

Guaranteeing Equal Access of Women to Justice



Council of Europe
Gender Equality Strategy

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Access to justice is a human right and an integral element of promoting the rule of law. Respect for and protection of human rights can only be guaranteed by the availability of effective remedies, adequate reparation and/or compensation. While accessing justice may be difficult for everyone, it is even more so for women, due to gender inequality in society and in the justice system. There are a multitude of obstacles: taboos, prejudices, gender stereotypes, customs, ignorance and sometimes even the laws themselves. Taken together, they are pieces in a 'justice jigsaw' that leaves women out. It is urgent that this gender imbalance is addressed, as equal access to justice is fundamental to ensuring the equality of women and men, not only *de jure* but also *de facto*.

Most cases of sex-based discrimination in which the European Court of Human Rights (ECtHR) has found a violation of Article 14 of the European Convention on Human Rights (prohibition of discrimination) have been brought by men, even though gender discrimination disproportionately affects women. Furthermore, a review of ECtHR case law reveals that the cases in which there has been a finding of discrimination on the ground of sex are by and large those in which differential treatment is explicit (e.g. labour contracts stipulating an earlier retirement age for women; parental leave not available for men). The limited jurisprudence on indirect sex-based discrimination presents a significant challenge for women's access to justice.

■ The Council of Europe's work and activities in this area aim to support member states achieve equal access to justice for women through a variety of means, including research and studies, conferences and hearings, as well as the exchange of good practices.

■ Assessing women's access to justice systems in Europe is complex. Multiple steps and stakeholders are involved: from the initial reporting to the police to the involvement of health and social services, access to legal aid, investigations and prosecutions, and the eventual judicial decision which needs to be duly enforced.



Through its activities, the Council of Europe has identified a number of barriers which limit women's opportunities to claim their rights, including:

Socio-economic and cultural barriers:

- ▶ fear and shame;
- ▶ a lack of knowledge about official procedures and available assistance;
- ▶ restrictions on the availability of legal aid;
- ▶ economic dependence and concern for children;
- ▶ the gendered impact of austerity measures.

Gender stereotyping has been highlighted as one of the significant barriers for women's equal access to justice. Stereotyping happens when a judge or other actor of the justice system reaches a view about an individual based on preconceived beliefs about a social group, rather than based on relevant facts or an actual enquiry related to that individual and to the circumstances of the case. In the context of women's access to justice, gender stereotyping plays an important role, in particular those stereotypes that primarily consider men as bearers of rights, authority and knowledge.

Legal and procedural barriers:

- ▶ persistence of *de jure* discrimination of women;
- ▶ gaps in legislation on women's rights;
- ▶ limited use of anti-discrimination legislation on the ground of sex;
- ▶ gender-neutral or gender-blind legislation which may lead to systemic inequalities, often unintended;
- ▶ limited use of international standards in judicial decisions;
- ▶ limited remedies for indirect discrimination of women;

- ▶ emphasis placed on using out-of-court settlement procedures to ensure a swift end to a legal dispute, often leaving women at a disadvantage;
- ▶ lengthy criminal proceedings;
- ▶ corruption and low conviction rates;
- ▶ discriminatory practices;
- ▶ negative gender stereotypes in courts and among law-enforcement officials.

Belonging to vulnerable groups of women can result in an increased restriction of access to certain rights, including justice. Women living in rural areas, elderly women, women with disabilities, lesbian/bisexual/transgender women, trafficked women, migrants (including refugees, asylum seekers and undocumented women) and women from certain social, ethnic or religious groups are structurally disadvantaged. This may be due to specific disadvantages at the socio-economic level, but can also be the result of a lack of awareness of their specific needs among justice or law-enforcement officials. Women from these groups are also often victims of stereotyping, which can result in bias and insensitivity on the part of the justice system, or even denial of justice.

Access to justice for women victims of gender-based violence

■ No other victims of crime are so mistrusted and viewed with so much suspicion as women victims of gender-based violence. Due to persistent stereotyped attitudes, women victims of violence are as likely to be shamed and humiliated in their own families, schools, or churches, as in the police station or the courtroom. Not all forms of violence against women are criminalised in all the Council of Europe member states, leaving women who have been stalked, sexually harassed, forced into marriage or raped by their current or former husbands or partners without recourse to justice. There is limited state funding for support services for women victims of gender-based violence, with only a minority of Council of Europe member states meeting a minimum threshold.

■ All these barriers are serious obstacles to obtaining justice for women survivors of violence and lead to victims' and potential victims' reduced trust, or a complete lack of trust, in the justice system. They lead to high attrition rates.



Most victims of gender-based violence never report the violence to authorities; many of them do not tell anyone about the violence they suffered. In the European Union (EU), the findings of the Fundamental Rights Agency survey on violence against women (2014) show that up to 40% of women who suffered either physical or sexual violence did not turn to anyone, including friends or family. Even when reported, gender-based violence is not effectively prosecuted, due in large part to myths and misconceptions that continue to inform the attitudes of justice actors. The vast majority of reported rapes do not end in a conviction. Although conviction rates vary significantly in our member states, in several countries they are as low as 5%.

The stories of millions of victims are kept in a dark place shaped by taboos, traditions, stereotypes, social codes, fear, shame and ignorance. With the entry into force of the Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), violence against women can no longer be considered a “private” or “family” matter. States have an obligation to prevent violence, protect victims and punish perpetrators.

Good practices from Council of Europe member states

- ▶ specialised courts and fast-track procedures;
- ▶ specialised prosecutors;
- ▶ dedicated police units;
- ▶ access to free legal aid for women victims of violence and discrimination;
- ▶ access to justice and redress for women victims of violence in armed conflict;
- ▶ legal standing for NGOs to bring proceedings in cases of violence against women;
- ▶ equality bodies;
- ▶ gender equality training for legal professionals;
- ▶ protection orders, emergency orders, eviction orders, bans on perpetrators contacting and approaching the survivors of violence.

Gaps in research and data

Good research and reliable and comparable data are essential to produce evidence-based policies and legislation to address shortcomings in women's access to justice. Ensuring adequate data on women's access to justice is therefore necessary to address inequalities and discrimination, and to promote the respect and protection of women's human rights. Due to its cross-cutting nature and the complexity of the process through which justice is delivered, equitable access to justice demands further work and the systematic collection of information to produce reliable statistics.

The Council of Europe has put forward proposals and recommendations to tackle gaps in research and the lack of data disaggregated by sex concerning women's access to justice, which include:

- ▶ improving the collection of data disaggregated by sex (as well as by age, residence, relationship between victim and perpetrator, and other characteristics) at all levels: crime statistics, court records, access to and use of legal aid, use of alternative dispute resolution processes;
- ▶ harmonising and sharing information among relevant stakeholders (the justice system, police, social services, health services);
- ▶ enabling a qualitative analysis of case law to identify negative gender stereotypes and ways to overcome them;
- ▶ violence against women and domestic violence being included in measurement frameworks;
- ▶ supporting research to study the root causes and effects of violence against women, including prevalence, incidence and conviction rates.

The Istanbul Convention contains the obligation to regularly collect information and data on the drafting and implementation of policies to prevent and combat all forms of violence against women.

Recommendations for action

The Conference "Towards guaranteeing equal access of women to justice" (Bern, Switzerland, October 2015) focused on the measures needed to address persistent barriers to women's equal access to justice and came up with a number of specific recommendations to support member states in their work towards guaranteeing women's equal access to justice, including to:

- ▶ ensure the full implementation of national legislation, international and regional human rights treaties and standards to make equal access to justice for women a reality;
- ▶ adopt legal, policy and institutional reforms to address judicial stereotyping through research, monitoring, education, capacity building and the promotion of good practices;
- ▶ ensure the effectiveness and independence of national equality bodies so that they can reach out and provide remedies to women victims of discrimination;
- ▶ secure access to appropriate legal aid and representation for women, in particular victims of gender-based violence;
- ▶ develop and deliver training on gender-based violence, gender equality issues and women's human rights, tailored to the needs of justice professionals and members of law enforcement bodies;
- ▶ set up databases of court decisions to raise awareness and ensure a better understanding among legal professionals of issues related to women's access to justice, including judicial stereotypes and the protection against gender-based violence and discrimination.

■ The Council of Europe is implementing an EU-funded regional project to improve women's access to justice in five countries: Armenia, Azerbaijan, Georgia, the Republic of Moldova and Ukraine. The aims of the project are to identify and support the removal of obstacles to women's access to justice; and to strengthen the capacity of the beneficiary countries to design measures to ensure that the justice chain is gender-responsive, including through the training of legal professionals. The project has produced five national studies mapping the obstacles to women's access to justice in each of the countries. In addition, a training manual on equal access of women to justice, addressed to judges and prosecutors and adapted to each national context, is under preparation.



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The Council of Europe is the continent's leading human rights organisation. It comprises 47 member states, 28 of which are members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.

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