



The Edinburgh International Justice Initiative 2022

**For the Association for Emancipation, Solidarity and Equality of
Women**

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Glossary

The Edinburgh International Justice Initiative (EIJI)

The Association for Emancipation, Solidarity and Equality of Women (ESE)

Istanbul Convention (IC)

North Macedonia (NM)

Domestic Violence (DV)

Violence against Women (VAW)

Due Diligence (DD)

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

European Convention on Human Rights (ECHR)

European Court of Human Rights (ECtHR)

Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO)

National Action Plan (NAP)

National Coordination Body of Portugal (CIG)

Introductory Note

Abstract

This report will begin by considering the general meaning of due diligence obligations in international law. This will be achieved by drawing analogies to obligations set out in international treaties and case law. Once a general understanding is established, the specific content and scope of due diligence will be examined as it is stipulated in Article 5 of the *Convention on Preventing and Combating Violence against Women and Domestic Violence* (2011). There will be a particular emphasis on these due diligence obligations in the context of North Macedonian domestic violence policies and criminal proceedings. This report will highlight the legal and socio-political gaps which hinder North Macedonian implementation of their due diligence obligations under the Istanbul Convention, particularly with respect to the needs of victims. This report will conclude by drawing comparisons between North Macedonian and foreign state implementations of due diligence measures that effectively prevent Domestic Violence (DV) and Violence against Women (VAW) as is required by the Convention. The state implementations compared for the purposes of this report are those of France, Denmark, Malta, and Austria. All of these have effectively adopted due diligence measures in the prevention of VAW and DV.

Acknowledgements

The team would like to thank Emma Irving, who provided invaluable support, expertise, and advice as the external supervisor on this project. The team would also like to thank Stojan Misev, as our point of contact at ESE, for clarifying the focus and objectives of the report and aiding the project in its finalization. Finally, the team thanks everyone at EIJI for their hard work in facilitating this project especially our Director Stav Salpeter.

Research team

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Grace Johnston (Researcher) is a third year Scots Law LLB student at the University of Edinburgh. She has always had an interest in human rights law, which inspired her to join the EIJI team in 2021. This is her second project working with

EIJI and she hopes to see positive results stemming from this project for the women of North Macedonia.

Sandy Malcolm (Researcher) is a third year Scots Law LLB student at the University of Edinburgh. His interests are in human rights, international justice, and sustainable international commerce. He has played both an authorship and editorial role in the production of this report. Sandy is pleased with the contributions of the entire EIJI team and hopes this report can contribute in some way to the protection of women in North Macedonia.

Eleana Kasoulide (Researcher) is an Innovation, Technology and the Law LLM student at the University of Edinburgh. She joined EIJI in 2022 being passionate about human rights and having the desire to contribute in the fight against international injustice. She hopes that any future career plans in the legal sector will contribute to these matters and is particularly interested to explore how technology can hinder or facilitate social equality and the effective implementation of human rights.

Celene Sandiford (Researcher) is a second year Law and International Relations LLB student at the University of Edinburgh. She became involved with EIJI in 2022 as her passion for justice and human rights protection drew her interests towards international criminal justice work. From issues of gender inequality to those of climate change, she hopes that her future career will involve seeking international justice.

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Disclaimer

As we are not lawyers, we are not giving legal advice. We are providing research assistance to the Association for Emancipation, Solidarity and Equality of Women (ESE), and do not assume any liability regarding how the information is used in the future. Furthermore, the EIJI is an apolitical body. The contents of this report are not to be taken as a political statement or as a form of advocacy work. The way in which this report is used by the EIJI's partners is at their discretion and does not necessarily reflect the views of the EIJI.

Research task and methodology

The team researched how the standard of due diligence can be used to ensure compliance with the primary obligations set out in the Istanbul Convention. They relied on GREVIO reports published on the ICC website, the Second Report (2016) of the ILA Study Group on Due Diligence, customary international law and the work of several legal authorities.¹ Researchers also consulted other international human rights treaties such as the European Convention on Human Rights, as well as material published on academic blogs or by non-governmental organisations (NGOs). The team then created a horizontal analysis of due diligence adherence by different signatories to the Istanbul Convention to provide an overview of how this standard is to be measured. This was finally followed by an analysis of North Macedonia's performance in meeting its due diligence obligations under the Istanbul Convention, and a series of recommendations to remedy the gaps highlighted in this report.

¹ See Vladislava Stoyanova, 'Due diligence versus positive obligations: critical reflections on the Council of Europe Convention on Violence against Women', in Johanna Niemi, Lourdes Peroni and Vladislava Stoyanova (eds), *International Law and Violence Against Women: Europe and the Istanbul Convention* (Routledge 2020); Julie Goldscheid, 'Gender Violence and Human Rights in an Era of Backlash' (2018) 24 *William & Mary Journal of Women and the Law* 559; Jackie Jones, 'The Istanbul Convention' in Rashida Manjoo (ed), *The Legal Protection of Women from Violence* (1st edn, Routledge 2018).

Chapter One

Background:

The Istanbul Convention or *Convention on Preventing and Combating Violence against Women and Domestic Violence* has been ratified by 34 members and non-members of the Council of Europe.² One core understanding that all these states hold in common is the recognition of a need to protect women from inequality and abuse.

In Europe - despite the existence of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (1979) - there are significant systemic and enforcement gaps within the international system. These gaps allow human rights abuses to occur.³ Recognition of this problem prompted the Council of Europe to create the first legally binding treaty on preventing and combating VAW and DV: the Istanbul Convention.

The Convention aims to protect women from violence and all forms of discrimination.⁴ It also requires states to design legislation and implement policies to pursue this end.⁵ In doing so, states must support NGOs and promote international cooperation.⁶ Member parties are required to fulfil these obligations with due diligence and such implementations are subject to review and enforcement by The Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO).⁷ GREVIO is an independent body that monitors and ensures proper implementation of the Istanbul Convention and dissuades unavailing or mere declaratory ratification.⁸ GREVIO reports are essential to the maintenance of European cooperation on the protection of victims and prevention of future abuses. As of recently, GREVIO has turned its attention to North Macedonia which signed and ratified the treaty in 2018 thus binding the state to uphold its due diligence obligations in the fight against DV and VAW.⁹

The purpose of this report is to establish the due diligence obligation set forth in Article 5 of the Istanbul Convention and to review its implementation by North Macedonia. Article 5 sets a standard of conduct for states to exercise when preventing gender violence, prosecuting

² European Network of National Human Rights Institutions, 'ENNHRI Calls for Ratification and Implementation of CoE Human Rights Conventions, Including Istanbul Convention' (*ENNHRI News: Democracy & Rule of Law*, 11 May 2021) <https://ennhri.org/wp-content/uploads/2021/05/ENNHRI_Istanbul-Convention.pdf> accessed 25 February 2022.

³ Ibid.

⁴ The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (adopted 7 April 2011, opened for signature 11 May 2011, entered into force 1 August 2014) CETS 210 (Istanbul Convention) Article 1.

⁵ Ibid.

⁶ Ibid.

⁷ 'The Istanbul Convention and the CEDAW Framework: A Comparison of Measures to Prevent and Combat Violence against Women' (Council of Europe 2012).

⁸ Jackie Jones, 'The Istanbul Convention' in Rashida Manjoo (ed), *The Legal Protection of Women from Violence* (1st edn, Routledge 2018).

⁹ Biljana Nastovska, 'Mapping of Policies and Legislation on Violence Against Women and the Istanbul Convention in the Former Yugoslav Republic of Macedonia' (European Women's Lobby Européen des Femmes 2018).

and punishing its perpetrators, and protecting and providing redress for its victims.¹⁰ In the absence of specific and demanding requirements, due diligence reinforces the primary obligations set in the Convention and extends its protection of human rights to acts committed by private actors. In the following chapter, the four factors of the International Law Association (ILA) are used to assess whether state conduct has lived up to the due diligence standard in concrete circumstances.¹¹ Nonetheless, from legislative and executive actions to state-sponsored provisions of services, states have significant latitude in how they respond to gender violence. With this in mind, the report will concentrate on North Macedonia's success, or lack thereof, in exercising their due diligence obligations under the Convention. This will be done by evaluating whether due diligence has been exercised under different treaty articles, and considering what has hindered the state in meeting this obligation. Ultimately, a comparison will be drawn by looking at the due diligence exercised by other member states, to establish analogies with North Macedonian policies regarding the effective prevention of DV and VAW.

It is important to also note that despite North Macedonia's legal and political commitments, the country still lacks a coordinated systematic collection of statistical data on cases concerning all forms of violence covered by the scope of the Istanbul Convention. Collected data mainly contains information on DV and criminal cases involving physical violence and femicides, yet excludes crucial figures such as the perpetrator's gender, the relationship of the perpetrator to the victim, intersectional inequalities and the national prevalence and severity of cases.¹² Moreover, the available data is not classified according to the necessary parameters and data deriving from different sources are often incomparable due to different data collection and sampling methods, and diverse context related issues. Therefore, there is a significant reliance on case law, secondary research, policy analysis and reason by analogy within many of the subsequent chapters of this report. This is necessitated by the fact that statistics and data on DV and VAW are limited, infrequent and not in line with the legal requirements imposed by the Istanbul Convention.¹³

Some Systemic Issues in North Macedonia

¹⁰ Julie Goldscheid and Debra Liebowitz, 'Due Diligence and Gender Violence: Parsing Its Power and Its Perils' (2015) 48.

¹¹ Vladislava Stoyanova, 'Due diligence versus positive obligations: critical reflections on the Council of Europe Convention on Violence against Women', in Johanna Niemi, Lourdes Peroni and Vladislava Stoyanova (eds), *International Law and Violence Against Women: Europe and the Istanbul Convention* (Routledge 2020).

¹² Danica Mitkovska, 'Violent Deaths in the Republic of North Macedonia, 2018' *State Statistical Office* (Skopje, 19 June 2019) <https://www.stat.gov.mk/pdf/2019/2.1.19.24_mk.pdf>; Marija Bashevska, 'Gender Equality Index in Northern Macedonia 2019: Measuring Gender Equality' (Ministry of Labour and Social Policy and the State Statistical Office of the Republic of Northern Macedonia 2019) <https://www.mtsp.gov.mk/content/pdf/dokumenti/2019/Gender%20Index_MK_01.pdf>.

¹³ 'Draft Shadow Report on the Implementation of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence in North Macedonia' (Helsinki Committee for Human Rights 2021) <<https://mhc.org.mk/wp-content/uploads/2021/09/draft-shadow-report-grevio.pdf>>.

The Republic of North Macedonia faces serious human rights violations concerning violence against women. This is the most common breach of human rights facing the country.¹⁴ While there have been measures taken to combat this, such as the ratification of the Istanbul Convention in 2017,¹⁵ this remains a significant issue. This section offers insight into some of these systemic issues.

Although DV and VAW have not been well documented within North Macedonia, this does not mean that these crimes have become less prevalent or any less serious. Such data limitations have caused research difficulties in respect to humanitarian efforts as well as for the purposes of this report. Having limited and infrequent access to national statistics on DV and VAW has made progress difficult to assess over the years. This major drawback to our research links back to other notable systemic issues that are present in the country. These systemic issues - which counteract progress in combating DV and VAW - include poor national promotion of gender equality and nondiscrimination, poor funding, and insufficient education on women's rights in school curriculums and at a state institutional level.¹⁶ Such a lack of inclusive systemic education for practitioners of the law and judiciary has resulted in lenient or biased sentencing, unsatisfactory victim protection and support, and ineffective preventative measures among other things. Again, these issues highlight a societal problem with gender and are just a few of the symptoms.¹⁷

A large number of women in North Macedonia face violence. A survey of 850 women in the country (1.3% of the female population) found that 61.5% had experienced psychological violence, 23.9% physical and 5% sexual.¹⁸ Despite this, only 2% of women in the country report such violence to the police.¹⁹ Accordingly, there is a significant problem of violence against women and a lack of reporting. Furthermore, North Macedonia has lower rates of domestic violence reporting than other EU countries.²⁰ Nevertheless, in comparison with those in other select EU countries, women in North Macedonia are three times more likely (on average) to view domestic violence as a private issue, with some thinking "minor" violence to be normal behaviour.²¹ This, in combination with a lack of data available from

¹⁴ Fimka Tozija F, 'Women's Safety and Gender-Based Violence in the Republic of North Macedonia' (*Frontiers in Public Health*, 21 February 2020)

<<https://www.frontiersin.org/articles/10.3389/fpubh.2020.00033/full>> accessed 15 March 2022 8.

¹⁵ Council of Europe, "'The Former Yugoslav Republic of Macedonia' Ratifies the Istanbul Convention' (23 March 2018) <<https://go.coe.int/2jYoy>> accessed 20 Feb 2022.

¹⁶ Biljana Nastovska, 'Mapping of Policies and Legislation on Violence Against Women and the Istanbul Convention in the Former Yugoslav Republic of Macedonia' (European Women's Lobby Européen des Femmes 2018).

¹⁷ Julie Goldscheid, 'Gender Violence and Human Rights in an Era of Backlash' (2018) 24 *William & Mary Journal of Women and the Law* 559.

¹⁸ Fimka Tozija F, 'Women's Safety and Gender-Based Violence in the Republic of North Macedonia' (*Frontiers in Public Health*, 21 February 2020)

<<https://www.frontiersin.org/articles/10.3389/fpubh.2020.00033/full>> accessed 15 March 2022 8.

¹⁹ OSCE, 'OSCE-led Survey on Violence Against Women: North Macedonia - Results Report' (May 2019). <<https://www.osce.org/files/f/documents/5/b/418913.pdf>> accessed 20 Feb 2022.

²⁰ *ibid.*

²¹ *ibid.*

North Macedonia,²² suggests statistics regarding rates of violence against women are not wholly accurate: the number of women facing this violence may be higher.

In 2014, a law on the prevention of domestic violence and protection of women was passed.²³ This was a significant step as it signaled that the state was taking action to tackle this issue. This has been successful in some respects, including an increase in data collected in 2014 from 2004.²⁴ The most recent step North Macedonia has taken in an attempt to act with due diligence to prevent, investigate, punish and provide reparation for violence against women is the introduction of a new law for Protection and Prevention from Violence against Women and Domestic Violence (adopted 2021).²⁵ This legislation establishes specific definitions for gender-based violence and violence against women, which accordingly provide a clearer framework for prosecution thereof. This is the first law in North Macedonia to address and define all types of violence against women in the country.²⁶ Vitaly, the legislation also incorporates the principle of due diligence into national legislation.²⁷ Since this Act has been recently enacted, its overall success is yet to be seen.

While a legislative framework exists to prevent and punish such violence, it has been largely unsuccessful in tackling it. It is the case in North Macedonia that perpetrators of violence against women are not being adequately or proportionately sanctioned.²⁸ Data from basic courts have shown that between 21% and 32% of charges for domestic violence were rejected.²⁹ Moreover, out of 28 cases analysed by ESE for domestic violence, only 4 received a prison sentence.³⁰ Not only are there issues in the level of justice served to the perpetrators, but there are also problems in accessing the legal system. Legal aid is not freely available to those who need it, and so the pursuit of justice is complicated or blocked

²² Fimka Tozija and others, 'Violence against Women in The Former Yugoslav Republic of Macedonia: The Burden and Challenges for Prevention' *Entre Nous The European Magazine for Sexual and Reproductive Health* (Geneva 2005) 24.

²³ Marija Gelevska and Stojan Mishev, 'Analysis of the Legal Framework and Institutional Response to Violence Against Women' (ESE 2017).

²⁴ *ibid.*

²⁵ UN Women Europe and Central Asia, 'Ending violence against women' (eca.unwomen.org, 2021) <<https://eca.unwomen.org/en/where-we-are/north-macedonia/ending-violence-against-women>> accessed 20 Feb 2022.

²⁶ The National Network to End Violence against Women and Domestic Violence, 'What after the adoption of the new Law for preventing and protection from violence against women and domestic violence?' (glasprotivnasilstvo.org.mk, 2020) <<https://www.glasprotivnasilstvo.org.mk/en/30-11-2020-what-after-the-adoption-of-the-new-law-for-preventing-and-protection-from-violence-against-women-and-domestic-violence/>> accessed 20 Feb 2022.

²⁷ The National Network to End Violence Against Women, 'What Is next!? Following the Adoption of the Law on Prevention and Protection from Violence against Women and Domestic Violence' (November 2020) <http://www.glasprotivnasilstvo.org.mk/wp-content/uploads/2021/03/Policy-brief-Reintegration-of-women-victims-of-violence_WEB.pdf> accessed 20 Feb 2022.

²⁸ Stojan Mihov, 'Is Domestic Violence Sanctioned? Do Perpetrators of Domestic Violence Receive the Sanction Deserved?' (ESE 2019) <<https://www.esem.org.mk/en/pdf/Publikacii/2019/Is%20domestic%20violence%20sanctioned.pdf>> accessed 20 February 2022.

²⁹ Marija Gelevska and Stojan Mishev, 'Analysis of the Legal Framework and Institutional Response to Violence Against Women' (ESE 2017).

³⁰ Stojan Mihov, 'Is Domestic Violence Sanctioned? Do Perpetrators of Domestic Violence Receive the Sanction Deserved?' (ESE 2019) <<https://www.esem.org.mk/en/pdf/Publikacii/2019/Is%20domestic%20violence%20sanctioned.pdf>> accessed 20 February 2022.

by financial barriers.³¹ This has the consequence of preventing victims from accessing redress and exercising their rights under statute. Consequently, in addition to the high rates of violence which women in North Macedonia experience, they also face a lack of justice. Appropriate punishment is the standard deterrent to crime, and if perpetrators are facing little to no punishment, they may continue to offend.

The efficacy of preventative measures are also dependent on the actions of police, who are responsible for providing initial assistance and protection to victims, detecting perpetrators and initiating proceedings against them. Countries such as Albania, France, Italy and Spain all have specialized police forces set up to tackle DV and VAW, with Albania going so far as to provide regular training on handling such cases.³² Meanwhile, in North Macedonia, police officers have the power of determining which of their DV assessments results in criminal charges being filed to the competent public prosecutor, or being recorded as either a complaint or misdemeanour.³³ However, the lack of educational initiatives aimed at increasing the sensitivity of authorised police officers, has left most victims complaining of police reports that underestimate the security risk posed against them.³⁴ Police indifference to victim statements has led to overdue and belated responses, and inadequate preventative measures taken for women who have suffered serious physical violence.³⁵ Moreover, women make up only 12.7% of the police force,³⁶ meaning they are a significant minority in a sector that plays a big role in protection from gender-based violence. It has been reported that there is a prominent culture of stereotyping within law enforcement.³⁷ This contributes to the lack of effective tackling of this issue, with police, in light of the statistics previously cited, seemingly not taking reports seriously. Police officers are some of the most important people in ensuring prevention and investigation of domestic violence and other gender-based violence, so a failure on their behalf only makes prosecution and punishment harder.³⁸ A lack of punishment of perpetrators risks deterring victims from reporting the violence, thus hindering access to justice.

³¹ Biljana Nastovska, 'Mapping of Policies and Legislation on Violence Against Women and the Istanbul Convention in the Former Yugoslav Republic of Macedonia' (European Women's Lobby Européen des Femmes 2018).

³² Grevio, 'Baseline Evaluation Report Albania' (*GREVIO: Council of Europe*, 2017) <<https://rm.coe.int/grevio-first-baseline-report-on-albania/16807688a7>> accessed 7 February 2022 28.

³³ Marija Gelevska and Stojan Mishev, 'Analysis of the Legal Framework and Institutional Response to Violence Against Women' (ESE 2017).

³⁴ *ibid.*

³⁵ *ibid.*

³⁶ SEESAC, 'Women in Police Services in South East Europe' (2015) <<http://www.seesac.org/f/docs/Gender-and-Security/Women-in-Police-Services-in-South-East-Europe-.pdf>> accessed 20 Feb 2022.

³⁷ Biljana Nastovska, 'Mapping of Policies and Legislation on Violence Against Women and the Istanbul Convention in the Former Yugoslav Republic of Macedonia' (European Women's Lobby Européen des Femmes 2018).

³⁸ 'Draft Shadow Report on the Implementation of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence in North Macedonia' (Helsinki Committee for Human Rights 2021) <<https://mhc.org.mk/wp-content/uploads/2021/09/draft-shadow-report-grevio.pdf>>.

Conclusion

Overall, North Macedonia is facing a worrying pattern of violence against women which has not, to date, been effectively tackled.³⁹ While ratifying the Istanbul Convention was an important step for the country, this must be more than a symbolic act. It is not enough to pass laws which are theoretically sound, yet are not executed. The state must exercise due diligence to prevent and punish violence against women and domestic violence.⁴⁰ This will be the focus of this report. Chapter 2 begins by taking a general look at the standard of due diligence in international law, before defining the requirements of this principle under the Istanbul Convention. As an obligation of conduct characterized by its generality and variability, this report uses the four factors of the ILA to assess whether States have carried out their primary obligations in a manner compliant with the due diligence standard. Specifically, the degree of diligence required of a State varies according to the reasonableness of the measure taken, the degree of the risk, the State's knowledge of the risk, and the control it has over territory and resources. To better understand what GREVIO considers to be good practice, Chapter 3 provides a comparative analysis of the due diligence measures that other signatories have implemented. Through reference to certain Convention Articles, the report offers examples of how State action or inaction can be evaluated through the lens of this highly subjective standard. This report will conclude that North Macedonia is failing to effectively exercise due diligence as required under the Istanbul Convention and should consider the efforts of other member states when working to effectively meet its obligations.

³⁹ *ibid.*

⁴⁰ The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (adopted 7 April 2011, opened for signature 11 May 2011, entered into force 1 August 2014) CETS 210 (Istanbul Convention), Article 5.

Chapter Two

Due Diligence: Macro and Micro Legal Overview

The purpose of this chapter is to set out the concept of due diligence - in general and for the purposes of the Istanbul Convention (2011). Subject to the legal framework it is set within, the standard of due diligence is given content by the primary obligations states assume towards each other and towards all individuals within their jurisdiction.⁴¹ The principle thus acts as an oversight tool to ensure states make their best efforts and dedicate reasonable resources when fulfilling their duties.⁴² In explaining the general character of due diligence, this chapter differentiates between 1) the common characteristics of the norm across different areas of international law, and 2) the specific types of measures that are expected of states within each. While different requirements may change the degree of diligence required of states, there is no conflict of norms between the standard of due diligence in its general or sectorally-specific context.⁴³ Upon setting the theoretical framework, this chapter then focuses on due diligence as found in Article 5(2) of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention) (2011). Under the same objective and loosely-defined standard of diligence, States have discretion in deciding which measures are appropriate to implement. Accepting this, the report will utilise four factors set by the International Law Association (ILA) to determine whether States have complied with their due diligence obligations.⁴⁴

1.1: Scope of Due Diligence

Initially, States assume legal responsibility over breaches of obligations committed by State organs, officials and other actors exercising governmental authority.⁴⁵ However, the decline of the public/private divide in international law has expanded state responsibility to include the acts of private individuals.⁴⁶ State officials must

⁴¹ Council of Europe, 'CETS 210- Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence' (CoE, 2011).

⁴² Lisa Grans, 'The Concept of Due Diligence and the Positive Obligation to Prevent Honour-Related Violence: Beyond Deterrence' (2018) 22 Routledge.

⁴³ International Law Association (ILA) Study Group, 'ILA Study Group on Due Diligence in International Law' (International Law Association, 2016) <<https://ila.vettoreweb.com/Storage/Download.aspx?DbStorageId=1427&StorageFileGuid=ed229726-4796-47f2-b891-8cafa221685f>> accessed 31 Jan 2022.

⁴⁴ Ibid.

⁴⁵ Yearbook of the International Law Commission, *International Law Commission Draft Articles on State Responsibility* (Yb.ILC), 1980-II-2, 30 et seq. Articles 5, 6, and 7.

⁴⁶ Ronagh J.A. McQuigg 'What potential does the Council of Europe Convention on Violence against Women hold as regards domestic violence?', *The International Journal of Human Rights*, (2012) 16:7, 947-962, DOI: 10.1080/13642987.2011.638288.

respect the law, and refrain from the commission of wrongful acts. They must also protect individuals from harm by other non-state actors.

This report will focus on the obligation of due diligence: a standard of care that arises when States fulfil their obligations.⁴⁷ Due diligence determines what measures States will implement to uphold their international legal responsibilities (and avoid liability for negligence), and considers how they go about doing so. There is no single principle or rule for due diligence;⁴⁸ its relative nature means that it varies from case to case.⁴⁹ When exploring the content and scope of due diligence in international law, it is critical to understand the context as set by the relevant instrument (e.g. the Convention).

Due diligence obligations can be explicitly required under a rule, be part of a rule, or be required to act in conformity with a rule.⁵⁰ The nature of the role of due diligence can also be determined by a State's motivations and risk management strategies. A State may carry out its due diligence obligations in a legal capacity to avoid negligent conduct, or in a non-legal capacity - through policy initiatives and guides - to mitigate wider risks affecting government, society, and the economy.⁵¹ The standard's flexibility has been used to invoke the international responsibility of various actors (i.e. States, international organisations and corporate bodies), and encouraged the use of fact-finding processes across various fields of international law.⁵²

The assessment of compliance in regards to due diligence differs amongst the various treaties and rules of customary international law.⁵³ While the due diligence

⁴⁷ Riccardo Pisillo-Mazzeschi, 'The Due Diligence Rule and the Nature of the International Responsibility of States' 35 (1992) German Yearbook of International Law <https://heinonline.org/HOL/Page?handle=hein.journals/gyl35&div=4&g_sent=1&casa_token=&collection=journals> accessed 30 January 2022 9.

⁴⁸ Neil McDonald, *The Role of Due Diligence In International Law*, Cambridge University Press for the British Institute of International and Comparative Law, 2019.

⁴⁹ Ibid; For ICJ case law showing that the due diligence standard should be established on a case-by-case basis: Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro) Judgment (2007) ICJ Rep 43, para 429; Certain Activities Carried out by Nicaragua in the Border Area (Costa Rica v Nicaragua) and Construction of a Road in Costa Rica along the San Juan River (Nicaragua v Costa Rica) Joined Cases, Judgment (2015) ICJ Rep 665.

⁵⁰ Neil McDonald, *The Role of Due Diligence In International Law*, Cambridge University Press for the British Institute of International and Comparative Law, 2019.

⁵¹ Ibid.

⁵² For example, the use of the due diligence principle for ensuring corporate responsibility for human rights violation has been codified in the 2008 UN Protect, Respect and Remedy Framework and the 2011 Guiding Principles for its implementation https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf; see also Jonathan Bonnitcha, Robert McCorquodale, *The Concept of 'Due Diligence' in the UN Guiding Principles on Business and Human Rights*, European Journal of International Law, Volume 28, Issue 3, August 2017, Pages 899–919.

⁵³ James Crawford, *State Responsibility: The General Part* (Cambridge University Press, 2013) 219–32. See Genocide in Bosnia- ICJ explicitly cautions against transposition of the type of conduct required to discharge a legal obligation (ie to act with due diligence) from one area of international law

standard does not require a predetermined result, it presents States with a duty to prevent conduct that may lead to a breach of international obligations.⁵⁴ This previously posed a challenge for international human rights treaties, which are commonly organised in terms of 'rights' rather than 'obligations.'⁵⁵ However, recent developments show that States are increasingly using the due diligence standard to reinforce positive obligations to fulfil, protect and respect human rights.⁵⁶ Examples include the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) General Recommendation No.19 (1992) which called on States to take preventative action against VAW. It should be noted here that there are common characteristics across these different frameworks. The most prominent example is the categorisation of due diligence as concerning obligations of conduct - not result.

1.2: Due Diligence in Different International Legal Fields

Due diligence is one of many standards of conduct based on the same idea that "States are expected to strive to achieve certain common goals and, in the spirit of good neighbourliness, to prevent problems especially of transboundary and global harm."⁵⁷ In a few disciplines of international law, customary international law dictates how States are to fulfil their due diligence obligations.⁵⁸

In the field of international environmental law, due diligence has come to encompass the duty to prevent or minimise the risk of transboundary harm.⁵⁹ States have a duty to assess the potential or actual presence of environmental liabilities that may arise

to another. *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)* Judgment (2007) ICJ Rep 43.

⁵⁴ Riccardo Pisillo-Mazzeschi, 'The Due Diligence Rule and the Nature of the International Responsibility of States' 35 (1992) German Yearbook of International Law <https://heinonline.org/HOL/Page?handle=hein.journals/gyl35&div=4&g_sent=1&casa_token=&collection=journals> accessed 30 January 2022 9.

⁵⁵ Vladislava Stoyanova, 'Due diligence versus positive obligations: critical reflections on the Council of Europe Convention on Violence against Women', in Johanna Niemi, Lourdes Peroni and Vladislava Stoyanova (eds), *International Law and Violence Against Women: Europe and the Istanbul Convention* (Routledge 2020).

⁵⁶ Riccardo Pisillo-Mazzeschi, 'The Due Diligence Rule and the Nature of the International Responsibility of States' 35 (1992) German Yearbook of International Law <https://heinonline.org/HOL/Page?handle=hein.journals/gyl35&div=4&g_sent=1&casa_token=&collection=journals> accessed 30 January 2022 9.

⁵⁷ International Law Association (ILA) Study Group, 'ILA Study Group on Due Diligence in International Law' (*International Law Association*, 2016), <<https://ila.vettoreweb.com/Storage/Download.aspx?DbStorageId=1427&StorageFileGuid=ed229726-4796-47f2-b891-8cafa221685f>> accessed 31 Jan 2022.

⁵⁸ Riccardo Pisillo-Mazzeschi, 'The Due Diligence Rule and the Nature of the International Responsibility of States' 35 (1992) German Yearbook of International Law <https://heinonline.org/HOL/Page?handle=hein.journals/gyl35&div=4&g_sent=1&casa_token=&collection=journals> accessed 30 January 2022 9.

⁵⁹ Medes Malaihollo, *Due Diligence in International Environmental Law and International Human Rights Law: A Comparative Legal Study of the Nationally Determined Contributions under the Paris Agreement and Positive Obligations under the European Convention on Human Rights*. *Neth Int Law Rev* 68, 121–155 (2021) <<https://doi.org/10.1007/s40802-021-00188-5>>.

from their territory, and thus take precautionary measures to prevent such risk or harm.⁶⁰ An aspect of this duty to take care includes an obligation to carry out an environmental impact assessment.⁶¹ The need to conduct this assessment will arise where the planned activity of a state poses a risk of causing transboundary harm.⁶² Similarly, this duty persists throughout the project undertaken by the state, with a requirement to monitor the effects on the environment.⁶³

Due diligence in peace and security law includes international humanitarian law which provides for rules protecting victims of conflicts and rules which regulate conduct in warfare.⁶⁴ Likewise, there is a standard of care which is used to assess whether states are in compliance. This obligation of due diligence placed on states requires that they do the utmost, and deploy '*adequate means*' to 'obtain a certain result'.⁶⁵ This obligation is not to secure a result, rather an obligation of diligence in their conduct.⁶⁶ For instance, under 'the principle of distinction' states cannot directly target civilian or civilian objects in acts of warfare.⁶⁷ Nevertheless, these protected persons and objects may be indirectly harmed as a consequence of targeted military attacks. Under the principle of proportionality there is a requirement, that this unintended harm was not excessive, in consideration of the expected military advantage of the attack against targets which were deemed legitimate. Furthermore, every possible measure must have been taken in order to limit the impacts on civilians.⁶⁸

Due diligence in International Economic law embraces international investment law which extends the duty of due diligence to require that states comply with rules regarding the treatment of 'aliens' to the host state, to provide full protection and security as well as fair and equitable treatment in their access to justice.⁶⁹ An example of this is the requirement on states to satisfy an international minimum standard which relates to diligent conduct in matters regarding the investigation of offences committed by aliens. In order to comply with this standard, states must demonstrate sufficient government action, in consideration of the manner in which it

⁶⁰ Ibid.

⁶¹ ARGENTINA v. URUGUAY, Judgement 2010 at [205].

⁶² ARGENTINA v. URUGUAY, Judgement 2010 at [203].

⁶³ Ibid 205.

⁶⁴ Marco Longobardo, 'Due Diligence in International Humanitarian Law' (2020) Due Diligence in the International Order at page 183.

⁶⁵ INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA, Seabed Disputes Chamber, Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area, Advisory Opinion of 1 February 2011, ITLOS Reports 2011, 10, para. 110.

⁶⁶ Marco Longobardo, 'Due Diligence in International Humanitarian Law' (2020) Due Diligence in the International Order at page 184.

⁶⁷ Marco Longobardo, 'Due Diligence in International Humanitarian Law' (2020) Due Diligence in the International Order at page 184.

⁶⁸ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, Art.51(5)(b).

⁶⁹ Rajput Aniruddha, 'Due Diligence in International Investment Law' (2020) Due Diligence in the International Order 267.

acted alongside the relevant circumstances.⁷⁰ Likewise, this obligation is about diligence in the conduct of the state, rather than a requirement of any specific result.⁷¹

1.3: Key Characteristics of Due Diligence Obligations

Due diligence is concerned with conduct, not result.⁷² The focus is on the measures in place before an outcome arose, the conduct during, and the conduct after. States are afforded flexibility in how they meet the standard when acting in pursuance of the primary obligation in question. Nevertheless, this may be limited in certain situations where only a specific measure will be able to meet the standard.⁷³

To assess whether state conduct accords with the due diligence standard, the International Law Association (ILA) highlights four measures.⁷⁴ These measures serve several functions: they determine the existence of a due diligence obligation, its scope, its content, and whether it has been breached.⁷⁵ This further highlights the adaptability of the standard. It is implicit in the definitions of these measures that they are variable, depending on such factors as state organisation and resources.

1. Reasonableness.

States are only expected to take measures which are reasonable. Reasonableness implies evaluating what to realistically expect from states. Nonetheless, the term cannot be set broadly and as such, the standard is highly subjective and content specific.⁷⁶ Assessing a measure's reasonableness thus depends on factors, limitations and interests that are

⁷⁰ Ibid.

⁷¹ Ibid and International Centre for Settlement of Investment Disputes (ICSID), *ECO Guatemala Holdings, LLC v. Republic of Guatemala*, ICSID Case No. ARB/10/23, Award, 19 December 2013, para. 454-5.

⁷² Ellen Campbell, Elizabeth Dominic, Snezhana Stadnik, and Yuanzhu Wu, '*Due Diligence Obligations Of International Organizations Under International Law*' [2018] 50 *International Law and Politics* <<https://www.nyuilp.org/wp-content/uploads/2018/07/NYI204.pdf>> accessed 30 January 2022; Vladislava Stoyanova, *Due Diligence versus Positive Obligations: Critical Reflections on the Council of Europe Convention on Violence against Women*, In Johanna Niemi, Lourdes Peroni, and Vladislava Stoyanova (eds), *International Law and Violence Against Women: Europe and the Istanbul Convention* (Routledge 2020) 10.

⁷³ Vladislava Stoyanova, *Due Diligence versus Positive Obligations: Critical Reflections on the Council of Europe Convention on Violence against Women*, In Johanna Niemi, Lourdes Peroni, and Vladislava Stoyanova (eds), *International Law and Violence Against Women: Europe and the Istanbul Convention* (Routledge 2020) 11.

⁷⁴ Vladislava Stoyanova, *Due Diligence versus Positive Obligations: Critical Reflections on the Council of Europe Convention on Violence against Women*, In Johanna Niemi, Lourdes Peroni, and Vladislava Stoyanova (eds), *International Law and Violence Against Women: Europe and the Istanbul Convention* (Routledge 2020) 8.

⁷⁵ Ibid 9.

⁷⁶ *Continental Shelf Case (Tunisia v Libyan Arab Jamahiriya)* (Judgement) [1982] ICJ Rep 18.

unique to the State itself and influence the performance of its due diligence obligations.

2. Control.

The different capacities of states are the subjective factors which determine the degree of diligence required of the state and account for the standard's potential variabilities. These factors include a State's territorial capacities and possible limitations posed by its access to resources, the geographical peculiarities of that area or the involvement and interference of non-state actors (for example private military contractors, international organisations and paramilitary forces).⁷⁷ The extent of the State's due diligence obligations will thus vary according to the degree of control they exercise in and over their territory. An absence of effective territorial authority does not relieve the state of its international duties.

3. Degree of Risk

To fulfil the due diligence standard, a state must take measures which are proportionate to the degree of risk present.⁷⁸ Due diligence obligations may change in relation to the risks involved in the activity. A higher risk will mean "more demanding obligations of [due] diligence can be imposed on the State".⁷⁹ It is worth noting that there is some uncertainty surrounding the definitions of "real and immediate" commonly seen in due diligence literature for the degree of risk. This has arisen because of ECtHR flexibility in allowing periods as long as years to be considered as falling within this definition.⁸⁰

4. State Knowledge

A State can only be expected to act in accordance with a due diligence obligation if it has knowledge of the situation which requires action.⁸¹ Once a state knows of a certain risk, it is obligated to employ all reasonable means at its disposal to prevent harm or to mitigate its consequences. However, in some circumstances a State may be under a specific obligation to use its best

⁷⁷ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)* Judgment, ICJ Reports 2007 p.43.

⁷⁸ Pisillo-Mazzeschi R, 'The Due Diligence Rule and the Nature of the International Responsibility of States' 35 (1992) German Yearbook of International Law <https://heinonline.org/HOL/Page?handle=hein.journals/gyl35&div=4&g_sent=1&casa_token=&collection=journals> accessed 30 January 2022 9.

⁷⁹ Vladislava Stoyanova, 'Due diligence versus positive obligations: critical reflections on the Council of Europe Convention on Violence against Women', in Johanna Niemi, Lourdes Peroni and Vladislava Stoyanova (eds), *International Law and Violence Against Women: Europe and the Istanbul Convention* (Routledge 2020).

⁸⁰ *Pulp Mills on the River Uruguay (Argentina v Uruguay)* (Judgement) [2010] ICJ Rep 14.

⁸¹ *Corfu Channel Case (UK v Albania)* (Merits) [1949] ICJ Rep 4.

efforts at gaining knowledge of an activity within its territory or jurisdiction. Therefore, due diligence does not act to reward wilful ignorance.⁸²

Having considered the concept of due diligence with a broad, inter-framework scope, the second part of the report will focus specifically on its iteration in Article 5 of the Istanbul Convention (2011) (State Obligations and Due Diligence). We will outline the Article itself; considering the explanatory notes and surrounding literature. Continuing the theme of horizontal comparison, we will then briefly explore how this interpretation differs from those found in other international human rights frameworks.

2: Article 5 in Context

2.1: Article 5 - State Obligations and Due Diligence

Article 5 is split into two paragraphs:

Article 5:⁸³

- (1): Parties shall refrain from engaging in any act of violence against women and ensure that State authorities, officials, agents, institutions and other actors acting on behalf of the State act in conformity with this obligation.
- (2): Parties shall take the necessary legislative and other measures to exercise due diligence to prevent, investigate, punish and provide reparation for acts of violence covered by the scope of this Convention that are perpetrated by non-State actors.

5(1) concerns the State's primary obligation to prevent its actors from engaging in violence against women.⁸⁴ As it concerns both refraining from action and the active prevention of certain actions it has elements of both positive and negative obligations. 5(2) concerns the State's obligation to exercise due diligence when dealing with violence perpetrated by non-State actors.⁸⁵ 5(2) is a secondary (or

⁸² Vladislava Stoyanova, 'Due diligence versus positive obligations: critical reflections on the Council of Europe Convention on Violence against Women', in Johanna Niemi, Lourdes Peroni and Vladislava Stoyanova (eds), *International Law and Violence Against Women: Europe and the Istanbul Convention* (Routledge 2020).

⁸³ Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, Council of Europe Treaty Series No 210 (2011) Article 5 <<https://rm.coe.int/168008482e>> accessed 22 February 2022.

⁸⁴ Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence Istanbul, paragraph 57, 11.V.2011 <<https://rm.coe.int/16800d383a>> accessed 22 February 2022.

⁸⁵ J Combacau and D Alland, 'Primary' and 'Secondary' Rules in the Law of State Responsibility *Categorizing International Obligations* [1985] 16 *Netherlands Yearbook of International Law* <<https://www.cambridge.org/core/journals/netherlands-yearbook-of-international-law/article/primary-and-secondary-rules-in-the-law-of-state-responsibility-categorizing-international-obligations/7834A45744DBF3978F43862902B0504F>> accessed 30 January 2022 81.

“corollary”) obligation which attaches a standard of care to those primary obligations found in the Convention and applicable to non-State actors.⁸⁶ The term “non-state actor” refers to private persons, as opposed to public (or State) actors.⁸⁷ 5(1) is a relatively straightforward obligation, and will not be the focus of this report. 5(2) engages a due diligence standard, which is necessarily more complicated; as has hopefully been shown. How Article 5(2) has been drafted will be the focus of this section.

2.2: Drafting

Article 5(2) requires that a State “organise [its] response [...] in a way that allows relevant authorities to diligently prevent, investigate, punish and provide reparation for such acts of violence”.⁸⁸ Since due diligence is just concerned with conduct, it is not necessary that these achieve a certain outcome.⁸⁹

Several of these requirements merit further examination. The inclusion of prevention is interesting, since determinations as to whether a State acted with due diligence are usually (but not necessarily) conducted after a breach has occurred. Where state responsibility is engaged, there will be an evaluation of any preventative acts taken prior to the incident itself.⁹⁰ This is significant as well as encouraging for women’s protection. It widens the scrutiny of a State’s response to include the period before the obligation to investigate. It is also likely that prevention includes acts taken to prevent further violence against victims, such as witness protection programs or restraining orders.

It is worth noting the inclusion of prevention and reparation as possible responses to the criticisms of existing due diligence interpretations by the UN Special Rapporteur on Violence against Women in 2006.⁹¹ In their report, the Special Rapporteur

⁸⁶ International Law Association (ILA) Study Group, 'ILA Study Group on Due Diligence in International Law' (*International Law Association*, 2016), <<https://ila.vettoreweb.com/Storage/Download.aspx?DbStorageId=1427&StorageFileGuid=ed229726-4796-47f2-b891-8cafa221685f>> accessed 31 January 2022 6.

⁸⁷ J Combacau and D Alland, 'Primary' and 'Secondary' Rules in the Law of State Responsibility *Categorizing International Obligations* [1985] 16 *Netherlands Yearbook of International Law* <<https://www.cambridge.org/core/journals/netherlands-yearbook-of-international-law/article/abs/primary-and-secondary-rules-in-the-law-of-state-responsibility-categorizing-international-obligations/7834A45744DBF3978F43862902B0504F>> accessed 30 January 2022 81.

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*

⁹⁰ Ellen Campbell, Elizabeth Dominic, Snezhana Stadnik, and Yuanzhu Wu, 'Due Diligence Obligations Of International Organizations Under International Law' [2018] 50 *International Law and Politics* <<https://www.nyujilp.org/wp-content/uploads/2018/07/NYI204.pdf>> accessed 30 January 2022; V Stoyanova, *Due Diligence versus Positive Obligations: Critical Reflections on the Council of Europe Convention on Violence against Women*. In Niemi, J., Peroni, L., and Stoyanova, V. (eds), *International Law and Violence Against Women: Europe and the Istanbul Convention* (Routledge 2020) 11.

⁹¹ Yakin Ertürk, 'The due diligence standard as a tool for the elimination of violence against women : report of the Special Rapporteur on Violence against Women, Its Causes and Consequences' (*United*

(henceforth “SR”) labelled existing interpretations “State-centric” and reactionary in [their] approach to violence against women.⁹² This, they claimed, amounted to a “neglect” of the obligations of prevention and reparation, now inherent in Article 5 as printed above.⁹³ Going further, the SR criticised existing measures for tiptoeing around the wider cultural and societal issues that cause violence against women, dealing with which is now clearly envisioned by the Convention (see for example Article 13),⁹⁴ and therefore included under the due diligence requirement of prevention.

“[R]eparation” under Article 5(2) includes various measures. These are summarised as “restitution, compensation, rehabilitation, satisfaction, and guarantee of non-repetition”.⁹⁵ The last example (“guarantee of non-repetition”) is similar, and has the potential to overlap with post-incident actions preventing future harm.

2.3: Article 5(2) Obligations in Context

Under Article 5(2), due diligence requires investigation into instances of violence against women, and punishment of offenders. This report will consider the importance of police proceedings in cases of domestic violence, amongst other Article considerations. Article 5(2) also requires States to act with due diligence when providing reparation for victims of violence. In this report there will be a consideration of victim reparations and the right to child support. These have been selected due to their relevance in the context of North Macedonia.

2.4: ECtHR interpretation

While the European Court of Human Rights does not apply and interpret the Istanbul Convention (2011) it is still worth considering how the Court has approached due diligence. There are two reasons for this. First, both the Istanbul Convention (2011) and the European Court of Human Rights (ECtHR) are products of the Council of Europe. Second, the jurisprudence of the Istanbul Convention and the ECtHR overlaps as many of the rights protected under the Istanbul Convention also fall under the ECHR. Therefore, looking at the ECtHR’s interpretation might provide some insight into the drafting of Article 5(2).

Nations Digital Library, 2006) <<https://digitallibrary.un.org/record/565946?ln=en>> accessed 7 November 2022.

⁹² Ibid above, page 2.

⁹³ Ibid.

⁹⁴ Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, Council of Europe Treaty Series No 210 (2011) Article 13 <<https://rm.coe.int/168008482e>> accessed 22 November 2021.

⁹⁵ Neil McDonald, ‘The Role of Due Diligence In International Law’ [2019] 68(4) Cambridge University Press for the British Institute of International and Comparative Law, <<https://www.cambridge.org/core/journals/international-and-comparative-law-quarterly/article/abs/role-of-due-diligence-in-international-law/B92BB8B8E094EA071AD82380C2FA9340>> accessed 30 January 2022 60.

Unhelpfully, there is very little judicial consideration of the due diligence standard in ECtHR case law. This is likely due to the fact that Strasbourg doesn't commonly use the term.⁹⁶ While a conceptual equivalent had existed long before and sometimes “[underlay] the court’s reasoning” in similar cases,⁹⁷ its inclusion under that name in the Istanbul Convention is surprising. As Stoyanova points out, there are two cases in which the Court considered due diligence in relation to primary obligations.⁹⁸ The first is *Opuz v Turkey*.⁹⁹ The Second is *Talpis v Italy*.¹⁰⁰

In *Opuz* the court was required to consider whether Turkish State actors had responded with due diligence in respect of a case of violent and pervasive domestic abuse.¹⁰¹ Where they ought to have taken more substantial protective measures, their leniency towards the abuser meant that he was able to seek out and kill the abused’s mother.¹⁰² It was held that Turkey had failed to fulfil the obligation to protect life (as enshrined in Article 2 of the ECHR) with due diligence.¹⁰³ The Court emphasised the failure to exercise due diligence with the following dicta at paragraph 149:

“[...] in response to the applicant's mother's repeated requests for protection, the police and the Magistrate's Court merely took statements from H.O. and released him [...]. While the authorities remained passive for almost two weeks apart from taking statements, H.O. shot dead the applicant's mother. [...] In these circumstances, **the Court concludes that the national authorities cannot be considered to have displayed due diligence.** They therefore failed in their positive obligation to protect the right to life of the applicant's mother within the meaning of Article 2 of the Convention“.¹⁰⁴ [emphasis added].

⁹⁶ Vladislava Stoyanova, *Due Diligence versus Positive Obligations: Critical Reflections on the Council of Europe Convention on Violence against Women*. In Niemi, J., Peroni, L., and Stoyanova, V. (eds), *International Law and Violence Against Women: Europe and the Istanbul Convention* (Routledge 2020) 7.

⁹⁷ Bernhard Hofstötter, 'European Court of Human Rights: Positive obligations in *E and others v United Kingdom*' [2004]2(3) *International Journal of Constitutional Law* <<https://academic.oup.com/icon/article/2/3/525/789233>> accessed 30 January 2022 531.

⁹⁸ Vladislava Stoyanova, *Due Diligence versus Positive Obligations: Critical Reflections on the Council of Europe Convention on Violence against Women*. Niemi, J., Peroni, L., and Stoyanova, V. (eds), *International Law and Violence Against Women: Europe and the Istanbul Convention* (Routledge 2020) 6.

⁹⁹ *Opuz v Turkey* (2010) 50 EHRR 28.

¹⁰⁰ *Talpis v Italy* (2017) ECHR 224.

¹⁰¹ *Opuz v Turkey* (2010) 50 EHRR 28, 131.

¹⁰² *Opuz v Turkey* (2010) 50 EHRR 28, 7-38.

¹⁰³ *Opuz v Turkey* (2010) 50 EHRR 28., 149.

¹⁰⁴ *Opuz v Turkey* (2010) 50 EHRR 28., 149.

While preceding the Istanbul Convention (2011), *Opuz* is evidence of the ECtHR applying a due diligence standard. As Stoyanova points out however, it does so in a specific context and “without prejudice to the detailed elaboration of the concrete tests applicable under the positive obligations framework.”¹⁰⁵ It is therefore not particularly helpful for the purposes of establishing a solid ECtHR definition of due diligence.

Another case which discusses due diligence in an ECHR context is *Talpis v Italy*. This case had similar facts, in which the applicant alleged that a lack of State protection had resulted in the killing of her son by a domestic abuser. The Court again found that the State had failed to exercise due diligence while obligated under Article 2 of the ECHR. Once again however the Court gave little explicit consideration to due diligence. It should be noted as well that the Court in *Talpis* frequently engages in considerations of aspects of due diligence identified earlier in this chapter (knowledge; determination of risk), but outside of and apart from any explicit discussion of due diligence. It might be drawn from this that due diligence is a concept which the ECtHR is not entirely confident in using, at least not under that banner. This makes its inclusion in Article 5(2) slightly confusing.

2.5: Article 5(2) in Relation to the Other Articles of the Istanbul Convention

Throughout the research for this report, two methods of approaching the Article 5(2) due diligence obligation were considered. The first method looked at later Articles of the Convention as imbued with the due diligence standard. In other words, looking at Article 5 in this way leads to the conclusion that in implementing the Articles as written, a state will be acting with due diligence. The second approach considers a separation of the standard and the specific Article, so that (for example) a state must implement Article 8 with due diligence as per Article 5. It is possible that one of these ideas is correct and the other incorrect, but this report contends that both ideas can work together. The Articles seem to be structured so as to guide the state towards acting with due diligence in the specific scenarios legislated for, whilst Article 5 ensures that implementation is necessarily performed with due diligence. The second approach supports the first, and therefore both should be employed in unison. This is a very theoretical way of looking at Article 5, but it is important for understanding Chapter 3 - where due diligence is discussed alongside the later (more specific) Articles of the Convention. In a sentence then: while the later Articles have been drafted with due diligence in mind, it is Article 5 which ensures that they

¹⁰⁵ Pisillo-Mazzeschi R, 'The Due Diligence Rule and the Nature of the International Responsibility of States' 35 (1992) German Yearbook of International Law <https://heinonline.org/HOL/Page?handle=hein.journals/gyl35&div=4&g_sent=1&casa_token=&collection=journals> accessed 30 January 2022 9.

are implemented with due diligence. Such a stance justifies considering the substantive Articles in terms of due diligence, as is done shortly in Chapter 3.

Conclusion

To conclude this chapter, it has been shown that Article 5(2) of the Istanbul Convention applies a due diligence standard to acts seeking to “prevent, investigate, punish and provide reparation for acts of violence covered by the scope of this Convention that are perpetrated by non-State actors”. While a single unifying definition of the concept has proven elusive, there are certain attributes that can be considered fundamental to any interpretation:

- The standard is focused on conduct, not result.
- The standard is considered a secondary obligation, relating to and evaluating adherence to primary obligations as set out in treaty and law.
- The most helpful metrics for applying due diligence under Article 5(2) - and the metrics chiefly used in the remainder of this report - are identified by the International Law Association (ILA). They comprise reasonableness, control, degree of risk and state knowledge.

With these measures in mind, the rest of this report will focus on how various states have tried (and/or failed) to act with due diligence in pursuance of the elimination of violence against women. International consideration will allow comparative analysis and hopefully provide both advice and experience. The North Macedonian state can draw on these examples to seek more effective implementation of the Istanbul Convention.

Chapter Three

Horizontal Comparison of Other States' Due Diligence Implementations

This chapter will consider how other signatories have implemented the Istanbul Convention with due diligence - successfully or otherwise. Such a lens is justified by the approach detailed in section 2.5 above - which considers due diligence as both imbued in each Article and supported overall by Article 5. Due diligence compliance will be reviewed in Austria, Denmark, France, and Malta in detail. There will also be some intermittent and less detailed considerations of several other party states, namely Portugal, Italy, Finland, and Monaco. These are intended to provide quick and concise horizontal comparisons. Each state is a party to the Istanbul Convention and offers a different territorial size, level of governmental reach, and extent of available funds. The result of considering a varied sample size is a broadening of the range of due diligence obligations, implementations, and enforcement reviewed in this report. This chapter will begin with a short introduction to the countries primarily considered, before taking an ordered approach to assorted Convention Articles. Such an exercise will illuminate practices which GREVIO has considered effective for the purposes of the Convention, and approaches which have been either ineffective or simply lacking. This will be helpful in providing advice, experience and context for North Macedonia's implementations.

1: State Introductions

1.1: Malta:

Malta is a parliamentary republic and one of the top ten most densely populated countries in the world. Its GDP has been steadily increasing since the 1970s and it ranks 25th on the Legatum Prosperity Index.¹⁰⁶ With such a developed economy and political system, Malta would have the appropriate infrastructure to implement recommended changes. However, Malta ranks 44th on the Gender Inequality Index Rank.¹⁰⁷ Furthermore, according to the Global Database on Violence Against Women, 15% of women in Malta experience physical and/or sexual intimate partner violence in their lifetime (from the age of fifteen).¹⁰⁸

The GREVIO report on the Istanbul Convention identifies several areas in which the Maltese government is making positive progress towards fulfilling their due diligence

¹⁰⁶ The World Bank, 'GDP per capita (current US\$) - Malta' (*The World Bank Data*, 2020) <<https://data.worldbank.org/indicator/NY.GDP.PCAP.CD?locations=MT>> accessed 7 February 2022.

¹⁰⁷ Selim Jahan, 'Human development for Everyone' (*United Nations Development Report*, 2016) <https://hdr.undp.org/sites/default/files/2016_human_development_report.pdf> accessed 7 February 2022 214.

¹⁰⁸ European Union Agency for Fundamental Rights, 'Violence against women: an EU-wide survey' (2014) <https://fra.europa.eu/sites/default/files/fra_uploads/fra-2014-vaw-survey-main-results-apr14_en.pdf> accessed 7 February 2022 24.

obligations.¹⁰⁹ Articles 13 (Awareness Raising) and 7 (Comprehensive and Coordinated Policies) are just a few areas which have seen positive progress in combating VAW and DM. Changes such as the adoption of '*Society's Concern – Gender-Based Violence and Domestic Violence Strategy and Action Plan* and the *Gender-Based Violence and Domestic Violence Act*' have been praised by the report.¹¹⁰ There are however areas requiring improvement. Examples include: immediate support services; evidence handling procedures; and gaps in support services for underage victims.¹¹¹ As a result of the COVID-19 pandemic levels of DM and VAW have increased, consequently increasing the need for governments to invest in combating these issues and ensuring they meet due diligence obligations.¹¹²

1.2: Austria:

Austria is one of the wealthiest nations in Europe.¹¹³ It also has a lower rate of domestic violence than the average in Europe, with 20% of women having experienced some form of physical or sexual violence,¹¹⁴ compared to an average of 33% for the EU as a whole.¹¹⁵ Despite this, the issue of violence against women is rising in Austria, having worsened during the pandemic.¹¹⁶ By June of 2021, 14 women in Austria had been killed that year.¹¹⁷ This has resulted in protests in the country, making it hard to claim that the state has little knowledge of the increasing violence.¹¹⁸ This also means that the degree of risk in Austria has increased. Finally, as a wealthy nation¹¹⁹ the level of control and reasonableness expected from Austria

¹⁰⁹ Grevio, 'Baseline Evaluation Report Malta' (*GREVIO: Council of Europe*, 2020) <<https://rm.coe.int/grevio-inf-2020-17-malta-final-report-web/1680a06bd2>> accessed 7 February 2022 15.

¹¹⁰ Ibid, 7.

¹¹¹ Ibid, 8.

¹¹² Policy Department for Citizens' Rights and Constitutional Affairs, 'Tackling violence against women and domestic violence in Europe' (*European Parliament*, October 2020) <[https://www.europarl.europa.eu/RegData/etudes/STUD/2020/658648/IPOL_STU\(2020\)658648_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/658648/IPOL_STU(2020)658648_EN.pdf)> accessed 8 February 2022 12.

¹¹³ European Chamber, '2014-10 Richest countries in Europe' (*European Chamber*, October 2014) <<https://eucham.eu/2014-10-richest-countries-in-europe/>> accessed 8 February 2022.

¹¹⁴ UN Women, 'Prevalence Data on Different Forms of Violence against Women' (*UN Women: Global Database on Violence against Women*) <<https://evaw-global-database.unwomen.org/fr/countries/europe/austria>> accessed 8 February 2022.

¹¹⁵ Anne Laure Humbert, Sofia Strid, Jeff Hearn, Dag Balkmar, 'Undoing the 'Nordic Paradox': Factors affecting rates of disclosed violence against women across the EU' (*Plos One*, 5 May 2021) <<https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0249693>> accessed 8 February 2022 3.

¹¹⁶ Associated press, 'Why Austria is struggling to get a grip on rising violence against women' (*South China Morning Post*, 4 June 2021) <<https://www.scmp.com/news/world/europe/article/3136120/why-austria-struggling-get-grip-rising-violence-against-women>> accessed 8 February 2022.

¹¹⁷ Ibid.

¹¹⁸ Ibid.

¹¹⁹ European Chamber, '2014-10 Richest countries in Europe' (*European Chamber*, October 2014) <<https://eucham.eu/2014-10-richest-countries-in-europe/>> accessed 8 February 2022.

is high: they have the resources to protect women, prevent violence and can act proportionately to do so.

1.3: Denmark:

Denmark has one of the highest national gross domestic products in the world - the result of an extremely lucrative economy.¹²⁰ Despite this, GREVIO notes that funding for women's aid in Denmark is inconsistent, and civil society minority risk groups are provided one-off support via a "rate adjustment pool" rather than continuous annual funding.¹²¹ Furthermore, successful pilot projects - such as psychological support - which proved extremely beneficial to victims of domestic violence were not provided on a nation-wide basis due to "high costs".¹²² This is disappointing because it has been noted that multi-agency holistic approaches addressing victim safety, empowerment, law enforcement, criminal responsibility, and the interests of affected children would largely increase the chance of ending similar abuse.¹²³ These major categories of prevention need to be granted increased attention and funding. Although efforts have been made, assessing adherence to the due diligence standard will highlight major gaps.

1.4: France:

Utilising their extensive resources and personpower, France has demonstrated enduring commitment to implementing the Convention at a national and international level.¹²⁴ This has been demonstrated through inter-ministerial plans between 2005 and 2016 which have been constantly renewed.¹²⁵ Furthermore, the success of this approach has been supplemented through legislation and measures implemented by the government. In spite of this, the statistics regarding violence against women in France remain concerning, as highlighted by GREVIO.¹²⁶ As state control is closely tied to reasonableness, by extension, it will be difficult to find any GREVIO-recommended implementations unreasonable for the French state. In particular,

¹²⁰ Britannica, 'Economy of Denmark' (*Britannica*) <<https://www.britannica.com/place/Denmark/Economy>> accessed 8 February 2022.

¹²¹ Grevio, 'Baseline Evaluation Report Denmark' (*GREVIO: Council of Europe*, 2017) <<https://rm.coe.int/grevio-first-baseline-report-on-denmark/16807688ae>> accessed 7 February 2022 16.

¹²² Group of experts on action against violence against women and domestic violence (GREVIO), 'SECOND GENERAL REPORT ON GREVIO'S ACTIVITIES' (*Council of Europe*, December 2020) <<https://rm.coe.int/grevio-s-second-activity-report-2021/1680a2165c>> accessed 8 February 2022 37.

¹²³ Grevio, 'Baseline Evaluation Report Denmark' (*GREVIO: Council of Europe*, 2017) <<https://rm.coe.int/grevio-first-baseline-report-on-denmark/16807688ae>> accessed 7 February 2022 29-30.

¹²⁴ Grevio, 'Baseline Evaluation Report France' (*GREVIO: Council of Europe*, 2019) <[https://s3.amazonaws.com/tld-documents.llnassets.com/0032000/32178/grevio_inf\(2019\)16_grevio's%20report%20on%20france_eng.pdf](https://s3.amazonaws.com/tld-documents.llnassets.com/0032000/32178/grevio_inf(2019)16_grevio's%20report%20on%20france_eng.pdf)> accessed 7 February 2022 75.

¹²⁵ Ibid, 19.

¹²⁶ Ibid, 75.

GREVIO has called attention to a need for France to continue developing their understanding of violence against women as gender-based,¹²⁷ which also engenders an intersectional approach to tackling discrimination. It is important to recognise that there are certain groups that might experience multiple levels of discrimination such as young women, elderly women, women from the LGBT community, women in prostitution and women with disabilities. In order to achieve these aims, an inter-institutional cooperative approach should be adopted, taking into account the recommendations made in the 2019 GREVIO report on France's implementation of the Istanbul Convention.¹²⁸ In their report, GREVIO restricted all Article 5 related assessments to Articles 29 through 57.¹²⁹ For this reason the French implementations cover only Articles in that range.

2: Horizontal Analysis of Due Diligence Adherence with Respect to Specific Convention Articles

In this next section there will be an analysis of Article-specific state implementations. For each Article considered, the acts of a single state will provide the focus of the discussion. Following this, there will be some further discussions relating to other states and their approach to that same obligation. This approach should provide a good deal of insight into where other member states are succeeding and falling short of their due diligence obligations.

2.1: Article 7: Comprehensive and Coordinated Policies

Article 7 of the Convention seeks to ensure a holistic approach is taken by parties in their response to violence against women. Parties are required to implement policies which are "comprehensive and co-ordinated" in order to combat and prevent all forms of violence within the scope of the Convention.¹³⁰ Coordination under this Article requires cooperation amongst relevant state actors in implementing measures which place the rights of victims at the fore.¹³¹

2.1.1: Malta

Malta's 'Society's Concern - Gender-based Violence and DV Strategy and Action Plan' (adopted in 2017) provided an outline for a broadening of the policies currently addressing domestic violence.¹³² At the centre of this plan was the intention to

¹²⁷ Ibid,13.

¹²⁸ Ibid, 75.

¹²⁹ Ibid, 9.

¹³⁰ Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, Council of Europe Treaty Series No 210 (2011) Article 7 <<https://rm.coe.int/168008482e>> accessed 8 February 2022.

¹³¹ Ibid.

¹³² Ministry for European Affairs and Equality, 'Society's Concern: Gender-Based Violence and Domestic Violence Strategy & Action Plan' (*Ministry for European Affairs and Equality*, 2020)

change the “hearts and minds of individuals”. This was an appeal to all, but focused on men and boys in the hope of progressing attitudes towards gender equality. The most successful example of Malta exercising due diligence in this regard, is through the transformation of the Commission on Domestic Violence into the Commission on Gender-Based Violence and Domestic Violence ('Commission') which has a wider and stronger directive, with access to greater financial resources. GREVIO has commended the Commission, which has been provided with a distinct legal personality as an institutional entity.¹³³ Furthermore, intersectionality is ensured through diverse membership.¹³⁴ The Commission acts as chair for the Inter-Ministerial Committee to monitor the coordination of the Action Plan.¹³⁵ However, the GREVIO report identified a need for the Committee and the Commission to ensure better consultation with civil society.¹³⁶ Malta has acknowledged the need to ensure that the Commission is acting as an effective intermediary by incorporating the input of more NGOs into Committee meetings.¹³⁷

Malta has also sought to tackle violence against women through the implementation of a comprehensive legislative overhaul which saw the introduction of Act XIII of the Gender-Based Violence and Domestic Violence Act in 2018.¹³⁸ This Act renders void any legislation which is not consistent with the Convention except where domestic law already provides a higher level of protection to victims.¹³⁹ Similarly, this was praised by GREVIO for the Act's coordinated implementation of policies effectively transposed the Convention into Maltese law. This demonstrates a further example of how Article 7 has been addressed by Malta, meeting their due diligence obligation to prevent, investigate and punish non-state perpetrators of violent acts within the Convention through the implementation of a comprehensive legislative framework.¹⁴⁰

2.1.2: Article 7 links to other countries

Finland managed to carry out a cross-sector Action Plan to reduce violence against women which targeted primary, secondary and tertiary prevention of different forms

<https://meae.gov.mt/en/Documents/GBV_DV%20Strategy%20and%20Action%20Plan%20publication.pdf> accessed 8 February 2022 7.

¹³³ Grevio, 'Baseline Evaluation Report Malta' (*GREVIO: Council of Europe*, 2020) <<https://rm.coe.int/grevio-inf-2020-17-malta-final-report-web/1680a06bd2>> accessed 7 February 2022

7.

¹³⁴ Ibid.

¹³⁵ Ibid, 16.

¹³⁶ Ibid, 64.

¹³⁷ Ibid, 23.

¹³⁸ Policy Department for Citizens' Rights and Constitutional Affairs, 'Tackling violence against women and domestic violence in Europe' (*European Parliament*, October 2020) <[https://www.europarl.europa.eu/RegData/etudes/STUD/2020/658648/IPOL_STU\(2020\)658648_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/658648/IPOL_STU(2020)658648_EN.pdf)> accessed 8 February 2022 28.

¹³⁹ Article 22 Gender-Based Violence and Domestic Violence Act 2018.

¹⁴⁰ Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, Council of Europe Treaty Series No 210 (2011) Articles 5 & 7 <<https://rm.coe.int/168008482e>> accessed 8 February 2022.

of violence. Finland carried out both public awareness raising and professional training of relevant personnel, while simultaneously creating a network of points of reference throughout the different levels of governance in the country.¹⁴¹

Portugal has created a set of policies which are comprehensive and coordinated through cooperation by the Commissioner for Citizenship and Gender Equality (national coordination body - 'CIG') and the Portuguese National Human Rights Committee. CIG is attached to the Presidency of the Ministers rather than a particular ministry, thus enjoying stronger political support. Also, national action plans in this area gain a quasi-mandatory nature by being approved by the Council of Ministers.¹⁴²

Similarly, coordinated policies have allowed Austria to make progress in regards to Article 7. The country has had legislation in place since 1997 to permit the removal of a perpetrator from the family home.¹⁴³ Austria has a National Action Plan with the aim of protecting women from violence, with both short and long-term policies.¹⁴⁴ This has resulted in awareness-raising policies as well as sex education plans in schools and training for healthcare professionals.¹⁴⁵ While GREVIO has noted that more long-term policies may be needed, overall Austria is fulfilling their Article 7 obligations with due diligence, and has long been paving the way for other countries in this area.¹⁴⁶

GREVIO has criticised the Danish government for their haphazard distribution of preventative responsibilities across varying ministries and working groups rather than through a comprehensive and fully institutionalised entity.¹⁴⁷

2.2: Article 8: Financial Resources

Article 8 requires parties to allocate financial and human resources in order to adequately implement measures preventing and combating all relevant forms of violence. This includes supporting the work of NGOs.

¹⁴¹ Grevio, 'Baseline Evaluation Report Finland' (GREVIO: Council of Europe, 2019) <<https://rm.coe.int/grevio-report-on-finland/168097129d>> accessed 7 February 2022 20.

¹⁴² Grevio, 'Baseline Evaluation Report Portugal' (GREVIO: Council of Europe, 2019) <<https://rm.coe.int/grevio-reprt-on-portugal/168091f16f>> accessed 7 February 2022 17.

¹⁴³ Grevio, 'Baseline Evaluation Report Austria' (GREVIO: Council of Europe, 2017) <<https://rm.coe.int/grevio-report-austria-1st-evaluation/1680759619>> accessed 7 February 2022 14.

¹⁴⁴ Ibid.

¹⁴⁵ Ibid.

¹⁴⁶ Ibid.

¹⁴⁷ Committee of the Parties, 'Reporting form on the implementation of the recommendations addressed to state parties' (Council of Europe, January 2021) <<https://rm.coe.int/denmark-reporting-form-on-the-implementation-of-recommendations-addrres/1680a30d80>> accessed 8 February 2022.

2.2.1: Austria

In Austria, funded measures include awareness-raising campaigns as well as research, counselling and assistance for victims. The budget allocated to the Federal Ministry of Health and Women's Affairs was reported to be €10 million per year in 2017.¹⁴⁸ However, even with this budget there are still gaps in prevention of violence and in evaluating whether the measures adopted by the state are successful. As one of the wealthiest countries in Europe,¹⁴⁹ dedicating €10 million annually to this issue might be considered a relatively small sum. It is unlikely that this sum is enough to fully protect women and ensure measures in place are effective, and GREVIO has encouraged an expansion of the budget.¹⁵⁰ It is notable that in response Austria has this year raised the budget to €14.65 million, allocating more money to the issue in an attempt to remedy the above concerns.¹⁵¹ About half of the budget will be used for implementing measures to protect women. Additional funds have also been set aside for specifically targeting the issue of prevention. This is a reasonable step for a wealthy state to make as they have the funds to increase this budget and attempt to meet this obligation with due diligence.

Moreover, Austria has a wide range of NGOs that provide support to victims. These NGOs are typically wholly or mostly funded by the federal government.¹⁵² However, these too face an issue of underfunding. Shelters for victims of domestic abuse, for example, have to turn many women away.¹⁵³ Considering the financial capabilities of Austria, it is seemingly unreasonable that services are having to turn women away and struggle to cover the costs of staff. Moreover, it suggests the level of state funding provided is simply not sufficient to meet demand. Nevertheless, this shortfall is arguably mitigated by Austria's housing scheme, in which affordable housing is provided so victims have somewhere to escape to and re-establish themselves.¹⁵⁴ This is an extensive programme with long-term goals, as opposed to solely short-term solutions like shelters for victims of domestic abuse. Additionally, as noted, Austria has increased its budget for protecting women from gender-based violence which may result in increased funds to other publicly funded activities such as NGO-run counselling and support services.

¹⁴⁸ Grevio, 'Baseline Evaluation Report Austria' (GREVIO: Council of Europe, 2017) <<https://rm.coe.int/grevio-report-austria-1st-evaluation/1680759619>> accessed 7 February 2022 15.

¹⁴⁹ European Chamber, '2014-10 Richest countries in Europe' (European Chamber, October 2014) <<https://eucham.eu/2014-10-richest-countries-in-europe/>> accessed 8 February 2022.

¹⁵⁰ Grevio, 'Baseline Evaluation Report Austria' (GREVIO: Council of Europe, 2017) <<https://rm.coe.int/grevio-report-austria-1st-evaluation/1680759619>> accessed 7 February 2022 16.

¹⁵¹ Committee of the parties council of europe convention , 'Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)' (Council of Europe, January 2021) <<https://rm.coe.int/austria-reporting-form-on-the-implementation-of-the-recommendations-co/1680a22378>> accessed 8 February 2022 8.

¹⁵² Grevio, 'Baseline Evaluation Report Austria' (GREVIO: Council of Europe, 2017) <<https://rm.coe.int/grevio-report-austria-1st-evaluation/1680759619>> accessed 7 February 2022 16.

¹⁵³ Ibid.

¹⁵⁴ Ibid, Page 30.

2.3: Article 13: Raising awareness of violence against women

Article 13 requires parties to raise awareness to increase the public's understanding of different forms of gender-based violence, its consequences and the need for prevention.

2.3.1: Malta

Malta has made significant progress in this area by launching awareness-raising campaigns in the hope that these will mobilise the population into taking an active role in combating these issues.¹⁵⁵ GREVIO noted that Malta has launched a number of successful campaigns such as “Full Cooperation: Zero Violence” and “Breaking the cycle of violence”.¹⁵⁶ This is certainly a positive indication that they are meeting the obligation of awareness raising with due diligence. However, given the higher expectations associated with Malta's performance in relation to due diligence requirements,¹⁵⁷ it would be expected that the government would not solely place emphasis on running campaigns regularly. The implementation of a national strategy is needed to reduce reliance on EU-funded campaigns and the work of other activist groups.¹⁵⁸ The report also recommends carrying out research into the impact these campaigns have on the public's perception of gender-based issues.

An important issue noted by the report is that Malta uses the term gender-based violence rather than violence against women in its campaigns. While this is a positive step towards the inclusion of male and non-binary experiences of domestic violence, the gender-neutral approach fails to acknowledge forms of violence which only affect individuals who are assigned the gender woman at birth (e.g. Female Genital Mutilation). Concerns have therefore been expressed by GREVIO that awareness raising campaigns on these issues are virtually non-existent. This could have significant consequences, particularly on women within some migrant communities in Malta. For example, there are no policies or guidelines for health professionals that may encounter patients who have undergone FGM and inadequate training for those who work with asylum seekers.¹⁵⁹ Consequently, it is harder to effectively prosecute this crime and to provide effective support for the survivors. The lack of awareness

¹⁵⁵ Mario Vassallo, 'Malta renews its Strategy on Gender-Based Violence and Domestic Violence' (*European Commission*, July 2021), <<https://ec.europa.eu/social/BlobServlet?docId=24694&langId=en>> accessed 7 February 2022.

¹⁵⁶ Grevio, 'Baseline Evaluation Report Malta' (*GREVIO: Council of Europe*, 2020) <<https://rm.coe.int/grevio-inf-2020-17-malta-final-report-web/1680a06bd2>> accessed 7 February 2022 11.

¹⁵⁷ See Chapter 3, s.1.1 State Introduction of Malta.

¹⁵⁸ Grevio, 'Baseline Evaluation Report Malta' (*GREVIO: Council of Europe*, 2020) <<https://rm.coe.int/grevio-inf-2020-17-malta-final-report-web/1680a06bd2>> accessed 7 February 2022, 19.

¹⁵⁹ *Ibid*, 23.

raising campaigns also contributes to maintaining the idea that abuse is an individual issue rather than a wider social and structural issue.¹⁶⁰ These factors have a profound effect on the way Malta seeks to solve VAW. In particular it creates an insufficient response from the police and civil service. For instance, the training provided to police personnel on the prevention and combating of VAW is primarily carried out on a voluntary basis and is not consistent, leading to the phenomena of dual reporting and repeat victimisation.¹⁶¹ At the same time, the process through which victims go to obtain support requires them to present before numerous services and retell their trauma multiple times which results in both secondary victimisation and risks the loss of evidence.¹⁶²

2.3.2: Article 13 links to other countries

In Austria, policies have been implemented in an attempt to meet the obligations imposed by Article 13. Notably, while these were funded, or at least co-funded, by the Austrian authorities, the policies were largely implemented by NGOs.¹⁶³ Campaigns carried out in Austria have included art contests, poster campaigns and the promotion of the hotline number for women suffering such violence.¹⁶⁴ These campaigns have targeted all types of people, from school children to healthcare workers.¹⁶⁵ Some specialist support services are even under a legal obligation to promote the awareness of such violence and the available resources.¹⁶⁶ These campaigns have largely been successful and have been praised by GREVIO for the huge efforts made to bring attention to VAW. However, a significant problem not confined to Austria is a rise of anti-feminist beliefs. Thus, there must be conscious effort in future awareness-raising campaigns to combat this phenomenon in order to avoid damaging the progress made so far.¹⁶⁷

Denmark's approach to Article 13 can be commended for focusing on raising awareness between law enforcement agents and social workers regarding stalking and rape. As victims of VAW come into close contact with law enforcement agents

¹⁶⁰ Ibid, 8.

¹⁶¹ Ibid.

¹⁶² Ibid.

¹⁶³ Grevio, 'Baseline Evaluation Report Austria' (*GREVIO: Council of Europe*, 2017) <<https://rm.coe.int/grevio-report-austria-1st-evaluation/1680759619>> accessed 7 February 2022 24-25.

¹⁶⁴ Ibid.

¹⁶⁵ Ibid.

¹⁶⁶ Ibid.

¹⁶⁷ Ibid.

and social workers, it is seemingly essential that they are well educated and trained in these important issues.¹⁶⁸

France has been highly successful in its awareness campaigns by making large investments in this area and due to political will shown in running such campaigns regularly. In a recent study run by the European Union Agency for Fundamental Rights across all EU states, it was found that 70% of women in France had recently seen or heard of an awareness campaign. This forms a stark contrast with the EU's average response of 50% of women. Therefore, France is achieving a higher rate of success in meeting the due diligence obligations presented by Article 13 of the Istanbul Convention.¹⁶⁹

NGOs in Italy have been commended by GREVIO for having a long tradition of carrying out successful awareness campaigns at a local, regional and national level.¹⁷⁰

In Monaco, the success of the International Day for the Elimination of Violence Against Women shows that a positive effect can be achieved through a diverse range of methods. Monaco employed activities such as presentations, conferences, debates, and the launch of a new victim support scheme in the form of an anonymous free helpline. Taken together, these suggest an effective approach to raising awareness.¹⁷¹

2.4: Article 11: Data Collection and Research

Under Article 11, the Istanbul Convention requires that there are publicly available, regular, and continuous recordings of "relevant statistical data". There also needs to be population-based surveys that support the work of researchers and those experts outlined in Article 66.¹⁷² Contracting States are thus required to conduct substantial qualitative surveys of their citizens, to accurately represent victims of DV and VAW

¹⁶⁸ Grevio, 'Baseline Evaluation Report Denmark' (*GREVIO: Council of Europe*, 2017) <<https://rm.coe.int/grevio-first-baseline-report-on-denmark/16807688ae>> accessed 7 February 2022 25.

¹⁶⁹ Grevio, 'Baseline Evaluation Report France' (*GREVIO: Council of Europe*, 2019) <<https://rm.coe.int/grevio-first-baseline-report-on-denmark/16807688ae>> accessed 7 February 2022 30.

¹⁷⁰ Grevio, 'Baseline Evaluation Report Italy' (*GREVIO: Council of Europe*, 2019) <<https://rm.coe.int/grevio-report-italy-first-baseline-evaluation/168099724e>> accessed 7 February 2022 34.

¹⁷¹ Grevio, 'Baseline Evaluation Report Monaco' (*GREVIO: Council of Europe*, 2017) <<https://rm.coe.int/grevio-report-monaco/168074fd6b>> accessed 7 February 2022 18.

¹⁷² Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, Council of Europe Treaty Series No 210 (2011) Article 7 <<https://rm.coe.int/168008482e>> accessed 8 February 2022.

cases, and the relationships and common characterizing factors present in any of the forms of violence denounced within the Convention.

2.4.1: Denmark

Denmark has been particularly effective in ensuring the widespread improvement of disaggregated data collection and research on instances of DV and VAW. However, there is still room for improvement. After the 2017 *GREVIO Baseline Report* and 2021 *Report on the Implementation of the Istanbul Treaty in Denmark*, it is clear that despite the Danish authority's commitment to "evidence-based policymaking", Article 11 measures remained insufficient in some key fields. The Article 5 due diligence standard requires non-discriminate and preventative efforts combating domestic violence and violence against women.¹⁷³ When reviewing the Danish National Patient Register and national police, it is clear that many gendered experiences were neglected or disregarded in systemic data systems and survey collection. GREVIO has partly attributed this to the policy choice of not using gendered-terminology which de-gendered the discourse around VAW in the country.¹⁷⁴ Gender-conscious categories such as: perpetrator and victim relationships, sexuality, and the lived experiences of victims must be considered in order to properly understand the underlying causes of domestic violence and violence against women.¹⁷⁵ Efforts by Danish Police have resulted in the manual reviews of 400 cases of violence and threats to address previously neglected data points such as the nature of the perpetrator's relationship to the victim.¹⁷⁶ This movement away from purely quantitative data systems and collection of research is essential to the fulfilment of due diligence obligations and can be mirrored on a more widespread scale in other signatories to the Convention.

2.4.2: Article 11 links to other countries

Austria has well-established policies which have allowed for the collection of data. Law enforcement, the civil courts as well as victim and healthcare services all currently collect data regarding violence against women.¹⁷⁷ GREVIO has, however,

¹⁷³ Ibid.

¹⁷⁴ Grevio, 'Baseline Evaluation Report Denmark' (*GREVIO: Council of Europe*, 2017) <<https://rm.coe.int/grevio-first-baseline-report-on-denmark/16807688ae>> accessed 7 February 2022 14.

¹⁷⁵ Nancy Lombard and Lesley McMillan, *Violence Against Women: Current Theory and Practice in Domestic Abuse, Sexual Violence and Exploitation*, (1st edn, Jessica Kingsley Publishers, 2013); Stephanie Holt et al., *Responding to Domestic Violence: Emerging Challenges for Policy, Practice and Research in Europe* (Lond: Jessica Kingsley Publishers, 2017).

¹⁷⁶ Grevio, 'Baseline Evaluation Report Denmark' (*GREVIO: Council of Europe*, 2017) <<https://rm.coe.int/grevio-first-baseline-report-on-denmark/16807688ae>> accessed 7 February 2022 20.

¹⁷⁷ Grevio, 'Baseline Evaluation Report Austria' (*GREVIO: Council of Europe*, 2017) <<https://rm.coe.int/grevio-report-austria-1st-evaluation/1680759619>> accessed 7 February 2022 19-20.

noted that there are gaps in this and efforts should be taken towards comprehensive data collection.¹⁷⁸ This entails breaking statistics down by sex and age, rather than just by age, which is the current practice.¹⁷⁹ In addition, some of the categories used are not specific enough. For example, in classifying sex offences, the category of “family relationships” could indicate either a sibling or an intimate partner.¹⁸⁰ Importantly, Austria has recognised this gap and the benefits of more detailed data collection, and has set up an inter-ministerial working group in an attempt to resolve this.¹⁸¹ Accordingly, Austria has been seen to take steps towards more adequate and comprehensive data collection to properly fulfil due diligence expectations.

GREVIO has commended France’s comprehensive collection of data on violence against women. This - it notes - is critical for the objective of evidence-based policymaking.¹⁸² There are effective displays of inter-ministerial cooperation, police data-collection and data disaggregation - all of which are noted with approval by GREVIO.¹⁸³ There are however issues with the current French procedures. One such issue is a lack of cooperation in this area between the judiciary and law enforcement, which complicates data collation. This manifests as a lack of “harmonisation” of offence categories.¹⁸⁴ There should also be an inclusion of data provenance, in respect to what institution and process resulted in the initial collection of a given data entry.¹⁸⁵ Overall, GREVIO recommends an increase in attention to the details of collated data, with respect to victim and perpetrator age, sex, and relationship to the perpetrator. Furthermore, there should be harmony across state agencies, improvement of data models (“to assess the effectiveness of statutory agencies’ response to violence against women”) and a robust commitment to publishing this data.¹⁸⁶

In Finland, the academic research, often funded by public agencies, greatly contributes to the knowledge base on violence against women.¹⁸⁷

Following a different approach, Monaco has developed a digital tool named ‘the digital table of offences’, which is used by the Public Prosecutor’s Office to register

¹⁷⁸ Ibid.

¹⁷⁹ Ibid.

¹⁸⁰ Ibid.

¹⁸¹ Committee of the parties council of europe convention , 'Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)' (*Council of Europe*, January 2021) <<https://rm.coe.int/austria-reporting-form-on-the-implementation-of-the-recommendations-co/1680a22378>> accessed 8 February 2022.

¹⁸² Grevio, 'Baseline Evaluation Report France' (*GREVIO: Council of Europe*, 2019) <<https://rm.coe.int/grevio-inf-2019-16/168098c61a>> accessed 7 February 2022 25(62).

¹⁸³ Ibid, page 25 paragraphs 63 - 65.

¹⁸⁴ Ibid, page 26 paragraph 66.

¹⁸⁵ Ibid, page 26 paragraph 66.

¹⁸⁶ Ibid, page 26 paragraph 70.

¹⁸⁷ Grevio, 'Baseline Evaluation Report Finland' (*GREVIO: Council of Europe*, 2019) <<https://rm.coe.int/grevio-report-on-finland/168097129d>> accessed 7 February 2022 19.

and keep track of judicial proceedings. In the future, the aim is to enable the generation of statistical data to be sorted according to type of offence.¹⁸⁸

Portugal has opted to amend its laws to increase compliance with Article 11. The amendment introduced an obligation to collate data from law-enforcement bodies and the judiciary so as to reconstruct the entire criminal proceedings chain, from the filing of the complaint to the delivery of the judgement. The data collected is passed on to CIG every six months and used to produce a yearly report on domestic violence.¹⁸⁹

2.5: Article 29: Civil Lawsuits and Remedies

Article 29 of the Istanbul Convention covers civil lawsuits and compensation for breaches of Convention by state actors.¹⁹⁰

2.5.1: France

In France, GREVIO highlighted that while there are remedies in place - an appropriate administrative procedure and Human Rights Defender - they are underused, or at the very least the data proving use is missing.¹⁹¹ Therefore, optimum compliance with Article 29 requires not only the availability of remedial procedures, but also the encouragement of their use and collection of data proving use. Considering the 4 measures of due diligence, a high degree of state knowledge is a given since remedies are an *ex post facto* (after the fact) consideration. The implementations required of France are manifestly reasonable. The degree of risk is obviously high by this point in the procedure, and in France the percentage of women who experience VAW in their lifetime is 26%.¹⁹² This isn't abnormally high or low compared to other European countries (Germany: 22%; the UK: 29%; Spain: 13%; Italy: 19%; Belgium: 24%) but it shows that progress needs to be made.¹⁹³ This is an area where the State has maximum control, given that it is aware at this point of incidents having occurred, and so the due diligence standard will be high.

¹⁸⁸ Grevio, 'Baseline Evaluation Report Monaco' (*GREVIO: Council of Europe*, 2017) <<https://rm.coe.int/grevio-report-monaco/168074fd6b>> accessed 7 February 2022 16.

¹⁸⁹ Grevio, 'Baseline Evaluation Report Portugal' (*GREVIO: Council of Europe*, 2019) <<https://rm.coe.int/grevio-reprt-on-portugal/168091f16f>> accessed 7 February 2022 24.

¹⁹⁰ Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, Council of Europe Treaty Series No 210 (2011) Article 29 <<https://rm.coe.int/168008482e>> accessed 8 February 2022.

¹⁹¹ Grevio, 'Baseline Evaluation Report France' (*GREVIO: Council of Europe*, 2019) <<https://rm.coe.int/grevio-inf-2019-16/168098c61a>> accessed 7 February 2022 51(175-176).

¹⁹² Organisation for Economic Co-operation and Development (OECD), 'Violence against women; Prevalence in the lifetime', (*Gender, Institutions and Development*, 2019) <<https://data.oecd.org/inequality/violence-against-women.htm>> accessed 22 February 2022.

¹⁹³ Ibid.

2.5.2: Article 29 links to other countries

Drawing from other international implementations, Article 29 can be linked to the experience of Austria in implementing Article 8, as reviewed by GREVIO in their 2017 Report.¹⁹⁴ Article 8 relates to the allocation of financial and human resources for the purposes of combating violence and discrimination against women.¹⁹⁵ As explored above, Austria - despite its relative wealth - has been criticised for underfunding pivotal instruments in the fight against VAW and gender-based discrimination, such as NGOs and womens shelters.¹⁹⁶ It is therefore important that, when implementing policy to meet the obligations of Article 29 with due diligence, adequate state funding is provided and distributed purposefully. Accountability could be ensured here by having such funding rigorously documented and subject to periodic independent scrutiny.

Another informative link that can be made here is to the experience of Denmark in implementing Article 25, which concerns the “setting up of appropriate, easily accessible rape crisis or sexual violence referral centers” for victims of sexual assault.¹⁹⁷ Denmark has been praised by GREVIO for their creation of specialised centres which provide trauma and medical support, as well as optional forensic examination for the purposes of future prosecution.¹⁹⁸ Given that Article 29 concerns abuse by state actors, the appropriate response in terms of Article 25 is complicated. It is not clear that referral or access to a state-run centre would be of any comfort to victims, who might view it as another limb belonging to a state that has violated their rights.

Austria’s handling of Article 29 itself has been heavily criticised.¹⁹⁹ Where a state agency, institution or individual has “failed diligently to prevent, investigate, and punish acts of violence”²⁰⁰ then it must be possible to seek some type of accountability. In Austria, this requires an unlawful act of the state agency or institution, not merely a failure to diligently prevent, investigate and punish acts of

¹⁹⁴ Grevio, 'Baseline Evaluation Report Austria' (GREVIO: Council of Europe, 2017) <<https://rm.coe.int/grevio-report-austria-1st-evaluation/1680759619>> accessed 7 February 2022 37.

¹⁹⁵ Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, Council of Europe Treaty Series No 210 (2011) Article 8 <<https://rm.coe.int/168008482e>> accessed 8 February 2022.

¹⁹⁶ Grevio, 'Baseline Evaluation Report Austria' (GREVIO: Council of Europe, 2017) <<https://rm.coe.int/grevio-report-austria-1st-evaluation/1680759619>> accessed 7 February 2022 16.

¹⁹⁷ Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, Council of Europe Treaty Series No 210 (2011) Article 25 <<https://rm.coe.int/168008482e>> accessed 8 February 2022.

¹⁹⁸ Grevio, 'Baseline Evaluation Report Denmark' (GREVIO: Council of Europe, 2017) <<https://rm.coe.int/grevio-first-baseline-report-on-denmark/16807688ae>> accessed 7 February 2022 35(121-124).

¹⁹⁹ Grevio, 'Baseline Evaluation Report Austria' (GREVIO: Council of Europe, 2017) <<https://rm.coe.int/grevio-report-austria-1st-evaluation/1680759619>> accessed 7 February 2022 36.

²⁰⁰ Ibid.

violence. This means that there must be an actual breach of Austrian legislation before a victim can seek damages. Evidently, this is a very high threshold and arguably breaches the due diligence requirement, as there is a very obvious risk that this threshold cannot be met. Based on our previous analysis of international legal standards of due diligence, it appears the threshold should be lower, perhaps set at negligence or gross negligence of the state actor; it should not require an outright unlawful act.

Austria's situation can be contrasted with Finland where public accountability is ensured in various ways. These include holding officials criminally liable where they are found to have negligently or intentionally violated their public duties; complaints mechanisms, and the power of the Chancellor of Justice to investigate public institutions.²⁰¹

2.6: Article 30: Compensation

Article 30 requires that states have adequate mechanisms for victim compensation.²⁰² This includes both compensation from the perpetrator and from the state, where the victim has suffered “*serious bodily injury or impairment of health*” which cannot be recovered from the perpetrator.²⁰³ The latter must be provided within a reasonable time.²⁰⁴

2.6.1: France

As highlighted by GREVIO, France has implemented measures facilitating compensation for the victim from the perpetrator. However, these measures are not without issue. The absence of data makes it impossible to determine whether the procedures function as intended.²⁰⁵ There is also concern about the safety of victims during the recovery process.²⁰⁶ Optimum implementation, therefore, involves an effective process of compensation which is well documented and protects victims. In terms of the due diligence expectations for France, this engages state control, which again is high due to the *ex post facto* nature of compensation. The policies as stated are manifestly reasonable, the degree of risk as mentioned is considerable and the state knowledge is as high as possible. For these reasons, the standard of due diligence required for France is high.

²⁰¹ Grevio, 'Baseline Evaluation Report Finland' (GREVIO: Council of Europe, 2019) <<https://rm.coe.int/grevio-report-on-finland/168097129d>> accessed 7 February 2022 38.

²⁰² Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, Council of Europe Treaty Series No 210 (2011) Article 30 <<https://rm.coe.int/168008482e>> accessed 8 February 2022.

²⁰³ Ibid.

²⁰⁴ Ibid.

²⁰⁵ Grevio, 'Baseline Evaluation Report France' (GREVIO: Council of Europe, 2019) <<https://rm.coe.int/grevio-inf-2019-16/168098c61a>> accessed 7 February 2022 51(177).

²⁰⁶ Ibid.

2.6.2: Article 30 links to other countries

Once again considering links to other international implementations, it is critical that there is appropriate funding available for victims who must rely on compensation from the state (due to recovery being impossible from the perpetrator). This ties Article 30 to Article 8 (the allocation of financial and human resources for the purposes of combatting violence and discrimination against women).²⁰⁷ The Austrian implementation of Article 8 exemplifies why there must be adequate resources available to meet this need.²⁰⁸ It is insufficient to have a compensation pool that will dry up and leave some victims with lesser sums. The resources allocated for state compensation must be adequate, distributed swiftly and in a structured manner.²⁰⁹ Article 11(1)(b) concerns data collection on the '*efficacy of measures taken to implement this Convention*'; Correspondingly, it is critical that data is collected which can confirm that state compensation is being awarded properly and to the due diligence standard.²¹⁰ GREVIO's assessment of Austrian implementations provides that the process of administrative data collection should be underpinned by the need for comprehensiveness, coherence, awareness of the need to demarcate by gender for the purposes of the Convention, and constant refinement of the data collecting process.²¹¹

In Finland, the primary obligation to compensate the victim is on the perpetrator.²¹² However, the State Treasury can offer compensation for damages where funds cannot be recovered from the perpetrator or insurance. Nevertheless, limited evidence could be obtained by GREVIO in regard to how this compensation was awarded in practice.²¹³

²⁰⁷ Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, Council of Europe Treaty Series No 210 (2011) Article 8 <<https://rm.coe.int/168008482e>> accessed 8 February 2022.

²⁰⁸ Grevio, 'Baseline Evaluation Report Austria' (GREVIO: Council of Europe, 2017) <<https://rm.coe.int/grevio-report-austria-1st-evaluation/1680759619>> accessed 7 February 2022 15-16.

²⁰⁹ Ibid.

²¹⁰ Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, Council of Europe Treaty Series No 210 (2011) Article 11(1)(b) <<https://rm.coe.int/168008482e>> accessed 8 February 2022.

²¹¹ Grevio, 'Baseline Evaluation Report Austria' (GREVIO: Council of Europe, 2017) <<https://rm.coe.int/grevio-report-austria-1st-evaluation/1680759619>> accessed 7 February 2022 19.

²¹² Finland's Tort Liability Act Chapter 2 Section 1 <https://www.finlex.fi/fi/laki/kaannokset/1974/en19740412_19990061.pdf> accessed 17 February 2022.

²¹³ Grevio, 'Baseline Evaluation Report Finland' (GREVIO: Council of Europe, 2019) <<https://rm.coe.int/grevio-report-on-finland/168097129d>> accessed 7 February 2022.

Portugal also provides victims with an opportunity to file a claim for compensation, which covers both moral and material damages.²¹⁴ Alternatively, judges may exercise their discretion to order that compensation be recovered from the offender, unless the victim objects.²¹⁵ Similarly, the State can provide for where the offender is unable to pay, if it can be determined that the standard of living of the victim has been considerably disrupted.²¹⁶ Victims of domestic violence, who experience serious financial hardship as a result, may be awarded a special cash benefit from the State.²¹⁷ This can be a sum of up to 6 months of the national minimum salary.²¹⁸ Nevertheless, procedural issues have been identified by GREVIO regarding the length of the decision process and the restrictive interpretation of the criteria used to assess a victims entitlement.²¹⁹ It should be noted that issues with the availability of data inhibited a more comprehensive assessment.²²⁰

2.7: Article 50: Immediate Response, Prevention and Protection

Article 50(1) of the Convention imposes a requirement on states to ensure violence is responded to by the relevant '*law enforcement agencies*', in a way which provides victims with '*adequate and immediate protection*'. Further, under Article 50(2), these agencies should also take steps to prevent and protect against violence: engaging '*promptly and appropriately*'. This includes '*the employment of preventive operational measures and the collection of evidence*.' Thus, parties to the Istanbul Convention must take appropriate legislative measures to prevent, respond, and protect women from violence.

2.7.1: Austria

Austria has implemented legislative measures effectively in this regard. As per Article 50(2), training has been provided for all law enforcement bodies which has been extended to provide specific training for responding to violence against women.²²¹ Moreover, Austria has structures in place which promote a prompt response from law enforcement officials to calls for help,²²² similarly satisfying Article 50(2). In addition, measures have been implemented to increase and regulate evidence collection for use in court, as required by Article 50(2), through the introduction of standard forms to record injuries of women.²²³ The implementation of

²¹⁴ Grevio, 'Baseline Evaluation Report Portugal' (*GREVIO: Council of Europe*, 2019) <<https://rm.coe.int/grevio-reprt-on-portugal/168091f16f>> accessed 7 February 2022 45.

²¹⁵ Ibid.

²¹⁶ Ibid.

²¹⁷ Ibid, 46.

²¹⁸ Ibid.

²¹⁹ Ibid.

²²⁰ Ibid.

²²¹ Ibid, page 41-42.

²²² Ibid.

²²³ Ibid.

this measure has also sought to ensure victims are treated equally in the documentation of their injuries, which provides for a fairer court process. Nevertheless, it has not been implemented throughout Austria. In a country as wealthy as Austria,²²⁴ it is seemingly insufficient that beneficial measures homogenising the collection of evidence are only available in certain regions, placing some women at a disadvantage as their injuries may be insufficiently recorded. This is compounded by a focus on victim's statements in evidence collection, as opposed to an approach which centres on systematic collection of crime scene evidence.²²⁵ This places pressure on victims whilst making it more difficult to obtain a conviction. It is arguably an unreasonable approach, as the state should be focussed on implementing a structure that allows an effective case against the perpetrator to be put forward, as opposed to re-victimising the victim and potentially deterring them from coming forward. The state's resources justify high expectations of Austria - which could be expected to have a law enforcement sector which can effectively and systematically collect data rather than relying on the victim's word. Similarly, the level of control expected from Austria is high as a result of the country's wealth and democratic frameworks. This affords the state with the ability to introduce and pass new legislation which can effectively prevent, respond to and protect women from this violence. In spite of this, they have seemingly failed to do so fully.

2.7.2: Article 50: Links to other Countries

In Denmark, the requirements of Article 50 have been addressed with an effort to improve the response of law enforcement to rape cases. Project 'Respect for Rape Victims' was introduced in 2016 and has contributed to high levels of satisfaction from victims reporting crimes of this nature.²²⁶ Furthermore, procedural amendments have been implemented to fast track all violent crimes to ensure law enforcement handles reports within 30 days. Similarly, a 37 day target has been established in an effort to prosecute rape cases swiftly, although this had been achieved in only 29% of cases as of 2017.²²⁷ Nonetheless, GREVIO identified a need for the authorities in Denmark to homogenise the approach taken across different police districts in order to ensure domestic violence is addressed consistently- an issue similarly identified in Austria.

²²⁴ European Chamber, '2014-10 Richest countries in Europe' (*European Chamber*, October 2014) <<https://eucham.eu/2014-10-richest-countries-in-europe/>> accessed 8 February 2022.

²²⁵ Grevio, 'Baseline Evaluation Report Austria' (*GREVIO: Council of Europe*, 2017) <<https://rm.coe.int/grevio-report-austria-1st-evaluation/1680759619>> accessed 7 February 2022 41.

²²⁶ Grevio, 'Baseline Evaluation Report Denmark' (*GREVIO: Council of Europe*, 2017) <<https://rm.coe.int/grevio-first-baseline-report-on-denmark/16807688ae>> accessed 7 February 2022 49.

²²⁷ Grevio, 'Baseline Evaluation Report Denmark' (*GREVIO: Council of Europe*, 2017) <<https://rm.coe.int/grevio-first-baseline-report-on-denmark/16807688ae>> accessed 7 February 2022 51.

In France, specialised ‘Family Protection Brigades’, within police stations and gendarmerie units, have been established since 2009 which are dedicated to the care of domestic violence victims.²²⁸ Furthermore, the complaint protocol introduced in 2013 has sought to systematise the information provided to victims of domestic violence.²²⁹ An online platform to report sexual and gender-based violence was also introduced in 2018.²³⁰ Despite the improvements to evidence collection which these measures have provided, GREVIO required the development of a “*non-stereotypical understanding of sexual violence*” by state actors, as well as improved evidence collection and unilateral ex-officio investigations. This was likely influenced by the responses to a 2018 survey which found that 6% of complaints of such crimes were refused.²³¹

2.8: Article 52 and 53: Emergency Barring and Restraining Orders

Article 52 of the Istanbul Convention outlines that a victim immediately at risk of abuse shall be removed from their home, or dangerous living environment, and thus protected via the emergency barring process.²³² Conversely, a restraining or protective order against the perpetrator may be pursued. These have served as one of the most successful and important methods of preventing further abuse, procedural improvement is often strongly recommended by GREVIO.²³³ The needs of the victim must be prioritised due to the impending risks and nature of the crime.²³⁴

2.8.1: Denmark

Measures have been implemented in Denmark to improve the emergency barring and restraining order approval process so that it meets the due diligence standard. Danish legislation has made commitments to the eradication of domestic violence by streamlining barring processing times and its support for survivors of sexual violence.²³⁵ However, gendered perspectives are still excluded from data collection efforts. GREVIO’s 2017 Report noted that the Danish authorities required more

²²⁸ Grevio, 'Baseline Evaluation Report France' (GREVIO: Council of Europe, 2019) <<https://rm.coe.int/grevio-inf-2019-16/168098c61a>> accessed 7 February 2022 63.

²²⁹ Ibid.

²³⁰ Ibid.

²³¹ Grevio, 'Baseline Evaluation Report France' (GREVIO: Council of Europe, 2019) <<https://rm.coe.int/grevio-inf-2019-16/168098c61a>> accessed 7 February 2022 63.

²³² Committee of the Parties, 'Reporting form on the implementation of the recommendations addressed to state parties' (Council of Europe, January 2021).

²³³ See for example Grevio, 'Baseline Evaluation Report Denmark (GREVIO: Council of Europe, 2017) <<https://rm.coe.int/grevio-first-baseline-report-on-denmark/16807688ae>> accessed 7 February 2022 69.

²³⁴ Grevio, 'Baseline Evaluation Report Denmark (GREVIO: Council of Europe, 2017) <<https://rm.coe.int/grevio-first-baseline-report-on-denmark/16807688ae>> accessed 7 February 2022 9.

²³⁵ Ibid, 50.

comprehensive training, alongside other state agents, public administrators and professionals on varying forms of protective law enforcement measures, especially emergency barring orders.²³⁶ Nevertheless, an extremely successful pilot project in East Jutland enabled co-operation around protection orders, as well as other forms of support for victims in domestic violence shelters. This project is a great example of the kind of cooperative aid implementations that could best meet the due diligence standard through the prioritisation of emergency measures under Article 52 and 53 of the Convention.²³⁷ These Parliament-selected projects have since been absent from the wider state context and should be better funded and geographically extended to provide support to all victims regardless of their location within the state.

2.8.2: Article 52 and 53: Links to Other Countries

GREVIO also identified issues with the procedure in France regarding their implementation of Article 52 and 53 requirements. Protection orders, as governed by their Civil Code, could be sought by victims of violence within a couple or in situations of forced marriage. The order could offer urgent responses such as the removal of the perpetrator of the violence from the family home. However, the data suggests that this mechanism was rarely used; only 59% of 3031 applications made in 2017 were accepted. The issues with this mechanism were identified as arising from inconsistent assessment across different courts, which also involved the application of a *'likelihood'* condition that implies that allegations of violence are insufficient and that some form of proof is needed instead.²³⁸ The latter condition also omits consideration of psychological and verbal violence which are difficult to prove without witnesses or records.²³⁹ However, since 2014 victims have been able to alert authorities to danger using remote protection devices (high danger telephones) which allow for the immediate granting of a protection order. The use of this device is monitored by a steering committee which includes various members such as judges, lawyers and law enforcement services. As noted by GREVIO, this is a great example of *'inter-institutional cooperation'* in the development of an *'interdisciplinary approach and culture towards violence against women'*.²⁴⁰ Following this, GREVIO recommends that this kind of approach and cooperation is utilised to facilitate work between relevant actors to implement a revised system of protection orders which allows for greater and more systematic use. This new system would embrace measures which provide for immediate victim protection without delay, regardless of their willingness to file complaints and provide access to victims in situations of immediate danger. These would also entail the ability to seek protection via emergency barring orders, as per Article 50(2). Finally, increased

²³⁶ Ibid.

²³⁷ Ibid.

²³⁸ Grevio, 'Baseline Evaluation Report France' (GREVIO: Council of Europe, 2019) <<https://rm.coe.int/grevio-inf-2019-16/168098c61a>> accessed 7 February 2022 67.

²³⁹ Ibid.

²⁴⁰ Ibid, 68.

training will provide for more nuanced state responses to violence of any degree, and supporting data (in accordance with Article 11) will also facilitate progress.²⁴¹

Conclusion

This chapter has provided an array of examples of Article implementations by signatory states, alongside commendations and criticisms of those implementations based on our previous assessment of the legally mandated due diligence threshold. It is hoped that from such work there can be an extrapolation of the principles and values underpinning the exercise of implementation with due diligence. The next chapter will outline some of these key takeaways and draw together the prevailing ideas and challenges surrounding the implementation of the Istanbul Convention (2011).

²⁴¹ Ibid.

Chapter Four

Summary

This report has assessed the legal context of due diligence in international law. The report first explored the scope of due diligence in international law, particularly as it is used in the Istanbul Convention (2011). It has found that due diligence has a broad and variable legal definition. Under Article 5 of the Istanbul Convention, countries are bound to act with due diligence when combating domestic violence and violence against women.

The report then used a horizontal comparison of other Convention signatories as a basis for demonstrations of due diligence implementation and as a helpful point of reference for North Macedonia. The comparative analysis primarily related to preventative international implementations in France, Austria, Denmark, and Malta. These countries, among other supplemental examples, are obligated to combat DV and VAW with due diligence. This comparison showed that due diligence obligations of conduct differ upon each treaty member, depending on resources and reasonable expectations. That chapter also showed that many preventative measures, although employed with increasing frequency, continue to prove ineffective or insufficient.

The research conducted for this report has found that major international due diligence failings as well as improvements to the aid of victims have been influenced by three key factors. When present, these factors result in a pattern of decreased violence. The factors are:

- (1) A definition of violence that is clear and inclusive.
- (2) Gendered data collection.
- (3) Increased funding and aid.

There will now be a consideration of each of these points. They will be explained, and then applied to North Macedonia in the form of recommendations. This chapter will finish with an explanatory table. This table aims to summarise the recommendations set out in this chapter and explain their relevance to the due diligence obligation set out in the Istanbul Convention.

Recommendation 1 - A Clear Definition of Violence

The international legal community has made various steps in trying to define violence against women, understanding it as “a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women.”²⁴² It is important that our understanding of violence includes ethnic, religious, gendered, or LGBTQI+ perspectives to ensure appropriate support for migrant and minority individuals.

Identifying a clear definition of gender-based violence and violence against women - building on the progress made by the definition given in The Law on Prevention and Protection against Violence against Women and Domestic Violence (GBV Act) (North Macedonia) 2021²⁴³ - is an important step towards implementation of the Istanbul Convention (2011). Being able to articulate the issue in clear and inclusive terms is essential to understanding the problem and finding solutions. It is this understanding that can then inform successful awareness-raising campaigns, debates, conferences and the general education of the public. Creating a common understanding can facilitate productive dialogue, and aid citizens in identifying problematic behaviour and in knowing that help is provided in relation to such behaviour. At the same time, a common understanding sets the foundation for a holistic approach as it allows interested parties - such as professionals, politicians, or private citizens - to communicate more effectively. In particular, a common understanding of violence among state actors in the North Macedonian government may potentially help ensure that discrepancies in the treatment of victims of violence are avoided, and make it more difficult to avoid negligence of such violence and its effects. A common definition also aids in meeting a variety of obligations set out in the Istanbul Convention, such as Articles 7 and 13. It is important to note that the definition adopted should be open to review and enhancement to reflect the dynamic and flexible behaviour expected by due diligence considerations, and to ensure that prevention and protection measures are as relevant and updated as possible.

Recommendation 2- Gendered Data Collection

States can better combat those internal oversights which exacerbate and enable gendered violence by remaining informed on national statistics and data. Links and

²⁴² The Convention on the Elimination of All Forms of Discrimination, General Recommendation No. 19: Violence against women; UN Declaration on the Elimination of Violence Against Women 1993.

²⁴³ European network of legal experts in gender equality and non-discrimination, 'North Macedonia Law on Gender Based Violence' (*Equality Law*, 13 July 2021) <<https://www.equalitylaw.eu/downloads/5461-north-macedonia-law-on-gender-based-violence-82-kb>> accessed 19 February 2022; UN Women, 'Ending violence against women', *UN Women Europe and Central Asia*, <<https://eca.unwomen.org/en/where-we-are/north-macedonia/ending-violence-against-women>> Accessed 14 February.

effective prevention can not be attempted without information on important characteristics commonly linking DV/VAW cases. Research has established that gender data which records relationships between perpetrators and victims along with sexual orientations and relevant history is missing in many reports and questionnaires among party states. Inclusive data collection should not be overlooked, as it has the capacity to improve the prevention of violence, treatment of victims, and court processing times in granting protective orders.

Given the recent progress in many European countries towards LGBTQI+ equality, the question arises as to why the Istanbul Convention appears to take a binary approach to gender-based discrimination and violence. The Convention seeks to protect women victims primarily, which appears to put it at odds with the developing rhetoric of European degenderification and inclusivity with regards to non-binary individuals.²⁴⁴ GREVIO has recognised the effects of multiple discrimination and the need for state action to combat it, but there is a notable lack of discussion (at least in the Convention text itself) on those individuals who do not identify with a binary (male or female) gender.²⁴⁵ Furthermore, the Convention also states that protections specific to women only will not be considered discriminatory.²⁴⁶ The reasoning for this focus appears to be that taking a wholly gender-neutral approach would undermine the inequality of experience between “men and women” victims and hinder protection of women as the primary victims of gender-based discrimination and violence.²⁴⁷ It cannot be said that there is a complete lack of discussion in the Istanbul Convention literature as to how this affects non-binary individuals, as the explanatory notes confirm that those who “do not correspond to what society has established as belonging to “male” or “female” are protected from non-discrimination during implementation under Article 4(3). It does however note that Article 4(3) is more limited than 4(2), in that its focus is on discrimination during Convention implementation and not the extra-Convention application of 4(2).²⁴⁸

In summary, the substantive obligations of the Convention primarily protect women from gender-based discrimination, and use a catch-all ‘non-discrimination during

²⁴⁴ Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, Council of Europe Treaty Series No 210 (2011) Article 4(2) <<https://rm.coe.int/168008482e>> accessed 19 February 2022.

²⁴⁵ Grevio, 'Baseline Evaluation Report France' (*GREVIO: Council of Europe*, 2019) <[https://s3.amazonaws.com/tld-documents.lhnassets.com/0032000/32178/grevio_inf\(2019\)16_grevio's%20report%20on%20france_eng.pdf](https://s3.amazonaws.com/tld-documents.lhnassets.com/0032000/32178/grevio_inf(2019)16_grevio's%20report%20on%20france_eng.pdf)> accessed 19 February 2022 7.

²⁴⁶ Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, Council of Europe Treaty Series No 210 (2011) Article 4(4) <<https://rm.coe.int/168008482e>> accessed 19 February 2022.

²⁴⁷ Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence Explanatory Report, Council of Europe Treaty Series No 210 (2011) <<https://rm.coe.int/ic-and-explanatory-report/16808d24c6>> accessed 19 February 2022 9.

²⁴⁸ Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence Explanatory Report, Council of Europe Treaty Series No 210 (2011) <<https://rm.coe.int/ic-and-explanatory-report/16808d24c6>> accessed 19 February 2022 10.

implementation' provision to offer some protection for non-binary people. It is hoped that those falling through the net of the Istanbul Convention can experience an equal level of support and protection under a similar framework. The implications of this for North Macedonia are that it is acceptable and non-discriminatory to implement the obligations of the Istanbul Convention with a gendered approach for the benefit of women victims. It must however protect "categories of individuals such as transgender or transsexual persons, cross-dressers, transvestites and other groups of persons that do not correspond to what society has established as belonging to "male" or "female" categories" when implementing the Istanbul Convention.²⁴⁹

Recommendation 3 - Allocated Funding and Aid

Populations of adults and children are better supported following violent and dehumanising encounters when NGOs are allotted dedicated funds by committed government officials.²⁵⁰ Despite this, NGOs and civil society organisations are systematically over relied upon and underfunded,²⁵¹ even though the onus is placed on them to provide widespread physical, legal, and psychological aid to survivors. NGOs and Civil Society Organisations (CSOs) have proven to be important voices in terms of combating VAW in North Macedonia.²⁵² It is important therefore that they are supported, and their valuable input recognised by the government.

Increasing the funding and support for institutions that tackle VAW is an essential and highly effective way for states to contribute towards meeting due diligence obligations²⁵³. It is often the case that a lack of funding is the underlying cause of other failings. Legislative and policy frameworks must not be simply declarative, and proper funding is an effective way of ensuring this. Similarly, it is unsustainable to be consistently relying on foreign donor support. By increasing funding in one area or institution that tackles VAW, there is a positive knock-on effect towards improving other areas. For example, increased funding towards awareness-raising campaigns and education has resulted in a better understanding and more informed work by the police and other bodies. As exemplified by Denmark, that has stressed the

²⁴⁹ Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence Explanatory Report, Council of Europe Treaty Series No 210 (2011) <<https://rm.coe.int/ic-and-explanatory-report/16808d24c6>> accessed 19 February 2022 10.

²⁵⁰ Hence, for example, the UN's continuing support for effective funding of projects aimed at preventing and addressing violence against women and girls, see: UN Women, 'UN Trust Fund to End Violence against Women' <<https://www.unwomen.org/en/trust-funds/un-trust-fund-to-end-violence-against-women>> accessed 14 March 2022.

²⁵¹ Biljana Nastovska, 'Mapping of Policies and Legislation on Violence Against Women and the Istanbul Convention in the Former Yugoslav Republic of Macedonia' (European Women's Lobby Européen des Femmes 2018) 16.

²⁵² Biljana Nastovska, 'Mapping of Policies and Legislation on Violence Against Women and the Istanbul Convention in the Former Yugoslav Republic of Macedonia' (European Women's Lobby Européen des Femmes 2018) 15-16.

²⁵³ Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, Council of Europe Treaty Series No 210 (2011) Article 8 <<https://rm.coe.int/168008482e>> accessed 15 March 2022.

importance of educating the public sector and as a result the police now address previously neglected data points such as the nature of the relationship between victim and perpetrator.²⁵⁴

It is important to note that even a small amount of funding, combined with legislative and multi-institutional support, can be of great assistance to NGOs which aim to tackle VAW. This is particularly true in some countries - such as Malta.²⁵⁵ However, if countries are to meet due diligence obligations, then the allocation of funding must be analysed contextually; not in terms of how *much* money is being allocated. It should be considered in terms of the percentage of funds allocated against a country's GDP, spending in other areas, and the need for reform. For example, it appears insufficient that Austria - with its financial capabilities²⁵⁶ - has underfunded NGO shelters for victims of domestic abuse, which in turn have to turn victims away due to understaffing.²⁵⁷

Finally, higher levels of funding and support ensure that more resources can be devoted to supporting victims of VAW from various ethnic and economic backgrounds. This is particularly important as women do not all experience violence in the same way. For example, individuals in certain minoritised communities are more vulnerable to certain types of VAW such as female genital mutilation and/or forced marriages.²⁵⁸

Therefore, increased funding and support for all bodies trying to tackle VAW should be a top priority in order to achieve efficiency and widespread progress across all areas.

Overview of recommendations:

Recommendation	Why this recommendation?	How would this help North Macedonia meet its obligation of due diligence under the Istanbul Convention?
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²⁵⁴ Grevio, 'Baseline Evaluation Report Denmark' (*GREVIO: Council of Europe*, 2017) <<https://rm.coe.int/grevio-first-baseline-report-on-denmark/16807688ae>> accessed 7 February 2022 20.

²⁵⁵ Grevio, 'Baseline Evaluation Report Malta' (*GREVIO: Council of Europe*, 2020) <<https://rm.coe.int/grevio-inf-2020-17-malta-final-report-web/1680a06bd2>> accessed 7 February 2022 19.

²⁵⁶ European Chamber, '2014-10 Richest countries in Europe' (*European Chamber*, October 2014) <<https://eucham.eu/2014-10-richest-countries-in-europe/>> accessed 8 February 2022.

²⁵⁷ Grevio, 'Baseline Evaluation Report Austria' (*GREVIO: Council of Europe*, 2017) <<https://rm.coe.int/grevio-report-austria-1st-evaluation/1680759619>> accessed 7 February 2022 16.

²⁵⁸ Ibid 25.

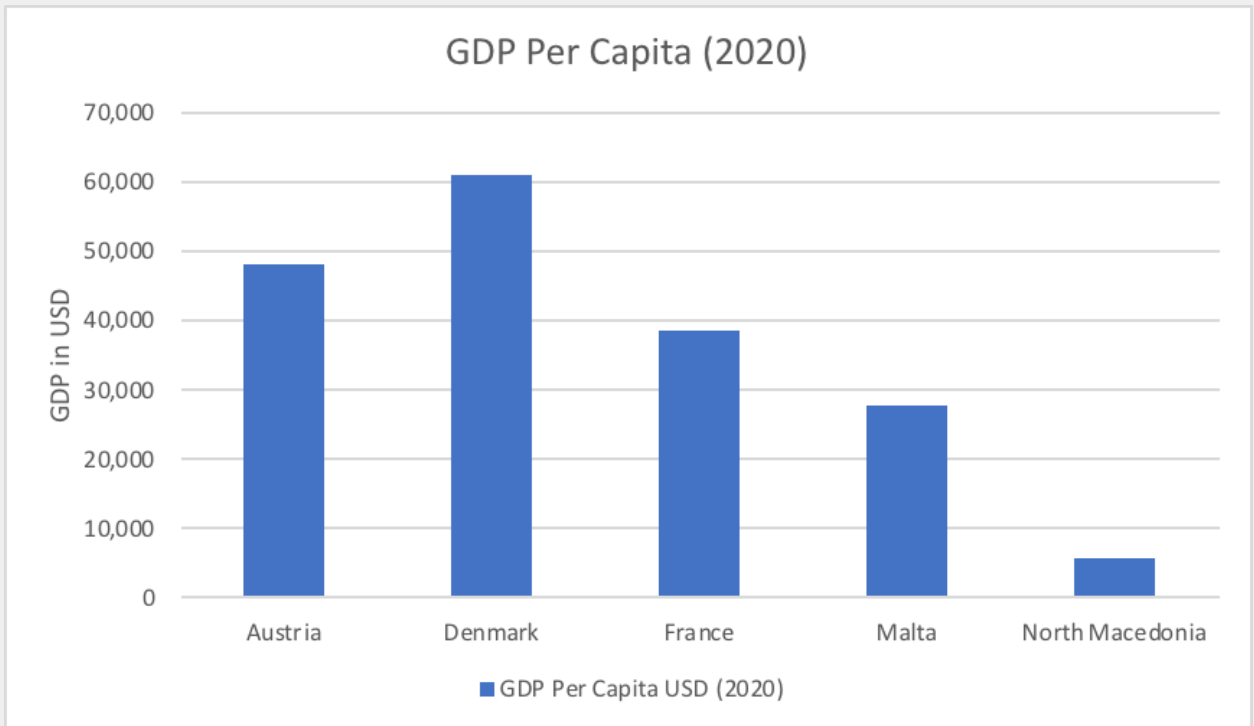
<p>A clear definition of violence</p>	<ul style="list-style-type: none"> • Being able to understand and resolve a problem requires knowing what it means. • Not having a set definition can result in solutions which lack focus. • A uniform definition will allow more success in tackling VAW, as individuals and state actors can communicate more effectively. • This should be a flexible definition. 	<ul style="list-style-type: none"> • This would help North Macedonia in meeting their due diligence obligation as this would help tackle the discrepancies in the treatment of victims and prosecution of perpetrators: what constitutes violence against women is clear, and thus easier to punish. • Allow for easier satisfaction of obligations under the convention.
<p>Gendered data collection</p>	<ul style="list-style-type: none"> • The Istanbul Convention lacks provisions to tackle violence against non-binary individuals. • Avoids being gender-neutral with the aim of avoiding hindering the protection of all individuals from such violence. • This potentially leaves these individuals falling through the net since the catch-all provision of Article 4(3) is less comprehensive than Article 4(2) which exclusively considers VAW. 	<ul style="list-style-type: none"> • North Macedonia must ensure that it protects individuals who are transgender or non-binary, but the current approach of the Istanbul Convention perhaps allows such people to fall through the net without the conclusion that North Macedonia is not meeting its due diligence obligation. Regardless, transgender and non-binary people, as well as male survivors of gender-based violence should be afforded protection and respect.

<p>Allocated funding and aid</p>	<ul style="list-style-type: none"> • Increases in funding can be effective in tackling VAW. • Funding helps NGOs improve their effectiveness. • Currently, some wealthy member states are not allocating sufficient funds, despite their affluence. • Funding can allow for the specific protection of women from different ethnicities and socio-economic backgrounds, who may experience VAW differently. 	<ul style="list-style-type: none"> • Increasing allocated funding and aid would allow North Macedonia to further support NGOs, which are a vital resource for women facing violence in the country. • Shelters for victims of abuse could have more spaces for women. • More campaigns could be launched to raise awareness and allow individuals to become more educated on the topic. • Funding appropriately facilitates a safer country for women, non-binary individuals, and all residents.
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Conclusion

Signatories of the Istanbul Convention (2011) have agreed to meet a due diligence standard under Article 5(2), yet many are failing to do so in proportion to their resources. These recommendations aim to provide some guidance for how these countries could improve their actions in order to meet this obligation and overall create a safer environment for victims of gender-based violence. North Macedonia, the focus of this report, has agreed to meet this standard. Its currently insufficient and ineffective measures could be supplemented and improved by these recommendations. This would help to move the country towards meeting its obligation of due diligence. Thus, it is proposed that North Macedonia reviews its policies in consideration of these recommendations in order to effectively prevent violence against women as well as punish those who perpetrate it.

Appendix



- Level of due diligence owed by our chosen countries will be much higher than NM who overall has a lower GDP per capita.
- High GDP per capita usually reflects a higher standard of living, healthcare, and education.
- A low GDP per capita can suggest a country has fewer resources to provide for its citizens.
- North Macedonia has a low GDP per capita relative to the other countries surveyed in this study. This is important in considering what can be implemented within a country in terms of due diligence, while taking into consideration available resources.

List of Positive Implementations in Additional Countries

1. Montenegro
 - a. Amendments to the Criminal Code in 2017 seek to criminalise important violence against women covered by the Convention: stalking, FGM and sterilisation.²⁵⁹
2. Netherlands
 - a. The Dutch sentencing system prioritises reducing reoffending. The Netherlands employ the COSA programme which has been found to have reduced recidivism rates and has a very high rate of success in the Netherlands – only one relapse in 130 people on the scheme since 2009.²⁶⁰
3. Belgium
 - a. Improvement in the police and judicial response to violence against women in Belgium is largely owing to the recent adoption guidelines in the field of criminal policy. The purpose has been to encourage a standardised system for identification of situations of violence by the police and prosecution services, to lay down minimum measures for all judicial districts and to give the police and courts tools and references to support their work.²⁶¹
 - b. A positive effect has also been observed in light of a joint circular from the Minister of Justice and the Board of Principal Crown Prosecutors regarding criminal policy with respect to intimate partner violence (COL 4/2006, revised in 2015).²⁶² This promotes the preparation of local anti-violence plans for each judicial district, together with the signing of protocols of co-operation between the judicial authorities, the police, public services and private associations involved in care, referral and protection of victims and their children.²⁶³
4. Finland
 - a. National Action Plan to Reduce Violence against Women (2010-2015) – cross sector measures aimed at primary, secondary and tertiary prevention of various forms of violence against women. This resulted in a mix of public awareness efforts and professional capacity-building activities such as training of key professionals and created a network of contact persons at different levels of

²⁵⁹ Grevio, 'Baseline Evaluation Report Montenegro' (*GREVIO: Council of Europe*, 2018) <<https://rm.coe.int/grevio-report-montenegro/16808e5614>> accessed 16 February 2022 12.

²⁶⁰ Grevio, 'Baseline Evaluation Report Netherlands' (*GREVIO: Council of Europe*, 2020) <<https://rm.coe.int/grevio-report-on-netherlands/1680997253>> accessed 16 February 2022 28.

²⁶¹ Grevio, 'Baseline Evaluation Report Belgium' (*GREVIO: Council of Europe*, 2020) <<https://rm.coe.int/grevio-report-on-belgium/16809f9a2c>> accessed 16 February 2022 51.

²⁶² *Ibid*, 12.

²⁶³ *Ibid*, 51.

governance, including regional state administrative agencies and a number of municipalities. There has also been an external valuation which attested to the plan's success.²⁶⁴

5. Italy

- a. Legislative reforms have led to the development of a solid legislative framework in line with the requirements of the Convention on the Civil and Criminal Remedies for Victims of Violence.²⁶⁵ Examples include:
 - i. The adoption of Law No. 119/2013 formalised the authorities' duty to support and promote a vast network of support services for victims, including by attributing financial means.
 - ii. The recent Law No. 69 of 19 July 2019 reform, known as the Red Code.
- b. Italy has carried out several NAPs with some good results.²⁶⁶ For example:
 - i. NAP Against Gender-Based Violence and Stalking & Extraordinary plan of action against sexual and gender violence 2015-17.
 - ii. A second NAP strengthened the institutional framework for action against gender-based violence which came with the creation of a steering committee whose members are representatives from governmental bodies. The function of the committee is to oversee different NAPs ensuring their proper implementation. A technical committee assists in this matter and its members include representatives of the main national organisations and networks dealing with victims and perpetrators of gender-based violence.
 - iii. Italy has a long tradition of NGO's carrying out successful awareness-raising activities, at local, regional and national level.²⁶⁷

6. Cyprus

- a. As part of the implementation of the obligations under the Istanbul Convention, the Council of Ministers of Cyprus approved the operation of a "Woman's House" (WH) which will function as a crisis centre for women victims of violence and their children.²⁶⁸

²⁶⁴ Grevio, 'Baseline Evaluation Report Finland' (GREVIO: Council of Europe, 2019) <<https://rm.coe.int/grevio-report-on-finland/168097129d>> accessed 16 February 2022 20.

²⁶⁵ Grevio, 'Baseline Evaluation Report Italy' (GREVIO: Council of Europe, 2019) <<https://rm.coe.int/grevio-report-italy-first-baseline-evaluation/168099724e>> accessed 16 February 2022 6-7.

²⁶⁶ Ibid, 12 and 27.

²⁶⁷ Ibid, 35.

²⁶⁸ Grevio, 'Report submitted by Cyprus pursuant to Article 68, paragraph 1 of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Baseline

7. Monaco

- a. International Day for the Elimination of Violence against Women – Activities organised in light of this Day are successful examples of Monaco's efforts to change local mentalities and signal its strong rejection of all forms of violence against women. For example the International Day organised in 2016 was thought to be an overall success by all involved. One of the achievements arising from these events was the introduction of a new victim support scheme in the form of a new anonymous free helpline with a single dial-in number for victims of domestic violence.²⁶⁹
- b. Educational initiatives - The Department of Education, Youth and Sport (DENJS) works to combat bullying in school, including in relation to age of sexual consent, insults and threats. This is supplemented by other preventative activities in relation to cyberbullying in association with GenderHopes. In addition, s.37 of Law No. 1.382 requires schools to report on an annual basis, pursuant to the legal provisions applying to educational institutions, on measures for the prevention of early detection of violence.²⁷⁰
- c. High level of accessibility of support services for foreign victims, which is especially important seeing as Monaco has a very diverse population in terms of national backgrounds.²⁷¹

8. Portugal

- a. Comprehensive and coordinated policies: The coordinated efforts of the Commissioner for Citizenship and Gender Equality (CIG) and the Portuguese National Human Rights Committee (PNHRC) secure interministerial involvement in the promotion of policies on violence against women in two ways. Firstly, by attaching the CIG to the Presidency of the Council of Ministers, rather than to a particular ministry, the CIG enjoys strong political support to promote inter-institutional cooperation. Secondly, the fact that national action plans on gender equality and gender-based violence are approved by a decision of the Council of Ministers lends them a quasi- mandatory nature and expresses the strong political will to have them implemented.²⁷²

Report)' (*GREVIO: Council of Europe*, 2021) <<https://rm.coe.int/grevio-inf-2021-8-state-report-cyprus-eng/1680a32073>> accessed 16 February 2022 8.

²⁶⁹ Grevio, 'Baseline Evaluation Report Monaco' (*GREVIO: Council of Europe*, 2017) <<https://rm.coe.int/grevio-report-monaco/168074fd6b>> accessed 16 February 2022 18, 42.

²⁷⁰ Grevio, 'Baseline Evaluation Report Monaco' (*GREVIO: Council of Europe*, 2017) <<https://rm.coe.int/grevio-report-monaco/168074fd6b>> accessed 16 February 2022 18-19.

²⁷¹ *Ibid*, 42.

²⁷² Grevio, 'Baseline Evaluation Report Portugal' (*GREVIO: Council of Europe*, 2018) <<https://rm.coe.int/grevio-reprt-on-portugal/168091f16f>> accessed 16 February 2022 17.

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