

KEY FINDINGS

Lesbianising the Istanbul Convention



Research on the
Implementation of
the Convention to
Protect LBT Women

April 2024



LESBIANISING THE ISTANBUL CONVENTION - Summary of key findings

This report and the underlying research have been created with several objectives in mind. First, the report aims to present lesbian rights not only from the point of view of anti-discrimination/anti-hate crime policies and other LGBTI-focused policies. It is also important that the experience of lesbians, especially their experience of violence, takes a feminist approach and is considered for its gendered aspect.

On one hand, this study is a legal analysis that aims to “lesbianise” the Istanbul Convention, meaning to interpret it in a way that is inclusive of the perspectives and experiences of lesbian, bisexual, trans and intersex women. It provides an interpretation of lesbophobic violence, that focuses on the gendered aspect of violence committed against lesbians. It therefore underlines the connections between those experiences and the framework of the Convention rather than excluding them from it.

On the other hand, the research question focused on whether the anti-discrimination clause of the Convention (art. 4.2) is implemented by member states. For this reason, the analysis focused not only on the Convention and Explanatory Report but also the available baseline evaluations conducted by GREVIO at the time of the research (28 countries). The main results are summarised in this introductory briefing that should be considered in conjunction with the more detailed analysis provided in the report below.

The legal analysis and the analysis of the monitoring reports was completed by experts involved in a **focus group** organised in Valencia in September 2023. The focus group also allowed the **collection of good practices**, mainly from the civil society, that are also presented.

This research was developed in a political landscape where feminist and LGBTI initiatives are defunded and deprioritised. It is for this reason that Feminist NGOs and groups, that have been engaged for decades in the fight against gender-based violence, should be considered allies of LBT women and non-binary persons. They should be part of the conversation concerning inclusiveness of support services, access to justice and liberation for victims and survivors of GBV rather than excluded.

The report does not aim to create a hierarchy of oppressions, nor a competition of needs and priorities, but aims to start a conversation. For this reason, WAVE, the feminist network of women specialists’ services in Europe, was involved since the beginning, has been part of expert dialogues held in institutional settings and has provided comments on this report.

DISPELLING THE MYTH OF THE “MORE INCLUSIVE” GENDER NEUTRALITY

A lesbian interpretation of the Istanbul convention needs, first of all, to position itself on whether the fight against GBV should be considered as “gender-neutral” and should therefore not mention women.

In line with GREVIO findings, the report concludes that **women and gender minorities at the intersection of different discriminations are the first that will suffer from gender neutral policies.** It is fundamental to recognise the fact that violence is rooted in power inequalities and social and cultural structures (including heteronormativity). Such norms and values that govern society lead to women’s subordinate status in both the private and public spheres. This applies to straight women victims of Intimated Partner Violence (IPV) as well as to LBT women that suffer violence at the hands of their parents or sexual assaults from strangers. In case of intimate partner violence in lesbian couples, this analysis stands: lesbian couples are not immune to patriarchal structures present in our societies, nor to the patriarchal idea of love as ownership and possession over the body and soul of one’s partner.

While it is important to understand that gender is not a substitute for ‘women’, gender-neutrality is counter-productive, because it overlooks the gendered nature of violence and creates a sense of ‘competition’ between women’s rights and LGBTI people’s rights. GBV maintains a particular system of power that affects primarily women (and people perceived/socialised as such), including especially those that violate the gender norms imposed on them, whether it is by being lesbians, by being trans or by not sticking to the role women are expected to have in a heterosexual relationship. Therefore, referring to gender-based violence when addressing lesbian experiences with violence and mentioning LBT women when referring to GBV are both useful and necessary to ensure that lesbian experiences are not further made invisible.

It is not the neutrality of the legislation that will improve protection and access to justice for victims. On the contrary, it is necessary to be more explicit and in this way challenge legal systems based on cis-heteronormativity.

Participants in the focus group highlighted that lack of legal gender recognition restricts the right of trans women to receive administrative guarantees aimed at assist of the victims of domestic violence. For example, in **Georgia**, trans women cannot request a restraining order as their identity documents sex marker indicates that they are male. In 2018, a court rejected a trans woman’s request for a restraining order, considering her to be an unauthorized person to file for the order.

For these reasons, **making LBT women and non-binary people explicitly visible is better than keeping a 'gender-neutral' approach to GBV.** It is a more precise approach, because it makes explicit the causes and impacts of the violence. A “gender-aware approach” strengthens the understanding of violence against women and non-binary persons as a social rather than an individual problem, requiring comprehensive responses, beyond those aimed at specific events, individual perpetrators, and victims/survivors. It also enables policy-makers to pay more attention to the social position and needs of the victim/survivor, instead of assuming that any victim of gender-based violence is a heterosexual cisgender woman.

INCLUDING LESBOPHOBIC AND TRANSPHOBIC VIOLENCE WITHIN THE ISTANBUL CONVENTION

In line with these premises, the report provides a legal interpretation of the Convention that clearly shows that violence against LBT women is fully part of its legal framework. The report does this in two ways:

1. It **interprets the substantive provisions** of the IC to show **the lesbian manifestation of a particular form of violence.** For instance, **corrective practices** imposed upon young lesbians by their parents or by institutions constitute **psychologic and domestic violence.** These practices can trigger the aggravating circumstance related to the consequences of the violence (Article 46, h) and the one related to the situation of a person made particularly vulnerable (Article 46, c).
2. It looks at the **circumstances surrounding criminal responsibility** to ensure that **lesbophobic violence is addressed and prosecuted** within the framework of the IC. For instance, the **killing of a girl by her brother, her father or other relative *for being a lesbian*** could be considered an act of physical violence, characterised by ‘extreme levels of violence’ (Article 46, f), and as an act committed within the family (Article 46, a) and therefore as **femicide.**

Further details are contained in the table here below:

VIOLENCE + IC ARTICLE	IC DEFINITION	CONDUCTS	MOST-AFFECTED VICTIMS
DOMESTIC VIOLENCE (ARTICLE 3, B)	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. DV not conceived as a separate offence; not differentiated from IPV. A series of behaviours fall under the umbrella term DV.	Battering, slapping, pushing, hitting. Lesbophobic rape Facilitating lesbophobic rape Rape ¹ Economic violence Psychological violence (including conversion practices, insults in the family)	All Youngsters IPV- partners
PSYCHOLOGICAL VIOLENCE (ARTICLE 33)	The intentional conduct of seriously impairing a person's psychological integrity through coercion or threats	Conversion practices Forced medical treatment Manipulation, Insults Hate speech	All Youngsters IPV- partners
STALKING (ARTICLE 34)	The intentional conduct of repeatedly engaging in threatening conduct directed at another person, causing him or her to fear for her or his safety	Street and online stalking	All Trans, Butches
PHYSICAL VIOLENCE (ARTICLE 35)	The intentional conduct of committing acts of physical violence against another person	Battering, slapping, pushing, hitting. Conversion practices	All
SEXUAL VIOLENCE, INCLUDING RAPE (ARTICLE 36)	The intentional conduct of engaging in non-consensual vaginal, anal or oral penetration of a sexual nature of the body of another person with any bodily part or object engaging in other non-consensual acts of a sexual nature with a person; causing another person to engage in non-consensual acts of a sexual nature	Lesbophobic rape Facilitating lesbophobic rape Rape Sexual violence within IPV	All Youngsters IPV- partners
FORCED MARRIAGE (ARTICLE 37)	The intentional conduct of forcing an adult or child to enter a marriage	Forced heterosexual marriage	All Youngsters Countries not recognising egalitarian marriage
FEMALE GENITAL MUTILATION (ARTICLE 38)	Excising, infibulating or performing any other mutilation of the whole or any other part of a woman's labia or clitoris	Compulsory sex confirmation surgeries	Practicing communities Trans women and trans persons
FORCED ABORTION AND FORCED STERILISATION (ARTICLE 39)	Performing an abortion on a woman without her prior and informed consent; Performing surgery which has the purpose or effect of terminating a woman's capacity to naturally reproduce without her prior consent	Forced sterilisation to align the legal gender with the person's gender identity ²	Trans women and trans persons
SEXUAL HARASSMENT (ARTICLE 40)	Any form of unwanted verbal, non-verbal or physical conduct of a sexual nature with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment	At work, street harassment, online and through ICT Hate speech	All

1 With regard to the material scope of specific offences on domestic violence, explicit mention of sexual violence is present in several States in Europe. See, in that respect, De Vido S., Sosa L. (2021), Criminalisation of gender-based violence against women in European States, including ICT-facilitated violence. EELN, European Commission, p. 61.

2 Several European countries require hormonal treatment and/or sex confirmation in order to allow for change of the legal gender. More details are available at here: <https://transrightsmap.tgeu.org/>

LESBOPHOBIA AS AN AGGRAVATING CIRCUMSTANCE

Aside from this interpretative effort, it is important to note that all these practices and forms of violence have a common fil rouge, which is lesbophobia. Including lesbophobic motives as an aggravating circumstance would mark a significant step forward in countering GBV against lesbians as it would allow the emergence, from the neutrality of criminal law, of the gendered dimension of those crimes.

Though this aggravating circumstance is not enshrined in the Istanbul Convention, it can nonetheless emerge using the traditional criteria of interpretation of international law, by reading the provisions on aggravating circumstances in conjunction with Article 4 (3) IC containing the prohibited grounds for discrimination.

In this sense good practices have been identified in **policy at Council of Europe level**, in the **EU Directive on Violence against Women** and in **judicial decisions in France**.

ADDRESSING LESBOPHOBIC INSTITUTIONAL VIOLENCE

One of the clear results of the research is also the need to **address the impact of institutional violence on LBT women and non-binary persons**. Institutional violence is the violence committed by public officials that can take the form of physical or sexual violence – for example in detention centres, or healthcare facilities – as well as inertia in the police investigation, harassment, psychological violence, lack or delay in the investigation, non-recognition of one's identity or even 'tolerance' expressed by police forces or judicial authorities with regard to cases of gender-based violence against LBT women.

The European Court of Human Rights, in *J.L. v. Italy*, decided in 2021, dealt with the case of a gang rape against a bisexual woman.³ The Italian court of appeal acquitted all men involved, accepting the argument of the defendants that she had no credibility. The domestic judges blamed her for her bisexuality, labelling her as 'uninhibited,' 'non-linear,' 'capable of managing her (bi)sexuality and of having casual sex encounters she wasn't entirely convinced of,' having an 'ambivalent attitude to sex, which led her to choices that she did not entirely own, and experienced in a contradictory and traumatizing fashion.' The Court in Strasbourg found that Italy violated Article 8 of the European Court of Human Rights, because the references of the Court of Appeal to the applicant's bisexuality, her relationships, and casual sexual relations prior to the events in question were 'unjustified.'

3 J.L. v. Italy, Appl. No. 5671/16, judgment of 27 May 2021 [ECtHR]

Participants in the focus groups shared cases of institutional violence against women committed in **France, Georgia and Ukraine**. This included threatening tactics consisting of arrests for vague reasons, random identity checks by the police, as well as secondary victimisation when survivors approach the public authorities. At the same time, LBT women and non-binary persons have some of the lowest reporting rates among the LGBTI communities and are often very reluctant to approach public authorities after having been victimised. In this sense, the **training of professionals** appears to be one of the key actions to address violence against lesbians.

In that respect, training must raise awareness of the relevant provisions of the Istanbul Convention, including Article 4(3), 15, and 54, as applicable to protect LBT women from GBV; and of the Court of Strasbourg's arguments on the right to privacy of LBT women when they are victims/survivors of gender-based violence. However, participants in the focus group mentioned that, even when trainings are conducted, they are insufficient, do not present any form of assessment of the outcomes, and their quality is low because the programme has been designed without involving lesbian organisations.

QUANTITY DOES NOT MEAN QUALITY: AGAINST THE COMMODIFICATION OF SURVIVORS' SUPPORT

To conclude, the report highlights that women located at the intersection of several systems of power and discrimination can find themselves in a more vulnerable position to certain forms of violence. However, states might not recognise this reality because the system is built to privilege quantity over quality, and it constitutes therefore a direct obstacle in the creation of policies truly inclusive of the needs of minority women. Participants in the focus group identified two areas of concrete action needed to improve the recognition of violence against lesbians.

Lesbian data gap. Quantitative and statistical data are often the only available instrument to measure the incidence of gender-based violence. However, more often than not, marginalised women and women facing intersectional discrimination do not seek help from state agencies and, therefore, are not included in statistics. This is a vicious circle, because specific data is inexistent, thus the analysis of GBV against lesbians remains incomplete and hinders the state's ability to prevent, protect and prosecute such violence. In this sense, it is necessary to challenge the **overreliance of policy makers on quantitative data** and innovative policies, research, and funding are required.

This includes an **improved involvement of NGOs** in data collection. NGOs are better placed to collect qualitative data on the experiences and needs of women facing intersectional discrimination and violence, including LBT women. Because data from marginalised groups or sexual minorities is complicated to gather, the insistence on having large numbers (a representative sample) is a methodological burden for small, community-

based organisations that serve a “small percentage of women”. For this reason, NGOs need to be adequately funded to collect data and produce evidence-based knowledge on GBV against lesbians and for the data to be trusted.

Such actions are in line with Article 10 where the Convention recommended that state authorities work with institutions, researchers, and agencies active at the grassroots level to design an **overall strategy for data collection**. This mindset should also be applied in monitoring processes, GREVIO should receive or request information on different policies and data from different monitoring bodies such as equality bodies, Ombudsperson offices, and institutions alike and consistently include LBT civil society in monitoring exercises.

Under-resourced and under-represented lesbian civil society. As mentioned above, NGOs are familiar with the problems and needs of the community they serve, and they can bring a critical perspective on government actions. They can also be considered as an early-warning system that recognises rapidly issues with policies and their implementation since they see the direct repercussions on the communities. It is for this reason **extremely concerning that when developing the EU code of conduct** laying down the rights and obligations of the European Union and Member States under the Istanbul Convention,⁴ **there is no reference to the role of civil society.**

Even in contexts where civil society is consulted, lesbian NGOs present in the focus group describe their participation as being a mere formality and often have been invited as mere consultants involved to serve solely the interest of the state. The selection of associations invited by state authorities frequently exclude small, community-based NGOs serving women confronting intersecting forms of discrimination.⁵ Finally, as mentioned above, one of the main obstacles in the full inclusion of lesbian civil society is the **under-funding of lesbian specific NGOs and specialised support services**, which reduces the data and information available and deprives victims/survivors of the needed support and access to justice. While addressing the needs of LBT women can be difficult in services that are not tailored to their realities, **more guidelines, funding and support for NGOs are definitely needed.**

A change of mindset is also needed as the creation of “safer spaces” specifically dedicated to the women of the LGBTI community is often seen as a form of segregation. As denounced by WAVE, approaches that favour “general” services toward victims/survivors hinder the quality of the services, are often ineffective and risk to be more burdensome than helpful. In line with a more general defunding of women’s specialist services, those initiatives that address lesbians’ specific needs, avoid re-victimisation and provide a safer space themselves consistently defunded and deprioritised.

4 Interinstitutional file 2016/0062 (NLE).

5 This challenge has been acknowledged by GREVIO in several baseline evaluation reports, such as the ones for Spain (para. 47) or Poland (para. 46).

