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Draft Council of Europe Convention on preventing and combating violence against women and domestic violence

Draft explanatory memorandum

Request for an opinion
Committee of Ministers

Draft explanatory memorandum

Ad hoc Committee on Preventing and Combating Violence against Women and Domestic Violence (CAHVIO)

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I. Introduction

1. Violence against women, including domestic violence, is one of the most serious forms of gender-based violations of human rights in Europe that is still shrouded in silence. Domestic violence – against other victims such as children, men and the elderly – is also a hidden phenomenon which affects too many families to be ignored.

2. Prevalence rates for Europe do not exist, but many member states have increasingly conducted surveys to measure the extent of violence against women nationally. Although methodologies vary, an overview of these surveys suggests that across countries, one-fifth to one-quarter of all women have experienced physical violence at least once during their adult lives and more than one-tenth have suffered sexual violence involving the use of force. Figures for all forms of violence, including stalking, are as high as 45%. The majority of such violent acts are carried out by men in their immediate social environment, most often by partners and ex-partners.

3. Secondary data analysis support a conservative estimate that about 12% to 15% of all women have been in a relationship of domestic abuse after the age of 16. Many more continue to suffer physical and sexual violence from former partners even after the break-up, indicating that, for a large number of women, ending an abusive relationship does not necessarily mean physical safety.

4. Domestic violence against children is widespread and studies have revealed the link between domestic violence against women and child physical abuse as well as the trauma that witnessing violence in the home causes in children. For other forms of domestic violence, such as elderly abuse and domestic violence against men, reliable data is relatively scarce.

5. Violence against women is a worldwide phenomenon. The Committee on the Elimination of Discrimination against Women (CEDAW Committee) of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (hereafter CEDAW) in its general recommendation on violence against women No. 19 (1992) helped to ensure the recognition of gender-based violence against women as a form of discrimination against women. The United Nations General Assembly, in 1993, adopted a Declaration on the Elimination of Violence against Women that laid the foundation for international action on violence against women. In 1995, the Beijing Declaration and Platform for Action identified the eradication of violence against women as a strategic objective among other gender equality requirements. In 2006, the UN Secretary-General published his In-depth study on all forms of violence against women, in which he identified the manifestations and international legal frameworks relating to violence against women, and also compiled details of "promising practices" which have shown some success in addressing this issue.

6. As a regional instrument open for ratification and accession to non-member states, the Council of Europe Convention on preventing and combating violence against women and domestic violence complements and expands the standards set by other regional human rights organisations in this field. The Inter-American Convention on the prevention, punishment and eradication of violence against women, adopted in 1994 by the Organisation of American States, and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, adopted in 2003 by the African Union, both address the issue of violence against women. More comprehensive in nature, the Council of Europe Convention significantly reinforces action to prevent and combat violence against women and domestic violence at world level.

Action of the Council of Europe

7. One of the primary concerns of the Council of Europe, representing 47 member states and their 800 million citizens, is to safeguard and protect human rights. Violence against women, including domestic violence, undermines the core values on which the Council of Europe is based.

8. Since the 1990ies, the Council of Europe, in particular its Steering Committee for Equality between Women and Men (CDEG), has undertaken a series of initiatives to promote the protection of women against violence. In 1993, the 3rd European Ministerial Conference on Equality between Women and Men was devoted to Strategies for the elimination of violence against women in society: the media and other means.

9. An Action Plan to Combat Violence against Women which had subsequently been developed provided the first comprehensive policy framework for national administrations. This was followed up in 2002 by the adoption of Council of Europe Recommendation Rec(2002)5 of the Committee of Ministers to member states on the protection of women against violence. It represents a milestone in that it proposes, for the first time in Europe, a comprehensive strategy for the prevention of violence against women and the protection of victims in all Council of Europe member states. Since 2002, it has served as the most important reference text for

member states in combating violence against women. Its implementation is regularly monitored by means of a monitoring framework to evaluate progress. Several monitoring cycles were completed and their outcome assessed and published. They showed that, in particular in the areas of legislation, police investigation and prosecution much had been done to enhance the criminal law response to violence against women. Nonetheless, many gaps remain. In other areas, notably the provision of services for victims, signs of progress are scarce.

10. To give new impetus to the eradication of violence against women, and to reaffirm their commitment to this aim, the Heads of State and Government of the Council of Europe member states decided at their Third Summit (Warsaw, 16-17 May 2005) to carry out a large-scale campaign on the issue, devised and closely monitored by the Council of Europe Task Force to Combat Violence against Women, including Domestic Violence, whose members were appointed by the Secretary General of the Council of Europe.

11. The Campaign was conducted at three levels: intergovernmental, parliamentary and local. Member states were asked to make significant progress in four main areas: legal and policy measures, support and protection for victims, data collection and awareness-raising. They were also invited to carry out national campaigns to lobby for stronger implementation of Recommendation Rec (2002)5 on the protection of women against violence, which more than half the member states did.

12. Thanks to the unique role of the Parliamentary Assembly of the Council of Europe, comprising delegations from all 47 national parliaments, there was a strong parliamentary dimension to the Campaign. Many parliamentarians have, individually and jointly, pushed for changes in legislation to protect women from gender-based violence. By organising parliamentary debates and hearings on violence against women, but also in interviews and public statements, parliamentarians have greatly contributed to raising awareness of this topic. Parliamentarians in many member states continue to actively lobby for change and have created a "Network of Contact Parliamentarians" who are committed to combating violence against women at national level.

13. The campaign revealed the magnitude of the problem in Europe, but it also brought to light examples of good practice and initiatives in many different member states. It increased awareness among key actors and helped place the various forms of violence against women on the political agenda.

14. Furthermore, the assessment of national measures to address violence against women carried out by the Task Force showed the need for harmonised legal standards and the collection of relevant data to ensure that victims across Europe benefit from the same level of protection and support. The Task Force therefore recommended in its Final Activity Report (EG-TFV (2008) 6), that the Council of Europe develop a human rights convention to prevent and combat violence against women.

15. Moreover, the European Ministers of Justice decided during their 27th Conference (Yerevan, Armenia, 12-13 October 2006) to assess the need for a Council of Europe legal instrument on violence against the partner and be aware that such violence can be based on discriminating prejudices in terms of inequalities resulting from gender, origins and economic dependency. Following the results of the "Feasibility study for a convention on against domestic violence" (CDPC (2007)09 rev) it was concluded by the European Committee for Crime Problems (CDPC) that such an instrument would be necessary.

16. The Parliamentary Assembly has long taken a firm political stance against all forms of violence against women. It has adopted a number of resolutions and recommendations on the various forms of violence against women. In particular, it has addressed the issue of female genital mutilation (Resolution 1247 (2001) on female genital mutilation), domestic violence (Resolution 1582 (2002) on domestic violence), so-called "honour crimes" (Resolution 1327 (2003) on so-called "honour crimes"), forced and child marriages (Recommendation 1723 (2005) on forced marriages and child marriages), date rape (Recommendation 1777 (2007) on sexual assaults linked to "date-rape drugs") and, more recently, the issues of feminicides (Resolution 1654 (2009) on Feminicides) and marital rape (Resolution 1691 (2009) on rape of women, including marital rape).

17. The Parliamentary Assembly has repeatedly called for legally-binding standards on preventing, protecting against and prosecuting the most severe and widespread forms of gender-based violence and has expressed its support to the drafting of the Council of Europe Convention on preventing and combating violence against women and domestic violence.

The Council of Europe Convention on preventing and combating violence against women and domestic violence

18. In response to the recommendations by the Task Force to develop a convention on violence against women and the results of the feasibility study on a convention on violence against the partner, the Committee of Ministers decided to set up a multi-disciplinary committee mandated to develop legally-binding standards that would cover both these areas: violence against women and domestic violence.

19. As a result, the Ministers' Deputies of the Council of Europe adopted, at their 1044th meeting on 10 December 2008, the terms of reference for the Ad Hoc Committee on Preventing and Combating Violence against Women and Domestic Violence (CAHVIO) to prepare one or more legally binding instrument[s] "to prevent and combat domestic violence, including specific forms of violence against women, other forms of violence against women, and to protect and support the victims of such violence as well as prosecute the perpetrators". The Deputies also requested that CAHVIO "present, by 30 June 2009, an interim report on its position on the subjects and contents of the proposed instrument(s), its working methods and the time table for its work, in order to allow the Committee of Ministers to take a decision, where necessary, on these matters". The interim report reflected the opinion of the Committee that the focus of the Convention was to be on the elimination of violence against women. Furthermore, the Convention would deal with domestic violence which affects women disproportionately, while allowing for the application of its provisions to all victims of domestic violence. At its 1062nd meeting of 1st July 2009, the Deputies "took note of the interim report (…)" and "invited the CAHVIO to continue its work in accordance with the work programme and timetable set out in the interim report and, in particular, to prepare the instruments proposed in the report". On that basis, in December 2009, CAHVIO started negotiations on the Convention on preventing and combating violence against women and domestic violence. CAHVIO held six meetings, in December 2009 and February, June/ July, September, November and December 2010 to finalise the text.

20. The text of the draft convention was approved by the CAHVIO during its meeting in December 2010 and transmitted to the Committee of Ministers for submission to the Parliamentary Assembly for opinion. In … 2011 the Parliamentary Assembly gave its opinion on the draft convention.

21. Building on Recommendation Rec(2002)5 on the protection of women against violence, the Convention sets, for the first time in Europe, legally-binding standards to prevent violence against women and domestic violence, protect its victims and punish the perpetrators. It fills a significant gap in human rights protection for women and encourages Parties to extend its protection to all victims of domestic violence. It nonetheless frames the eradication of violence against women in the wider context of achieving substantive equality between women and men and thus significantly furthers recognition of violence against women as a form of discrimination.

II. Commentary on the provisions of the Convention

Preamble

22. The Preamble reaffirms the commitment of the signatories to human rights and fundamental freedoms. It recalls only the most important international legal instruments which directly deal with the scope of this Convention in the framework of the Council of Europe and the United Nations.

23. During the negotiation process of this Convention, other international legal instruments, in particular those prepared by the Council of Europe, have been taken into account. In addition, the drafters bore in mind the following recommendations of the Council of Europe Parliamentary Assembly: Recommendation 1450 (2000) on Violence against women in Europe, Recommendation 1582 (2002) on Domestic violence against women, Recommendation 1723 (2005) on Forced marriages and child marriages, Recommendation 1759 (2006) on Parliaments united in combating domestic violence against women, Recommendation 1777 (2007) on Sexual assaults linked to "date-rape drugs", Recommendation 1817 (2007) on Parliaments united in combating domestic violence against women: mid-term assessment of the Campaign, Recommendation 1847 (2008) on Combating violence against women: towards a Council of Europe convention, Recommendation 1873 (2009) on Sexual violence against women in armed conflict, Recommendation 1868 (2009) on Action to combat gender-based human rights violations, including abduction of women and girls, Recommendation 1861 (2009) on Feminicides, Recommendation 1881 (2009) on the urgent need to combat so-called 'honour crimes', Recommendation 1887 (2009) on Rape of women, including marital rape, Recommendation 1891 (2009) on Migrant women: at particular risk from domestic violence and Recommendation 1905 (2010) on Children who witness domestic violence. Similarly, the drafters took into consideration Recommendation 260(2009) Combating domestic violence against women and Resolution 279(2009) Combating domestic violence against women of the Congress of Local and Regional Authorities of the Council of Europe.

24. Furthermore, the negotiations were inspired by the following political declarations:

a. the Declaration and Programme of Action adopted at the 5th European Ministerial Conference on Equality between Women and Men (Skopje, 22-23 January 2003);

b. the Action Plan adopted at the 3rd Summit of the Heads of State and Government of the Council of Europe (Warsaw, 16-17 May 2005);

c. the Declaration "Making gender equality a reality" adopted by the Committee of Ministers of the Council of Europe (Madrid, 12 May 2009);

d. the Resolution no. 1 on preventing and responding to domestic violence adopted at the 29th Council of Europe Conference of Ministers of Justice (Tromsø, Norway, 18 -19 June 2009);

e. the Action Plan and Resolution adopted at the 7th Council of Europe Conference of Ministers responsible for Equality between Women and Men (Baku, 24-25 May 2010);

f. the Beijing Declaration and Platform for Action adopted at the Fourth World Conference of Women in 1995, the report of the Ad Hoc Committee of the whole of the 23rd special session of the United Nations General Assembly (Beijing + 5 political declaration and outcome document) as well as the political declaration from the 49th session of the United Nations Commission on the Status of Women in 2005 (Beijing + 10) and 54th session of the United Nations Commission on the Status of Women in 2010 (Beijing + 15) and Women 2000: Gender Equality, Development and Peace for the Twenty-first Century.

25. The Preamble sets out the basic aim of the Convention: the creation of a Europe free from violence against women and domestic violence. To this end, it firmly establishes the link between achieving gender equality and the eradication of violence against women. Based on this premise, it recognises the structural nature of violence against women and that it is a manifestation of the historically unequal power relations between women and men. Consequently, the Preamble sets the scene for a variety of measures contained in the Convention that frame the eradication of violence against women within the wider context of combating discrimination against women and achieving gender equality in law and in fact. It should also be noted that the term "discrimination against women" should be interpreted as constituting "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field" as provided in Article 1 of CEDAW. At the same time the drafters wished to acknowledge that violence

against women and domestic violence may be explained and understood in various manners at structural, group and individual levels. Violence against women and domestic violence are complex phenomena and it is necessary to use a variety of approaches in combination with each other in order to understand them.

26. The drafters wished to emphasise that violence against women seriously violates and impairs or nullifies the enjoyment by women of their human rights, in particular their fundamental rights to life, security, freedom, dignity and physical and emotional integrity, and that it therefore cannot be ignored by governments. Moreover, they recognised that violence affects not only women adversely, but society as a whole and that urgent action is therefore required. Finally, they stressed the fact that some groups of women such as women and girls with disabilities are often at greater risk of experiencing violence, injury, abuse, neglect or negligent treatment, maltreatment or exploitation, both within and outside the home.

27. In addition to affirming that violence against women, including domestic violence against women, is a distinctly gendered phenomenon, the signatories clearly recognise that men and boys may also be victims of domestic violence and that this violence should also be addressed. Where children are concerned, it is acknowledged that they do not need to be directly affected by the violence to be considered victims but that witnessing domestic violence is also traumatising and therefore sufficient to victimise them.

28. The drafters wished to stress that the obligations contained in this Convention do not require Parties to take measures that run counter to constitutional rules or fundamental principles relating to the freedom of the press and the freedom of expression in other media.

29. It is important to note that the measures contained in the Convention are without prejudice to the positive obligations on states to protect the rights recognised by the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereafter ECHR). Measures should also take into account the growing body of case law of the European Court of Human Rights which sets important standards in the field of violence against women, and which provided guidance to the drafters for the elaboration of numerous positive obligations and measures needed to prevent such violence.

Chapter I – Purposes, definitions, equality and non-discrimination, general obligations

Article 1 – Purposes of the Convention

30. Paragraph 1 sets out the purposes of the Convention. Paragraph 1 (a) states as the specific purpose of the Convention the protection of women against all forms of violence, as well as the prevention, prosecution and elimination of violence against women and domestic violence.

31. In line with the recognition contained in the preamble that there is a link between eradicating violence against women and achieving gender equality in law and in fact , paragraph 1 (b) specifies that the Convention will contribute to the elimination of all forms of discrimination against women and promote substantive equality between women and men. The drafters considered it essential to clearly state this as one of the purposes of the Convention.

32. Paragraph 1 (c) reflects the need for a comprehensive approach to the protection of and assistance to all victims of violence against women and domestic violence. The forms of violence covered by the scope of this Convention have devastating consequences on victims. It is necessary to design a comprehensive framework to not only ensure their further safety, re-establish their physical and psychological health but to also enable them to re-build their lives. This framework should be grounded on a human-rights based approach.

33. Paragraph 1 (d) deals with international co-operation, about which Chapter VIII contains details. International co-operation is not confined to legal co-operation in criminal and civil matters but extends to the exchange of information to prevent criminal offences established under the Convention and to ensure protection from immediate harm.

34. Eliminating violence against women and domestic violence requires extensive multi-agency co-operation as part of an integrated approach. Ensuring this approach to preventing and combating violence is stated as the final purpose of the Convention in Paragraph 1 (e). It is further developed in Chapter II and other sections of the Convention.

35. Paragraph 2 underlines that, in order to ensure the effective implementation of its provisions by the Parties, the Convention sets up a special monitoring mechanism. This is a means of ensuring Parties' compliance with the Convention and is a guarantee of the Convention's long-term effectiveness (see comments on Chapter IX).

Article 2 – Scope of the Convention

36. Paragraph 1 states that the focus of this Convention is on all forms of violence against women which includes domestic violence committed against women. The drafters considered it important to emphasise that the majority of victims of domestic violence are women.

37. The provision contained in paragraph 2 on the scope of the Convention encourages Parties to apply this Convention also to domestic violence committed against men and children. It is therefore up to the Parties to decide whether to extend the applicability of the Convention to these victims. They may do so in the manner they consider the most appropriate, taking notably account of the specific national situation and of the developments in their society. However, with a view to keeping the focus on the various forms of gender-based violence committed against women, paragraph 2 requires Parties to pay particular attention to victims of this form of violence when implementing the Convention. This means that gender-based violence against women, in its various manifestations, one of which is domestic violence, must lie at the heart of all measures taken in implementation of the Convention.

38. The basic principles of international humanitarian law and the Rome Statute of the International Criminal Court, which are referred to in the Preamble to the Convention, affirm individual criminal responsibility under international law for violence that occurs primarily (but not exclusively) during armed conflict. Article 7 of the Rome Statute (crimes against humanity committed as part of a widespread or systematic attack directed against any civilian population) and Article 8 (war crimes) include crimes of violence committed largely against women such as rape and sexual violence. However the forms of violence covered by the present Convention do not cease during armed conflict or periods of occupation. Paragraph 3 therefore provides for the continued applicability of the Convention during armed conflict as complementary to the principles of international humanitarian law and international criminal law.

Article 3 – Definitions

39. Article 3 provides several definitions which are applicable throughout the Convention.

Definition of "violence against women"

40. The definition of "violence against women" makes clear that, for the purpose of the Convention, violence against women shall be understood to constitute a violation of human rights and a form of discrimination. This is in line with the purpose of the Convention set out in Article 1 (b) and needs to be borne in mind when implementing the Convention. The second part of the definition is the same as contained in Council of Europe Recommendation Rec (2002) 5 of the Committee of Ministers to member states on the protection of women against violence, the CEDAW Committee General Recommendation No. 19 on violence against women (1992), as well as in Article 1 of the United Nations Declaration on the Elimination of All Forms of Violence against Women. The drafters have, however, expanded it to include the notion of "economic harm" which can be related to psychological violence.

Definition of "domestic violence"

41. Article 3 (b) provides a definition of domestic violence that covers acts of physical, sexual, psychological or economic violence between members of the family or domestic unit, irrespective of biological or legal family ties. In line with what is mentioned in paragraph 40, economic violence can be related to psychological violence. Domestic violence includes mainly two types of violence: intimate-partner violence between current or former spouses or partners and inter-generational violence which typically occurs between parents and children. It is a gender neutral definition that encompasses victims and perpetrators of both sexes.

42. Domestic violence as intimate-partner violence includes physical, sexual, psychological or economic violence between current or former spouses as well as current or former partners. It constitutes a form of violence which affects women disproportionately and which is therefore distinctly gendered. Although the term "domestic" may appear to limit the context of where such violence can occur, the drafters recognised that the violence often continues after a relationship has ended and therefore agreed that a joint residence of the victim and perpetrator is not required. Inter-generational domestic violence includes physical, sexual, psychological and economic violence by a person against her or his child or parent (elderly abuse) or such violence between any other two or more family members of different generations. Again, a joint residence of the victim and perpetrator is not required.

Definition of "gender"

43. As the Convention places the obligation to prevent and combat violence against women within the wider framework of achieving equality between women and men, the drafters considered it important to define the term "gender". This definition explains that there are socially constructed roles and behaviours that any given society considers appropriate for women and men. Research has shown that certain roles or stereotypes reproduce unwanted and harmful practices and contribute to make violence against women acceptable. To overcome such gender roles, Article 12 (1) frames the eradication of prejudices, customs, traditions and other practices which are based on the idea of the inferiority of women or on stereotyped gender roles as a general obligation to prevent violence. Elsewhere, the Convention calls for a gendered understanding of violence against women and domestic violence as a basis for all measures to protect and support victims. This means that these forms of violence need to be addressed in the context of the prevailing inequality between women and men, existing stereotypes, gender roles and discrimination against women in order to adequately respond to the complexity of the phenomenon.

Definition of "gender-based violence against women"

44. The term "gender-based violence against women" is used throughout the Convention and refers to violence that is directed against a woman because she is a woman or that affects women disproportionately. It differs from other types of violence in that the victim's gender is the primary motive for the acts of violence described under lit.a. In other words, gender-based violence refers to any harm that is perpetrated against a woman and that is both the cause and the result of unequal power relations based on perceived differences between women and men that lead to women's subordinate status in both the private and public spheres. This type of violence is deeply rooted in the social and cultural structures, norms and values that govern society, and is often perpetuated by a culture of denial and silence. The use of the expression "gender-based violence against women" in this Convention is understood as equivalent to the expression "gender-based violence" used in the CEDAW Committee General Recommendation No. 19 on violence against women (1992), the United Nations General Assembly Declaration on the Elimination of Violence against Women (1993) and Recommendation Rec(2002)5 of the Committee of Ministers of the Council of Europe to member states on the protection of women against violence (2002).

Definition of "victim"

45. The Convention contains a large number of references to victims. The term "victim" refers to both victims of violence against women, and victims of domestic violence, as defined in Article 3 (a) and Article 3 (b) respectively. While only women, including girls, can be victims of violence against women, victims of domestic violence may include men and women as well as children. In line with other international human rights treaties, the term "child" shall mean any person under the age of eighteen years. The term "victim" should be understood in accordance with the scope of the Convention.

Definition of "women"

46. Conscious of the fact that many of the forms of violence covered by the Convention are perpetrated against both women and girls, the drafters did not intend to limit the applicability of the Convention to adult victims only. Lit.f. therefore clearly states that the term "women" includes girls under the age of eighteen years.

Article 4 – Fundamental rights, equality and non-discrimination

47. Paragraph 1 states the principle deriving from international human rights law that every person has the right to live free from violence in the public and the private sphere. With a view to the focus of the Convention, the drafters considered it important to emphasise the particular obligation to promote and protect this right for women which are predominantly victims of gender-based violence.

48. Discrimination against women provides a breeding ground for tolerance towards violence against women. Any measures taken to prevent and combat violence against women need to promote equality between women and men as only substantive equality will prevent such violence in the future. In the *Opuz v. Turkey* judgment, the European Court of Human Rights has discussed the interconnection between discrimination and violence against women and has held that gender-based violence constitutes a form of discrimination because it mainly affects women and women were not protected by the law on an equal footing with men.

49. For these reasons, paragraph 2 affirms the principle of substantive equality between women and men by requiring Parties to not only condemn all forms of discrimination against women, but to enshrine the principle of equality in law, ensure its practical realisation as well as prohibit discrimination by law and abolish any discriminatory legislation and practices. It recognises that the enjoyment of the right to be free from violence is interconnected with the Parties' obligation to secure equality between women and men to exercise and enjoy all civil, political, economic, social and cultural rights as set out in the human rights instruments of the Council of Europe, particularly the ECHR and its Protocols and the European Social Charter, and other international instruments, particularly CEDAW, to which they are Parties.

50. It is important to note that this paragraph provides Parties with two options to meet the requirement of enshrining in law the principle of equality between women and men: a constitutional amendment or its embodiment in other legislative act. Furthermore, the obligation to ensure the practical realisation of equality between women and men addresses the fact that enshrining it in law is often insufficient and that practical measures are required to implement this principle in a meaningful way.

51. Paragraph 3 prohibits discrimination in Parties' implementation of the Convention. The meaning of discrimination is identical to that given to it under Article 14 of the ECHR. The list of non-discrimination grounds draws on that in Article 14 ECHR as well as the list contained in Protocol No. 12 to the ECHR. It is worth pointing out that the European Court of Human Rights has applied Article 14 to discrimination grounds not explicitly mentioned in that provision (see, for example, as concerns the ground of sexual orientation, the judgment of 21 December 1999 in *Salgueiro da Silva Mouta v. Portugal*).

52. In light of this case law, the drafters wished to add the following non-discrimination grounds which are of great relevance to the subject-matter of the Convention: gender, sexual orientation, gender identity, age, state of health, disability, marital status, and migrant or refugee status or other status, meaning that this is an open-ended list. Research into help-seeking behaviour of victims of violence against women and domestic violence, but also into the provision of services in Europe shows that discrimination against certain groups of victims is still wide-spread. Women may still experience discrimination at the hands of law enforcement agencies or the judiciary when reporting an act of gender-based violence. Similarly, gay, lesbian and bisexual victims of domestic violence are often excluded from support services because of their sexual orientation. Certain groups of individuals may also experience discrimination on the basis of their gender identity, which in simple terms means that the gender they identify with is not in conformity with the sex assigned to them at birth. This includes 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. Furthermore, migrant and refugee women may also be excluded from support services because of their residence status. It is important to point out that women tend to experience multiple forms of discrimination as may be the case of women with disabilities or/and women of ethnic minorities, Roma, or women with HIV/AIDS infection, to name a few. This is no different when they become victims of gender-based violence.

53. The extent of the prohibition on discrimination contained in paragraph 3 is much more limited than the prohibition of discrimination against women contained in paragraph 2 of this article. It requires Parties to refrain from discrimination in the implementation of the provisions of this Convention, whereas paragraph 2 calls on Parties to condemn discrimination in areas beyond the remit of the Convention.

54. Paragraph 4 refers to special measures which a Party to the Convention may wish to take to enhance the protection of women from gender-based violence – measures which would benefit women only. Drawing on Article 4 of CEDAW, this paragraph stipulates that special measures which aim at preventing and protecting women from gender-based violence and which do not address men do not constitute a form of discrimination. This is in line with the concept of discrimination as interpreted by the European Court of Human Rights in its case law concerning Article 14 ECHR. In particular, this case law has made clear that not every distinction or difference of treatment amounts to discrimination. As the Court has stated, for example in the *Abdulaziz, Cabales and Balkandali v. the United Kingdom* judgment, "a difference of treatment is discriminatory if it has no objective and reasonable justification, that is, if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised". The fact that women experience gender-based violence, including domestic violence, to a significantly larger extent than men can be considered an objective and reasonable justification to employ resources and take special measures for the benefit of women victims only.

Article 5 – Principles of state responsibility, including due diligence

55. Under international law a state is responsible for the commission of an internationally wrongful act which is attributable to it, through the conduct of their agents such as the police, immigration officials and prison officers. This principle is set out in the International Law Commission's Articles on the Responsibility of States for Internationally Wrongful Acts (2001) which are widely accepted as customary international law. Under international human rights law the state has both negative duties and positive duties: state officials must both respect the law and refrain from the commission of internationally wrongful acts and must protect individuals from their commission by other non-state actors. Article 5 (1) addresses the state obligation to ensure that their authorities, officials, agents, institutions and other actors acting on behalf of the state refrain from acts of violence against women, whereas paragraph 2 sets out Parties' obligation to exercise due diligence in relation to acts covered by the scope of this Convention perpetrated by non-state actors. In both cases failure to do so will incur state responsibility.

56. A requirement of due diligence has been adopted in a number of international human rights instruments, interpretations, and judgments with respect to violence against women. These include CEDAW Committee General Recommendation No. 19 on violence against women (1992), Article 4 of the United Nations General Assembly Declaration on the Elimination of Violence against Women (1993), the Convention on the Prevention of Violence against Women (Convention of *Belém do Pará*, 1994) adopted by the Organisation of American States as well as the Council of Europe Recommendation Rec(2002)5 of the Committee of Ministers to member states on the protection of women against violence (2002). In its case law on domestic violence, the European Court of Human Rights has adopted the obligation of due diligence (see the judgment of *Opuz v. Turkey*, 2009). It has established that the positive obligation to protect the right to life (Article 2 ECHR) requires state authorities to display due diligence, for example by taking preventive operational measures, in protecting an individual whose life is at risk.

57. Against the backdrop of these developments in international law and jurisprudence, the drafters considered it important to enshrine a principle of due diligence in this Convention. It is not an obligation of result, but an obligation of means. Parties are required to organise their response to all forms of violence covered by the scope of this Convention in a way that allows relevant authorities to diligently prevent, investigate, punish and provide reparation for such acts of violence. Failure to do so incurs state responsibility for an act otherwise solely attributed to a non-state actor. As such, violence against women perpetrated by non-state actors crosses the threshold of constituting a violation of human rights as referred to in Article 2 insofar as Parties have the obligation to take the legislative and other measures necessary to exercise due diligence to prevent, investigate, punish and provide reparation for acts of violence covered by the scope of this Convention, as well as to provide protection to the victims, and that failure to do so violates and impairs or nullifies the enjoyment of their human rights and fundamental freedoms.

58. The term "reparation" may encompass different forms of reparation under international human rights law such as restitution, compensation, rehabilitation, satisfaction, and guarantee of non-repetition. As regards compensation, it is important to note that this form of reparation shall only be provided by a Party under the conditions set out in Article 30 (2) of this Convention. Finally, term "non-state actor" refers to private persons, a concept which is already expressed in point II of Council of Europe Recommendation Rec (2002)5 on the protection of women against violence.

Article 6 – Gender-sensitive policies

59. Since Article 6 is placed under Chapter I which also deals with general obligations of Parties, it application extends to all other articles of this Convention. The nature of this obligation is two-fold. On the one hand, it requires Parties to ensure a gender perspective is applied not only when designing measures in the implementation of the Convention, but also when evaluating their impact. This means that a gender impact assessment needs to be carried out in the planning stage of any measure which a Party takes in the implementation of this Convention. It further means that during the evaluation stage, Parties are required to determine whether there is a gender differential in the impact of the provisions.

60. On the other hand, this article calls on Parties to promote and implement policies aimed at achieving equality between women and men and at empowering women. This obligation complements the obligation to condemn and prohibit discrimination contained in Article 4 paragraph 2. Convinced of the need to achieve equality between women and men and to empower women in order to put an end to all forms of violence covered by the scope of this Convention, the drafters believed it essential to place an obligation on Parties that goes beyond the specific measures to be taken to prevent and combat such violence in order to achieve

this goal. This ties in with the purposes of the Convention listed in Article 1, in particular the promotion of substantive equality between women and men, including by empowering women, as expressed in Article 1 (b).

Chapter II – Integrated policies and data collection

61. Similar to other recent conventions negotiated at the level of the Council of Europe, this Convention follows the "3 P structure" of "**P**revention", "**P**rotection", and "**P**rosecution". However, since an effective response to all forms of violence covered by the scope of this Convention requires more than measures in these three fields, the drafters considered it necessary to include an additional "P" (integrated **P**olicies).

Article 7 – Comprehensive and co-ordinated policies

62. Paragraph 1 requires Parties to devise and implement policies which would comprise a multitude of measures to be taken by different actors and agencies and which, taken as a whole, offer a holistic response to violence against women. This obligation is further developed in paragraph 2. It requires Parties to ensure that the adopted policies are implemented by way of effective multi-agency co-operation. Good practice examples in some member states show that results are enhanced when law enforcement agencies, the judiciary, women's non-governmental organisations, child protection agencies and other relevant partners join forces on a particular case, for example to carry out an accurate risk assessment or devise a safety plan. This type of co-operation should not rely on individuals convinced of the benefits of sharing information but requires guidelines and protocols for all agencies to follow, as well as sufficient training of professionals on their use and benefits.

63. To ensure that the expertise and perspective of relevant stakeholders, agencies and institutions contribute to any policy-making in this field, paragraph 3 calls for the involvement of "all relevant actors, such as government agencies, the national, regional and local parliaments and authorities, national human rights institutions and civil society organisations". This is a non-exhaustive list of actors, which the drafters intended to cover, in particular, women's non-governmental organisations and migrant organisations, but also religious institutions. National human rights institutions refer to those established in accordance with the UN principles for national institutions for the promotion and protection of human rights, adopted by United Nations General Assembly Resolution 48/134, 1993. As national human rights institutions exist in many member states of the Council of Europe, the drafters considered it important to include these in the list of relevant actors, where they exist. This provision does not contain the obligation to set up such institutions where they do not exist. By including national, regional and local parliaments in this provision, the drafters wished to reflect the different levels of law-making powers in Parties with a federal system. One way of ensuring the elements of comprehensive and co-ordinated policies on the one hand and the involvement of all relevant institutions and agencies on the other would be by drawing up national action plans.

Article 8 – Financial resources

64. This article aims at ensuring the allocation of appropriate financial and human resources for both activities carried out by public authorities and those of relevant non-governmental and civil society organisations. Across Council of Europe member states, different practice exists when it comes to government funding for non-governmental organisations (hereinafter NGOs) involved in preventing and combating all forms of violence covered by the scope of this Convention. The obligation placed on Parties is therefore that of allocating financial and human resources for activities carried out by NGOs and civil society.

65. In view of the different economic circumstances of member states, the drafters chose to limit the scope of this obligation to the allocation of appropriate resources. This means that the resources allocated need to be suitable for the target set or measure to be implemented.

Article 9 – Non-governmental organisations and civil society

66. In many member states, the overwhelming majority of services for victims of domestic violence, and also services for victims of other various forms of violence against women, are run by non-governmental or civil society organisations. They have a long tradition of providing shelter, legal advice, medical and psychological counselling as well as of running hotlines and other essential services.

67. The purpose of this article is to emphasise the important contribution these various organisations make to preventing and combating all forms of violence covered by the scope of this Convention. It therefore requires Parties to the Convention to recognise their work by, for example, tapping into their expertise and

involving them as partners in multi-agency co-operation or in the implementation of comprehensive government policies which Article 7 calls for. Beyond such recognition, this article requires Parties to the Convention to actively encourage and support the work of these dedicated NGOs and civil society organisations. This means enabling them to carry out their work in the best possible way. Although Article 9 refers only to NGOs and civil society active in combating violence against women, this should not prevent Parties from going further and supporting the work that is carried out by NGOs and civil society focusing on domestic violence in its wider scope.

Article 10 – Co-ordinating body

68. Paragraph 1 entails the obligation to entrust one or more official government bodies with four specific tasks: co-ordinating, implementing, monitoring and evaluating the policies and measures which the respective Party to the Convention has devised to prevent and combat all forms of violence covered by the scope of this Convention. This can be done by setting up new official bodies or mandating official bodies already in existence with these tasks. The term “official body” is to be understood as any entity or institution within government. It may be a body set up or already in existence either at national or regional level. Size, staffing and funding are to be decided by the Parties, as well as which entity it shall be answerable to and any reporting obligations it shall have. Regarding the tasks of implementation, monitoring and evaluation this body should be in existence on the respective level of a Party’s structure which is responsible for the carrying out of the measures. This means that in a federal government structure it may be necessary to have more than one body.

69. The four tasks which this body or bodies are mandated to undertake aim at ensuring that the various measures taken by the Party in implementation of this Convention are well co-ordinated and lead to a concerted effort of all agencies and all sectors of government. Moreover, they aim at ensuring the actual implementation of any new policies and measures. The monitoring task bestowed upon these bodies is limited to the monitoring of how and how effectively policies and measures to prevent and combat all forms of violence covered by the scope of this Convention are being implemented at the national and/or regional and local level. It does not extend to monitoring compliance with the Convention as a whole which is a task performed by the independent, international monitoring mechanism set up in Chapter IX of the Convention (see comments on Chapter IX). Lastly, the evaluation of policies and measures which these bodies are mandated to carry out comprises the scientific evaluation of a particular policy or measure in order to assess whether it meets the needs of victims and fulfils its purpose as well as to uncover unintended consequences. This will require robust administrative and population-based data, which Article 11 obliges Parties to the Convention to collect. For this reason, bodies created under this article are also assigned the task of co-ordinating the collection of the necessary data and to analyse and disseminate its results. Some member states have set up observatories on violence against women which already collect a vast variety of data. While these may serve as examples, the drafters decided to leave to the Parties the decision on how to ensure the co-ordination, analysis and dissemination of data by the bodies in question.

70. Paragraph 2 of this article authorises these bodies to receive information within the framework of this Convention which the respective Party has taken in compliance with Chapter VIII (see comments on Chapter VIII). It is important to note that, for data protection reasons, the authorisation is limited to receiving information of a general nature (see comments on Article 65). The obligation is therefore confined to ensuring that bodies created under this article are kept informed, in a general manner and without references to individual cases, of international co-operation activities, including mutual legal assistance in civil and criminal matters. The purpose is to allow them to fulfil its role.

71. The information and knowledge acquired through the exchange of experiences and practice is of great value in preventing and combating all forms of violence covered by the scope of this Convention. Paragraph 3 therefore equips bodies created under this article with the ability to seek contact with and set up working relations with its counterparts created in other Parties to the Convention. This will allow for important cross-fertilisation that is mutually productive and will lead to further harmonisation of practice.

Article 11 – Data collection and research

72. Systematic and adequate data collection has long been recognised as an essential component of effective policy-making in the field of preventing and combating all forms of violence covered by the scope of this Convention. Despite this recognition, examples of systematically collected administrative or population-based data in Council of Europe member states are rare. Additionally, available data are seldom comparable across countries nor over time, resulting in a limited understanding of the extent and the evolution of the problem. Preventing and combating violence against women and domestic violence requires evidence-based

policy-making. This implies effectively documenting the magnitude of violence by producing robust, comparative data in order to guide policy and to monitor the implementation of measures to address the problem. This chapter contains the obligation to address the importance of regularly collecting representative and comparable data to the devising and implementation of policies to prevent and combat all forms of violence covered by the scope of this Convention. It establishes the type of data that will need to be collected, analysed and prepared for dissemination by the co-ordinating body or bodies created under Article 10 and provided to the Group of independent experts (GREVIO) responsible for the monitoring of the implementation of the Convention (see Chapter IX). Additionally, it highlights the need to support research in the field of violence against women and domestic violence.

73. The nature of the obligation contained in paragraph 1 is twofold. First, in order to design and implement evidence-based policies and assess whether they meet the needs of those exposed to violence, lit.a requires Parties to collect disaggregated relevant statistical data at regular intervals on cases of all forms of violence covered by the scope of this Convention. Accurate statistical information specifically designed to target victims and perpetrators of such violence is not only important in efforts to raise awareness among policy-makers and the public on the seriousness of the problem, but can also encourage reporting by victims or witnesses. Relevant statistical data may include administrative data collected from statistics compiled by health care services and social welfare services, law enforcement agencies and NGOs, as well as judicial data recorded by judicial authorities, including public prosecutors. Appropriately collected statistical administrative and judicial data can contribute to Parties' national response to all forms of violence covered by the scope of this Convention by seeking information about the performance of government institutions as well as information on crimes that authorities are dealing with within the criminal procedure. Service-based administrative data includes for instance the systematic recording of data on how victims of such violence are using services and how government agencies as well as the public (and private) health sector, in return, are serving them in their plight to seek justice, medical care, counselling, housing or other support. Agency-based client data on service use is not only limited to assessing the effectiveness of policies in place, but can also provide a basis for estimating the administrative cost of such violence. Furthermore, judicial data can provide information on the sentences and characteristics of convicted persons, as well as on conviction rates.

74. Consequently, public authorities such as the judiciary, the police and social welfare services will need to set-up data systems in place that go beyond the internal recording of the needs of the agency. Again, in order to show if there has been an improvement or a decline in the effectiveness of prevention, protection and prosecution measures and policies, relevant statistical administrative and judicial data should be collected at regular intervals. The usefulness and relevance of such data depend above all on the quality of its recording. Although, the drafters felt it best to leave to the Parties the choice of data categories used, as a minimum requirement, recorded data on victim and perpetrator should be disaggregated by sex, age, type of violence as well as the relationship of the perpetrator to the victim, geographical location, as well as other factors deemed relevant by Parties such as disability. Recorded data should also contain information on conviction rates of perpetrators of all forms of violence covered by the scope of this Convention, including the number of protection orders issued. The Council of Europe study on "Administrative data collection on domestic violence in Council of Europe member states" (EG-VEW-DC(2008)Study) identifies these and other categories and designs a model approach containing recommendations on the collection of administrative data beyond current practices.

75. Secondly, lit.b creates the obligation for Parties to support research in the field of all forms of violence covered by the scope of this Convention. It is essential that Parties base their policies and measures to prevent and combat such forms of violence on state-of-the art research and knowledge in this field. Research is a key element of evidence-based policy-making and can thus contribute greatly to improving day-to-day, real-world responses to violence against women and domestic violence by the judiciary, support services and law enforcement agencies. This provision therefore requires Parties to undertake to support research efforts in order to pursue further knowledge of the root causes and effects of the problem, incidences and conviction rates, as well as of the efficiency of measures taken in implementation of the Convention.

76. Paragraph 2 details Parties' obligation to endeavour conducting population-based surveys. This implies collecting data that are statistically representative of the target population so that they can be easily generalised to the larger population. Population-based surveys can provide more general sociologically oriented insights into the prevalence, nature, determinants and consequences of all forms of violence covered by the scope of this Convention. They can also provide reliable data on victims' experiences of violence, on the reasons for not reporting, on the services received, as well as victims' opinions of and attitudes towards such violence. Parties are additionally obliged to conduct such surveys at regular intervals in order to make a pertinent and comparative assessment of the prevalence and the trends in all forms of violence covered by the scope of this Convention by tracking developments longitudinally. In this case, the choice of population

sample size and the regularity of such studies is left to the Parties. Depending on the Party, the scope of the surveys may be national, regional or local. It is however important to note that the combination of these levels can provide a macroscopic view of the phenomenon while also highlighting local or regional specificities. When designing population-based surveys, Parties may refer to the World Health Organisation (WHO) Multi-country Study on Women's Health and Domestic Violence against Women as well as to the International Violence Against Women Survey (IVAWS).

77. The drafters considered it important to highlight the distinction between population-based surveys and statistical administrative and judicial data for they serve different purposes and answer different questions. While the first can shed light on the level of severity and frequency as well as on the socio-economic and cultural factors leading to violence against women and domestic violence, the second can contribute to address capacity issues of government agencies and evaluate the effectiveness of services provided for victims of such violence. Using both types of data collection methods in conjunction can help gain an in-depth picture of the problem. Due to a lack of shared definitions and common indicators for evaluating the prevalence and trends of violence against women and domestic violence, data that are available rarely allow for cross-country comparison. Consequently, it would be beneficial for Parties to align the collection of data with standardised indicators and methods already in existence or currently under development. Parties should take into account existing developments or initiatives to provide reliable and comparable data such as the European Union Agency for Fundamental Rights violence against women survey.

78. As laid out in Article 65 the process of collecting, storing and transforming collected data should comply with standards on data protection as contained in the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108), to ensure confidentiality and respect for the privacy of victims, perpetrators and other persons involved. The standards laid out in Article 65 do not only apply in cases of transnational data exchange, but to all processes of collecting, storing and transforming of collected data.

79. Complementing Article 68 (7), the third paragraph of this article entails the obligation of Parties to provide the independent Group of experts referred to in Chapter IX with the information collected in order to stimulate international co-operation and enable international benchmarking. This not only allows the identification of existing good practice but also contributes to its harmonisation across the Parties to the Convention.

80. Finally, paragraph 4 contains the obligation to ensure that the information collected pursuant to Article 11 is available to the public. It is however left to the Parties to determine the form and means, as well as the type of information that is to be made available. In making information collected pursuant to Article 11 available to the public, Parties shall pay special attention to the privacy rights of persons affected.

Chapter III - Prevention

81. This chapter contains a variety of provisions that come under the heading of prevention in the wide sense of the term. Preventing violence against women and domestic violence requires far-reaching changes in attitude of the public at large, overcoming gender stereotypes and raising awareness. Local and regional authorities can be essential actors in implementing these measures by adapting them to specific realities.

Article 12 – General obligations

82. This article comprises a number of general preventive measures which lay the foundation and represent over-arching principles for more specific obligations contained in the subsequent articles of this chapter.

83. The obligations contained in paragraph 1 are based on the conviction of the drafters that existing patterns of behaviour of women and men are often influenced by prejudices, gender stereotypes and gender-biased customs or traditions. Parties to the Convention are therefore required to take measures that are necessary to promote changes in mentality and attitudes. The purpose of this provision is to reach the hearts and minds of individuals who, through their behaviour, contribute to perpetuate the forms of violence covered by the scope of this Convention. As a general obligation, this paragraph does not go into detail as to propose specific measures to take, leaving it within the discretion of the Party.

84. Paragraph 2 requires Parties to the Convention to take the necessary legislative and other measures to prevent all forms of violence covered by the scope of this Convention by any natural or legal person. Depending on the national legal system, some of these measures may require the passing of a law while others may not.

85. In addition to the prohibition of discrimination contained in Article 4 (3), paragraph 3 requires positive action to ensure that any preventive measures specifically address and take into account the needs of vulnerable persons. Perpetrators often choose to target such persons because they know that they are less likely to be able to defend themselves, or seek prosecution of the perpetrator and other forms of reparation, because of their situation. For the purpose of this Convention, persons made vulnerable by particular circumstances include: pregnant women and women with young children, persons with disabilities, including those with mental or cognitive impairments, persons living in rural or remote areas, substance abusers, prostitutes, persons of national or ethnic minority background, migrants – including undocumented migrants and refugees, gay men, lesbian women, bi-sexual and transgender persons as well as HIV-positive persons, homeless persons, children and the elderly.

86. Paragraph 4 underlines that all members of society can make an important contribution to the prevention of violence and should be encouraged to do so. As many of the forms of violence covered by the scope of this Convention are perpetrated primarily by men and boys, the drafters considered it important to emphasise their particular role in the prevention of such violence. Bearing in mind the fact that the majority of men and boys are not perpetrators, the drafters wanted to point out that their contribution can take on many forms in particular as role models, agents of change and advocates for equality between women and men and mutual respect. By speaking out against violence, engaging other men in activities to promote gender equality and acting as role models by actively taking on a caring role and family responsibilities men have an important contribution to make.

87. Paragraph 5 clearly states that culture, custom, religion, tradition or so-called “honour” shall not be invoked to justify any act of violence covered by the scope of this Convention. Parties to the Convention are therefore obliged to ensure that their national laws do not contain loopholes for interpretations inspired by such convictions. Moreover, this obligation extends to the prevention of any official statements, reports or proclamations that condone violence on the basis of culture, custom, religion, tradition or so-called “honour”. This provision also establishes a key principle according to which the prohibition of any of the acts of violence set out in the Convention can never be invoked as a restriction of the perpetrator’s cultural or religious rights and freedoms. This principle is important for societies where distinct ethnic and religious communities live together and in which the prevailing attitudes towards the acceptability of gender-based violence differ depending on the cultural or religious background.

88. Rounding off the list of general preventive measures, paragraph 6 calls for the promotion of specific programmes and activities for the empowerment of women. This means empowerment in all aspects of life, including political and economic empowerment. This obligation is a reflection of the greater aim of achieving gender equality by increasing women’s agency and reducing their vulnerability to violence.

Article 13 – Awareness-raising

89. The purpose of this article is to ensure that the general public is fully informed of the various forms of violence that women experience on a regular basis as well as of the different manifestations of domestic violence. This would help all members of society to recognise such violence, speak out against it and support its victims as neighbours, friends, relatives or colleagues, where possible and appropriate. The obligation entails the running of public awareness-raising campaigns or programmes on a regular basis that address and explain these issues in a gender-sensitive manner. Awareness-raising activities should include the dissemination of information on equality between women and men, non-stereotyped gender roles, and non-violent conflict resolution in interpersonal relationships. Moreover, the drafters considered it important that any campaign highlight the harmful consequences for children which violence against women and domestic violence may have in its direct or indirect form.

90. Many NGOs have a long tradition of carrying out successful awareness-raising activities – at local, regional or national level. This provision therefore encourages the co-operation with national human rights institutions and equality bodies, civil society and NGOs, in particular women’s organisations, where appropriate, in order to reach out to the general public. This however, is a non-exhaustive list of actors, which the drafters intended to cover. Furthermore, the inclusion of “where appropriate” in the provision means that Parties are not obliged to set up such bodies or institutions where they do not exist. Finally, it should be noted that the term women’s organisations refers to women’s NGOs working in the area of protection and support for women victims of violence against women.

91. Paragraph 2 extends the obligation to the dissemination of concrete information on available government or non-government preventive measures. This means the wide dissemination of information leaflets or posters or on-line information material on services which the police or the local community offers, contact information of local, regional or national services such as helplines or shelters and much more.

Article 14 – Education

92. Attitudes, convictions and behavioural patterns are shaped very early on in life. The promotion of gender equality, mutual respect in interpersonal relationships and non-violence must start as early as possible and is primarily a responsibility of parents. Educational establishments, however, have an important role to play in enhancing the promotion of these values.

93. In paragraph 1, this article addresses the need to design, where Parties deem appropriate, teaching material for all levels of education (primary, secondary and tertiary education) that promotes such values and enlightens learners with respect to the various forms of violence covered by the scope of this Convention. Where Parties deem teaching material appropriate, it needs to be adapted to the capacity of learners, which would, for example, require primary school teaching material to meet the intellectual capacity of primary school students. Teaching material means any type of formally developed and approved material that forms part of the curriculum and that, where appropriate, all teachers at a particular school have access to and are required or requested to use in class. As the words “where appropriate” indicate, the drafters did not want to impose a specific model on the Parties. Rather, this provision leaves it to the Parties to decide which type of schooling and which age group of learners they consider such teaching material to be appropriate for. The drafters decided on this wording to allow for a maximum of flexibility in the implementation of this provision also taking into account different possibilities between Parties in determining teaching materials. Some states for instance determine the teaching aims in their formal curriculum while leaving it to the schools to decide on the proper working methods and teaching materials to be used to reach these aims. The term “formal curriculum” refers to the planned programme of objectives, content, learning experiences, resources and assessment offered by a school where appropriate. It does not refer to incidental lessons which can be learnt at school because of particular school policies.

94. Paragraph 2 extends the obligation to promote the principles of equality between women and men, non-stereotyped gender roles, mutual respect, non-violent conflict resolution in interpersonal relationships in all informal educational facilities as well as any sports, cultural and leisure facilities as well as the media. Across Council of Europe member states, many different forms of informal education exist and are often referred to in many different ways. Generally, the term “informal educational facilities” refers to organised education activity outside formal systems, such as community or religious education facilities, activities, projects and institutions based on social pedagogy, and any other type of educational activity offered by community groups and other organisations (such as boy scouts or girl scouts, summer camps, after school activities, etc.). Sports, cultural and leisure facilities refer to facilities which offer leisure activities in the areas of sports, music, arts or any other field and which contribute to the lifelong process of learning from everyday experience.

95. Furthermore, this paragraph requires Parties to the Convention to include the media in its measures to promote the above principles. It is important to note that the drafters clearly indicated that any measures taken in this regard shall have due regard to the fundamental principle of the independence of the media and the freedom of the press.

Article 15 – Training of professionals

96. The training and sensitisation of professionals to the many causes, manifestations and consequences of all forms of violence covered by the scope of this Convention provides an effective means of preventing such violence. Training not only allows to raise awareness among professionals on violence against women and domestic violence, but contributes to changing the outlooks and the conduct of these professionals with regard to the victims. Furthermore, it significantly improves the nature and quality of the support provided to victims.

97. It is vital that professionals in regular contact with victims or perpetrators have appropriate knowledge of the issues associated with these kinds of violence. For this reason, paragraph 1 places an obligation on Parties to provide or strengthen appropriate training for the relevant professionals dealing with victims or perpetrators of all acts of violence covered by the scope of this Convention on issues such as the prevention and detection of such violence, equality between women and men, the needs and rights of victims, as well as on how to prevent secondary victimisation. Initial vocational training and in-service training should enable the relevant professionals to acquire the appropriate tools for identifying and managing cases of violence, at an early stage, and to take preventive measures accordingly, by fostering the sensitivity and skills required to respond appropriately and effectively on the job. The drafters felt it best to leave to the Parties how to organise the training of relevant professionals. However, it is important to ensure that relevant training be on-going and sustained with appropriate follow-up to ensure that newly acquired skills are adequately applied.

Finally, it is important that relevant training should be supported and reinforced by clear protocols and guidelines that set the standards staff are expected to follow in their respective fields. The effectiveness of these protocols where relevant, should be regularly monitored, reviewed and, where necessary, improved.

98. The relevant professionals may include professionals in the judiciary, in legal practice, in law enforcement agencies and in the fields of health care, social work and education. When providing training for professionals involved in judicial proceedings (in particular judges, prosecutors and lawyers), Parties must take account of requirements stemming from the independence of the judicial professions and the autonomy they enjoy in respect of the organisation of training for their members. The drafters wished to stress that this provision does not contravene the rules governing the autonomy of legal professions but that it requires Parties to ensure that training is made available to professionals wishing to receive it.

99. The content of paragraph 2 is linked to the greater aim of the Convention to establish a comprehensive approach to prevent and combat all forms of violence covered by its scope. This provision requires Parties to encourage that the training referred to in paragraph 1 also includes training on coordinated multi-agency cooperation, complementing in this way the obligations laid out in Article 7 of this Convention. Consequently, professionals should also be taught skills in multi-agency working, equipping them to work in cooperation with other professionals from a wide range of fields.

Article 16 – Preventive intervention and treatment programmes

100. Preventive intervention and treatment programmes have been developed to help perpetrators change their attitudes and behaviour in order to prevent further acts of domestic violence and sexual violence.

101. Paragraph 1 requires Parties to the Convention to establish or support the establishment of programmes, where they do not exist, or support any existing programmes, for perpetrators of domestic violence. Many different models for working with perpetrators exist and the decision on how they should be run rests with the Parties or service providers. However, the following core elements should be respected in all models.

102. Domestic violence intervention programmes should be based on best practice and what research reveals about the most effective ways of working with perpetrators. Programmes should encourage perpetrators to take responsibility for their actions and examine their attitudes and beliefs towards women. This type of intervention requires skilled and trained facilitators. Beyond training in psychology and the nature of domestic violence, they need to possess the necessary cultural and linguistic skills to enable them to work with a wide diversity of men attending such programmes. Moreover, it is essential that these programmes are not set up in isolation but closely co-operate with women's support services, law enforcement agencies, the judiciary, probation services and child protection or child welfare offices where appropriate. Participation in these programmes may be court-ordered or voluntary. In either case, it may influence a victim's decision to stay with or leave the abuser or provide the victim with a false sense of security. As a result, priority consideration must be given to the needs and safety of victims, including their human rights.

103. The second paragraph of this article contains the obligation to set up or support treatment programmes for perpetrators of sexual assault and rape. These are programmes specifically designed to treat convicted sex offenders, in and outside prison, with a view to minimising recidivism. Across Council of Europe member states, many different models and approaches exist. Again, the drafters felt it best to leave to the Parties and/or service providers how to run such programmes. Their ultimate aim must be preventing re-offending and successfully reintegrating perpetrators into the community.

Article 17 – Participation of the private sector and the media

104. Paragraph 1 contains two different obligations. First, it requires Parties to the Convention to encourage the private sector, the information and communication technology sector (hereafter ICT sector), and the media, to participate not only in the development of local, regional or national policies and efforts to prevent violence against women, but also to take part in their implementation. If and what type of action is taken is left to the individual company. The importance of this as regards media is such that the text specifically signals that the Parties' encouragement has to respect freedom of expression and media's independence; the latter should be seen in particular from the perspective of editorial independence.

105. Secondly, it requires Parties to encourage the private sector, the ICT sector, and the media, to set guidelines and self-regulatory standards to enhance respect for the dignity of women and thus contribute to preventing violence against them. However, the reference in Article 17 (1), to policies, guidelines and self-regulatory standards to prevent violence against women should be construed as encouraging more private

companies to establish protocols or guidelines on, for example, how to deal with cases of sexual harassment in the workplace. It is also intended to encourage the ICT sector and the media to adopt self-regulatory standards to refrain from harmful gender stereotyping and spreading degrading images of women or imagery which associates violence and sex. Moreover, it means encouraging these actors to establish ethical codes of conduct for a rights-based, gender-sensitive and non-sensationalist media coverage of violence against women. All these measures must be taken with due respect for the fundamental principles relating to the freedom of expression, the freedom of the press and the freedom of the arts.

106. The Council of Europe, through its Committee of Ministers and its Parliamentary Assembly, have long called for an end to gender stereotyping and inequality between women and men by issuing the following recommendations:

– Recommendation No. R (84)17 of the Committee of Ministers to member states on equality between women and men in the media

– Recommendation 1555 (2002) by the Parliamentary Assembly of the Council of Europe on the image of women in the media

– Recommendation 1799 (2007) by the Parliamentary Assembly of the Council of Europe on the image of women in advertising

– Resolution 1751 (2010) and Recommendation 1931 (2010) by the Parliamentary Assembly of the Council of Europe on combating sexist stereotypes in the media

107. The aim of this article is to give these efforts new impetus to achieve the long-term goal of preventing and combating all forms of violence covered by the scope of this Convention. As the Steering Committee on the Media and New Communication Services (CDMC) indicated in comments to the above-mentioned Recommendation 1931 (2010), “Dealing with gender stereotypes will contribute to reducing inequality, including gender violence which is one of its most unacceptable expressions. Given that addressing this issue effectively will inevitably have to take account of the fundamental principle of media’s independence, purely regulatory measures may not provide a satisfactory response. The task therefore falls largely to the media themselves which have to incorporate the principle of equal presentation and fair treatment of various persons with their specific identities in their professional codes and self-regulatory mechanisms and to combat stereotypes as an everyday practice. It may be even more effective to consider solutions through governance models and approaches.”

Chapter IV – Protection and support

108. While the ultimate aim of the Convention is the prevention of all forms of violence covered by its scope, victims require adequate protection from further violence, support and assistance to overcome the multiple consequences of such violence and to rebuild their lives. This chapter contains a range of obligations to set up specialised as well as more general support services to meet the needs of those exposed to violence.

Article 18 – General obligations

109. This article sets out a number of general principles to be respected in the provision of protective and supportive services.

110. Paragraph 1 contains the general obligation of taking legislative or other measures for the protection of all victims within their territory from any further acts of violence covered by this Convention.

111. In line with the general multi-agency and comprehensive approach promoted by the Convention, paragraph 2 requires Parties to the Convention to ensure that, in accordance with internal law, there are appropriate mechanisms in place that provide for effective co-operation among the following agencies which the drafters have identified as relevant: the judiciary, public prosecutors, law enforcement agencies, local and regional authorities and NGOs. By adding “other relevant organisations” the drafters have ensured that this list is non-exhaustive to allow for co-operation with any other organisation a Party may deem relevant. The term “mechanism” refers to any formal or informal structure such as agreed protocols, round-tables or any other method that enables a number of professionals to co-operate in a standardised manner. It does not require the setting up of an official body or institution.

112. The emphasis placed on co-operation among these actors stems from the conviction that the forms of violence covered by the Convention are best addressed in a concerted and co-ordinated manner by a number of agencies. Law enforcement agencies who are often the first to be in contact with victims when called to a crime scene need to be able to refer a victim to specialist support services, for example a shelter or a rape

crisis centre often run by NGOs. These support services will then support the victim by providing medical care, the collection of forensic evidence if required, psychological and legal counselling. They will also help the victim in taking the next step, which often requires dealing with the judiciary. It is important to note that this obligation is not limited to victims but extends to witnesses as well, bearing particularly in mind child witnesses.

113. Paragraph 3 lists a number of aims and criteria which protective and support services should pursue or be based on. First, all measures taken shall be based on a gendered understanding of violence against women and domestic violence. This means that services offered need to demonstrate an approach, relevant to their users, which recognises the gendered dynamics, impact and consequences of these forms of violence and which operates within a gender equality and human rights framework.

114. Secondly, this paragraph requires any such measures to take into account the relationship between victims, perpetrators, children and their wider environment to avoid the risk of addressing their needs in isolation or without acknowledging their social reality. The drafters considered it important to ensure that the needs of victims are assessed in light of all relevant circumstances to allow professionals to take informed and suitable decisions. The term “integrated approach” refers to the integrated human rights based approach addressed as the “three P approach”, aiming to integrated prevention, protection and prosecution.

115. Thirdly, measures and services that mean well but do not adequately take into consideration the devastating effects of violence and the length of the recovery process or that treat victims insensitively run the risk of re-victimising service users.

116. Furthermore, paragraph 3 requires all measures to aim at the empowerment and economic independence of women victims of such violence. This means ensuring that victims or service users are familiar with their rights and entitlements and can take decisions in a supportive environment that treats them with dignity, respect and sensitivity. At the same time, services need to instil in victims a sense of control of their lives, which in many cases includes working towards financial security, in particular economic independence from the perpetrator.

117. Some examples in which services, including branches of law enforcement agencies, are located in the same building or in close proximity to one another and co-operate have shown to significantly increase levels of satisfaction with services and have, in some cases, increased the willingness of victims to press charges or go through with a case. These examples are known as “One-stop-shops” and have been tried and tested for domestic violence services but can easily be adapted to other forms of violence. For this reason, paragraph 3 calls on Parties to strive to locate services in the same building.

118. Lastly, paragraph 3 requires Parties to the Convention to ensure that the available support services are made available to vulnerable persons and address their specific needs. The term “vulnerable persons” refers to the same list of persons as explained in the comments under Article 12. Parties should make these services available to victims independently of their socio-economic status and provide them free of charge, where appropriate.

119. The purpose of paragraph 4 is to point to a serious grievance which victims often encounter in seeking help and support. Many services, public and private, make their support dependent on the willingness of the victim to press charges or testify against the perpetrator. If, for reasons of fear or emotional turmoil and attachment the victim is unwilling to press charges or refuses to testify in court, he or she will not receive counselling or accommodation. This goes against the principle of empowerment and a human rights-based approach and must be avoided. It is important to note that this provision refers first and foremost to general and specialist support services referred to in Articles 20 and 22 of the Convention – with the exception of legal aid services.

120. Some of the forms of violence covered by the scope of this Convention may have an international dimension. Victims of violence such as forced marriages or domestic violence, but also women or girls threatened with being genitally mutilated and who are outside of their country of nationality require consular protection and, possibly, medical and financial assistance. Paragraph 5 requires Parties to take appropriate measures to provide the necessary consular assistance and if appropriate other protection and assistance, which includes assistance to victims of violent crime, assistance in the event of arrest or detention, relief and repatriation of distressed nationals, issuance of new identity documentation and other consular support.

121. This obligation is not limited to nationals of a Party to the Convention but extends to all other victims who, in accordance with their obligations under international law, are entitled to national protection by that Party, for example nationals of a member state of the European Union which does not itself offer protection through a permanent representation (embassy, general consulate or consulate) as provided for by Article 20 (2) lit. c of the Treaty on the Functioning of the European Union.

Article 19 – Information

122. In the immediate aftermath of violence, victims are not always in a position to take fully informed and empowered decisions and many lack a supportive environment. This provision lays particular emphasis on the need to ensure that victims are provided with information on the different types of support services and legal measures available to them. This requires providing information on where to get what type of help, if necessary in a language other than the national language(s), and in a timely manner, meaning at a time when it is useful for victims. This, however, does not oblige Parties to the Convention to offer information in any language but to concentrate on the languages most widely spoken in their country and in accessible form. The term “adequate information” refers to information that sufficiently fills the victim’s need for information. This could include, for example, providing not just the name of a support service organisation, but handing out a leaflet that contains its contact details, opening hours and information on the exact services it offers.

Article 20 – General support services

123. In the provision of services for victims, a distinction is made between general and specialist support services. General support services refer to help offered by public authorities such as social services, health services, employment services, which provide long-term help and are not exclusively designed for the benefit of victims only but serve the public at large. By contrast, specialist support services have specialised in providing support and assistance tailored to the – often immediate – needs of victims of specific forms of violence against women or domestic violence and are not open to the general public. While these may be services run or funded by government authorities, the large majority of specialist services are offered by NGOs.

124. The obligation contained in Article 20 (1) requires public welfare services such as housing services, employment or unemployment services, public education and training services, public psychological and legal counselling services, but also financial support services to address, when necessary, the specific needs of victims of the forms of violence covered by the scope of this Convention. While many victims can already be found among the clients of such services, their particularly difficult situation and trauma is not necessarily sufficiently or systematically addressed or taken into account. Parties to the Convention are thus required to ensure victims are granted access to such services, treated in a supportive manner and that their needs are properly addressed.

125. Health and social services are often the first to come in contact with victims. Paragraph 2 seeks to ensure that these services are adequately resourced to respond to their long-term needs. Furthermore, it places an emphasis on the importance of training staff members on the different forms of violence, the specific needs of victims and how to respond to them in a supportive manner.

Article 21 – Assistance in individual/collective complaints

126. This provision sets out the obligation of Parties to ensure that victims have information on and access to applicable regional and international complaints mechanisms. The term "applicable" refers only to those regional and international complaints mechanisms that have been ratified by the Parties to this Convention. Council of Europe member states are state parties to a significant number of regional and international human rights treaties, and most have accepted the jurisdiction of the corresponding treaty bodies and complaints mechanisms. Upon exhausting national remedies, victims of all forms of violence covered by the scope of this Convention therefore have recourse to a number of existing regional and international complaints mechanisms. These can be open to individuals, who can, for example, turn to the European Court of Human Rights or the CEDAW Committee for further legal redress. They can also be of a collective nature, meaning that they are available to groups of victims – an example would be the collective complaints mechanism under the European Social Charter.

127. By ensuring that victims have "information on and access to" these mechanisms, the drafters wished to stress that victims should be provided with information on the admissibility rules and procedural requirements relating to the applicable regional and international complaint mechanisms, and that, upon exhaustion of national remedies, Parties should not impede in any way access to these mechanisms.

128. The provision also aims at promoting the availability of sensitive and knowledgeable assistance to victims in presenting such complaints, which may be provided by the state, bar associations, relevant NGOs or other possible actors. "Assistance" may consist of the provision of information and legal advice. The assistance provided should be well informed and adapted to the needs of the victim, so as to facilitate the access to applicable complaint mechanisms by the victim.

Article 22 – Specialist support services

129. Complementing the obligation contained in Article 20, this and the following provisions require Parties to the Convention to set up or arrange for a well-resourced specialist support sector.

130. The aim of such specialised support is to ensure the complex task of empowering victims through optimal support and assistance catered to their specific needs. Much of this is best ensured by women's organisations and by support services provided, for example, by local authorities with specialised and experienced staff with in-depth knowledge of gender-based violence. It is important to ensure these services are sufficiently spread throughout the country and accessible for all victims. Moreover, these services and their staff need to be able to address the different types of violence covered by the scope of this Convention and provide support to all groups of victims, including hard-to-reach groups. The types of support that such dedicated services need to offer include providing shelter and safe accommodation, immediate medical support, the collection of forensic medical evidence in cases of rape and sexual assault, short and long-term psychological counselling, trauma care, legal counselling, advocacy and outreach services, telephone helplines to direct victims to the right type of service and specific services for children as victims or witnesses.

Article 23 – Shelters

131. This article requires Parties to provide for the setting up of appropriate, easily accessible shelters in sufficient numbers as an important means of fulfilling the obligation to provide protection and support. The purpose of shelters is to ensure immediate, preferably around-the-clock, access to safe accommodation for victims, especially women and children, when they are no longer safe at home. Temporary housing alone or general shelters such as those for the homeless, are not sufficient and will not provide the necessary support or empowerment. Victims face multiple, interlocking problems related to their health, safety, financial situation and the well-being of their children. Specialised women's shelters are best equipped to address these problems, because their functions go beyond providing a safe place to stay. They provide women and their children with support, enable them to cope with their traumatic experiences, leave violent relationships, regain their self-esteem and lay the foundations for an independent life of their own choosing. Furthermore, women's shelters play a central role in networking, multi-agency co-operation and awareness-raising in their respective communities.

132. To fulfil their primary task of ensuring safety and security for women and children, it is crucial that all shelters apply a set of standards. To this end, the security situation of each victim should be assessed and an individual security plan should be drawn up on the basis of that assessment. The technical security of the building is another key issue for shelters as violent attacks by the perpetrators are a threat not only to the women and their children, but also to the staff and other people in the surrounding area. Moreover, effective co-operation with the police on security issues is indispensable.

133. This provision calls for shelters to be set up in sufficient numbers to provide appropriate temporary accommodation for all victims. Each type of violence requires a different kind of support and protection, and staff need to be trained to provide these. The term "sufficient numbers" is intended to ensure that the needs of all victims are met, both in terms of shelter places and specialised support. The Final Activity Report of the Council of Europe Task Force to Combat Violence against Women, including Domestic Violence (EG-TFV (2008)6) recommends safe accommodation in specialised women's shelters, available in every region, with one family place per 10 000 head of population. However, the number of shelter places should depend on the actual need. For shelters on other forms of violence, the number of places to be offered will again depend on the actual need.

Article 24 – Telephone helplines

134. Helplines are one of the most important ways of enabling victims to find help and support. A helpline with a widely advertised public number that provides support and crisis counselling and refers to face-to-face services, such as shelters, counselling centres or the police, forms the cornerstone of any support and advice service in relation to all the forms of violence covered by the scope of this Convention. This article therefore contains the obligation to set up state-wide telephone helplines which are available around the clock and

which are free of charge. Many victims find themselves without documentation and resources and would find it difficult to buy a telephone card or find the necessary change to pay for a phone call. Having to pay even a very small amount of money can present a burden to many seeking help, hence the requirement to offer the call to a helpline free of charge. Furthermore in many telephone systems non-toll free calls can be traced via the telephone bill, thus indicating to the perpetrator that the victim is seeking help and therefore possibly endangering the victim further. The Final Activity Report of the Council of Europe Task Force to Combat Violence against Women, including Domestic Violence (EG-TFV (2008)6) recommends the establishment of at least one free national helpline covering all forms of violence against women operating 24 hours a day 7 days a week and providing crisis support in all relevant languages.

135. Many victims find it difficult to actively seek help and the threshold for making a call and sharing intimate and personal details is high. It is therefore important that callers may remain anonymous, are counselled by persons who are trained in dealing with such situations and that helplines provide information and support confidentially if callers so wish. In some countries, it is equally important to provide assistance in several languages to ease the language barrier that some callers might face.

Article 25 – Support for victims of sexual violence

136. The traumatic nature of sexual violence, including rape, requires a particularly sensitive response by trained and specialised staff. Victims of this type of violence need immediate medical care and trauma support combined with immediate forensic examinations to collect the evidence needed for prosecution. Furthermore, there is often a great need for psychological counselling and therapy – often weeks and months after the event.

137. Article 25 therefore lays particular emphasis on providing this type of specialised support by obliging Parties to provide for the setting up of accessible rape crisis or sexual violence referral centres in sufficient numbers. It is important to note that Parties are provided with an alternative, not with the obligation to set up both types of centres.

138. Rape crisis centres may take on many different forms. Typically, these centres offer long-term help that centres on counselling and therapy by offering face-to-face counselling, support groups and contact with other services. They also support victims during court proceedings by providing woman-to-woman advocacy and other practical help.

139. Sexual violence referral centres, on the other hand, specialise in immediate medical care, high-quality forensic practice and crisis intervention. They can be set up in a hospital setting to respond to recent sexual assault by carrying out medical checks and referring the victim to specialised community-based organisations for further services. Research has shown that it is good practice to carry out forensic examinations regardless of whether the matter will be reported to the police, and to offer the possibility of having samples taken and stored so that the decision as to whether or not to report the rape can be taken at a later date.

140. The requirement to provide for the setting up of such centres places an obligation on Parties to the Convention to ensure that this is done in sufficient numbers, but also to ensure their easy access and that their services are carried out in an appropriate manner. The Final Activity Report of the Council of Europe Task Force to Combat Violence against Women, including Domestic Violence (EG-TFV (2008)6) recommends that one such centre should be available per every 200.000 inhabitants and that their geographic spread should make them accessible to victims in rural areas as much as in cities. The term “appropriate” is intended to ensure that the services offered are suitable for the needs of victims.

Article 26 – Protection and support for child witnesses

141. Exposure to physical, sexual or psychological violence and abuse between parents or other family members has a severe impact on children. It breeds fear, causes trauma and adversely affects their development.

142. For this reason, Article 26 sets out the obligation to ensure that, when providing services and assistance to victims with children who have witnessed violence, the latter’s rights and needs are taken into account. The term “child witnesses” refers not only to children who are present during the violence and actively witness it, but to those who are exposed to screams and other sounds of violence while hiding close by or who are exposed to the long term consequences of such violence. It is important to recognise and address the victimisation of children as witnesses of all forms of violence covered by the scope of this Convention and their right to support. Paragraph 2 therefore calls for age and developmentally appropriate

best evidence-based psychosocial interventions that are specifically tailored to children to cope with their traumatic experiences where necessary. All services offered must give due regard to the best interests of the child.

Article 27 – Reporting

143. With the requirement of encouraging the reporting by any person who witnesses or has reasonable grounds to suspect that an act of violence covered by the scope of this Convention may be committed, the drafters wished to highlight the important role that individuals – friends, neighbours, family members, colleagues, teachers or other members of the community – can play in breaking the silence that often closes in around violence. It is the responsibility of each Party to determine the competent authorities to which such suspicions may be reported. These can be law enforcement agencies, child protection services or any other relevant social services. The term "reasonable grounds" refers to an honest belief reported in good faith.

Article 28 – Reporting by professionals

144. Under this article Parties to the Convention must ensure that professionals normally bound by rules of professional secrecy (such as, for example, doctors and psychiatrists) have the possibility to report to competent organisations or authorities if they have reasonable grounds to believe that a serious act of violence covered by the scope of this Convention has been committed and that further serious acts of such violence are to be expected. These are cumulative requirements for reporting and cover, for example, typical cases of domestic violence where the victim has already been subjected to serious acts of violence and further violence is likely to occur.

145. It is important to note that this provision does not impose an obligation for such professionals to report. It only grants these persons the possibility of doing so without any risk of breach of confidence. While confidentiality rules may be imposed by legislation, issues of confidentiality and breach of such may also be governed by codes of ethics or professional standards for the different professional groups. This provision seeks to ensure that neither type of confidentiality rule would stand in the way of reporting serious acts of violence. The aim of this provision is to protect life and limb of victims rather than the initiation of a criminal investigation. It is therefore important to enable those professionals who, after careful assessment, wish to protect victims of violence.

146. The term "under appropriate conditions" means that Parties may determine the situations or cases to which this provision applies. For instance, Parties may make the obligation contained in Article 28 contingent on the prior consent of the victim, with the exception of some specific cases such as where the victim is a minor or is unable to protect her or himself due to physical or mental disabilities. Moreover, each Party is responsible for determining the categories of professionals to which this provision applies. The term "certain professionals" is intended to cover any number of professionals whose functions involve contact with women, men and children who may be victims of any of the forms of violence covered by the scope of this Convention. Additionally, this article does not affect the rights, in conformity with Article 6 ECHR, of those accused of acts to which this Convention applies, whether in civil or criminal proceedings.

Chapter V – Substantive law

147. As is the case in other Council of Europe conventions on combating specific forms of violence, abuse or ill-treatment, substantive law provisions form an essential part of the instruments. It is clear from research on national legislation currently in force on violence against women and domestic violence that many gaps remain. Therefore, it is necessary to strengthen legal protection and reparation and to take into account existing good practice when introducing changes into the legislative systems of all member states in order to effectively prevent and combat these forms of violence. The drafters examined the appropriate criminal, civil and administrative-law measures to be introduced, to ensure that the Convention covers the various situations associated with the acts of violence concerned. As a result, this chapter contains a range of preventive, protective and compensatory measures for victims and introduces punitive measures against perpetrators of those forms of violence which require a criminal law response.

148. This chapter sets out the obligation to ensure a variety of civil law remedies to allow victims to seek justice and compensation – primarily against the perpetrator, but also in relation to state authorities if they have failed in their duty to diligently take preventive and protective measures.

149. Chapter V also establishes a number of criminal offences. This type of harmonisation of domestic law facilitates action against crime at the national and international level, for several reasons. Often, national measures to combat violence against women and domestic violence are not carried out in a systematic manner or remain incomplete due to gaps in legislation.

150. The primary aim of criminal law measures is to guide Parties in putting into place effective policies to rein in violence against women and domestic violence – both of which are still, unfortunately, widespread crimes in Europe and beyond.

151. The drafters agreed that, in principle, all criminal law provisions of the Convention should be presented in a gender-neutral manner; the sex of the victim or perpetrator should thus, in principle, not be a constitutive element of the crime. However, this should not prevent Parties from introducing gender-specific provisions.

152. The drafters decided that this Convention should avoid covering the same conduct already dealt with in other Council of Europe conventions, in particular the Convention on Action against Trafficking in Human Beings (ETS No.197) and the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (ETS No. 201).

153. The obligations contained in Articles 33 to 39 require Parties to the Convention to ensure that a particular intentional conduct is criminalised. The drafters agreed on this wording to oblige Parties to criminalise the conduct in question. However, the Convention does not oblige Parties to necessarily introduce specific provisions criminalising the conduct described by the Convention. With regard to Article 40(sexual harassment) and taking account of the specific nature of this conduct, the drafters considered that it could be subject to remedy either under criminal law sanctions or other legal sanctions. Finally, the offences established in this chapter represent a minimum consensus which does not preclude supplementing them or establishing higher standards in domestic law.

154. In conformity with general principles of criminal law a legally valid consent may lift criminal liability. Furthermore, other legally justifiable acts, for example, acts committed in self-defence, defence of property, or for necessary medical procedures, would not give rise to criminal sanctions under this Convention.

Article 29 – Civil lawsuits and remedies

155. Paragraph 1 of this provision aims at ensuring that victims of any of the forms of violence covered by the scope of this Convention can turn to the national legal system for an adequate civil law remedy against the perpetrator. On the one hand, this includes civil law remedies which allow a civil law court to order a person to stop a particular conduct, refrain from a particular conduct in the future or to compel a person to take a particular action (injunctions). A civil law remedy of this type can be used, for example, to help girls and boys faced with the prospect of being married against their will to have their passport or other important documentation handed to them from anybody withholding it against their will (parents, guardians or any family members). Such injunctions help to provide protection against acts of violence.

156. On the other hand, and depending on the national legal order of the Party, civil law remedies offered under this provision may also include court orders that deal more specifically with acts of violence covered by the scope of this Convention, such as barring orders, restraining orders and non-molestation orders as referred to in Article 53. These are particularly relevant in cases of domestic violence and complement the immediate and often short-term protection offered by emergency protection orders as referred to in Article 52.

157. Moreover, civil law should provide for legal remedies against defamation and libel in the context of stalking and sexual harassment, in case where such acts are not covered by the criminal legislation of the Parties.

158. All civil law orders are issued following an application by the victim or - depending on the legal system - a third party and cannot be issued *ex officio*.

159. While paragraph 1 aims at providing victims with civil remedies against the perpetrator, paragraph 2 ensures that victims are provided with remedies against state authorities which have failed in their duty to take the necessary preventive or protective measures.

160. It reiterates the principle of liability of state authorities, who, in accordance with Article 5 of this Convention are under the obligation to diligently prevent, investigate and, punish acts of violence covered by the scope of this Convention. Failure to comply with this obligation can result in legal responsibility and civil law needs to offer remedies to address such failure. These remedies include, *inter alia*, civil law action for

damages which need to be available for negligent and grossly negligent behaviour. The extent of state authorities' civil liability remains governed by the internal law of the Parties which have the discretion to decide what kind of negligent behaviour is actionable.

161. The obligation contained in paragraph 2 is in line with case law of the European Court of Human Rights concerning the failure of public authorities to comply with their positive obligation under Article 2 ECHR (right to life). In the *Osman v. the United Kingdom* judgment, and again the *Opuz v. Turkey* judgment, the Court has stated that "where there is an allegation that the authorities have violated their positive obligation to protect the right to life in the context of their above-mentioned duty to prevent and suppress offences against the person, it must be established to its satisfaction that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk." The Court explicitly stated that responsibility for such failure is not limited to gross negligence or wilful disregard of the duty to protect life.

162. In the event of death of the victim, the available remedies shall be accessible to her or his descendants.

Article 30 – Compensation

163. This article sets out the right to compensation for damages suffered as a result of any of the offences established by this Convention. Paragraph 1 establishes the principle that it is primarily the perpetrator who is liable for damages and restitution.

164. Compensation can also be sought from insurance companies or from state-funded health and social security schemes. Paragraph 2 establishes a subsidiary obligation for the state to compensate. The conditions relating to the application for compensation may be established by internal law such as the requirement that the victim has first and foremost sought compensation from the perpetrator. The drafters emphasised that state compensation should be awarded in situations where the victim has sustained serious bodily injury or impairment of health. It should be noted that the term "bodily injury" includes injuries which have caused the death of the victim, and that "impairment of health" encompasses serious psychological damages caused by acts of psychological violence, as referred to in Article 33. Although the scope of state compensation is limited to "serious" injury and impairment of health, this does not preclude Parties from providing for more generous compensation arrangements, nor from setting higher and/or lower limits for any or all elements of compensation to be paid by the state. In particular, this provision is without prejudice to the obligations of the Parties to the European Convention on the Compensation of Victims of Violent Crimes (ETS No. 116).

165. The subsidiary obligation for the state to compensate does not preclude Parties from claiming regress for compensation awarded from the perpetrator as long as due regard is paid to the victim's safety. The reference to the "victim's safety" requires Parties to ensure that any measures taken to claim regress for compensation from the perpetrator give due consideration to the consequences of these measures for the safety of the victim. This covers in particular situations where the perpetrator may want to avenge her or himself against the victim for having to pay compensation to the state.

166. This provision does not preclude an interim state contribution to the compensation of the victim. A victim urgently needing help may not be able to await the outcome of often complicated proceedings. In such cases, the Parties can provide that the state or the competent authority may subrogate in the rights of the person compensated for the amount of the compensation paid or, if later the person compensated obtains reparation from any other source, may reclaim totally or partially the amount of money awarded.

167. In the event that state compensation is paid to the victim because the perpetrator is unwilling or unable although court-ordered to do so, the state shall have recourse against the perpetrator.

168. To ensure compensation by the state, Parties may set up state compensation schemes as specified in Articles 5 and 6 of the European Convention on the Compensation of Victims of Violent Crimes.

169. It should be noted that paragraph 2 of this article is open to reservations, pursuant to Article 78 (2) of this Convention. This possibility of reservations is without prejudice to the obligations of the Parties pursuant to other international instruments in this field, such as the aforementioned European Convention on the Compensation of Victims of Violent Crimes.

170. As many victims of the forms of violence covered by this Convention may not have the nationality of the Party in whose territory the crime was committed, subsidiary state compensation should extend to nationals and non-nationals.

171. Paragraph 3 aims to ensure that compensation be granted within reasonable time, meaning within an appropriate time-scale.

172. It is important to note that compensation may not only be awarded under civil or administrative law but also under criminal law as part of a criminal law sanction.

Article 31 – Custody, visitation rights and safety

173. This provision aims at ensuring that judicial authorities do not issue contact orders without taking into account incidents of violence covered by the scope of this Convention. It concerns judicial orders governing the contact between children and their parents and other persons having family ties with children. In addition to other factors, incidents of violence against the non-abusive carer as much as against the child itself must be taken into account when decisions on custody and the extent of visitation rights or contact are taken.

174. Paragraph 2 addresses the complex issue of guaranteeing the rights and safety of victims and witnesses while taking into account the parental rights of the perpetrator. In particular in cases of domestic violence, issues regarding common children are often the only ties that remain between victim and perpetrator. For many victims and their children, complying with contact orders can present a serious safety risk because it often means meeting the perpetrator face-to-face. Hence, this paragraph lays out the obligation to ensure that victims and their children remain safe from any further harm.

Article 32 – Civil consequences of forced marriages

175. This article deals with the legal consequences of a forced marriage and ensures that such marriages may be "voidable, annulled or dissolved". For the purpose of this provision, a "voidable" marriage is a marriage considered to be valid but which may be rendered void if challenged by one of the parties; an "annulled" marriage is deprived of its legal consequences, whether challenged by a party or not. A "dissolved" marriage, such as in case of divorce, is deprived of legal consequences only from the date of dissolution. The drafters bore in mind that the concrete implementation of this article with regard to the terms used (voidable, annulled, dissolved) may vary, depending on the concepts provided for in Parties' civil law.

176. It is important that legal action as required under this provision is easily available and does not place an undue financial and administrative burden on the victim. This means that any procedures set up for the annulment or dissolution of a forced marriage shall not present insurmountable difficulties or indirectly lead to financial hardship on the part of the victim. Furthermore, the form of ending the marriage should not affect the rights of the victim of forced marriage.

Article 33 – Psychological violence

177. This article sets out the offence of psychological violence. The drafters agreed to criminally sanction any intentional conduct that seriously impairs another person's psychological integrity through coercion or threats. The interpretation of the word "intentional" is left to domestic law, but the requirement for intentional conduct relates to all the elements of the offence.

178. The extent of the offence is limited to intentional conduct which **seriously** impairs and damages a person's psychological integrity which can be done by various means and methods. The Convention does not define what is meant by serious impairment. Use must be made of coercion or threats for behaviour to come under this provision.

179. This provision refers to a course of conduct rather than a single event. It is intended to capture the criminal nature of an abusive pattern of behaviour occurring over time – within or outside the family. Psychological violence often precedes or accompanies physical and sexual violence in intimate relationships (domestic violence). However, it may also occur in any other type of setting, for example in the work place or school environment. It is important to stress that pursuant to Article 78 (3) of this Convention, any state or the European Union may declare that it reserves the right to provide for non-criminal sanctions, instead of criminal sanctions in relation to psychological violence. The intention of the drafters was to preserve the principle of criminalisation of psychological violence in the Convention, while allowing flexibility where the legal system of a Party provides only for non-criminal sanctions in relation to these behaviours. Nevertheless, sanctions should be effective, proportionate and dissuasive, regardless of whether Parties chose to provide for criminal or non-criminal sanctions.

Article 34 – Stalking

180. This article establishes the offence of stalking, which is defined as the intentional conduct of repeatedly engaging in threatening conduct directed at another person, causing her or him to fear for her or his safety. This comprises any repeated behaviour of a threatening nature against an identified person which has the consequence of instilling in this person a sense of fear. The threatening behaviour may consist of repeatedly following another person, engaging in unwanted communication with another person or letting another person know that he or she is being observed. This includes physically going after the victim, appearing at her or his place of work, sports or education facilities, as well as following the victim in the virtual world (chat rooms, social networking sites, etc.). Engaging in unwanted communication entails the pursuit of any active contact with the victim through any available means of communication, including modern communication tools and ICTs.

181. Furthermore, threatening behaviour may include behaviour as diverse as vandalising the property of another person, leaving subtle traces of contact with a person's personal items, targeting a person's pet, or setting up false identities or spreading untruthful information online.

182. To come within the remit of this provision, any act of such threatening conduct needs to be carried out intentionally and with the intention of instilling in the victim a sense of fear.

183. This provision refers to a course of conduct consisting of repeated significant incidents. It is intended to capture the criminal nature of a pattern of behaviour whose individual elements, if taken on their own, do not always amount to criminal conduct. It covers behaviour that is targeted directly at the victim. However, Parties may also extend it to behaviour towards any person within the social environment of the victim, including family members, friends and colleagues. The experience of stalking victims shows that many stalkers do not confine their stalking activities to their actual victim but often target any number of individuals close to the victim. Often, this significantly enhances the feeling of fear and loss of control over the situation and therefore may be covered by this provision.

184. Finally, just as it is the case with psychological violence, Article 78 (3) provides for the possibility of any state or the European Union to declare that it reserves the right to provide for non-criminal sanctions, as long as they are effective, proportionate and dissuasive. Providing for a restraining order should be seen as a non-criminal sanction within the possibility of a reservation. Once more, the intention of the drafters was to preserve the principle of criminalisation of stalking, while allowing flexibility where the legal system of a Party provides only for non-criminal sanctions in relation to stalking.

Article 35 – Physical violence

185. This article criminalises any intentional act of physical violence against another person irrespective of the context in which it occurs.

186. The term "physical violence" refers to a bodily harm suffered as a result of the application of immediate and unlawful physical force. It encompasses also violence resulting in the death of the victim.

Article 36 – Sexual violence, including rape

187. This article establishes the criminal offence of sexual violence, including rape. Paragraph 1 covers all forms of sexual acts which are performed on another person without her or his freely given consent and which are carried out intentionally. The interpretation of the word "intentionally" is left to domestic law, but the requirement for intentional conduct relates to all the elements of the offence.

188. Lit. a refers to the vaginal, anal or oral penetration of another person's body which that person has not consented to. The penetration may be performed with a bodily part or an object. By requiring the penetration to be of a sexual nature, the drafters sought to emphasise the limits of this provision and avoid problems of interpretation. The term "of a sexual nature" describes an act that has a sexual connotation. It does not apply to acts which lack such connotation or undertone. Lit b. covers all acts of a sexual nature without the freely given consent of one of the parties involved which fall short of penetration. Lastly, lit. c. covers situations in which the victim is caused without consent to perform or comply with acts of a sexual nature with or by a person other than the perpetrator. In relationships of abuse, victims are often forced to engage in sexual acts with a person chosen by the perpetrator. The purpose of lit.c. is to cover scenarios in which the perpetrator is not the person who performs the sexual act but who causes the victim to engage in sexual activity with a third person; this act has to be of some relevance in relation to the protected legal interests in question.

189. When assessing the constituent elements of offences, the Parties should have regard to the case-law of the European Court of Human Rights. In this respect, the drafters wished to recall, subject to the interpretation that may be made thereof, the *M.C. v. Bulgaria* judgment of 4 December 2003, in which the Court stated that it was "persuaded that any rigid approach to the prosecution of sexual offences, such as requiring proof of physical resistance in all circumstances, risks leaving certain types of rape unpunished and thus jeopardising the effective protection of the individual's sexual autonomy. In accordance with contemporary standards and trends in that area, the member states' positive obligations under Articles 3 and 8 of the Convention must be seen as requiring the penalisation and effective prosecution of any non-consensual sexual act, including in the absence of physical resistance by the victim" (§ 166). The Court also noted as follows: "Regardless of the specific wording chosen by the legislature, in a number of countries the prosecution of non-consensual sexual acts in all circumstances is sought in practice by means of interpretation of the relevant statutory terms ("coercion", "violence", "duress", "threat", "ruse", "surprise" or others) and through a context-sensitive assessment of the evidence" (§ 161).

190. Prosecution of this offence will require a context-sensitive assessment of the evidence in order to establish on a case-by-case basis whether the victim has freely consented to the sexual act performed. Such an assessment must recognise the wide range of behavioural responses to sexual violence and rape which victims exhibit and shall not be based on assumptions of typical behaviour in such situations. It is equally important to ensure that interpretations of rape legislation and the prosecution of rape cases are not influenced by gender stereotypes and myths about male and female sexuality.

191. In implementing this provision, Parties to the Convention are required to provide for criminal legislation which encompasses the notion of lack of freely given consent to any of the sexual acts listed in lit.a to lit.c. It is, however, left to the Parties to decide on the specific wording of the legislation and the factors that they consider to preclude freely given consent. Paragraph 2 only specifies that consent must be given voluntarily as the result of the person's free will, as assessed in the context of the surrounding circumstances.

192. Paragraph 3 spells out the obligation of Parties to the Convention to ensure that the criminal offences of sexual violence and rape established in accordance with this Convention are applicable to all non-consensual sexual acts, irrespective of the relationship between the perpetrator and the victim. Sexual violence and rape are a common form of exerting power and control in abusive relationships and are likely to occur during and after break-up. It is crucial to ensure that there are no exceptions to the criminalisation and prosecution of such acts when committed against a current or former spouse or partner as recognised by internal law.

Article 37 – Forced marriage

193. This article establishes the offence of forced marriage. While some victims of forced marriage are forced to enter into a marriage in the country in which they live (paragraph 1), many others are first taken to another country, often that of their ancestors, and are forced to marry a resident of that country (paragraph 2). For this reason, the drafters felt it important to include in this provision two types of conduct: forcing a person to enter into a marriage and luring a person abroad with the purpose of forcing this person to enter into marriage.

194. The type of conduct criminalised in paragraph 1 is that of forcing an adult or a child to enter into a marriage. The term "forcing" refers to physical and psychological force where coercion or duress is employed. The offence is complete when a marriage is concluded to which at least one party has – due to the above circumstances - not voluntarily consented to.

195. Paragraph 2 criminalises the act of luring a person abroad with the intention of forcing this person to marry against her or his will. The marriage does not necessarily have to be concluded. The term "luring" refers to any conduct whereby the perpetrator entices the victim to travel to another country, for example by using a pretext or concocting a reason such as visiting an ailing family member. The intention must cover the act of luring a person abroad, as well as the purpose of forcing this person into a marriage abroad. The drafters felt that this act should be covered by the criminal law of the Parties so as to take into account the standards established under other legally-binding international instruments in particular the Council of Europe Convention on Action against Trafficking in Human Beings (ETS No.197).

Article 38 – Female genital mutilation

196. Due to the nature of female genital mutilation (FGM), this is one of the criminal offences that break with the principle of gender neutrality of the criminal law part of this Convention. It sets out the criminal offence of female genital mutilation, the victims of which are necessarily women or girls. It aims at criminalising the traditional practice of cutting away certain parts of the female genitalia which some communities perform on

their female members. The drafters considered it important to establish female genital mutilation as a criminal offence in this Convention because this practice causes irreparable and lifelong damage and is usually performed without the consent of the victim.

197. Lit.a criminalises the act of excising, infibulating or performing any other mutilation to the whole or any part of the labia majora, labia minora or clitoris including when performed by medical professionals, as enshrined in the WHO World Health Assembly Resolution 61.16 on accelerating actions to eliminate female genital mutilation. The term "excising" refers to the partial or total removal of the clitoris and the labia majora. "Infibulating", on the other hand, covers the closure of the labia majora by partially sewing together the outer lips of the vulva in order to narrow the vaginal opening. The term "performing any other mutilation" refers to all other physical alterations of the female genitals.

198. Lit.b, on the other hand, covers the act of assisting the perpetrator to perform acts in lit.a by coercing or procuring a woman to undergo the excision, infibulation or mutilation of her labia majora, labia minora or clitoris. This part of the provision is limited to adult victims only.

199. Lit.c criminalises the act of assisting the perpetrator to perform acts in lit.a by inciting, coercing or procuring a girl to undergo the excision, infibulation or mutilation of her labia majora, labia minora or clitoris. This part of the provision is limited to girl victims only and includes situations in which anyone, in particular parents, grandparents or other relatives coerce their daughter or relative to undergo the procedure. The drafters felt it important to differentiate between adult and child victims because they did not wish to criminalise the incitement of women to undergo any of the acts listed in lit.a.

Article 39 – Forced abortion and forced sterilisation

200. This article makes certain intentional acts related to women's natural reproductive capacity a criminal offence. This is another provision that breaks with the principle of gender neutrality of the criminal law part of this Convention.

201. Lit.a establishes the criminal offence of forced abortion performed on a woman or girl. This refers to the intentional termination of pregnancy without the prior and informed consent of the victim. The termination of pregnancy covers any of the various procedures that result in the expulsion of all the products of conception. To come within the remit of this provision, the abortion must be carried out without the prior and informed consent of the victim. This covers any abortion that is performed without a fully informed decision taken by the victim.

202. Lit.b on the other hand establishes the criminal offence of forced sterilisation of women and girls. This offence is committed if surgery is performed which has the purpose or effect of terminating a woman's or girl's capacity to naturally reproduce if this is done without her prior and informed consent. The term sterilisation refers to any procedure which results in the loss of the ability to naturally reproduce. As in lit.a, the sterilisation must be carried out without the prior and informed consent of the victim. This covers any sterilisation that is performed without a fully informed decision taken by the victim in line with standards set in the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine (ETS No.164).

203. It is not the intention of this Convention to criminalise any medical interventions or surgical procedures which are carried out for example with the purpose of assisting a woman by saving her life or for assisting a woman who lacks capacity to consent. Rather, the aim of this provision is to emphasise the importance of respecting women's reproductive rights by allowing women to decide freely on the number and spacing of their children and by ensuring their access to appropriate information on natural reproduction and family planning.

Article 40 – Sexual harassment

204. This article sets out the principle that sexual harassment be subject to criminal or "other" legal sanction, which means that the drafters decided to leaving to the Parties to choose the type of consequences the perpetrator would face when committing this specific offence. While generally considering it preferable to place the conduct dealt with by this article under criminal law, the drafters acknowledged that many national legal systems consider sexual harassment under civil or labour law. Consequently, Parties may choose to deal with sexual harassment either by their criminal law or by administrative or other legal sanctions, while ensuring that the law deals with sexual harassment.

205. The type of conduct covered by this provision is manifold. It includes three main forms of behaviour: verbal, non-verbal or physical conduct of a sexual nature unwanted by the victim. Verbal conduct refers to words or sounds expressed or communicated by the perpetrator, such as jokes, questions, remarks, and may be expressed orally or in writing. Non-verbal conduct, on the other hand, covers any expressions or communication on the part of the perpetrator that do not involve words or sounds, for example facial expressions, hand movements or symbols. Physical conduct refers to any sexual behaviour of the perpetrator and may include situations involving contact with the body of the victim. As in Article 36, any of these forms of behaviour must be of a sexual nature in order to come within the remit of this provision. Furthermore, any of the above conduct must be unwanted on the part of the victim, meaning imposed by the perpetrator. Moreover, the above acts must have the purpose or effect of violating the dignity of the victim. This is the case if the conduct in question creates an intimidating, hostile, degrading, humiliating or offensive environment. It is intended to capture a pattern of behaviour whose individual elements, if taken on their own, may not necessarily result in a sanction.

206. Typically, the above acts are carried out in a context of abuse of power, promise of reward or threat of reprisal. In most cases, victim and perpetrator know each other and their relationship is often characterised by differences in hierarchy and power. The scope of application of this article is not limited to the field of employment. However, it should be noted that the requirements for liability can differ depending on the specific situation in which the conduct takes place.

Article 41 – Aiding or abetting and attempt

207. The purpose of this article is to establish additional offences relating to aiding or abetting of the offences defined in the Convention and the attempted commission of some.

208. Paragraph 1 requires Parties to the Convention to establish as offences aiding or abetting the commission of any of the following offences established in accordance with the Convention: psychological violence (Article 33), stalking (Article 34), physical violence (Article 35), sexual violence, including rape (Article 36), forced marriage (Article 37), female genital mutilation (Article 38 lit.a), and forced abortion and forced sterilisation (Article 39).

209. The drafters wished to emphasise that the terms "aiding or abetting" do not only refer to offences established by a Party in its criminal law, but may also refer to offences covered by administrative or civil law. This is of particular importance since, pursuant to Article 78 (3), Parties may provide for non-criminal sanctions in relation to psychological violence (Article 33) and stalking (Article 34).

210. With regard to paragraph 2, on attempt, the drafters felt that treating certain offences as attempt gave rise to conceptual difficulties. Moreover, some legal systems limit the offences for which the attempt is punished. For these reasons, it requires Parties to establish as an offence the attempt to commit the following offences only: serious cases of physical violence (Article 35), sexual violence including rape (Article 36), forced marriage (Article 37), female genital mutilation (Article 38 lit.a), and forced abortion and forced sterilisation (Article 39).

211. With regard to physical violence (Article 35) the drafters acknowledged that the offence as established by the Convention has a very broad scope. It also covers cases of simple assault for which an attempt is difficult to construct. Parties therefore have the discretion to establish as an offence the attempt to commit physical violence only for serious cases of physical violence. The Convention also does not preclude Parties to cover attempt by other offences.

212. As with all the offences established under the Convention, aiding and abetting and attempt must be intentional.

Article 42 – Unacceptable justifications for crimes, including crimes committed in the name of so-called “honour”

213. The drafters enshrined in this Convention an important general principle: nobody under the jurisdiction of the courts of one of the Parties to this Convention will be allowed to validly invoke what he or she believes to be an element of his or her culture, religion or other form of personal reason to justify the commission of what is simply an element of a criminal offence, i.e. violence against women. In order to address crimes committed in the name of so-called “honour” the drafters intended to ensure that crimes committed to punish a victim for her or his behaviour are not justified. Consequently, this article sets out the obligation for Parties, in paragraph 1, to ensure that culture, custom, religion, tradition or so-called “honour”, are not regarded as justification for any of the acts of violence covered by the scope of this Convention. This means that Parties

are required to ensure that criminal law and criminal procedural law do not permit as justifications claims of the accused justifying his or her acts as committed in order to prevent or punish a victim's suspected, perceived or actual transgression of cultural, religious, social or traditional norms or customs of appropriate behaviour.

214. In addition, this provision requires Parties to ensure that personal convictions and individual beliefs of judicial actors do not lead to interpretations of the law that amount to a justification on any of the above-mentioned grounds. Paragraph 1 thus reinforces for the particular area of criminal law the obligation contained in Article 12 (5) of the Convention.

215. To avoid criminal liability, these acts are often committed by a child below the age of criminal responsibility, which is instigated by an adult member of the family or community. For this reason, the drafters considered it necessary to set out, in paragraph 2, the criminal liability of the instigator(s) of such crimes in order to avoid gaps in criminal liability. Paragraph 2 applies to acts established in accordance with this Convention where the child is the principal perpetrator, it does not apply to offences established in accordance with Articles 38 (b), 38 (c) and 41.

Article 43 – Application of criminal offences

216. A large number of the offences established in accordance with this Convention are offences typically committed by family members, intimate partners or others in the immediate social environment of the victim. There are many examples from past practice in Council of Europe member states that show that exceptions to the prosecution of such cases were made, either in law or in practice, if victim and perpetrator were, for example, married to each other or had been in a relationship. The most prominent example is rape within marriage, which for a long time had not been recognised as rape because of the relationship between victim and perpetrator.

217. For this reason, the drafters considered it necessary to establish the principle that the type of relationship between victim and perpetrator shall not preclude the application of any of the offences established in this Convention.

Article 44 – Jurisdiction

218. This article lays down various requirements whereby Parties must establish jurisdiction over the offences with which the Convention is concerned.

219. Paragraph 1 (a) is based on the principle of territoriality. Parties are required to punish the offences established in accordance with the Convention when they are committed on their territory.

220. Paragraph 1 (b) and (c) is based on a variant of the principle of territoriality. These sub-paragraphs require Parties to establish jurisdiction over offences committed on ships flying their flag or aircraft registered under their laws. This obligation is already in force in the law of many countries, ships and aircraft being frequently under the jurisdiction of the state in which they are registered. This type of jurisdiction is extremely useful when the ship or aircraft is not located in the country's territory at the time of commission of the crime, as a result of which paragraph 1 (a) would not be available as a basis for asserting jurisdiction. In the case of a crime committed on a ship or aircraft outside the territory of the flag or registry Party, it might be that without this rule there would not be any country able to exercise jurisdiction. In addition, if a crime is committed on board a ship or aircraft which is merely passing through the waters or airspace of another state, there may be significant practical impediments to the latter state's exercising its jurisdiction and it is therefore useful for the registry state to also have jurisdiction.

221. Paragraph 1 (d) is based on the principle of nationality. The nationality theory is most frequently applied by countries with a civil law tradition. Under this principle, nationals of a country are obliged to comply with its law even when they are outside its territory. Under sub-paragraph (d), if one of its nationals commits an offence abroad, a Party is obliged to be able to prosecute her or him. The drafters considered this a particularly important provision in combating certain forms of violence against women. Indeed, some states in which women and girls are subjected to rape or sexual violence, forced marriage, female genital mutilation, crimes committed in the name of so-called "honour" and forced abortion and forced sterilisation, do not have the will nor the necessary resources to successfully carry out investigations or they lack the appropriate legal framework. Paragraph 2 enables these cases to be tried even where they are not criminalised in the state in which the offence was committed.

222. Paragraph 1 (e) applies to persons having their habitual residence in the territory of the Party. It provides that Parties shall establish jurisdiction to investigate acts committed abroad by persons having their habitual residence in their territory, and thus contributes to the punishment of acts of violence committed abroad. Article 78 (2) on reservations allows Parties not to implement this jurisdiction or only to do so in specific cases or conditions.

223. Paragraph 2 is linked to the nationality or residence status of the victim. It is based on the premise that the particular interests of national victims overlap with the general interest of the state to prosecute crimes committed against its nationals or residents. Hence, if a national or person having habitual residence is a victim of an offence abroad, the Party shall endeavour to establish jurisdiction in order to start proceedings. However, there is no obligation imposed on Parties, as demonstrated by the use of the expression "endeavour".

224. Paragraph 3 represents an important element of added value in this Convention, and a major step forward in the protection of victims. The provision eliminates, in relation to the most serious offences of the Convention, the usual rule of dual criminality where acts must be criminal offences in the place where they are committed. Its aim is to combat in particular certain forms of violence against women which may be – or are most frequently - committed outside the territory of application of this Convention, such as forced marriage, female genital mutilation, forced abortion and forced sterilisation. Therefore, this paragraph applies exclusively to the offences defined in Article 36 (sexual violence including rape), Article 37 (forced marriage), Article 38 (female genital mutilation), and Article 39 (forced abortion and forced sterilisation) and committed by nationals of the Party concerned. Article 78 (2) on reservations allows Parties not to implement this jurisdiction or only to do so in specific cases or conditions.

225. In paragraph 4, the drafters wished to prohibit the subordination of the initiation of proceedings of the most serious offences in the state of nationality or of habitual residence to the conditions usually required of a complaint of the victim or the laying of information by the authorities of the state in which the offence took place. The aim of this provision is to facilitate the prosecution of offences committed abroad. As some states do not possess the necessary will or resources to carry out investigations of certain forms of violence against women and domestic violence, the requirement of a complaint of the victim or the filing of charges by the relevant authorities often constitutes an impediment to prosecution. This paragraph applies exclusively to the offences defined in Article 36 (sexual violence including rape), Article 37 (forced marriage), Article 38 (female genital mutilation), and Article 39 (forced abortion and forced sterilisation) and committed by nationals of the Party concerned. Article 78 (2) on reservations allows Parties not to implement this jurisdiction or only to do so in specific cases or conditions.

226. Paragraph 5 concerns the principle of *aut dedere aut judicare* (extradite or prosecute). Jurisdiction established on the basis of paragraph 5 is necessary to ensure that Parties that refuse to extradite a national have the legal ability to undertake investigations and proceedings domestically instead, if asked to do so by the Party that requested extradition under the terms of the relevant international instruments. Paragraph 4 does not prevent Parties from establishing jurisdiction only if the offence is punishable in the territory where it was committed, or if the offence is committed outside the territorial jurisdiction of any state.

227. It may happen that in some cases of violence covered by the scope of this Convention more than one Party has jurisdiction over some or all of the participants in the offence. For example, a woman may be lured into the territory of another state and forced to marry against her will. In order to avoid duplication of procedures and unnecessary inconvenience for victims and witnesses or to otherwise facilitate the efficiency or fairness of proceedings, the affected Parties are, in accordance with paragraph 6, required to consult in order to determine the proper venue for prosecution. In some cases it will be most effective for them to choose a single venue for prosecution; in others it may be best for one country to prosecute some alleged perpetrators, while one or more other countries prosecute others. Either method is permitted under this paragraph. Finally, the obligation to consult is not absolute; consultation is to take place "where appropriate". Thus, for example, if one of the Parties knows that consultation is not necessary (e.g. it has received confirmation that the other Party is not planning to take action), or if a Party is of the view that consultation may impair its investigations or proceedings, it may delay or decline consultation.

228. The bases of jurisdiction set out in paragraph 1 of this article are not exclusive. Paragraph 7 permits Parties to establish other types of criminal jurisdiction according to their domestic law.

Article 45 – Sanctions and measures

229. This article is closely linked to Articles 33 to 41 which define the various offences that should be made punishable under criminal law. However, it applies to all types of sanctions, regardless of whether they are of a criminal nature or not. In accordance with these obligations imposed by those articles, Article 45 requires Parties to match their action with the seriousness of the offences and lay down sanctions which are “effective, proportionate and dissuasive”. This includes providing for prison sentences that can give rise to extradition where this is appropriate. The drafters decided to leave it to the Parties to decide on the type of offence established in accordance with the Convention that merits a prison sentence. It should be noted that, under Article 2 of the European Convention on Extradition (ETS No.24), extradition is to be granted in respect of offences punishable under the laws of the requesting and requested Parties by deprivation of liberty or under a detention order for a maximum period of at least one year or by a more severe sanction.

230. In addition, paragraph 2 provides for other measures which may be taken in relation to perpetrators. The provision lists two examples: the monitoring or supervision of convicted persons and the withdrawal of parental rights, if the best interests of the child, which may include the safety of the victim, cannot be guaranteed in any other way. The reference to the "best interest of the child" in the latter example is in line with the ruling of the European Court of Human Rights in the *Zaunegger v. Germany* judgment of 3 December 2009, which stated that in the majority of member states, "decisions regarding the attribution of custody are to be based on the child's best interest" (§60). In particular, measures taken in relation to parental rights should never lead to endangering or causing harm to the child. Although the granting of parental rights and contact with the child are often related issues, the drafters bore in mind that some Parties may distinguish these issues in their internal law, and thus allow a parent to have contact with the child without granting her or him parental rights. In particular in cases of domestic violence against one parent and witnessed by a child, it may not be in the best interest of the child to continue contact with the abusive parent. Ensuring contact with the abusive parent may not only have a negative impact on the child, but may also pose a serious risk to the safety of the abuser’s victim, because it often gives the perpetrator a reason to contact or see the victim and may not be in line with a restraining or barring order in place. It is important to ensure that all legal measures taken to protect victims are consistent and are not thwarted by legal measures taken in other contexts.

Article 46 – Aggravating circumstances

231. Article 46 requires Parties to ensure that the circumstances mentioned in sub-paragraphs a – i may be taken into consideration as aggravating circumstances in the determination of the penalty for offences established in the Convention. These circumstances must not already form part of the constituent elements of the offence. This principle applies to cases where the aggravating circumstances already form part of the constituent elements of the offence in the national law of the Party.

232. By the use of the phrase “may be taken into consideration”, the drafters wished to highlight that the Convention places an obligation on Parties to ensure that these aggravating circumstances are available for judges to consider when sentencing perpetrators although there is no obligation on judges to apply them. In addition, the reference to “in conformity with the relevant provisions of internal law” is intended to reflect the fact that the various legal systems in Europe have different approaches to aggravating circumstances and therefore permits Parties to retain some of their legal concepts. This gives flexibility to Parties in implementing this provision without notably obliging them to modify their principles related to the application of sanctions in the criminal law systems.

233. The first of the aggravating circumstances, lit.a, is where the offence was committed against a former or current spouse or partner as recognised by internal law, by a member of the family, a person cohabiting with the victim or a person having abused her or his authority. This would cover various situations where the offence was committed by the former or current marital partner or non-marital partner as recognised by internal law. It would also include members of the victim’s family, such as parents and grand-parents and children or persons having a family related dependant relationship with the victim. Any person cohabiting with the victim refers to persons living within the same household other than family members. A person having authority refers to anyone who is in a position of superiority over the victim, including for example a teacher or employer. The common element of these cases is the position of trust which is normally connected with such a relationship and the specific emotional harm which may emerge from the misuse of this trust when committing an offence within such a relationship. In this paragraph the reference to "partners as recognised by internal law" means that, as a minimum, former or current partners shall be covered in accordance with the conditions set out in internal law, bearing in mind that it is the intimacy and trust connected with the relationship that makes it an aggravating circumstance.

234. The second aggravating circumstance, lit.b, concerns offences that are committed repeatedly. This refers to any of the offences established by this Convention as well as any related offence which are committed by the same perpetrator more than once during a certain period of time. The drafters thereby decided to emphasise the particularly devastating effect on a victim who is repeatedly subjected to the same type of criminal act. This is often the case in situations of domestic violence, which inspired the drafters to require the possibility of increased court sentences. It is important to note that the facts of an offence of a similar nature which led to a conviction of the same perpetrator may not be considered as a repeated act referred to under lit.b but constitute an aggravating circumstance of their own under lit.i.

235. The third aggravating circumstance, lit. c, refers to offences committed against a person made vulnerable by particular circumstances (see paragraph 85 for the indicative list of possible vulnerable persons).

236. The fourth aggravating circumstance, lit.d, covers offences committed against a child or in the presence of a child, which constitutes a form of victimisation of the child in itself. The drafters wished to highlight the particularly culpable behaviour if any of the offences established by this Convention are committed against a child.

237. The fifth aggravating circumstance, lit.e, is where the offence was committed by two or more people acting together. This indicates a collective act committed by two or more people.

238. The sixth aggravating circumstance, lit.f, refers to offences preceded or accompanied by extreme levels of violence. This refers to acts of physical violence that are particularly high in intensity and present a serious risk to the life of the victim.

239. The seventh aggravating circumstance, lit.g, concerns the use or threat of a weapon. By including this, the drafters emphasise the particularly culpable behaviour of employing a weapon, as it may cause serious violence, including the death of the victim.

240. The eighth aggravating circumstance, lit.h, is where the offence resulted in severe physical or psychological harm for the victim. This indicates offences which cause particularly serious physical or psychological suffering, in particular long-term health consequences for the victim.

241. The last aggravating circumstance, lit.i, is where the perpetrator has previously been convicted of offences of a similar nature. By including this, the drafters draw attention to the particular risk of recidivism for many of the offences covered by the Convention, in particular domestic violence.

Article 47 – Sentences passed by another Party

242. Some of the offences established in accordance with this Convention can have a transnational dimension or may be carried out by perpetrators who have been tried and convicted in another country or in more than one country. At the domestic level, many legal systems provide for a different, often harsher, penalty where someone has previous convictions. In general, only convictions by a national court count as a previous conviction. Traditionally, convictions by foreign courts are not necessarily taken into account on the grounds that criminal law is a national matter and that there can be differences of national law, and because of a degree of suspicion of decisions by foreign courts.

243. Such arguments have less force today in that internationalisation of criminal law standards – as a result of the internationalisation of crime – is tending to harmonise the laws of different countries. In addition, in the space of a few decades, countries have adopted instruments such as the ECHR whose implementation has helped build a solid foundation of common guarantees that inspire greater confidence in the justice systems of all the participating states.

244. The principle of international recidivism is established in a number of international legal instruments. Under Article 36(2)(iii) of the New York Convention of 30 March 1961 on Narcotic Drugs, for example, foreign convictions have to be taken into account for the purpose of establishing recidivism, subject to each Party's constitutional provisions, legal system and national law. Under Article 1 of the Council Framework Decision of 6 December 2001 amending Framework Decision 2000/383/JHA on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of the Euro, European Union member states must recognise as establishing habitual criminality final decisions handed down in another member state for counterfeiting of currency.

245. The fact remains that at international level there is no standard concept of recidivism and the laws of some countries do not include the concept at all. The fact that foreign convictions are not always brought to the courts' notice for sentencing purposes is an additional practical difficulty. However, Article 3 of the Council Framework Decision 2008/675/JHA on taking account of convictions in the member states of the European Union in the course of new criminal proceedings, firstly establishes in a general way – without limitation to specific offences – the obligation of taking into account a previous conviction handed down in another (member) state.

246. Therefore, Article 47 provides for the possibility of taking into account final sentences passed by another Party in assessing a sentence. To comply with the provision Parties may provide in their domestic law that previous convictions by foreign courts are to result in a harsher penalty when they are known to the competent authority. They may also provide that, under their general powers to assess the individual's circumstances in setting the sentence, courts should take those convictions into account. This possibility should also include the principle that the perpetrator should not be treated less favourably than he would have been treated if the previous conviction had been a national conviction.

247. This provision does not place any positive obligation on courts or prosecution services to take steps to find out whether persons being prosecuted have received final sentences from another Party's courts. It should nevertheless be noted that, under Article 13 of the European Convention on Mutual Assistance in Criminal Matters (ETS No.30), a Party's judicial authorities may request from another Party extracts from and information relating to judicial records, if needed in a criminal matter.

Article 48 – Prohibition of mandatory alternative dispute resolution processes or sentencing

248. The domestic law of many Council of Europe member states provides for alternative dispute resolution processes and sentencing – in criminal and in civil law. In particular in family law, methods of resolving disputes alternative to judicial decisions are considered to better serve family relations and to result in more durable dispute resolution. In some legal systems, alternative dispute resolution processes or sentencing such as mediation or conciliation are also used in criminal law.

249. While the drafters do not question the advantages these alternative methods present in many criminal and civil law cases, they wish to emphasise the negative effects these can have in cases of violence covered by the scope of this Convention, in particular if participation in such alternative dispute resolution methods are mandatory and replace adversarial court proceedings. Victims of such violence can never enter the alternative dispute resolution processes on a level equal to that of the perpetrator. It is in the nature of such offences that such victims are invariably left with a feeling of shame, helplessness and vulnerability, while the perpetrator exudes a sense of power and dominance. To avoid the re-privatisation of domestic violence and violence against women and to enable the victim to seek justice, it is the responsibility of the state to provide access to adversarial court proceedings presided over by a neutral judge and which are carried out on the basis of the national laws in force. Consequently, paragraph 1 requires Parties to prohibit in domestic criminal and civil law the mandatory participation in any alternative dispute resolution processes.

250. Paragraph 2 of this article aims at preventing another unintended consequence which legal measures may have on the victim. Many of the perpetrators of the offences established by the Convention are members of the family of the victim. Moreover, they are often the sole breadwinners of the family and therefore the only source of a possibly limited/small family income. Ordering the perpetrator to pay a fine will consequently have a bearing on the family income or his ability to pay alimony and may result in financial hardship for the victim. Such a measure may thus present an indirect punishment of the victim. This provision therefore requires Parties to ensure that any fine that a perpetrator is ordered to pay shall not indirectly lead to financial hardship on the part of the victim. It is important to note that it does not impinge on the independence of the judiciary and an individual approach to sanctions.

Chapter VI – Investigation, prosecution, procedural law and protective measures

251. This chapter contains a variety of provisions that cover a broad range of issues related to investigation, prosecution, procedural law and protection against all forms of violence covered by the scope of this Convention, in order to reinforce the rights and duties laid out in the previous chapters of the Convention.

Article 49 – General obligations

252. The drafters wanted to prevent that incidents of violence against women and domestic violence are assigned low priority in investigations and judicial proceedings, which contributes significantly to a sense of impunity among perpetrators and has helped to perpetuate high levels of acceptance of such violence. In

order to achieve this goal, paragraph 1 sets out the obligation to ensure that investigations and judicial proceedings in relation to all forms of violence covered by the scope of this Convention are carried out without undue delay. This will help to secure vital evidence, enhance conviction rates and put an end to impunity. It is important to note that while it is essential to ensure swift investigations and proceedings, it is equally important to respect the rights of victims during these stages. Paragraph 1 therefore requires Parties to avoid to the extent possible aggravating any harm experienced by victims during investigations and judicial proceedings and to provide them with assistance during criminal proceedings.

253. Paragraph 2 complements the obligation by establishing the obligation to ensure that the investigation and prosecution of cases of all forms of violence covered by the scope of this Convention are carried out in an effective manner. This means, for example, establishing the relevant facts, interviewing all available witnesses, and conducting forensic examinations, based on a multi-disciplinary approach and using state-of-the-art criminal investigative methodology to ensure a comprehensive analysis of the case. The drafters considered it important to spell out as part of this obligation the need to ensure that all investigations and procedures are carried out in conformity with fundamental principles of human rights and with regard to a gendered understanding of violence. This means, in particular, that any measures taken in implementation of this provision are not prejudicial to the rights of the defence and the requirements of a fair and impartial trial, in conformity with Article 6 ECHR.

Article 50 – Immediate response, prevention and protection

254. Paragraph 1 requires law enforcement agencies to promptly and appropriately react by offering adequate and immediate protection to victims, while paragraph 2 calls for their prompt and appropriate engagement in the prevention of and protection against all forms of violence covered by the scope of this Convention, including the employment of preventive operational measures and the collection of evidence.

255. Compliance with this obligation includes, for example, the following:

– the right of the responsible law enforcement agencies to enter the place where a person at risk is present;

– the treatment and giving advice to victims by the responsible law enforcement agencies in an appropriate manner;

– hearing victims without delay by specially-trained, where appropriate female, staff in premises that are designed to establish a relationship of trust between the victim and the law enforcement personnel; and

– provide for an adequate number of female law enforcement officers, including at high levels of responsibility.

256. Effective measures should be taken to prevent the most blatant forms of violence which are murder or attempted murder. Each such case should be carefully analysed in order to identify any possible failure of protection in view of improving and developing further preventive measures.

Article 51 – Risk assessment and risk management

257. Concerns for the victim's safety must lie at the heart of any intervention in cases of all forms of violence covered by the scope of this Convention. This article therefore establishes the obligation to ensure that all relevant authorities, not limited to the police, effectively assess and devise a plan to manage the safety risks a particular victim faces on a case-by-case basis, according to standardised procedure and in co-operation and co-ordination with each other. Many perpetrators threaten their victims with serious violence, including death, and have subjected their victims to serious violence in the past. It is therefore essential that any risk assessment and risk management consider the probability of repeated violence, notably deadly violence, and adequately assess the seriousness of the situation.

258. The purpose of this provision is to ensure that an effective multi-agency network of professionals is set up to protect high-risk victims. The risk assessment must therefore be carried out with a view to managing the identified risk by devising a safety plan for the victim in question in order to provide co-ordinated safety and support if necessary.

259. However, it is important to ensure that any measures taken to assess and manage the risk of further violence allow for the rights of the accused to be respected at all times. At the same time, it is of paramount importance that such measures do not aggravate any harm experienced by victims and that investigations and judicial proceedings do not lead to secondary victimisation.

260. Paragraph 2 extends the obligation to ensure that the risk assessment referred to in the first paragraph of this article duly takes into account reliable information on the possession of firearms by perpetrators. The possession of firearms by perpetrators not only constitutes a powerful means to exert control over victims, but also increases the risk of homicide. This is particularly the case in post-conflict situations or in countries with a tradition of firearms ownership, which can provide perpetrators with greater access to these weapons. However, very serious cases of violence against women and domestic violence are committed with the use of firearms in all other countries as well. For this reason, the drafters felt it essential to place on Parties the obligation to ensure that any assessment of the risks faced by a victim should systematically take into consideration, at all stages of the investigation and application of protective measures, whether the perpetrator legally or illegally possesses or has access to firearms in order to guarantee the safety of victims. For example, in issuing emergency barring orders, restraining or protection orders, and when sentencing following criminal convictions for any of the forms of violence covered by the scope of this Convention, Parties may adopt, within their domestic legal systems, such measures as may be necessary to enable immediate confiscation of firearms and ammunition. Additionally, in order to cover all weapons that could be used in serious cases of violence, notably combat-type knives, Parties are encouraged to take into account, as far as possible, the possession of or access to such weapons.

Article 52 – Emergency barring orders

261. In situations of immediate danger, the most effective way of guaranteeing the safety of a domestic violence victim is by achieving physical distance between the victim and the perpetrator. In many cases, this requires one of the two to leave, for a certain period of time, the joint residence or the perpetrator to leave the victim's residence. Rather than placing the burden of hurriedly seeking safety in a shelter or elsewhere on the victim, who is often accompanied by dependant children, often with very few personal affairs and for an indefinite period of time, the drafters considered it important to ensure the removal of the perpetrator to allow the victim to remain in the home. Therefore, this provision establishes the obligation of equipping the competent authorities, with the power to order, a perpetrator of domestic violence to leave the residence of the victim and to bar him or her from returning or contacting the victim. The immediate danger must be assessed by the relevant authorities. The drafters decided to leave to the Parties to decide on the length of period for such an order, but the period should be sufficient to provide effective protection to the victim. Existing examples of such orders in Council of Europe member states range between 10 days and four weeks, with or without the possibility of renewal. Equally, the drafters decided to leave to the Parties to identify, in accordance with their national system, the authority competent to issue such orders and the applicable procedure.

262. The term "immediate danger" refers to any situations of domestic violence in which harm is imminent or has already materialised and is likely to happen again.

263. Lastly, this provision requires Parties to ensure that any measures taken in its implementation give due consideration to the safety of the victim or person at risk. This shows the protective nature of this measure.

Article 53 – Restraining or protection orders

264. This provision sets out the obligation to ensure that national legislation provides for restraining and/or protection orders for victims of all forms of violence covered by the scope of this Convention. Furthermore, it establishes a number of criteria for such orders to ensure that they serve the purpose of offering protection from further acts of violence.

265. Although this provision refers to restraining "or" protection orders, the drafters bore in mind that the national legislation of certain Parties may provide for the combined use of restraining and protection orders. A restraining or protection order may be considered complementary to a short-term emergency barring order. Its purpose is to offer a fast legal remedy to protect persons at risk of any of the forms of violence covered by the scope of this Convention by prohibiting, restraining or prescribing a certain behaviour by the perpetrator. This wide range of measures covered by such orders means that they exist under various names such as restraining order, barring order, eviction order, protection order or injunction. Despite these differences, they serve the same purpose: preventing the commission of violence and protect the victim. For the purpose of this Convention, the drafters decided to use the term restraining or protection order as an umbrella category.

266. The drafters decided to leave to the Parties to choose the appropriate legal regime under which such orders may be issued. Whether restraining or protection orders are based in civil law, criminal procedure law or administrative law or in all of them will depend on the national legal system and above all on the necessity for effective protection of victims.

267. Paragraph 2 contains a number of specifications for restraining and protection orders. The first indent requires these orders to offer immediate protection and to be available without undue financial or administrative burdens placed on the victim. This means that any order should take effect immediately after it has been issued and shall be available without lengthy court proceedings. Any court fees levied against the applicant, most likely the victim, shall not constitute an undue financial burden which would bar the victim from applying. At the same time, any procedures set up to apply for a restraining or protection order shall not present insurmountable difficulties for victims.

268. The second indent calls for the order to be issued for a specified or a determined period or until modified or discharged. This follows from the principle of legal certainty that requires the duration of a legal measure to be spelt out clearly. Furthermore, it shall cease to be in effect if changed or discharged by a judge or other competent official.

269. The third indent requires Parties to ensure that in certain cases these orders may be issued, where necessary, on an *ex parte* basis with immediate effect. This means a judge or other competent official would have the authority to issue a temporary restraining or protection order based on the request of one party only.

270. The fourth indent seeks to ensure the possibility for victims to obtain a restraining or protection order whether or not they choose to set in motion any other legal proceedings. For example, where such orders exist, research has shown that many victims who want to apply for a restraining or protection order may not be prepared to press criminal charges (that would lead to a criminal investigation and possibly criminal proceedings) against the perpetrator. Standing to apply for a restraining or protection order shall therefore not be made dependent on the institution of criminal proceedings against the same perpetrator. Similarly, they should not be made dependent on the institution of divorce proceedings, etc. At the same time, the fact that criminal or civil proceedings concerning the same set of facts are underway against the same perpetrator shall not prevent a restraining or protection order from being issued.

271. The fifth indent requires Parties to take measures to ensure that the existence of a restraining or protection order may be introduced in any other legal proceedings against the same perpetrator. The aim of this provision is to allow for the fact that such an order has been issued against the perpetrator to be known to any other judge presiding over legal proceedings against the same person.

272. Paragraph 3 aims at ensuring respect for restraining and protection orders by requiring “effective, proportionate and dissuasive” sanctions for any breach of such orders. These sanctions may be of a criminal law or other legal nature and may include prison sentences, fines or any other legal sanction that is effective, proportionate and dissuasive.

273. Lastly, since establishing the truth in domestic violence cases may, at times, be difficult, Parties may consider limiting the possibility of the adversary/the perpetrator to thwart attempts of the victim to seek protection by taking the necessary measures to ensure that, in cases of domestic violence, restraining and protection orders as referred to in paragraph 1 may not be issued against the victim and perpetrator mutually. Also, Parties should consider banning from their national legislation any notions of provocative behaviour in relation to the right to apply for restraining or protection orders. Such concepts allow for abusive interpretations that aim at discrediting the victim and should be removed from domestic violence legislation. Finally, Parties may also consider taking measures to ensure that standing to apply for restraining or protection orders referred to in paragraph 1 is not limited to victims. These measures are of particular relevance in relation to legally incapable victims, as well as regarding vulnerable victims who may be unwilling to apply for restraining or protection orders for reasons of fear or emotional turmoil and attachment.

Article 54 – Investigations and evidence

274. In judicial proceedings evidence relating to the sexual history and sexual conduct of a victim is sometimes exploited in order to discredit the evidence presented by the victim. The defence sometimes uses previous sexual behaviour history evidence in order to challenge the respectability, the credibility and the lack of consent of victims. This particularly regards cases of sexual violence, including rape. Presenting this type of evidence may reinforce the perpetuation of damaging stereotypes of victims as being promiscuous and by extension immoral and not worthy of the protection provided by civil and criminal law. This may lead to *de facto* inequality, since victims, who are overwhelmingly women, are more likely to be provided with this protection if they are judged to be of a respectable nature.

275. The drafters felt it essential to emphasise that a victim’s past sexual behaviour should not be considered as an excuse for acts of violence against women and domestic violence allowing to exonerate the perpetrator or to diminish his liability. However, they were conscious of the fact that, in some Parties to the

Convention, the admissibility and consideration of evidence lies within the discretion of the judge, whereas in others, it is strictly pre-determined by the rules of criminal procedural law. Article 54 entails the obligation for Parties to take the necessary legislative or other measures to ensure that evidence relating to the sexual history and sexual conduct of the victim shall be permitted or considered only when it is relevant and necessary. This means that the provision restricts the admissibility of such evidence, in both civil or criminal proceedings, to cases where it is relevant to a specific issue at trial and if it is of significant probative value. Therefore, it does not rule out the admissibility of such evidence. Where judges admit previous sexual history evidence, it should only be presented in a way that does not lead to secondary victimisation. Victims should have access to legal recourse without suffering additional trauma because of their sexual history and conduct.

Article 55 – Ex parte and ex officio proceedings

276. Conscientious of the particularly traumatising nature of the offences covered by this article, the drafters sought to ease the burden which lengthy criminal investigations and proceedings often place on the victims while at the same time ensuring that perpetrators are brought to justice. The aim of this provision is therefore to enable criminal investigations and proceedings to be carried out without placing the onus of initiating such proceedings and securing convictions on the victim.

277. Paragraph 1 places on Parties the obligation to ensure that investigations into a number of categories of offences shall not be “wholly dependant” upon the report or complaint filed by a victim and that any proceedings underway may continue even after the victim has withdrawn her or his statement or complaint. The drafters decided to use the terms "wholly dependant" in order to address procedural differences in each legal system, bearing in mind that ensuring the investigations or prosecution of the offences listed in this article is the responsibility of the state and its authorities. In particular, the drafters were of the opinion that acts resulting in severe bodily harm or deprivation of life must be addressed promptly and directly by competent authorities.The fact that many of the offences covered by this Convention are perpetrated by family members, intimate partners or persons in the immediate social environment of the victim and the resulting feelings of shame, fear and helplessness lead to low numbers of reporting and, subsequently, convictions. Therefore, law enforcement authorities should investigate in a proactive way in order to gather evidence such as substantial evidence, testimonies of witnesses, medical expertise, etc., in order to make sure that the proceedings may be carried out even if the victim withdraws her or his statement or complaint at least with regard to serious offences, such as physical violence resulting in death or bodily harm.

278. Paragraph 1 of this article is open to reservations in respect of Article 35 regarding minor offences, pursuant to Article 78 (2) of this Convention. The drafters wished to make a clear distinction between serious offences of physical violence resulting in severe bodily harm or deprivation of life which would be then excluded by this possibility of reservation and other, minor, offences of physical violence which do not lead to such consequences. However, it is left to Parties to determine what constitutes “minor offences” of physical violence.

279. With a view to empowering victims and to encouraging them to go through with criminal proceedings, paragraph 2 requires Parties to ensure that victim organisations, specifically trained domestic violence counsellors or other types of support/advocacy services may assist and support victims during investigations and judicial proceedings. Good practice examples have shown that victims who are supported or assisted by a specialist support service during investigations and proceedings are more likely to file a complaint and testify and are better equipped to take on the emotionally challenging task of actively contributing to the outcome of proceedings. The type of service which this paragraph refers to is not of a legal, but a practical/psychological nature. It includes psychologically/emotionally preparing victims to endure testifying in front of the accused, accompanying victims to court and/or assisting them in any other practical and emotional way.

Article 56 – Measures of protection

280. This provision is inspired by Article 31 (1) of the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (ETS No. 201). Paragraph 1 contains a non-exhaustive list of procedures designed to protect victims of all forms of violence covered by the scope of this Convention during proceedings. These measures of protection apply at all stages of the proceedings, both during the investigations, whether they are carried out by law enforcement agencies or judicial authorities, and during trial proceedings. Although there is no legal necessity to do so, as it is always open to Parties to adopt measures more favourable than those provided for in any part of the Convention, the drafters wished to make it clear that the measures of protection referred to are indicative. Parties are thus free to grant additional measures of protection. It is important to highlight that throughout Article 56 (1), where there is mention that

measures need to be taken in accordance with internal law or “where possible”, it underlines that Parties are at liberty to employ whatever means they consider best to achieve the provision’s objectives. This is the case of lit.c, d, g, and i.

281. First of all, lit.a contains the obligation for Parties to take the necessary legislative or other measures in order to provide for the protection of victims, as well as that of their families and witnesses. Parties must ensure that victims are safe from intimidation, retaliation and repeat victimisation.

282. In relation to lit.b, the drafters stressed the importance of the obligation to inform victims when the perpetrator is released temporarily or definitely or escapes, at least in cases where the victims and the family might be in danger. This does not prevent Parties to inform victims in other circumstances where this seems necessary (for instance, in cases where there is a risk of retaliation or intimidation or when, because the victim and the perpetrator live near each other, they might accidentally find themselves face to face with each other). Some legal systems require the prior application by the victim to receive this information. In these cases Parties shall inform the victim of this possibility.

283. Furthermore, lit.c sets out the right of victims (and their families or legal representatives in the case of child victims) to be informed of developments in the investigations and proceedings in which they are involved as victims. In this respect, the provision provides that victims should be informed of their rights and of the services at their disposal and the follow-up given to their complaint, the charges, the general progress of the investigations or proceedings, and their role as well as the outcome of their cases. Although this is not included in the provision, Parties should ensure that this information be provided in a language that they understand (see comments on Article 19).

284. With regard to lit.d, this provision aims at enabling victims to be heard, to supply evidence and to choose the means of having their views, needs and concerns presented and considered. Parties shall take the necessary measures to ensure that the presentation and consideration of the victims’ views, needs and concerns is assured directly or through an intermediary.

285. Lit.e deals more specifically with general assistance to victims to ensure that their rights and interests are duly presented and taken into account at all stages of investigations and judicial proceedings.

286. The obligation contained in lit.f, entails taking the necessary measures in order to ensure that the victims’ privacy is protected. This requires taking measures, where appropriate and in accordance with internal law, to prevent the public dissemination of any information that could lead to the identification of victims. The drafters wished to stress, however, that the protection of the victim's image and privacy extends to the risk of "public" disclosure, and that these requirements should not prevent this information being revealed in the context of the actual proceedings, in order to respect the principles that both parties must be heard and the inherent rights of the defence during a criminal prosecution.

287. Lit.g is designed to protect victims, in particular by preventing their being further traumatised through contact, on the premises of the investigation services and in court, with the alleged perpetrator of the offence. This provision applies to all stages of the criminal proceedings (including the investigation), with certain exceptions: the investigation services and the judicial authority must be able to waive this requirement for example when the victim wishes to attend the hearing or when contact between the victim and the alleged perpetrator is necessary or useful for ensuring that the proceedings take place satisfactorily (for example, when a confrontation appears necessary).

288. Lit.h lays out the obligation of providing victims, where necessary, with independent and competent interpreters. Some legal systems require a sworn-in interpreter to establish independence. Due to the difference in status of victims in the different judicial systems, the drafters considered it important, to make it clear in the text of the Convention that this applies when victims are parties to the proceedings or when they are giving evidence. Many victims do not speak, or barely speak, the language of the country where they were subject to acts of violence against women and domestic violence. Ignorance of the language adds to their isolation and is one of the factors preventing them from claiming their rights. In such cases access to interpreters is needed to help them during investigations and judicial proceedings. This is an essential measure for guaranteeing access to rights, which is a prerequisite for access to justice and Parties should envisage providing victims with interpreters free of charge.

289. Finally, lit.i places an obligation on Parties to ensure that victims are enabled to testify in the courtroom without being present or at least without the presence of the alleged perpetrator. The law in some countries provides for audiovisual recording of hearings of victims and safeguarding such hearings by such means as: limiting the people allowed to attend the hearing and view the recording; allowing the victim to request a break in recording at any time and making a full, word-for-word transcription of the hearing on request. Such

recordings and written records may then be used in court instead of having the victim appear in person. Some legal systems likewise allow victims to appear before the court by videoconference. The victim is heard in a separate room, possibly in the presence of an expert and technicians. To limit as far as possible the psychological impact on the victim of being in the same room as the perpetrator or being with them by videoconference, the sightlines of both can be restricted so that the victim cannot see the perpetrator and/or *vice versa*. If, for instance, the victim were to appear at the hearing, she or he could give evidence from behind a screen or give evidence where the perpetrator does not appear in the court room. Parties must therefore ensure the obligation laid out in this provision, where available, through the use of appropriate communication technologies.

290. In the case of child victims and child witnesses, paragraph 2 states that Parties must take special care of their needs and ensure their rights to special protection measures as a child will usually be more vulnerable than an adult and likelier to be intimidated. Consequently, special protection measures must give due regard to the best interests of the child, which may include measures such as not obliging a child to testify in the presence of the perpetrator. With regard to the term “child witness” see also comments on Article 26.

Article 57 – Legal aid

291. In the immediate aftermath of violence many victims of violence against women and domestic violence may be forced to leave all their belongings or jobs behind on a moment's notice. Judicial and administrative procedures are often highly complex and victims need the assistance of legal counsel to be able to assert their rights satisfactorily. In these cases, it might be difficult for victims to effectively access legal remedies because of the high costs which can be involved in seeking justice. For this reason the drafters believed it essential to place an obligation on Parties to provide for the right to legal assistance and to free legal aid for victims under the conditions provided by their internal law. This provision is inspired by Article 15 (2) of the Council of Europe Convention on Action against Trafficking in Human Beings (ETS No.197).

292. Article 57 does not give the victim an automatic right to free legal aid. It is for each Party to decide the requirements for obtaining such aid. In addition to this provision, Parties must take account of Article 6 ECHR. Even though Article 6 paragraph 3 (c) ECHR provides for free assistance from an officially appointed lawyer only in criminal proceedings, European Court of Human Rights case-law (*Airey v. Ireland* judgment, 9 October 1979) also recognises, in certain circumstances, the right to free legal assistance in a civil matter on the basis of Article 6 paragraph 1 ECHR, interpreted as establishing the right to a court for determination of civil rights and obligations (see *Golder v. the United Kingdom*, judgment of 21 February 1975). The Court’s view is that effective access to a court may necessitate free legal assistance. Its position is that it must be ascertained whether appearance before a court without the assistance of a lawyer would be effective in the sense that the person concerned would be able to present their case properly and satisfactorily. Here the Court has taken into account the complexity of procedures and the emotional character of a situation - which might be scarcely compatible with the degree of objectivity required by advocacy in court - in deciding whether someone was in a position to present her or his own case effectively. If not, he or she must be given free legal assistance. Thus, even in the absence of legislation granting free legal assistance in civil matters, it must be assessed whether, in the interest of justice, an applicant who is without financial means should be granted legal assistance if unable to afford a lawyer.

Article 58 – Statute of limitation

293. This provision provides that the limitation period for initiating legal proceedings continues to run for a sufficient period of time to allow prosecutions to be effectively initiated after the victim has reached the age of majority. The obligation therefore applies in relation to child victims only, who are often unable, for various reasons, to report the offences perpetrated against them before reaching the age of majority. The expression “for a period of time sufficient to allow the efficient initiation of proceedings” means, firstly, once these children become adults, they must have a sufficiently long time to overcome their trauma, thus enabling them to file a complaint and, secondly, that the prosecution authorities must be in a position to bring prosecutions for the offences concerned.

294. In order to meet the requirements of proportionality that apply to criminal proceedings, however, the drafters restricted the application of this principle to the offences provided in Articles 36, 37, 38 and 39, in respect of which there is justification for extending the limitation period. Nevertheless, Article 78 (2) on reservations allows future Parties to declare that they reserve the right not to apply this principle or to apply it only in specific cases or conditions in respect of Articles 37, 38 and 39.

Chapter VII – Migration and asylum

295. Migrant women, including undocumented migrant women, and women asylum-seekers form two subcategories of women that are particularly vulnerable to gender-based violence. Despite their difference in legal status, reasons for leaving their home country and living conditions, both groups are, on the one hand, at increased risk of experiencing violence against women and, on the other hand, face similar difficulties and structural barriers in overcoming violence.

296. This chapter contains a number of obligations that aim at introducing a gender-sensitive understanding of violence against migrant women and women asylum-seekers. For example, it introduces the possibility of granting migrant women who are victims of gender-based violence an independent residence status. Furthermore, it establishes the obligation to recognise gender-based violence against women as a form of persecution and contains the obligation to ensure that a gender-sensitive interpretation be given when establishing refugee status. In addition, this chapter establishes the obligation of introducing gender-sensitive procedures, guidelines and support services in the asylum process. Finally, it contains provisions pertaining to the respect of the *non-refoulement* principle with regard to victims of violence against women

Article 59 - Residence status

297. Research has shown that fear of deportation or loss of residence status is a very powerful tool used by perpetrators to prevent victims of violence against women and domestic violence from seeking help from authorities or from separating from the perpetrator. Most Council of Europe member states require spouses or partners to remain married or in a relationship for a period ranging from one to three years for the spouse or partner to be granted an autonomous residence status. As a result, many victims whose residence status is dependant on that of the perpetrator stay in relationships where they are forced to endure situations of abuse and violence for long periods of time.

298. The drafters considered it necessary to ensure that the risk of losing their residence status should not constitute an impediment to victims leaving an abusive and violent marriage or relationship. The obligation contained in paragraph 1 requires Parties to the Convention to take the necessary legislative or other measures to ensure that migrant victims whose residence status is conditional on marriage or on being in a relationship are granted an autonomous residence permit of a limited validity in the event of the dissolution of the marriage or the relationship.

299. Paragraph 1 specifies that an autonomous residence permit should be granted in the event of particularly difficult circumstances. Parties should consider being a victim of the forms of violence covered by the scope of this Convention committed by the spouse or partner or condoned by the spouse or partner as a particularly difficult circumstance. The drafters felt it best to let Parties establish, in accordance with internal law, the conditions relating to the granting and duration of the autonomous residence permit, following an application by the victim. This includes establishing which public authorities are competent to decide if the relationship has dissolved as a consequence of the violence endured by the victim and what evidence is to be produced by the victim. Evidence of violence may include, for example, police records, a court conviction, a barring or protection order, medical evidence, an order of divorce, social services records or reports from women's NGOs, to name a few.

300. Moreover, paragraph 1 highlights the fact that independent/autonomous permits should be granted irrespective of the duration of the marriage or the relationship. It contains the obligation to ensure that victims of all forms of violence covered by the scope of this Convention be granted autonomous residence permits in her or his own right, even if the marriage or the relationship ceases before the end of the probationary period. This will allow victims to obtain the necessary protection from authorities without fearing that the perpetrator will retaliate by withdrawing or threatening to withdraw residence benefits under the perpetrator's control. This is also particularly important in cases of forced marriages, where victims are forced to remain married for the probationary period unless they are prepared to be deported upon divorce.

301. Furthermore, paragraph 1 applies to spouses or partners as recognised by internal law. Unmarried partners are included in the provision to the extent that several Council of Europe member states grant residence permits to partners who are able to demonstrate, under the conditions laid down by internal law, that they have been living in a relationship analogous to marriage or that the relationship is of a permanent nature.

302. The second paragraph refers to cases where victims who have joined their spouses or partners under a family reunification scheme, face repatriation because of expulsion proceedings initiated against their abusive and violent spouse or partner. In most Council of Europe member states, the residence status of spouses or

partners is connected to that of the sponsor spouse or partner. This means that the victim continues to be subjected to abuse in her or his country of origin, resulting in *de facto* denial of protection. This is particularly relevant in cases where the country of origin has lower prevention, protection and prosecution standards in the field of violence against women and domestic violence than the host country. The expulsion of such victims does not only have negative implications for their lives, but can also constitute an obstacle to law enforcement authorities endeavouring to combat violence against women and domestic violence. As a result, paragraph 2 requires Parties to take appropriate measures to ensure that victims that find themselves in such situations be given the possibility to obtain the suspension of expulsion proceedings against themselves to apply for a residence status on humanitarian grounds. Paragraph 2 is applicable to cases where the sponsor spouse or partner is a perpetrator of domestic violence, in these cases, her or his spouse or partner, the victim, will be expelled together with the perpetrator. The purpose of this paragraph is to provide protection from expulsion; it does not constitute a residence permit in itself.

303. Paragraph 3 is inspired by Article 14 (1) of the Council of Europe Convention on Action against Trafficking in Human Beings (ETS No.197). The paragraph places the obligation on Parties to issue victims of domestic violence with renewable residence permits. It lays down two requirements for issuing a residence permit. Firstly, it covers situations where the victim's personal circumstances are such that it would be unreasonable to compel them to leave the national territory (lit.a). Whether the victim meets the personal situation requirement is to be decided on account of factors such as the victim's safety, state of health, family situation, or the situation in their country of origin among others. Secondly, it establishes the requirement of the cooperation with the competent authorities in cases where investigation or criminal proceedings have been initiated against the perpetrator (lit.b). This means that a residence permit may be granted to the victim if the cooperation and testimony of the victim are necessary in investigation and criminal proceedings. The duration of the residence permit is to be decided by the Parties, though the established length should be compatible with the provision's purpose. Moreover, Parties to the Convention have the obligation to provide renewable permits. The non-renewal or the withdrawal of a residence permit are subject to the conditions provided for in the internal law of the Party.

304. Paragraph 4 covers situations where a victim of forced marriage in possession of a residence permit for a Party to the Convention is brought into another country resulting in a loss of residence status in the country where he or she habitually reside. In most Council of Europe member states, a residence permit becomes invalid if the holder leaves the country for more than a stipulated number of consecutive months. However, this condition only bears in mind persons that leave the country voluntarily. If victims of forced marriages are taken abroad involuntarily and thus overstay the guaranteed or expiry period of time outside the Party in which they habitually reside, their residence status will become invalid. For this reason, this paragraph obliges Parties to the Convention to provide for the possibility for such victims to regain their residence status on account of them being forced to leave the country where they habitually reside.

305. Finally, it should be noted that Article 78 (2) on reservations allows future Parties to this Convention to reserve the right not to apply or to apply only in specific cases or conditions the provisions laid down in Article 59.

Article 60 – Gender-based asylum claims

306. Asylum law has long failed to address the difference between women and men in terms of why and how they experience persecution. This gender blindness in the establishment of refugee status and of international protection has resulted in situations where claims of women fleeing from gender-based violence have gone unrecognised. In the past decade, however, developments in international human rights law and standards as well as in case law, have led an increasing number of Council of Europe member states to recognise some forms of violence against women as a form of gender-related persecution within the meaning of Article 1 A(2) of the 1951 Convention relating to the Status of Refugees. There is no doubt that rape and other forms of gender-related violence, such as female genital violence, dowry-related violence, serious domestic violence, or trafficking, are acts which have been used as forms of persecution, whether perpetrated by state or non-state actors.

307. Although paragraph 1 consecrates what is already being undertaken in practice, the drafters considered it important to include the obligation of Parties to take the necessary legislative or other measures to ensure that gender-based violence against women may be recognised as a form of persecution within the meaning of Article 1 A(2) and as a form of serious harm. In other words, Parties to the Convention are required to recognise that gender-specific violence may amount to persecution, and lead to the granting of refugee status. The recognition of gender-based violence as a form of persecution within the meaning of Article 1 A(2) implies recognising that a woman may be persecuted because of her gender, i.e. because of her identity and status

as a woman. Parties also have the obligation to ensure that gender-based violence against women may be recognised as a form of serious harm giving rise to complementary/subsidiary protection. This means that international protection may be granted to women who are third country nationals or who are stateless and who have not qualified as a refugee, but if returned to their country of origin or where they previously resided would face gender-based violence, which would amount to inhuman or degrading treatment or seriously threaten the life of the individual. Consequently, the right to international protection is not limited to protection under the 1951 Convention, but can also be derived from other well established international and regional standards such as the ECHR or the European Union Qualification Directive.

308. Paragraph 2 complements the obligation laid out in paragraph 1. The obligation contained in this provision is two-fold. On the one hand, it requires Parties to ensure that a gender-sensitive interpretation is given to each of the 1951 Convention grounds. The well-founded fear of persecution must be related to one or more of the 1951 Convention grounds. In the examination of the grounds for persecution, gender-based violence is often seen to fall within the ground of "membership of a particular social group", overlooking the other grounds. Ensuring a gender-sensitive interpretation implies recognising and understanding how gender can have an impact on the reasons behind the type of persecution or harm suffered. On the other hand, paragraph 2 requires Parties to allow for the possibility of granting refugee status should it be established that the persecution feared is for one of these grounds. It is important to note that adopting a gender-sensitive interpretation does not mean that all women will automatically be entitled to refugee status. What amounts to a well-founded fear of persecution will depend on the particular circumstances of each individual case.

309. Regarding persecution on the grounds of race or on the grounds of nationality, women may face certain types of persecution that specifically affect them. Examples are sexual violence and control of reproduction in cases of racial and ethnic "cleansing". Concerning persecution on the grounds of religion, women may be persecuted for not conforming to religious norms and customs of acceptable behaviour. This is particularly true in cases of crimes committed in the name of so-called "honour" which affect women disproportionately. Persecution on the grounds of membership of a particular social group has increasingly been put forward in gender-related claims and has gradually acquired international support. In considering women fleeing from gender-related persecution such as female genital mutilation, forced marriage and even serious domestic violence as forming a "particular social group", women may be granted asylum. Some women can thus be identified as a particular group and that shares a common innate, unchangeable or otherwise fundamental characteristic other than the common experience of fleeing persecution. Finally, persecution on the ground of political opinion can include persecution on the grounds of opinions regarding gender roles. Some women may be persecuted, for example, for not conforming to society's roles and norms of acceptable behaviour and for speaking out against traditional gender roles. When taking the necessary measures in order to ensure a gender-sensitive interpretation of the refugee definition, Parties may refer to the UNHCR Guidelines on International Protection: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, May 2002. Additionally, when ensuring that a gender-sensitive interpretation is given to each of the convention grounds, Parties may if they wish, extend the interpretation to individuals who are gay, lesbian, bisexual or transgender, who may also face particular forms of gender-related persecution and violence.

310. Paragraph 3 contains several obligations. The first obligation placed on Parties is that of developing gender-sensitive reception procedures that take into account women's and men's differences in terms of experiences and specific protection needs to ensure their right to safety when considering standards of treatment for the reception of asylum-seekers. Examples of gender-sensitive reception procedures include *inter alia* : the identification of victims of violence against women as early in the process as possible; the separate accommodation of single men and women; separate toilet facilities, or at a minimum, different timetables established and monitored for their use by males and females; rooms that can be locked by their occupants; adequate lighting throughout the reception centre; guard protection, including female guards, trained on the gender-specific needs of residents; training of reception centre staff; code of conduct applying also to private service providers; formal arrangements for intervention and protection in instances of gender-based violence; and provision of information to women and girls on gender-based violence and available assistance services.

311. Paragraph 3 also places the obligation to develop support services for asylum-seekers that provide assistance in a gender-sensitive manner and that cater to their particular needs. This could include taking measures such as providing additional psycho-social and crisis counselling, as well as medical care for survivors of trauma since for example, many female asylum-seekers have been exposed to sexual or other forms of abuse and are therefore particularly vulnerable. Support services should also aim at empowering women and enable them to actively rebuild their lives.

312. Developing and implementing gender guidelines is essential for the relevant actors to understand how they can include gender-sensitive elements into their policies and practice. Guidelines provide an essential reference point in order to enhance awareness of special protection needs for women asylum-seekers that have been victims or are at risk of gender-based violence. Parties must however bear in mind that in order to ensure their success, specific measures should be taken to ensure that such guidelines are implemented. Guidelines should cover the enhancement of awareness and responsiveness to cultural and religious sensitivities or personal factors as well as the recognition of trauma.

313. In order to properly examine asylum claims by women and girls who are victims of gender-based violence, paragraph 3 entails the obligation to develop gender-sensitive asylum procedures. It encompasses *inter ali a*: the provision to women of information on asylum procedures; the opportunity for women dependents to have a personal interview separately and without the presence of family members; the opportunity for women to raise independent needs for protection and gender-specific grounds leading to a separate application for international protection; the elaboration of gender guidelines on the adjudication of asylum claims, and training. It also encompasses gender-sensitive interviews led by an interviewer, and assisted by an interpreter when necessary; the possibility for the applicant to express a preference for the sex of their interviewer and interpreter which the Parties will accommodate where it is reasonable to do so; and the respect of confidentiality of the information gathered through interviews. For further guidance, Parties may refer to the work of the Parliamentary Assembly in this field, and in particular to Resolution 1765 (2010) and Recommendation 1940 (2010) on gender-related claims for asylum.

Article 61 – Non-refoulement

314. Enshrined in Article 33 of the 1951 Convention relating to the Status of Refugees, the principle of *non-refoulement* constitutes a pillar of asylum and of international refugee protection and has acquired the status of customary international law. This means that the principle applies to all states, irrespective of whether they are bound or not by the 1951 Convention.

315. The principle of *non-refoulement* is of particular relevance to asylum-seekers and refugees. According to this principle, subject to certain exceptions and limitations as laid down in the 1951 Convention, states shall not expel or return an asylum seeker or refugee to any country where their life or freedom would be threatened. Article 3 of the ECHR also prevents a person being returned to a place where they would be at real risk of being subjected to torture or inhuman or degrading treatment or punishment. Expelling or returning a person to persecution contravenes the commitment of the international community to ensure the enjoyment of human rights of all persons. The *non-refoulement* principle also includes not prohibiting access to the territory of a country to asylum-seekers who have arrived at its borders or who are prevented to access its borders.

316. The protection against refoulement applies to any person who is a refugee under the terms of the 1951 Convention. It also applies asylum-seekers whose status has not formally been determined and who may be subjected to persecution if returned to their country of origin or of habitual residence. Paragraph 1 entails the obligation under international law for states to respect the principle of *non-refoulement* in relation to victims of gender-based violence who may fear persecution if returned.

317. Paragraph 2 confirms that the obligation to respect the *non-refoulement* principle applies equally to victims of violence against women who are in need of protection complementing in this way the first paragraph. More specifically, paragraph 2 reiterates the obligation for Parties to take the necessary legal or other measures to ensure that victims of violence against women and in need of protection, shall not be returned under any circumstances if there were a real risk, as a result, of arbitrary deprivation of life or torture or inhuman or degrading treatment or punishment. It is important to ensure that these obligations are complied with irrespective of the status or residence of the women concerned. This means that this protection against return applies to all victims of violence against women that have not yet had their asylum claim determined as refugees under the 1951 Convention regardless of their country of origin or residence status, and who would face gender-based violence amounting to the ill-treatment described above if expelled/ deported. Even if their claim for asylum is refused, states should ensure that these persons will not be expelled/deported to a country where there is a real risk to that they will be subject to torture or inhuman or degrading treatment or punishment.

Chapter VIII – International cooperation

318. Chapter VIII sets out the provisions on international cooperation between Parties to the Convention. The provisions are not confined to judicial cooperation in criminal and civil matters but are also concerned with cooperation in preventing all forms of violence covered by the scope of this Convention and assisting victims of that violence.

319. As regards judicial cooperation in general and more specifically in the criminal sphere, the Council of Europe already has a substantial body of standard-setting instruments. Mention should be made here of the European Convention on Extradition (ETS No.24), the European Convention on Mutual Assistance in Criminal Matters (ETS No.30), their Additional Protocols (ETS No. 86, 98, 99 and 182), European Convention on the International Validity of Criminal Judgments (ETS No.70), the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No.141) and the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (ETS No.198). These treaties are cross-sector instruments applying to a large number of offences, and can be implemented to permit judicial cooperation in criminal matters in the framework of procedures aiming at the offences established in the Convention. As all member states of the Council of Europe are parties to the European Convention on Extradition and the European Convention on Mutual Legal Assistance, drafters are generally advised not to reproduce provisions on mutual legal assistance and extradition in specialised instruments, but to include the aforementioned general provision and otherwise refer to the horizontal instruments in the explanatory memorandum accompanying the convention being drafted.

320. For this reason, the drafters opted not to reproduce, in this Convention, provisions similar to those included in cross-sectoral instruments such as those mentioned above. For instance, they did not want to introduce separate mutual assistance arrangements that would replace the other instruments and arrangements applicable, on the grounds that it would be more effective to rely, as a general rule, on the arrangements introduced by the mutual assistance and extradition treaties in force, with which practitioners were fully familiar. This chapter therefore includes only provisions that add something over and above the existing conventions.

Article 62 – General principles

321. Article 62 sets out the general principles that should govern international co-operation.

322. First of all, it obliges the Parties to co-operate widely with one another and in particular to reduce, as far as possible, the obstacles to the rapid circulation of information and evidence.

323. Article 62 then makes it clear that the obligation to co-operate is general in scope: it covers preventing, combating and prosecuting all forms of violence covered by the scope of this Convention (lit.a), protecting and providing assistance to victims (lit.b), investigations or procedures concerning criminal offences established in accordance with the Convention (lit.c) and enforcement of relevant of civil and criminal judgments issued by Parties (lit.d).

324. Paragraph 2 is based on Article 11, paragraphs 2 and 3, of the Council of the European Union Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings. It is designed to make it easier for victims to file a complaint by enabling them to lodge it with the competent authorities of the state of residence.

325. These authorities may then either initiate proceedings if their law permits, or pass on the complaint to the authorities of the state in which the offence was committed, in accordance with the relevant provisions of the co-operation instruments applicable to the states in question.

326. Paragraph 3 authorises a Party that makes mutual assistance in criminal matters, extradition or enforcement of civil and criminal judgments conditional on the existence of a treaty to consider the Convention as the legal basis for judicial co-operation with a Party with which it has not concluded such a treaty. This provision, which serves no purpose between Council of Europe member states as regards mutual assistance in criminal matters and extradition because of the existence of the European Conventions on Extradition and on Mutual Assistance in Criminal Matters, dating from 1957 and 1959 respectively, and the Protocols thereto, is of interest because of the possibility provided to third states to accede to the Convention.

327. Lastly, under paragraph 4, the Parties must endeavour to include preventing and combating violence against women and domestic violence in development assistance programmes benefiting third states. Many Council of Europe member states carry out such programmes, which cover such varied areas as the restoration or consolidation of the rule of law, the development of judicial institutions, combating crime, and

technical assistance with the implementation of international conventions. Some of these programmes may be carried out in countries faced with substantial violence against women and domestic violence. It seems appropriate, in this context, that action programmes should take account of and duly incorporate issues relating mainly to the prevention of these forms of crimes, including with a view to facilitating the protection of victims in accordance with Article 18 (5).

Article 63 – Measures relating to persons at risk

328. The main objective pursued by this provision is again to encourage Parties to this Convention to enhance the exchange of information and, in addition in this specific case, to prevent certain acts of violence against women and domestic violence related to a number of offences established by this Convention from happening. Some of the forms of violence covered by the scope of this Convention may have a transnational dimension. For this reason, the drafters identified some of the offences established in this Convention, such as forced marriage or female genital mutilation, and established the principle according to which a Party that is in possession of information providing reasonably evidence that a person is at immediate risk of being subject to any of the acts of violence referred to should transmit this information to the Party where these acts of violence could happen. The information needs to be based on “reasonable grounds” that an immediate risk exists. The drafters did not consider it necessary to elaborate in the Convention criteria on what constitutes reasonable grounds. It is therefore left to the Parties to establish, according to the information collected on a case-by-case basis, when to share this information in order to prevent such acts of violence. This information includes details on protection orders taken for the benefit of the persons at risk.

Article 64 – Information

329. Article 64 substantiates a principle already present in the international cooperation field, and in particular in the criminal field, which provides for an efficient and timely exchange of information between states in order to either prevent a possible offence as established in accordance with this Convention, to initiate investigation on such an offence or to prosecute a perpetrator. In particular, paragraph 1 requires the requested Party to communicate to the requesting Party the outcome of any action undertaken. Paragraph 2 leaves to each Party the choice (wording used, *may*, clearly does not make this action as compulsory) whether or not to forward to another Party information related to its own investigations. This may be done “without prior request” by the other Party.

330. Similarly, Paragraph 3 establishes the principle according to which when a Party receives information (which concerns in general a central administrative authority dealing with international cooperation in criminal matters), this Party shall submit that information to the relevant authorities which, according to its internal law, are competent to deal with this information. In general, the relevant authorities are for instance the police, prosecution service or judge. The relevant authorities will then consider whether or not that information is to appropriate for their investigations or judicial proceedings. It is important to note that the exchange of information required under this provision is not limited to criminal investigations or proceedings but extends to civil law action, including protection orders.

Article 65 – Data protection

331. This provision refers to the question of personal data regarding all forms of violence covered by the scope of this Convention. Because of the possible dangers to individuals, in particular to victims, if data concerning them were to circulate without any safeguards or checks, Article 65 specifically refers to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No.108) as regards the storing and usage of data. The article states that this provision applies pursuant to the obligations undertaken by the Parties under the above-mentioned convention. However, this does prevent Parties that are not Parties under Convention No. 108, to ratify this Convention. Convention No.108 provides, in particular, that personal data are to be stored only for specified lawful purposes and are not to be used in any way incompatible with those purposes. It also provides that such data are not to be stored in any form allowing identification of the data subject or for any longer than is necessary for the purposes for which the data are recorded and stored. Convention No.108 likewise makes it compulsory to take appropriate security measures preventing unauthorised access to and alteration or disclosure of data.

Chapter IX – Monitoring mechanism

332. Chapter IX of the Convention contains provisions which aim at ensuring the effective implementation of the Convention by the Parties. In its interim report, the CAHVIO stated that “The Committee is of the opinion that a strong and independent monitoring mechanism is of utmost importance to ensure that an adequate

response to this problem is given in all Parties to the Convention." Consequently, the drafters considered that the monitoring system foreseen by the Convention shall be one of its main strengths. The monitoring mechanism is designed to cover the scope of this Convention. The Convention sets-up a Group of experts on action against violence against women and domestic violence (hereafter "GREVIO") which is an expert body, composed of independent and highly qualified experts in the fields of human rights, gender equality, violence against women and domestic violence, criminal law and in assistance to and protection of victims of violence against women and domestic violence, with the task of "monitoring the implementation of this Convention by the Parties". The Convention also establishes a Committee of the Parties, composed of the representatives of the Parties to the Convention.

Article 66 – Group of experts on action against violence against women and domestic violence (GREVIO)

333. As indicated above, GREVIO is in charge of monitoring the implementation of the Convention by the Parties. It shall have a minimum of 10 and a maximum of 15 members.

334. Paragraph 2 of this Article stresses the need to ensure geographical and gender balance, as well as a multidisciplinary expertise, when electing GREVIO's members, who shall be nationals of Parties to the Convention. Candidates to the GREVIO are nominated by the Parties and elected by the Committee of the Parties.

335. Paragraph 3 establishes criteria of election of GREVIO's members in relation to the number of ratifications of the Convention.

336. Paragraph 4 underlines the main competences of the experts sitting in GREVIO, as well as the main criteria for their election, which can be summarised as follows: "independence and expertise". In particular, members of the GREVIO should represent relevant actors and agencies working in the field of violence against women and domestic violence. If nominated by the Parties, this may include for instance NGO representatives.

337. Paragraph 5 indicates that the procedure for the election of the members of GREVIO (but not the election of the members itself) shall be determined by the Committee of Ministers. This is understandable as the election procedure is an important part of the application of the Convention. Being a Council of Europe Convention, the drafters felt that such a function should still rest with the Committee of Ministers and the Parties themselves will then be in charge of electing the members of GREVIO. Before deciding on the election procedure, the Committee of Ministers shall consult with and obtain the unanimous consent of all Parties. Such a requirement recognises that all Parties to the Convention should be able to determine such a procedure and are on an equal footing.

338. Paragraph 6 states that GREVIO establishes its own rules of procedure.

339. The purpose of paragraph 7 is to allow all members of country visit delegations provided for in Article 68 paragraphs 9 and 14 to be on equal footing and benefit from the same privileges and immunities. The General Agreement on Privileges and Immunities of the Council of Europe is open to member states only. However, the Convention is also open to non-member states. With regard to other Council of Europe conventions providing for country visits, the usual procedure is for the Committee of Ministers to ask for a bilateral agreement to be signed by non-member states, resulting in a lengthy process that can delay their accession to a convention. For this reason, and as a precautionary step for the future, this provision is directly included in the body of the Convention to avoid lengthy procedures in order to negotiate bilateral agreements with non-member states.

Article 67 – Committee of the Parties

340. Article 67 sets up the other pillar of this monitoring system, which is the political body ("Committee of the Parties"), composed as indicated above.

341. The Committee of the Parties will be convened the first time by the Secretary General of the Council of Europe, within a year from the entry into force of the Convention, in order to elect the members of GREVIO. It will then meet at the request of a third of the Parties, of the Secretary General of the Council of Europe or of the President of GREVIO.

342. The setting up of this body will ensure equal participation of all the Parties alike in the decision-making process and in the monitoring procedure of the Convention and will also strengthen cooperation between the Parties and between them and GREVIO to ensure the proper and effective implementation of the Convention.

343. Paragraph 3 states that the Committee of the Parties establishes its own rules of procedure.

Article 68 – Procedure

344. Article 68 details the functioning of the monitoring procedure and the interaction between GREVIO and the Committee of the Parties.

345. Paragraphs 1 and 2 establish that GREVIO consider a report on general legislative and other measures undertaken by each Party to give effect to the provisions of this Convention with the representatives of the Party concerned. This report is submitted by the Party and it is based on a questionnaire developed by the GREVIO. The idea is to have a baseline of legislative and other measures the Parties have in place, when acceding to the Convention, with regard to the concrete and general implementation of the Convention.

346. Paragraph 3 makes it clear that the evaluation procedure following the first report and assessment as indicated in paragraphs 1 and 2 is divided into rounds and that GREVIO will select the provisions the monitoring will concentrate on. The idea is that GREVIO will autonomously define, at the beginning of each round, the provisions for the monitoring procedure during the period concerned.

347. Paragraph 4 states that GREVIO will determine the most appropriate means to carry out the evaluation. This may include a questionnaire or any other request for information. The term “questionnaire” refers to a set of written questions or guidelines to gain information of a qualitative and quantitative nature on measures taken in implementation of the Convention. It goes beyond the collection of statistical/numeric data which the monitoring framework on the implementation of Recommendation Rec (2002)5 on the protection of women against violence assured. Moreover, this paragraph makes it clear that the Party concerned must respond to GREVIO’s requests. Parties to the Convention should not be required to answer on the implementation of Recommendation Rec (2002)5 on the protection of women against violence.

348. Paragraph 5 establishes the important principle that GREVIO may receive information by the NGOs, civil society as well as national institutions for the protection of human rights.

349. Paragraphs 6, 7 and 8 introduce the principle that GREVIO should make the best possible use of any existing source of information. That is also in order to avoid unnecessary duplication of work and activities already carried out in other instances.

350. Paragraph 9 underlines that, subsidiarily, GREVIO may organise country visits. The drafters wanted to make it clear that country visits should be a subsidiary means of monitoring and that they should be carried out only when necessary, in two specific cases: 1) if the information gained is insufficient and there are no other feasible ways of reliably gaining the information or 2) in case the GREVIO receives reliable information indicating a situation where problems require immediate attention to prevent or limit the scale or number of serious violations of the Convention. These country visits must be organised in cooperation with the competent authorities of the Party concerned, meaning that they are established in advance and that dates are fixed in co-operation with national authorities which are notified in due time.

351. Paragraphs 10 and 11 describe the drafting phase of both the report and the conclusions of GREVIO. From these provisions, it appears clear that GREVIO has to carry out a dialogue with the Party concerned when preparing the report and the conclusions. It is through such a dialogue that the provisions of the Convention will be properly implemented. GREVIO will publish its report and conclusions, together with any comments by the Party concerned. This completes the task of GREVIO with respect to that Party and the provisions concerned. The reports and conclusions of GREVIO, which will be made public as from their adoption, cannot be changed or modified by the Committee of the Parties.

352. Paragraph 12 deals with the role of the Committee of the Parties in the monitoring procedure. It indicates that the Committee of the Parties may adopt recommendations indicating the measures to be taken by the Party concerned to implement GREVIO’s conclusions, if necessary setting a date for submitting information on their implementation, and promoting cooperation to ensure the proper implementation of the Convention. This mechanism will ensure the respect of the independence of GREVIO in its monitoring function, while introducing a “political” dimension to the dialogue between the Parties.

353. Paragraphs 13, 14 and 15 provide for a special procedure according to which GREVIO is entitled to request the submission of a report by the Party concerned related to measures taken by that Party to prevent a serious, massive or persistent pattern of any of the acts of violence covered by the Convention. The condition for requesting a special report is that GREVIO receives reliable information indicating a situation where problems require immediate attention to prevent or limit the scale or number of serious violations of the Convention”. On the basis of the information received (by the Party concerned and by any other source of

information), GREVIO may designate one or more of its members to conduct an inquiry and to report urgently to the GREVIO. In very exceptional cases, this inquiry could also include a visit to the country concerned. The main role of the appointed "rapporteur(s)" should be collecting all necessary information and ascertaining the facts in relation to the specific situation. The rules of procedure of GREVIO will establish the details of the functioning of this "inquiry procedure". However, the main objective is to allow GREVIO to have a more precise explanation and understanding of situations where, according to reliable information, a considerable number of victims of the same acts of violence are involved. The findings of the inquiry shall be transmitted to the Party concerned and, where appropriate, to the Committee of the Parties and the Committee of Ministers of the Council of Europe together with any comments and recommendations.

Article 69 – General recommendations

354. Drawing inspiration from Article 21 (1) of CEDAW, this article provides for the possibility of GREVIO to adopt, where appropriate, general recommendations on the implementation of this Convention. General recommendations have a common meaning for all Parties and concern articles or themes that are included in this Convention. They are not country-specific. Although these general recommendations are not legally-binding, they serve as an important reference for Parties by developing a greater understanding of the different themes in the Convention and offering clear guidance that can contribute to an effective implementation of the provisions contained in the Convention. These recommendations should also be part of future monitoring rounds.

Article 70 – Parliamentary involvement in monitoring

355. This provision sets out the role of national parliaments in monitoring the implementation of this Convention. In paragraphs 1 and 2, it contains the obligation of Parties to the Convention to invite national parliaments to participate in the monitoring (paragraph 1) and to submit the reports of GREVIO to them for consultation (paragraph 2). The drafters emphasised the important role which national parliaments take on in implementing the Convention, which, in many cases, requires legislative changes. As a result, they considered it essential to involve national parliaments in assessing the implementation of the Convention.

356. Paragraph 3 of this provision specifies the involvement of the Parliamentary Assembly of the Council of Europe in the monitoring of measures taken by Parties in the implementation of this Convention. The first provision of this kind in a Council of Europe Convention, it states that the Parliamentary Assembly shall be invited to regularly take stock of the implementation of the Convention. With this provision, the drafters wished to recognise the important role which the Parliamentary Assembly played in placing the issue of violence against women on the political agenda both of the Council of Europe and of its member states. Following the Assembly's longstanding commitment to this issue and the high number of recommendations adopted in this field, the Assembly's participation in the monitoring of this Convention significantly enhances its results.

Chapter X – Relationship with other international instruments

Article 71 – Relationship with other international instruments

357. Article 71 deals with the relationship between the Convention and other international instruments.

358. In accordance with the 1969 Vienna Convention on the Law of Treaties, Article 71 seeks to ensure that the Convention harmoniously coexists with other treaties – whether multilateral or bilateral – or instruments dealing with matters which the Convention also covers. This includes for instance the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols, the European Social Charter (revised, ETS No. 163), the United Nations Convention on the Elimination of All Forms of Discrimination Against Women and its Optional Protocol, the Convention on the Rights of the Child and its Optional Protocols on the involvement of children in armed conflict, and on the sale of children, child prostitution and child pornography, the International Convention on the Elimination of All Forms of Racial Discrimination and its Optional Protocol, the 1951 Convention relating to the Status of Refugees and its Optional Protocol and the United Nations Convention on the Rights of Persons with Disabilities.

359. This Convention is designed to strengthen the protection and ensure the support for victims of violence against women and domestic violence. For this reason, Article 71, paragraph 1 aims at ensuring that this Convention does not prejudice the obligations derived from other international instruments to which the Parties to this Convention are also Parties or will become Parties, and which contain provisions on matters

governed by this Convention. This provision clearly shows, once more, the overall aim of this Convention, which is to protect the rights of victims of violence against women and domestic violence and to assure them of the highest level of protection.

360. Article 71 (2) states positively that Parties may conclude bilateral or multilateral agreements – or any other legal instrument – relating to the matters which the Convention governs. However, the wording makes clear that Parties are not allowed to conclude any agreement which derogates from this Convention.

Chapter XI – Amendments to the Convention

361. Amendments to the provisions of the Convention may be proposed by the Parties. They must be communicated to the Secretary General of the Council of Europe and to all Council of Europe member states, to any signatory, to any Party, to the European Union and to any state invited to sign or accede to the Convention.

362. As a next step, the Committee of Ministers examines and adopts the amendment. Before deciding on the amendment, the Committee of Ministers shall consult and obtain the unanimous consent of all Parties to the Convention. Such a requirement recognises that all Parties to the Convention should be able to participate in the decision-making process concerning amendments and are on an equal footing.

Chapter XII – Final clauses

363. With some exceptions, the provisions in this chapter are essentially based on the Model Final Clauses for Conventions and Agreements concluded within the Council of Europe, which the Committee of Ministers approved at the Deputies' 315th meeting, in February 1980. Articles 73 to 81 either use the standard language of the model clauses or are based on long-standing treaty-making practice at the Council of Europe.

Article 73 – Effects of this Convention

364. Article 73 safeguards those provisions of internal law and binding international instruments which provide additional protection to persons against violence against women and domestic violence; this Convention shall not be interpreted so as to restrict such protection. The phrase "more favourable rights" refers to the possibility of putting a person in a more favourable position than provided for under the Convention.

Article 74 – Dispute settlement

365. The drafters considered it important to include in the text of the Convention an article on dispute settlement, which imposes an obligation on the Parties to seek first of all a peaceful settlement of any dispute concerning the application or the interpretation of the Convention.

366. The various types of peaceful settlement mentioned in the first paragraph of this article (negotiation, conciliation and arbitration) are commonly recognised under international law. These methods of settlement are not cumulative, so that Parties are not obliged to exhaust all of them before having recourse to other methods of peaceful settlement. Any procedure for solving disputes shall be agreed upon by the Parties concerned.

367. Paragraph 2 provides that the Committee of Ministers of the Council of Europe may establish a non-judicial procedure which Parties could use if a dispute arises in relation to the application or the interpretation of the Convention. The drafters chose not to refer to judicial procedures such as the one governing the International Court of Justice, since several Parties to this Convention had not accepted the mandatory competence of this judicial body and did not wish to do so concerning this specific Convention. However, this article does not preclude Parties in dispute from submitting their case to the International Court of Justice if they should so agree.

Article 75 – Signature and entry into force

368. Paragraph 1 states that the Convention is open for signature not only by Council of Europe member states but also the European Union and states not member of the Council of Europe (Canada, the Holy See, Japan, Mexico and the United states) which took part in drawing it up. Once the Convention enters into force, in accordance with paragraph 3, other non-member states not covered by this provision may be invited to accede to the Convention in accordance with Article 76 (1).

369. Paragraph 2 states that the Secretary General of the Council of Europe is the depositary of the instruments of ratification, acceptance or approval of this Convention.

370. Paragraph 3 sets the number of ratifications, acceptances or approvals required for the Convention's entry into force at 10. This figure reflects the belief that a significant group of states is needed to successfully set about addressing the challenge of preventing and combating violence against women and domestic violence. The number is not so high, however, as to unnecessarily delay the Convention's entry into force. In accordance with the treaty-making practice of the Organisation, of the ten initial states, at least eight must be Council of Europe members.

Article 76 – Accession to the Convention

371. After consulting the Parties and obtaining their unanimous consent, the Committee of Ministers may invite any state not a Council of Europe member which did not participate in drawing up the Convention to accede to it. This decision requires the two-thirds majority provided for in Article 20.d of the Statute of the Council of Europe and the unanimous vote of the Parties to this Convention.

Article 77 – Territorial application

372. Paragraph 1 specifies the territories to which the Convention applies. Here it should be pointed out that it would be incompatible with the object and purpose of the Convention for states Parties to exclude parts of their territory from application of the Convention without valid reason (such as the existence of different legal systems applying in matters dealt with in the Convention).

373. Paragraph 2 is concerned with extension of application of the Convention to territories for whose international relations the Parties are responsible or on whose behalf they are authorised to give undertakings.

Article 78 – Reservations

374. Article 78 specifies that no reservation may be made in relation to any provision of this Convention, with the exceptions provided for in paragraphs 2 and 3 of this article. The declarations of reservation made pursuant to paragraphs 2 and 3 should explain the reasons why a reservation was sought by a Party.

375. The articles listed in paragraph 2 of this article are provisions for which unanimous agreement was not reached among the drafters despite the efforts achieved in favour of compromise. These reservations aim at enabling the largest possible ratification of the Convention, whilst permitting Parties to preserve some of their fundamental legal concepts. The provisions concerned are the following: Article 30, paragraph 2 (state compensation); Article 44, paragraphs 1 e, 3 and 4 (jurisdiction); Article 55, paragraph 1 (*ex parte* and *ex officio* proceedings); Article 58 (statute of limitation); Article 59 (residence status). It should be noted that the possibility of reservation has been further restricted regarding Articles 55 and 58, since reservations to Article 55, paragraph 1 are permissible only in respect of Article 35 regarding minor offences, in the same way as reservations to Article 58 are permissible only in respect of Articles 37, 38 and 39.

376. Paragraph 3 provides for a specific form of reservation in relation to Articles 33 (psychological violence) and 34 (stalking). Parties may reserve the right to provide for non-criminal sanctions, instead of the criminal sanctions, for the behaviours referred to in these articles. Consequently, this possibility of reservation does not apply to the articles mentioned as a whole, but only to the way they may be implemented by the Parties at the national level.

377. Paragraph 4, by making it possible to withdraw reservations at any time, aims at reducing in the future divergences between legislations which have incorporated the provisions of this Convention.

Article 79 – Validity and review of reservations

378. Reservations are exceptions to the uniform implementation of the standards provided for by the Convention. Therefore, the drafters considered it appropriate to provide for a periodic review of the reservations in order to encourage Parties to lift them or to indicate the reasons for maintaining them. Pursuant to paragraph 1, reservations referred to in Article 78, paragraphs 2 and 3 have a limited validity of 5 years. This duration was settled in order to strike a balance between on the one hand, the objective of progressive elimination of existing reservations with the need, on the other hand, to ensure that Parties have

sufficient time to re-examine their reservations at the national level. After this deadline, reservations will lapse unless they are expressly renewed. In any event, it is necessary for Parties to inform the Treaty Office of the Council of Europe of their intentions regarding existing reservations.

379. Paragraph 2 contains a procedure for the automatic lapsing of non-renewed reservations. Finally, pursuant to Article 79 (3), Parties shall provide to GREVIO, before its renewal or upon request, an explanation on the grounds justifying the continuation of a reservation. In cases of renewal of a reservation, there shall be no need of a prior request by GREVIO. In all cases GREVIO will have the possibility of examining the explanations provided by the Party to justify the continuance of its reservations.

Article 80 – Denunciation

380. In accordance with the United Nations Vienna Convention on the Law of Treaties, Article 80 allows any Party to denounce the Convention.

Article 81 – Notification

381. Article 81 lists the notifications that, as the depositary of the Convention, the Secretary General of the Council of Europe is required to make, and it also designates the recipients of these notifications (states and the European Union).