

# The role of the Istanbul Convention in protecting children from domestic violence



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**Appendix 2: Declaration statement**



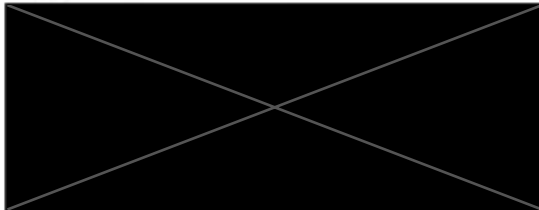
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## **vi. Executive summary**

The Istanbul Convention is the first and only regional treaty on domestic violence. The Council of Europe Strategy for the rights of the child (2022-2027) encourages the ratification of the Convention for countries that have not ratified it yet. This thesis investigates the role of the Istanbul Convention in protecting children from domestic violence. The research will be based on an analysis of the articles of the convention and the reports made by GREVIO, the monitoring body of the Convention.

The thesis starts by presenting the issue of domestic violence. Specific attention is given to the intersections between violence against children and violence against women. Chapter 1 explains that children experience violence both as direct victims and witnesses. In both cases, exposure to violence is harmful to child development and impedes the enjoyment of many children's rights. Children are also still exposed to risks after the separation of the parents, especially in cases where decisions on custody and visitation rights do not consider the episodes of violence, thus disregarding the best interests of the child. It is thus imperative to develop a preventive and responsive mechanism to protect children from domestic violence.

The European and International framework is presented in chapter 2. Violence occurring in the home has long been a hidden phenomenon and has been neglected by national and international legislators. The CRC Convention played a crucial role in recognising the right to be free from all kinds of violence. While the CRC recognises the role of parents in the child's upbringing, the state can intervene in a series of circumstances, including instances of violence. General Comment 13 on the right to be free from violence recognises witnessing domestic violence as a form of mental violence which severely impact the enjoyment of other children's rights.

The second part of chapter 2 focuses on the legislative and policy framework of the Council of Europe. It will first delve into the jurisprudence of the European Court of Human Rights. The obligation to prevent can be invoked when the situation of violence is known or ought to be known by the relevant authorities and when it is known that people are at imminent risk. Thus, when the authorities underestimate the situation, do not promptly act, or do not give due consideration to episodes of domestic violence, there is a violation of the Convention. The articles invoked by the court are art. 2, 3 and 8. Moreover, the court has recognised that the intervention of the state can indeed significantly reduce the suffering of victims of domestic violence and that children are entitled to specific protection from the state.

Chapter 3 delves into the Istanbul Convention, which has led to several achievements in the fight against domestic violence. The Convention builds on the three pillars of protection, prevention, and prosecution and has a strong human rights focus and well-defined criminal law provisions. While recognising that not only women can be victims of domestic violence, the Convention mainly focuses on violence against women. The Convention was adopted in 2011 by the Committee of Ministers of the Council of Europe, and it entered into force in 2014, after the 10<sup>th</sup> ratification. Thirty-seven countries are currently part of the Convention, while nine countries have signed it. However, only eighteen states have completed the country evaluation, based on a report submitted by the state under review and information coming from the civil society, institutions established under other international instruments, non-governmental organizations, and national human rights institutions. An analysis of the Convention and the GREVIO reports is essential to answer the research question of this thesis. To conduct the analysis, I went through

all available GREVIO reports and flagged the recommendations or other findings related to child witnesses.

The analysis of the Convention starts in art. 3 by focusing on the provisions which do not explicitly address children. The definition of domestic violence in the Convention includes acts "within the family or domestic unit or between former or current spouses or partners" (art. 3. a). However, the Convention only encourages states to apply the provisions of the Convention to children.

Chapter 4 focuses on art. 26 on child witnesses and art. 31 on custody, visitation rights and safety. Art. 26 deals with the need to provide children with adequate services. I identified the issues related to child witnesses and wrote the relevant information which can be found in the reports. The analysis mainly focuses on the legal recognition of child services, the provisions of services both inside and outside the shelters, the lack of funding, training of the staff, coordination among the agencies, interviews to children, and the decisions taken with regard to child witnesses. Art. 26 addresses the needs to ensure that incidents of violence are considered when state parties take legislative or other measures. When analysing art. 31, I paid specific attention to the legal recognition of child witnesses when taking decisions on domestic violence, training to the staff making decisions on child witnesses, the proceedings, investigations, implementation of contact order and parental alienation.

The last chapter examines the findings of the previous chapters. Overall, GREVIO does frequently address children's needs when assessing the implementation of the convention. With regards to the articles explicitly mentioning children, GREVIO is still not consistent in addressing all issues related to child witnesses. Moreover, GREVIO approaches children from a welfare perspective, and it does not ensure the right to participation of children. It sees children as objects needing protection and ignores the role that children can play in responding to violence. The Convention overlooks the role of children as rights holders.

The chapter continues with recommendations to GREVIO based on the CRC General Comment 13 and the guidance of the CRC Committee in the areas of prevention, identification, reporting, referral, investigation, treatment, follow-up, judicial involvement and effective procedures. GREVIO should indeed give more guidance on interpreting the convention and apply and give due consideration to child witnesses. Further, GREVIO should elaborate more on identifying child witnesses and the risk factors. GREVIO should also reflect upon the right to participation and the importance of empowering children to recognise episodes of violence and report them to the authorities with the help of appropriate helplines. GREVIO must also provide further guidance on training, funding, and protection orders. Further, specific attention should be given to children in the judicial involvement and to right of the child to be treated in a child-sensitive manner.

States often overlook children in during the implementation of the convention. This might be due to the reluctance to see child witnesses as a problem related to domestic violence and the lack of guidance from GREVIO. A General recommendation on child witnesses will be beneficial in giving more guidance to the states. Moreover, GREVIO can also dedicate one of its monitoring procedures to child witnesses or add a protocol to the Convention.

## **vii. Key Words**

domestic violence; Istanbul Convention; child witnesses; violence against children; Council of Europe

## **viii. Overview of Main Findings**

Children experience domestic violence both as direct victims and witnesses. Exposure to domestic violence leads to detrimental long-term and short-term effects on the development of children, and it impairs the enjoyment of other children's rights. The CRC Committee defines exposure to domestic violence as mental violence, even when children are not physically hurt.

The Istanbul Convention on domestic violence is the most far-reaching binding treaty on domestic violence, and children are mentioned both as victims and witnesses of domestic violence. To assess the role of the Convention in protecting children from domestic violence, the thesis presents an analysis of the Istanbul Convention and the reports of GREVIO, the monitoring body of the convention.

Overall, GREVIO is not consistent in making recommendations about child witnesses. This might be due to the reluctance of states and GREVIO to consider issues of child witnesses as related to the field of domestic violence. Further, GREVIO does not adequately guide states in implementing the Convention in relation to child witnesses.

The Convention does not oblige states to include child witnesses in the definition of domestic violence. GREVIO fails to consider children in the recommendations related to many articles which do not directly address children. For example, art. 11 on data and research does not include children, and GREVIO rarely recommends including data on child witnesses and victims. Moreover, art. 15 on training does not include training on how to deal with child witnesses. GREVIO does not recommend that states provide child-specific information on domestic violence or child-friendly helplines (art. 24). Further, GREVIO does not recommend introducing any specific procedure related to the involvement of children in legal proceedings. Art. 30 does not provide specific compensation for children. This is regrettable, as compensation can be helpful for their rehabilitation. Art. 34 on stalking does not take into consideration witnessing stalking. However, GREVIO addresses this issue in one of the recommendations. The presence of the child witnessing violence is mentioned as one of the aggravating circumstances when deciding on the sentencing for the perpetrator (art. 46). However, GREVIO does not systemically recommend states to consider the presence of the child as an aggravating circumstance. GREVIO sometimes makes recommendations related to art. 52 and 53 on protection orders for children, but it is not consistent. Art. 56 is comprehensive in listing the protection measures for victims and has an entire provision on particular measures of protection for children. However, GREVIO does not frequently recommend states to address the needs of children witnessing violence effectively.

Notably, children are considered witnesses even in cases where the acts of violence do not happen in the presence of the child, but the child experiences the consequences of living in an abusive environment. The legal recognition of child witnesses as victims is appreciated by GREVIO in the reports, but never explicitly recommended. Moreover, according to GREVIO the service providers should give due account to the best interests of the child. However, GREVIO does not further elaborate on what this notion means and how this applies to child witnesses. The Committee emphasises the need to provide children with psychological services. It also expresses concern about inequalities in the provision of services and recommends states to provide more funding. GREVIO also recommends training on the harmful effects of witnessing violence for all kinds of professional figures, including social services, judges, and everybody interacting with child witnesses. Training is also seen as crucial to allow for quick identification of child witnesses and the related risk factors. However, these recommendations do not regard treating victims in

a child-friendly manner. Furthermore, GREVIO does not frequently make recommendations on how to interview children. GREVIO also highlights some practices harmful to children, such as separating them from their non-abusive parents. Moreover, GREVIO shed light on the lack of effective cooperation between the agencies related to child protection and domestic violence.

GREVIO encourage states to pay attention to the detrimental effects that the custody and visitation decisions can have on the safety of the child and the mother. Thus, the Committee explicitly calls for the introduction of the legal obligation to take into account episodes of violence when making these decisions. For this reason, training among professionals should be ensured. Further, the Committee calls on states to conduct a risk assessment before deciding on visitation and custody rights.

GREVIO emphasises the need to integrate safeguards into the proceedings related to custody and visitation rights. It also calls states to conduct a risk assessment before going through mediation, as this practice can lead to detrimental results due to the unbalance of power between the abuser and the abused person. Furthermore, GREVIO highlights the need to investigate appropriately and ensure collaboration between the criminal and family courts. GREVIO is quite consistent in condemning the use of the notion of parental alienation syndrome.

Overall, GREVIO approaches children from a welfare perspective. Priority is indeed given to protection rights, and participation rights are not explicitly ensured. GREVIO fails to see children as agents in their own rights, and it disregards the role children can play in preventing and responding to domestic violence. Children can indeed be protected from the Convention only if the non-abusive parent or somebody else asks for protection.

In light of General Comment 13, this analysis shows that GREVIO should give more guidance to states in relation to child witnesses. This especially true with regard to prevention, identification, reporting, referral, investigation, treatment, follow-up, judicial involvement and effective procedures.

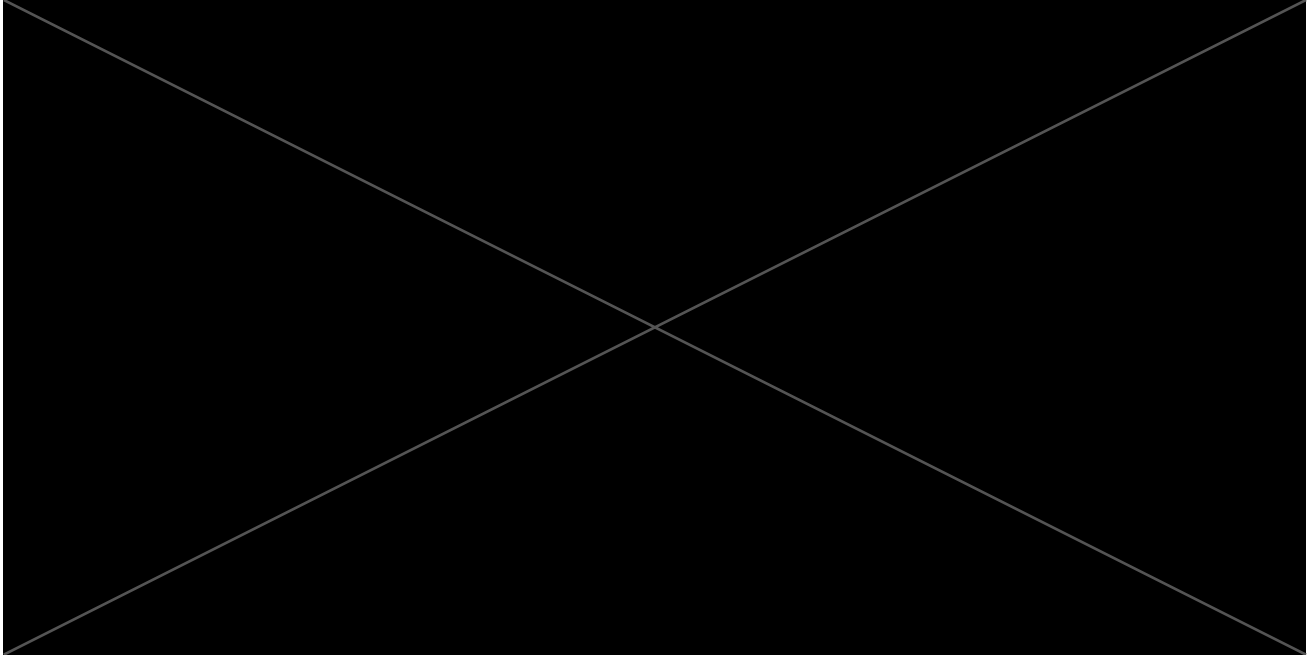
GREVIO should elaborate more on identifying child witnesses and the risk factors. It should also reflect upon the right to participation and the importance of empowering children to recognise episodes of violence and report them to the authorities with the help of appropriate helplines. Further, specific attention should be given to children involved in proceedings. The recommendations should be based on a holistic understanding of all children's rights of the CRC that are violated in cases of domestic violence and the rights that should be upheld during the rehabilitation process. When guiding states, GREVIO should carefully consider the positive obligations set by the ECHR jurisprudence

A GREVIO General Recommendation on child witnesses will be extremely useful in giving more guidance to the states. It will help GREVIO to give more guidance on the issue of child witnesses. Moreover, GREVIO can start a monitoring procedure specifically related to the child witnesses. If necessary, GREVIO can also introduce a new protocol to the Convention.

**ix. List of abbreviations**

- Art: Article
- CAHVIO: Ad Hoc Committee for Preventing and Combating Violence against Women and Domestic Violence
- CoE: Council of Europe
- CM: Committee of Ministers of the Council of Europe
- UNCA: Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- CRC: United Nations Convention on the Rights of the Child
- CRC Committee: Committee on the Convention on the Rights of the Child
- ECHR: European Convention of Human Rights
- GC General Comment
- GREVIO: The Group of experts on action against violence against women and domestic violence
- Istanbul Convention: Council of Europe Convention on Preventing and Combating Violence against Women and domestic violence
- PACE: Parliamentary Assembly of the Council of Europe

## **v. Acknowledgments**



# 1. Violence against children in the family

## 1.1 Introduction

Family violence against children has long been neglected by international and national law. This was due to many reasons, including societal norms that justified violence against children<sup>1</sup>, thus failing to view them as rights holders. Moreover, it was assumed that parents always acted in the child's best interests and the family's private sphere was emphasized. The Convention on the Rights of the Child (CRC)<sup>2</sup> in 1989 recognised the children's dignity and the child's right to be protected from violence in the family. The Committee has further defined violence in General Comment (GC) 13 and focused on the issue of corporal punishment in GC 8. GC 13 is quite important because it defines witnessing domestic violence as a form of mental violence<sup>3</sup> and consequently entitles children to the right to be protected from domestic violence. Furthermore, the Council of Europe has produced many soft-law instruments addressing different aspects of violence against children in the family. The European Convention of Human Rights (ECHR) has also clarified the positive obligations of the states in relation to domestic violence.

The Council of Europe Convention on Preventing and Combating Violence against Women and domestic violence (the Istanbul Convention)<sup>4</sup> is revolutionary as it is the first and only regional binding treaty on domestic violence. The latter is defined as "all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim" (art 3 a). The drafters of the Convention did not include children in the definition of domestic violence. However, the definition suggests that women are not the only victims of domestic violence, and the preamble recognises children as both direct and indirect victims. In both cases, according to the preamble, children must be protected.

Child witnesses can benefit from the provisions of the Istanbul Convention. The importance of this treaty is also recognised by the Council of Europe Strategy for the rights of the child (2022-2027), which supports the ratification of the treaty. The Parliamentary Assembly of the Council of Europe (PACE) sees the issue of child witnesses as one of the most challenging areas in the implementation of the Convention.<sup>5</sup> However, literature is scarce on how the Convention applies to children and whether it aligns with relevant international children's rights standards.

The Convention primarily relates to women victims of domestic violence, and article 2.2 of the Convention only encourages States to apply all provisions to children. This is extremely concerning due to the rising

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<sup>1</sup> Durrant, J. E., Stewart-Tufescu, A., & Affi, T. O. (2020). Recognizing the child's right to protection from physical violence: an update on progress and a call to action. *Child Abuse & Neglect*, 110, 104297.

<sup>2</sup> UN General Assembly (1989) Convention on the Rights of the Child, United Nations, Treaty Series, vol. 1577, p. 3

<sup>3</sup> UN CRC Committee (2011), General Comment 13 The right of the child to freedom from all forms of violence,

<sup>4</sup> CoE, (2011). Council of Europe Convention on Preventing and Combatting Violence Against Women and Domestic Violence: Istanbul, 11. V. 2011.

<sup>5</sup> PACE, Committee on Equality and Non-Discrimination (2019), The Istanbul Convention on violence against women: achievements and challenges, para. 26

number of children in Europe experiencing violence in the household and the detrimental effects of violence in children's lives.<sup>6</sup>

There are substantial differences between violence occurring in the domestic setting and other environments. Family violence against children and violence against women within the household are two phenomena that intersect each other. The Istanbul Convention has brought significant changes in the legislation and policies related to tackling the problem of domestic violence.

This research examines whether the Istanbul Convention effectively protects children from domestic violence. The relevant provisions of the Convention will be presented. There will also be an analysis of the reports where GREVIO (the monitoring body of the Convention) assesses the implementation of the convention.

## **1.2 The intersection between violence against children and violence against women**

Violence in the family does not affect all family members equally. Women and children are disproportionately represented over the total victims of violence in the household. It is thus vital to highlight the points in common between violence against women and child abuse and how they influence each other.<sup>7</sup> Behind an act of violence lies the disrespect for the inherent personhood and dignity of the victim. Violence against women is rooted in the patriarchal society and the gender disparity and a kind of masculinity based on control and power.<sup>8</sup> Parents hit children because they feel entitled to use violence against them.

Socio-economic factors might also put children and women at risk of violence. Children in vulnerable situations and from low socio-economic backgrounds are disproportionately represented over the total victims of child abuse. These risk factors also lead to violence against women, despite being non-determining.<sup>9</sup> The role of socio-economic factors became very visible during the lockdown due to Covid-19.<sup>10</sup>

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<sup>6</sup> WHO Regional Office for Europe (2021) European regional status report on preventing violence against children 2020. Copenhagen

<sup>7</sup> Guedes A., Bott S., Garcia-Moreno C et al (2016) Bridging the gaps: a global review of intersections of violence against women and violence against children, *Global Health Action*, 9:1, 31516, 1-10

<sup>8</sup> Namy, S., Carlson, C., O'Hara, K., Nakuti, J., Bukuluki, P., Lwanyaaga, J., ... & Michau, L. (2017). Towards a feminist understanding of intersecting violence against women and children in the family. *Social Science & Medicine*, 184, 40-48.

<sup>9</sup> CRC/C/GC/13, para. 74

<sup>10</sup> Usta, J., Murr, H., & El-Jarrah, R. (2021). COVID-19 Lockdown and the increased violence against women: understanding domestic violence during a pandemic. *Violence and gender*, 8(3), 133-139.

Societal norms emphasising the family's reputation<sup>11</sup> and privacy contribute to hiding violence against women and children. Moreover, the perpetrator, the society, and the criminal system often blame the victims<sup>12</sup> rather than giving them the support needed.

Studies also reveal a direct link between violence against children and domestic violence. There is a heightened risk of being revictimised or perpetuating violence later in life for children that have been exposed to violence in the family.<sup>13</sup> Further, violence against children can have a gender dimension, and experiencing violence in childhood can have different impacts based on the gender. Feminist literature shows that girls are mainly brought to internalise violence and be revictimised, while boys will most likely emulate the behaviour and engage in abusive behaviours.<sup>14</sup>

Lastly, violence against children and women often occurs in the same household. Children growing up in an abusive environment are not only experiencing mental violence, but they can become themselves the victim of physical abuse.<sup>15</sup>

However, there is often a lack of coordination between the child protection system and domestic violence services.<sup>16</sup> Consequently, children can be taken away from abusive environments without prioritizing the relation with the non-abusive parent. This is highly detrimental to children and prevents women from reporting instances of violence due to the fear of child removal.<sup>17</sup>

### 1.3 Children and domestic violence

Children experience domestic violence in two ways. First, research shows that between 30% and 60% of children living in an abusive environment are physically abused.<sup>18</sup> The problem of child abuse at the parents' hands was recognised by the medical community in the US in 1962.<sup>19</sup> The impact of this behavior on the mental health of individuals and their development can lead to significant changes in the child's

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<sup>11</sup> Guedes, A., Bott, S., Garcia-Moreno, C., & Colombini, M. (2016). Bridging the gaps: a global review of intersections of violence against women and violence against children. *Global health action*, 9(1), 31516, 1-10

<sup>12</sup> Id

<sup>13</sup> Id

<sup>14</sup> Fagan, A.A. (2022) 'Adverse Childhood Experiences and Adolescent Exposure to Violence', *Journal of interpersonal violence*, 37(3-4), 1708–1731

<sup>15</sup> Øverlien, C. (2013). The children of patriarchal terrorism. *Journal of family Violence*, 28(3), 277-287.

<sup>16</sup> Douglas, H. and Walsh, T. (2010) 'Mothers, Domestic Violence, and Child Protection', *Violence against women*, 16(5), pp. 489–508

<sup>17</sup> Jaffe, P.G., Lemon, N.K.D. and Poisson, S.E. (2003) *Child custody and domestic violence a call for safety and accountability*. Thousand Oaks, Calif. ; London: SAGE, 35-59

<sup>18</sup> Id

<sup>19</sup> Cicchetti, D. and Carlson, V. (eds) (1989) "History and definition," in *Child Maltreatment: Theory and Research on the Causes and Consequences of Child Abuse and Neglect*. Cambridge: Cambridge University Press, 1–2.

brain structure, even in the case of light corporal punishment.<sup>20</sup> Their vulnerability to this type of violence is enhanced by their dependence on adults for daily care and the impossibility of choosing whom to spend time with.<sup>21</sup> Family violence against children has been (and is still) tolerated for many reasons. This is linked to the belief that parents always act in the child's best interests and that families' right to privacy and autonomy should prevail over children's rights.<sup>22</sup> Violence in the house is often normalised, and children often believe they deserve to be hit. Cases of violence are also underreported due to the stigma around it and many other factors, including challenges children face when they report episodes of violence.<sup>23</sup>

In some cases, children are not physically abused but witness violence. Robust literature shows that exposure to violence equates to mental violence, which harms children's wellbeing and development.<sup>24</sup> The impact of witnessing violence on children is often underestimated. However, it should be noted that children are not passive observers, but are profoundly impacted by exposure to violence. Further, domestic violence is not an episode but a constant situation of fear and uncertainty, which is perceived as never-ending by children.<sup>25</sup> Violence against the mother also harms the relationship between the children and the mother,<sup>26</sup> and the abuser sometimes blames the mother for the consequences of violence on the children.<sup>27</sup>

Exposure to violence undermines the child's sense of safety and security.<sup>28</sup> It is often associated with the failure of both the abuser and the abused parents to meet the child's needs. Moreover, the abusive parent is not a good model for the child, and the child might internalise patriarchal norms and gender stereotypes.<sup>29</sup> Ultimately, children are constantly endangered even when they are not the direct victims. The Case law of the European Court of Human Rights related to the child's homicide in the context of domestic violence shows that the abuser can also kill the child as an act of revenge against the child.<sup>30</sup>

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<sup>20</sup> Teicher, M., Samson, J., Anderson, C. et al. (2016) The effects of childhood maltreatment on brain structure, function and connectivity. *Nat Rev Neurosci* 17, 652–666

<sup>21</sup> Finkelhor, D. (2008), *Childhood Victimization, Violence, Crime, and Abuse in the Lives of Young People*, 65-92

<sup>22</sup> Levesque, R. J. R. (2001). Reaching family violence through human rights law. In R. J. R. Levesque, *Culture and family violence: Fostering change through human rights law* American Psychological Association, 125–159

<sup>23</sup> Postmus, J. L., & Merritt, D. H. (2010). When child abuse overlaps with domestic violence: The factors that influence child protection workers' beliefs. *Children and Youth Services Review*, 32(3), 309-317.

<sup>24</sup> Cohen, E., Groves, B. M., & Kracke, K. (2009). *Understanding Children's Exposure to Violence*. Boston Medical Center, Safe Start Center, Office of Juvenile Justice and Delinquency Prevention, 1-8

<sup>25</sup> McGee, C. (2000). *Childhood experiences of domestic violence*. Jessica Kingsley Publishers, 69-113

<sup>26</sup> Herring, J. (2020) "Domestic Abuse and Children," in *Domestic Abuse and Human Rights*. Intersentia, 159–194.

<sup>27</sup> Jaffe, P.G., Lemon, N.K.D. and Poisson, S.E. (2003) *Child custody and domestic violence a call for safety and accountability*. Thousand Oaks, Calif. ; London: SAGE, 35-59

<sup>28</sup> Holt, S., Buckley, H., & Whelan, S. (2008). The impact of exposure to domestic violence on children and young people: A review of the literature. *Child abuse & neglect*, 32(8), 797-810.

<sup>29</sup> Herring, J. (2020) "Domestic Abuse and Children," in *Domestic Abuse and Human Rights*. Intersentia, 159–194.

<sup>30</sup> Jaffe, P.G. et al. (2014) 'Paternal Filicide in the Context of Domestic Violence: Challenges in Risk Assessment and Risk Management for Community and Justice Professionals', *Child abuse review* (Chichester, England : 1992), 23(2), 142–153

The impact of exposure to violence depends on different factors, including the child's age. Infants witnessing violence show a high level of stress, visible in a high heart rate and frequent crying. Pre-schoolers raised in an abusive environment tend to avoid playing and exploring and are extremely attached to their mother. Older children engage in aggressive behaviours, cannot concentrate at school and show difficulties interacting with their peers. Further, adolescents witnessing violence have high levels of anxiety and want to stay home to protect the abused parent. Teenagers exposed to violence are also likely to have self-destructive behaviours.<sup>31</sup>

Thus, the services dealing with domestic violence must precisely assess the situation of each victim or witness of violence. Services tailored to their needs prevent and minimise the negative consequences of exposure to violence. Coordination between domestic violence services and child protection services and a proper understanding of the effects of domestic violence on children is necessary to avoid revictimisation and ensure the child's safety. It is also necessary to give protective factors to the children.<sup>32</sup>

#### **1.4 Custody and visitation rights and domestic violence**

Domestic violence does not cease with the end of the relationship. The abuser sometimes takes advantage of the arrangement of custody and visitation rights to perpetuate the violence against the mother and the child. The proceedings are characterised by an unbalance of power between the abuser and the victim. Litigation over care and contact arrangements are sometimes used to further control the mother and perpetuate abuse.<sup>33</sup>

Mothers are sometimes disbelieved and accused of alleging instances of violence to take advantage of the custody outcomes. The lack of evidence on domestic violence increases the tendency to doubt the allegations of domestic violence. For example, the notion of parental alienation syndrome was introduced to identify children affecting children who are manipulated by mothers.<sup>34</sup> According to Gardner, this "syndrome" leads to negative attitudes toward the father, and allegations of domestic violence made by children result from the manipulation of the mother.<sup>35</sup> While children may sometimes be more vulnerable to manipulation, the scientific community has never endorsed the parental alienation syndrome. However,

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<sup>31</sup> Jaffe, P.G., Lemon, N.K.D. and Poisson, S.E. (2003) *Child custody and domestic violence a call for safety and accountability*. Thousand Oaks, Calif. ; London: SAGE, 165-181

<sup>32</sup> Obreja, L. (2019). *Intimate Partner Violence in Childhood: Human Rights Implications in Multiple Exposure Scenarios*, *The International Journal of Children's Rights*, 27(1) [15718182, 100-117

<sup>33</sup> V. Elizabeth (2017) *Custody Stalking: A Mechanism of Coercively Controlling Mothers Following Separation* ' *Feminist Legal Studies*, 185-199

<sup>34</sup> Gardner, R. A. (1998). *Recommendations for dealing with parents who induce a parental alienation syndrome in their children*. *Journal of divorce & remarriage*, 28(3-4), 1-23.

<sup>35</sup> Herring, J. (2020) "Domestic Abuse and Children," in *Domestic Abuse and Human Rights*. Intersentia, 159–194.

the parental alienation syndrome is widely used in courts to disregard children's testimony, thus leading to detrimental decisions for both the mother and the child.<sup>36</sup>

### 1.5 Research questions and methodology

The main question of this research is whether the Istanbul convention effectively protects children's rights in cases of domestic violence and if there is any reason for action in this regard.

The following subquestions will also be answered:

- What are the international and European standards to protect children from exposure to domestic violence? Are there any core obligations to protect children from domestic violence?
- Does GREVIO (the monitoring body of the Istanbul Convention) appropriately consider child witnesses when assessing articles that do not specifically mention children? Is GREVIO consistent in making recommendations related to the articles which explicitly deal with child witnesses?
- To what extent the Istanbul Convention protect children from domestic violence in light of the standards set by the CRC Committee? How does GREVIO pay attention to domestic violence? Which recommendations can be addressed to GREVIO based on our analysis in light with General Comment 13, the CRC and the jurisprudence of the ECHR? Are children's rights taken seriously in the Istanbul Convention? How can GREVIO guide states to implement the convention regarding child witnesses?

These questions will be answered through desk research. The thesis will firstly identify the international standards to protect children from violence in the family context.

Chapter 2 will then provide an overview of the International and European instruments that can be applied to the specific situation of child witnesses of violence.

A thorough analysis of the Istanbul Convention will be provided. Each article of the Convention relevant to children will be presented and analysed. A specific focus will be given to the GREVIO reports, where the monitoring body of the Convention assess whether the actions of states comply with the Convention and its objectives. This choice will allow the author to see how the GREVIO Committee interprets the convention and how addresses the issue of child witnesses.

While chapter 3 deals with articles that are not explicitly related to children, art. 4 analyses all the issues that GREVIO found while analysing the implementation of the articles on child witnesses. The analysis of the GREVIO reports will enhance the understanding of whether children's rights are taken seriously by the States and the GREVIO Committee during the implementation and monitoring of the Convention. The last chapter will provide an overview of the findings. Some recommendations based on General Comment 13 will then made.

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<sup>36</sup> Birchall, J., & Choudhry, S. (2022). 'I was punished for telling the truth': how allegations of parental alienation are used to silence, sideline and disempower survivors of domestic abuse in family law proceedings, *Journal of Gender-Based Violence*, 6(1), 115-131

The main focus of this thesis is the protection of children witnessing intimate partner violence intended as the domestic unit. This choice results from the challenges related to this specific form of violence. While the house is often where children are most at risk of violence, it is also the environment where they are least protected. Moreover, literature is scarce on how the Convention applies to children and whether it aligns with relevant international children's rights standards

### **1.6 Limitations**

There are several limitations to this research. First, the thesis will only be based on the GREVIO Reports available. Thus, the thesis focuses on the reports of Albania, Andorra, Austria, Belgium, Denmark, Finland, France, Italy, Malta, Monaco, Montenegro, Netherlands, Poland, Portugal, San Marino, Serbia, Slovenia, Spain and Sweden. Second, this research only covers the finding of the GREVIO Committee, thus leaving room for future research at the national level. Moreover, some of the information in these reports might be outdated and would not be exemplificative of the current situation of the child protection systems and the system of protection from domestic violence in these states.

Lastly, the thesis is focused on the situations of children witnessing violence in the context of domestic violence. Child sexual violence falls out of the scope of the research. This choice is based on the vast number of research on child sexual violence at the European level and the existence of the Lanzarote Convention, which specifically protects children from sexual violence regardless of the environment. This thesis deals with the most common situation where the mother is the victim, and the male partner is the perpetrator.

## 2. The International and European framework for protecting children from domestic violence

### 2.1 Introduction

This chapter presents the international and European standards related to child victims or witnesses of domestic violence. It will start with an overview of the international standards before the CRC. It will then mention the articles of the CRC relevant to domestic violence against children and general comment 13 on freedom from violence. We will then delve into the case-law of the European Court of Human Rights and mention the soft law instruments related to this issue.

### 2.2 International standards

#### 2.2.1 Family violence and the international framework

The Universal Declaration of Human Rights<sup>37</sup> recognises the right not to be subject to exploitation or degrading treatment (art. 5). This provision is also included in art. 7 of the International Covenant on Civil and Political Rights (ICCPR).<sup>38</sup> As underlined by the ICCPR Committee, the right to be free from violence relates to protecting the dignity and physical and mental integrity of the individual.<sup>39</sup> Physical violence also falls within the definition of degrading treatment provided by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT). The UNCAT Committee has stated to have competence on violence occurring in the household.<sup>40</sup>

The obligation to respect each other's integrity and dignity and refrain from using force constitutes a fundamental rule to live in societies. However, violence occurring in the household has long been a hidden phenomenon that only recently grabbed the attention of national and international legislators.

While there is no agreed legal definition of family, the international community has recognised it as a "natural and fundamental group unit of society" since 1948. This concept has been reiterated in the two Covenants.<sup>41</sup> The family has also long been idealised as a safe haven<sup>42</sup> and something belonging

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<sup>37</sup> United Nations (1948) Universal Declaration of Human Rights.

<sup>38</sup> UN General Assembly (1966). International Covenant on Civil and Political Rights. Treaty Series, 999, 171..

<sup>39</sup> UN Human Rights Committee (1992), General comment No. 20 Article 7 (Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment), para. 2

<sup>40</sup> UN Committee Against Torture (2008), General Comment No. 2: Implementation of Article 2 by States Parties, 24 January 2008, CAT/C/GC/2

<sup>41</sup> UN General Assembly (1966). International Covenant on Civil and Political Rights. Treaty Series, 999, 171 and 10(1) UN General Assembly (1966) International Covenant on Economic, Social and Cultural Rights, Treaty. Series, 993

<sup>42</sup> Malley-Morrison, K. (Ed.). (2004). International perspectives on family violence and abuse: A cognitive ecological approach, para. 30-42

exclusively to the individual's private sphere. Physical violence is widely perpetrated against some members of society, such as children.<sup>43</sup>

Violence against women has been recognised by the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), interpreted in 1992 to include violence against women as a form of discrimination.<sup>44</sup> Further, the definition of violence against women is provided by the UN declaration in 1993.<sup>45</sup>

The symptomatology of child abuse within the household started to be recognised with the publication of the "battered child syndrome" in 1962.<sup>46</sup> However, the discussion in the international forums started being carried out only in the last decades. Interestingly, the term violence or abuse does not appear in the UN Declaration on the Rights of the Child.<sup>47</sup> The word used in the declaration is "cruelty", which can hardly be associated with violence occurring in the household. At the national level, violence against children occurring in the household was not seen as an issue, and the national and international legislative frameworks somehow allowed (and still allow) family violence, especially in the name of educative purposes.<sup>48</sup> The UN Study on violence against children<sup>49</sup> shed light on the extension of the phenomenon of violence against children. Notably, the study also reflects upon the detrimental consequences of witnessing violence on children and explicitly references domestic violence.

## 2.2.2 The CRC Committee and the right to freedom from violence in the family

The CRC Convention has been paramount in recognising children as rights holders whose dignity and physical integrity should be respected. The family is seen as the ideal place where children should grow up, in an "atmosphere of happiness, love, and understanding"<sup>50</sup> and parents have the primary responsibility for the upbringing and development of the child.<sup>51</sup> The CRC recognises the role of parents in the child's life, which should guide him in the exercise of his rights. Further, art. 9 requires states to maintain contact when the child is separated from one of the parents. However, an exception to this rule can be made if it is deemed in the child's best interests to be separated from the parents. Thus, the Convention recognises that parents do not always act in line with the child's best interests, and children's

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<sup>43</sup> Cicchetti, D. and Carlson, V. (eds) (1989) "History and definition," in *Child Maltreatment: Theory and Research on the Causes and Consequences of Child Abuse and Neglect*. Cambridge: Cambridge University Press, 1–2.

<sup>44</sup> Hagemann-White, C. (2014). Protecting women and children 28 05 2012. Smedslund, K., Risse, D. (Eds): *Violence Against Women: Individual and Collective Responsibilities*. Montreal: Univ. of Québec 2014, 315–330.

<sup>45</sup> UN General Assembly (1994), Declaration on the Elimination of Violence against Women

<sup>46</sup> Cicchetti, D. and Carlson, V. (eds) (1989) "History and definition," in *Child Maltreatment: Theory and Research on the Causes and Consequences of Child Abuse and Neglect*. Cambridge: Cambridge University Press, pp. 1–2.

<sup>47</sup> UN General Assembly (1959) Declaration of the Rights of the Child

<sup>48</sup> Freeman, M., & Saunders, B. J. (2014). Can we conquer child abuse if we don't outlaw physical chastisement of children?. *The International Journal of Children's Rights*, 22(4), 681-709.

<sup>49</sup> Pinheiro, P. S. (2006). *Violence against children*. ATAR Roto Presse SA.

<sup>50</sup> UN General Assembly (1989) Convention on the Rights of the Child, United Nations, preamble

<sup>51</sup> Id, art.18

rights may sometimes contrast with parental rights. The state can intervene in a series of circumstances, including instances of violence.

Art. 19 deals with the children's rights to be protected from violence in any setting. While there is no explicit reference to domestic violence, the definition given by this article is broad enough and can embrace both direct abuse and witnessing abuse.<sup>52</sup> The first paragraph mentions the specific situation of child victims of abuse "while in the care of parents". In this case, States can indeed intervene and take the appropriate measures to protect children. The Committee's general comments, especially General Comment (GC) 8<sup>53</sup> and GC 13, have played an essential role in defining violence and guiding the State's action in protecting children subject to violence in the family environment.

While GC 8 has been crucial in clarifying the view of the Committee on corporal punishment, GC 13 on violence against children was an achievement for many reasons. First, it states that violence is never justifiable.<sup>54</sup> All types of violence, "however light"<sup>55</sup>, should indeed be eliminated. Moreover, GC 13 recognised that many children suffer from violence in the family environment.<sup>56</sup> This is especially true for younger children.<sup>57</sup> The Committee points out the need of a human rights approach when dealing with violence against children.<sup>58</sup> Furthermore, the Committee recognises exposure to domestic violence as a form of mental violence<sup>59</sup> and mentions the developmental and behavioural consequences resulting from witnessing violence.<sup>60</sup> GC 13 outlines the measures that states should take with regard to prevention, identification, reporting, referral, investigation, treatment, follow-up, judicial involvement and effective procedures (para. 46-57)

### 2.2.3 Other rights at stake

GC 13 points out how violence can hinder cognitive functioning, leading to slower cognitive development and poor academic performance. The long-term consequences of violence are low self-esteem, depression and substance use. Children may also externalise symptoms and engage in aggressive, antisocial, or self-destructive behaviours. Children who have been abused may view violence as a way to

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<sup>52</sup> Morrison, F., & Houghton, C. (2022). Children's human rights in the contexts of domestic abuse and COVID-19. *The International Journal of Human Rights*, 1-16.

<sup>53</sup> UN Committee on the Rights of the Child (CRC), General comment No. 8 (2006): The Right of the Child to Protection from Corporal Punishment and Other Cruel or Degrading Forms of Punishment (Arts. 19; 28, Para. 2; and 37, inter alia), 2 March 2007, CRC/C/GC/8

<sup>54</sup> CRC/C/GC/13, para. 3

<sup>55</sup> CRC/C/GC/13, para. 17

<sup>56</sup> CRC/C/GC/13, para 72 (d)

<sup>57</sup> UN Committee on the Rights of the Child, General comment No. 7 (2005): Implementing Child Rights in Early Childhood, 20 September 2006, CRC/C/GC/7/Rev.1, para. 36

<sup>58</sup> UN Committee on the Rights of the Child (CRC), General comment No. 13 (2011): The right of the child to freedom from all forms of violence, 18 April 2011, CRC/C/GC/13, para. 13

<sup>59</sup> CRC/C/GC/13, para. 21(e)

<sup>60</sup> CRC/C/GC/13, para. 15 (b)

solve conflicts, leading to deterioration of relationships, conflict with the law, and becoming an abuser. Moreover, children who have been abused have a very high chance of being revictimized later on.<sup>61</sup>

Being free from violence is not only a right in itself but also a precondition to the enjoyment of many other rights. Exposure to violence or being victimised can hinder the enjoyment of the right to health and the right to life, survival, and development. Exposure to violence can also impact the right to education, as the experience of domestic violence shapes children's behavioural patterns.

Effectively supporting children immediately calls for art. 39, the physical and psychological recovery should occur in an environment that fosters the child's health, self-respect, and dignity. Further, other rights are at stake, such as the right to health, education, the right to non-discrimination, and the right to participation.<sup>62</sup>

## 2.3 European standards

### 2.3.1 Overview of the jurisprudence of the European Court of Human rights

While no provision is devoted to the issue,<sup>63</sup> the European Court of Human rights (ECHR) has dealt with a number of domestic violence cases involving children.<sup>64</sup> The articles invoked are art.2 (the right to life), art. 3 (Prohibition of torture) and art. 8 (Right to respect for private and family life).

In *Opuz v Turkey*, the Court has recognised the phenomenon as a problem common to all member states, significantly impacting child witnesses and victims.<sup>65</sup>

In *Eremia v. the Republic of Moldova*,<sup>66</sup> a protection order was issued against the abusive parent, who did not respect it. According to the Court, the authorities knew that the man was violating the protection order but did not take any action. The court specifically identified the state's positive obligation to guarantee that the private and family life is effectively respected (para. 72) by adopting measures in the private sphere of the individuals. The failure of Moldova to discharge its positive obligations results in a violation of art. 8 (para. 78-79). The court also underlined that children are entitled to specific protection and that witnessing violence harms the psychological well-being of the child (para 77).

In *T.M. And C.M. V. the Republic Of Moldova*,<sup>67</sup> the applicants are the mother and the daughter of an abusive man who was not removed from the house. The prosecutor refused to open a criminal

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<sup>61</sup> UNCRC, General Comment No. 13 on the right of the child to freedom from all forms of violence (2011) CRC/C/GC/13, para. 15

<sup>62</sup> Kelly, L. and Mullender, A. (2000) 'Complexities and contradictions: Living with domestic violence and the UN Convention on Children's Rights', *The International journal of children's rights*, 8(3), pp. 229–241.

<sup>63</sup> European Court of Human Rights (2022), press Unit, Factsheet – Domestic violence

<sup>64</sup> Choudhry, S. (2012) 'Domestic Violence, Contact, and the ECHR', in *Law and Childhood Studies*. Oxford: Oxford University Press.

<sup>65</sup> *Opuz v. Turkey* (33401/02), 09.06.2009

<sup>66</sup> *Eremia v. the Republic of Moldova* (3564/11) 28.05.2013

<sup>67</sup> *T.M. And C.M. V. the Republic Of Moldova* (26608/11) 28.04.2014

investigation against the applicant's ex-husband. This case was an opportunity for the court to explicitly define the positive obligations of the state, which included both the establishment of a legislative framework to prevent and respond to ill-treatment and the application of the laws in the presence of an "imminent risk of ill-treatment of an identified individual or when ill-treatment has already occurred, thereby affording protection to the victims and punishing those responsible for ill-treatment" (para. 43). In the present case the authorities found a violation of the convention for not having discharged their positive obligations under art. 8 (para. 50). It also found that exposing children to violence amounts to a violation of art. 3.

In *Talpis v. Italy*,<sup>68</sup> the court qualified children as entitled to specific protection to deter breaches of personal integrity (para. 99). The positive obligations also include the effectiveness of criminal investigation. Thus, the state violates the convention by not taking the measures that would have realistically changed the outcome of the events and reduced the harm. The court also explicitly underlined that no protection no protection order was issued in this regard (113).

The applicant of *Kontrova v. Slovakia*<sup>69</sup> is a woman who has filed a complaint regarding the acts of violence committed by their husband against her and her children. However, she subsequently modified the complaints, and the police did not take action.<sup>70</sup> The husband consequently murdered the children. The Court found that the government failed to protect children from violence because the authorities knew that domestic violence was happening in the household but did not prevent further harm. The Court found that the failure to protect the child constitutes a violation of art. 2, 3, and 14 to be read in conjunction with art. 1 and 13.

In *Branko Tomašić and Others v. Croatia*,<sup>71</sup> the applicants are the child's relatives and the woman who has been killed in the context of domestic violence. After having threatened the life of his family members, the perpetrator was sent to prison. When he was released, he killed the child and the mother. The Court found a violation of art. 2 due to the failure of the authorities to prevent the homicide while being aware of the threats against them.

*Landi v Italy*<sup>72</sup> concerns the death of a child at the hands of his father in the context of domestic violence. Despite the presence of evidence, the authorities underestimated the situation. Consequently, even though the authorities knew or ought to have known about the violence at home, the Italian authorities did not exercise the due diligence required and failed to comply with the obligation to protect the son's life in art. 2.

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<sup>68</sup> In *Talpis v. Italy* (41237/14) 02.03.2017

<sup>69</sup> Id

<sup>70</sup> European Court of Human Rights (2022), press Unit, Factsheet – Domestic violence

<sup>71</sup> *Branko Tomašić and Others v. Croatia* (46598/06) 15.01.2009

<sup>72</sup> *Landi v. Italy* (10929/19) 03.04.2022

In *ES and Others v. Slovakia*<sup>73</sup> the mother filed a complaint about violence against her and her children. The court found a violation of art. 3 and 8 of the convention due to the delay in providing the mother and the child with due protection

In *Rumor v Italy*,<sup>74</sup> the Court found a violation of art. 3. Positive obligation should include adequate protection to identify people which can potentially be responsible for criminal acts and reasonable steps to prevent violence. Specific attention is given to children, who are entitled to state protection (para. 59)

It is clear from the cases above cited that the state has positive obligation to tackle domestic violence. The obligation to prevent come to play when the situation is known or ought to be known by the relevant authorities and when it is known that people are at imminent risk. Thus, when the authorities underestimate the situation, do not promptly act, or do not give due consideration to episodes of domestic violence, there is a violation of the convention. The intervention of the state can indeed significantly reduce the suffering of the victims of domestic violence. Children, as vulnerable individuals, are entitled to specific protection from the state. The court also specifically dealt with the choice of protection order for both the mother and the child and that children are entitled to specific protection.

### 2.3.2 Non-binding instruments of the Council of Europe on violence against children

Over the years, the Committee of Ministers (CM), the Parliamentary Assembly (PACE), the Congress and the Committee of the Regions of the Council of Europe have produced several non-binding instruments to protect children from violence.

The first instrument is the recommendation on violence in the family,<sup>75</sup> which recognises the urge to protect children from exposure to violence (para. 10). The CM Recommendation on emergency measures in family matters<sup>76</sup> recognises the need for specific protection for children whose welfare is at risk due to physical or mental violence.

It is important to note that the CM Council of Europe Policy guidelines on integrated national strategies for the protection of children<sup>77</sup> defines witnessing violence as a form of psychological violence that can harm the child's psychological development and wellbeing. According to the recommendations, the State should ensure the recovery and rehabilitation of child victims and child witnesses of violence. The approach taken should be multidisciplinary and multiagency.

The Committee of Ministers, in recommendations to member states on children's rights and social services friendly to children and families,<sup>78</sup> outlines that specialised social services should address child

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<sup>73</sup> E.S. and Others v. Slovakia (8227/04) 15.09.2009

<sup>74</sup> Rumor v Italy (72964/10) 27.04.14

<sup>75</sup> Committee of Ministers (1986). Recommendation no. 4(85)

<sup>76</sup> Committee of Ministers Recommendation No. (91) 9

<sup>77</sup> Committee of Ministers (2009) Recommendation CM/Rec(2009)10

<sup>78</sup> Committee of Ministers Recommendation CM/Rec(2011)12

victims of physical and mental violence or witnessing violence. The specialised social services should be based on the individual needs and address both victims and children witnessing violence.

The recommendation on violence in the family,<sup>79</sup> recognises the urge to protect children from exposure to violence (para. 10). Furthermore, the CM Council of Europe Policy guidelines on integrated national strategies for the protection of children<sup>80</sup> calls states to ensure the recovery and rehabilitation of child victims and child witnesses of violence. The approach taken should be multidisciplinary and multiagency. The CM Recommendation on social measures concerning violence in the family<sup>81</sup> shed light on the role of shelters for domestic violence victims should for both women and children.

The CM Recommendation on protecting women against violence<sup>82</sup> underlines the impact of witnessing violence on the child and calls states to hear the child appropriately and ensure avoiding humiliating questioning which can lead to retraumatisation to victims and witnesses. In the Recommendation on children who witness domestic violence<sup>83</sup>, the Parliamentary Assembly calls for the Committee of Ministers to specifically address children witnessing violence in a future convention on domestic violence. Further, it calls on the Council of Europe to explore new approaches and practices to protect children during the proceedings and custody and visitation rights. Further, the recommendations shed light on providing adequate support to children in the shelters and outside. The staff working with child witnesses must be trained. The Committee of Ministers also recommends opting for an integrated approach to prevent re-traumatization and break the cycle of intergeneration trauma through the provisions of educational programs. Similarly, Recommendation 260(2009) Combating domestic violence against women<sup>84</sup> prescribes the development of adequate services for women and children experiencing domestic violence. Furthermore, the recommendation on violence against women<sup>85</sup> calls for states to provide services to assist women and children and integrate child protection services with representatives responsible for family violence issues.<sup>86</sup>

## 2.4 Conclusions

While it has long been neglected, the issue of violence against children in the family context is now becoming more visible in Europe. The CRC Committee gives specific guidance on how to realise the right

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<sup>79</sup> Committee of Ministers (1986). Recommendation no. 4(85)

<sup>80</sup> Committee of Ministers (2009) Recommendation CM/Rec(2009)10

<sup>81</sup> Committee of Ministers (1990) Recommendation No. (90)2

<sup>82</sup> Committee of Ministers, Recommendation Rec (2002)5

<sup>83</sup> PACE(2010), Children who witness violence, Resolution 1714

<sup>84</sup> Congress of Local and Regional Authorities, Recommendation 260 (2009)

<sup>85</sup> Parliamentary Assembly, Recommendation 1582 (2002)

<sup>86</sup> The CoE has produced other soft-law instruments regarding violence against children, namely The CM Recommendations on policy to support positive parenting, The PACE Recommendation on abuse and neglect of children, the Resolution on child victims, and the Resolution on preventing violence against children. However, all these soft-law instruments do not mention the issue of witnessing domestic violence. Moreover, some of the non-binding instruments of the CoE dealing with violence against women do not mention children.

of children to be free from violence, including exposure to domestic violence, which is a form of domestic violence.

Further, the CoE has been prolific in producing tools to guide states in addressing violence against children. Moreover, the ECHR played a crucial role in defining the positive obligations of the states about domestic violence. The obligation to prevent can be invoked when the situation of violence is known or ought to be known by the relevant authorities and when it is known that people are at imminent risk. Thus, when the authorities underestimate the situation, do not promptly act, or do not give due consideration to episodes of domestic violence, there is a violation of the Convention.

Some of the case-law of the ECHR explicitly mention the Istanbul Convention, which is a relevant rule of international law. The next chapter will introduce the convention and analyses its role in protecting children from domestic violence.

### 3. The Istanbul Convention

#### 3.1 Introduction

Protecting children from violence has been a top priority of the past strategies on the rights of the child of the CoE. Strategy 2022-2027<sup>87</sup> calls for states to adopt a zero-tolerance policy for violence against children. The strategy underlines that violence against children remains present in every setting, including where children should be safest, such as in the family and its social circle (including as direct or indirect victims of domestic and gender-based violence). The strategy also highlights that children experience violence in the places where they should be safe and recognises witnessing violence as a form of child abuse. The ratification of the Istanbul Convention for countries that have not ratified it yet is also included in the strategy (1.1.9). The Conference of INGOs of the Council of Europe has also issued a document in support of the ratification of the Convention.<sup>88</sup>

After providing an overview of the convention and the monitoring system, this chapter will present the articles of the convention which do not specifically deal with child witnesses. To conduct this analysis, I went through all the Istanbul Convention reports and noted the recommendations relevant to child witnesses for each article. The two articles explicitly addressing children will be analysed in chapter 4.

#### 3.2 Overview of the Convention

The Istanbul Convention is the most far-reaching international treaty<sup>89</sup> to tackle violence against women and domestic violence, and it aims to "make Europe free from violence against women and domestic violence" (preamble). The Convention was drafted by an Ad Hoc Committee for Preventing and Combating Violence against Women and Domestic Violence (CAHVIO) made up of the representatives of the 47 CoE Member States. Representatives of international organisations, scientific experts, and civil society also participated in the drafting process. The involvement of the task force on violence against women and the European Committee on Crime Problems resulted in a convention that has a solid human rights focus and well-defined criminal law provisions.<sup>90</sup>

The Convention was adopted in 2011 by the CM, and it entered into force in 2014, after the 10<sup>th</sup> ratification.<sup>91</sup> Thirty-seven countries are currently part of the Convention,<sup>92</sup> while nine countries have

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<sup>87</sup> CM (2021) Strategy for the Rights of the Child (2022-2027) "Children's Rights in Action: from continuous implementation to joint innovation"

<sup>88</sup> Conference of INGOs (2020) Recommendation in support of the Istanbul Convention, CONF/PLE(2020)REC2

<sup>89</sup> Gasmı, G. (2019). Global Significance Of European Standards Of Women Human Rights' protection In Domain Of Gender Based And Domestic Violence. *Fiat Iustitia*, 1(1), 125-139.

<sup>90</sup> Choudhry, S. (2012) 'Domestic Violence, Contact, and the ECHR', in *Law and Childhood Studies*. Oxford: Oxford University Press.

<sup>91</sup> Niemi-Kiesiläinen, J., Peroni, L. and Stoyanova, V. (2020) *International law and violence against women : Europe and the Istanbul Convention*.

<sup>92</sup> The total number of ratifications is 35. Turkey has withdrawn the Convention in 2021.

signed it.<sup>93</sup> Further, on the 20<sup>th</sup> June 2022, the Ukrainian parliament approved the ratification of the convention.<sup>94</sup>

Like other international treaties, the convention builds on the three pillars of protection, prevention, and prosecution. The drafters also decided to include the additional pillar of integrated policies.

The Convention emphasizes the importance of preventive measures, which underscored that overcoming gender stereotypes and raising awareness on the issue is necessary to eliminate domestic violence. Many actors should be involved in this process. In particular, the local and regional authorities play an essential role in implementing these measures by adapting them to specific realities.<sup>95</sup> Preventive measures include awareness-raising (art. 13), education on non-stereotyped gender roles (art. 14), training of professionals (art. 15), treatment programs for perpetrators (art.16), and the collaboration with the private sector and the media (art.17).

Protective measures aim to protect the victims from all the consequences of these acts of violence and empower the victims to rebuild their lives. The protection pillar encompasses all the measures to ensure the safety of victims and witnesses. The convention includes articles on providing adequate information (art. 19), support services, including shelters (art. 22 and 23), telephone helplines (art. 24), specific measures to protect child witnesses (art. 26) and the possibility of reporting instances of violence (art. 27-28).

Chapter V concerns substantive law provisions, dealing with criminal, civil and administrative measures to be taken to combat and prevent the offences of the convention. While art. 29 deals with child witnesses, art. 31 delves into custody, visitation rights and safety. The Convention also emphasised the need to criminalise certain forms of violence, such as psychological violence (art. 33), stalking (art. 34), physical violence (art. 35), sexual violence (art. 36), sexual harassment (art. 40), forced marriage (art. 37), FGM and forced abortion and forced sterilisation (art. 39). Further, art. 46 deals with aggravating circumstances, and art. 48 prohibits mandatory dispute resolution processes or sentencing.

Chapter VI covers investigation, prosecution, procedural law, and protective measures, including emergency barring orders (art 52 and 53), risk assessment and risk management (art. 51), measures of protection (Art. 56) and legal aid (art. 57).<sup>96</sup>

The convention is a ground-breaking instrument<sup>97</sup>, as it fills a normative gap at the CoE level. The preamble refers to several initiatives of the CoE related to violence against women and domestic violence, including

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<sup>93</sup> (<https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=210>) last visited 16-06-2022

<sup>94</sup> (<https://www.coe.int/en/web/kyiv/-/ukraine-writes-its-history-daily-and-approving-the-istanbul-convention-is-one-of-the-most-important-pages-steen-n-rlqv>) last visited 30-06-2022

<sup>95</sup> Council of Europe (2011), Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, Istanbul, 11.V.2011, para. 83 explanatory report

<sup>96</sup> There is also an entire chapter on migration (VI) and asylum and international cooperation (VII), which this thesis will not analyse.

<sup>97</sup> PACE (2019), A handbook for parliamentarians on the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence

the recommendations on children witnessing violence.<sup>98</sup> As underlined by chapter 1, the convention is based on the principles of non-discrimination and equality. It states that violence against women is rooted in the historical discrimination against women and recognises the cultural and social dimension of violence against women based on the idea of inferiority of women. Art. 4.3 underlines that the implementation of the Convention should not discriminate based on gender and that special measures of response should have a gender dimension, and art. 6 calls for a gender perspective.

As underlined by a 2019 PACE report,<sup>99</sup> the introduction of the convention has already produced substantial achievements for a number of reasons.<sup>100</sup> First, it is vital that the drafters explicitly acknowledge that all kinds of violence should be protected, whether it occurs in the public or the private sphere (art. 3.1 and 4.1).<sup>101</sup> The Convention also obliges states to align their legislative and policy framework with the provisions of the Convention. Further, it can influence the interpretation of domestic law by national judges. Moreover, the provisions of the Istanbul Convention can constitute "relevant rules of international law" under Article 31(3)(c) of the Vienna Convention<sup>102</sup> that the European Court of Human Rights<sup>103</sup> can apply to interpret the provisions of the ECHR, especially art. 2, 3, 8 and 14.<sup>104</sup> Moreover, another potential of the Istanbul Convention is that it is open to signatures for countries beyond Europe (Amendment 72.2).

### 3.3 Monitoring mechanism

The Group of experts on action against violence against women and domestic violence (GREVIO) is the monitoring body of the Convention (art. 66.1). The GREVIO comprises 15 members with multidisciplinary expertise (Art 66.2), reflecting gender and geographical balance and acting in their capacity elected by the Committee of the Parties composed of the representatives of the Parties to the Convention (Art 67.1). The latter is a political body<sup>105</sup> composed of the representative of the States (art.67).

GREVIO can monitor the implementation of the Convention through a country-by-country evaluation and a special inquiry procedure. At the end of the procedure, GREVIO adopts a country report, sends it to the State and the Committee of the Parties and makes it public.

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<sup>98</sup> Council of Europe (2011), Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, Istanbul, 11.V.2011, para. 144 , para. 23-24

<sup>99</sup> PACE , Committee on Equality and Non-Discrimination (2019), The Istanbul Convention on violence against women: achievements and challenges

<sup>100</sup> Id

<sup>101</sup> De Vido, S. (2017). The ratification of the council of europe istanbul convention by the eu: step forward in the protection of women from violence in the european legal system. *European Journal of Legal Studies*, 9(2), 69-102

<sup>102</sup> United Nations (1969) Vienna Convention on the Law of Treaties

<sup>103</sup> *Talpis v. Italy* (41237/14, 2 March 2017)

<sup>104</sup> Niemi-Kiesiläinen, J., Peroni, L. and Stoyanova, V. (2020) *International law and violence against women : Europe and the Istanbul Convention*.

<sup>105</sup> PACE (2019), *A handbook for parliamentarians on the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence*

After joining the Convention, States should submit a baseline report on the legislative and other measures giving effect to the provisions of this Convention (art. 68.). The subsequent monitoring rounds will be based on specific provisions of the Convention (art. 68.3).

The country report is based on a questionnaire prepared by GREVIO and sent to the Secretary-General of the Council of Europe. GREVIO drafts the country report based on information submitted by the Parties in response to its questionnaires or any other requests for information and input from the relevant CoE bodies, institutions established under other international instruments, non-governmental organizations, and national human rights institutions (art. 68.5 and 68.8). If necessary, GREVIO can also conduct a country visit (68.9). After sending the draft report to the State, there is a phase of exchanges between the State and GREVIO. The first report by State Parties serves as a benchmarking tool for States in evaluating their laws and policies. As of now, only 18 States have completed the first monitoring procedure. GREVIO assesses the legislative and policy framework of the country and addresses its recommendations.<sup>106</sup>

GREVIO can also issue General Recommendations on specific topics of the Convention (art. 69). The only recommendation adopted by GREVIO is General Recommendation No. 1 on the digital dimension of violence against women, which gives practical guidance to the Istanbul Convention to combat digital violence and gives recommendations to the States parties.

### 3.4 Analysis of the GREVIO reports

The Istanbul Convention is rooted in a deep understanding of the gender dimension of violence. This is very important<sup>107</sup> because, as recognised by the CRC Committee, children can also suffer from gender-based violence, such as teen dating violence (TDV).<sup>108</sup> The CRC Committee also attributes gender-based violence to social attitudes and gender discrimination, as well as the power relationship based on the patriarchal system.<sup>109</sup> A gender-based approach is also prescribed in the Strategy for the Rights of the Child,<sup>110</sup> which focuses on fighting gender stereotypes. The strategy sees the elimination of inequalities and gender discrimination as a goal in itself and a precondition to the fight against violence.

While recognising this, the following analysis looks at how the Convention addresses the specific situation of child witnesses of domestic violence. The analysis will be based on the articles and the 18 adopted

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<sup>106</sup> The Convention also allows GREVIO to conduct a special inquiry procedure in case of persistent, severe, and massive violations of the convention. In that case, GREVIO would ask for the urgent submission of a special report by the state party concerned.

<sup>107</sup> CRC/C/GC/13, para. 2

<sup>108</sup> Obreja, L. (2019). Intimate Partner Violence in Childhood: Human Rights Implications in Multiple Exposure Scenarios, *The International Journal of Children's Rights*, 27(1), 99-121.

<sup>109</sup> Convention on the Elimination of All Forms of Discrimination against Women Convention on the Rights of the Child (2014), Joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child on harmful practices, CEDAW/C/GC/31-CRC/C/GC/18

<sup>110</sup> CM (2021) Strategy for the Rights of the Child (2022-2027) "Children's Rights in Action: from continuous implementation to joint innovation

GREVIO reports: Albania<sup>111</sup>, Andorra<sup>112</sup>, Austria<sup>113</sup>, Belgium<sup>114</sup>, Denmark<sup>115</sup>, Finland<sup>116</sup>, France<sup>117</sup>, Italy<sup>118</sup>, Malta<sup>119</sup>, Monaco<sup>120</sup>, Montenegro<sup>121</sup>, Netherlands<sup>122</sup>, Poland<sup>123</sup>, Portugal<sup>124</sup>, San Marino<sup>125</sup>, Serbia<sup>126</sup>, Slovenia<sup>127</sup>, Spain<sup>128</sup>, and Sweden<sup>129</sup> are indeed the only countries which completed the monitoring process.



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<sup>111</sup> GREVIO/Inf(2017)13

<sup>112</sup> GREVIO/Inf(2020)18

<sup>113</sup> GREVIO/Inf(2017)4

<sup>114</sup> GREVIO/Inf(2020)14

<sup>115</sup> GREVIO/Inf(2017)14

<sup>116</sup> GREVIO/Inf(2019)9

<sup>117</sup> GREVIO/Inf(2019)16

<sup>118</sup> GREVIO/Inf(2019)18

<sup>119</sup> GREVIO/Inf(2020)17

<sup>120</sup> GREVIO/Inf(2017)3

<sup>121</sup> GREVIO/Inf(2018)5

<sup>122</sup> GREVIO/Inf(2019)19

<sup>123</sup> GREVIO/Inf(2021)5

<sup>124</sup> GREVIO/Inf(2018)16

<sup>125</sup> GREVIO/Inf(2021)6

<sup>126</sup> GREVIO/Inf(2019)20

<sup>127</sup> GREVIO/Inf(2021)7

<sup>128</sup> GREVIO/Inf(2020)19

<sup>129</sup> GREVIO/Inf(2018)15

The analysis will start looking at the definitions and awareness-raising. The assessment will continue by analysing all other provisions of the Istanbul Convention which do not specifically address children and the related reports. Chapter 4 will then focus on the articles that specifically deal with child witnesses.

### 3.5 Definitions

The Istanbul Convention defines domestic violence as "all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim" (art 3. a). Further, according to the convention, every person experiencing domestic violence can be considered a victim (art. 3e).

The preamble mentions the issue of domestic violence against children, which are considered victims even when they are not physically abused, but they witness violence in the home.<sup>130</sup> Further, the explanatory report highlights the connection between violence against women and child physical abuse.<sup>131</sup> CAHVIO recognises that children can be victims of domestic violence<sup>132</sup> and that domestic violence also includes intergenerational violence that typically occurs between parents and children,<sup>133</sup> even when the victim does not live with the abuser.<sup>134</sup>

The Convention primarily relates to women victims of domestic violence, and article 2.2 of the Convention only encourages States to apply all provisions to other victims, including children, in the manner they deem to be the most appropriate. When they reported to the Committee, States had different definitions of domestic violence and violence in the legislative and policy framework. Most of the time, states did not include children in their definition of domestic violence.

However, GREVIO appreciates when states include children in the legal definition of domestic violence. This is the case of Andorra<sup>135</sup>, where the Committee notes the definition of child victims of violence and children who witness violence committed against one of their parents, who are also traumatised by their exposure to violence. The Committee further highlights that this approach allows for a systematic analysis of the various forms of violence and fosters a shared understanding of violence by all concerned players and the general public.<sup>136</sup>

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<sup>130</sup> Council of Europe (2011), Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, Istanbul, 11.V.2011, para. 144

<sup>131</sup> Id, para. 4

<sup>132</sup> Id, para. 45

<sup>133</sup> Id, para. 41

<sup>134</sup> Id, para. 42

<sup>135</sup> GREVIO/Inf(2020)18, para. 2-10

<sup>136</sup> Id

Denmark<sup>137</sup>, Finland<sup>138</sup>, France,<sup>139</sup> Malta,<sup>140</sup> Monaco,<sup>141</sup> San Marino,<sup>142</sup> Spain,<sup>143</sup> Belgium<sup>144</sup> and Sweden<sup>145</sup> do not include children in the definition of domestic violence. However, GREVIO does not make any recommendation in this regard.

The Albanian,<sup>146</sup> Italian<sup>147</sup> and Serbian law<sup>148</sup> includes children as potential victims of domestic violence, but GREVIO does not ask for further clarification on child witnesses.

Other states attempt to include that in the definition of domestic violence. For example, Montenegro<sup>149</sup> defines violence against a family member as violating "the physical, psychological, sexual or economic integrity, mental health, and peace of another family member". Moreover, while Austria<sup>150</sup> does not define domestic violence in the law, its application is broad and includes different types of victims. In the Austrian Violence Protection Act, violence is defined as a physical attack, threat of a physical attack, or any behaviour harming the psychological integrity of another person against current or former partners or family members. In the Netherlands<sup>151</sup>, domestic violence is defined as "violence in a dependency relationship". In the Youth Act 2015, child abuse is defined as each form of threatening or violent interaction of a physical, psychological, or sexual nature with the parents or other persons. The Polish law<sup>152</sup> defines domestic violence as "crimes against the family and includes descendant, a sibling or an adopted child, and individuals living together (thus covering most elements required by Article 3b of the Istanbul Convention). In Portugal<sup>153</sup>, intimate partner violence and violence against children are dealt with in the same law, which specifically deals with "people, particularly undefended due to age, deficiency, disease, pregnancy, or economic dependency, who cohabitates with him."

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<sup>137</sup> GREVIO/Inf(2017)14, para. 5-10

<sup>138</sup> GREVIO/Inf(2019)9, para. 2-5

<sup>139</sup> GREVIO/Inf(2019)16., para. 2-17

<sup>140</sup> GREVIO/Inf(2020)17, para. 8-13

<sup>141</sup> GREVIO/Inf(2017)3, para.1-5

<sup>142</sup> GREVIO/Inf(2021)6, para. 2-8

<sup>143</sup> GREVIO/Inf(2020)19, para. 5-16

<sup>144</sup> GREVIO/Inf(2020)14, para. 2-11

<sup>145</sup> GREVIO/Inf(2018)15, para. 6-9

<sup>146</sup> GREVIO/Inf(2017)13, para. 5-9

<sup>147</sup> GREVIO/Inf(2019)18 para. 6-10

<sup>148</sup> GREVIO/Inf(2019)20, para. 4-8

<sup>149</sup> GREVIO/Inf(2018)5, para. 5-10

<sup>150</sup> GREVIO/Inf(2017)4, para. 6-10

<sup>151</sup> GREVIO/Inf(2019)19, para. 10-15

<sup>152</sup> GREVIO/Inf(2021)5, para. 2-9

<sup>153</sup> GREVIO/Inf(2018)16, para. 6

In Sweden<sup>154</sup>, domestic violence covers other forms of intimidation, control, and deprivation of liberty employed by family or community members concerning girls and boys.

### **3.6 Awareness-raising on the effects of domestic violence on children**

Art.13 of the Convention is devoted to awareness-raising campaigns or programs that the states should carry out in collaboration with many agencies, including NGOs and civil society. The awareness raising activities should deal with all forms of violence and focus on the effect of domestic violence on children. GREVIO recognises the efforts made by some states, such as the Netherlands<sup>155</sup>, in including the issue of child witnesses in the raising awareness activities.

GREVIO has also explicitly recommended that States raise awareness of the effects of exposing children to violence. This is the case of Albania,<sup>156</sup> where GREVIO defines children as "the forgotten victims of domestic violence against women." In the recommendations to Andorra,<sup>157</sup> GREVIO notes that it is unclear how the activities address all forms of violence against women and its harmful impact on children. In the analysis of the Italian report,<sup>158</sup> GREVIO points out that awareness-raising in these areas would protect children from frequent revictimization.

Belgium,<sup>159</sup> Slovenia,<sup>160</sup> and Sweden<sup>161</sup> are explicitly recommended by GREVIO to raise awareness about children's exposure to violence. GREVIO notes that France<sup>162</sup> has not taken the necessary advocacy efforts on the harmful consequences of violence against children.

The recommendations made to Monaco<sup>163</sup> are very specific. GREVIO acknowledges that awareness-raising activities are carried out in relation to children. However, GREVIO notes that these actions focus on the situation of the child involved in family mediation and harmful consequences of violence on children prior to the separation of the parents and are not adequately considered.

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<sup>154</sup> GREVIO/Inf(2018)15, para. 6-9

<sup>155</sup> GREVIO/Inf(2019)19, para. 81-86

<sup>156</sup> GREVIO/Inf(2017)13, para.54-58

<sup>157</sup> GREVIO/Inf(2020)18, para. 69-72

<sup>158</sup> GREVIO/Inf(2019)18 , para. 89-92

<sup>159</sup> GREVIO/Inf(2020)14, para. 66-68

<sup>160</sup> GREVIO/Inf(2021)7, para. 93-98

<sup>161</sup> GREVIO/Inf(2018)15, para. 77-87

<sup>162</sup> GREVIO/Inf(2019)16, para. 41-43

<sup>163</sup> GREVIO/Inf(2017)3, para. 42

GREVIO also calls on Sweden,<sup>164</sup> Spain,<sup>165</sup> and Denmark<sup>166</sup> to cover all manifestations of violence against women, but it does not refer to child witnesses. In the GREVIO reports on Denmark<sup>167</sup>, Malta,<sup>168</sup> Montenegro<sup>169</sup> and San Marino<sup>170</sup> GREVIO does not mention child witnesses.

The recommendations reveal that GREVIO is particularly concerned about ensuring that awareness-raising adequately covers all manifestations of domestic violence. Exposure to domestic violence is one of the manifestations of violence. However, GREVIO does not consistently recommend states to effectively raise awareness about children's exposure to domestic violence.

### 3.7 Other relevant articles

Most articles of the Convention do not specifically deal with children. This subchapter will present the relevant articles of the convention and the recommendations made in relation to child witnesses.

Art. 11 deals with data collection, which is an essential activity to be carried out before the policy-making process.<sup>171</sup> Further, art. 11.2 obliges states to support research on the root causes of the offences of the convention, the effects and the efficacy of the measures taken to implement it. This obligation should be applied to all types of violence falling within the scope of the convention. GREVIO recommends that Italy<sup>172</sup> and France<sup>173</sup> include data on child witnesses and victims and the homicide of children. Further, GREVIO recommends that Portugal<sup>174</sup> conduct proper research on the effects of domestic violence on children.

According to art. 14, states should endeavor to include issues of gender equality, mutual respect, and non-violent conflict resolution in the teaching material of the curricula of all levels of education. These educational activities should also involve nonformal education. While the explanatory report<sup>175</sup> highlights that the promotion of these values should start from an early age, neither the Convention nor the GREVIO reports refer to how these measures can play a role in addressing the problem of children witnessing violence. However, GREVIO welcomes the implementation of projects and programs for educators to learn how to

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<sup>164</sup> GREVIO/Inf(2018)15, para. 77-80

<sup>165</sup> GREVIO/Inf(2020)19, para. 81-85

<sup>166</sup> GREVIO/Inf(2017)14, para. 65-68

<sup>167</sup> GREVIO/Inf(2017)14, para. 65-68

<sup>168</sup> GREVIO/Inf(2020)17, para. 62-65

<sup>169</sup> GREVIO/Inf(2018)5, para. 72-76

<sup>170</sup> GREVIO/Inf(2021)6, para.56-59

<sup>171</sup> Council of Europe (2011), Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, Istanbul, 11.V.2011, para. 74

<sup>172</sup> GREVIO/Inf(2019)18, para. 78

<sup>173</sup> GREVIO/Inf(2019)16, para. 78

<sup>174</sup> GREVIO/Inf(2018)16; para. 78

<sup>175</sup> Council of Europe (2011), Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, Istanbul, 11.V.2011, para. 94-97

identify and respond to children witnessing domestic violence.<sup>176</sup>

Art. 15 deals with training for the staff interacting with victims of all forms of domestic violence. This provision aims at enhancing the quality of services<sup>177</sup> by improving the level of awareness of the professionals and the skills to respond to domestic violence cases.<sup>178</sup> The urge to train the staff on the effects of domestic violence on children and how to protect child witnesses is pointed out in the recommendations presented in art. 26 and 31. GREVIO rarely addresses these concerns in the section related to art. 15. Moreover, GREVIO expresses concern about psychiatric staff that is not trained on domestic violence issues, which cannot recognise signs of violence suffered by children.<sup>179</sup>

Art. 18 deals with general measures of implementation and emphasises the need to take measures to guarantee cooperation among the agencies. GREVIO recommends that Denmark adopt an approach involving all agencies and actors to consider all the factors, including the child's best interests.<sup>180</sup> France is also recommended to institutionalise the coordination of the agencies working on domestic violence issues.<sup>181</sup> GREVIO welcomes the Dutch national plan on domestic violence because it responds to the need for a multiagency approach.<sup>182</sup>

Art. 19 calls for states to take action to ensure that victims are promptly informed about services and legal measures. When the drafters specified that information should be provided in a language the child can understand, they meant that information could be provided in languages different from national ones. No reference is made to providing child-specific information or providing information to children. However, GREVIO appreciates that Serbia distributes a leaflet on the child protection helpline and information to incite adults to call the number if they are aware of endangered children.<sup>183</sup>

Art. 22 obliges States to ensure the most appropriate support services to the needs of the victims, which are enlisted in the explanatory report, and include immediate medical support, psychological counselling, trauma care and legal counselling. The services directed to children are further explained in chapter 4.

Art. 23 deals with setting up appropriate and easily accessible shelters in an accurate number and reaching out proactively to women and children. This results from the obligation to provide adequate protection and support to children and prioritise the safety of the victims. The shelters should be specialised and provide

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<sup>176</sup> GREVIO/Inf(2021)7, para. 99-107

<sup>177</sup> Council of Europe (2011), Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, Istanbul, 11.V.2011, para. 99

<sup>178</sup> Id, para. 98

<sup>179</sup> GREVIO/Inf(2019)16, para. 106, GREVIO/Inf(2021)7, para. 119

<sup>180</sup> GREVIO/Inf(2017)14, para. 105

<sup>181</sup> GREVIO/Inf(2019)16, para. 136

<sup>182</sup> GREVIO/Inf(2019)19 para. 119

<sup>183</sup> GREVIO/Inf(2021)7, para. 156-161; GREVIO/Inf(2019)9, para. 105

women and children with adequate support tailored to their needs.<sup>184</sup> Significantly, GREVIO considers shelters as more "than a roof."<sup>185</sup> The GREVIO reports reveal that the services are not always accessible for child victims and witnesses. For example, in Austria, the services are not always accessible for children older than 14, and some shelters in Belgium do not admit children above 12. In Italy,<sup>186</sup> older women with older children also encounter difficulties getting access to shelters, while in Denmark,<sup>187</sup> women with several children are disadvantaged. GREVIO calls for shelters to be more accessible and to ensure that children are placed in in the same shelter as their mother.<sup>188</sup> Another issue found is the right to education. In Portugal,<sup>189</sup> children in shelters have difficulties accessing education because of problems related to the address. This is a unique case of GREVIO explicitly mentioning the right to education for child witnesses.

The need to set up telephone helplines is dealt with in article 24, in relation to all forms of violence of the convention. Even though children are potential victims within the scope of the Convention, GREVIO never mentions the need to make telephone helplines accessible to children. Nevertheless, it positively notes the existence of a specific helpline for children witnessing violence in Austria.<sup>190</sup>

Art. 27 deals with the need to encourage all persons witnessing violence to report when they have the suspicion that the child is witnessing domestic violence. The Committee does not refer to child witnesses in this provision and does not recommend states to apply this provision to child victims and witnesses. However, it notes that in Finland, the authorities must file a report when they suspect the child is endangered and might witness violence.<sup>191</sup> GREVIO also notes a protocol (under the section on art. 28) obliging the professional figures working with children to report on violence in Montenegro.<sup>192</sup>

According to art. 30, states should guarantee the right of the victims to receive compensation for the offences enlisted in the Convention. This provision is not meant to involve children. However, GREVIO "notes with interest" that in Sweden, child witnesses are also entitled to be compensated for the suffering caused by witnessing violence.<sup>193</sup>

Art. 34 obliges states to criminalise stalking, intended as "the intentional conduct of repeatedly engaging in threatening conduct directed to another person, causing him to feel her safety endangered." GREVIO also recognises the harmful effects of children witnessing stalking after separation and outlines the importance

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<sup>184</sup> Council of Europe (2011), Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, Istanbul, 11.V.2011, para. 133

<sup>185</sup> GREVIO/Inf(2017)13, para.107

<sup>186</sup> GREVIO/Inf(2019)18 para. 144-151

<sup>187</sup> GREVIO/Inf(2017)14, para. 112-120

<sup>188</sup> GREVIO/Inf(2017)14, para. 179-187

<sup>189</sup> GREVIO/Inf(2018)16 , para. 130-138

<sup>190</sup> GREVIO/Inf(2017)4, para. 113

<sup>191</sup> GREVIO/Inf(2019)9, para. 132

<sup>192</sup> GREVIO/Inf(2018)5 para. 147

<sup>193</sup> GREVIO/Inf(2018)15, para. 160

of considering the presence of the child as an aggravating circumstance.<sup>194</sup>

The list of circumstances that may be considered aggravating in the determination of the sentencing is presented in art. 46. One of them is that the offence was made against the child or in the child's presence (46.d). GREVIO usually does not explicitly mention whether the child's presence is considered an aggravating circumstance, but it more generally recommends that states consider all the factors enlisted by art. 46. In the recommendation addressed to Finland,<sup>195</sup> GREVIO recommends including any of the circumstances in art. 46 in the list of the aggravating circumstances, "such as, for example" the presence of the child.

Art. 48 prohibits mandatory alternative dispute resolution processes in case of proven domestic violence or when there is the suspicion that this might have happened. GREVIO further explains that the victim is not in the same position of power as the abuser. Thus, mediation is inappropriate because it leads to retraumatisation and can lead to negative results for the victims and their children. The practice of mediation in relation to child custody and visitation rights will be dealt with in chapter 4. In the recommendations related to the art. 48, GREVIO is also particularly concerned about mediation on child custody without the intervention of the judiciary. When parents undergo mediation without the intervention of a judge, cases of violence are rarely identified and taken into account.<sup>196</sup> This practice also enhances the imbalance of power, exposing children and the victims to further harm. It also expresses concern about the draft decree in Italy under examination in the parliament that would have introduced mandatory mediation irrespective of whether violence was involved.<sup>197</sup>

Art 52 and 53 relate to protection orders. Art. 52 mandates states to ensure that the authorities have the power to emergency order to remove the abuser from the house of the victim. More frequent use of protection orders is recommended regarding art.31 because GREVIO believes that the relationship with the non-abusive partner is to be prioritised, as staying in the house and with a parent is part of the rehabilitation process. Art 53 enlisted all the requirements of protection orders. GREVIO also recommends including children in the same protection order as the mother with the children. Further, GREVIO is concerned that in Albania sometimes the situation of children is not appropriately assessed in cases of protection orders.<sup>198</sup> In Austria, emergency orders are automatic for children below 14, but they should be explicitly requested by the mother or the child welfare system.<sup>199</sup>

Art. 56 provides a list of measures of protection that should be taken to protect both victims and witnesses, including intimidation, retaliation and repeated victimisation. According to art. 56.2, children are entitled to special protection. However, the Committee does not elaborate further on it in the GREVIO reports. Italy reports the special measures of protection available in the country to prevent revictimisation, such as the

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<sup>194</sup> GREVIO/Inf(2021)7, para. 247

<sup>195</sup> GREVIO/Inf(2019)9, para. 188

<sup>196</sup> GREVIO/Inf(2019)16, para. 211-216

<sup>197</sup> GREVIO/Inf(2021)7, para. 208-212

<sup>198</sup> GREVIO/Inf(2017)13, para. 190

<sup>199</sup> GREVIO/Inf(2017)4, para. 177

opportunity to record the testimony and protect the child during the hearing.<sup>200</sup>

### **3.8 Conclusions**

GREVIO appreciates the efforts made to include children in the recommendations of their articles. There are other articles for children, but they are relevant for child witnesses.

In this chapter, it has become clear that the provisions of the convention mainly apply to women. The Convention does not call states to include child witnesses in the definition of domestic violence. However, it calls for states to raise awareness on the effects of domestic violence on children. The other articles are mainly directed at violence against women. Regrettably, the other articles related to prevention rarely refer to child witnesses. For example, art. 11 on data and research does not include children, but GREVIO sometimes recommends including data on children witnessing and experiencing domestic violence. Art. 15 on training does not include training on how to deal with children, GREVIO never mentions the need to provide child-specific information on domestic violence (art .19), and GREVIO never recommends states to have child-friendly helplines.

The Convention pays particular attention to children with regard, for example, to protection orders. However, it rarely made recommendations in this regard. The next chapter will be dealt with the articles specifically addressing children to see how children are addressed there.

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<sup>200</sup> GREVIO/Inf(2019)18, para. 248

## 4. The Istanbul Convention: child-specific articles

### 4.1 Introduction

In the last chapter, it has become clear that GREVIO does not usually include children when it makes recommendations about provisions that do not explicitly mention children. This chapter focuses on the articles which specifically deal with children, namely art. 26 on protection and support for child witnesses and art. 31 on custody and visitation rights. The analysis of the GREVIO reports will allow us to understand how GREVIO views child witnesses and which kind of protective measures are provided by the convention. To conduct the analysis, I went through all the GREVIO reports and I divided the information based on the issues discussed.

### 4.2 Protection and support for child witnesses (art. 26)

Art. 26 of the Convention obliges states to ensure that due consideration is given to children witnessing violence, as it cause fear and trauma and impairs the child's development.<sup>201</sup> According to CAHVIO, child witnesses are not only children directly observing domestic violence but also those experiencing its consequences.<sup>202</sup> The second paragraph of art. 26 requires states to provide age-appropriate services to children to ensure their recovery and protection from further harm, giving due consideration to the child's best interests.

#### 4.2.1 Legal recognition of child witnesses as victims

GREVIO notes that child witnesses enjoy the status of victims in only few states, such as Andorra,<sup>203</sup> Montenegro<sup>204</sup> and Slovenia.<sup>205</sup> In San Marino,<sup>206</sup> the law initially dealing only with women victims of violence is now applicable to child witnesses, which are recognised as victims. Italy<sup>207</sup> also sets a higher penalty for any act of domestic violence perpetrated in the presence of a child, and according to the jurisprudence witnessing violence is a kind of child abuse.

GREVIO rarely explicitly encourages states to recognises child witnesses as victims.<sup>208</sup>

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<sup>201</sup> Council of Europe (2011), Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, Istanbul, 11.V.2011, para. 143

<sup>202</sup> Id, para. 144

<sup>203</sup> GREVIO/Inf(2020)18, para. 129-133

<sup>204</sup> GREVIO/Inf(2018)5, para. 138-144

<sup>205</sup> GREVIO/Inf(2021)7, para. 201

<sup>206</sup> GREVIO/Inf(2021)6, para. 120-124

<sup>207</sup> GREVIO/Inf(2019)18, para. 159-163

<sup>208</sup> GREVIO/Inf(2021)7, para. 199-205 and GREVIO/Inf(2020)19, para.174-179

#### 4.2.2 Provision of services to child witnesses

GREVIO acknowledges that the legal recognition of child witnesses as victims is insufficient to ensure the necessary protection for child witnesses. This is the case of Slovenia,<sup>209</sup> which is recommended by GREVIO to translate the legal recognition of the detrimental effects of witnessing violence into the provision of services for child witnesses.<sup>210</sup> Similarly, despite the legal recognition of child witnesses in the law, GREVIO notes that the service providers in Andorra<sup>211</sup> do not always fully recognise child witnesses as victims.

The Committee positively notes that in Austria<sup>212</sup>, welfare services consider that child witnesses are entitled to the same level of protection as child victims. Similarly, in the Netherlands<sup>213</sup>, specific attention is paid to the protection of child witnesses, which is included in the policies to prevent intergenerational violence.

GREVIO notes that the types of services provided by Finland<sup>214</sup> are not in line with the age and development of the child. In some countries, such as Italy<sup>215</sup> and Slovenia,<sup>216</sup> GREVIO finds that there is no evidence on whether child witnesses are provided with adequate services. GREVIO also recommends that Portugal<sup>217</sup> and Malta<sup>218</sup> give due consideration to the needs of child victims.

GREVIO points out a practice that can potentially endanger children in Spain: the obligation to inform both parents (even the abusive one) that the child is undergoing therapy. GREVIO notes how this practice can hinder the right of children to have psychological support.<sup>219</sup>

According to GREVIO,<sup>220</sup> all services should include children that have witnessed all kinds of violence, including post-separation stalking. GREVIO also calls states to provide the support that is adequate for their age and takes into due account the child's best interests.<sup>221</sup> Services should also be available<sup>222</sup>

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<sup>209</sup> GREVIO/Inf(2021)7, para. 199-205

<sup>210</sup> Id, para. 205

<sup>211</sup> GREVIO/Inf(2020)18, para. 129-133

<sup>212</sup> GREVIO/Inf(2017)4, para. 114-120

<sup>213</sup> GREVIO/Inf(2019)19, para. 175

<sup>214</sup> GREVIO/Inf(2019), para. 131

<sup>215</sup> GREVIO/Inf(2019)18, para. 159-163

<sup>216</sup> GREVIO/Inf(2021)7, para. 199-205

<sup>217</sup> GREVIO/Inf(2018)16, para. 145-148

<sup>218</sup> GREVIO/Inf(2020)17, para. 132-137

<sup>219</sup> GREVIO/Inf(2020)19, para. 177

<sup>220</sup> GREVIO/Inf(2021)5, para. 166

<sup>221</sup> GREVIO/Inf(2019)18, para. 163

<sup>222</sup> GREVIO/Inf(2021)5, para. 166

throughout the country.<sup>223</sup> Moreover, GREVIO calls San Marino to guarantee support to children while allowing them to stay with the non-abusive parent, which plays a crucial role in the recovery process.<sup>224</sup>

GREVIO also appreciates that psychological counselling for child witnesses is to some extent available in Andorra,<sup>225</sup> Austria,<sup>226</sup> Belgium,<sup>227</sup> Denmark<sup>228</sup> , Finland<sup>229</sup> and Poland.<sup>230</sup> Conversely, it is not adequately provided in Malta<sup>231</sup> and Slovenia.<sup>232</sup>

#### 4..2.3 Services inside the shelters

GREVIO consider the differences in the size, funding, and quality of these shelters as obstacles for children from receiving the tailored support and counseling they urgently need in Slovenia<sup>233</sup> and Sweden.<sup>234</sup> While recognising that some efforts have been made to support children, the lack of funding and staff impacts the provision of services.<sup>235</sup> In the region of Wallonia in Belgium, providing services for child victims derives from the single initiative of individual shelters, with no structural support from the State.<sup>236</sup>

Belgium<sup>237</sup> and Austria<sup>238</sup> are recommended to financially support the services dedicated to child witnesses in the shelters. Moreover, according to GREVIO, a "child rights perspective" is necessary to guarantee the necessary support and counseling.<sup>239</sup>

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<sup>223</sup> GREVIO/Inf(2020)19, para. 179

<sup>224</sup> GREVIO/Inf(2021)6, para. 124

<sup>225</sup> GREVIO/Inf(2020)18, para.130

<sup>226</sup> GREVIO/Inf(2017)4, para. 118

<sup>227</sup> GREVIO/Inf(2020)14, para. 133

<sup>228</sup> GREVIO/Inf(2017)4, para. 132

<sup>229</sup> GREVIO/Inf(2019)9, para. 129

<sup>230</sup> GREVIO/Inf(2021)5, para. 164

<sup>231</sup> GREVIO/Inf(2020)17, para. 137

<sup>232</sup> GREVIO/Inf(2021)7, para. 202

<sup>233</sup> GREVIO/Inf(2021)7, para. 199-205

<sup>234</sup> GREVIO/Inf(2018)15, para. 146-149

<sup>235</sup> GREVIO/Inf(2021)7, para. 173-187

<sup>236</sup> GREVIO/Inf(2020)14, para. 133-136

<sup>237</sup> Id

<sup>238</sup> GREVIO/Inf(2017)4, para. 114-120

<sup>239</sup> GREVIO/Inf(2018)15, para. 146-149

GREVIO notes a best practice in Austria,<sup>240</sup> where a male social works in the shelters to be a role model for boys who have witnessed violence.

#### 4.2.4 Insufficient funds

Lack of funding is a significant burden to the provision of services in most countries, especially when the service providers are NGOs. GREVIO highlights that lack of funding leads to understaffed service providers in Poland<sup>241</sup> and long waiting times to access services in France.<sup>242</sup> Moreover, GREVIO notes huge inequalities among regions in countries such as Spain, where their funding is differentiated among regions, the rural areas are disadvantaged, and the continuity in the provisions of services is not always ensured.<sup>243</sup>

GREVIO also recommends improving the financial support of services for child witnesses, enhancing the accessibility of services, and reducing the waiting times to access them.<sup>244</sup>

#### 4.2.5 Training

According to GREVIO, all staff, including psychologists, social services, and judges, should be trained on the harmful effects of witnessing violence on children.<sup>245</sup> The GREVIO reports show that the professional figures dealing with child witnesses are not adequately trained. GREVIO recommends that the French<sup>246</sup> authorities consider that exposure to violence is a manifestation of violence against women. Moreover, GREVIO highlights that in Poland,<sup>247</sup> most social services professionals do not have trained professionals to provide specialist therapeutic intervention to children exposed to domestic violence.

GREVIO also points out that due to the lack of awareness about the impact of domestic violence on children, violence is often minimised and overlooked, and the abused parent is often blamed for the violence occurring in the household.<sup>248</sup> This also leads to decisions that are not in line with the child's best interests. For example, the abused mother is not deemed to be capable of exercising parental responsibility over the child.<sup>249</sup> Further, the authorities are not able to conduct a proper risk assessment.<sup>250</sup>

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<sup>240</sup> GREVIO/Inf(2017)4, para. 114-120

<sup>241</sup> GREVIO/Inf(2021)5, para. 162-166

<sup>242</sup> GREVIO/Inf(2019)16, para. 165-169

<sup>243</sup> GREVIO/Inf(2020)19, para. 175-179

<sup>244</sup> GREVIO/Inf(2019)16, para. 165-169

<sup>245</sup> GREVIO/Inf(2019)18, para. 159-163

<sup>246</sup> GREVIO/Inf(2019)16, para. 165-169

<sup>247</sup> GREVIO/Inf(2021)5, para. 162-166

<sup>248</sup> GREVIO/Inf(2020)18, para. 129-133

<sup>249</sup> GREVIO/Inf(2018)16, para. 145-148

<sup>250</sup> GREVIO/Inf(2021)7, para. 199-205

Other concerns are related to the support and expertise of court-appointed psychologists, which do not adequately consider the situation of child witnesses.<sup>251</sup> Training is recommended for social workers, legal and health professionals and psychologists.<sup>252</sup> GREVIO also recommends introducing guidelines, so professionals are fully aware of the harm experienced by child witnesses.<sup>253</sup>

#### 4.2.6 Identification of child witnesses

The provision of services depends on how the staff can detect child witnesses and the related risks. GREVIO notes that in France, the lack of awareness of domestic violence and its manifestations hinders the detection of child witnesses and prevents the authorities from conducting a proper risk assessment.<sup>254</sup> Thus, it recommends that France promote more knowledge to better detect child witnesses.<sup>255</sup> The identification should be based on the understanding that child protection and protection of women are two sides of the same coin, and children are harmed by exposure to violence, even when they are not physically abused.<sup>256</sup> In Belgium, the non-recognition of the consequences of witnessing violence to children undermines the accessibility to the services.<sup>257</sup>

#### 4.2.7 Coordination among the agencies

To better deal with child witnesses, it is crucial to ensure the coordination between all the agencies involved. GREVIO recommends that Andorra<sup>258</sup> ensure an integrated approach among the agencies to guarantee the recovery process. Further, GREVIO notes that more coordination is needed between the agencies specialising in domestic violence and child protection in Belgium.<sup>259</sup> GREVIO also recalls the urge to avoid "compartmentalisation between child protection and domestic violence services".<sup>260</sup> At the same time, GREVIO underlines that the professional figures dealing with child witnesses should have the expertise in domestic violence and condemns the regular referral of complex cases to agencies that are not equipped to address the needs of child witnesses.<sup>261</sup>

#### 4.2.8 Interviews

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<sup>251</sup> GREVIO/Inf(2021)5, para. 162-166

<sup>252</sup> GREVIO/Inf(2019)16, para. 165-169

<sup>253</sup> GREVIO/Inf(2020)14, para. 133-136

<sup>254</sup> GREVIO/Inf(2019)16, para. 179-186

<sup>255</sup> Id

<sup>256</sup> Id

<sup>257</sup> GREVIO/Inf(2020)14, para. 133-136

<sup>258</sup> GREVIO/Inf(2020)18, para. 129-133

<sup>259</sup> GREVIO/Inf(2020)14, para. 133-136

<sup>260</sup> GREVIO/Inf(2019)16, para. 167

<sup>261</sup> GREVIO/Inf(2019)16, para. 175

GREVIO rarely makes recommendations on how to interview children. the Committee points out that in Malta,<sup>262</sup> child victims are often required to recount their experiences numerous times, and it is impossible to record the child's statement to be used subsequently in Court. Thus, Malta<sup>263</sup> is also recommended to have child witnesses interviewed by trained staff in a child-sensitive manner.

A best practice can be found in Denmark,<sup>264</sup> where there is the possibility for child witnesses to be interviewed in the Children's Houses for victims of sexual abuse.

#### 4.2.9 The relationship with the non-abusive parent

GREVIO recommends states on the decisions to make with regard to child witnesses. It sees child safety as interrelated to the safety of adults, and support to child victims as critical to protect children.<sup>265</sup> The priority should be given to guaranteeing a stable and safe environment, and GREVIO points out that children will recover if they stay in a safe environment and with their attachment figures.<sup>266</sup> Another detrimental practice noted by GREVIO is placing children in foster care, where they are less likely to receive the support needed.<sup>267</sup> States should ensure that the child remains with the non-abusive parent by increasing the number of services and shelters available for mothers and children.<sup>268</sup> The introduction of regional centers to take care of child witnesses without the mother in Serbia raise concerns.<sup>269</sup>

Moreover, GREVIO is particularly concerned about the practice of giving priority to contact with both parents over the safety of the child. For example, in Montenegro,<sup>270</sup> child witnesses are not seen as equally in need of protection as child victims, and they are often encouraged by the authorities to have contact with the abusive father. GREVIO also recommends San Marino<sup>271</sup> to guarantee that children stay with the non-abusive parent, ideally in their home.

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<sup>262</sup> GREVIO/Inf(2020)17, para. 132-137

<sup>263</sup> GREVIO/Inf(2017)14, para. 129-137

<sup>264</sup> GREVIO/Inf(2017)14, para. 129-137

<sup>265</sup> GREVIO/Inf(2017)14, para. 133

<sup>266</sup> Id

<sup>267</sup> GREVIO/Inf(2019)20, para. 144-147

<sup>268</sup> Id

<sup>269</sup> Id

<sup>270</sup> GREVIO/Inf(2018)5, para. 138-144

<sup>271</sup> GREVIO/Inf(2021)6, para. 120-124

Thus, GREVIO also expresses concern regarding the widespread practice of removing the child from the family and strongly encourages Denmark,<sup>272</sup> San Marino,<sup>273</sup> and Finland<sup>274</sup> to make more use of emergency barring and protection orders.

GREVIO also commends states for having taken specific actions for children whose mother has been killed in the context of domestic violence (femicide), such as the disbursement of scholarships and the financing of training and counselling services.<sup>275</sup>

### **4.3 Custody, visitation rights, and safety (art.31)**

Art. 31 obliges states to take into account domestic violence incidents when deciding on custody and visitation rights.<sup>276</sup> In domestic violence cases, the child is often the only link left between the victim and the perpetrator. Further, compliance with the contact order can endanger both victims and the children. Thus, States are urged to ensure the safety of victims and witnesses, especially given that contact orders can expose the victim and the child to risks. Thus, the exercise of any visitation or custody rights should not jeopardize the rights and safety of the child.<sup>277</sup>

GREVIO recognises the importance of the right of the child to have contact with both parents in line with art.9 of the CRC. However, it points out that the presence of domestic violence is a reasonable ground to depart from this general principle.<sup>278</sup>

#### **4.3.1 Legal recognition**

The law of some countries already recognised episodes of violence in the law. GREVIO considers the Austrian civil code an excellent legal example because it highlights the need to find a balance between the need to ensure contact with both parents and the reduction of the risks of suffering violence or witnessing violence.<sup>279</sup> The Andorran law obliges states to give due attention to conflict or situations of violence or domestic violence within the family. In the Netherlands,<sup>280</sup> witnessing violence is a kind of child abuse, and it is taken into consideration in custody decisions. In Montenegro,<sup>281</sup> family violence is also a ground to

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<sup>272</sup> GREVIO/Inf(2017)14, para. 94-97

<sup>273</sup> GREVIO/Inf(2021)6, para. 120-124

<sup>274</sup> GREVIO/Inf(2019)9, para. 127-131

<sup>275</sup> GREVIO/Inf(2019)16, para. 165-169; GREVIO/Inf(2019)18, para. 159-163; GREVIO/Inf(2020)19, para. 175-179

<sup>276</sup> Explanatory report, Para. 175

<sup>277</sup> Id, para. 176

<sup>278</sup> GREVIO/Inf(2020)14, para. 87

<sup>279</sup> GREVIO/Inf(2017)4, para. 133-148

<sup>280</sup> GREVIO/Inf(2019)19, para. 198-205

<sup>281</sup> GREVIO/Inf(2018)5, para. 138-144

limit parental authority. However, GREVIO notes that the notion of "family violence" is broad, and it is unclear whether the definition encompasses the situation of children witnessing violence.<sup>282</sup>

GREVIO recommends that all countries consider incidences of violence when deciding on custody and visitation rights. For example, Belgium<sup>283</sup> is recommended to amend legislation to withdraw parental responsibility. Further, GREVIO recommends that Italy<sup>284</sup> make effective the legal obligations to ensure that the issue of domestic violence is appropriately considered when deciding on custody and visitation rights.<sup>285</sup> GREVIO also calls Poland<sup>286</sup> to take the appropriate measures, including legislative, to give due attention to children witnessing domestic violence. While commending the introduction of provisions to consider family violence, GREVIO also calls for the proper implementation of existing law, such as in the Netherlands.<sup>287</sup>

#### 4.3.2 Training of the staff making the decisions on custody and visitation rights

To carefully consider the situation child witnesses find themselves in, the staff involved must be aware of the effects of domestic violence on child witnesses. It is thus vital, according to GREVIO, to effectively train the professional figures, including judges,<sup>288</sup> on the issue of children witnessing violence, and introduce guidelines.<sup>289</sup>

GREVIO recommends introducing training to explain the difference between conflict and violence<sup>290</sup>, and replacing some guidelines in Andorra which define domestic violence as a conflict in the family<sup>291</sup> and promote mediation without considering violence. Further, the relevant staff making decisions should be consulted with the psychologists.<sup>292</sup> GREVIO also urged that the people facilitating supervised visitations are appropriately trained.<sup>293</sup>

#### 4.3.3 The proceedings

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<sup>282</sup> Id

<sup>283</sup> GREVIO/Inf(2020)14, para. 145-151

<sup>284</sup> GREVIO/Inf(2019)18, para. 180-188

<sup>285</sup> GREVIO/Inf(2019)18, para. 180-188

<sup>286</sup> GREVIO/Inf(2021)5, para. 183-197

<sup>287</sup> GREVIO/Inf(2019)19, para. 198-205

<sup>288</sup> GREVIO/Inf(2020)19, para. 195-207

<sup>289</sup> GREVIO/Inf(2017)14, para. 141-160

<sup>290</sup> GREVIO/Inf(2020)18, para. 146-151

<sup>291</sup> GREVIO/Inf(2019)18, para. 180-188

<sup>292</sup> Id

<sup>293</sup> GREVIO/Inf(2021)7, para.232-242

The proceedings can potentially endanger the life of the child witnesses and the mothers. Thus, a risk assessment is necessary before starting the proceedings on custody and visitation rights, and it is recommended to Belgium,<sup>294</sup> Denmark,<sup>295</sup> France,<sup>296</sup> Italy,<sup>297</sup> and Slovenia.<sup>298</sup> GREVIO also calls the family courts in Montenegro<sup>299</sup> and Portugal<sup>300</sup> to ask for the disclosure of the risk assessment and safety plans of the law-enforcement agencies.

GREVIO also notes some practices that can potentially endanger the safety of the children and the victims. The first one is mediation, in which the survivor is forced to have joint meetings with the abuser. Due to the imbalance of power, the victims are not capable of negotiating, and the result can be highly damaging for the children. GREVIO also shows concern about the fact that custody and visitation rights in Denmark are based on agreements and do not consider instances of violence.<sup>301</sup> It is thus recommended to conduct a specific risk assessment before deciding on conducting mediation. Further, GREVIO calls on Malta<sup>302</sup> to implement the exemption from meditation custody and visitation rights.

Further, safeguards should be integrated into the proceedings. The safety of victims and children should be protected, the parents should receive different meetings and have separate waiting rooms, and due consideration should be given to the imbalance of power between the victim and the perpetrator and prevent the risks.<sup>303</sup>

GREVIO also calls Montenegro<sup>304</sup> and Portugal<sup>305</sup> to pose a question in family proceedings on whether violence was an issue in the relationship.

#### 4.3.4 Investigations

A thorough investigation is necessary in cases of domestic violence.<sup>306</sup> In this regard, GREVIO points out the need for civil courts to accurately investigate whether violence happened and which effects had on the

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<sup>294</sup> GREVIO/Inf(2020)14, para.145-150

<sup>295</sup> GREVIO/Inf(2017)14, para.147-161

<sup>296</sup> GREVIO/Inf(2019)16, para.179-189

<sup>297</sup> GREVIO/Inf(2019)18, para.180-188

<sup>298</sup> GREVIO/Inf(2021)7, para.232-241

<sup>299</sup> GREVIO/Inf(2020)18, para. 163-168

<sup>300</sup> GREVIO/Inf(2018)16, para.159-174

<sup>301</sup> GREVIO/Inf(2017)14, para.147-161

<sup>302</sup> GREVIO/Inf(2020)17, para.151-160

<sup>303</sup> GREVIO/Inf(2018)5, para.163-178

<sup>304</sup> GREVIO/Inf(2018)5, para.163-169

<sup>305</sup> GREVIO/Inf(2021)5, para.183-195

<sup>306</sup> GREVIO/Inf(2019)9, para. 143-150; GREVIO/Inf(2019)18, para.180-188

child.<sup>307</sup> For example, GREVIO notes that judges in family proceedings rarely investigate domestic violence. Allegations of domestic violence in Slovenia are not often considered when deciding on parental responsibility.<sup>308</sup> As a result, decisions on custody and visitation rights expose children to further harm.

Investigation can be carried out by relying on the criminal proceedings against the father or seeking information from other bodies, including education and specialist women's support services.<sup>309</sup> When they seek information and choose not to consider them, the Courts should justify their decisions. GREVIO also recommends that Portugal rely on ongoing criminal investigations. If they are closed or suspended, the family court should investigate.<sup>310</sup>

#### 4.3.5 The implementation of contact orders

GREVIO is also concerned about the risks related to the exercise of child custody and visitation rights in cases of domestic violence. In Belgium<sup>311</sup>, shared custody is the default decision. After the separation of the parents, the child would also have the residence at the house of both parents. Domestic violence is not listed among the grounds to object to the rule of double residence. In France, the child's residence is sometimes transferred to the abuser's, and mediators do not inform judges about domestic violence. GREVIO is also concerned that the withdrawal of parental authority in France is rarely practiced, thus exposing the mother and the child to several risks. GREVIO recommends that France<sup>312</sup> ensure that its policies derive from the understanding that in instances of domestic violence, joint parenting allows the abuser to perpetuate control over the child and the mother. GREVIO also recommends cooperation between the judiciary and the support services<sup>313</sup>

GREVIO calls states to ensure that the implementation of a contact order does not expose the victims to harm. It urges Slovenia to monitor possible evidence of the negative consequences of supervised visitations and ensure that the Court can revise the decision on visitation based on the new information if it is opportune<sup>314</sup>. Further, supervised visits should happen in a safe environment, and the necessary support should be provided to detect children's discomfort.

The safety of victims and children should be protected, the parents should receive different meetings and have separate waiting rooms, and due consideration should be given to the imbalance of power between the victim and the perpetrator and prevent the risks.<sup>315</sup>

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<sup>307</sup> GREVIO/Inf(2018)16, para.159-175; GREVIO/Inf(2018)5, para.163-168

<sup>308</sup> GREVIO/Inf(2021)7, para.232-242

<sup>309</sup> GREVIO/Inf(2020)19, para.195-207

<sup>310</sup> GREVIO/Inf(2018)16, para.159-168

<sup>311</sup> GREVIO/Inf(2020)14, para.145-150

<sup>312</sup> GREVIO/Inf(2019)16, para.179-186

<sup>313</sup> GREVIO/Inf(2017)14, para.147-161; GREVIO/Inf(2018)16, para.159-175

<sup>314</sup> GREVIO/Inf(2021)7, para.232-242

<sup>315</sup> *Id*

#### 4.3.6 Parental alienations syndrome and other beliefs on domestic violence

GREVIO is particularly concerned about the improper use of the notion of parental alienation. Its use leads to detrimental decisions for both the child and the victims, and case law shows that the notion is abused.<sup>316</sup>

According to GREVIO, all professionals dealing with child witnesses, namely the judiciary, law enforcement agencies, social services, and medical and psychological support, should be informed of the lack of scientific basis of parental alienation. The progress in this field should be measured through data.<sup>317</sup> GREVIO is also particularly concerned by the campaign in Poland called "stop parental alienation".<sup>318</sup>

GREVIO also shows concern about the "friendly parent provision" and the tendency of the courts to consider mothers as "uncooperative" and "unfit" and to blame them for the relationship the child has with the violent parent.<sup>319</sup>

#### 4.4 Conclusions

This chapter presented the two articles related to child witnesses and the relative recommendations of the GREVIO Committee. Art. 26 focuses on the need to provide children with adequate services. GREVIO recommends states on training to the staff, funding for the services that are both inside and outside the shelters, encouraging cooperation between child protection and domestic violence services.

Art. 31 obliges states to consider instances of violence when making decisions related to custody and visitation rights. It emphasises the need to investigate appropriately, ensure the child's safety, and make more use of emergency barring orders. GREVIO also underlines how mediation for custody and visitation rights can be detrimental in cases of domestic violence. Further, the committee is concerned about the use of the notion of parental alienation syndrome in court decisions.

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<sup>316</sup> GREVIO/Inf(2020)14, para. 145-151

<sup>317</sup> GREVIO/Inf(2020)18, para.146-152; GREVIO/Inf(2020)14, para.145-151; GREVIO/Inf(2019)16, para.179-186

<sup>318</sup> GREVIO/Inf(2021)5 para.183-195

<sup>319</sup> GREVIO/Inf(2019)18, para. 180-188

## 5. Conclusions

### 5.1 Findings from the GREVIO reports

The analysis of relevant provisions of the Convention and the GREVIO reports resulted in some interesting findings. Children are not explicitly included in the definition of domestic violence provided by the Convention. However, the Convention encourages states to apply the convention to child witnesses. Even though GREVIO recommends states to include all manifestations of violence in the definition, the Committee never explicitly recommends incorporating child witnesses in the definition of domestic violence.

Overall, children are rarely adequately considered in the sections of the reports which do not explicitly address children. This might be due to the reluctance of states and GREVIO to consider issues of child witnesses as related to the field of domestic violence. Further, GREVIO does not adequately guide states in implementing the convention in relation to child witnesses. Consequently, States rarely include child witnesses in their reports, and GREVIO is not consistent in making recommendations related to children.

As the convention explicitly mentions awareness-raising on the effects of domestic violence on children, GREVIO frequently makes recommendations on this issue. Awareness-raising impacts children's access to services and the kind of treatment children would receive from the staff involved. However, even when GREVIO emphasises the need to raise awareness about children, the main focus is always on women. Significantly, GREVIO defines children as "the forgotten victims of violence against women"<sup>320</sup> when assessing the situation in a country that does not raise awareness about the consequences of violence on children.

GREVIO sometimes recommends data collection and research about child witnesses (art. 11), but not frequently. This is regrettable, as research is a precondition to effective policy making.<sup>321</sup>

Educative measures (art. 14) are mainly focused on gender equality. However, there is no reference to how education can empower children to recognise and respond to domestic violence. Further, art. 15 does not explicitly oblige states to train the staff to deal with child witnesses and recognise them. GREVIO rarely makes recommendations on these issues. Art. 19 does not consider the importance of providing child-specific information to children.

Art. 22 on providing services to women and children does not give due attention to the needs of children, both inside (art. 23) and outside the shelters. The recommendations related to art. 23, however, highlight how the presence of children (especially older children) can hinder the capacity of the mother to access shelters. Art. 24 does not consider the need for child-specific helplines, and GREVIO does not make recommendations on this matter. Further, art. 27 on reporting does not provide any specific obligation for professionals working with child witnesses to file a report. Art. 30 does not provide specific compensation for children. This is regrettable, as compensation can be helpful for their rehabilitation.

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<sup>320</sup> GREVIO/Inf(2017)13, para.54-58

<sup>321</sup> Grevio report

Art. 34 on stalking does not take into consideration child witnesses of this crime. However, GREVIO addresses this issue in one of the recommendations. The presence of the child witnessing violence is mentioned as one of the aggravating circumstances when deciding on the sentencing for the perpetrator (art. 46). However, GREVIO does not systemically recommend states to pay attention to this issue.

GREVIO sometimes makes recommendations related to art. 52 and 53 on protection orders. Art. 56 is comprehensive in listing the protection measures for victims and has an entire provision on particular measures of protection for children. However, GREVIO is not consistent in recommending states to address the needs of children witnessing violence effectively.

#### 5.2.1 Protection and support for child witnesses (art. 26)

Art. 26 calls states to consider the needs of child witnesses and provide psychological counselling. Notably, child are considered to witness violence even in cases where the acts of violence do not happen in the presence of the child, but the child experiences the consequences of living in an abusive environment. Moreover, GREVIO states that the service providers should give due account to the best interests of the child. However, GREVIO does not further elaborate on what this notion means and how this applies to child witnesses. The legal recognition of child witnesses as victims is appreciated by GREVIO in the reports but never explicitly recommended.

The recommendations related to art. 26 allow GREVIO to clarify which kind of services should be provided to children. First, child witnesses should have the same level of protection as child victims. The Committee emphasises the need to provide children with psychological services. It also notes inequalities in the provision of services and recommends that states give more funding to services for children. GREVIO also highlights the consequences of the lack of training and recommends training on the harmful effects of witnessing violence for all kinds of professional figures, including social services, judges, and everybody interacting with child witnesses. Training is also seen as crucial to allow for quick identification of child witnesses and the related risk factors. However, these recommendations do not regard treating victims in a child-friendly manner. Furthermore, GREVIO does not frequently make recommendations on how to interview children. GREVIO also highlights some practices harmful to children, such as separating them from their non-abusive parents. Moreover, GREVIO also shed light on the lack of effective cooperation between the agencies related to child protection and domestic violence.

#### 5.2.2 Custody, visitation rights and safety (art.31)

GREVIO recognises that custody and visitation decisions can potentially endanger the safety of the child and the mother. Thus, the Committee explicitly calls for the introduction of the legal obligation to consider episodes of violence when making these decisions. GREVIO is particularly concerned about the decision of custody and visitation arrangements which do not consider episodes of violence, thus endangering the child and the mother. For this reason, training should be ensured. Sometimes GREVIO also recommends the introduction of guidelines. Further, the Committee calls on states to conduct a risk assessment before deciding on visitation and custody rights.

Moreover, GREVIO emphasises that the proceedings can harm the child and the victims. It also defines mediation as a practice that can lead to detrimental results due to the unbalance of power between the

abuser and the abused person. Further, it highlights the need to investigate appropriately and ensure collaboration between the criminal and family courts. GREVIO is quite consistent in condemning the use of the notion of parental alienation syndrome, and it calls for states to provide training and raise awareness of the detrimental implications of the improper use of the notion of parental alienation.<sup>322</sup>

### **6.3 To what extent does the Istanbul Convention protect children from domestic violence?**

As previously discussed, the child has the right to be raised in a "loving and safe environment." Preventing domestic violence and ensuring the protection of the abused parent is thus beneficial for the child witness, as it is a precondition to ensuring a caring environment. Supporting the mothers and their rehabilitation process allows them to give the proper care to the child and meet their needs. Moreover, giving women a choice and empowering them to get away from an abusive situation is critical for the safe development of the child and several children's rights. Thus, even if there were no provisions addressing children, the child would have indirectly benefitted from the Convention and the provisions protecting the mother.

The definition of domestic violence in the convention can potentially apply to children, who are considered witnesses even when they live in an abusive environment but are not physically present when violence occurs. In some instances, GREVIO also refuses the distinction between children who have been directly abused and children who only witness violence. However, the Convention mainly focuses on violence against women. For instance, GREVIO reports often refer to "the victims and their children."<sup>323</sup> It is noticeable that GREVIO explicitly mentions children. However, GREVIO mainly views child witnesses as collateral or secondary victims,<sup>324</sup> or "appendages of their mothers".<sup>325</sup>

The recommendations in the GREVIO reports, especially those concerning the articles on children, are useful in understanding how GREVIO conceives the needs for child witnesses and allow us to identify how child witnesses of violence should be protected according to GREVIO.

Overall, GREVIO is not consistent in making recommendations on child witnesses. Our analysis reveals that both the drafters of the Convention and the GREVIO Committee have a welfare approach,<sup>326</sup> which prioritises the right to protection. The Convention neglects the provisions and participation rights. It does not deny children's right to participate but does not explicitly ensure it. GREVIO fails to see children as agents in their rights and disregards the role of child participation in the rehabilitation process and in

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<sup>322</sup> Adams, M. A. (2006). Framing contests in child custody disputes: parental alienation syndrome, child abuse, gender, and father's rights. *Family Law Quarterly*, 40(2), 315-338.

<sup>323</sup> GREVIO/Inf(2019)19, para. 198

<sup>324</sup> Herring, J. (2020) "Domestic Abuse and Children," in *Domestic Abuse and Human Rights*. Intersentia, 159–194

<sup>325</sup> Montserrat, C., Garcia-Molsosa, M., Planas-Lladó, A., & Soler-Masó, P. (2022). Children's understandings of gender-based violence at home: The role school can play in child disclosure. *Children and Youth Services Review*, 136, 106431, 1-7

<sup>326</sup> Hanson, K. (2012). Schools of thought in children's rights. In *Children's rights from below*, Palgrave Macmillan, London, 63-79

responding to domestic violence. Allowing children to participate is indeed crucial to tailor the preventive and responsive actions to their needs.

Children can indeed access the protective measures of the convention only if the non-abusive parent or somebody else asks for protection. Thus, the Convention assumes there is always a responsible adult who knows to act in the child's best interests. However, this is not always the case. Literature shows that many factors prevent women from leaving an abusive relationship. One of them is the tendency to underestimate the consequences of domestic violence on children and the belief that children need a paternal figure at all costs.<sup>327</sup>

The Convention does not contemplate the case where the child is physically abused while the mother is not the victim of violence. Moreover, the convention never refers to facilitating child disclosure and empowering them to seek help for themselves and their mother.<sup>328</sup> It is overall silent on the role that children can play in putting an end to the situation of violence. While recognising the attention given by GREVIO to child witnesses, it should be noted that the Convention is silent on many children's rights. Moreover, GREVIO is not consistent in giving recommendations on child witnesses since this is not the main focus of the Convention.

#### **6.4 Recommendations to GREVIO in light of General Comment 13**

In light of General Comment 13, it is clear that GREVIO should provide more guidance to states on the protective measures to protect children from domestic violence, especially in relation to prevention, identification, reporting, referral, investigation, treatment, follow-up, judicial involvement and effective procedures.<sup>329</sup>

Many provisions of the Istanbul Convention lack a child-specific focus. This is especially true for the provisions on preventive measures and the related GREVIO recommendations.<sup>330</sup> GREVIO should emphasise the need to collect data and conduct research on child witnesses. Moreover, GREVIO does not appropriately address the issue of the identification and fails to highlight the role that school can play in informing children on how to react to domestic violence.<sup>331</sup> GREVIO should also point out the need to inform children and empower them to identify risk factors.

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<sup>327</sup> Herring, J. (2020) "Domestic Abuse and Children," in *Domestic Abuse and Human Rights*. Intersentia, 159–194.

<sup>328</sup> Montserrat, C., Garcia-Molsosa, M., Planas-Lladó, A., & Soler-Masó, P. (2022). Children's understandings of gender-based violence at home: The role school can play in child disclosure. *Children and Youth Services Review*, 136, 106431, 1-7

<sup>329</sup> CRC/C/GC/13, para. 47-57

<sup>330</sup> CRC/C/GC/13, para. 47

<sup>331</sup> Montserrat, C., Garcia-Molsosa, M., Planas-Lladó, A., & Soler-Masó, P. (2022). Children's understandings of gender-based violence at home: The role school can play in child disclosure. *Children and Youth Services Review*, 136, 106431

GREVIO is not consistent in making recommendations on the importance of identifying<sup>332</sup> child witnesses and does not elaborate on the importance of recognising signs of violence, and risk factors for particular individuals or groups of children, possibly before a state of crisis is reached. Further, GREVIO is not consistent in making recommendations on this issue and does not further elaborate on how to identify child witnesses. GREVIO rightly mention to raise awareness on the effects of violence. However, This should have a scientific basis. Furthermore, as we see that children internalise domestic violence differently, it is necessary to conduct a case- by case analysis. Specific attention should be given to interviewing children in a child-sensitive manner, considering their vulnerabilities due to the trauma they have experienced.

GREVIO ignores the role children can play in responding to domestic violence. This is concerning because children should be empowered to recognise episodes of violence and receive information on the services available to them and their mothers. Moreover, child-friendly helplines and child-friendly reporting mechanisms should be implemented.<sup>333</sup> Children should also be informed of the possibility of filing a report on domestic violence.<sup>334</sup> Rules on mandating reporting for the staff aware of children witnessing violence, similar to those established by the Lanzarote Convention, should also be encouraged.<sup>335</sup>

One of the findings of the GREVIO reports is that the services related to child protection and domestic violence do not collaborate. This results in detrimental decisions and practices, such as the removal of children from the non-abusive parent and other decisions on contact and visitations rights that are not in the best interests of the child. Thus, a solid referral mechanism<sup>336</sup> among the agencies working with child witnesses is necessary.<sup>337</sup> Ideally, there should be a coordination body and the staff should be trained on the referral mechanism.<sup>338</sup>

As domestic violence occurs in the secrecy of the house, it deserves a specific kind of investigation.<sup>339</sup> Some GREVIO reports note that collaboration between the criminal and civil courts is necessary.<sup>340</sup> GREVIO also noted that civil court could seek information from other bodies, such as domestic violence services. GREVIO should give further guidance on this.

The right to recovery should be ensured through appropriate treatment.<sup>341</sup> All the services, both inside and outside the shelters, should be based on an assessment of the needs of the individual child. All rights

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<sup>332</sup> Id, para. 48

<sup>333</sup> CRC/C/GC/12, para. 120

<sup>334</sup> CRC/C/GC/13, para.49

<sup>335</sup> CoE (2007), Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, Lanzarote, 25.X.2007

<sup>336</sup> CRC/C/GC/13, para. 50

<sup>337</sup> CRC/C/GC/13, para. 50

<sup>338</sup> Id

<sup>339</sup> CRC/C/GC/13, para.51

<sup>340</sup> GREVIO/Inf(2019)16, para. 186

<sup>341</sup> CRC/C/GC/13, para. 52

should be upheld in the rehabilitation process, including the right to education and participation. It is thus necessary to ensure the stability of funding for child-specific services. Moreover, the interventions should be regularly monitored and followed up.<sup>342</sup>

A particular attention should be given to the judicial involvement<sup>343</sup> of the child. All decisions related to custody and visitation rights should prioritise the protection of the development and best interests of the child. The least intrusive is to be preferred.<sup>344</sup> The staff should also be trained in interacting with children. Further, proceedings should be taken to ensure the right of the child to participate,<sup>345</sup> in line with the Guidelines.<sup>346</sup> Children should be promptly and adequately informed by the justice system and treated in a child-friendly way. At the same time, their safety should be ensured.<sup>347</sup> As underlined by GREVIO, detrimental concepts such as parental alienation should be avoided. Lastly, it is necessary to ensure the effectiveness of the procedures. To this aim, it is necessary to have effective procedures and outcome indicators in place.<sup>348</sup>

### 6.5.1 The International and European principles

All recommendations should embed the standards set by the CRC, the CRC general comments and the jurisprudence of the ECHR.

The guidance should be based on a holistic consideration of all rights involved. Further, GREVIO should explicitly reflect upon the CRC convention and give due consideration to the wide range of children's rights. All recommendations made by GREVIO should be inspired by art. 19. More guidance is also needed on the best interests of the child (art. 3 CRC) in the context of domestic violence. Further, the right to health (art. 24 CRC), including mental health, the right to survival life, and development (art. 6 CRC) must be carefully taken into consideration. As an empowering right, the right to education (art. 28 CRC) also plays an important role in identifying violence and the recovery process. Last but not least, child participation (art.12) should be ensured to detect and respond to violence and children should receive adequate information (art. 13 CRC). All guidance should be based on the scientific understanding of the effects of violence on children, and the different ways exposure to violence can manifest based on age and other factors.

GREVIO should also carefully consider the jurisprudence of the ECHR and the positive obligations that the court has identified. GREVIO should give guidance on how states should comply with the obligation to prevent further harm when it is known that the child is exposed to domestic violence and the obligation to promptly act and give due consideration to the episodes of violence. A specific attention should be paid to the obligation of states to promptly act and give specific protection to children. Notably, the child should be

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<sup>342</sup> Id, para. 53

<sup>343</sup> Id, para. 54

<sup>344</sup> Id

<sup>345</sup> Schrama et al. (2021) International handbook on child participation in family law, 13-39

<sup>346</sup> PACE 1905 (2010), Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice

<sup>347</sup> Eriksson, M., & Näsman, E. (2008). Participation in Family Law Proceedings for Children Whose Father is Violent to Their Mother. *Childhood*, 15(2), 259–275

<sup>348</sup> CRC/C/GC/13, para. 57-58

removed from the abusive parent and emergency barring and protection orders should be encouraged in situations of domestic violence.

GREVIO should also take into due account the relevant soft law instruments of the CoE, especially the one on child witnessing and the one related to children in the justice system. A specific attention should be given to the Recommendation on children who witness domestic violence.<sup>349</sup>

### **6.6 How can GREVIO give more guidance on child witnesses?**

As noted by PACE in 2020, many challenges are found when implementing the convention in relation to child witnesses.<sup>350</sup> This is also due to the lack of clarity and guidance on the issue.

A recent article suggests to make a joint general comment between the GREVIO Committee and the CRC Committee.<sup>351</sup> It can be argued that this is not feasible for several reasons. The main one is that, while the Convention aims to be universal, no single state outside Europe has ever ratified it. The Convention indeed builds on the legal traditions of the European States and ECHR cases.

The most feasible solution in the short-term period would be to write a GREVIO General Recommendation on the issue, similar to the one that GREVIO has already issued on online violence against women. A working group closely collaborating with the Working Group on responses to violence against children (CDENF-GT-VAE) and child rights experts should accurately interpret and implement the provisions of the Convention related to children. The General recommendations should be inspired by the recommendations of the GREVIO reports and the best practices of the member states. The case laws of the ECHR, which highlight the detrimental effects of domestic violence on women, should also be considered while drafting the General Recommendation. The hope is that the General Recommendation would guide states in protecting child victims. Further, it will also help GREVIO be more consistent in its recommendations.

Another option is found in art. 68.3 of the Istanbul Convention. After the baseline report related to the implementation of the Convention, GREVIO will indeed establish a monitoring procedure related to a specific issue. GREVIO should consider opening a monitoring round on child witnesses. Thus, states would report on the issue and GREVIO would assess the shortcomings in the countries regarding child witnesses.

In the long-term, GREVIO may also propose a new protocol specifically dealing with child witnesses.

The Istanbul Convention has achieved many results in the protection of women from domestic violence. The convention and the monitoring body has lot of potential in protecting children from domestic violence.

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<sup>349</sup> PACE(2010), Children who witness violence, Resolution 1714

<sup>350</sup> PACE, (2019) Committee on Equality and Non-Discrimination, The Istanbul Convention on violence against women: achievements and challenges

<sup>351</sup> Morrison, F. and Houghton, C. (2022) 'Children's human rights in the contexts of domestic abuse and COVID-19', The international journal of human rights, 1–16.

More guidance from the GREVIO Committee can potentially change the lives of many children all over Europe.

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