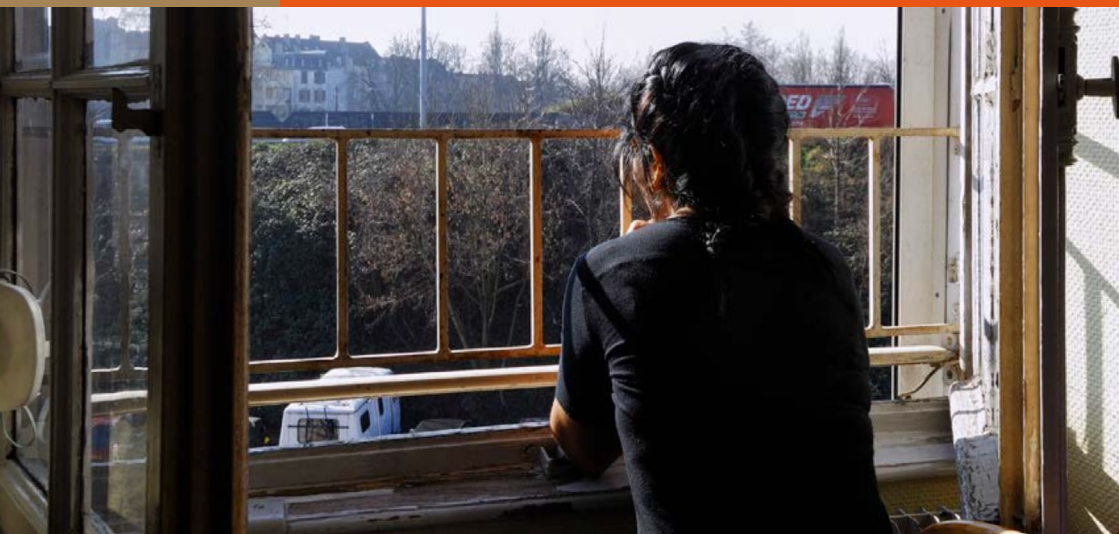


FOCUS SECTION: THE ROLE AND IMPORTANCE OF RISK ASSESSMENT AND RISK MANAGEMENT IN PREVENTING AND COMBATING VIOLENCE AGAINST WOMEN

5th General Report on GREVIO's Activities
January-December 2023



Council of Europe Project
"Combating Violence against Women in
Ukraine – Phase II" (COVAW-II)

COUNCIL OF EUROPE



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Introduction

Risk assessments serve as a crucial mechanism for states to fulfil their due diligence obligation to prevent and protect individuals from human rights violations at the hands of private individuals. They allow the likelihood of immediate harm and the severity of threats to be assessed and form part of the tools to be employed to ensure the protection of fundamental human rights such as the right to life, physical safety, privacy and family life. In view of the disproportionate manner in which women and girls are affected by domestic violence and exposed to gender-based violence, including threats to life and limb and gender-related killings, risk assessments form a cornerstone of the comprehensive set of measures required by the Istanbul Convention in order to effectively prevent and combat violence against women and domestic violence.

This focus section zooms in on the standards set out in Article 51 of the convention, which covers risk assessments, as well as progress and challenges in its implementation. It equally delves into an analysis of Articles 52 and 53 on emergency barring and protection orders, as well as on Article 31 on custody, visitation rights and safety, in order to highlight the importance of carrying out a risk assessment in those specific contexts. The analysis draws on the extensive corpus of baseline evaluation reports published to date by GREVIO and their respective findings.¹

This section also draws on the European Court of Human Rights (the “Court”) case law that sets out the requirement for effective risk assessments and contains references to the Istanbul Convention and GREVIO’s evaluation reports in this regard. The Court has consistently held in its jurisprudence that under the European Convention of Human Rights (the “Convention”) state authorities have a responsibility to take preventive operational measures in the form of effective deterrence against serious breaches of an individual’s physical integrity by a member of her family or by a partner. Taking preventive measures requires an assessment of whether there is a real and immediate risk to life or

limb, taking due account of the particular context of domestic violence. The Court has held in several cases that in such a context, it is not only a question of an obligation to afford general protection to an individual at risk, but above all, to take into account the likelihood of the recurrence of successive episodes of violence within a family.²

Risk assessment and risk management as an international obligation

Article 51 as interpreted by GREVIO through its corpus of evaluation reports provides a comprehensive and detailed framework for victims' risk assessments and risk management. More specifically, Article 51 requires parties to take measures, through legislation and by other means, to ensure that all relevant professionals, not only law-enforcement authorities, are required to assess and take steps to manage the safety risks of a victim on a case-by-case basis, including the risk of repeated and lethal violence, according to standardised procedure and provide, where necessary, co-ordinated support.³ Such coordinated effort must involve a range of different institutions and stakeholders, including, for example, law-enforcement agencies, staff from women's shelters, social services, health professionals and probation and prison services, and must place the victim's safety at the centre of any intervention. GREVIO has highlighted that risk assessments and safety plans are to be carried out for victims of all forms of violence covered by the scope of the convention, beyond domestic violence, and must be repeated at various stages of the investigation and application of protective measures, as the risk to a victim can change. The effectiveness of risk assessment also hinges on recognising the continuum of violence, which is to be prioritised over an approach that addresses individual instances of violence in isolation. Therefore, it is essential to consider, evaluate and assess incidents of violence within the broader context of violence against women as a form of gendered violence and systematically address the safety not only of the woman involved but also of her children.

In its third-party intervention in the Court case *Kurt v. Austria [GC]*⁴ GREVIO referred to several indicators that should be included in any risk



assessment because they are known to be indicative of a high risk. Of particular significance is whether the perpetrator possesses or has access to firearms as this is identified by the convention as a heightened risk factor that must be taken into account systematically. Such possession represents a powerful means to exert control over victims and increases the risk of homicide.⁵ Other important red flags include instances where the victim initiates separation or ends the relationship, past instances of violence, in particular sexual violence, coercive and controlling behaviour, the imposition of restrictive measures in the past, threats regarding the care of or access to the victim's children, threats of homicide against the victim and her children, substance abuse, mental health issues, unemployment and threats of suicide. A risk factor that has received growing attention by GREVIO due to its gravity is non-fatal strangulation.⁶ Indeed, research has shown that victims of prior strangulation are seven times more likely to later become victims of murder⁷ and that strangulation is a common method of killing in domestic violence settings.⁸ On the other hand, where it does not have a fatal outcome, it is likely to cause serious permanent injuries, such as brain damage, as well as extreme distress to victims, who commonly feel like they are about to die.⁹

The legal standard of requiring that risk assessment be carried out in cases of violence against women enshrined in the Istanbul Convention is mirrored in General Recommendation No. 35 (2017) on gender-based violence, updating General Recommendation No. 19 (1992) adopted by the UN Committee on the Elimination of all Forms of Discrimination against Women (CEDAW Committee).¹⁰ It specifies that measures to protect and assist women victims of gender-based violence need to provide appropriate and accessible protective mechanisms to prevent further or potential violence and should not be conditional on the victim initiating legal action. More specifically, such measures of protection should encompass immediate risk assessment and protection, comprising a wide range of effective measures and, where appropriate, eviction orders, protection, restraining or emergency barring orders against alleged perpetrators and adequate sanctions for non-compliance. Moreover, the EU Victims' Rights Directive (2012/29/EU) requires that an individual assessment of the victim be carried out by the relevant services with a view to identifying victims' specific protection needs.¹¹

Different approaches to risk assessment and management

Across the parties to the Istanbul Convention, a range of standardised tools are being used, at times adapted to the national context. These include several internationally recognised tools that are applied to assess the risk, including the lethality risk, that perpetrators of domestic violence pose to their victim, including, for example, the Spousal Assault Risk Assessment (SARA). GREVIO also found other models in use, notably B-SAFER, CARE, ODARA, DA and DASH. Moreover, several countries hold multi-agency risk-assessment conferences (MARACs) when a victim of domestic violence is known to be at risk of (further) serious harm. MARACs bring all relevant statutory agencies together and allow information on high-risk perpetrators to be shared with a view to identifying appropriate protective measures for the victim.

Where such internationally recognised tools are being incorporated into national practice, their use across all regions of the country may not be uniform (Austria, Bosnia and Herzegovina, Germany).¹² Other countries have developed their own tools, such as Portugal and Spain, the latter significantly enhancing the effectiveness of risk-assessment tools through the use of artificial intelligence.¹³

Specific risk-assessment tools for violence related to “honour” have also been developed, notably the Assessment of Risk for Honour-Based Violence (PATRIARCH). Such specific tools, however, are not in use throughout all parties to the Istanbul Convention and GREVIO’s baseline evaluation reports point to their use mainly in the Nordic countries.

Shortcomings in the use of existing risk-assessment tools

Where standardised risk assessments are in use, GREVIO baseline evaluation reports have highlighted several shortcomings in their implementation. In certain baseline evaluation reports, GREVIO noted with concern the lack of inclusion of important red flags such as the perpetrator's possession or access to firearms (Spain)¹⁴ or the recent separation of the victim from the perpetrator (Poland).¹⁵ The baseline evaluation reports on North Macedonia and Iceland, on the other hand, highlight that risk assessments are not systematically carried out.¹⁶ Accordingly, GREVIO has, *inter alia*, strongly encouraged the authorities to ensure that an assessment of the victim's risk is carried out systematically and speedily by all relevant authorities in co-operation, providing co-ordinated protection and support.

Concern has equally been expressed by GREVIO where standardised risk-assessment tools are used improperly and inaccurately or, despite their availability for use, they are overridden with preference given to police officials' own assessment of the risk based on their experience and intuitive skills.¹⁷ As regards the former case, in its baseline evaluation report on Georgia, GREVIO noted with concern that police officers did not accurately/fully record the information provided by victims, including facts that could reveal aggravating circumstances or that were crucial to identifying the discriminatory gender motive, which resulted in the crime being qualified as less grave. Moreover, police officers did not ask all of the relevant questions included in the risk-assessment checklist and filled out some parts of the assessment on their own, thereby diminishing the effectiveness of the risk-assessment process.¹⁸ GREVIO has equally identified in some parties the problematic practice of different agencies using different risk-assessment tools, leading to inconsistent results.

Risk-assessment tools mainly used for domestic violence

A review of the baseline evaluation reports published thus far reveals a predominant concentration of risk-assessment efforts on domestic violence, although these efforts vary significantly in terms of their comprehensiveness, level of multi-agency co-operation and mandatory nature. Forms of violence covered by the convention beyond domestic violence are far less frequently recognised as requiring a systematic risk assessment. GREVIO has therefore urged parties, including Bosnia and Herzegovina, Cyprus, Georgia, Germany, Ireland, Italy, Malta, North Macedonia, Poland, Romania, Serbia, Slovenia and Switzerland, to ensure that risk-assessment instruments are available for all forms of violence covered by the convention.¹⁹ By way of example, GREVIO noted in relation to Cyprus that there is no risk-assessment tool to assess the risk that a victim or her daughter/siblings may be subject to FGM and therefore to allow the timely implementation of protective measures such as travel bans.²⁰

As regards violence related to “honour”, GREVIO found that Denmark, Norway and Sweden used the PATRIARCH risk-assessment tool, which was mainly used by law-enforcement agencies, albeit on the basis of varying degrees of training.²¹

Several countries have yet to introduce systematic risk-assessment procedures for any form of violence against women. For example, GREVIO urged the authorities in Germany and Poland to ensure that in cases of all forms of violence covered by the Istanbul Convention, including domestic violence and forced marriage, systematic and gender-sensitive risk assessment and safety management is carried out.²²

Children are overlooked in risk assessment

Another recurrent shortcoming identified in GREVIO reports concerns the failure of the relevant authorities to carry out a risk assessment on the victims’ children parallel to their mothers. In this respect, GREVIO has clarified that it must be made clear in the law and in any protocol/guideline that the risk assessment should also systematically be carried out for the victim’s children.²³ As was detailed by GREVIO in its third-party intervention before the European Court of Human Rights in the case of *Kurt v. Austria [GC]*, perpetrators are often also violent towards children with whom they cohabit. Children may be exposed to direct and/or indirect violence, including after the end of an abusive relationship. With fewer opportunities available to subjugate their former partners after separation,

many domestic abusers retaliate by abusing their children, leading, in some tragic cases, to their murder. The importance of carrying out a risk assessment for all victims, including children, cannot therefore be over-emphasised.

Risk-assessment procedures are not always fully integrated into MARACs

In a number of baseline evaluation reports, GREVIO has expressed concern over the fact that risk-assessment procedures, even when formalised, are not fully integrated into multi-agency co-operation efforts. GREVIO has recalled that the risk assessment is not a goal in and of itself, but a first step to ensuring co-ordinated safety measures and support to victims.²⁴ It has also emphasised that where key information from other stakeholders such as schools or the judiciary is missed, coordination and the safety of the victim can be compromised.²⁵ More specifically, in a consistent number of GREVIO baseline evaluation reports, including Croatia, Greece, Georgia, Ireland, Poland and Spain, GREVIO drew attention to the fact that the risk-assessment tools were based almost exclusively on information from law-enforcement authorities and that there was no efficient mechanism in place to consider, in a standardised and timely manner, information from other relevant sources, including the judiciary, women's specialist services or supervised visitation facilities such as family meeting points.²⁶

In requiring multi-agency co-operation to protect high-risk victims, the drafters of the convention intended that risk-assessment processes also include mechanisms such as a safety plan for the victim, to co-ordinate safety and support.

Assessment of dynamic risk development

Risk levels are dynamic and may spike in relation to certain steps in legal proceedings, such as the opening of criminal proceedings or requests made by the victim for sole custody of shared children. Ensuring continuous risk assessment and continuous adjustments to safety measures by law-enforcement authorities, prosecutors and judges throughout all stages of any legal proceedings, starting from the initial interaction with the victim to potential sentencing, is of utmost importance. Without consistent and ongoing risk assessments and management, victims might in fact develop a false sense of security, placing them in greater jeopardy.

GREVIO baseline evaluation reports, including those on Bosnia and Herzegovina, Cyprus, Georgia, Ireland, Romania, and Norway, have noted with concern that

procedures for risk assessment and management were not repeated at all relevant stages of proceedings.²⁷ In this connection, GREVIO has clarified that the assessment of the risk and identification of safety measures should be conducted continuously from the first meeting with the victim all the way to a possible sentence, because victims' risk can change and must, therefore, be assessed during all phases of the procedure.²⁸ Conversely, in Spain, once the victim has been registered in the central risk-assessment and risk-management tool in use by law enforcement (VioGen), following the first police assessment of risk, the police will make regular assessments of changes to this risk according to the level of risk that the victim is exposed to and the protection measures that have been imposed. If the level of risk is considered to have changed, the measures are adapted by informing the courts, which shall then decide on a case-by-case basis the legal measures of protection to be adopted. Moreover, in Spain, a risk assessment should be carried by the judiciary and further measures of legal protection can be put in place alongside those taken by the police.

It is equally noteworthy that in Iceland the Prison and Probation Administration has developed a risk-assessment tool to assess perpetrators' likelihood of further violent behaviour and to determine whether he should be released on probation.²⁹

Firearm management and risk assessment

Under Article 51, paragraph 2, parties are specifically required to ensure that risk assessments comprehensively consider credible information regarding the possession of firearms by perpetrators. The possession of firearms not only serves as a potent means to control victims but also heightens the risk of homicide, particularly in post-conflict scenarios or regions where firearm ownership is customary, granting perpetrators easier access to such weapons. Indeed, a 2017 study investigated the relationship between, on the one hand, state laws on the possession and relinquishment of firearms in cases of domestic violence and, on the other, the levels of intimate-partner homicide (by any means).³⁰ The study has shown that states with laws that ban the possession and mandate the relinquishment of firearms by perpetrators in cases of intimate-partner violence have 9.7% lower rates of intimate-partner homicide and 14% lower rates of intimate-partner firearm homicide.³¹

GREVIO has noted through its monitoring work that several countries recognise the critical link between firearm possession and domestic violence and thus include access to or possession of firearms as a risk factor in its risk-assessment procedures. By way of example, risk-assessment procedures in Montenegro,

Poland, Romania and San Marino require law-enforcement agencies to establish whether a known perpetrator of domestic violence possesses firearms or other weapons.³² By contrast, GREVIO has noted with concern the absence of such a risk indicator in the risk assessments of a number of parties, including France, Monaco, North Macedonia and Serbia.³³

The evaluation of risk-assessment tools

Monitoring and evaluation systems are crucial in supporting quality assurance of risk-assessment and risk-management processes, and in identifying weaknesses and areas for improvement. At the same time, they are also an important element in the process of ensuring that the police are accountable in carrying out their obligations to assess risk and respond to intimate-partner violence within a multi-agency framework.

Indeed, ongoing efforts in parties to the Istanbul Convention to ensure the objective evaluation of risk-assessment tools in use have been identified. Notably, GREVIO observed in its baseline evaluation report on Estonia that a study had been commissioned by the authorities in 2016 to determine the effectiveness, need and feasibility of the MARAC risk assessment currently in use. The model impact assessment included the effect of the MARAC programme on victims and the costeffectiveness of the intervention programme and was due to be carried out in 2022. Additionally, in its state report submitted to GREVIO in the context of the baseline evaluation procedure, the United Kingdom reported that the College of Policing has published an evaluation of the Domestic Abuse Risk Assessment (DARA) tool, which was piloted to improve recognition of controlling or coercive behaviour and provide a more structured method of obtaining information to assess the threat posed by the perpetrator.³⁴ Based on this research, all frontline officers are advised to use DARA when conducting risk assessment at domestic abuse incidents. This notwithstanding, studies indicate that risk management is under-researched, under-evaluated and hard to link with risk-assessment outcomes.³⁵

The digital dimension of violence against women and risk assessment

In monitoring the implementation of the Istanbul Convention, GREVIO frequently observes that the digital dimension of violence against women is overlooked in domestic laws and policies. This observation extends to risk-assessment frameworks, which often do not include or prioritise women and girls' exposure to risk online. This is despite the growing incidence of the digital dimension of violence against women and its increased criminalisation. For example, GREVIO welcomed the fact that Spain had been among the first European countries to explicitly criminalise, in 2015, stalking perpetrated through digital means of communication ("cyberstalking") under Article 172 ter of its Criminal Code.³⁶ In Germany, GREVIO found a solid legal framework applicable to the digital dimension of violence against women which explicitly criminalises several forms of technology-facilitated abuse such as cyberstalking, the unauthorised taking of pictures of private bodily parts, the sharing of images online and the use of stalkerware.³⁷ Similarly, in Iceland, GREVIO welcomed the clear stance taken against violence against women in the digital sphere. The newly introduced Article 199a of the General Penal Code incriminates image-based abuse and the sharing or distributing of such content without the consent of the victim.³⁸ The Act on the Protection of Sexual Privacy was adopted in February 2021 with the objective of increasing the protection against digital sexual violence and strengthening the sexual liberty of individuals. As regards Norway, this party to the convention had adopted a separate strategy on internet-related abuse (2021-2025), which addresses the online sexual abuse of children, while the Strategy against Hate Speech (2016-2020) covered certain forms of violence against women in its digital dimension, including sexist hate speech.³⁹ The National Action Plan on Rape included the digital dimension of sexual violence, emphasising the increase in digital manifestations of such violence, the different forms it may take, such as image-based abuse or sexualised extortion, and its specific characteristics, such as the anonymity of perpetrators and the interjurisdictional nature of offences,

as well as its impacts on the well-being of victims. GREVIO had also pointed to the awareness-raising activities by the Norwegian law-enforcement agencies on the digital manifestations of violence against women, such as lectures in secondary schools, publishing information on various social media platforms and the forming of a “net patrol” in each police district, who are present on the internet and social media and offer advice and guidance on crimes committed on the internet, including violence against women.

In its General Recommendation No. 1 on the digital dimension of violence against women, GREVIO recognises the growing levels of violence against women committed in the digital sphere and that its impact is particularly pronounced for women and girls at risk of or exposed to intersecting forms of discrimination.⁴⁰ It offers recommendations for the convention’s full implementation in the digital space, developing detailed proposals for action for the prevention of such violence, the protection of victims, prosecution of perpetrators and the development of holistic policies. Notably, it recommends monitoring, through data collection, the number of suicides, suicide attempts and gender-based killings of women and their children with a link to a history of harassment, stalking or psychological violence perpetrated in the digital sphere.⁴¹

Domestic homicide (femicide) review mechanisms

Gender-related killings of women and girls, also referred to as femicide and feminicide,⁴² represent the lethal end point of a continuum of multiple, overlapping and interconnected forms of gender-based violence. The United Nations Office on Drugs and Crime (UNODC) estimates that globally 81 100 women and girls were killed intentionally in 2021 and that the largest share of gender-related killings of women and girls are homicides perpetrated by intimate partners and other family members.⁴³ Such homicides usually follow prior experiences of physical, sexual or emotional abuse.⁴⁴ By assessing the seriousness of the situation and the probability of repeated violence – including lethal violence – and managing the level of risk for a woman and/or girl, risk assessments and risk management play a crucial role in preventing the spiralling of violence and, ultimately, in averting gender-related killings. Accordingly, GREVIO pays close attention to whether parties to the convention have taken the necessary legislative or other measures to ensure that a risk assessment is systematically carried out by the competent authorities in cases of violence against women, in line with Article 51 of the convention. Such preventive efforts are further strengthened by the requirement to ensure that any gender-related killing is carefully analysed with a view to identifying any possible failure of protection and improving and developing further preventive measures.⁴⁵ Indeed, GREVIO has consistently highlighted in its baseline evaluation reports the need to put in place a system to analyse all cases of gender-based killings of or attempted killings of women, such as a domestic violence killings review mechanism, with



the aim of preventing them in the future, preserving the safety of women and holding to account both the perpetrator and the multiple agencies that come into contact with the victim.⁴⁶ In-depth reviews such as domestic homicide reviews or domestic violence fatality reviews offer an opportunity to identify gaps in the responses given by various agencies and support services to violence against women and to improve their responses and cross-sector collaboration. Reports have identified the following as some of their defining characteristics: the analysis of all previous contact between the victim and the relevant support services or institutions and with the perpetrator, intersectoral co-ordination when reviewing such killings, data-collection efforts and the formulation of recommendations to improve the relevant interventions.⁴⁷

GREVIO has found that most parties that have been evaluated have not put in place a systematic review mechanism for domestic killings. Nevertheless, it has welcomed as a first positive step the commissioning and carrying out of ad hoc reviews of gender-related killings within limited time frames in certain parties, including in France, Moldova,⁴⁸ Norway,⁴⁹ some cantons in Switzerland and in Bosnia and Herzegovina.⁵⁰ GREVIO has equally welcomed the setting up of a Retrospective Domestic Violence Homicide Analysis Team in its baseline evaluation report on Portugal, which has published review reports into the deaths of women, as well as the publication of reports on femicide monitoring in Georgia.⁵¹ As regards France more specifically, GREVIO in its baseline evaluation report welcomed the review of all domestic homicide cases committed in 2015 and 2016 for which a final judgment had been reached, commissioned in 2019. Such analysis looked into whether a thorough risk assessment had been carried out repeatedly and a co-ordinated security plan had been established and whether appropriate measures had been applied to protect victims from further violence. It equally assessed whether victims had benefited from or had requested the issuing of a protection order and whether such an order had been breached.

Gender-based violence-related suicides and forced suicides not sufficiently included in homicide reviews

Gender-based violence-related suicides and forced suicides of women and girls can also represent a lethal end point for those who are on the receiving end of acts of violence against women. Indeed, as evidenced by the World Health Organization's multicountry study on women's health and domestic violence, violence against women is strongly associated with suicide attempts.⁵² According to studies, 76% of victims of intimate-partner violence have suicidal ideation – a rate that is seven times higher than in non-victims.⁵³ While there are no reliable statistics, studies in France, the United Kingdom and the United States estimate that suicides committed in a context of intimate-partner violence represent 12% of all women's suicides. By way of example, 217 women took their lives as a result of intimate-partner violence in 2018 in France and more than 1 000 across the European Union.⁵⁴ Moreover, studies equally show that experiences of sexual violence account for a significant share of women's increased risk of suicidal ideation.⁵⁵ For this reason, a history of sexual violence should be investigated, when possible, in the event of attempted or completed suicide, in order to better quantify the effect that sexual victimisation has on the suicide risk.⁵⁶

While not defined internationally, "gender-based violence-related suicides" or "forced suicides" are understood as suicides committed as a result of or following instances of violence against women and domestic violence⁵⁷, and/or as the ultimate effect of severe and repeated psychological intimate-partner violence.⁵⁸ Equally grave and important to analyse retrospectively are instances in which women or girls are forced or pressured to commit suicide including for reasons linked to "honour". The United Nations Office on Drugs and Crime (UNODC) refers to such cases as "instigated suicide" and defines them as "the unlawful death of a woman inflicted upon herself after incitement by another person".⁵⁹

GREVIO has not identified, thus far, any party to the Istanbul Convention that examines the above-mentioned suicides in the context of homicide reviews with a view to assessing retrospectively whether preventive measures could and should have been taken.⁶⁰ Nonetheless, in its baseline evaluation report on Türkiye, GREVIO noted with satisfaction that the authorities were planning to conduct research on killings and suspicious suicides of women committed in the name of "honour" within the framework of the National Action Plan on Violence against Women and thus urged the authorities to ensure that suicides, accidents

and deaths of women that might disguise killings in the name of “honour” are effectively investigated and prosecuted.⁶¹ Equally worthy of note is the fact that France has criminalised “gender-based violence-related suicide” as an aggravated form of harassment of one’s spouse, civil partner or live-in partner.⁶² Since 2020, such behaviour is liable to 10 years’ imprisonment and a fine of €150 000 where the harassment has led the victim to commit or attempt to commit suicide. It can be argued that the inclusion of completed or attempted suicide in domestic homicide reviews could be seen as a logical next step for a truly comprehensive review of gender-based deaths of women.

Case law of the European Court of Human Rights

The European Court of Human Rights has had the opportunity to pronounce itself in several cases on the necessity and requirements of risk assessments in the context of domestic violence.⁶³ Most notably, in its landmark case of *Kurt v. Austria* [GC] the Court established an obligation on the contracting parties to conduct an autonomous, proactive and comprehensive risk assessment when faced with a situation of domestic violence.⁶⁴ The terms “autonomous” and “proactive” in this context refer to the requirement of the authorities to base their assessment not only on the victim’s testimony and own perception of the risk but also on an investigation, initiated *ex officio*. This can include collecting evidence and assessing information obtained from other state agencies, witnesses and other relevant sources on all relevant risk factors. While the Court did not stipulate an absolute requirement to use standardised risk-assessment tools, it underlined, referencing GREVIO’s third-party intervention, that their use could contribute to the comprehensiveness of the authorities’ risk assessment. Additionally, the Court considered necessary some form of basic documentation of any risk assessment conducted, in the light of the requirement of the often urgent nature of intervention and information sharing between state authorities.⁶⁵

When it comes to child victims of domestic violence, including in cases in which they have witnessed violence by one parent against the other, the Court has pointed out that risk assessments must also be conducted in relation to them, bearing in mind the possibility that the outcome of the assessment may be different for each person affected.⁶⁶ Should a risk to children be established, law enforcement must share this information with the child-protection authorities and with persons who are in regular contact with the children, for example teachers, schools and other childcare facilities.⁶⁷ In this respect, the Court explicitly pointed to the requirements under Article 51 of the Istanbul Convention and GREVIO’s third-party intervention.

If a real and immediate risk to a victim of domestic violence is detected, the authorities' duty to take preventive operational measures to mitigate and manage the risk is triggered. To that end, the authorities must be equipped with a "toolbox" containing an array of possible legal measures, including, for example, an emergency barring order, the arrest of the perpetrator or other measures that offer immediate protection to the victim. The Court has underlined that preventive operational measures inevitably constitute an interference with the (alleged) perpetrator's rights, which, however, may be necessary in order to protect the life and physical integrity of a victim of domestic violence.⁶⁸ To balance the rights of the different persons involved, any measure taken must be adequate and proportionate to the level of the risk assessed.⁶⁹ In addition, the Court has pointed out that risk-management plans and co-ordinated support services have proved valuable in practice to avert further risks, in addition to treatment options for the perpetrator.⁷⁰

Under the Court's jurisprudence, the obligation to conduct a risk assessment is not limited to criminal or administrative law. In the case of *I.M. and Others v. Italy*, where a knowingly violent father killed his son in the course of a supervised visit, the Court severely criticised the Italian authorities for not having assessed the risk to the child at any point in time.⁷¹ In the recent judgment of *Bîzdîga v. the Republic of Moldova*, the Court for the first time explicitly stipulated the requirement to conduct a risk assessment in family law proceedings where allegations of domestic violence have surfaced in the context of custody and visitation right disputes. It held that an assessment of any risks of violence or other forms of ill-treatment, therefore, must form an integral part of such proceedings. In addition, an alleged history of domestic violence is a "relevant and mandatory factor to be weighed in the assessment of domestic authorities when deciding on contact rights".⁷² The failure to do so led to a violation of Article 8 of the Convention in the case of *Luca v. the Republic of Moldova*.⁷³ In this case, the Court referenced the focus section contained in GREVIO's 3rd Report on its General Activities, which pointed to information obtained in the course of its evaluation visits that one parent's abuse of the other was only rarely taken into account when taking decisions on custody and visitation rights. Therefore, a systematic screening and following risk assessments constitute a necessary practice in such proceedings.

The importance of risk assessment in family law proceedings

Underscoring the importance of risk assessment at various points in time in a woman's journey towards a life free from violence, GREVIO has throughout its baseline evaluation procedure continuously emphasised the need for robust risk assessment and screening for a history of domestic violence in family law proceedings. It has repeatedly called for such screening to include a history of intimate-partner violence by one parent against the other, in order to allow information on the level of threats to the safety and well-being of the non-abusive parent and the child to surface.⁷⁴ Family law professionals must be enabled to consider a history of abuse for decisions on child custody and visitation to ensure the safety of victims and their children.



Article 31 of the Istanbul Convention seeks to ensure that incidents of violence covered by the convention, in particular domestic violence, are taken into account in decisions on custody and visitation rights to ensure that the exercise of these rights do not harm the rights and safety of the victim or children. Paragraph 1 aims at ensuring that judicial authorities do not issue contact orders without taking into account incidents of violence against the non-abusive carer as much as against the child itself, while paragraph 2 lays out the obligation to ensure that the exercise of any visitation and custody rights does not jeopardise the rights and safety of the victim and/or children.

In its assessment of the level of implementation of Article 31, GREVIO has developed important elements that it deems essential for the full implementation of this provision. Ensuring adequate levels of training of family law professionals on the nature of domestic violence, including psychological violence and post-

separation violence, as well as on other forms of violence, features among these elements. Similarly, consultation by family courts of all relevant professionals and statutory agencies to assess the full spectrum of past and ongoing violence is another important element in order to enable family law judges to consider the history of violence when deciding on custody and visitation rights. Of equal relevance is the need to ensure adequate risk assessment and screening at the level of family law courts. The Mid-term Horizontal Review of GREVIO baseline evaluation reports published in 2021 offers insights into the shortcomings established by GREVIO in this regard.⁷⁵ These were further detailed in the focus section dedicated to the intersection between domestic violence and child custody and visitation rights as contained in its 3rd Report on GREVIO's General Activities published in 2022.⁷⁶

Inadequate risk assessments and screening

The shortcomings identified by GREVIO in its baseline evaluation reports mainly pertain to the failure to conduct a risk assessment or screening for domestic violence in cases related to the determination of custody and visitation rights. GREVIO had noted the absence of such screening in relation to France, Italy, Montenegro, the Netherlands, Portugal and San Marino.⁷⁷ It had also found that judges did not conduct risk assessments or ask for the disclosure of the risk assessment and safety plans drawn up by law-enforcement agencies and/or other competent authorities with a view to taking them into account when establishing the best interests of the child.⁷⁸ Since then, GREVIO has identified similar shortcomings in its baseline evaluation reports on Bosnia and Herzegovina, Croatia, Estonia, Germany, Greece, Iceland, Ireland, Norway and Slovenia.⁷⁹ Similarly, the need to increase the level of consultation and co-operation across various statutory agencies was raised by GREVIO in relation to Bosnia and Herzegovina, Croatia, Cyprus, Ireland, Luxembourg and Norway, among others.⁸⁰

Risks to women and children overlooked or minimised in family law settings

The inadequacy or inexistence of formalised procedures in place to identify risks women and children face from an abuser is compounded by the frequent positioning of mothers as “alienating” the other parent or as being “un-co-operative”. This is particularly the case where they raise before the competent courts a perpetrators’ past or ongoing abusive behaviour or seek sole custody of children after separation from their abusive spouse. GREVIO has revealed the use of such notions and labels in nearly all parties under evaluation and has pointed

to the impact this has: minimising evidence of domestic violence and masking the level of risk women and children are exposed to.⁸¹ In many of its baseline evaluation reports, GREVIO has found these notions to be “invoked without a proper understanding of the dynamics of domestic violence against women and its effects on children”, and “in the absence of a thorough risk assessment and case-by-case examination”. In several of its reports, it found the application of such concepts, including the scientifically unfounded concept of “parental alienation syndrome” to downplay the level of abuse, to disregard the gender-based nature of domestic violence and to ignore essential aspects of child welfare in Andorra, Belgium, Croatia, Cyprus, Estonia, France, Germany, Greece, Iceland, Ireland, Italy, Luxembourg, Poland, Romania and Spain.⁸² For this reason, GREVIO has repeatedly voiced grave concern over the use of such concepts and has pointed repeatedly to its lacking scientific foundation. It consistently refers to the statement of December 2017 by the European Association for Psychotherapy (EAP), which draws attention to the fact that the concepts of “parental alienation syndrome” (PAS) and “parental alienation” (PA) are unsuitable for use in any psychotherapeutic practice. Similarly, the United Nations Special Rapporteur on violence against women and girls, its causes and consequences, has pointed to the harmful impact recourse to such scientifically unfounded concepts as “parental alienation” lead to.⁸³

Numerous baseline evaluation reports call on the authorities to ensure wider levels of training on patterns of domestic violence, concepts of coercive control, manipulation and abuse, including psychological violence, which may also involve the use of technology or may be perpetrated online. Separation from an abusive partner will often increase not lower the risk to children, which is why dynamic risk-assessment procedures and screening, including within family law proceedings, is crucial. Understanding the level of risk for women and children who leave abusive situations, including situations of psychological abuse, is vital for adequate decision making in proceedings on custody and visitation rights. Research is increasingly pointing to child custody and visitation proceedings as an arena for continued abuse after separation, often taking the form of malicious litigation.⁸⁴ Such proceedings and subsequent visitation rights may also result in the potential targeting of children, which family law professionals need to be aware of. For these reasons, GREVIO frequently points to the need for a more thorough understanding of how post-separation abuse manifests itself in family law proceedings concerning custody and visitation rights. Robust screening and risk-assessment procedures are thus vital for the Istanbul Convention’s premise of safety first to develop its potential.

Endnotes

1. See the GREVIO baseline reports on Albania, Andorra, Austria, Belgium, Bosnia and Herzegovina, Croatia, Cyprus, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, Republic of Moldova, Monaco, Montenegro, North Macedonia, Norway, Poland, Portugal, the Netherlands, Romania, San Marino, Serbia, Slovenia, Spain, Sweden, Switzerland and Türkiye.
2. See *Kurt v. Austria* [GC], Application No. 62903/15, paragraphs 164 and 190, *Talpis v. Italy*, Application No. 41237/14, paragraph 122, and *Volodina v. Russia*, Application No. 41261/17, paragraph 86.
3. Explanatory Report to the Istanbul Convention, paragraph 260.
4. Cited above.
5. Explanatory Report to the Istanbul Convention, paragraph 113.
6. Strangulation is the obstruction of blood vessels and/or airflow by external (often manual) pressure to the neck, which causes decreased oxygen supply to the brain and can lead to unconsciousness and the loss of bladder control within seven to 15 seconds. These time spans are commonly accepted in the medico-legal field and were first examined in a study from 1943: Kabat H. and Anderson J. P., "Acute arrest of cerebral circulation in man: Lieutenant Ralph Rossen (MC), U.S.N.R.," *Arch NeurPsych*, 1943, 50(5): 510-528, available at: www.jamanetwork.com/journals/archneurpsyc/article-abstract/649750.
7. Glass N., Laughon K., Campbell J., Block C. R., Hanson G., Sharps P. W. and Taliaferro E., "Non- fatal strangulation is an important risk factor for homicide of women", *The Journal of Emergency Medicine*, Volume 35, Issue 3, 2008, pp. 329-335, available at: www.ncbi.nlm.nih.gov/pmc/articles/PMC2573025/.

8. See for example www.femicidecensus.org/reports/ for data from the UK.
9. White C., Martin G., Schofield A. M. and Majeed-Ariss R., "I thought he was going to kill me: Analysis of 204 case files of adults reporting non-fatal strangulation as part of a sexual assault over a 3-year period", *Journal of Forensic and Legal Medicine*, Volume 79, 2021, available at: www.sciencedirect.com/science/article/abs/pii/S1752928X21000135.
10. See the Committee on the Elimination of Discrimination against Women, General recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19 (1992), CEDAW/C/GC/35, 2017: www.ohchr.org/en/documents/general-comments-and-recommendations/general-recommendation-no-35-2017-gender-based.
11. Directive 2012/29/EU of the European Parliament and of the Council of October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.
12. See GREVIO's baseline evaluation reports on Austria, paragraph 179; Bosnia and Herzegovina, paragraph 282 and 283; and Germany, paragraph 308.
13. See GREVIO's baseline evaluation reports on Portugal, paragraph 201; and Spain, paragraph 259.
14. See GREVIO's baseline evaluation report on Spain, paragraph 235.
15. See GREVIO's baseline evaluation report on Poland, paragraph 276.
16. See GREVIO's baseline evaluation reports on Iceland, paragraph 267; and North Macedonia, paragraph 323.
17. GREVIO's baseline evaluation report on Italy, paragraph 228.
18. See GREVIO's baseline evaluation report on Georgia, paragraph 326.
19. See GREVIO's baseline evaluation reports on Bosnia and Herzegovina, paragraph 285 ; Cyprus, paragraph 240; Georgia, paragraph 330; Germany, paragraph 308; Iceland, paragraph 274; Ireland, paragraph 266; Italy, paragraph 233(a); Malta, paragraph 214; North Macedonia, paragraph 325; Poland, paragraph 280; Romania, paragraph 371; Slovenia, paragraph 330; and Switzerland, paragraph 233.
20. See GREVIO's baseline evaluation report on Cyprus, paragraph 240.
21. See GREVIO's baseline evaluation reports on Denmark, paragraph 20; Norway, paragraph 235; and Sweden, paragraph 215.

22. See GREVIO's baseline evaluation reports on Germany, paragraph 311; and Poland, paragraph 281.
23. See GREVIO's baseline evaluation reports on Germany, paragraph 308; Iceland, paragraph 27; and Ireland, paragraph 265.
24. See GREVIO's baseline evaluation report on Georgia, paragraph 324.
25. See GREVIO's baseline evaluation report on Cyprus, paragraph 240.
26. See GREVIO's baseline evaluation reports on Croatia, paragraph 269; Georgia, paragraph 323-324; Greece, paragraph 270; Ireland, paragraph 267; Poland, paragraph 275; and Spain, paragraph 260.
27. See GREVIO's baseline evaluation reports on Bosnia and Herzegovina, paragraph 285; Cyprus, paragraph 241; Georgia, paragraph 324; Ireland, paragraph 270; Norway, paragraph 236; and Romania, paragraph 372.
28. See GREVIO's baseline evaluation reports on Bosnia and Herzegovina, paragraph 281; and Ireland 267.
29. See GREVIO's baseline evaluation report on Iceland, paragraph 272.
30. Targeting gun violence and trafficking in Europe, Flemish Peace Institute, 2021, available at: <https://vlaamsvredeinstituut.eu/wp-content/uploads/2021/12/TARGET-OnlineVersion.pdf>.
31. Ibid.
32. See GREVIO's baseline evaluation reports on Montenegro, paragraph 225; Romania, paragraph 265; Poland, paragraph 275; and San Marino, paragraph 190.
33. See GREVIO's baseline evaluation reports on France, paragraph 235; Monaco, paragraph 145; North Macedonia, paragraph 328; and Serbia, paragraph 224.
34. Report submitted by the United Kingdom pursuant to Article 68, paragraph 1, of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Baseline Report), page 49.
35. "Risk assessment and management of intimate partner violence in the EU", page 34.
36. See GREVIO's baseline evaluation report on Spain, paragraph 214.
37. See GREVIO's baseline evaluation report on Germany, paragraph 239.
38. See GREVIO's baseline evaluation report on Iceland, paragraphs 192, 137 and 225.

39. See GREVIO's baseline evaluation report on Norway, paragraphs 3, 6 and 64.
40. General Recommendation No. 1 on the digital dimension of violence against women, paragraph 12.
41. Ibid., paragraph 56 (e).
42. See UN General Assembly resolutions A/RES/68/191, adopted in 2013, and A/RES/70/176, adopted in 2016.
43. Gender-related killings of women and girls (femicide/feminicide). Global estimates of gender-related killings of women and girls in the private sphere in 2021 – Improving data to improve responses.
44. UNODC, Global Study on Homicide 2019, booklet 5, Gender-related Killing of Women and Girls (Vienna, 2019).
45. Explanatory Report to the Istanbul Convention, paragraph 259.
46. See GREVIO's baseline evaluation reports on Belgium, paragraph 196; Bosnia and Herzegovina, paragraph 284; Greece, paragraph 276; Iceland, paragraph 274; Ireland, paragraph 274; Italy, paragraph 233.d; Luxembourg, paragraph 197; Malta, paragraph 214; Portugal, paragraph 206; and Switzerland, paragraph 234; and GREVIO's baseline evaluation report on Liechtenstein, paragraph 244 (for attempted killing).
47. See Commission on Crime Prevention and Criminal Justice, 22-26 May 2023, Background paper on Femicide Review Committee, pages 1 and 37. This report defines a domestic homicide review or a domestic violence fatality review as a "multi-agency review process that is conducted following the death of a person as a result of domestic violence" entailing "a systematic examination of the circumstances surrounding the death, to identify what lessons can be learned from them, in order to improve responses to domestic violence and help prevent future deaths".
48. The authorities commissioned a National Analytical Study on Femicide in 2021 examining femicide perpetrated between 2016 and 2019, in order to improve the institutional response to gender-based and domestic violence.
49. The relevant committee reviewed 19 homicide cases where the perpetrator had been a current or former partner and found that in all of them intimate-partner violence preceded the killing of the victim, identifying various shortcomings. This analysis was taken into account when creating the National Action Plan on domestic violence.

50. See GREVIO's baseline evaluation reports on Bosnia-Herzegovina, paragraph 284; France, paragraph 236; Republic of Moldova, paragraph 66; Norway, paragraph 21; and Switzerland, paragraph 232.
51. See the baseline evaluation report on Georgia, paragraph 85; and Portugal, paragraph 205.
52. Devries K., Watts C., Yoshihama M., Kiss L., Schraiber L. B., Deyessa N., Heise L., Durand J., Mbwapbo J., Jansen H., Berhane Y., Ellsberg M. and Garcia-Moreno C., World Health Organization Multi-Country Study Team, "Violence against women is strongly associated with suicide attempts: evidence from the WHO multi-country study on women's health and domestic violence against women", *Soc Sci Med.* 2011 Jul; 73(1): 79-86. doi: 10.1016/j.socscimed.2011.05.006. E-pub, 27 May 2011. PMID: 21676510.
53. European Guide on Forced Suicides – Guidance systems for frontline professionals, Henry N. et al.: www.psytel.eu/PSYTEL/psy-documents/Suicides_forces/2022-SF_Eur_Guide_EN3_221228_web.pdf.
54. Ibid.
55. El-Khoury F., Puget M., Leon C., du Roscoat, E., Velter A., Lydié N. and Sitbon A., "Increased risk of suicidal ideation among French women: the mediating effect of lifetime sexual victimisation. Results from the nationally representative 2017 Health Barometer survey".
56. Ibid.
57. European Guide on Forced Suicides – Guidance systems for frontline professionals, Henry N. et al.: www.psytel.eu/PSYTEL/psy-documents/Suicides_forces/2022-SF_Eur_Guide_EN3_221228_web.pdf.
58. "Combating coercive control and psychological violence against women in the EU Member States", European Institute for Gender Equality, 2022.
59. [Statistical framework for measuring the gender-related killing of women and girls \(also referred to as "femicide/feminicide"\)](#).
60. Bearing in mind that the United Kingdom had not been monitored by GREVIO in the period under review, the relevant domestic homicide review mechanism does indeed encompass cases of suicide as a consequence of domestic violence. See Commission on Crime Prevention and Criminal Justice, 22-26 May 2023, Background paper on Femicide Review Committee, p. 25.

61. See the GREVIO baseline evaluation report on Türkiye, paragraphs 255 and 256.
62. Notably it qualifies it as “an aggravated form of harassment of one’s spouse, civil partner or live-in partner through repeated comments or behaviour with the aim or effect of degrading their living standards, resulting in an alteration of their physical or mental health”. See Article 222-33- 2-1 (Law No. 2020-936 of 30 July 2020), available at: www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006070719/LEGISCTA000006165282/#LEGISCTA000047052746.
63. See, for example, *Gaidukevich v. Georgia*, Application No. 38650/18, 15 June 2023; *Landi v. Italy*, Application No. 10929/19, 7 April 2022; *Y and Others v. Bulgaria*, Application No. 9077/18, 22 March 2022; *Tunikova and Others v. Russia*, Application Nos. 55974/16 et al., 14 December 2021.
64. *Kurt v. Austria [GC]*, cited above, paragraph 190.
65. *Ibid.*, paragraph 174.
66. *Ibid.*, paragraph 173.
67. *Ibid.*, paragraphs 174 and 180.
68. *Ibid.*, paragraph 183.
69. *Ibid.*, paragraph 190.
70. *Ibid.*, paragraphs 180-181.
71. *I.M. and Others v. Italy*, Application No. 25426/20, 10 November 2022.
72. *Bîzdîga v. the Republic of Moldova*, Application No. 15646/18, 17 October 2023.
73. *Luca v. the Republic of Moldova*, Application No. 55351/17, 17 October 2023.
74. GREVIO’s baseline evaluation report on Germany, paragraph 220; and Poland, paragraph 191.
75. Mid-term Horizontal Review of GREVIO baseline evaluation reports, paragraphs 324-338.
76. 3rd General Report on GREVIO’s Activities, covering the period from January to December 2021, paragraphs 67-85.
77. GREVIO’s baseline evaluation reports on France, paragraph 182; Italy, paragraph 187; Montenegro, paragraph 165; the Netherlands, paragraphs 200-202; and Portugal, paragraph 160.

78. GREVIO's baseline evaluation reports on Denmark, paragraph 161; Italy, paragraph 186; Montenegro, paragraph 165; the Netherlands, paragraph 204; and Portugal, paragraph 160.
79. GREVIO's baseline evaluation reports on Bosnia and Herzegovina, paragraph 195; Croatia, paragraph 196; Estonia, paragraph 158; Germany, paragraph 229; Greece, paragraph 197; Iceland, paragraph 189; Ireland, paragraph 194; Norway, paragraph 164; and Slovenia, paragraph 236.
80. GREVIO's baseline evaluation reports on Bosnia and Herzegovina, paragraph 192; Croatia, paragraph 196; Cyprus, paragraph 177; Ireland, paragraph 194; Luxembourg, paragraph 138; Norway, paragraph 164.
81. Third General Report on GREVIO's Activities, paragraph 79.
82. GREVIO's baseline evaluation reports on Andorra, paragraph 149; Belgium, paragraph 146; Croatia, paragraph 193; Cyprus, paragraph 176; Estonia, paragraph 157; France, paragraph 181; Germany, paragraph 227; Greece, paragraphs 194-197; Iceland, paragraph 185; Ireland, paragraph 189; Italy, paragraphs 182 and 185; Luxembourg, paragraph 140; Poland, paragraphs 188-190; Romania, paragraph 256; and Spain, paragraphs 200-201.
83. A/HRC/53/36, "Report of the Special Rapporteur on Violence against Women and Girls, Its Causes and Consequences – Custody, Violence against Women and Violence against Children" (2023), paragraph. 15.
84. Gutowski E. R. and Goodman L. A., "Coercive Control in the Courtroom: the Legal Abuse Scale (LAS)", *Journal of Family Violence* 38, No. 3 (April 2023): 527-42, <https://doi.org/10.1007/s10896-022-00408-3>.

The Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) is an independent expert body responsible for monitoring the implementation by the parties to the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention). GREVIO prepares and publishes reports assessing the legislative and policy measures taken by parties to implement the Istanbul Convention.

This publication is the extraction of a thematic section of the 5th General Report on GREVIO's activities, focused on the role of risk assessment and risk management in preventing and combating violence against women. This thematic section takes a closer look at the standards set out on risk assessment, restraining and protective orders, as well as custody, visitation rights and security. It has been produced by the project, "Combating Violence against Women in Ukraine – Phase II" (COVAW-II).

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