Beijing +25 gender equality assessment process in 2019, the World Economic Forum (WEF) issued its annual Global Gender Gap Report, which found that "none of us will see gender parity in our lifetimes, and nor likely will many of our children" given that "gender parity will not be attained for 99.5 years".<sup>612</sup> For Western Europe, the WEF predicted it would achieve gender equality in 54 years; for Eastern Europe and Central Asia, it would take almost double that: 107 years.

A more recent global estimate by UN Department of Economic and Social Affairs and UN Women undertaken since the pandemic sets achievement of gender equality at 300 years in the face of "cascading global crises".<sup>613</sup>

Notably, in the five years since the prior BPfA assessment in 2014, women's economic empowerment had declined, with women's participation in the labour market stalling, and increases in financial disparities, including due to persistent wage and income gaps.<sup>614</sup> Given the slow pace of advances towards equality in economic opportunity between 2006–2020, the report found that it would take 257 years to close this gap.<sup>615</sup> As the OSCE/ODIHR has observed, factors such as:

women's lower economic status, their role in unpaid household and care work, their limited political influence and the risks they face of gender-based violence are examples of aspects of

<sup>612</sup> World Economic Forum, [Global Gender Gap Report 2020](#), 2019, p. 5, citing a "31.4% average gender gap that remains to be closed globally".

<sup>613</sup> UN DESA/UN Women, Without investment, gender equality will take nearly 300 years: [UN report](#), 2022.

<sup>614</sup> World Economic Forum, [Global Gender Gap Report 2020](#), 2019, p. 5.

<sup>615</sup> World Economic Forum, [Global Gender Gap Report 2020](#), 2019, p. 5.

vulnerability that are characteristic for women on the whole, but not necessarily for all women.<sup>616</sup>

It was against this inequality backdrop that the outbreak of Covid-19 occurred. Already at an economic disadvantage, women and girls face both significant short- and long-term economic impacts from the pandemic. As a consequence of pre-existing structural inequalities, “many women *become* vulnerable during particular emergencies, some groups of women experience more profound disadvantage and marginalisation before a crisis, that then places them at even greater risk for harm and human rights violations during and after emergencies”.<sup>617</sup>

The international community has expressed concern regarding the rollback of hard-won advances in gender equality across all domains due to pandemic related restrictions.<sup>618</sup> More specifically, the UN identified the “compounded economic impacts ... felt especially by women and girls who are generally earning less, saving less, and holding insecure jobs or living close to poverty”.<sup>619</sup>

CEDAW has called on States to ensure that Covid-19 response and economic recovery plans address gender inequalities,<sup>620</sup> and the UN has underscored the importance of applying “an intentional gender lens to the design of fiscal stimulus packages and social assistance programmes to achieve greater equality, opportunities, and social protection”.<sup>621</sup> The UN Special Rapporteur on the independence of judges and lawyers expressed concern that “deep economic inequalities continue to seriously hamper women’s human rights and are a common obstacle for women’s access to justice”.<sup>622</sup>

Like CEDAW, the ICESCR contains no derogation clause. States’ obligations related to economic, social and cultural rights remain in effect during emergency situations. These include the right to health, the right to work, the right to education and the prohibition of discrimination. Yet, women and girls faced increased social and economic inequality as a result of pandemic-related policies, violating prohibitions on discrimination and impacting upon their access to justice.

### 10.1 Unpaid care and domestic work

SDG Target 5.3 calls on states to “recognise and value unpaid care and domestic work through the provision of public services, infrastructure and social protection policies and the promotion of shared responsibility within the household and the family as nationally appropriate”.

According to UN Women, “16.4 billion hours are spent on unpaid care work every day—the equivalent of 2 billion people working 8 hours per day without pay”.<sup>623</sup> Prior to the pandemic, women around the world were estimated to carry out approximately three times the unpaid household and care giving than men, including cooking, cleaning and caring for children, the sick and elderly, among other domestic tasks.<sup>624</sup> In the Eurasian region, before the pandemic, women spent, on average, 2.5 times more time on these activities than men.<sup>625</sup> However, in some countries, including in the European

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<sup>616</sup> OSCE/ODIHR, Human Rights and Gender Equality During Public Emergencies, 2020, p. 17.

<sup>617</sup> OSCE/ODIHR, Human Rights and Gender Equality During Public Emergencies, 2020, p. 17, emphasis in original.

<sup>618</sup> UN, Policy Brief: The impact of COVID-19 on women, 2020, p. 2, finding “even the limited gains made in the past decades are at risk of being rolled back”.

<sup>619</sup> UN, Policy Brief: The impact of COVID-19 on women, 2020, p. 2.

<sup>620</sup> CEDAW, [Guidance note on CEDAW and COVID-19](#).

<sup>621</sup> UN, Policy Brief: The impact of COVID-19 on women, 2020, p. 3.

<sup>622</sup> UN Special Rapporteur on the independence of judges and lawyers, Report of the Special Rapporteur on the independence of judges and lawyers, A/HRC/17/30, 2011, para 23.

<sup>623</sup> UN Women, Whose time to care? Unpaid care and domestic work during COVID-19, 2020, p. 9, with the work valued at 9% global GDP or USD\$11 trillion.

<sup>624</sup> UN Women, Whose time to care? Unpaid care and domestic work during COVID-19, 2020, p. 1.

<sup>625</sup> OECD, Social Institutions and Gender Index, [SIGI 2019 Regional Report for Eurasia](#).

region, the disparity was even higher. Moreover, in the EU, women make up the large majority of single parents.<sup>626</sup>

Unpaid care and domestic work results in women having less time to engage in paid labour and working longer hours to reconcile work and family obligations. For example, in Ukraine, 45.8% of economically inactive women compared to 14.2% of working-age men attributed their lack of economic activity to unpaid care and domestic work obligations.<sup>627</sup> This reproductive labour, essential for our very subsistence, effectively subsidises the world's economies, yet often remains invisible due to pervasive gendered social norms that normalise this blatant form of structural discrimination.

Some states in the region maintain policies that push women out of the labour market to assume unpaid care obligations. Although Azerbaijan extends partially paid social leave to both mothers and fathers, the amount provided (AZN 28-44) is substantially less than the wages loss and minimum subsistence costs for children (AZN 193). The effect in practice is to push mothers out of the labour market to assume childcare full time.<sup>628</sup>

Prior to the pandemic, several countries in the European region employed gender-sensitive social welfare policies to address women's disproportionate unpaid care and work burdens. For example, Austria created a legal right to a carers' allowance for persons who take care leave from work or who work part-time and care for someone the rest of the time. The allowance includes free health and pension insurance, a supplement for dependent children and they can apply for hospice care. Malta increased its carer's allowance, and removed means-testing and marital status (single) requirements.<sup>629</sup> Yet, efforts in Eastern Partnership countries to address women's unpaid care and domestic work have been characterised as weak. Several countries in the region have no relevant policies.<sup>630</sup>

One of the effects of pandemic-related restrictions was to increase the unpaid workloads of both men and women in the face of ill family members and an overburdened healthcare sector, the closure of schools and elder day-care facilities, elder vulnerability and work-from-home orders.<sup>631</sup> However, women continued to perform the "lion's share," particularly with respect to care-related tasks.<sup>632</sup> The situation exemplifies the ways in which traditional gender norms mask concerted policies that have a discriminatory effect on women.

Despite the disproportionate impact on women's pre-existing discriminatory unpaid care and domestic work obligations, only 8% of government responses to the pandemic (or 111 measures), from 60 countries, included measures designed to address the problem.<sup>633</sup> Australia and Costa Rica ensured childcare services remained open during lockdowns and Austria, Cyprus and Italy granted additional family leave to affected working parents. Canada, Spain and Korea introduced cash benefits to parents affected by school and day-care closures, and Argentina increased monthly child allowance

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<sup>626</sup> European Parliament, The situation of single parents in the EU, 2020, pp. 11-13, finding "many more households with a single adult and dependent children are headed by women (11% in 2019) compared to men (3%)".

<sup>627</sup> National research: Ukraine.

<sup>628</sup> National research: Azerbaijan.

<sup>629</sup> UN Women, Regional assessment of implementation of the Beijing Declaration and Platform for Action in Europe and Central Asia, 2020, p. 24.

<sup>630</sup> UN Women, Regional assessment of implementation of the Beijing Declaration and Platform for Action in Europe and Central Asia, 2020, p. 23.

<sup>631</sup> UN, Policy Brief: The impact of COVID-19 on women, 2020, p. 2; see also, CEDAW, [Guidance note on CEDAW and COVID-19](#), observing that women's disproportionate care burden also increases their exposure to the virus.

<sup>632</sup> UN Women, Whose time to care? Unpaid care and domestic work during COVID-19, 2020, pp. 3, 5, 7 citing 56% of women reporting increased time spent compared to 51% men; and women's increase of 5.2 hours/week on childcare, compared to an increase in 3.5 hours/week for men in 16 countries, exacerbates prior existing discrepancies. Moreover, the intensity of unpaid care and work increased due to being required to assume multiple tasks simultaneously.

<sup>633</sup> UN Women, Whose time to care? Unpaid care and domestic work during COVID-19, 2020, pp. 1, 9.

payments. Italy, Germany and Costa Rica introduced paid reductions in working time, and expanded access to paid parental and sick leave, including for self-employed workers.<sup>634</sup>

Spain ensured a minimum income package to GBV victims, housing assistance, and a series of economic support measures, including assistance from an extraordinary social fund that covered care for dependents, the right to adaptation of working hours to care for family members and remote work on a preferential basis. Albania also provided an extra economic supplement to support VAW victims during the pandemic.<sup>635</sup>

Georgia explicitly mentioned women as recipients of social compensation and schemes related to the increased unpaid care work taken on as a result of Covid-19.<sup>636</sup> No other Eastern Partnership country, however, referenced unpaid care and domestic work in devising social protection schemes.

Unpaid care and social work is one of the ways in which entrenched gender norms hinders women's ability to access justice. The resulting reduced income impedes women from affording the cost of legal representation (such as for civil remedies), court costs, childcare, transport and even parking, coupled with the time poverty resulting from care and domestic work obligations can function as insurmountable socio-economic barriers to women's access to justice.

## 10.2 Women's labour force participation and employment

SDG Target 5A calls for States to "undertake reforms to give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property, financial services, inheritance and natural resources, in accordance with national laws". Target 5.5 aims to "ensure women's full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic and public life".

Women's labour force participation is an essential element of their economic empowerment. Yet, prior to the pandemic, "women's workforce participation continue[d] to lag behind men's in every country in the region, irrespective of the level of economic development within a given country".<sup>637</sup> The Europe region remains characterised by both horizontal and vertical labour market segregation. Although women constitute "the majority of workers in the health, education and social sectors, [] they are underrepresented in top management positions in every sector".<sup>638</sup>

The European Institute for Gender Equality (EIGE) observed that within the EU, the "continuous increase in women's labour market participation over the last decades has often gone hand in hand with their move into women-dominated jobs rather than a more widespread distribution across sectors and occupations".<sup>639</sup> In part, due to the effects of horizontal and vertical segregation in employment, it remains questionable whether "improved labour participation, income and earnings have the necessary impact on reductions in poverty and the distribution of wealth".<sup>640</sup>

Prior to the pandemic, Eastern Partnership countries were already characterised by big gaps between women's and men's workforce participation. For example, in Ukraine, the indicators of economic

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<sup>634</sup> UN Women, *Whose time to care? Unpaid care and domestic work during COVID-19*, 2020, p. 1.

<sup>635</sup> Council of Europe member State responses to GEC questionnaire.

<sup>636</sup> UN Women, *One year of COVID-19: A gender analysis of emergency COVID-19 socio-economic policy responses adopted in Europe and Central Asia*, 2021, p. 21.

<sup>637</sup> UN Women, *Regional assessment of implementation of the Beijing Declaration and Platform for Action in Europe and Central Asia*, 2020, p. 18.

<sup>638</sup> OSCE/ODIHR, *Human Rights and Gender Equality During Public Emergencies*, 2020, p. 18.

<sup>639</sup> EIGE, *Gender segregation in education, training and the labour market: Review of the implementation of the Beijing Platform for Action in the EU Member States*, 2017, p. 4.

<sup>640</sup> UN Women, *Regional assessment of implementation of the Beijing Declaration and Platform for Action in Europe and Central Asia*, 2020, p. 18.

activity and employment for working-age women are lower than for the corresponding age group of men. In 2018, women's economic activity rate was 56.8%, while men's rate was 69%.<sup>641</sup>

Pandemic restrictions that resulted in overwhelming unpaid care and domestic work obligations being placed on women pushed more women than men out of the labour force. UN Women and ILO documented that from the fourth quarter of 2019 to the second quarter of 2020, “the unemployment rate among those aged 25+ increased from 5.5 to 7.7% among women and from 4.7 to 7.1% among men”. Moreover, a greater number of women left the workforce altogether (28 million women compared to 24.1 million men, aged +25).<sup>642</sup> UN Women also found that no Eastern Partnership country considered gender in labour policy adjustments in response to the pandemic.<sup>643</sup>

### 10.2.1 Employment discrimination

Various forms of gender employment discrimination are prohibited by CEDAW and EU Directives, including the Recast Directive (2006/54/EC) on equal opportunities and equal treatment of women and men in employment and occupation, among others.

Women across the region face multiple forms of workplace discrimination, including, *inter alia*, gender wage gaps and sexual and other forms of harassment. Women make only 73% of men's salaries in comparable positions in Azerbaijan. The wage gap in Georgia is 36%. In Ukraine, the gender wage gap reached its lowest level in the history of the country at 23%, but it is higher when measured for specific sectors, such as financial services (33%) and arts, sports and entertainment (30%).<sup>644</sup>

The OSCE has recalled the non-derogable obligation with respect to non-discrimination during public emergencies, which includes “ensuring non-discrimination and equal protection of employment”.<sup>645</sup> It further observed “[d]iscriminatory treatment of working women, including pregnant women, new mothers and older women. Employers have either required them to take sick leave or annual leave or have pressured them to take voluntary redundancy”.<sup>646</sup> For example, women in Ukraine represented 45% of those who lost their jobs, but fewer were rehired than men.<sup>647</sup> With respect to healthcare workers, “[w]hen emergency measures fail to mitigate the disparate impact on women providing additional health care, they are discriminatory.”<sup>648</sup>

### 10.2.2 Informal workers

SDG Target 8 foresees the protection of “labour rights and promot[ing] safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment”.

Prior to the pandemic, the informal sector of the economy constituted a significant proportion of employment in the Europe and Central Asia region (25.1%).<sup>649</sup> In Eastern Europe it accounts for 31.5% of employment. Armenia has one of the highest levels of informal employment in the region (52.1%)—

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<sup>641</sup> National research: Ukraine.

<sup>642</sup> UN Women, *Whose time to care? Unpaid care and domestic work during COVID-19*, 2020, p. 8.

<sup>643</sup> UN Women, *One year of COVID-19: A gender analysis of emergency COVID-19 socio-economic policy responses adopted in Europe and Central Asia*, 2021, p. 25.

<sup>644</sup> National research: Azerbaijan, Georgia, Ukraine.

<sup>645</sup> OSCE/ODIHR, *Human Rights and Gender Equality During Public Emergencies*, 2020, pp. 50-51.

<sup>646</sup> OSCE/ODIHR, *Human Rights and Gender Equality During Public Emergencies*, 2020, p. 51, citing multiple sources; National research: Republic of Moldova, noting forced leaves and firing.

<sup>647</sup> National research: Ukraine.

<sup>648</sup> OSCE/ODIHR, *Human Rights and Gender Equality During Public Emergencies*, 2020, p. 48.

<sup>649</sup> Women represent a slightly smaller percentage of informal workers than men in the region (23% women; 26% men).

more than half of all employment.<sup>650</sup> Women also make up the majority of informal workers in Azerbaijan, which accounts for 54% of its economy.<sup>651</sup> Within the informal sector:

women are more likely to work in vulnerable' jobs, such as low-skilled, part-time or in flexible arrangements (including seasonal agricultural work, home-based work or self-employment) that can be combined with childcare, but which are also generally characterized by low pay, job insecurity and lack of social protections (such as paid sick leave).<sup>652</sup>

One defining feature of work in the informal sector is that it is most often undertaken without social protection, such as unemployment benefits, pensions and labour rights, such as paid sick and maternity leave—if prevented from working during a public emergency. This contributes to increased gender wage and pension gaps, “which leave women more vulnerable to economic shocks and recessions that follow crises”.<sup>653</sup> UNDP estimated that the gross income per capita in the Europe and Central Asia region for men was almost twice that for women (\$20 674 USD for men; \$10 588 USD for women).<sup>654</sup> Moreover, informal workers have no safety net, such as health insurance, and unemployment benefits,

According to UN Women, the gendered responses in the region have so far has been inadequate to address the disproportionate impacts on women workers who lack access to basic social protections (e.g., pension schemes, health care plans and unemployment insurance).<sup>655</sup> As the OSCE has observed, this raises the question as to whether pandemic-related social protection and financial support schemes “that do not recognize the diverse working arrangements of women or are based on time in formal employment, uninterrupted work history or average salary have discriminatory impacts on women”.<sup>656</sup>

### **10.2.2.1 Domestic workers**

While affordable childcare is essential for increasing women's economic participation, it is important to keep in mind that the care economy remains largely informal. Domestic work is often unprotected, and occupied primarily by women and girls, who are very often migrants. It is characterised by precarious working conditions: instability, exceedingly long hours, no defined work schedule, and the absence of days off, vacations, benefits, maternity leave and medical insurance.

Domestic work is further renowned for the abuses it generates: contracts broken or modified on arrival, the withholding of salary, physical violence, discrimination, sexual harassment, and others. Because of their migration status, migrant domestic workers are particularly vulnerable to exploitation and abuse. Those that are undocumented, will likely be reluctant get in contact with authorities or social services for fear of being identified to immigration authorities.

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<sup>650</sup> UN Women, *Regional assessment of implementation of the Beijing Declaration and Platform for Action in Europe and Central Asia*, 2020, p. 18.

<sup>651</sup> National research: Azerbaijan.

<sup>652</sup> OSCE/ODIHR, *Human Rights and Gender Equality During Public Emergencies*, 2020, p. 51.

<sup>653</sup> OSCE/ODIHR, *Human Rights and Gender Equality During Public Emergencies*, 2020, p. 19.

<sup>654</sup> UNDP, *Human Development Report 2019*, p. 315.

<sup>655</sup> UN Women, *One year of COVID-19: A gender analysis of emergency COVID-19 socio-economic policy responses adopted in Europe and Central Asia*, 2021.

<sup>656</sup> OSCE/ODIHR, *Human Rights and Gender Equality During Public Emergencies*, 2020, p. 51.



Domestic workers cannot “work from home,” and thus were forced to take unpaid leave, or continued to work in potentially unsafe conditions during the pandemic.<sup>657</sup> They thus faced heightened exposure to the Covid-19.<sup>658</sup> They were also largely excluded from emergency relief measures.

### 10.2.2.2 Migrant workers

Border closures, including within the Schengen area, constituted one of the early responses to Covid-19 in March 2020. In addition to restricting basic freedom of movement for all, they particularly affected migrant workers.

One report from Spain highlighted the working conditions of female migrant workers in residential homes for the elderly, one of whom described working for 30 consecutive days in a care home in which several patients were infected with the virus.<sup>659</sup> Women, including migrant women, comprise a large number of non-health related “essential workers,” including supermarket cashiers, pharmacists, teachers, cleaners and childcare workers.<sup>660</sup>

### 10.2.2.3 Sex workers

Sex workers are among the most precarious of informal workers, in part due to the criminalisation of various aspects of their work, such as on clients and brothels, which often results in their being unjustly criminalised. They are also exposed to very high rates of workplace violence. Significantly, the majority of sex workers are (undocumented) migrants, LGBTIQ, persons of colour, women and poor.

It is generally observed that sex workers—even in countries where their work is legal with certain restrictions—hardly access state-provided social support, such as accident compensation, sick leave, parental leave, paid holiday leave, pension benefits or disability allowance.<sup>661</sup>

With respect to Covid-19 economic relief packages by States, given their extreme economic marginalisation, sex workers “are rarely benefitting from pandemic response and recovery plans”.<sup>662</sup> It should be noted in this regard that the economic impact will likely result in many people turning to sex work to survive. In this context, States parties to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children<sup>663</sup> and CEDAW should consider their commitment to the economic and social policies at the heart of prevention of sexual and other forms of exploitation and human trafficking<sup>664</sup>.

## 10.3 Gendered approaches in socio-economic policies in pandemic response

ILO data indicates that almost all of the countries in the Europe and Central Asia region implemented social protection measures for low-income and vulnerable people in response to the pandemic (98.3%).<sup>665</sup> The Special Rapporteur on the independence of judges and lawyers indicated that “146

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<sup>657</sup> OSCE/ODIHR, Human Rights and Gender Equality During Public Emergencies, 2020, p. 56.

<sup>658</sup> Vilá Sánchez, E., Boland, C. & Cottone, L. (2022) COVID-19 Implications for migrant care workers. A gender perspective. *Quaderns IEE: Revista de l'Institut d'Estudis Europeus*, 1 (1), 145-153, doi: <https://doi.org/10.5565/rev/quadernsieve.9>.

<sup>659</sup> Moré Corral, P. (2020). Cuidados y crisis del coronavirus: El trabajo invisible que sostiene la vida. *Revista Española de Sociología*, 29(3), 737-745, doi: <https://doi.org/10.22325/fes/res.2020.47>.

<sup>660</sup> OSCE/ODIHR, Human Rights and Gender Equality During Public Emergencies, 2020, p. 53.

<sup>661</sup> ICRSE, [Policy Demands: The impact of COVID-19 on sex workers in Europe and Central Asia and recommendations for policy makers, 2020](#), p. 3.

<sup>662</sup> ICRSE, [Policy Demands: The impact of COVID-19 on sex workers in Europe and Central Asia and recommendations for policy makers, 2020](#), p. 3.

<sup>663</sup> Supplementing the UN Convention against Transnational Organized Crime.

<sup>664</sup> See also <https://www.coe.int/en/web/portal/-/covid-19-is-worsening-human-trafficking-states-should-take-action-warn-council-of-europe-experts>

<sup>665</sup> ILO, [Social protection responses to COVID-19 crisis around the world](#), updated May 2021, [online].



Member States [of the UN] made a statement of commitment to protect women from the social and economic impacts of the pandemic”.<sup>666</sup> Yet, UN Women found that within the Eastern Partnership region,<sup>667</sup> only 13 (6%) of approximately 209 pandemic-related socio-economic response measures were gender sensitive.<sup>668</sup>

On a positive note, Azerbaijan and Georgia categorically referred to women’s inclusion in their pandemic response.<sup>669</sup> The percentages ranged from 16% and 13% of gender-responsive policies in Armenia and Georgia, respectively, to 4%, 3% and 0% in Republic of Moldova, Azerbaijan and Ukraine, respectively. For example, Armenian policies contained references to “women” and “single pregnant women” as recipients of unemployment-related one-time financial assistance.

Women-headed households, internally displaced populations, refugees, single elderly persons, single parents, ethnic minorities, persons with disabilities and other vulnerable groups constituted categories of persons eligible for utility, housing or in-kind support in Armenia, Azerbaijan and Georgia. Persons with disabilities, single parents and IDPs constituted eligible categories for in-kind social assistance in Ukraine.<sup>670</sup>

Women in the ECA region faced economic setbacks prior to the pandemic. Pandemic restrictions led to women assuming disproportionate burdens of unpaid care and social work, pushing them out of the labour market in addition to overtly discriminatory employment decisions. Female informal workers were also rendered more vulnerable. Policy makers’ insufficient attention to the disproportionate economic impact faced by women impedes women’s ability to escape from these ongoing structural confines.

As highlighted in the Barriers to women’s access to justice section of this report, economic inequalities compound barriers to access to justice. Resource limitations impede women from paying for the costs of legal representation (where not covered by legal aid) court procedures and bribes in some countries.

Structural economic discrimination is only possible due to prevailing gender discriminatory social norms. The normalisation to the point of invisibility of women assuming the “lion’s share” of unpaid care and domestic work, without which the global economy would come to a standstill, belies decision makers’ continued promulgation of gender-blind policies to the detriment of half of the population they are mandated to serve, even during a crisis.

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<sup>666</sup> UN Special Rapporteur on the independence of judges and lawyers, The coronavirus disease (COVID-19) pandemic: impact and challenges for independent justice, 9 April 2021, para 41.

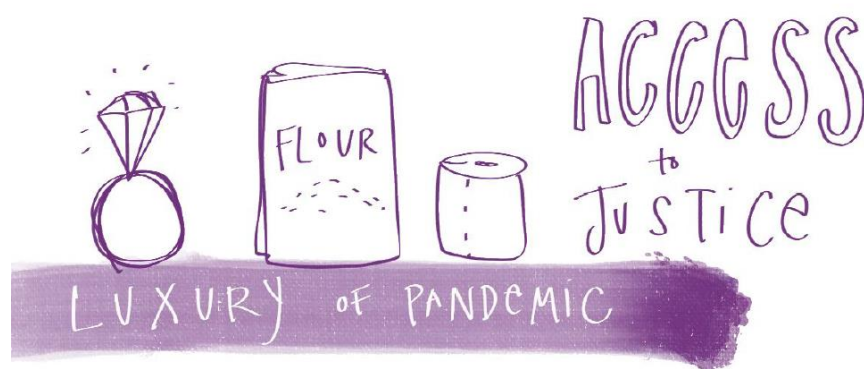
<sup>667</sup> Covering: Armenia, Azerbaijan, Belarus, Georgia, Republic of Moldova and Ukraine.

<sup>668</sup> UN Women, One year of COVID-19: A gender analysis of emergency COVID-19 socio-economic policy responses adopted in Europe and Central Asia, 2021, p. 8.

<sup>669</sup> UN Women, One year of COVID-19: A gender analysis of emergency COVID-19 socio-economic policy responses adopted in Europe and Central Asia, 2021, p. 15, referring specifically to the following policies: targeted cash transfers schemes, housing and utility relief, in-kind support, unemployment and leave benefits, pensions and disability benefits, and other welfare benefits.

<sup>670</sup> UN Women, One year of COVID-19: A gender analysis of emergency COVID-19 socio-economic policy responses adopted in Europe and Central Asia, 2021, p. 22.

## 11. Conclusions



*Illustration: Vanda Kovacs*

By one estimate, prior to the outbreak of the pandemic, more than 1.5 billion people lacked access to justice globally.<sup>671</sup> Barriers to access to justice were further exacerbated by the pandemic, during which only 8% of justice systems continued to function normally.<sup>672</sup> The pandemic response had the effect of pushing the SDG 16.3 target to “ensure equal access to justice for all” beyond the grasp of many, and in particular the most vulnerable.

As observed by justice-sector specialists: “When justice systems are unable (or seen as unable) to effectively respond to people’s needs, there is a risk of growing mistrust and disillusionment with justice, governance institutions and democracies more broadly.”<sup>673</sup> Having witnessed democratic backsliding, with growing social movements calling into question the legitimacy of democratic institutions, European State responses to the pandemic—including those that effectively used the public health crisis as a pretext to further rollback basic human rights protection and access to basic public services—have contributed to growing public disillusionment with both public and private leadership.

It is within this larger social context that an analysis of the impact of pandemic-related policies on women should be considered. The interconnectedness between access to justice and socio-economic status, and women’s marginalisation across all relevant domains, signals an urgent need to implement a people-centred approach to justice and other decision-making branches of democratic institutions.

A gender-responsive, human rights-based approach requires taking seriously the diversity of populations in terms of gender, ethnicity, (dis)ability and class, and how these differences shape lived experience. In this regard, the ongoing and often egregious violations of women’s rights by the justice sector across the region sends an important signal regarding the ability of these institutions to respond to the rights and lived reality of half of their populations.

As the Council of Europe Commissioner for Human Rights, Dunja Mijatović has affirmed:

we are at a crossroads. The direction we decide to take now will shape the type of society we want to live in and pass on to future generations. That choice will determine whether we

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<sup>671</sup> The Task Force on Justice, *Justice for All*, 2019.

<sup>672</sup> OECD, Virtual roundtable on accessible and people-centred justice, 2021, p. 3.

<sup>673</sup> OECD, Virtual roundtable on accessible and people-centred justice, 2021, p. 2; see also, National research: Republic of Moldova.

bolster our freedoms or relinquish them, promote participation or undermine democracy, empower people or marginalise them.<sup>674</sup>

## 12. Recommendations

1. Ratify ILO Convention (C190) on violence and harassment.
2. Continue implementation, and support for the implementation, of Istanbul Convention standards to ensure access to justice for VAW/DV victims, with attention to:
  - a. Harmonised and disaggregated data collection, especially on gender and the relationship between the perpetrator and the victim at each stage of the criminal justice chain;
  - b. Increased attention during investigations, risk assessments and adjudications to the history of the violence to ensure adequate protection and to reflect the nature and gravity of harm in remedies;
  - c. Improve legislation, protocols and practices on conducting risk assessments and the implementation of EBOs and protection orders
3. Protocols and practices for taking into account the history of violence and/or victimisation by women in conflict with the law, their relationship to other (male) perpetrators, their family situation (single parenting/sole caregivers) and socio-economic contexts in assessing criminal responsibility and sentencing.
4. States and CSOs working on prison reform should disaggregate all corrections statistics by gender and engage in gender analysis.
5. Analyse the impact of the suspension of justice processes on women during the Covid-19 pandemic, and ensure the performance of gender impact assessments in this field in any future pandemic to preclude discriminatory impacts.
6. Increased attention to, research and possible advocacy on, the potential uses of Article 4 of the ICCPR's prohibition of discrimination on the grounds of sex as an overlooked element of the legality requirement for human rights restrictions and derogations by international organisations, academics and CSOs.
7. Tailored assessments should be undertaken on the impact of remote hearings on victims of gender-based violence and persons with disabilities, including screening for persons with cognitive impairments, and mental health and neuro-diverse conditions.
8. All jurisdictions should ensure that the participation of criminal defendants and vulnerable persons in remote hearings is based on their informed consent.
9. Policy makers should take proactive steps to ensure that unpaid care and domestic work is recognised, reduced and redistributed.
10. Mandate the performance gender impact assessments of emergency measures.
11. Future emergency measures should

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<sup>674</sup> Council of Europe, Commissioner for Human Rights, The impact of Covid-19 on human rights and how to move forward, 10 December 2020

- a. prioritise availability of safe shelters, hotlines and remote psychological counselling services, and increased co-operation with and support to women’s CSOs engaged in this work;
- b. trigger contingency planning and protocols for protection and services for victims of violence against women and domestic violence;
- c. support access to childcare services and deem them as “essential”;
- d. extend paid family and sick leave; and
- e. introduce flexible working arrangements and “cash-for-care” programmes that compensate parents during school or day-care closures, extending benefits for single mothers;
- f. institute social protection measures that take into account women’s contribution to unpaid care and domestic work in terms of both lost productivity and income and protect women from layoffs;
- g. ensure that women deprived of liberty enjoy access to early release and humane conditions of detention free from violence.

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