

# Justice

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## Relevance of gender in the policy area

The relevance of gender in the justice policy area should be considered in terms of the following points:

- Access to justice is a human right and an integral aspect of the rule of law.
- Crime is a gender-oriented phenomenon, but the justice system does not equally accommodate women's and men's needs.
- The due diligence principle holds states (and other actors in the police and justice system) responsible for taking measures to fight violence against women.
- Acknowledging the gender dimension of crime is not only an issue of gender equality and human rights, but also an economic one.

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- Women's representation in decision-making is a matter of justice (political rights).

## Access to justice

It is essential to ensure the equality of both women and men in the justice field, not only de jure, but also de facto. Addressing the issue of gender equality in access to justice is particularly important in the aftermath of the economic crisis, as inequalities at all levels of society have been rising and impacting negatively on women's lives. Furthermore, there is a large body of literature underlining the fact that, despite a wide array of international laws ensuring equal rights for women and men, women's access to justice is not equal. This is due to a combination of inequalities at legal, institutional, structural, socioeconomic and cultural levels. Therefore, guaranteeing women's equal access to justice implies providing them with access to fair, affordable, accountable and effective remedies so that women and men can enjoy both equal rights, and equal chances to use them. As emphasised by the Council of Europe, ensuring women's and men's equal access to justice is an essential step towards achieving real gender equality.

## Crime as a gender-oriented phenomenon

Crime is not a gender-neutral phenomenon. Different studies have shown that in general women and men commit different types of crimes and, furthermore, are subject to different treatment in the legal system. For instance, when women offend, they commit more theft and burglary crimes and have a lower involvement in serious violence, criminal damage and professional crime. The UK's Report on the Inquiry into Preventing Unnecessary Criminalisation of Women shows that:

- Some women are coerced into committing crimes by abusing and controlling partners, but this aspect is barely recognised in the judicial system.
- Around half of the women identified by the criminal system in the UK committed offences to support another person's drug habit, compared to a fifth of men.
- Women are more often subject to poverty, which increases the likelihood of their involvement in crime.

Non-payment of fines (e.g. for television licences) is one of the examples quoted by the study, which finds that women are more likely to receive this type of fine as they are more likely to be at home when an inspection takes place and tenancies are more likely to be registered in their name. If they cannot pay the fine, they face tougher sentences.

## Dealing with women's and men's needs in the justice system

The literature on criminal law and gender emphasises that the general concepts and principles of law are more representative of the experiences of men than of women. Indeed, women face several challenges in the criminal justice system. Women can be victims of extremely traumatising crimes, of which gender-based violence in all its forms is the most obvious, producing both physical and psychological consequences. The judicial practices or existing procedural requirements in such cases can lead to the secondary victimisation of women if procedures and decisions are not victim-friendly, the result of which can be to alienate victims from the process and potentially lead them to withdraw the case or give up.

Secondary victimisation may be caused not only by judicial procedures, but also by staff in the police or judicial system (gender differences). Secondary victimisation is rather common, for instance, in the case of women victims of domestic violence or sex workers who face sexual or domestic violence.

Women may also experience negative consequences stemming from the criminal law system which does not take into account gender differences. The family law and the civil law system cover a series of sensitive issues (e.g. divorce, spousal and child support (maintenance), parental responsibilities, guardianship and the division of property) that are shaped by the values and norms of the society it governs. If such norms and values are characterised by gender inequalities and stereotypes, this can provide gateways for attitudes and gender stereotypes to surface. The Council of Europe gives the following examples:

- 1 | Women lose out in the division of property after divorce, mainly because implicit contracts within the marriage agreement are not honoured.
- 2 | There is a low number of men who obtain custody over their children in case of divorce, due to the belief that women are better carers.
- 3 | Many custody decisions after spousal abuse by the male partner/father continue to place the right of the abuser to exercise parental responsibilities, or the right of the child to continued contact with both parents, over the safety and other concerns of the victim – and her children.

Different areas of civil law are characterised by inequalities in the way that they treat women's and men's needs. For instance, the tax law system is based on the principle of recognising paid work. However, this system does not take into account domestic work, which is generally carried out by women, thus reinforcing the lower value ascribed to family and caring work. Gender equality in the civil law system is therefore relevant in fighting explicit legal discrimination and enforcing the equality of rights between women and men within the labour market (equal pay for work of equal value) and in terms of access to goods and services, etc.

In all OECD countries, women spend more time on care work (time spent to care for a child or

another adult) as a primary activity than men, even if in dual earners family that have become the model in OECD countries.

Women offenders within the prison system also face problems related to their gender. There are fewer women prisoners than men, and this can lead to women's needs not being accommodated by the prison system.

## **Due diligence principle applied to acts of violence against women**

The due diligence standard for violence against women (VAW) is part of the Declaration on the Elimination of Violence against Women (1993). Article 4(c) of the Declaration asks states to "exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the state or by private persons". The Committee on the Elimination of All Forms of Discrimination against Women (CEDAW) noted in its General Comment No. 19 that "States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence". According to this principle, states must display the same commitment to preventing, investigating and condemning violence against women as they do in relation to all other forms of violence.

## **Gender equality in justice is not only an issue of gender equality, but also an economic issue**

The gender dimension of crime is an economic issue as well as an issue of gender equality and human rights. According to a study by the European Institute for Gender Equality (EIGE), the costs of intimate partner violence in the EU amount to €122 billion, with intimate partner violence against women representing a cost of €109 billion (89% of the total). The cost to the EU of gender-based violence against women amounts to €225 billion. This represents 87% of the total cost of gender-based violence to the EU.

## **Women's equal representation in decision-making processes**

Women's equal representation in decision-making processes is first and foremost a political right. Furthermore, women's participation in the decision-making process also increases the likelihood of decision-making taking women's perspectives into account.

Despite the relevance of gender equality in the justice field, this area remains influenced by a set of persistent gender inequalities, which are as follows:

- gender equality and access to justice

- relevance of gender in the detention system
  - gender gaps in women's representation in decision-making positions in the judiciary system.
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## Issues of gender inequalities in the policy area

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### Gender equality and access to justice

#### **Women have less access to and ownership of judicial processes**

Intersectional discrimination in the judicial system is one of the main barriers in terms of women's equal access to justice.

#### **Women are also discriminated against due to their economic and social status**

According to the Council of Europe, belonging to a particular group of women can result in further restrictions in terms of access to justice. For instance, elderly women, disabled women and women living in remote areas may not be able to travel long distances, and courts often do not consider which facilities are needed to ensure that they can testify without travelling. Other groups include migrant women, asylum seekers and trafficked women. Such women may find it difficult to report a crime due to fear of being expelled and/or because they are unable to communicate with the police or judges in the absence of free-of-charge interpretation. Furthermore, women from vulnerable groups (e.g. women in marginalised areas, immigrant women and women from certain communities, (such as Muslim or Roma communities) face difficulties in accessing information about their rights and what facilities are available to promote their equal access to the justice system.

Both the Council of Europe and the United Nations Development Programme (UNDP) emphasise that one of the causes of unequal access to justice is lack of awareness about mechanisms aimed at protecting women in the justice system. According to the Council of Europe, where laws and mechanisms to protect women's rights exist, they may be accompanied by a lack of public awareness about their existence and the weak capacity of officials in the justice system to enforce them.

#### **Lack of financial and time resources and restrictions on the availability of legal aid**

According to the European Commission, women in the EU earn on average 16% less than men for each hour worked. Their ability to sustain justice costs (e.g. costs of legal services,

costs of transportation and accommodation, etc.) is therefore lower than men's. Vulnerable and economically disadvantaged women are increasingly likely to be detained pre-trial due to their inability to afford bail or the services of a lawyer. Furthermore, women are exposed to a higher risk of poverty, which may keep them in violent and vulnerable situations and impede them from bringing their perpetrators to justice. When it comes to time resources, it is worth recalling that women are generally still the main care-giver in society. Care responsibilities may also dissuade women from filing a complaint or pursuing a claim. As for legal aid, some of the most common obstacles to women's access to justice identified by the Council of Europe are:

- limited access to legal aid and knowledge of how it can be obtained
- limited information about legal costs and free services
- gender-blind eligibility criteria in terms of pursuing claims.

This latter element can seriously hamper women's access to legal aid. For instance, in many cases legal aid is granted based on family income, without taking into consideration the fact that the person facing prosecution is likely to be a family member upon whom the woman is dependent. Furthermore, such a measure overlooks the fact that not all women have access to family income or have an independent income.

Besides fair access to legal aid, the quality of the legal aid provided is equally important. Women who require legal aid usually come from disadvantaged groups. This implies that case-handlers should have specific skills to best accommodate the needs of these women.

### **Cultural and/or religious barriers that discriminate against women**

Cultural and social expectations and values may prevent women from seeking justice, especially in cases related to the family sphere, such as domestic violence, divorce proceedings and child support. Women from lower social classes are less likely to seek justice due to fear of mistreatment and a discriminatory attitude on the part of police officers and legal staff.

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## **Institutional circumstances**

### **Gender-neutral legislation and legislation that has not been assessed for its gender impact**

The idea of performing an impact assessment of legal provisions in order to guarantee that legislation promotes gender equality has been a public policy goal since the 1980s. Numerous legislative reforms and amendments have since aimed at achieving more gender-sensitive legislation, but, according to the Council of Europe, development has been



slow. The Council of Europe maintains that the way legislation is defined in numerous Member States may impact negatively on women's access to justice. This is apparent in definitions used in criminal law, which may better reflect men's experience than women's. Legal definitions of murder and manslaughter are one example. When men kill their partner, they are often considered to have acted without premeditation, in a context of escalating violence. On the other hand, when women kill their male partner, they usually plan the act in order to put an end to violence, especially domestic violence. Planning the act makes it premeditated murder. As the existing concepts of self-defence do not capture the reality of women who have been subjected to physical, sexual and psychological violence for years, women face the risk of being condemned to longer sentences than men. Another example is rape legislation that recognises the act of rape when the use of force can be proved. However, it is worth emphasising that in some EU Member States legislation on rape has been changed to better respond to women's needs. This is, for instance, the case in Austria, where rape legislation focuses on the lack of consent rather than on proof that the victim fought against the act, thereby reflecting that rape is first and foremost a violation of a woman's sexual integrity, irrespective of the means employed.

### **Judicial stereotyping**

Stereotyping by actors in the justice system, often known as judicial stereotyping is a common barrier to justice, particularly for women who face violence. Judicial stereotyping does not affect only women who experience violence. It can also affect women accused of violence and other crimes, or women exercising their rights in areas other than violence. Judicial stereotyping has a wide impact. It may distort judges' perceptions of what occurred in a particular situation of violence or the issues to be determined at trial; affect judges' vision of who is a victim of gender-based violence; and influence judges' views about the credibility of witnesses, etc. Judges are not the only actors in the criminal justice system who may apply stereotypes. Law enforcement officials, for instance, have been criticised for allowing stereotypes to influence their investigation of cases of violence, especially those regarding women.

### **Inadequate judicial procedures in terms of accommodating women victims' needs**

Women are more likely than men to suffer highly traumatic crimes such as sexual or domestic violence. Even though it is widely acknowledged that these crimes provoke feelings of fear, shame, self-blame and distrust, which may discourage women from bringing perpetrators to justice, judicial systems often require women victims of such crimes to take action against offenders without considering their vulnerability in such cases. For women to bring their perpetrators to justice, they are required to file charges.

... women seeking their perpetrators to justice, they are required to be charged, specifically request prosecution for sexual violence and testify several times in the presence of the perpetrator, while circumstantial evidence is usually disqualified.

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## Relevance of gender in the detention system

Women represent a vulnerable group in prisons. Some of the main factors explaining this vulnerability are the following:

- the challenges women face in accessing justice on an equal basis with men
- their disproportionate victimisation from sexual or physical abuse prior to imprisonment
- a high level of mental healthcare needs, often as a result of domestic violence and sexual abuse
- the extreme distress caused by imprisonment, which may lead to mental health problems or exacerbate existing mental disabilities
- sexual abuse and violence against women in prison
- a high likelihood of having caring responsibilities for their children, families and others.

The specific needs of women prisoners have generally been overlooked where prison systems have been primarily established with men prisoners in mind. The failure of the detention system to address women's specific needs is also reflected in the increasing rate of reoffending among women.

Women released from prison often suffer from multiple forms of discrimination due to their gender, post-release stigmatisation and victimisation, and abandonment by their families.

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## Gender gaps in decision-making positions

According to the United Nations Office on Drugs and Crime (UNDOC), women are underrepresented as actors in the justice system, but overrepresented as victims/survivors of gender-based crimes (e.g. violence, discrimination, harassment).

The Court of Justice of the European Union constitutes the judicial authority of the European Union. In cooperation with the courts and tribunals of the Member States, it ensures the uniform application and interpretation of European Union law. The Court of Justice of the European Union consists of 3 courts: the Court of Justice (also known as the



European Court of Justice), the General Court, and the Civil Service Tribunal. In 2015 there were no women presidents in European Union courts and on average only 27% of the court members were women (with 32% women members within the European Court of Human Rights [1] and only 14% on the Civil Service Tribunal). Furthermore, women tend to be overrepresented in traditionally family-related areas, such as family law, while men are overrepresented in fields typically considered as 'male' (e.g. commercial and tax law).

When it comes to policing, it is acknowledged that the increased presence of women officers contributes to an increase in the reporting of sexual violence and other forms of violence against women. However, men continue to dominate in police forces.

[1] The European Court of Human Rights is an international court set up in 1959. It rules on individual or State applications alleging violations of the civil and political rights set out in the European Convention on Human Rights.

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## **Gender equality policy objectives at EU and international level**

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### **EU level**

Regulatory power over justice policy is divided between the EU and the Member States. While national states decide on the organisation of their justice system, including the prison system, the European Commission has adopted a relevant body of legislation for the protection of victims and for ensuring fair treatment of offenders. Concerning women in the justice system, EU policy is mainly focused on combating gender-based violence and ensuring the protection of women victims of crime. The paragraphs below detail the main gender equality policy objectives of the EU institutions in this area.

### **European Commission**

In the last few years, the European Commission has taken several legislative and non-legislative measures to ensure the protection of women subjected to crimes, in particular violence, and the fight against gender-based violence.

In 2010, the Commission adopted the Communication "A strengthened commitment to equality between women and men – a women's charter" COM(2010) 78. This promotes, inter alia, the fight against gender-based violence.

Combating gender-based violence and protecting and supporting victims as well as promoting gender equality and women's rights across the world are also two of the thematic priorities area of the Strategic engagement for gender equality 2016-2019.

In order to protect women victims of crime, and in particular of violence, the European Commission has adopted 3 directives introducing specific measures in this area:

Directives on sexual harassment in employment and self-employment. Harassment and sexual harassment are deemed to be discrimination on grounds of sex. This Directive enables European Union (EU) countries to adopt positive action measures. Such public measures are aimed at ensuring full equality between men and women in working life, for example by promoting business creation by women.

Directive 2011/99 of the European Protection Order and Regulation 606/2013 on mutual recognition of protection measures in civil matters ensure that restraining and protection orders issued in one EU country can be recognised across the EU, enabling individuals who have suffered domestic violence to be protected from the perpetrators if they travel or move anywhere in the EU.

Directive 2011/92/EU on combating sexual abuse and sexual exploitation of children and child pornography provides a set of effective measures to prevent, support and protect victims, including girls, and punish perpetrators.

Directive 2012/29/EU on common minimum standards on the rights, support and protection of victims of crime foresees measures to ensure that women victims of violence, such as gender-based violence:

- 1 | are treated with respect by well-trained police, prosecutors and judges and receive understandable information on their rights
- 2 | can receive specialised support in all EU countries
- 3 | can participate in proceedings and have certain rights (such as the right to be heard, the right to legal aid, the right to interpretation and translation, the right to review a decision not to prosecute)
- 4 | are protected from secondary and repeat victimisation, from intimidation and from retaliation during police investigations and court proceedings (e.g. by limiting the number of interviews and medical examinations to a minimum, and by ensuring special measures to avoid visual contact with the offender during court proceedings).

In order to protect victims of trafficking in human beings the European Commission has adopted Directive 2011/36/EU of 5 April 2011 on preventing and combating trafficking in

adopted Directive 2011/36/EU of 8 April 2011 on preventing and combating trafficking in human beings and protecting its victims, replacing the Council Framework Decision 2002/629/JHA. The Directive establishes minimum rules concerning the definition of criminal offences and sanctions in the area of trafficking in human beings. It also introduces common provisions, taking into account the gender perspective to strengthen the prevention of this crime and the protection of the victims thereof (Article 1).

Besides legislative measures, the European Commission also dedicates specific financial resources to fighting gender-based violence through the 2014 – 2020 Justice Programme and the Rights, Equality and Citizenship Programme 2014 – 2020. The programme aims to help create a European area of justice, based on mutual trust. The specific programme priorities on gender equality are:

- promotion of gender equality and gender mainstreaming
- fighting against all forms of discrimination and racism
- promotion of children's rights
- fighting violence against women, young people and children.

## **European Parliament**

The European Parliament has adopted several resolutions calling on the Commission and the EU Member States to strengthen the fight against gender-based violence and promote the EU policy framework in this area. Some of the most relevant are:

European Parliament Resolution of 5 April 2011 on priorities and outline of a new EU policy framework to fight violence against women (2010/2209(INI))

This proposes a new comprehensive policy approach against gender-based violence including, among others: a criminal law instrument in the form of a directive against gender-based violence; measures to address the 'six-P' framework on violence against women (policy, prevention, protection, prosecution, provision, and partnership); requirements for Member States to demonstrate due diligence (see previous chapter for further details) and to record and investigate all forms of gender-based violence crimes in order to initiate public prosecution.

Resolution of 6 February 2013 on the 57th session on UN CSW: Elimination and prevention of all forms of violence against women and girls

It calls on the Commission and Member States to review the policies, programmes and resources available for confronting violence within and outside the EU, and to strengthen their strategy with upgraded instruments and ambitious goals.

Resolution of 25 February 2014 with recommendations to the Commission on combating Violence Against Women (2013/2004(INL))

It requests the Commission to present an EU-wide strategy and an action plan to combat all forms of violence against women and girls (VAWG) and to submit by the end of 2014, on the basis of Article 84 TFEU, a proposal for an act establishing measures to promote and support the action of Member States in the field of prevention of VAWG. Furthermore, it calls in the Commission to submit a revised proposal for a Regulation on European statistics that would target violent crimes and include a coherent system for collecting statistics on gender-based violence in the Member States. It also urges the Council to activate the passerelle clause, by adopting a unanimous decision identifying violence against women and girls (and other forms of gender-based violence) as an area of crime listed in Article 83(1) TFEU.

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## International level

At international level gender equality priorities in justice focus on:

- eradicating gender-based violence
- ensuring protection of women victims of crime
- increasing women's access to justice
- ensuring equal justice procedures to women offenders
- mainstreaming gender in the detention system

They also ensure gender balance in the composition of courts and police force as well as enhancing women's participation in the decision-making process in the justice field.

## United Nations

Fighting violence against women and ensuring women victims' protection is also an objective of the UN policy in the justice field.

One of the most relevant UN actions in this field consists of the adopting of the 1979, Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) (A/34/46), which provides that state parties shall:

- embody the principle of the equality of men and women in their national constitutions and ensure the practical realisation of this principle (Art. 2 (a))

- adopt appropriate legislative measures prohibiting all discrimination against women (Art. 2 (b))
- establish legal protection of the rights of women on an equal basis with men (Art. 2 (c))
- ensure that public authorities and institutions shall act in conformity with this obligation (Art. 2 (d))
- modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women (Art. 2 (f))
- repeal all national penal provisions which discriminate against women (art. 2 (g))
- accord women equality with men before the law, a legal capacity identical to that of men and the same opportunity to exercise that capacity (art. 15)

Furthermore, according to CEDAW's General recommendation n.33 on women's access to justice, states have to ensure equal access to justice for women by:

- mainstreaming the gender perspective within the justiciability, availability, accessibility, good-quality, provision of remedies and accountability of justice systems
- ensuring that the principle of equality before the law is given effect by taking steps to abolish any existing laws, procedures, regulations, jurisprudence, customs and practices that directly or indirectly discriminate against women especially in their access to justice, and to abolish discriminatory barriers to access to justice
- ensuring that independent, safe, effective, accessible and child-sensitive complaint and reporting mechanisms are available to girls
- taking measures to avoid marginalisation of girls due to conflicts and disempowerment within their families and the resulting lack of support for their rights; abolish rules and practices that require parental or spousal authorisation for access to services such as education, health, including sexual and reproductive health, as well as access to legal services and justice systems
- protecting women and girls against interpretations of religious texts and traditional norms creating barriers to their access to justice resulting in discrimination against them
- adopting measures, including awareness-raising and capacity-building for all actors of justice systems and for law students to eliminate gender stereotyping and incorporate a gender perspective in all aspects of the justice system

- including other professionals, in particular health professionals and social workers, who can play an important role in cases of violence against women and in family matters, in these awareness-raising and capacity-building programmes
- considering promoting a dialogue on the negative impact of stereotyping and gender bias in the justice system and the need for improved justice outcomes for women victims and survivors of violence
- raising awareness on the negative impact of stereotyping and gender bias and encourage advocacy related to stereotyping and gender bias in justice systems, especially in gender-based violence cases
- providing capacity building to judges, prosecutors, lawyers and law enforcement officials on the application of international legal instruments related to human rights, including the CEDAW Convention and the jurisprudence of the CEDAW Committee, and on the application of legislation prohibiting discrimination against women
- providing education from a gender perspective for all actors of the judiciary system
- awareness-raising on gender equality in the judiciary field through civil society, media and information and communication technologies
- ensuring that women have equal access to legal aid and public defence.

The recommendation also includes a series of specific indications for constitutional law; civil law; family law; criminal law; and administrative, social and labour law.

In addition, the United Nations 1993 Declaration on the Elimination of Violence against Women (A/RES/48/104) foresees that states shall: prevent, investigate and punish acts of violence against women (Art. 4 (c)); develop domestic legislation to punish and redress the wrongs caused to women who are subjected to violence (Art. 4 (d)); provide women who are subjected to violence with access to mechanisms of justice and just and effective remedies for the harm they have suffered (Art. 4 (d)); and ensure that law enforcement officers and public officials responsible for implementing policies to prevent, investigate and punish violence against women receive training to sensitise them to the needs of women (Art. 4 (i)).

The Fourth World Conference on Women Beijing Declaration and Platform for Action (1995) takes further action in this field. The Beijing Platform for Action calls on governments to: review all laws and legal practices to ensure the implementation of the principles and procedures of all relevant international human rights instruments by means of national legislation (para. 124-d, e); revoke any laws that discriminate on the basis of sex

and remove gender bias in the administration of justice (para. 232-d); ensure access to free or low-cost legal services, including legal literacy, especially designed to reach women living in poverty (para. 61-a); and ensure that women have the same right as men to be judges, advocates or other officers of the court (para. 323-m).

In 2010, the UN (ECOSOC) (2010) Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice urges Member States to:

- Review, evaluate and update their national laws, policies, codes, procedures, programmes and practices, especially their criminal laws, on an ongoing basis to ensure and guarantee their value, comprehensiveness and effectiveness in eliminating all forms of violence against women and to remove provisions that allow for or condone violence against women or that increase vulnerability or revictimisation of women who have been subject to violence (para. 14-a).
- Review, and, where appropriate, revise, amend or abolish any laws, regulations, policies, practices and customs that discriminate against women or have a discriminatory impact on women, and to ensure that provisions of multiple legal systems, where they exist, comply with international human rights obligations, commitments and principles, in particular the principle of non-discrimination (para. 14-e).
- Provide for or to encourage mandatory cross-cultural, gender and child-sensitivity training modules for police, criminal justice officials and professionals involved in the criminal justice system on the unacceptability of all forms of violence against women and on their harmful impact and consequences on all those who experience such violence (para. 20-a).

Mainstreaming gender in the detention system is another relevant UN objective in the justice field. The United Nations (2010) Resolution 16 on Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) foresees that Member States:

- Shall take into account the distinctive needs of women prisoners in the application of the Standard Minimum Rules for the Treatment of Prisoners. Providing for such needs in order to accomplish substantial gender equality shall not be regarded as discriminatory (Rule 1).
- Shall make efforts to review, evaluate and make public periodically the trends, problems and factors associated with offending behaviour in women and the effectiveness in responding to the social reintegration needs of women offenders



effectiveness in responding to the social reintegration needs of women offenders, as well as their children, in order to reduce the stigmatisation and negative impact of those women's confrontation with the criminal justice system (Rule 69).

## Council of Europe

One of the main gender objectives of the Council of Europe in the justice field refers to ensuring equal access to women to the justice system.

The 2014 – 2017 Council of Europe Gender Equality Strategy focuses on, among others, working with Member States towards guaranteeing equal access of women to justice. The strategy establishes that action in this area will seek to:

- analyse national and international frameworks to gather data and identify the obstacles women encounter in gaining access to the national courts and to international justice
- identify, collect and disseminate existing remedies and good practices to facilitate women's access to justice
- make recommendations to improve the situation.

Furthermore, the recommendation No. R (93)1 of the Committee of Ministers to Member States on effective access to the law and to justice for the very poor urges Member States to grant equal access to justice for the poor. Even though the recommendation does not directly target women, women are mostly benefiting from it as they are at risk of poverty more often than men. Some of the measures foreseen by the recommendation are:

- promoting, where necessary, action to make the legal profession aware of the problems of the very poor
- promoting legal advice services for the very poor
- defraying the cost of legal advice for the very poor through legal aid, without prejudice to the payment of a modest contribution by the persons benefiting from such advice where this is required by domestic law
- promoting the setting up of advice centres where the need is apparent in underprivileged areas
- increasing the involvement of non-governmental organisations or voluntary organisations providing support to the very poor in quasi-judicial forms of conflict resolution such as mediation and conciliation
- extending the benefit of legal aid or any other form of assistance to such methods

of conflict resolution

- extending legal aid or any other form of assistance to all judicial instances (civil, criminal, commercial, administrative, social, etc.) and to all proceedings, contentious or non-contentious, irrespective of the capacity in which the persons concerned act.

According to the Council of Europe, in order to ensure equal access to justice for women there should be a balance between women and men working in the justice system. Through the 2010 Recommendation CM/REC 12 on judges: independence, efficiency and responsibilities, the Council of Europe urges Member States to ensure a gender balance in courts and in judiciary councils, wherever they exist.

Another relevant gender priority in this area consists of mainstreaming gender in the detention system. The Recommendation CM/Rec, 2012, 12 of the Committee of Ministers to Member States concerning foreign prisoners foresees that: special measures shall be taken to combat the isolation of foreign women prisoners; attention shall be paid to meeting the psychological and healthcare needs of foreign women prisoners, especially those who have children; arrangements and facilities for pre-natal and post-natal care shall respect cultural and religious diversity.

The Recommendation CM/Rec 2012, 5 of the Committee of Ministers to Member States on the European Code of Ethics for Prison Staff foresees that: Member States have to use instruments of restraint only as provided for by Rule 68 of the European Prison Rules. In particular they shall never use them on women during labour, during birth and immediately after birth; prison staff shall be sensitive to the special needs of individuals, such as juveniles, women, minorities, foreign nationals, elderly and disabled prisoners, and any prisoner who might be vulnerable for other reasons, and make every effort to provide for their needs; and that probation agencies shall develop community service schemes that encompass a range of tasks suitable to the different skills and diverse needs of offenders. In particular, there must be appropriate work available for women offenders, offenders with disabilities, young adult offenders and elderly offenders.

The Recommendation Rec 2006, of the Committee of Ministers to Member States on the European Prison Rules foresees that: special provision shall be made for the sanitary needs of women; the authorities shall pay particular attention to the requirements of women such as their physical, vocational, social and psychological needs when making decisions that affect any aspect of their detention; prisoners shall be allowed to give birth outside prison, but where a child is born in prison the authorities shall provide all necessary support and facilities; and that men and women shall be represented in a balanced manner on the prison staff

The Recommendation Rec 2003, 23 of the Committee of Ministers to Member States on the management by prison administrations of life sentence and other long-term prisoners urges Member States to: pay particular attention to women's individual sentence planning since women prisoners usually constitute a small minority of those serving long or life sentences; make particular efforts for women prisoners to avoid social isolation by merging them as far as possible with the general population of women prisoners; give access to special services for women prisoners who have been subject to physical, mental and sexual abuse; ensure mothers serving life or other long sentences are not denied the opportunity of having their young children with them solely because of their sentence.

The Council of Europe has also taken measures to fight gender-based violence. The 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) is particularly relevant. The Istanbul Convention has been recognised as the most powerful legally binding set of comprehensive standards for preventing and combating violence against women, and relevant as a global tool in and beyond Europe. Its preamble states that the state responsibility to act with due diligence is not an obligation of results, but an obligation of means. Parties are required to organise their response to all forms of violence covered by the scope of the Convention in a way that allows relevant authorities to diligently prevent, investigate, punish and provide reparation for such acts of violence. The Convention applies to all victims of domestic violence and, in particular, to women victims of gender-based violence and aims to:

- protect women against all forms of violence, and prevent, prosecute and eliminate violence against women and domestic violence
- contribute to the elimination of all forms of discrimination against women and promote substantive equality between women and men, including by empowering women
- design a comprehensive framework, policies and measures for the protection of and assistance to all victims of violence against women and domestic violence
- promote international co-operation with a view to eliminating violence against women and domestic violence
- provide support and assistance to organisations and law enforcement agencies to effectively co-operate in order to adopt an integrated approach to eliminating violence against women and domestic violence.

# Policy cycle in justice

## How and when? Justice and the integration of the gender dimension into the policy cycle

The gender dimension can be integrated in all phases of the policy cycle. For a detailed description of how gender can be mainstreamed in each phase of the policy cycle visit EIGE's Gender mainstreaming platform.

Below, you can find useful resources and practical examples for mainstreaming gender into justice. They are organised according to the most relevant phase of the policy cycle they may serve.

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## Practical examples of gender mainstreaming in justice

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### Bulgaria

Applying the method of court watch for monitoring the implementation of the law on protection against domestic violence (DV).

This programme aims to:

- improve the effectiveness of protection of victims of domestic violence in Varna courts
- raise the awareness of judges and prosecutors on the issue of victim protection
- raise the visibility and publicity of justice done in cases of DV
- continuously train volunteer monitors
- transfer the experience of US practised court watch.

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### UK

In 2013, the British Ministry of Justice proclaimed 4 key priorities that guide the reforming of the rehabilitation system for women offenders, within the more general agenda for transforming the rehabilitation of offenders:

- Ensure the provision of credible, robust sentencing options in the community that will enable female offenders to be punished and rehabilitated in the community where appropriate.
- Ensure the provision of services in the community that recognise and address the specific needs of female offenders, where these are different from those of male offenders.
- Tailor women's custodial estate and regimes so that they reform and rehabilitate offenders effectively, punish properly, protect the public fully, meet gender specific standards and locate women in prisons as near to their families as possible.
- Through the transforming rehabilitation programme, support better life management by female offenders ensuring all criminal justice system partners work together to enable women to stop reoffending.

### **WomenMATTA project**

This is run by the Greater Manchester Community Rehabilitation Company and is an example of how these priorities can be translated into practice. The project aims to establish a unique, holistic support service in Manchester and Trafford for women in contact with the criminal justice system. WomenMATTA was launched to provide individual and group-based support to women in prisons, in magistrate's courts and in police custody suites across the target area. This whole system approach has now been expanded by the Justice and Rehabilitation Executive Board to cover all 10 council areas in Greater Manchester. WomenMATTA is an example of a one-stop shop of specialist services which is run from a women's centre and sets out to achieve a community-led whole system approach for women. The long list of issues faced by female offenders have been highlighted as housing, education, immigration, legal rights, work, benefits, domestic violence and abuse, debt, finding a solicitor, mental health, children ... while these are not unusual, the flexibility of the approach enables any of these issues to be tackled at all stages of the criminal justice cycle.

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## **Spain**

In 2004, the Spanish Parliament adopted the Organic Act 1/2004 of Comprehensive Protection Measures against Gender Violence changed the approach to the struggle against gender violence. The act addresses gender violence globally through a multidisciplinary range of measures which aim to influence public opinion on the subject. It raises the visibility of this type of violence, portraying it not as a private issue of

interpersonal relations, but as a structural form of violence that affects society as a whole. The law acknowledges and immediately grants rights to the victims of gender violence. The creation of the courts on violence against women is one of the measures foreseen by the act. These have the power to deal with the following crimes: homicide (manslaughter or murder); abortion harm to the foetus; crimes against freedom; crimes against moral integrity; sexual crimes or any other crime committed by the present of past spouse or significant other, independently of living together as well as against minors and the unable that are under the legal custody or care of the offender; crimes against family obligations when the victim is one of the mentioned before. Furthermore, they intervene also in the civil jurisdiction acting as courts of first instance and inquiry. These procedural regulations are designed to package the legal response to a situation of violence into a single process, coordinating the measures adopted and saving the victim from having to bring several proceedings simultaneously.

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## Timeline

The key milestones of the EU justice policy are presented below.

### European Convention on Human Rights of the Council of Europe.

Read the convention [here](#).

1950 - 1950

### The Treaty of Maastricht is creating a formal intergovernmental system for justice and home affairs.

Read the treaty [here](#).

1992 - 1992

### Treaty of Amsterdam introducing the concept of developing an area of freedom, security and justice.

Read the treaty [here](#).

1997 - 1997

## **Treaty of Nice providing for cooperation through the European Judicial Cooperation Unit (Eurojust) and proclaiming the EU Charter of Fundamental Rights.**

Read the treaty [here](#).

2001 - 2001

## **Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims.**

Read the directive [here](#).

2004 - 2004

## **Treaty of Lisbon including the EU Charter of Fundamental Rights.**

Read the treaty [here](#).

2007 - 2007

## **Council of the European Union. Procedural rights in criminal proceedings.**

Read the report [here](#).

2009 - 2009

## **Charter of Fundamental Human Rights of the European Union (2010/C 83/02).**

Read more [here](#).

2010 - 2010

## **European Commission, Communication from the Commission. A strengthened commitment to equality between women and men. A women's charter.**

Read more [here](#).

2010 - 2010



## **European Council. The Stockholm Programme – an open and secure Europe serving and protecting citizens (2010/C 115/01).**

Read more about the programme [here](#).

2010 - 2010

## **Council of the European Union, Council Conclusions on the European Pact for Gender Equality (2011 – →2020).**

Read more [here](#).

2011 - 2011

## **Council Directive 2011/99 of 13 December 2011 on the European Protection Order and Regulation 606/2013 on mutual recognition of protection measures in civil matters.**

Read the directive [here](#).

2011 - 2011

## **Council Directive 2011/92/EU of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography.**

Read the directive [here](#).

2011 - 2011

## **Council Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes.**

Read the regulation [here](#).

2011 - 2011

## **Directive 2012/29/EU of the European Parliament and of the Council**

[Directive 2012/29/EU](#) of the European Parliament and of the Council of 25 October 2012

[Directive 2012/29/EU](#) of the European Parliament and of the Council of 23 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

2012 - 2012

## **Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings.**

Read the directive [here](#).

2012 - 2012

## **Regulation (EU) No 606/2013 of the European Parliament and of the Council of 12 June 2013 on mutual recognition of protection measures in civil matters.**

2013 - 2013

## **COM(2013) 821/2 Proposal for a Directive of the European Parliament and of the Council on the strengthening of certain aspects of the presumption of innocence and of the right to be present at trial in criminal proceedings.**

2013 - 2013

## **COM(2013) 822/2 Proposal for a Directive of the European Parliament and of the Council on procedural safeguards for children suspected or accused in criminal proceedings.**

Read more [here](#).

2013 - 2013

## **Proposal for a Directive of the European Parliament and of the Council on provisional legal aid for suspects or accused persons deprived of liberty and legal aid in European: Arrest warrant proceedings.**

Read more [here](#).

2013 - 2013

## **C(2013) 8178 Commission recommendation on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings.**

Read more [here](#).

2013 - 2013

## **Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters.**

Read more [here](#).

2014 - 2014

## **Proposals for Council Decisions on the signing and conclusion of the Istanbul Convention by the EU**

Read the full proposal [here](#).

2016 - 2016

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## **Current policy priorities at EU level**

The European Union's mission is to build a European area of justice. The aim is to offer practical solutions to cross-border problems, so that citizens feel at ease when moving around the EU and businesses can make full use of the Single Market. This means:

- respect for fundamental rights by the EU, and by Member States at national level
- equal treatment on the basis of sex, race or ethnic origin, religion or belief, disability, age and sexual orientation
- protection for personal data anywhere in the EU.

The current priorities of the EU in the criminal justice field are:

- [strengthening of the role of Eurojust](#), which helps to build mutual trust and to bridge the

- [strengthening of the role of Eurojust](#), which helps to build mutual trust and to bridge the EU's wide variety of legal systems and traditions
- creating a European Public Prosecutors Office with the aim of investigating and prosecuting EU-fraud and other crimes affecting the Union's financial interests
- [designing a more coherent approach to criminal sanctions](#), stronger procedural rights and more efficient help to victims of crime.

When it comes to victim protection, the EU acts to ensure that victims are:

- recognised and treated with respect and dignity
- are protected from further victimisation and intimidation from the offender and further distress when they take part in the criminal justice process
- receive appropriate support throughout proceedings and have access to justice
- have appropriate access to compensation.

The European Commission acknowledges that it is not enough to have victims' rights only on paper. These rights must be applied and implemented in practice. Adequate transposition, implementation and application of the newly adopted EU measures are [a priority for the Commission's actions in the area of victims' rights](#).

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## Want to know more?