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THE PERVASIVENESS OF RAPE MYTHS ACCEPTANCE AND THE TRANSFORMATIVE POTENTIAL OF THE ISTANBUL CONVENTION

GREVIO's contribution

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ABSTRACT

Millions of women are raped each year and perpetrators are rarely convicted and punished by criminal justice systems. Because of the social acceptance of “rape myths”, i.e. false and preconceived notions of how a rape survivor ‘should’ behave before, during and after an attack, rape survivors are often denigrated and blamed, while rapists’ violent tendencies are tacitly justified, accepted and normalized.

Taking into specific account the importance of the entry into force of the Council of Europe Istanbul Convention, this thesis will focus on the social pervasiveness of rape myths acceptance, its corrosive effect on society's ability to prosecute and convict rapists with the purpose to assess how the Convention has defined rape and to what extent it has contributed in creating a “European caring society” in which female rape survivors’ rights to access the justice system and to be equally treated and protected by the law have been recognized and effectively guaranteed. To evaluate the transformative potential of the Istanbul Convention, a comparative analysis exclusively focused on the Convention provisions concerning rape will be conducted taking into account the four national reports submitted by State Parties to GREVIO and the baseline country evaluations published by the monitoring body.

TABLE OF ABBREVIATIONS

A&E DOCTORS- Accident and Emergency Doctors

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

CCA- Criminal Code of Albania

CDEG- Council of Europe and its Steering Committee for Equality between Women and Men

CEDAW- Convention on the Elimination of Discrimination against Women

CoE- Council of Europe

EED- Electronic documentation system

EU- European Union

FRA- EU Fundamental Rights Agency

GREVIO- Council of Europe Group of Experts on Action against Violence against Women and Domestic Violence

IMSEE- Monegasque Institute of Statistics and Economic Studies

INSTAT- Institute of Statistics of Albania

MSWY- Ministry of Social Welfare and Youth of Albania

OAS- Organisation of American States

POLIS- The Austrian Centre for Citizenship Education in Schools

RMA- Rape myths acceptance

StGB- Austrian Criminal Code (Strafgesetzbuch)

VAW- Violence against women

UNDESA- United Nations Department of Economic and Social Affairs

UNHCR- United Nations High Commissioner for Refugees

WHO- World Health Organization

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INTRODUCTION

Millions of women are raped each year. According to Amnesty International, “approximately nine million women in the EU have been raped since the age of 15”¹ and these shocking numbers are in line with by the ones released by UNICEF that show that worldwide “around 120 million girls and women under age 20 have been subjected to forced sexual inter-course or other forced sexual acts at some point in their lives”². Even more alarming is the fact that millions of women are raped each year and the perpetrators are rarely convicted and properly punished by criminal justice systems³. In fact, as it has been confirmed by the study conducted in 2009 by Lovett and Kelly, the percentage of rape case attrition in Austria, Belgium, England, Wales and Sweden was around 14 percent with the vast majority of reported rapes not ending in a conviction⁴. Criminal justice systems have often proved being structurally gender “insensitive” and inadequate to prosecute and condemn rape offenders and the alarming reality of rape case attrition is also confirmed by the fact that victims have the tendency to dismiss the lawsuits at different stages throughout the legal process⁵. Many studies have already highlighted the important role of police officers as “gateways to justice” and particular attention has been devoted to the law enforcement officers’ interaction with rape survivors and its impact on prosecutorial decision making⁶. Unfortunately, it is necessary to emphasise that women who have experienced sexual assault struggle and avoid reporting the crime in the first place: the fear of not being believed or being blamed for what has happened certainly is a key factor precluding rape report and this is

¹ Anna Błuś, “Sex Without Consent Is Rape. So Why Do Only Nine European Countries Recognise This?” *Amnesty International* (2018) <https://www.amnesty.org/en/latest/campaigns/2018/04/eu-sex-without-consent-is-rape/?utm_source=twitt> accessed 4 May 2018.

² United Nations Department of Economic and Social Affairs, “The World’s Women 2015, Trends And Statistics”, p.148, (United Nations Department of Economic and Social Affairs 2015) <<https://unstats.un.org/unsd/gender/chapter6/chapter6.html>> accessed 2 May 2018.

³ UN Women, “Progress Of The World’S Women 2011-2012: In Pursuit Of Justice”, p. 51 (UN Women 2012)<<http://www.unwomen.org/en/digital-library/publications/2011/7/progress-of-the-world-s-women-in-pursuit-of-justice>> accessed 10 April 2018.

⁴ Ibid.

⁵ Amy Grubb, & Emily Turner, “Attribution of blame in rape cases: A review of the impact of rape myth acceptance, gender role conformity and substance use on victim blaming”, p. 443, in *Aggression and Violent behaviour*, 17, 2012.

⁶ Rachel M. Venema, “Police officer schema of sexual assault reports: Real rape, ambiguous cases, and false reports”, pp. 873-874, *Journal of Interpersonal Violence*, 31, 2016.

all the more alarming considering that a lot of women do not report simply because they do not perceive what they suffered as rape⁷.

Why is rape so frequently unreported? Which are the factors determining such a low conviction rate when it comes to rape crimes? It is not possible to give proper answers to these questions without clarifying rape has to be considered as a socially constructed crime and the social pervasiveness of false myths about rape - such as the stereotypes of “real rape” and “genuine victims” - is negatively affecting the manner in which victims are perceived and therefore treated⁸.

“She asked for it”, “She wanted it”, “She liked it”, “She’s lying”, “It was not really rape”, “He did not mean to”: as a result of rape myths acceptance, rape survivors are often denigrated and blamed while rapists’ violent tendencies are tacitly justified and accepted⁹. In the light of the existence of such a rape-supportive society that denies, justifies and normalize the phenomenon of male sexual assault on women, it is of vital importance to analyze and understand the implications of rape myths acceptance in criminal justice¹⁰.

Focusing on the European context, the issue of rape myths acceptance and women’s access to justice had already been highlighted in 2009 by the Committee on Equal Opportunities for Women and Men of the Council of Europe. In fact, Ms Marlene Rupprecht specifically called for the creation and institution of the “Ad hoc Committee on Preventing and Combating Violence against Women and Domestic Violence (CAHVIO) to include in the future Council of Europe convention the severest and most widespread forms of violence against women, including rape and sexual assault”¹¹.

Since its entry into force in 2014, the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention)

⁷ Grubb & Turner, (n.5)444.

⁸ Dan M. Kahan, “Culture, Cognition, and Consent: Who Perceives What, and Why, in Acquaintance-Rape Cases”, p. 732, *University of Pennsylvania Law Review*, 158, 2010.

⁹ Grubb & Turner, (n.5).

¹⁰ Megan A. Alderden, “Processing of Sexual Assault Cases Through the Criminal Justice System”, p. 12, (Ph.D, University of Illinois, 2008).

¹¹ Council of Europe, “Rape Of Women, Including Marital Rape” (Committee on Equal Opportunities for Women and Men 2009) <<http://www.refworld.org/pdfid/4b2f4ddd14.pdf>> accessed 13 March 2018.

constitutes a legal binding instrument establishing, *inter alia*, high standards to protect rape victims and punish perpetrators for all the State Parties of the Convention.

With the specific purpose of monitoring the implementation of the Istanbul Convention by the States Parties, the Council of Europe Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) has so far published four country-monitoring reports evaluating all sorts of measures adopted by the Parties to comply with the obligations arising from the Convention.

The main questions this research aims at answering are how rape has been defined by the Istanbul Convention and to what extent the Convention has contributed in creating a “European caring society” in which female rape survivors’ rights to access the justice system and to be equally treated and protected by the law have been recognized and effectively guaranteed. Specific attention will be devoted to the examination of the four national reports submitted to GREVIO and the general evaluation and recommendations published by the independent body with the aim to give a more comprehensive picture of how the issue of guaranteeing access to justice to female victims of rape and sexual assault has been addressed at the regional level.

The structure of this work is divided into two main parts. In the first section, I will lay down the theoretical background of my research providing a literature review about the origin and the development of the concepts of rape myths and their social acceptance. Stereotypes of “real rape” and “genuine victims” will be examined and particular attention will be dedicated to the manner in which gender roles stereotypes contribute to the social pervasiveness of these rape myth beliefs. In addition, the process of attribution of blame in cases of rape and specifically the phenomena of victim blaming and self-blame will be analyzed as one of the main symptoms and consequences of rape myths acceptance. Lastly, Chapter four is meant to provide the theoretical framework of my research that is essentially based on the different feminist approach of the “Ethics of Care” proposed by Virginia Held.

The second part is essentially focused on the examination of the four national reports submitted to GREVIO and the analysis of the country-monitoring reports drafted by the independent body with the aim of understanding how the Istanbul Convention has already or could possibly influence the reality of rape at the domestic level. The first

chapter will provide an analysis of the innovative legal dispositions contained in the Istanbul Convention with particular emphasis reserved to the legal provisions concerning rape and victims of sexual violence such as, for example, Article 36 that provides a consent-based definition of rape and enshrines the lack of consent as the constituent element of this crime. Chapter Two will be subdivided into five subchapters each of which will be dedicated to the comparative analysis of the country reports submitted by state parties and the GREVIO Baseline Evaluation Reports. Finally, the conclusive section will include an outcome summary that will provide a clear picture of the current situation of rape survivors' access to justice in the European context: best practices and measures which have proved effective will be highlighted and suggestions will be made on what could still be done to positively challenge the social and legal climate influencing the perception and the consequential treatment of rape survivors.

Given the complexity and in order to get a deeper understanding of the issue addressed, this research draws on a combination of different strands of theories. In Part One that mainly focuses on the issue of social rape myths acceptance, existing theories, concepts and their social implications will be substantially explained in a combination of feminists theories, social psychological, sociological and criminological perspectives. In Part Two, I will recur to a comparative legal analysis to show how rape definition and reality has evolved in the domestic context of four CoE Member States after the adoption of the Istanbul Convention. To this particular end, domestic legislation and national reports submitted by State Parties to GREVIO will be taken into particular account. It is important to note that, for the purpose of this research, the comparative analysis will be specifically focused on the Convention provisions preventing and combating rape and therefore, the degree of implementation of the Convention will be assessed by comparing the four different domestic realities in terms of legal definition of rape, data collection, prevention of rape incidents, protection and support for rape survivors and access to justice.

The limitations of the present study should also be mentioned. Because of the sensitive nature of the issue and the fact that the crime of rape is extremely under-reported, it remains difficult presenting updated data on the actual number of female victims/survivors of rape. Even more difficult would be collecting comprehensive and relevant statistics confirming the social pervasiveness of rape myths acceptance and,

precisely for these reasons, I rely on main sources of information and data such as UN Women, UNICEF and WHO. Moreover, it is important to highlight that undoubtedly rape is a particular pernicious form of harm that predominantly affects women but, nevertheless, it also impacts men as rape victims/survivors. Although it would have been extremely interesting to expand the research of Part One discussing as well the issue of rape myths acceptance and gender roles stereotypes in relation to male victims of rape, the objectives of the study and its focus on the influence of the Convention on preventing and combating violence *against women* and domestic violence (emphasis added) request exclusive attention on the female component of the victims group.

The lack of social support, all those false ideas about rape discouraging the reporting process and negatively affecting the outcome of lawsuits, have to be seriously taken into consideration when approaching rape cases. It is vital to increase rape awareness to contrast low reporting and conviction rates that foster and perpetuate the pervasiveness of rape myths acceptance: it must be clear it is no longer acceptable to tacitly support a cultural and social environment that justifies rape and renders legal procedures, both investigative and judicial ones, not conducive to combating/eradicating the phenomenon, and male sexual aggression against women, in general. Considering the urgent need to address the issues concerning rape which has been also confirmed by the recent developments with the La Manada case in Spain and, being the very first piece of work focusing on GREVIO's evaluation of state compliance with the Istanbul Convention specifically concerning rape, this research can contribute to the existing scholarly debate on this specific matter by providing an analysis of the current "European reality of rape" highlighting both the social pervasiveness of rape myths acceptance, and the transformative potential of the Istanbul Convention.

PART I
RAPE MYTHS ACCEPTANCE AND THE ISSUE OF GUARANTEEING
ACCESS TO JUSTICE TO FEMALE VICTIMS OF RAPE

CHAPTER 1

RAPE MYTHS ACCEPTANCE: A THEORETICAL OVERVIEW

1.1 Defining rape: a socially constructed understanding of a widely underreported crime

According to the United Nations Department of Economic and Social Affairs (UNDESA), based on the findings of the World Health Organization (WHO) “around one third of women worldwide have experienced physical and/or sexual violence by an intimate partner or sexual violence by a non-partner at some point in their lives”¹². Considering these numbers, it is hardly surprising that sexual violence against women, being both cause and consequence of gender inequality, has been recognized as one of the most pervasive violation of human rights¹³.

Although sexual violence against women constitutes a social problem that significantly affects a large number of women worldwide, it remains extremely difficult to gather updated data and statistics taking into account that, first of all, there is no universally accepted definition of sexual violence¹⁴. Sexual violence has been broadly defined by the WHO as “any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic, or otherwise directed, against a person’s sexuality using coercion, by any person regardless of their relationship to the victim, in any setting, including but not limited to home and work”¹⁵. Many efforts have been made both at the international and regional level in order to adopt a definition able to include all different forms of sexual violence (sexual harassment, sexual abuse, rape, female genital mutilation and other traditional harmful practices, trafficking in women,

¹² United Nations Department of Economic and Social Affairs (UNDESA), “The World’s Women 2015, Trends And Statistics”, p.142, (United Nations Department of Economic and Social Affairs 2015) <<https://unstats.un.org/unsd/gender/chapter6/chapter6.html>> accessed 2 May 2018.

¹³ Gerd Bohner, Friederike Eyssel, Afroditi Pina, Frank Siebler, & G. Tendayi Viki, “Rape myth acceptance: affective, behavioral, and cognitive effects of beliefs that blame the victim and exonerate the perpetrator”, p. 17, In Miranda Horvath, & Jennifer Brown (Eds.), “*Rape: Challenging contemporary thinking*”, London, Routledge, 2013.

¹⁴ European Institute for Gender Equality (EIGE), “Study To Identify And Map Existing Data And Resources On Sexual Violence Against Women In The EU” (EIGE, 2018) <<http://eige.europa.eu/gender-based-violence/eiges-studies-gender-based-violence/study-identify-and-map-existing-data-and-resources-sexual-violence-against-women-eu>> accessed 19 May 2018.

¹⁵ UNDESA, “The World’s Women 2015”, (n.12)144.

forced prostitution, sexual slavery and forced pregnancy) without overlapping with other definitions of other types of gender-based violence¹⁶. To date, the most pioneering and comprehensive definition of sexual violence is provided by Article 36 of the Istanbul Convention which requires the criminalization of intentional conducts such as “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 with a third person”¹⁷.

Beside the lack of a universally accepted definition of sexual violence, it is crucial to understand as well that difficulties in collecting updated data and statistics are also due to the fact that states collect data and report on sexual violence in very different and diverse ways¹⁸ and that, unfortunately, the lack of detailed information also concerns the form of sexual violence par excellence: rape.

According to the WHO “globally, 35.6% of women have experienced either non-partner sexual violence or physical or sexual violence by an intimate partner, or both¹⁹” and the information on sexual violence provided by UNICEF shows that “around 120 million girls and women under age 20 have been subjected to forced sexual inter-course or other forced sexual acts at some point in their lives”²⁰. Beside the gravity of these numbers, what is even more alarming is the fact that millions of women and girls are raped each year but the perpetrators are rarely convicted and punished by criminal justice systems²¹. As it has been demonstrated by many studies, if the number of rapes reported to law enforcement officers is generally low, the percentage of trials that will result in convictions is even lower²². As a matter of fact, a 2009 study taking into consideration Austria, Belgium, England, Wales and Sweden confirmed that the

¹⁶ EIGE, (n.14).

¹⁷ Council of Europe Convention on preventing and combating violence against women and domestic violence, p. 17, 2011. <<https://rm.coe.int/168046031c>>

¹⁸ EIGE, (n.14).

¹⁹ World Health Organization, “Global And Regional Estimates Of Violence Against Women: Prevalence And Health Effects Of Intimate Partner Violence And Non-Partner Sexual Violence”, p. 20, (2013)<http://apps.who.int/iris/bitstream/handle/10665/85239/9789241564625_eng.pdf?sequence=1> accessed 19 May 2018.

²⁰ UNDESA, “The World’s Women 2015”, (n.12)148.

²¹ Amy Grubb, & Emily Turner, “Attribution of blame in rape cases: A review of the impact of rape myth acceptance, gender role conformity and substance use on victim blaming”, p. 443, in *Aggression and Violent behaviour*, 17, 2012.

²² Bohner, Eyssel, Pina, Siebler & Viki, (n.13).

percentage of rape case attrition was on average around 14 percent with the vast majority of reported rapes not ending in a conviction²³. Because of the high level of rape case attrition, justice remains out of reach for a large percentage of rape survivors all over the world that, *de facto*, are not able to navigate through the so-called “justice chain”, namely, “the series of steps that must be taken to access justice through the formal state system in order to seek redress”²⁴. Even before entering the criminal justice system, female victims of sexual violence have the tendency to avoid seeking help and, even when they do so, the vast majority do not rely on the police mainly due to the fear they will not be believed or that they will be blamed by law enforcement officers²⁵. Low reporting rates and high levels of rape case attrition in the justice chain are essentially fostered by negative attitudes towards rape survivors widely held by the general population, including police officers and prosecutors, attitudes that result from the social endorsement of “rape myths”, i.e. false and preconceived notions of how a rape survivor ‘should’ behave before, during and after an attack²⁶.

As a matter of fact, even if it is accepted that all people should be treated equally before the law, it would be misleading to think that the law exists in a vacuum and that the decisions of reporting and prosecuting are not in any way influenced by the way in which rape is defined by our society and the individuals that are part of it²⁷: as it has been highlighted by UN Women in its publication *Progress Of The World’s Women 2011-2012: In Pursuit Of Justice*, “police, court staff and other justice sector personnel typically reflect the discriminatory attitudes of wider society. In some cases, they may not be aware of the law and their obligation to serve women. All too often, women seeking justice face hostility or contempt from the very people who are supposed to uphold their rights”²⁸.

Precisely to increase the level of rape reporting and guaranteeing access to justice to female victims of rape and based on the evidence that the legal definitions of rape, albeit diverse according to different national criminal laws, do not match with the social

²³ UN Women, “Progress Of The World’S Women 2011-2012: In Pursuit Of Justice”, p. 51 (UN Women 2012)<<http://www.unwomen.org/en/digital-library/publications/2011/7/progress-of-the-world-s-women-in-pursuit-of-justice>> accessed 10 April 2018.

²⁴ *Ibid.* 49

²⁵ Grubb & Turner, (n.21)444.

²⁶ Megan A. Alderden, “Processing of Sexual Assault Cases Through the Criminal Justice System”, p. 16, (Ph.D, University of Illinois, 2008).

²⁷ *Ibid.*

²⁸ UN Women, “In Pursuit Of Justice”, (n.23)54.

definition of rape²⁹, it is extremely important to understand how and to what extent rape myths have influenced the manner in which rape has been socially defined and constructed³⁰. To this end, the concept of rape myths and the effects of the social pervasiveness of rape myths acceptance will be properly discussed in the following paragraph.

1. 2. Rape Myths: conceptual framework

As it has been already mentioned above, rape myths have been meticulously studied as factors influencing the social definition of rape. Nevertheless, before going through the rape myths literature review presented below, it is of vital importance highlighting the fact that, although the concept of rape myths has been much criticized due its theoretical limitations, many studies have concluded that its deployment results extremely useful to better understand the phenomenon of rape and its consequences, especially when they concern rape survivors³¹.

At the beginning of the 1970s, sociologists and feminists have referred to the concept of rape mythology and rape myths to describe a particular combination of attitudes and beliefs that, by shifting the blame from the perpetrators to the victims, negatively influence the reality of rape perceived by society³². Although Schwendinger and Brownmiller have been the first to highlight the specific function of rape myths of minimizing, rationalizing, justifying rape and, subsequently, supporting and perpetuating male sexual aggression against women³³, the social psychologist Martha Burt has been the first to propose a proper definition of rape myths in her

²⁹ Zoë D. Peterson, & Charlene L. Muehlenhard, “Was it rape? The function of women’s rape myth acceptance and definitions of sex in labelling their own experiences”, p. 130, *Sex Roles*, 51, 2004.

³⁰ Alderden, (n.26)12.

³¹ Eliana Suarez & Tahany M. Gadalla, “Stop blaming the victim: A meta-analysis on rape myths”, p. 2013, *Journal of Interpersonal Violence*, 25, 2010.

³² Rosemary Iconcis, “Rape myth acceptance in college students: A literature review”, p. 47, *Contemporary Issues in Education Research—Second Quarter*, 1, 2008.

³³ Diana L. Payne, Kimberly A. Lonsway, & Louise F. Fitzgerald, “Rape myth acceptance: Exploration of its structure and its measurement using the Illinois Rape Myth Acceptance Scale”, pp. 29–30, *Journal of Research in Personality*, 33, 1999.

groundbreaking paper published in 1980 where she defined rape myths as “prejudicial, stereotyped, or false beliefs about rape, rape victims and rapists”³⁴.

Despite being the first definition of rape myths, Lonsway and Fitzgerald criticized Burt’s academic findings in their review published in 1994: according to the two, since the definition proposed by Burt presented rape myths simply as untruths, it would have been necessary introducing a more articulated definition of rape myths capable to explain the important cultural function of rape myths in our society³⁵. Resorting to a social constructivist approach, Lonsway and Fitzgerald argued that myths are essentially used to explain events and to reproduce and transmit cultural stereotypes within our society³⁶. Therefore, it might be argued that rape myths are the particular lens through which individuals interpret and explain rape cases, or, as they have been defined by Lonsway and Fitzgerald, they are “attitudes and beliefs that are generally false, but are widely and persistently held, and that serve to deny and justify male sexual aggression against women”³⁷. Finally, based on the consideration that it remains extremely difficult to establish whether a myth is “false” or “widely held”, the most recent definition of rape myths has been proposed in 1998 by Bohner that described rape myths as “descriptive or prescriptive beliefs about rape (i.e. about its causes, context, consequences, perpetrators, victims and their interaction) that serve to deny, downplay or justify sexual violence that men commit against women”³⁸.

Focusing instead on what is actually prescribed by these myths, it is important to consider that, although different societies and cultures are characterized by the pervasiveness of different types of rape myths, researchers have essentially identified

³⁴ Martha R. Burt, “Cultural myths and supports for rape”, p. 217, *Journal of personality and social psychology*, 38, 1980 in Zoë D., Peterson & Charlene L., Muehlenhard, “Was it rape? The function of women’s rape myth acceptance and definitions of sex in labelling their own experiences”, p. 130, *Sex Roles*, 51, 2004.

³⁵ Laura L. King & Jennifer J. Roberts, “Traditional Gender Role and Rape Myth Acceptance: From the Countryside to the Big City”, p. 3, *Women & Criminal Justice*, 21, 2011.

³⁶ Alderden, (n.26)11-12. As Alderden describes, “Social constructionist approaches attempt to uncover how knowledge is created and reproduced in society through language and other cultural artifacts (e.g., myths, laws) and whether the experiences and perspectives of one group are privileged over another (e.g., the privileging of the male experience over the female experience). Instead of examining the observable “truths” of the world, a social constructionist approach examines how those truths were created and by whom, how these truths are unconsciously reproduced, and implications of those constructions”.

³⁷ Kimberly A. Lonsway & Louise F. Fitzgerald, “Rape myths: In review”, p. 134, *Psychology of Women Quarterly*, 18, 1994.

³⁸ Bohner, Eyssel, Pina, Siebler & Viki, (n.13)19.

four main typologies³⁹. First of all, taking into consideration the fact that there is still a tendency to consider rape as an uncommon and exceptional crime, women are usually perceived as exaggerating and lying about being raped⁴⁰. Secondly, based on the assumption that women unconsciously desire being raped or relying on the belief that their appearances or behaviors can significantly contribute to their rapes, female victims of rape are also generally blamed and deemed responsible for what happened to them⁴¹. Moreover, this culture of victim blaming is additionally reinforced by the abstruse idea that “only certain types of women (i.e. promiscuous women) are actually raped”⁴². Finally, it is important to highlight the fact that many researches have confirmed that rapists are usually exonerated because rape is essentially seen as a sexually motivated crime: passion and uncontrollable sexual urges are still generally considered as main motivating factors for rape⁴³. On this note, it is also necessary to emphasize that, due to the fact that “real rape” scenarios normally require having a completely stranger who all of a sudden assaults the victim in a dark corner of an empty road, the psychological consequences affecting rape survivors will be more likely considered as less serious in case the perpetrator is an acquaintance, a spouse or a family member⁴⁴.

Taking into consideration what has been explained above, it is clear that the social pervasiveness of false myths about rape is negatively affecting the manner in which victims are perceived and therefore treated: as a result of rape myths acceptance, rape survivors are usually not considered as “genuine victims of rape”, they are often denigrated and blamed while rapists’ violent tendencies are tacitly justified and accepted⁴⁵. In the light of the existence of such a rape-supportive society that denies and justifies the phenomenon of male sexual assault on women, it is of vital importance to analyze the implications of rape myths acceptance by starting to understand the reasons behind the endorsement of rape myths⁴⁶.

³⁹ Bohner, Eyssel, Pina, Siebler & Viki, (n.13)19.

⁴⁰ Grubb & Turner, (n.21)445.

⁴¹ Ibid.

⁴² Iconcis, (n.32).

⁴³ Ibid. 48

⁴⁴ Ibid.

⁴⁵ Grubb & Turner, (n.21)444.

⁴⁶ Ibid. 445

CHAPTER 2

WHY DO PEOPLE ENDORSE RAPE MYTHS?

A deeper understanding of the mechanism behind rape myths endorsement and the legal and social implications of rape myths acceptance, requires a careful analysis of the functions of rape myths in the first place. Different psychological functions have already been largely discussed by Brownmiller, Burt, Lonsway and Fitzgerald and Bohner⁴⁷, but for the purpose of my analysis, they will be properly presented while focusing first of all on the relation between rape myths acceptance and system justification, and then during the analysis of the phenomenon of victim blaming and secondary victimization.

2.1 Rape Myths acceptance and System Justification

Many researches suggest that individuals tend to endorse rape myths in order to rationalize and justify rape crimes⁴⁸. Despite the fact that, as it has been argued by Suarez and Gadalla, it would not be possible to explain the endorsement of rape myths and the pervasive acceptance and rationalization of sexual violence without resorting to an analytical framework combining both radical feminists theories and Galtung's theory of structural and cultural violence⁴⁹, a more comprehensive theoretical background that also includes the system justification theory will be used to frame and analyse the issue.

According to radical feminist theories, male dominance and patriarchy have to be considered as main causes of gender inequality and social acceptance of violence against women⁵⁰. In particular, many researches have demonstrated a high correlation

⁴⁷ Gerd Bohner, Friederike Eyssel, Afroditi Pina, Frank Siebler, & G. Tendayi Viki, "Rape myth acceptance: affective, behavioral, and cognitive effects of beliefs that blame the victim and exonerate the perpetrator", p. 23, In M. Horvath, & J. Brown (Eds.), *"Rape: Challenging contemporary thinking"*, London, Routledge, 2013.

⁴⁸ Kimberly A. Lonsway & Louise F. Fitzgerald, "Rape myths: In review", p. 133, *Psychology of Women Quarterly*, 18, 1994.

⁴⁹ Eliana Suarez & Tahany M. Gadalla, "Stop blaming the victim: A meta-analysis on rape myths", pp. 2012-2013, *Journal of Interpersonal Violence*, 25, 2010.

⁵⁰ *Ibid.* 2013

between the acceptance of traditional gender roles and the acceptance of rape myths⁵¹. In our patriarchal society men and women are differently shaped since the day they are born to comply with what they ought to be and conform to traditional gender roles stereotypes: based on sex role stereotypes, women are supposed to be submissive, obedient, reserved and docile while dominant, powerful, aggressive are the adjectives generally reserved to men⁵². It is also of fundamental importance realizing that the process of gender role socialization influences as well individual behaviors such as sexual behaviour: while women are usually socialized to be more passive, men are generally considered as dominant and therefore they are normally assigned the task to initiate sexual interactions⁵³. As a consequence, just like it has been highlighted by Martha Burt in her sex role socialization analysis of rape, men are forgiven for what it's erroneously perceived as audacious behaviour and, therefore, violent behaviours are socially accepted and normalized⁵⁴. Moreover, as we will see in greater detail in the following section, acceptance of traditional gender roles is also linked to the phenomenon of secondary victimization and victim blaming: whenever men's expectations of the stereotypical role of women are not satisfied, rape can be used or indirectly processed and accepted as a punishment for women's deviation from the stereotyped roles that a male dominated society has assigned to them in the first place⁵⁵. In short, radical feminists claim that our patriarchal society, sex role stereotyping and the consequent rationalization of sexual violence against women reinforce and perpetuate a situation of gender inequality in which women are living as hierarchically subordinated to men⁵⁶.

The issue of gender inequality, the concept of power and system of oppression have been also addressed by Galtung in his theory of structural violence. According to

⁵¹ Amy Grubb & Emily Turner, "Attribution of blame in rape cases: A review of the impact of rape myth acceptance, gender role conformity and substance use on victim blaming", p. 444, in *Aggression and Violent behaviour*, 17, 2012.

⁵² Laura L. King & Jennifer J. Roberts, "Traditional Gender Role and Rape Myth Acceptance: From the Countryside to the Big City", p. 12, *Women & Criminal Justice*, 21, 2011.

⁵³ Grubb & Turner, (n.51)446.

⁵⁴ Martha Burt, "Cultural myths and supports for rape", pp. 217-230, *Journal of Personality and Social Psychology*, 38, 1980 In Amy Grubb & Emily Turner, "Attribution of blame in rape cases: A review of the impact of rape myth acceptance, gender role conformity and substance use on victim blaming", p. 446, in *Aggression and Violent behaviour*, 17, 2012.

⁵⁵ Kristin L. Taylor, "Treating Male Violence against Women as a Bias Crime", pp. 592-594, 76 B.U. L. Rev. 575, 1996.

⁵⁶ Laurie C. Stoll, Terry G. Lilley, & Kelly Pinter, "Gender-blind sexism and rape myth acceptance", p. 32, *Violence against women*, 23, 2017.

the norwegian sociologist, the structures and institutions characterizing our society are able to place certain groups of individuals in an harmful position by preventing them from meeting their fundamental needs⁵⁷. Because of the sad reality of gender inequality, it is self-evident that women certainly form part of those groups living in harmful conditions. It is also worth to note that, while recognizing the high interdependence existing between structural violence and interpersonal violence, male violence against women has been clearly described by Galtung as one of the manifestation of structural violence⁵⁸. Nevertheless, there is no doubt that, for the purpose of this analysis, his greatest contribution certainly concerns the concept of "cultural violence" which specifically refers to all those cultural aspects, including myths, employed by individuals and groups to justify, rationalize and accept structural and interpersonal violence⁵⁹.

Moreover, from the point of view of social psychology, many theories of group hierarchy and dominance could also be applied to study the phenomena of endorsement of rape myths and social normalization of violence⁶⁰. Based on these theories, although dominant-groups members usually resort to the threat or actual use of violence in order to control subordinate-groups members and perpetuate their condition of dominance, in reality the protection of the status quo is *de facto* ensured by the creation and deployment of ideologies and stereotypes that, legitimizing dominant group's superiority and justifying subordinate group's inferiority, reinforce a condition of structural violence⁶¹. In particular, according to the system justification theory, stereotypes are strategically used to legitimize and justify inequalities and, by applying this theory to the specific context of rape and rape myths acceptance, it could be argued that rape myths are strategically used by people in order to legitimize male violence against women and justify rape while excusing the perpetrators⁶².

⁵⁷ Johan Galtung, "Violence, peace, and peace research", pp. 167-191, *Journal of peace research*, 6, 1969 in Eliana Suarez & Tahany M. Gadalla, "Stop blaming the victim: A meta-analysis on rape myths", pp. 2013-2014, *Journal of Interpersonal Violence*, 25, 2010.

⁵⁸ Suarez & Gadalla, (n.49)2013-2014.

⁵⁹ Johan Galtung, "Cultural violence", pp. 291-305, *Journal of peace research*, 27, 1990 in Eliana Suarez & Tahany M. Gadalla, "Stop blaming the victim: A meta-analysis on rape myths", pp. 2013-2014, *Journal of Interpersonal Violence*, 25, 2010.

⁶⁰ Kristine M. Chappleau & Debra L. Oswald, "Status, threat, and stereotypes: Understanding the function of rape myth acceptance", p. 19, *Social Justice Research*, 26, 2013.

⁶¹ Ibid.

⁶² Ibid.

To explain the relation between rape myths acceptance and system justification it is capital to analyze what social psychologists call “complementary stereotypes”. Advantaged and disadvantaged social groups are described as having both specific positive and negative traits characterizing them: women are generally stereotyped as “warm, sociable, interdependent and relationship oriented” while men are considered as “competent, assertive, independent and achievement oriented”⁶³. These stereotypes are *de facto* accepted and continuously reproduced in our society mainly due to their complementarity according to which the negative attributes possessed by a specific group are complemented and balanced by the positive traits characterizing the other group⁶⁴. As a result, the social status and roles constructed by these complementary stereotypes are not only thought being naturally inevitable but, more importantly, they are considered being fair and not hierarchically structured⁶⁵. Complementary stereotypes are therefore well accepted by men, but also by women which, for example, also endorse sexist stereotypes about their group and passively support myths and ideas that reinforce and preserve their subordinate status⁶⁶.

To summarize, taking into consideration all the theories reported above, it can be argued that, because the violence committed by the male dominant group against the female subordinate-group is constantly tarnished by rape stereotypes, rape myths can definitely be seen as legitimizing and perpetuating a system of male dominance and inequality, in which rape and male violence against women is accepted, normalized and perpetrators are excused⁶⁷.

⁶³ John T. Jost & Aaron C. Kay, “Exposure to benevolent sexism and complementary gender stereotypes: Consequences for specific and diffuse forms of system justification”, p. 499, *Journal of Personality and Social Psychology*, 88, 2005.

⁶⁴ Tomas Stahl, Daniel Eek, & Ali Kazemi, “Rape victim blaming as system justification: The role of gender and activation of complementary stereotypes”, p. 243, *Social Justice Research*, 23, 2010.

⁶⁵ Chapleau & Oswald, (n.60)22. As the authors argue “status differences between men and women, however, are not always based on gender alone: men and women can simultaneously belong to different dominant and subordinate groups based on ethnicity, education, wealth, age, title or position, etc.”.

⁶⁶ Ibid.

⁶⁷ Ibid.

2.2 Victim Blaming and Secondary Victimization

As it has already been explained above, people recur to rape myths to justify, legitimize and therefore normalize the reality of rape crimes. Nevertheless, it is important to point out that this process of justification requires a previous stage of explanation. In fact, social psychologists have confirmed that rape myths acceptance functions as a cognitive schema to interpret informations in rape cases: rape survivors and the perpetrators are systematically judged through the use of this cognitive schema made of stereotypes.⁶⁸

Many are the researches confirming that, unfortunately, these preexisting stereotypes about rape are able to influence social but, most importantly, individuals' perception even in the field of law enforcement and criminal prosecution, and precisely because of their legal implications, it is necessary to properly analyze these schematic influences⁶⁹. To this end, it must be clarified that, first of all, rape has to be considered as a social constructed crime and, because of its nature, it is necessary to examine how rape is perceived taking into consideration attitudes and group values characterizing different social groups and situational factors⁷⁰. In fact, many social cognition studies have demonstrated that, despite the truth that individuals belonging to different social groups can interpret the same case in a very different way due to the different beliefs and cultural values distinguishing their respective groups, social perceivers tend to avoid using any kind of pre-existing beliefs or knowledge if not considered to be applicable to the situation under scrutiny⁷¹. Consequently, the cognitive function of rape myths and the perception of rape would be better assessed focusing on the concept of rape scripts. Rape scripts are "organized cognitive schema" that describe what usually happens during a rape⁷² focusing, as it has been argued by Crome, McCabe and

⁶⁸ Dan M., Kahan, "Culture, Cognition, and Consent: Who Perceives What, and Why, in Acquaintance-Rape Cases", p. 732, *University of Pennsylvania Law Review*, 158, 2010.

⁶⁹ Niwako Yamawaki, Ryan Darby & Adriane Queiroz, "The moderating role of ambivalent sexism: the influence of power status on perception of rape victim and rapist", p. 42, *The Journal of Social Psychology*, 147, 2007.

⁷⁰ Kahan, (n.68).

⁷¹ Bettina Frese, Miguel Moya & Jesús L. Megías, "Social perception of rape: How rape myth acceptance modulates the influence of situational factors", p. 145, *Journal of Interpersonal Violence*, 19, 2004.

⁷² John H. Gagnon, "The Explicit and Implicit Use of the Scripting Perspective in Sex Research", pp.1-43, *Annual review of sex research*, 1, 1990 In Zoë D. Peterson and Charlene L. Muehlenhard, "Was it rape? The function of women's rape myth acceptance and definitions of sex in labelling their own experiences", p. 130, *Sex Roles*, 51, 2004.

Ryan, on “the nature of rape (e.g., the location, weaponry, sex of perpetrators), the roles of the sexes in rape, boundaries of vulnerability to rape, and the disposition of the victims”⁷³.

Despite the fact that rape scripts take into consideration situational factors and that they could therefore be extremely useful to interpret rape cases, it is important to highlight that the real issue concerning them is represented not by their mere existence but instead by the influence rape myths exert on them: since rape myths can influence rape scripts and, taken into consideration the fact that rape scripts can become instructional guidelines determining behaviours and attitudes towards rape, then rape myths can negatively influence rape and its social perception⁷⁴. To provide an example, many researches have proved the “real rape stereotype” has misleadingly and erroneously influenced the “real rape script” which is actually employed by many individuals⁷⁵. As explained by Ryan, “the real rape script involves a sudden and physically violent attack on an unsuspecting woman, usually by a stranger. The woman is alone at the time of the attack. She may physically resist the rape or she may be too afraid to resist. There is no doubt that the victim was raped, her only mistake was being in the wrong place at the wrong time. She is devastated after the rape.”⁷⁶. As a result, if a rape scenario cannot match with this description, it really cannot be considered as rape. Moreover, based on the assumption that only if the rape is labelled as real then the victim can be considered as “genuine”, all the “not genuine” female victims of rape will be thought as being in some way responsible for what happened to them. Unfortunately, beside being victims of such a pernicious form of sexual violence, rape survivors are often denigrated and blamed for their own assault⁷⁷. Being intoxicated by alcohol, dressing in a provocative manner, teasing and flirting with men, failing to effectively communicate a refusal are all factors that are generally taken into consideration whenever individuals have to examine, explain a rape case, especially when they have to attribute the blame either to the alleged victims, either to the perpetrators⁷⁸. As a

⁷³ Kathryn M. Ryan, “The relationship between rape myths and sexual scripts: The social construction of rape”, pp. 775, *Sex Roles*, 65, 2011.

⁷⁴ Ibid.

⁷⁵ Ibid. 777

⁷⁶ Ibid. 775

⁷⁷ Grubb & Turner, (n.51).

⁷⁸ David Gurnham, “Victim-blame as a symptom of rape myth acceptance? Another look at how young people in England understand sexual consent”, p. 259, *Legal Studies*, 36, 2016.

matter of facts, several studies have confirmed that rape myths can greatly influence the process of attribution of responsibility⁷⁹ and, in order to explain the phenomena of secondary victimization and, more specifically, the phenomenon of victim-blaming, three main theories will be explained: after having properly presented the defensive attribution theory and the just world theory, the phenomenon of victim blaming will be analyzed taking into consideration the importance of gender role stereotypes and the theory of ambivalent sexism.

According to the defensive attribution theory, individuals tend to attribute the blame based on their perceived similarity with either the victim or the perpetrator⁸⁰. When applying this particular theory to rape cases, the victims and the suspects characteristics are therefore evaluated in relation to what the individual that is attributing responsibility thinks and knows about himself/herself⁸¹. Perceptions, personalities and experiences characterizing the observers will greatly influence the process of allocating responsibility especially at the criminal justice level⁸². Although many researches have confirmed that women are generally more likely to feel similar and to identify with female victims of rape, gender cannot be considered as the only factor governing the process of identification with the victim⁸³. In fact, it is worth to note that the so called “blame avoidance” factor, namely the chances a woman will also be blamed if something similar would happen to her in the future, could also negatively influence the whole identification process and attributional decisions made by women⁸⁴. Moreover, many studies have demonstrated that women could also not identifying and distance themselves from rape victims as a self-defensive mechanism aimed at reinforcing the illusory idea that rape will never truly harm them⁸⁵.

⁷⁹ Elizabeth M. Hammond, Melissa A. Berry, & Dario N. Rodriguez, “The influence of rape myth acceptance, sexual attitudes, and belief in a just world on attributions of responsibility in a date rape scenario”, pp. 242-243, *Legal and Criminological Psychology*, 16, 2011.

⁸⁰ Amy Grubb & Julie Harrower, “Understanding attribution of blame in cases of rape: An analysis of participant gender, type of rape and perceived similarity to the victim”, p. 69, *Journal of Sexual Aggression*, 15, 2009.

⁸¹ Simon Duff & Amy Tostevin, “Effects of gender, rape myth acceptance, and perpetrator occupation on perceptions of rape”, pp. 250-251, *Journal of Criminal Psychology*, 5, 2015.

⁸² Megan A. Alderden, “Processing of Sexual Assault Cases Through the Criminal Justice System”, p. 12, (Ph.D, University of Illinois, 2008).

⁸³ Grubb & Harrower, (n.80)66. As argued by the authors, “Studies have shown that similarity between participant and defendant or victim on the basis of gender, race, social status and experience affect identification and, in turn, attributional decisions”.

⁸⁴ Ibid. 65

⁸⁵ Ibid. 72

The principle of “harm avoidance” has been also largely discussed within the context of the just world theory. As it has been argued by Berry, Hammond and Rodriguez “in rape cases, people who endorse similar just-world beliefs may be threatened by the prospect that an innocent woman was victimized by forces beyond her control. As a result, they may attempt to protect themselves from this discomfort by viewing the rape victim as responsible for her own attack, effectively reducing the responsibility placed on the perpetrator.”⁸⁶ Based on the idea that the world is a just place where people get what they deserve and precisely in order to perpetuate this ordered and fair image of the world, the just world theory depicts rape victims as contributing to and deserving their misfortunes⁸⁷. In fact, according to the Just World Belief, a theoretical construct elaborated by Lerner in 1965, all the negative events affecting someone’s life are the consequences of his/her own bad choices because “bad things do not happen to responsible and prudent people”⁸⁸. The false idea that people get what they deserve systematically reinforces the assumption that rape is a predictable and avoidable crime: good, responsible and cautious women that take precautions are actually able to control their lives and avoiding being raped⁸⁹. Essentially, rape myths can be used to blame rape survivors while reaffirming and consolidating the perception of a just world and it is worth to mention that many studies managed to demonstrate the high correlation between rape myths acceptance and high level of belief in a just world: rape myths are employed by individuals in our society to generate evidences in order to maintain control over a potentially chaotic environment and restore the just world belief whenever an “apparently” innocent woman becomes victim of rape⁹⁰.

Finally, given the fact that negatives stereotypical attitudes concerning women’s sexual behaviours, their social and gender roles have been usually associated with a higher level of rape myth acceptance⁹¹, the phenomenon of victim blaming will be now analyzed focusing on the manner in which sexism influences the process of blame attribution and rape myth acceptance.

⁸⁶ Hammond, Berry & Rodriguez, (n.79)244.

⁸⁷ Grubb & Turner, (n.51).

⁸⁸ Rebecca H. Hayes, Katherine Lorenz, & Kristin A. Bell, “Victim Blaming Others: Rape Myth Acceptance and the Just World Belief”, pp. 202–203, *Feminist Criminology*, 8, 2013.

⁸⁹ Helen Eigenberg & Tammy Garland, “Victim blaming”, p. 27, In Laura J. Moriarty (Ed.), *Controversies in Victimology*, Newark, NJ: Elsevier Press, 2008.

⁹⁰ Bohner, Eyssel, Pina, Siebler & Viki, (n.47)27-28.

⁹¹ Rosemary Iconcis, “Rape myth acceptance in college students: A literature review”, p.48, *Contemporary Issues in Education Research*—Second Quarter, 1, 2008.

According to the theory of ambivalent sexism proposed by Glick and Fiske, sexism cannot be merely described as “the manifestation of a unitary antipathy” toward women because, on the very contrary, it has an ambivalent connotation⁹² that renders it a “strange mixture of hostility and benevolence”⁹³. Considered the most traditional form of sexism, hostile sexism can be defined as the particular manifestation of antipathy toward women based on the ideas of female weakness and inferiority⁹⁴. In fact, sexist prejudices have been usually considered as a clear expression of this particular form of sexism⁹⁵. Moreover, it is important to note that, considering the accusations of a rape victim as a threat to the maintenance of their male-dominated status quo and with the purpose to protect a group member suspected of being a rapist, hostile sexists tend to minimize the seriousness of rape by claiming that the alleged victim is either lying or exaggerating the whole incident, arguing that she was trying to seduce the suspect in order to gain benefits or even to dominate and to destroy his entire life⁹⁶. Leaving aside the negative attitudes toward women produced by hostile sexism, Glick and Fiske defined benevolent sexism as “a set of interrelated attitudes toward women that are sexist in terms of viewing women stereotypically and in restricted roles but that are subjectively positive in feeling tone and also tend to elicit behaviors typically categorized as prosocial or intimacy seeking”⁹⁷. In other words, benevolent sexists demonstrate being generally affectionate towards women, but only to the ones conforming to the restricted, stereotyped description that depicts them as “pure, chaste, guardians of sexuality”⁹⁸. Although women are “positively” seen as pure and innocent creatures that have to be supported and defended by men, from a benevolent sexists point of view, the male protection they are granted could be withdrawn as soon as they are perceived as not complying with the moral, pure and chaste role that distinguishes

⁹² G.Tendayi Viki, Dominic Abrams, & Barbara Masser, “Evaluating stranger and acquaintance rape: The role of benevolent sexism in perpetrator blame and recommended sentence length”, p. 296, *Law and Human Behavior*, 28, 2004.

⁹³ Jost & Kay, (n.63).

⁹⁴ Yamawaki, Darby & Queiroz, (n.69)43.

⁹⁵ Viki, Abrams & Masser, (n.92).

⁹⁶ Niwako Yamawaki, “Rape perception and the function of ambivalent sexism and gender-role traditionality”, p. 409, *Journal of Interpersonal Violence*, 22, 2007.

⁹⁷ Peter Glick & Susan T. Fiske, “The Ambivalent Sexism Inventory: Differentiating hostile and benevolent sexism”, p. 491, *Journal of Personality and Social Psychology*, 70, 1996.

⁹⁸ Barbara Masser, Kate Lee & Blake M. McKimmie, “Bad women, bad victim? Disentangling the effects of victim stereotypicality, gender stereotypicality and benevolent sexism on acquaintance rape victim blame”, p. 495, *Sex Roles*, 62, 2010.

them⁹⁹. Many studies have shown that, even if more liberal views about sexual attitudes have challenged the traditional conservative idea of appropriate sexual behaviour based on pureness and chastity¹⁰⁰, benevolent sexists have the tendency to analyze rape cases based on this conservative view of appropriate sexual behaviors and, as a result, they will generally attribute the blame to the perpetrators only if the rape scenario presents a total stranger assaulting a pure and respectable woman that did not do anything to contribute to her misfortune, that promptly reported the incident to the police and that clearly shows signs of psychological trauma¹⁰¹. While addressing the concept of ambivalent sexism it is also worth to mention that, despite the different form of sexism presented above, both hostile and benevolent sexists tend to essentially divide the female group in “good girls” and “bad women” based on their compliance and adherence to stereotypical gender roles and sexual attitudes: whenever the victim is perceived as having deviate or violate the rules of conduct, she will be not be considered as a genuine, innocent victim but, instead, she will be seen as a bad girl and blamed for the incident while the perpetrator will be excused¹⁰².

As it has already been explained, rape myths are generally used as a cognitive schema to interpret and evaluate rape cases and, more specifically, they are employed by observers while attributing the blame to either the alleged victim or perpetrator. As a result, women experience the phenomenon of “secondary victimization”: beside having suffered the sexual aggression, they are also negatively perceived and treated by others after their rape¹⁰³. On this note it is of vital importance to point out that rape myths are also endorsed by women. In fact, there are women who endorse rape myths and blame rape survivors in order to psychologically protect their self-esteem, to reduce their personal feeling of vulnerability reinforcing the idea that, because they actually are and behave differently from the alleged victims, they will not become potential victims of rape¹⁰⁴. Additionally, because of the influence of rape myths acceptance, many are the

⁹⁹ Grubb & Turner, (n.51).

¹⁰⁰ Hammond, Berry & Rodriguez, (n.79).

¹⁰¹ Masser, Lee & McKimmie, (n.98)495-496.

¹⁰² Viki, Abrams & Masser, (n.92).

¹⁰³ Stahl, Eek & Kazemi, (n.64)239–240.

¹⁰⁴ Ibid. 241

women that either feel guilty and blame themselves for the crime they suffered, either they fail labelling the violence they experienced as rape in the first place¹⁰⁵.

To conclude the social endorsement of rape myths reinforce a rape-supportive culture in which violence is normalized, justified and the seriousness of rape and its long lasting effects on rape survivors are generally minimized¹⁰⁶. Rape myths are used to rationalise aggressive sexual tendencies, normalizing male violence against women while excusing the perpetrators¹⁰⁷ and, based on the evidence that the perceived rape myths acceptance of other peers can significantly influence the rationalization of aggressive tendencies and increase rape proclivity, it might be reasonable considering rape myths acceptance acting as a social norm, as a rule accepted by a great number of men, as specific standards guiding and defining men's aggressive sexual behaviours¹⁰⁸.

Excusing rapists and normalizing male sexual violence against women has also the pervasive effect of depicting sexual aggression as an inherent risk of relationship between men and women¹⁰⁹. The fact of considering sexual coercion and rape in this particular manner automatically reinforce the idea that first of all, nothing can be done to change the reality of male sexual violence against women and, secondly that women should be cautious and take precautions in order to avoid the risk of being raped: once again, normalizing male sexual aggression excuses perpetrators that are considered as somehow "acting normally" and blames rape survivors for either deserving or being partially responsible for not having properly prevented the assault¹¹⁰.

¹⁰⁵ Ryan, (n.73)774.

¹⁰⁶ Karen G. Weiss, "Boys will be boys and other gendered accounts: An exploration of victim's excuses and justifications for unwanted sexual contact and coercion", pp. 811-812, *Violence Against Women*, 15, 2009.

¹⁰⁷ Bohner, Eyssel, Pina, Siebler & Viki, (n.47)19.

¹⁰⁸ Gerd Bohner, Frank Siebler, & Jürgen Schmelcher, "Social norms and the likelihood of raping: Perceived rape myth acceptance of others affects men's rape proclivity", p. 287, *Personality and Social Psychology Bulletin*, 26, 2006.

¹⁰⁹ Weiss, (n.106).

¹¹⁰ Ibid. 107

CHAPTER 3

REPORTING AND PROSECUTING RAPE

Precisely because rape is considered as one of the most under-reported crimes, many are the researchers have devoted their attention to law enforcement officers' interaction with rape survivors and its impact on prosecutorial decision making¹¹¹. As a matter of fact, most women victims of rape choose not reporting the incident in the first place and the majority of those who actually denounce, they often end up experiencing the phenomenon of "secondary victimization": because of the pervasiveness of rape myths acceptance, victims avoid reporting because of the fear of being perceived in a very negative manner or being treated in a disrespectful way, the fear of not being believed or being considered at least in some part responsible for the incident¹¹². Moreover, alleged perpetrators are rarely arrested or convicted and, taking also into account that victims have the tendency to dismiss the lawsuits at different stages throughout the legal process, rape cases attrition and low conviction rates seem to confirm the inadequacy of criminal justice systems in providing justice to rape survivors¹¹³. Based on the assumption that law does not exist and operate in a vacuum and, noting that the decisions of reporting and prosecuting are *de facto* influenced by the way in which rape is defined and perceived by all the members of our society, including police officers and prosecutors,¹¹⁴ the following sections will be dedicated to analyze which are the main factors influencing law enforcement officers and criminal justice professionals' response to rape.

¹¹¹ Rachel M. Venema, "Police officer schema of sexual assault reports: Real rape, ambiguous cases, and false reports", p. 873, *Journal of Interpersonal Violence*, 31, 2016.

¹¹² Ibid. 874

¹¹³ Amy Grubb, & Emily Turner, "Attribution of blame in rape cases: A review of the impact of rape myth acceptance, gender role conformity and substance use on victim blaming", p. 444, in *Aggression and Violent behaviour*, 17, 2012.

¹¹⁴ Megan A. Alderden, "Processing of Sexual Assault Cases Through the Criminal Justice System", p. 11, (Ph.D, University of Illinois, 2008).

3.1 Rape reporting and police officers' perception of rape survivors

In order to prosecute perpetrators and guaranteeing justice to female victims of rape, the role played by law enforcement officers is of crucial importance. Although it might sound obvious, it is important to recall that, in order to have a trial to bring a rapist to justice, a rape victim has first to report the incident she suffered to the police. Subsequently, law enforcement officers are usually the “first call for assistance a victim makes after a rape”¹¹⁵. Moreover, beside being the first responders to rape crimes, police officers have been considered “gateways to justice” because they possess the extraordinary power to decide which cases will or won't actually proceed to prosecution¹¹⁶. It is important to note that, even if factors such as the seriousness of the crime, the degree of injury to the victim and the blameworthiness and dangerousness of the offender are clearly taken into account during the investigation process, police officers consider as well whether or not the alleged rapist could be possibly convicted and subsequently, it is quite easy to see how police officers tend to accept “only strong winnable cases”¹¹⁷ and how their decisions can influence, if not determine, a case outcome¹¹⁸. Moreover, we must consider that, unfortunately, the decisions to pass or not to pass rape cases to the prosecutor are generally affected by police officers' personal negative attitudes toward rape survivors largely influenced by the endorsement of false beliefs about rape such as the “real rape” or the “genuine victims” myths¹¹⁹. Many studies shows that victims-survivors have the tendency to avoid reporting being raped to the police if the incident does not present the defining characteristics of “real rape” such as the presence of a weapon, the presence of injuries or the lack of victim-offender relationship¹²⁰. Taking as an example the rape myth about women lying about being raped and the issue of the prevalence of false reports of rape, it is worth to mention that, although it remains particularly difficult to assess an exact percentage of false rape

¹¹⁵ Annelise Mennicke, Delaney Anderson & Stephanie Kennedy, “Law enforcement officers' perception of rape and rape victims: A multimethod study”, p. 815, *Violence and Victims*, 29, 2014.

¹¹⁶ Venema, “Police officer schema of sexual assault reports”, (n.111).

¹¹⁷ Cassia Spohn, Clair White, & Katharine Tellis, “Unfounding sexual assault: Examining the decision to unfound and identifying false reports”, p. 168, *Law & Society Review*, 48, 2014.

¹¹⁸ Rachel M. Venema, “Making Judgments: How Blame Mediates the Influence of Rape Myth Acceptance in Police Response to Sexual Assault”, p. 2, *Journal of Interpersonal Violence*, 2016.

¹¹⁹ Mennicke, Anderson & Kennedy, (n.115)815-816.

¹²⁰ Venema, “Police officer schema of sexual assault reports”, (n.111)874.

reports, the most accurate statistics fix the rate between 2 and 8 percent ¹²¹. Nevertheless, studies confirm that many police officers have the tendency to call into question the credibility of the alleged victims during the investigation process: it is true that delays in reporting and contradictory allegations are factors that, for example, could make the cases more problematic to be dealt with, but it is also true that usually police officers simply consider a “problematic case” as an “unfounded and false case” ¹²².

To conclude, because rape is one of the most underreported crimes that, unfortunately, happens to affect a large percentage of women all over the world, it is of vital importance guaranteeing that law enforcements officers are highly trained to be aware of the different problematic aspects concerning rape myth acceptance and rape reporting in order to properly investigate the crime in a more gender sensitive manner¹²³.

3.2 Criminal justice professionals’ perception of rape survivors

As it has been already said, if the number of rapes reported to law enforcement officers is generally low, the percentage of trials that will result in convictions is even lower¹²⁴. Many studies actually confirm the alarming reality of rape case attrition within the criminal justice system: due to police and prosecutorial decision making the majority of rape reports do not progress and won’t result with the conviction of rape perpetrators¹²⁵. In order to analyze this particular phenomenon known as “rape case attrition” or, more in general, “justice gap”, it is crucial to understand that, while delivering a judgment, judges take into consideration both evidence-based legal factors and extralegal factors based on rape myths¹²⁶.

Criminal justice practitioners employ evidence-based factors -such as the presence of physical or forensic evidence, the presence of a weapon or a witness- in

¹²¹ Spohn, White & Tellis, (n.117)162.

¹²² Ibid. 164

¹²³ Mennicke, Anderson & Kennedy, (n.115)825.

¹²⁴ Gerd Bohner, Friederike Eyssel, Afroditi Pina, Frank Siebler & G. Tendayi Viki, “Rape myth acceptance: affective, behavioral, and cognitive effects of beliefs that blame the victim and exonerate the perpetrator”, pp. 17-18, In Miranda Horvath & Jennifer Brown (Eds.), “Rape: Challenging contemporary thinking”, London, Routledge, 2013.

¹²⁵ Venema, “Police officer schema of sexual assault reports”, (n.111).

¹²⁶ Alderden, (n.114)21-22.

order to support and validate victims' allegations and prove that a crime actually occurred¹²⁷. The presence of physical injuries, having the possibility to take into consideration medical reports, hearing the testimony of a witness supporting the victim' allegations or examining a weapon with which the alleged victim has been threaten or actually injured all constitute important factors that can corroborate victims claims and that are clearly taken into primary consideration by professionals in need to decide whether or not a case should proceed through the criminal justice system¹²⁸.

Nevertheless, other extra-legal factors that are not based on legal evidence but on rape myths and stereotypes can actually influence the manner in which criminal justice personnel perceive and decide the merits of a case¹²⁹. Stereotyped beliefs concerning the victim credibility, the victim-suspect relationship and the characteristics of the victim, the suspect and the assault itself all contribute reinforcing a negative perception of rape survivors while creating a cultural understanding of rape that does not match with its legal definitions¹³⁰. Before focusing on the analysis of these extra-legal factors, it is also crucial to understand that criminal justice professionals are not only workers whose job is prosecuting criminals but that they are also individuals and therefore, their personal characteristics such as their identity, their social position and their personal experiences can actually largely influence the way in which they attribute responsibility¹³¹. Now, in order to understand how rape myths actually influence jurors' attribution of responsibility and verdicts, various extra-legal factors and their effects on deliberations will be now discussed in greater details.

I. Victim Credibility

Sadly, the credibility of the alleged victims of rape is not only called into question by law enforcement officers during the investigation process: once a particular case has been passed to the prosecutors, many criminal justice professionals seem to share the same tendency to meticulously examine victims' allegation in order to prove

¹²⁷ Alderden, (n.114)22-28.

¹²⁸ Ibid.

¹²⁹ Ibid. 21-22, 28

¹³⁰ Venema, "Making Judgments", (n.118)5.

¹³¹ Alderden, (n.114)39-41.

and ensure their veracity¹³². Although this particular focus on victim credibility could be explained and in some way justified taking into account prosecutors' desire to exclude the hypothesis the victim had an ulterior motive to denounce the suspect and therefore to avoid the phenomenon of false rape reporting, as it has been argued before, false allegations concerning rape are in reality not that common¹³³. Nevertheless, female victims of rape have to generally struggle in order to prove that there is no alternative explanation for what happened, in order to prove they are "genuine victims" of rape¹³⁴. As an example, delay in reporting the incident is considered to be one of the factors concerning the alleged victims' behaviour that could influence jurors' assessments of her credibility: even if in reality many victims-survivors don't report the incident for a significant period of time, delay in reporting has been generally perceived as "unnatural" and "suspicious" in the courtrooms¹³⁵. Moreover, many studies have shown that factors such as the lack of resistance during an assault or appearing rather calm while recounting events at trial could potentially compromise survivors' credibility: physical struggle is still considered as one of the most normal response to rape and many people still find it difficult to believe an alleged victim of rape who actually does not show evident signs of psychological distress while talking about her traumatic experience¹³⁶.

To summarize, prosecutors tend to establish what constitute a "normal behaviour" and a "natural reaction" to rape outside and inside a courtroom and, as soon as an alleged victims fails to behave or react as the "ideal victim of rape" would have done, her genuinely being victim of a crime such as rape will be probably put into question and discredited¹³⁷.

¹³² Louise Ellison & Vanessa E. Munro, "Reacting to rape: exploring mock jurors' assessments of complainant credibility", p. 202, *British Journal of Criminology*, 49, 2009.

¹³³ Alderden, (n.114)32.

¹³⁴ Ibid.

¹³⁵ Ellison & Munro, (n.132)203.

¹³⁶ Ibid. 202

¹³⁷ Wendy Larcombe, "The "ideal" victim v. successful rape complainants: Not what you might expect", p. 134, *Feminist Legal Studies*, 10, 2002.

II. Victim-Suspect Relationship

The relationship between the alleged victim and perpetrator has been identified as one of the most influential extra-legal factors affecting criminal justice professionals' decisions¹³⁸. Based on the myth of "real rape", it is generally but falsely assumed that the majority of rape incidents involve complete strangers and therefore, rape by an acquaintance is usually less considered as rape¹³⁹. As a matter of fact, many studies have demonstrated that when victims claim having been raped by someone they know such as acquaintances, relatives, or intimate partners, the likelihood that victim allegations will be questioned by the prosecutors will tendentially increase¹⁴⁰. It is also important to note that criminal justice professionals tend to dismiss more acquaintance rape cases because they do not believe they would be able to easily prove the crime actually occurred due to the existence of a previous relationship between victim and suspect: it might seem quite easy to convict a stranger who raped a girl in a dark corner of the road but it might be more demanding to assess the case of a guy who raped the girl he started to go out with¹⁴¹. In fact, as it has been argued by Ben-David and Schneider, "as the intimacy of the relationship increases, the tendency to consider his behavior as totally unacceptable decreases. The more familiar the perpetrator is, he is viewed as less responsible for the rape, his actions as a lesser violation of the victim's rights, and the likelihood of a misunderstanding of the situation as greater"¹⁴². Taking marital rape as an example, it is well known that in many countries of the world being married implies irrevocably consenting to sexual relations and a woman's right to refuse having sexual intercourse with her husband is still not recognized nor guaranteed in a great number of legal systems¹⁴³. Focusing instead on *date rape* that has been defined as "forced intercourse that happens on a date or between acquainted or romantically involved individuals"¹⁴⁴, it is crucial to highlight the fact that, although it is one of the

¹³⁸ Venema, "Making Judgments", (n.118)5.

¹³⁹ Sarah Ben-David & Ofra Schneider, "Rape perceptions, gender role attitudes, and victim perpetrator acquaintance", p. 386, *Sex Roles: A Journal of Research*, 55, 2005.

¹⁴⁰ Alderden, (n.114)34-35.

¹⁴¹ Ibid. 35

¹⁴² Ben-David & Schneider, (n.139)387.

¹⁴³ Ibid.

¹⁴⁴ Megan J. Jenkins & Faye H. Dambrot, "The attribution of date rape: Observer's attitudes and sexual experiences and the dating situation", pp. 875-895, *Journal of Applied Social Psychology*, 1987, 17, 1987

most frequent type of rape, date rape has been often misperceived and minimized: date rape survivors have generally been blamed when, for example, they admitted having been drinking or whenever they have been perceived as failing to clearly manifest their refusal¹⁴⁵. In conclusion, the fact that rape by acquaintances, relatives, or intimate partners is less likely to be considered as “real rape” reinforce the idea that male violence against women remains a problem that concerns the private sphere of individuals’ lives. Therefore, it might be argued that criminal justice practitioners have the tendency to fail recognizing rape incidents perpetrated by acquaintances, relatives, or intimate partners as a problem of public order that concerns the community as a whole.

III. Victim characteristics

As it has been explained while discussing the phenomena of secondary victimization and victim-blaming, rape survivors are often considered responsible for having precipitated their own assault¹⁴⁶. In rape-supportive societies like the ones we live in, women and young girls are warned and even taught to avoid taking high risk behaviors which could potentially put them in danger and increase the likelihood of being raped: avoid drinking alcohol and taking drugs, not walking alone late at night, avoid inviting guys to come up to your apartment, dressing in a non provocative way are just few of the many rules followed by the “ good girls” who want to avoid at all costs being raped¹⁴⁷. Many studies have confirmed that alcohol or drug consumption are factors capable influencing both the behaviour of perpetrators and the process of attribution of responsibility conducted by observers, including criminal justice professionals¹⁴⁸. Sadly, researches show as well that the great majority of victims that resulted intoxicated at the time of the incident are more likely to be blamed¹⁴⁹.

in Calvin M. Simms, Nora E. Noel, & Stephen A. Maisto, “Rape blame as a function of alcohol presence and resistant type”, p. 2767, *Addictive Behaviors*, 32, 2007.

¹⁴⁵ Calvin M. Simms, Nora E. Noel, & Stephen A. Maisto, “Rape blame as a function of alcohol presence and resistant type”, p. 2767, *Addictive Behaviors*, 32, 2007.

¹⁴⁶ Avigail Moor, “She dresses to attract, he perceives seduction: A gender gap in attribution of intent to women’s revealing style of dress and its relation to blaming the victims of sexual violence”, p. 115, *Journal of International Women’s Studies*, 11, 2010.

¹⁴⁷ Venema, “Making Judgments”, (n.118)5-6.

¹⁴⁸ Grubb & Turner, (n.113)447-448.

¹⁴⁹ Ibid. 448

Moreover, because of the general negative perception toward rape survivors fostered by rape myths acceptance, many are the rape survivors who feel responsible for their intoxication and end up not only not reporting to the police but also not looking either for social and health support¹⁵⁰.

Another factor that has been found compromising the way rape survivors are perceived and treated inside the courtrooms is the way the survivors were dressing and behaving before the incident: wearing a sexually provocative dress and behaving in a provocative manner have been often interpreted as proof of the victims' sexual responsibility¹⁵¹. What are the characteristics of a "provocative" outfit? In her article Wolfendale proposes a definition in which a provocative dress is described as "all female appearance styles that deviate from the acceptable norm of a specific social situation toward the direction of sexual suggestiveness and/or body exposure"¹⁵². Based on this definition, it could follow that women's clothing is socially interpreted relying on the need of meeting the dress codes but, most importantly, taking into consideration the wearer's intentions¹⁵³. The problem turns out to be that both men and women, having internalised well-established social norms, tend to interpret women's outfit as a clear manifestation of their desire for sex and sexual availability and this interpretation of women's sexual intentions usually is not at all based on women's real and actual intentions¹⁵⁴. As it has been well questioned by Moor, "do women in fact have seduction in mind when they dress revealingly, or are their actual motives completely different and entirely misunderstood?"¹⁵⁵. According to the author, it is not possible to explain the problem of women's revealing clothing and its impact on victim-blaming without referring to the phenomenon of sexual objectification of women: the female body has been gradually but inexorably constructed within our societies as "target for male sexual lust" and because of this, men tend to unconsciously assume that women are constantly interested in seducing men although women themselves might have and even express totally different intentions¹⁵⁶. Taking into consideration that female

¹⁵⁰ Grubb & Turner, (n.113)448.

¹⁵¹ Jessica Wolfendale, "Provocative Dress and Sexual Responsibility", p. 600, *The Georgetown Journal of Gender and the Law*, 17, 2016.

¹⁵² Ibid. 602-603

¹⁵³ Ibid. 603

¹⁵⁴ Ibid.

¹⁵⁵ Moor, (n.146)116.

¹⁵⁶ Ibid. 116-117

beauty is essentially constructed in sexual terms and body-revealing clothing is at the base of present fashion codes, the scenarios in which women dress in a revealing manner should not be misunderstood: they should either be seen as situations in which women are *de facto* forced to adhere to or autonomously choose to adopt fashion standards that have been socially sexualized¹⁵⁷.

Despite the critique about the sexual objectification of women, several studies suggest that the “provocative dress” rhetoric actually reinforces the rape myth according to which “she was asking for it”: the rape survivor should have known that dressing or behaving in a provocative manner could have been risky, she should have known that specific outfit could have failed controlling male sexual desire, so she is in part responsible for what happened and therefore, she cannot complain now because it clearly looked like “she was asking for it”¹⁵⁸. As a result, in a social and legal environment focused on women’s sexual responsibility, perpetrators may be once again partially excused, justified and women’s vulnerability to sexual violence and rape is not properly addressed but instead reinforced¹⁵⁹.

To conclude, while alcohol and drugs are generally used as a mitigating factors in order to excuse to some extent rapists’ violent and aggressive behaviours, to female victims of rape is reserved the exact opposite treatment and judgement¹⁶⁰. Similarly, men’s outfits and behaviors are rarely perceived and described as “provocative” while women are often criticized and blamed for dressing or behaving in a way that “provokes men’s sexual desire and invite men’s sexual advances”¹⁶¹. These negative beliefs and attitudes influence how rape and more in general sexual violence are addressed and processed by criminal justice professionals and ultimately they often negatively impact women’s everyday lives by increasing their chances of being blamed when raped and therefore by increasing their concerns about the perception of their bodies and behaviours¹⁶².

¹⁵⁷ Moor, (n.146)117-118

¹⁵⁸ Wolfendale, (n.151)605

¹⁵⁹ Ibid. 609

¹⁶⁰ Grubb & Turner, (n.113)447-448.

¹⁶¹ Wolfendale, (n.151).

¹⁶² Ibid. 601

CHAPTER 4

CHANGING RAPE REALITY WITH A DIFFERENT FEMINIST APPROACH

Despite the fact that the three major schools of feminism do not always agree on the interpretation and conceptualization of some key ideas of feminist theory, the critiques of patriarchy and legal rights can definitely be considered as shared common features¹⁶³. Back in 1995, Christine Chinkin wrote that “legislation cannot change the power imbalances between men and women, and will inevitably be applied and administered by men”¹⁶⁴. Chinkin is certainly not the only feminist assuming that, because rights are the reflection of a male point of view, law has to be considered as essentially supporting patriarchy¹⁶⁵. As a matter of fact, we know that international human rights law has remained gender blind in terms of violence against women for a very long time and that it has not been until recently that violence against women has been finally recognized as a clear violation of women’s rights¹⁶⁶. Although international and national legal instruments have gradually been introduced and modified to protect and promote equal rights for women, especially when we are addressing the issue of sexual violence and rape, law enforcement officers and justice professionals tend to interpret and “apply the law in ways that uphold patriarchal power”¹⁶⁷.

If on the one hand feminists generally consider the law as one of the most powerful manifestations of male power, on the other one it is of vital importance to highlight the fact that this feminist critique of legal rights does not automatically imply the rejection of rights and law: as it has been argued by Virginia Held, the majority of feminists are really far from wishing and believing to be able to change social structures and reach gender equality leaving out the law and that is precisely why, despite recognizing the importance of rights for feminist aims, they actually advocate for the reconceptualization of rights and the reformulation of existing legal provisions.¹⁶⁸

¹⁶³ Virginia Held, *The Ethics of Care: Personal, Political, and Global*, p. 141, Oxford University Press, New York, 2006.

¹⁶⁴ Christine Chinkin, “Violence against women: the international legal response”, p. 28, in Sweetman, Caroline et al. (ed.), *Women and rights*, Oxfam, 1995.

¹⁶⁵ Held, (n.163).

¹⁶⁶ Chinkin, (n.164)24.

¹⁶⁷ Held, (n.163).

¹⁶⁸ Ibid. 142

Modifying the law has the potential to significantly improve living conditions for women and feminists have been advocating for legal reform in many aspects of law, especially with regard to rape law¹⁶⁹. Referring instead to the reconceptualization of rights, Held and other advocates of the Ethics of Care such as Martha Minow suggest that rights should rather not be seen as the reflection of an utopic world governed by perfect justice but they should be essentially conceived as a reflection of social reality and therefore they “should never lose sight of the social relations of power and privilege” both in the public and private spheres¹⁷⁰. According to Held, influenced by Kantian and utilitarian moral theories that consider all individuals as rational, autonomous, independent agents, the Ethics of Justice and more in general liberal individualism have had their attentions focused on guaranteeing individual rights, fairness and equality to all people, including women¹⁷¹. Nevertheless, as Held wrote “within the ethics of justice, respect for human rights has played a central role, and this concern has been increasingly apparent at the global level. But as feminist scholars have shown, the human rights of women have been woefully neglected”¹⁷².

Moreover, “limiting the reach of law to its appropriate domain” has also been considered of fundamental importance by the proponents of the Ethics of Care¹⁷³: whilst it is absolutely true we have to consider seeking justice and guaranteeing fairness and equality as clear priorities in the domain of law, we cannot extend the language and the principles of the law to regulate all the other domains of life¹⁷⁴. Held and the Ethics of Care do not aspire to exclude the Law and justice as its priority from the process of creating a better society but they ultimately uphold the idea that justice and the law have to be developed within the larger framework of Care¹⁷⁵: if our societies won’t be developed based on the existence of strong caring relationships between its members, if individuals do not care enough about all the other members of their societies, then rights won’t be respected either¹⁷⁶. As Held argues “before there can be respect for rights there must be a sense of social connectedness with those others whose rights are recognized.

¹⁶⁹ Held, (n.163)143.

¹⁷⁰ Ibid. 145

¹⁷¹ Ibid. 156-157

¹⁷² Ibid. 165

¹⁷³ Ibid. 142 & 144

¹⁷⁴ Ibid. 158

¹⁷⁵ Ibid. 146

¹⁷⁶ Ibid. 89

A relation of social connection, or a caring relation, is normatively prior and has priority over an acknowledgment of rights. We ought to respect the human rights of all persons everywhere, but first of all we ought to develop in everyone the capacity for and the practice of caring about all others as human beings like ourselves”¹⁷⁷. Establishing and strengthening at the personal, political but also at the global level caring social relationships based on trust and active cooperation to ensure that all people will meet their needs is at the base of the Ethics of Care¹⁷⁸: just as the members of a family care about and for one another, it is of vital importance to establish a solid framework of care characterizing all levels of our society¹⁷⁹. From the perspective of care, individuals are all connected and interdependent and their cooperation based on caring relationships could prove being extremely useful in order to transform and eliminate situations and realities characterized by domination and oppression such as those that affect women¹⁸⁰.

Addressing the issue of violence against women and more specifically rape, it is important to point out that building societies based on the value and the practice of care would not automatically imply creating societies completely free from violence¹⁸¹. If on the one side the Ethics of Care recognizes that the recourse to violence- even when considered justifiable- can always potentially threaten not only wider contexts such as the whole global society but also the primary contexts of families and groups, on the other side, advocates of Care argue that it is perfectly possible preventing violence before it occurs and that, in any case, the use of violence would automatically prove the failure of thinking in terms of care by not having chosen alternative and nonviolent ways to avoid violence in the first place¹⁸².

Despite the existence of sceptical positions based on the assumption that “violence seems to call for the harsh arm of law and enforcement and not the soft touch of care”¹⁸³, what I will argue is that, on the very contrary, through the Ethics of Care and the process of creation of caring societies it could be possible not only guaranteeing

¹⁷⁷ Held, (n.163)125.

¹⁷⁸ Ibid. 157

¹⁷⁹ Ibid. 72

¹⁸⁰ Ibid. 160

¹⁸¹ Ibid. 138

¹⁸² Ibid. 139

¹⁸³ Virginia Held, “Can the Ethics of Care Handle Violence?”, p. 116, *Ethics and Social Welfare*, 4, 2010.

proper support and access to justice to female victims of rape but also preventing sexual violence and rape accidents in the first place.

As it has been said above, in order to comply with the new standards set by the adoption of new international legal instruments on gender-based violence and violence against women, civil and criminal codes have been often modified and new laws and policies have been gradually introduced at the level of domestic legislation¹⁸⁴. Nevertheless, the ways in which rape survivors are often treated haven't considerably improved and it is still necessary to find an effective solution to the issue of social pervasiveness of rape myth acceptance¹⁸⁵. Especially because of the existence of rape myths that are usually the product of eradicated gender roles stereotypes, there is a big difference between the legal definition of rape written in international and national texts and the social perception of rape and rape survivors that not only our societies but even police officers and criminal law professionals possess¹⁸⁶. The effectiveness of the Law to fight against RMA and guaranteeing access to justice to female victims of rape could be questioned: it is true, as it has been argued by Chinkin, "the articulation of legal principles remains an important first step", but it has to be supported by other measures¹⁸⁷. Resorting to the Ethics of Care, I argue that, in order to achieve these goals, it is necessary to foster societies based on the existence of caring relations between their interdependent members that become actively involved in ensuring all people's needs will be met and all people's rights will be guaranteed and respected¹⁸⁸. Building caring societies committed to guarantee access to justice to rape survivors would clearly entail adopting different measures at the local, national, regional and international level such as the training of police officers and criminal law professionals, the provision of medical and social support services to victims of rape but, above all, the education of women and in particular of men on gender stereotypes and violence against women, including sexual violence and rape, with the aim of changing in a meaningful

¹⁸⁴ Held, (n.183)35.

¹⁸⁵ Megan A. Alderden, "Processing of Sexual Assault Cases Through the Criminal Justice System", p. 16, (Ph.D, University of Illinois, 2008).

¹⁸⁶ Zoë D. Peterson and Charlene L. Muehlenhard, "Was it rape? The function of women's rape myth acceptance and definitions of sex in labelling their own experiences", p. 130, *Sex Roles*, 51, 2004.

¹⁸⁷ Chinkin, (n.164)28.

¹⁸⁸ Held, (n.163)157.

manner social attitudes and practice towards women in general but also towards rape survivors¹⁸⁹.

Moreover, a part from caring for women that have already been exposed to violence, through the lens of the Ethics of Care it is even possible to prevent women from potentially becoming rape victims in the first place¹⁹⁰. As Held wrote in her *Can the Ethics of Care Handle Violence?*, “a moral theory such as the Ethics of Care is needed to assure that we care enough about our fellow human beings to actually respect their rights and take appropriate account of their interests and especially that we refrain from aggressive violence”¹⁹¹. An education based on the value and the practice of care would allow all individuals to develop a particular set of abilities since their very first days of life such as building relations based on trust and respect, cultivating nonviolent feelings and looking for nonviolent alternatives to solve a dispute so that violence could be effectively contained, decreased and prevented¹⁹². In the second part of this research, based on the principles and the approach proposed by the Ethics of Care, while analyzing how States that ratified the Istanbul Convention are actually complying with its provisions, I will try to evaluate whether and to what extent the Convention itself is contributing or could eventually contribute to the process of creating caring societies in the European context.

¹⁸⁹ Chinkin, (n.164)28.

¹⁹⁰ Held, “Can the Ethics of Care Handle Violence?”, (n.183)120.

¹⁹¹ Ibid.121

¹⁹² Ibid.126

PART II

**FOSTERING A EUROPEAN CARING SOCIETY: COMPLYING
WITH THE ISTANBUL CONVENTION ACCORDING TO GREVIO**

CHAPTER 1

THE ISTANBUL CONVENTION: A REGIONAL TOOL TO FIGHT VIOLENCE AGAINST WOMEN

Violence against women, and in particular sexual violence, affect women worldwide disproportionately and on a day-to-day basis: rape and other acts of sexual violence, whether during peace-time or in the context of armed conflicts, preclude women's enjoyment of their fundamental rights such as the right to be free from fear and violence.¹⁹³ Specifically in order to comprehensively address the problem of discrimination against women and redress all the civil, political, economic, social and cultural inequalities that were precluding to women the ability and possibility to effectively enjoy their fundamental rights and freedoms, in 1979 the Convention on the Elimination of Discrimination against Women (CEDAW) has been adopted by the UN General Assembly as the main international legally binding instrument aimed at respecting and promoting women's human rights¹⁹⁴.

It is well known that, despite its focus on discrimination against women in areas such as education, employment, health care and participation in policy and decision-making processes, a specific provision concerning violence against women has not been included in the original text of the Convention¹⁹⁵. Since the 1990s violence against women has begun being considered as well as a form of discrimination against women and as an obstacle *de facto* impeding women's effective enjoyment of the rights included in the Convention¹⁹⁶. In fact, recognizing the long lasting effects of violence against women on their physical and mental health, General Recommendation 19 of 1992 focus on the need of eradicating violence against women that States should properly take into account in order to guarantee an effective and comprehensive

¹⁹³ Kirsten Anderson, "Violence against women: state responsibilities in international human rights law to address harmful masculinities", p. 193, *Netherlands Quarterly of Human Rights*, 26, 2008.

¹⁹⁴ Rebecca J. Cook, "Enforcing women's rights through law", pp. 8-9, In Caroline Sweetman et al. (ed.). *Women and rights*. Oxfam, 1995.

¹⁹⁵ Christine Chinkin, "Violence against women: the international legal response", p. 25, in Caroline Sweetman et al. (ed.), *Women and rights*, Oxfam, 1995.

¹⁹⁶ *Ibid.*

implementation of the Convention¹⁹⁷. In order to comply with the international standards set by the United Nations on this particular matter, many are the countries that have changed their national legislations or have passed new laws to address violence against women¹⁹⁸ but it has been at the World Conference on Human Rights held in Vienna in 1993 that, after having recognized public or private violent acts against women as severe violations of human rights, the international community urged States to develop not only national but also regional programs to eliminate violence and discrimination against women¹⁹⁹. Legal instruments adopted and implemented at the regional level were thought, and they can actually be seen, as potentially useful and powerful tools to address the issues related to the pervasiveness of discrimination and violence against women²⁰⁰. Considering that even the 2017 CEDAW's General Recommendation 35 on gender-based violence against women has been greatly influenced by the CoE Convention on preventing and combating violence against women and domestic violence (Istanbul Convention)²⁰¹, in the following paragraphs I will specifically take into consideration this regional instrument with the aim to understand to what extent it has complemented and further broadened the international normative framework for the eradication of all forms of violence against women.

1. A regional Convention to broaden international standards on VAW

At the European level, achieving gender equality and promoting women's right to live free from violence have begun to influence and underpin the action of the Council of Europe and its Steering Committee for Equality between Women and Men (CDEG) since the 1990s²⁰². Despite the existence of Recommendation N. 5 on the

¹⁹⁷ Chinckin, (n.195).

¹⁹⁸ Gaby Ortiz-Barreda & Carmen Vives-Cases, "Legislation on violence against women: overview of key components", p. 62, *Pan American Journal of Public Health*, 33, 2013.

¹⁹⁹ G. Erlick Robinson, "International perspectives on violence against women – Introduction", p. 156, *Archives of Women's Mental Health*, 6, 2003.

²⁰⁰ Ibid.

²⁰¹ Council of Europe, "CEDAW launches General Recommendation No. 35 on gender-based violence against women", (Council of Europe, 2017) <<https://www.coe.int/en/web/istanbul-convention/-/cedaw-launches-general-recommendation-35-on-gender-based-violence-against-women>> accessed 03 July 2018

²⁰² Organization of American States and Council of Europe, "*Regional Tools To Fight Violence Against Women: The Belém Do Pará And Istanbul Conventions*", p. 96, 2014

<<http://www.oas.org/en/mesecvi/docs/mesecvi-coe-cswpub-en.pdf>> accessed 20 May 2018.

protection of women against violence adopted by the CoE Committee of Ministers in 2002, the necessity to adopt a legally binding European convention to comprehensively address the issue of violence against women became clear. To this end, the Ad Hoc Committee on Preventing and Combating Violence against Women and Domestic Violence (CAHVIO Committee) was established and tasked by the Committee of Ministers to work on the draft of the Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) that was formally adopted in 2011²⁰³.

Taking into consideration the regional legal framework on violence against women which comprises the the 1994 Inter-American Convention on the prevention, punishment and eradication of violence against women (Belém do Pará) and the 2003 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, the 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence has reaffirmed and further broadened the international standards previously set on the matter by providing legally-binding definitions such as the one in Article 3(a) that criminalizes all different forms of violence against women (including domestic violence in Article 3(b)) or the one that explains the meaning of "gender" (Article 3(c)) and what the principle of "due diligence" entails (Article 5)²⁰⁴. Moreover, it should also be highlighted not only the fact that the Convention can be ratified by any country in the world that wishes so and that its provisions are legally-binding on states both during peacetime and in situations of armed conflict (Article 2.3) but also the fact that, based on its "cross-border approach", states parties have a double obligation which entails extending their jurisdiction to prosecute crimes committed abroad by their nationals and guaranteeing support and "greater access to justice for nationals or residents of states parties who become victims of crimes of violence against women while abroad"²⁰⁵.

It is important to note that, beside being the first treaty specifically addressing violence against women at the European level²⁰⁶, the Convention has been generally

²⁰³ Dubravka Šimonović, "Global and Regional Standards on Violence Against Women: The Evolution and Synergy of the CEDAW and Istanbul Conventions", p. 603, *Human Rights Quarterly*, 36, 2014.

²⁰⁴ Ibid. 602

²⁰⁵ OAS & CoE, "*Regional Tools To Fight Violence Against Women*", (n.202)89.

²⁰⁶ Johanna Nelles & Elise Petitpas, "The Istanbul Convention: new treaty, new tool", p. 83, *Forced Migration Review*, 1, 2015

recognized as unique and of inestimable value because of its “approach based on a gendered understanding of violence against women and domestic violence”²⁰⁷. In fact, in the light of the existing and mutually reinforcing relation between gender inequality and violence against women, at the base of the provisions of the Convention there is the idea that, in order to eradicate violence against women, it is necessary to make very great efforts to modify power hierarchies and dynamics within our societies to achieve a greater level of equality between men and women²⁰⁸. Nevertheless, it is important to point out that, although the importance of achieving gender equality and recognizing VAW as a gendered phenomenon that affects women to a much greater degree has been underlined in the Preamble of the Convention, anyway states parties are strongly encouraged to integrate a comprehensive gender perspective while adopting laws and policies at the domestic level (Article 6) and they might as well decide to extend the scope of application of the Convention with the aim to protect male, elderly and child victims of violence, in particular victims of domestic violence²⁰⁹.

Violence against women has been defined in Article 3(a) as “a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including treats of such act, coercion or arbitrary deprivation of liberty, whether occurring in public or private life”²¹⁰: physical violence, psychological violence, stalking, sexual harassment, forced marriage, female genital mutilation, force abortion, forced sterilization and sexual violence, including rape are all forms of violence against women that state parties to the Convention have the obligation to criminalize by introducing specific provisions in their respective domestic legislations²¹¹.

Finally, as it will be discussed in greater details in the following paragraph, it is vital to understand that, apart from the legal definition of VAW, this regional legal tool has been drafted in order to address and deal with the issue of violence against women through a holistic approach which entails harmonizing domestic legislation with the standards set by the Convention as well as adopting and implementing comprehensive

²⁰⁷ Šimonović, (n.203)602.

²⁰⁸ OAS & CoE, “*Regional Tools To Fight Violence Against Women*”, (n.202)96.

²⁰⁹ Ibid. 97-98

²¹⁰ Šimonović, (n.203)604.

²¹¹ Ibid.

policies to prevent violence against women in all its manifestations, to assist and support the victims and to prosecute the perpetrators²¹².

2. Rape and Rape Myths Acceptance: the untapped transformative potential of the Istanbul Convention

Considering the fact that rape is one of the most terrible, devastating and common forms of gender-based violence, it is of crucial importance to understand whether and to what extent the Convention of Istanbul is capable to potentially bring about a change to eradicate rape by overcoming problems, such as the lack of services and support for survivors, the limited access to justice for victims of rape and the apparent lack of political will and commitment shown by the majority of European states to change their criminal codes to properly criminalize rape²¹³. Specific legal provisions concerning rape in the Convention are presented here below in an effort to understand which are the measures States Parties have the obligations to adopt and implement in order to comply with the “rape standards” established by the Convention.

States that have ratified the Istanbul Convention have the legal obligation to change their national laws to harmonize them with what is prescribed by the Convention and therefore, they have to change their respective domestic legislations to criminalize all the different forms of VAW including sexual violence, and more specifically rape²¹⁴. According to the definition of sexual violence provided by Article 36 of the Convention, since “consent *must be given voluntarily as the result of the person’s free will* assessed in the context of the surrounding circumstances” (emphasis added), the lack of consent is considered as the main constituent element of rape crimes and rape incidents have to be criminalized and properly prosecuted even when the perpetrators are the victims’ former spouses or partners²¹⁵. Despite the legal improvements made by the Convention

²¹² Šimonović, (n.203)604.

²¹³ European Women's Lobby, “Report Of Activities And Outputs For The Project: Europe Mobilises Against Rape And For The Council Of Europe Istanbul Convention As A Tool For Change”, p. 3, (2014) <https://www.womenlobby.org/IMG/pdf/ewl_public_report_act_against_rape_20140425.pdf> accessed 21 May 2018.

²¹⁴ Ibid.

²¹⁵ Ibid. 4

concerning this specific violation of women's right to sexual autonomy and bodily integrity, "only nine European countries recognise the simple truth that sex without consent is rape"²¹⁶. While some states such as Belgium, Cyprus, Germany, Ireland, Luxembourg and the UK (England, Scotland, Wales and Northern Ireland) have adopted legal definitions of rape based on the absence of consent, the majority of European States still rely on definitions in which factors such as "physical force or threat thereof, coercion or inability to defend oneself" are instead considered as main constitutive elements of rape crimes²¹⁷. Influenced by the sentence of the case *M.C. v. Bulgaria* in which the Bulgarian rape legislation has been judged by the Court of Strasbourg as violating the European Convention on Human Rights due to its reference to the use of force as constituent element of rape, Article 36 of the Istanbul Convention has been specifically adopted to confirm the evidence that "force-based definitions of rape offer inadequate protection for women against sexual violence"²¹⁸: sex without consent is rape. Having said that, it is also of crucial importance to point out that very often the perception and the evaluation of whether or not consent has been expressed and given by rape survivors, can be strongly influenced by gender stereotypes about male and female sexuality and myths about rape that could be even employed by law enforcement officers, prosecutors and criminal justice professionals while investigating and prosecuting rape cases²¹⁹. Therefore, in order to comply with the Istanbul Convention, States Parties have not only the legal obligation to amend their laws to provide a consent-based definition of rape crimes, but also they have to avoid the phenomenon of secondary victimization of rape survivors during rape investigation and prosecution by ensuring that the presence or lack of consent is not assessed by professionals under the influence of rape myths and gender stereotypes²²⁰.

Taking into particular account and recognizing the pervasiveness of rape myths and gender stereotypes within our societies, a whole chapter of the Convention has been dedicated to highlight the urgent need to promote changes at the social and cultural level

²¹⁶ Anna Bluś, "Sex Without Consent Is Rape. So Why Do Only Nine European Countries Recognise This?", Amnesty International (2018) <https://www.amnesty.org/en/latest/campaigns/2018/04/eu-sex-without-consent-is-rape/?utm_source=twitt> accessed 4 May 2018.

²¹⁷ Ibid.

²¹⁸ European Women's Lobby, (n.213)6.

²¹⁹ Ibid.

²²⁰ Ibid. 6-7

in order to prevent rape incidents from occurring in the first place.²²¹ Because of the social influence exerted by gender stereotypes and rape myths, women victims of rape are often blamed and considered by the public as responsible for their own misfortunes in the sense of having somehow contributed to what happened to them and, precisely to address this issue, Chapter III of the Convention highlights the importance to adopt and implement comprehensive measures such as awareness-raising campaigns involving the media as well as the private sector, the training of professionals and education programmes especially devoted to boys and men in order to transform and render our society more gender sensitive and less prone to resort to violence against women²²².

As argued in the first part, the pervasiveness of rape myths acceptance at the social level seems to constitute one of the main causes of the difficulty of guaranteeing effective access to justice to female survivors of rape: as a matter of fact, gender stereotypes and rape myths are also widely held by police officers, prosecutors and criminal justice professional and, because of this, women's rights to be equally treated and protected by the law, their rights to access to justice and due process are often violated during the investigation and prosecution phases²²³. In order to guarantee adequate and effective access to justice to rape survivors, the Convention requires states parties to ensure that the case might be duly investigated and prosecuted independently of the victim's complaint and even if the victim drops the charges (Article 55), to avoid putting into question the victim's respectability and credibility by allowing questions on the victim's sexual history and conduct of life only when strictly relevant and necessary (Article 54), to prohibit mediation and conciliation and other mandatory alternative dispute resolution processes or sentencing (Article 48), to protect victims at all stages of investigations and judicial proceedings (Article 56) and guaranteeing they actually have access to legal assistance and to free legal aid (Article 57)²²⁴. Beside access to justice, as it is enshrined in Chapter IV of the Convention, female victims of rape have to be provided with specialized support services²²⁵ and, as specified in Article 25, given the peculiar nature of rape crimes and the long-lasting effects caused by this particular traumatic form of VAW, the existence of accessible rape crisis referral centers,

²²¹ European Women's Lobby, (n.213)8

²²² Ibid.

²²³ Ibid.

²²⁴ Ibid. 4 & 9

²²⁵ Ibid. 4

providing adequate medical care, trauma support and prompt forensic examination is of crucial importance not only to ensure proper and effective recovering to the victims but also to guarantee the existence of medical evidence to support their claims during the investigation and prosecution proceedings²²⁶.

Focusing now on the issues of low levels of rape reporting and low conviction rates, Article 11 of the Convention stipulates state obligations to “collect disaggregated relevant statistical data at regular intervals on all forms of violence against women, including rape; to conduct population-based surveys to assess the prevalence of and trends of forms of violence against women, including rape; and to support research in the field to identify root causes and effects, incidences and conviction”²²⁷.

To conclude, from a legal point of view, the Istanbul Convention clearly sets important and powerful standards at the regional and international level to contribute improving legislation and policies in order to prevent and eradicate rape²²⁸. Nevertheless, in order to assess its full potential, it is absolutely essential to analyze how governments are actually complying with the Convention by evaluating the effectiveness of legal reforms and measures taken at the domestic level²²⁹. To this end, the following chapter will be dedicated to the presentation of GREVIO, the specific monitoring mechanism created by the CoE and the comparative analysis of state parties’ degree of compliance with the Convention.²³⁰

²²⁶ European Women's Lobby, (n.213)7.

²²⁷ Ibid.

²²⁸ OAS & CoE, “*Regional Tools To Fight Violence Against Women*”, (n.202)90.

²²⁹ Ibid.

²³⁰ Ibid. 93

CHAPTER 2

COMPLIANCE WITH THE ISTANBUL CONVENTION: GREVIO'S CONTRIBUTION

Chapter IX of the Istanbul Convention is dedicated to the establishment of GREVIO, the monitoring mechanism charged with evaluating the implementation of the Convention provisions by states parties²³¹ and, as it has been written by the CoE itself, this monitoring mechanism has the real potential to contribute in a meaningful way to eliminate violence against women at the national, regional and international level since “it is expected to generate very valuable data, advice and support emerging from the in-depth analysis of the various national contexts and the mobilization of expertise and exchange of good practices” and it “will offer a vital forum to co-ordinate and to set a global agenda to eliminate violence against women”²³².

To understand how GREVIO's 17 months long and country-by-country based evaluation procedure is actually conducted, it is necessary to rely on Article 68 of the Convention and Title II (Evaluation procedure) of GREVIO's Rules of Procedure²³³. Even though, based on GREVIO's evaluation timetable, State Parties under evaluation receive a questionnaire to complete with the purpose to provide as much details and informations as possible, the Group of Experts starts to draw a clear picture on the different degrees of implementation by analyzing data and informations provided by international treaty bodies, Council of Europe bodies such as the Parliamentary Assembly or the Human Rights Commissioner and, even more relevant, GREVIO takes into particular account informations confidentially provided by non-governmental organisations (NGOs), other members of civil society and national human rights

²³¹ Organization of American States and Council of Europe, “*Regional Tools To Fight Violence Against Women: The Belém Do Pará And Istanbul Conventions*”, p. 90, 2014.

²³² Ibid.

²³³ Secretariat of the monitoring mechanism of the Council of Europe Convention on preventing and combating violence against women and domestic violence, “Steps In The First (Baseline) Evaluation Procedure Of The Council Of Europe Convention On Preventing And Combating Violence Against Women And Domestic Violence (Istanbul Convention)”, p.2, (Council of Europe, 2016) <<https://www.coe.int/en/web/istanbul-convention/steps-in-the-first-baseline-evaluation-procedure>> accessed 17 April 2018.

institutions²³⁴. It is important to understand that the evaluation procedure conducted by GREVIO is essentially dialogue oriented since it aims at openly and constructively discuss with state representatives about specific issues emerged from the state reports analysis²³⁵. Beside the state dialogue taking place in Strasbourg, evaluations visits are also foreseen in order to properly assess, directly on the ground, what is the real country situation and, once all the relevant informations have been collected, a draft evaluation report has to be prepared, discussed and approved by the Group of Experts²³⁶. State Parties clearly have the possibility to make comments on the reports drafted and transmitted by GREVIO and this latter takes into proper account comments made by governments before finalising and adopting the report²³⁷. Additional government remarks can be provided even prior the publication and the transmission of GREVIO's report to the Committee of the Parties which in turn may adopt recommendations to encourage state parties concerned adopting measures in order to ensure full compliance with the Convention²³⁸.

The Istanbul Convention has been generally recognized as an important and effective legal tool capable to improve rape reality, not only in the European context²³⁹. The examination of the four evaluation procedures completed by GREVIO provides new evidence on how State Parties are actually implementing the Convention provisions concerning rape. This will help highlighting the improvements made and the ones States still need to make in the near future.

The country that have been evaluated by GREVIO and that I will take into account are respectively Albania that signed the Istanbul Convention on 19 December 2011 and ratified it with Law No.104/8.11.2012²⁴⁰, Austria who was among the first 13 CoE member states to sign the Convention in 2011 during a meeting of the Committee

²³⁴ Secretariat of the monitoring mechanism of the Council of Europe Convention on preventing and combating violence against women and domestic violence, (n.233)1.

²³⁵ Ibid.

²³⁶ Ibid. 2

²³⁷ Ibid.

²³⁸ Ibid.

²³⁹ European Women's Lobby, "Report Of Activities And Outputs For The Project: Europe Mobilises Against Rape And For The Council Of Europe Istanbul Convention As A Tool For Change", p. 2, (2014) <https://www.womenlobby.org/IMG/pdf/ewl_public_report_act_against_rape_20140425.pdf> accessed 21 May 2018.

²⁴⁰ GREVIO, "First Country Report Albania", p.6, (Council of Europe 2018), <<https://rm.coe.int/ic-cp-inf-2018-3-fre/168078406a>> accessed 22 May 2018.

of Ministers in Istanbul and to ratify it at the end of 2013²⁴¹, Denmark whose government signed and ratified the Convention within only three months (April-August 2014) but with a reservation according to which the provisions do not apply to self-governing territories of the Faroe Islands and Greenland²⁴² and, last but not least, Monaco where the Convention has been ratified in 2014 and entered into force the following year through the Sovereign Ordinance n°5.208²⁴³.

To better serve the purpose of this research, the degree of implementation of the Convention will be assessed by comparing the four different domestic realities in terms of legal definition of rape, data collection, prevention of rape incidents, protection and support for rape survivors and access to justice²⁴⁴ and their compliance with the demanding standards established by GREVIO.

2.1 The legal definition of rape (Article 36)

In the case of Albania, an entire Section of the Criminal Code is specifically dedicated to sexual crimes and Article 102 of the CCA provides that “sexual intercourse *by violence with adult females or between spouses or cohabitants, without the consent of either of them*, shall be punishable by three to ten years imprisonment.” (emphasis added)²⁴⁵. Even though Albania has claimed that, because of the constant process of revision aimed at ensuring its national legal framework would comply with international standards, its domestic legislation “is almost in line also with the scope of the Istanbul Convention”²⁴⁶, Article 102 establishes *de facto* the use of force as constituent element of rape crimes: the absence of consent is considered as element constituting rape only in cases of marital rape or rape between cohabitants but, except for these particular cases, Albania’s definition of rape as “sexual intercourse by violence with adult females” has

²⁴¹ GREVIO, “First Country Report Austria”, p. 1, (Council of Europe 2016), <<https://rm.coe.int/16806ee8b2>> accessed 22 May 2018.

²⁴² GREVIO, “First Country Report Denmark”, p. 1, (Council of Europe, 2017), <<https://rm.coe.int/16806dd217>> accessed 22 May 2018.

²⁴³ GREVIO, “First Country Report Monaco”, p.1, (Council of Europe 2016), <<https://rm.coe.int/16806a6b70>> accessed 22 May 2018.

²⁴⁴ European Women's Lobby, (n.239)6.

²⁴⁵ GREVIO, “First Country Report Albania”, (n.240)78.

²⁴⁶ Ibid. 50

to be considered a force-based definition²⁴⁷. Even though factors such as the fact that violence might be repeatedly done or done with accomplices, the fact that the violence might cause serious health consequences to the victims or even her death or suicide, have all been included in the CCA as aggravating factors²⁴⁸, it is important to recall that a force-based definition of the crime of rape automatically shifts the burden of proof on the victims who are asked to prove whether and how they resisted to violence and, because of the risk of not being able to demonstrate resistance, female survivors of rape tend to avoid reporting in the first place knowing that the chances to end up with perpetrators being convicted and punished will also be rather limited²⁴⁹.

Even though GREVIO has recognized and welcomed the many efforts made by Albania in order to reform both the General Part and the Special Part of the Criminal Code to make it more comprehensive by taking into account new criminal offences concerning violence against women and by establishing harsher penalties against perpetrators²⁵⁰, the CCA does not include any provision that *de facto* criminalizes the non-consensual sexual behaviour described in paragraph 1, indents b and c of Article 36, especially in the context of intimate or domestic relationships: beside the criminalization of rape (also between spouses or cohabitants), other types of non-consensual sexual behavior are not criminalized and the emphasis on cohabitation of Article 102 of the CCA does not comply also with Article 36 paragraph 3 of the Convention according to which “Parties shall take the necessary legislative or other measures to ensure that the provisions of paragraph 1 also apply to acts committed against former or current spouses or partners as recognised by internal law”, regardless of any cohabitation²⁵¹.

To conclude, even though GREVIO itself has confirmed that “a holistic approach to violence against women cannot rely solely on the criminal justice system”²⁵², Albanian authorities have to guarantee full compliance with the legal definition of rape provided by Article 36 of the Convention by recognizing and properly

²⁴⁷ GREVIO, “GREVIO Baseline Evaluation Report Albania”, p. 47, (Council of Europe, 2017), <<https://rm.coe.int/grevio-first-baseline-report-on-albania/16807688a7>> accessed 22 May 2018.

²⁴⁸ GREVIO, “First Country Report Albania”, (n.240)62.

²⁴⁹ Rachel M. Venema, “Police officer schema of sexual assault reports: Real rape, ambiguous cases, and false reports”, p. 873, *Journal of Interpersonal Violence*, 31, 2016.

²⁵⁰ GREVIO, “First Country Report Albania”, (n.240)54.

²⁵¹ GREVIO, “Baseline Evaluation Report Albania”, (n.247).

²⁵² *Ibid.* 43

addressing the urgent need to “amend the definition of rape of adult women so that it is based on lack of freely given consent and does not require demonstration of use of force or resistance; to criminalise the non-consensual sexual behaviour described in paragraph 1, indents b and c of Article 36 of the Convention and to adopt the necessary measures to ensure that any offence of sexual violence applies between former or current spouses or partners as recognised by internal law”²⁵³.

Focusing on Austria that has been not only one of the first countries having ratified the Convention but also having amended its Criminal Code in order to comply with the requirements set by Article 36, it is of crucial importance to note that Article 201 of the Austrian Criminal Code- which criminalizes rape by providing a definition based on the requirements of the use of force, deprivation of liberty or a threat to life or limb- has been complemented from 2016 with Article 205 on the “violation of sexual integrity”: taking into account the legal obligation deriving from the Convention to provide a consent-based definition of the crime of rape, in Austria all non-consensual sexual acts that have been committed “against the will of a person”, “under coercive circumstances” or “following an act of intimidation” have been criminalized with the adoption of Article 205 ²⁵⁴. Moreover, as many other criminal codes, Article 33 of the StGB offers a list of aggravating factors such as “ violent acts against family members and/or (ex-)partners or an individual requiring special protection, violent acts committed on racist, xenophobic or other particularly objectionable grounds, in a manner that is malicious or cruel or distressful for the victim, using extraordinarily high levels of violence and/or weapons, causing the victim’s death”²⁵⁵. From what it has been written up until now and considering as well that in Austria “the fact that victims did not physically resist” is actually never considered as a valid criteria to assess whether or not rape crimes have been committed, we could all agree with what has been written by Austria in its First Country report: “a number of statutory offences in the Austrian Criminal Code (Strafgesetzbuch - StGB) for protection of bodily, psychological and/or sexual integrity fit the stipulations in the Convention”.²⁵⁶ Nevertheless, while evaluating how Austria is actually complying with the Convention, GREVIO has highlighted the

²⁵³ GREVIO, “Baseline Evaluation Report Albania”, (n.247)43.

²⁵⁴ GREVIO, “GREVIO Baseline Evaluation Report Austria”, p. 39, (Council of Europe, 2017), <<https://rm.coe.int/grevio-report-austria-1st-evaluation/1680759619>> accessed 22 May 2018.

²⁵⁵ GREVIO, “First Country Report Austria”, (n.241)49.

²⁵⁶ Ibid. 45

fact that, first of all, even though Article 202 and 218 of the StGB cover sexual acts of a lesser nature such as sexual touching, the scope of Article 205 only includes non-consensual sexual acts such as penetration²⁵⁷. Secondly, according to GREVIO, the Austrian legislation does not completely comply with the requirement to criminalize all non-consensual sexual acts foreseen by the Convention due to the fact that Article 205 criminalizes sexual acts committed *against the will of the victim*: by failing to recognize the so-defined by GREVIO “slightly difference” between sexual acts committed against the will of the victim and non-consensual sexual acts, Austria runs the real risk to end up prosecuting only the cases in which the victims have manifestly/verbally expressed their non-consent, leaving without protection, support and justice a large percentage of rape survivors that might have froze, remaining passive and without saying anything but that nevertheless did not consent²⁵⁸. Finally, the scenarios in which the perpetrators encourage, incite or force the victims to engage in sexual activity with a third person are also not taken into account by the provisions of the Austrian Criminal Code and therefore, Austrian authorities have been invited by GREVIO to “introduce criminal legislation that would cover the intentional conduct set out in Article 36, paragraph 1c of the Istanbul Convention”²⁵⁹.

If on the one side the Austrian legislation can be overall considered as “almost entirely complying” with the legal definition of rape of Article 36, on the other side the legal definitions proposed by the Danish Criminal Code cannot be in anyway considered as complying with the definition of rape enshrined in the Istanbul Convention.

Although the Danish legislation had been carefully examined by different ministries of Denmark in order to guarantee its compliance with the regional instrument before the ratification of the Convention²⁶⁰, the lack of consent, that according to Article 36 of the Convention is the constituent element of the crime of rape, doesn’t seem to underpin and underline any of the domestic provisions criminalizing rape or sexual assault²⁶¹. As a matter of fact, the Danish case can be definitely considered as “peculiar” precisely because of the distinctive manner in which sexual offences are

²⁵⁷ GREVIO, “Baseline Evaluation Report Austria”, (n.254)35.

²⁵⁸ Ibid.

²⁵⁹ Ibid.

²⁶⁰ GREVIO, “First Country Report Denmark”, (n.242)29.

²⁶¹ GREVIO, “GREVIO Baseline Evaluation Report Denmark”, p. 45, (Council of Europe, 2017), <<https://rm.coe.int/grevio-first-baseline-report-on-denmark/16807688ae>> accessed 22 May 2018.

criminalised in the Danish Criminal Code. First of all, it is important to note that sexual intercourse or other sexual activities are criminalized by a large number of provisions in the Danish Criminal Code- namely Articles 210-228²⁶²- and secondly, as it has been explained by GREVIO, the approach on criminalizing sexual violence adopted by the Danish legislation is essentially based on “enumerating constituent elements of the crime and/or characteristics of the victim which preclude consent and thus make the act punishable”²⁶³. Taking as an example the offence of rape, Article 216 of the Danish Criminal Code establishes that “any person who uses violence or threats of violence to have sexual intercourse or engages in sexual intercourse by duress as defined in section 260 or with a person who is in a state or situation in which he or she is incapable of resisting the act is liable for imprisonment for a term not exceeding eight years for rape”²⁶⁴: the use of violence, the threat of violence, the duress as defined in Article 260 of the Danish Criminal Code and a state or situation of the victim which makes her incapable of resisting are specifically the four factors that, as GREVIO says, “preclude the consent of the victim and make the sexual intercourse a rape” and therefore, it is clear how the Danish Criminal Code *de facto* criminalises sexual violence, including rape only when “the circumstances of the case or the characteristics of those involved already lead to an imbalance of power and necessarily negate consent”²⁶⁵. Even though it is true that it is left to State Parties “to decide on the specific wording of the legislation and the factors that they consider to preclude freely given consent”²⁶⁶, GREVIO has rightly concluded in its Baseline Evaluation Report that Denmark should recognize that, since its legislation doesn’t take into account and therefore doesn’t prosecute all those cases that are not described and do not fit with its criminal provisions, the approach adopted to deal with sexual violence and the definition of rape provided are not comprehensive and should therefore be changed²⁶⁷. Worth to note is also the fact that in order to avoid the creation and perpetuation of a hierarchy of victims of sexual violence, GREVIO has criticised the apparent differences in length of the sanctions across the different sexual violence offences (maximum of 8 years

²⁶² GREVIO, “Baseline Evaluation Report Denmark”, (n.261).

²⁶³ Ibid.

²⁶⁴ GREVIO, “First Country Report Denmark”, (n.242)37.

²⁶⁵ GREVIO, “Baseline Evaluation Report Denmark”, (n.261)46.

²⁶⁶ GREVIO, “First Country Report Denmark”, (n.242)36.

²⁶⁷ GREVIO, “Baseline Evaluation Report Denmark”, (n.261)46.

imprisonment in case of sexual intercourse with an intoxicated woman incapable of consenting to the act while only 4 years of prison in case of sexual intercourse following the exploitation of a victims affected by a mental illness or disability) that appear to exist in Denmark²⁶⁸. Finally, based on the evidence that the “non exhaustive” list of aggravating factors provided by Chapter X of the Danish Criminal Code are *de facto* almost never taken into proper account by judges especially when making a sentence on a rape case, GREVIO has strongly encouraged Denmark to ensure that factors such as the current or past existence of a relationship between victim and perpetrator would be effectively considered as aggravating factors (and certainly not as mitigating ones!) by well-informed and trained judges in order to also effectively comply with Article 46 of the Istanbul Convention²⁶⁹.

Last but not least, as it has been the case in all of the domestic realities presented up until now, Monaco and its Penal Code have also been found by GREVIO not complying with the legal definition of rape provided by Article 36 of the Convention²⁷⁰. Despite the numerous changes to especially criminal law resulted from the adoption of Law No. 1.382 on specific forms of violence that has been drafted and later on adopted concomitantly with the Convention of Istanbul, Article 262 of the Monegasque Penal Code establishes the use of force, coercion, intimidation and surprise as the four main constituent elements of the crime of rape²⁷¹ and therefore, the provision cannot be considered as in line with the requirements established by the Convention especially because, in the words of GREVIO, “the wording employed in Article 36, paragraph 1 does not limit proof of the victim’s lack of consent to the above-mentioned elements, since absence of freely given consent can also be inferred from other circumstance”²⁷².

As it has been the case for Austria, the circumstances in which the perpetrators encourage, incite or force the victims to engage in sexual activity with a third person are not taken into proper account by the provisions of the Monegasque Penal Code and therefore, Article 262 also lack compliance with Paragraph 1, indents c of Article 36 of

²⁶⁸ GREVIO, “Baseline Evaluation Report Denmark”, (n.261)46.

²⁶⁹ Ibid.

²⁷⁰ GREVIO, “GREVIO Baseline Evaluation Report Monaco”, p. 31, (Council of Europe, 2017)

<<https://rm.coe.int/grevio-report-monaco/168074fd6b>> accessed 22 May 2018.

²⁷¹ GREVIO, “First Country Report Monaco”, (n.243)47. Article 262 of the Penal Code says that “Le viol se définit comme tout acte de pénétration sexuelle, de quelque nature qu'il soit et par quelque moyen que ce soit, commis sur la personne d'autrui, par violence, contrainte, menace ou surprise”.

²⁷² GREVIO, “Baseline Evaluation Report Monaco”, (n.270)30.

the Convention²⁷³. Finally, although Monaco's Penal Code criminalizes rape independently of the nature of the existing relationship between the victim and the perpetrator, including marital rape, other non-consensual acts of a sexual nature are criminalized disregarding existing relations between perpetrator and victim so provisions in conformity with Article 36, paragraph 3 are also necessary to guarantee Monaco's full compliance with the legal provisions of the Convention²⁷⁴.

2.2 Data collection on all forms of violence against women, including rape (Article 11)

Considering GREVIO's evaluation of Albania in terms of data collection and research, it can definitely be said that in the Albanian case, national entities responsible for data collection have specifically concentrated their attention on domestic violence, leaving unrevealed and completely out of the picture the realities of sexual violence and other forms of VAW²⁷⁵. As it has been meticulously explained by Albania in its national report, beside the Ministry of Labor, Social Affairs and Equal Opportunities that is the main responsible administrative authority on gender issues and women's rights, different stakeholders such as the Ministry of Health, the one of Interior and of Justice or local governments actually contribute in a cooperative way at collecting data.²⁷⁶ Nevertheless, GREVIO has noted that, beside contributing to different degrees and with questionable levels of inter-agency cooperation, all the efforts made by the responsible entities have been concentrated exclusively on domestic violence: despite the advancements made in order to tackle the issue of domestic violence that have been greatly welcomed by GREVIO, the independent body has highlighted that "data on other forms of violence against women such as sexual violence barely hint at the existence of a phenomenon which by many accounts remains largely uncharted territory, fenced off by taboos and severe under-reporting"²⁷⁷.

²⁷³ GREVIO, "Baseline Evaluation Report Monaco", (n.270).

²⁷⁴ Ibid.

²⁷⁵ GREVIO, "Baseline Evaluation Report Albania", (n.247)23.

²⁷⁶ GREVIO, "First Country Report Albania", (n.240)23.

²⁷⁷ GREVIO, "Baseline Evaluation Report Albania", (n.247)22.

Although law enforcements officers and criminal justice professionals collect data broken down by sex, age-group, geographical location and even the level of education of perpetrators, the relationship between the victim and the perpetrators is not taken into account while assessing the annual number of cases reported, prosecuted and that actually ended with a conviction²⁷⁸. On a more positive note, based on the fact that all the data and informations collected by responsible authorities are usually used by INSTAT to publicly publish and disseminating gender statistics providing, for example, data on rates of crime for different categories of offences in order to raise awareness on VAW, Albania partially comply with the requirements set by Article 11 Paragraph 4²⁷⁹. To conclude, while welcoming the progresses made but reaffirming the need to increase the efforts in the area of data collection in order to comply with the standards set by the Convention, GREVIO has encouraged Albania to ensure that data categories are developed taking also into account the type of relationship between perpetrator and the victim and finally to “conduct studies on conviction rates for all forms of violence against women and make public the results of such studies”²⁸⁰.

If Albania has been criticized for its exclusive focus on gathering data about domestic violence, in the case of Austria instead GREVIO opens its evaluation section on data collection by saying that “following the 2014 survey on the prevalence of violence against women in all member states of the European Union (EU) conducted by the EU Fundamental Rights Agency (FRA) and the national prevalence study on “Violence in intimate social environments” commissioned by the Federal Ministry of Family Affairs in 2011, there is sufficient information on the prevalence in Austria of physical, sexual and psychological violence as well as sexual harassment”²⁸¹. Nevertheless, it is important to highlight that, despite the improvements made and the continuing efforts on improving the collection of data showed by responsible authorities, just like in the case of Albania, Austrian law enforcement officers have to recognize the urgent need to collect disaggregated data and develop data categories of all forms of VAW taking also into consideration the type of existing relationship between the perpetrator and the victim²⁸².

²⁷⁸ GREVIO, “Baseline Evaluation Report Albania”, (n.247)22.

²⁷⁹ Ibid.

²⁸⁰ Ibid. 23

²⁸¹ GREVIO, “Baseline Evaluation Report Austria”, (n.254)19.

²⁸² Ibid. 20

According to the Austrian national report, all the reports made by police officers are properly collected and classified by the Austrian Criminal Intelligence Service based on factors such as geographic location, sex and age group of both victims and suspects and “certain categories of relationships between victims and offenders”²⁸³: acquaintance, family relationship in the same household, family relation not in the same household, none, unknown, chance acquaintance are the six categories of relationships that are taken into account while dealing with sexual offences²⁸⁴. The list including these six categories has been considered by GREVIO as non specific and not comprehensive mainly because by using the term “family relationship”, it is not possible to distinguish incidents of domestic violence or cases of violence between intimate partners from, for example, incidents of child abuse and therefore, despite the willingness to take into proper account the relationships between victims and offenders while collecting and classifying data shown by austrian authorities, GREVIO has highlighted the need to adopt more specific categories of types of relationship in order to provide a clear picture of the prevalence of gender-based violence²⁸⁵. The independent body has also criticized the fact that the electronic documentation system (EDD) used by the police to electronically collecting data and categorizing cases is generally used not to raise-awareness and combat VAW by giving a clear picture of the prevalence of all the different forms of violence, but for internal recording requirements such as the internal need to “keep track of working hours spent” instead²⁸⁶. Focusing on the criminal justice sector, it is important to note that, despite the reaffirmation of the urgent need to develop data categories based on the type of perpetrator-victim relationship that had already been highlighted while assessing law enforcement agencies’ role in collecting data, GREVIO has positively commented the Austrian initiative to “introduce a “unique person number” to ensure cases can be traced across sectors, not on the basis of the offence but on the basis of an individual offender”²⁸⁷.

To conclude, in a positive note and to highlight the great efforts made by Austrian authorities to improve data collection on all forms of VAW, it is worth to

²⁸³ GREVIO, “First Country Report Austria”, (n.241)6.

²⁸⁴ GREVIO, “Baseline Evaluation Report Austria”, (n.254)20.

²⁸⁵ Ibid.

²⁸⁶ Ibid.

²⁸⁷ Ibid. 21

mention that in Austria, data concerning cases of sexual violence, including rape, are also properly collected by specialised counselling centres for survivors and statistics aimed at the comparison between the number of charges presented and the number of cases that ended with a conviction are also conducted and properly published by the Federal Association of Autonomous Women's Helplines of Austria²⁸⁸.

With focus being shifted to Denmark, it could be argued that in this case the level of compliance with Article 11 is even lower than those assessed up until now: despite the great number of efforts made by Denmark in order to comply with the Convention and to contribute in preventing and combating VAW, data are generally collected in a non-disaggregated manner²⁸⁹. The fact that data are usually not disaggregated by sex and, even more rarely, by existing relationship between the perpetrators and the victims has been confirmed by Denmark itself in its national report where it states that judicial data collected by the Director of Public Prosecutions covering all the different offences related to all types of violence included in the Istanbul Convention, "are not disaggregated by the sex and age of the victim, relationship between the perpetrator and victim or by geographical location"²⁹⁰. By stating as well that the data program of the Director of Public Prosecution is not made or meant to create statistics and, to this end, to publicly release informations and data, Article 11 Paragraph 4 of the Convention might also seem not having been properly taken into account by Danish authorities²⁹¹. Beside the issues relating to not publicly disseminating data on VAW, more importantly GREVIO has expressed its concern and perturbation mainly due to the lack of understanding of the importance and need of collecting sex-disaggregated data showed by Denmark: according to the monitoring body, the gender neutral approach to data collection that has been adopted and developed by Denmark should not be considered as the manifestation of a high level of gender equality reached by this country²⁹². This gender neutrality approach fails to recognize violence against women as a gendered phenomenon and, in the words of GREVIO, "a non-gendered approach to data collection, on the assumption that gender equality is already achieved, may easily mask the prevalence of violence against

²⁸⁸ GREVIO, "First Country Report Austria", (n.241)7.

²⁸⁹ GREVIO, "Baseline Evaluation Report Denmark", (n.261)20.

²⁹⁰ GREVIO, "First Country Report Denmark", (n.242)7.

²⁹¹ Ibid.

²⁹² GREVIO, "Baseline Evaluation Report Denmark", (n.261)20.

women”, while using instead sex disaggregated data can become of crucial importance to highlight the improvements made and the ones that still have to be made to achieve gender equality and to eradicate VAW²⁹³.

Finally, with regards to the criminal justice sector, the lack of accurate and disaggregated data concerning gender-based violence makes it almost impossible to realize how many difficulties victims of violence may experience in accessing justice and it also does not allow understanding what is the real rate of conviction and punishment of perpetrators of VAW²⁹⁴. For all the reasons above explained Danish authorities have been strongly encouraged to “introduce harmonised data categories such as the sex, age, type of violence, and type of relationship of the perpetrator with the victim to be collected at regular intervals by all sectors of the administration, including the law enforcement agencies, the judiciary, the relevant social services (including public specialist services), the State Administration, the public health sector, the Immigration Service and other relevant services”²⁹⁵.

Concluding this section on the collection of data with the Principality of Monaco, it is important to note that GREVIO has positively highlighted the improvements made by the Principality especially in terms of developing digital systems such as the “table numérique des infractions” (digital table of offences) through which all judicial proceedings are registered taking into account the type of violence mainly to ensure that accurate statistical information will be later on generated by the Public Prosecutor’s Office²⁹⁶. Moreover, the Monegasque Institute of Statistics and Economic Studies (IMSEE) has also been established in 2011 and, as it has been underlined by GREVIO, its creation certainly offers “interesting prospects for data consolidation, integration of the gender dimension, and the development of statistical research into violence against women”²⁹⁷. Nevertheless, beside the efforts made to guarantee a quite satisfactory level of coordination between all the various responsible entities charged with the collection of data, GREVIO has also highlighted the fact that “there are no tools available to allow general cross-referencing of all violent cases between the various agencies” especially between the health sector and the law

²⁹³ GREVIO, “Baseline Evaluation Report Denmark”, (n.261)21.

²⁹⁴ Ibid. 20-21

²⁹⁵ Ibid. 22

²⁹⁶ GREVIO, “Baseline Evaluation Report Monaco”, (n.270)16.

²⁹⁷ Ibid.

enforcement and judicial ones, and for this particular reason, Monegasque authorities have been strongly encouraged by the monitoring body “to systematise and streamline the collection of data relating to violence against women at all levels using terminology reflecting that of the Istanbul Convention and to make these data publically available these data”²⁹⁸. Additionally it is important to mention the fact that, as it has been written by Monaco in its national report, “aucune enquête de population n’a été menée” (no population-based survey has been conducted)²⁹⁹, and therefore Monaco doesn’t seem to comply with the legal obligation deriving from Article 11 Paragraph 2 of the Convention: because of the importance of population-based surveys- especially those raising awareness about victims’ experiences and those capable to specify the type of support received from victims or their reasons to avoid reporting- GREVIO has urged Monaco not only to conduct victim surveys in a regular and confidential manner, but also to focus particular attention on the need to collect informations deriving from those victim surveys specifically conducted in the health-care sector by health-care professionals³⁰⁰.

2.3 Prevention of rape incidents (Chapter III)

Examining for first Albania’s compliance with the provisions of Chapter III of the Convention, National strategy and action plan on gender equality for 2016-20 has been adopted also with the aim to raise and promote awareness around the issues of violence against women and, more specifically, to challenge social attitudes shared by women and girls based on the assumption that they “should tolerate violence to keep the family together”, and those attitudes shared instead by men and boys which very often excuse and normalize “certain forms of violence or violence under certain circumstances (such as provocation)”³⁰¹. Despite all the campaigns organized by the Ministry of Social Welfare and Youth (MSWY) in collaboration with other ministries and international organizations such as UN Women³⁰², and, although it can definitely

²⁹⁸ GREVIO, “Baseline Evaluation Report Monaco”, (n.270)16.

²⁹⁹ GREVIO, “First Country Report Monaco”, (n.243)21.

³⁰⁰ GREVIO, “Baseline Evaluation Report Monaco”, (n.270)16-17.

³⁰¹ GREVIO, “Baseline Evaluation Report Albania”, (n.247)26.

³⁰² GREVIO, “First Country Report Albania”, (n.240)27-28.

be said that Albanian authorities have made valuable efforts in order to increase the national support for the strategy of zero tolerance towards violence against women by “linking the issues of gender equality and violence against women, and involving men and boys as actors of change in combating stereotypes and rejecting all forms of violence”, in direct conflict with what is foreseen by Article 12 of the Convention the pervasiveness of gender roles and stereotypes within the families and Albanian society at large does seem to confirm the tendency of social tolerance and acceptance of VAW³⁰³. As it has been suggested by GREVIO, to better comply with Article 13 of the Convention, Albanian authorities should also launch awareness-raising campaigns in order to promote women and girls’ rights (including their right to access the justice system) by informing rape survivors and, more in general, victims of VAW about “possible legal redresses and available societal support, where victims may turn to for help and incidences of violence might be reported”³⁰⁴. Focusing instead on the legal obligations deriving from Article 14 of the Convention that enshrines the importance of education in preventing and combating violence against women, it is worth to mention that despite the initiative “School, a community center –a friendly school for all” and the organization of trainings on gender stereotypes with teachers and communities of parents³⁰⁵, and, even though from primary school to university level albanian educational curricula, textbooks and other pedagogical material take into account not only principles such as mutual respect and the peaceful settlement of conflicts but also principles such as gender equality, non-discrimination based on gender and gender stereotypes, GREVIO has rightly highlighted the fact that this process of mainstreaming gender related issues at the educational level has not included violence against women and, despite having raised awareness on specific forms of violence such as trafficking of human beings, all various forms of VAW have not only not been explicitly addressed in university study programmes or teacher training modules but, more importantly, violence against women has not been explained as a gender-based phenomenon³⁰⁶.

Hence, to increase the chances of the eradication of VAW, the independent body has not only formally encouraged the authorities “to incorporate teaching about the

³⁰³ GREVIO, “Baseline Evaluation Report Albania”, (n.247)26.

³⁰⁴ Ibid. 27

³⁰⁵ GREVIO, “First Country Report Albania”, (n.240)29.

³⁰⁶ GREVIO, “Baseline Evaluation Report Albania”, (n.247)27-28.

various forms of gender-based violence against women and girls in curricula at all levels of formal education from pre-primary to higher education”, but also to comply with Article 14 Paragraph 2 of the Convention by promoting “the principles of equality between women and men, non-stereotyped gender roles, mutual respect, non-violent conflict resolution in interpersonal relationships in non-formal education, as well as in sports, cultural and leisure activities”³⁰⁷. Considering instead Article 15 and its requirement to train professionals in order to foster and strengthen their abilities to deal with cases of violence against women by effectively and sensitively supporting the survivors, it is important to note that, especially after the adoption of the legislation on domestic violence, many are the improvements made by Albania that have been recognized and welcomed by GREVIO who ensures that Albanian law enforcement officers, prosecutors and criminal justice professionals “have already incorporated knowledge on the Istanbul Convention and the topics referred to in its Article 15 (namely prevention and detection of violence, equality between women and men, the needs and rights of victims and the prevention of secondary victimisation) in their professional curricula and university study programmes, as well as in-service training modules” as confirmed by the adoption and the use of the numerous training manuals in the School of Magistrates and the Police Academy³⁰⁸. Nevertheless, based on the evidence that these improvements seem to be limited to domestic violence, the independent body has highlighted the need to provide in-service trainings for professionals that actually takes into proper account all the other forms of violence against women, such as sexual violence and rape, that are normally not addressed during the majority of trainings³⁰⁹. Lastly, focusing on the preventive intervention and treatment programmes foreseen in Article 16, Albanian authorities have confirmed in the First Country Report that “the programs on perpetrators are almost entirely new in Albania and in a limited and insufficient number”³¹⁰: taking into account the fact that Albania does not seem to provide any treatment program aimed at supporting and helping perpetrators of sexual violence to avoid recurring to violence once again, albanian authorities have been encouraged to “set up and/or encourage the setting-up

³⁰⁷ GREVIO, “Baseline Evaluation Report Albania”, (n.247)28.

³⁰⁸ Ibid.

³⁰⁹ Ibid. 29-30

³¹⁰ GREVIO, “First Country Report Albania”, (n.240)35.

and support treatment programmes for perpetrators of sexual assault and rape, with a view to minimising recidivism”³¹¹.

Focusing now on Austria, a great number of awareness-raising campaigns and activities have been funded by Austrian authorities and mainly carried out by NGOs: beside world-wide campaigns such as the “16 Days of Action against Gender-based Violence” and the “One Billion Rising Campaign”, other activities such as art contests, poster campaigns and promotion of the violence against women hotline have been organized³¹². For the specific purpose of this research it is worth to mention the fact that first of all, numerous campaigns such as “One no is enough” and “A yes is something else” aimed at the reform of the Austrian rape legislation were carried out and secondly, the majority of campaigns that have been organized to raise awareness about VAW by reaching the whole population including children, young people, migrants, and professionals such as journalists and health-care workers, have paid particular attention to issues such as date-rape drugs and sexual violence³¹³. Welcoming all the efforts made by Austria in order to comply with Article 13 of the Convention and formally recognizing the meaningful contribution in terms of awareness raising resulted from the implementation of these campaigns, GREVIO has nonetheless suggested first of all to effectively evaluate all the campaigns and activities that are carried out in order to being able to establish their real impact in terms of raising awareness and second of all, “to expand the scope of awareness-raising activities to address the root causes of violence against women and what may be perceived as growing anti-feminist attitudes”, attitudes that, according to the monitoring body, seem to have weakened the degree of commitment in the fight for the prevention and eradication of VAW³¹⁴.

Concerning Austria’s compliance with Article 14 of the Convention instead, GREVIO has made particular emphasis on the necessity to integrate thematics such as violence against women and children, gender-based violence against children and youth with disabilities, female genital mutilation, forced marriage, gender equality, women’s rights as human rights, boys and masculinities, mobbing in schools and women in armed conflict in all compulsory academic curricula³¹⁵. In fact, while the nine provinces

³¹¹ GREVIO, “Baseline Evaluation Report Albania”, (n.247)30-31.

³¹² GREVIO, “Baseline Evaluation Report Austria”, (n.254)24.

³¹³ GREVIO, “First Country Report Austria”, (n.241)11-12.

³¹⁴ GREVIO, “Baseline Evaluation Report Austria”, (n.254)24.

³¹⁵ Ibid.

responsible for early childhood education in kindergarten have already started to educate children in a gender-sensitive manner but without covering issues such as violence against women (not even in an age-appropriate way), the Federal Ministry of Education has established that the curriculum in primary and secondary schools has to include subjects such as gender equality and non-violent conflict resolution in interpersonal relationships³¹⁶. Beside the thematics mentioned above, additional teaching material concerning other subjects such as for example violence against women and children, gender equality or women's rights is provided by the government funded centre for civic education (POLIS) but, even though the 2014-16 National Strategy on the Prevention of Violence in Schools has been adopted by the federal government in order to ensure as well a wider use of the POLIS material, it is important to note that, *de facto*, this material is accessed online by teachers on a regular but nonetheless voluntary base, and it is for this particular reason that GREVIO has highlighted the need to include a broader range of subjects directly in the compulsory academics curricula so that all children can be educated on these themes independently of their teachers' willingness to use POLIS material and to promote gender equality in their teaching³¹⁷. Referring to Article 15 and the obligation to train professionals that deal with victims of violence against women, GREVIO has concluded that the Austrian case presents "a mixed picture regarding the level of training on violence against women which members of the various professions receive"³¹⁸. Taking into particular consideration the training of criminal justice professionals, it is important to highlight that the category of criminal justice professionals is considered as the less trained in terms of VAW because, even if "the four-year training programme for judges and public prosecutors provides for special seminars on dealing with victims in criminal proceedings and on the topic of (sexual) violence against children, along with a mandatory two-week placement in a violence protection centre or other social institution"³¹⁹, Austrian legislation does not prescribe mandatory in-service training for judges and prosecutors on issues such as violence against women, equality between women and men, victims' rights and needs and the prevention of secondary

³¹⁶ GREVIO, "First Country Report Austria", (n.241)14-15.

³¹⁷ GREVIO, "Baseline Evaluation Report Austria", (n.254)25-26.

³¹⁸ Ibid. 26

³¹⁹ GREVIO, "First Country Report Austria", (n.241)17.

victimisation³²⁰. Therefore, in order to comply with Article 15 of the Convention, Austrian authorities have been strongly encouraged “to provide for compulsory vocational training for legal professionals on all issues listed in Article 15 of the Istanbul Convention”³²¹. Contrary to what has been said about Albania, in Austria sex offenders have the possibility to follow treatment programmes aimed at changing their behaviour to prevent them from re-offending³²²: as confirmed by Austria in its national report, “sex offenders are subject to mandatory care supervision by the Neustart organisation and on average there are around 600 sex offenders under supervision”³²³. Because of the existence and functioning of these treatment programmes which generally foresee the active and court-ordered participation of the perpetrator of sexual violence in one-on-one frequent and intense counselling sessions with a Neustart trained social worker, Austria can be considered as perfectly complying with Article 16 of the Istanbul Convention³²⁴.

In Denmark, a great number of awareness raising campaigns and activities focusing on dating violence, stalking, rape, domestic and honour-related violence have already been conducted and they confirm Denmark’s compliance with Article 13 of the Istanbul Convention³²⁵. According to the national report submitted to GREVIO by Denmark, beside the campaigns launched to raise-awareness on violence in the family and in intimate relations with specific focus on the phenomenon of teen dating violence, the prevention of sex crimes and the encouragement of rape survivors to report to the police have been placed at the very center of the action plan Respect for Victims of Rape carried out by police officers³²⁶. Therefore, focusing specifically on rape, it can definitely be said that the campaigns have been organized in order to raise awareness in both the general public and professionals such as law enforcement officers and as it has been argued by GREVIO, “it is in particular the awareness-raising of professionals around stalking and rape which has led to improvements in responding to such violence”³²⁷.

³²⁰ GREVIO, “Baseline Evaluation Report Austria”, (n.254)27.

³²¹ Ibid.

³²² Ibid.

³²³ GREVIO, “First Country Report Austria”, (n.241)23.

³²⁴ GREVIO, “Baseline Evaluation Report Austria”, (n.254)28.

³²⁵ GREVIO, “Baseline Evaluation Report Denmark”, (n.261)25.

³²⁶ GREVIO, “First Country Report Denmark”, (n.242)9-10.

³²⁷ GREVIO, “Baseline Evaluation Report Denmark”, (n.261)25.

Taking now into examination Denmark's compliance with Article 14 of the Convention, according to GREVIO "topics related to human rights, gender equality, health and sexual education are included in the formal curricula for primary and secondary schools, which means that many of the areas of teaching required by Article 14 of the Istanbul Convention are addressed in some form"³²⁸. Nevertheless, although guaranteeing gender equality and equal opportunities for both girls and boys are considered as fundamental values in Danish society³²⁹, child's right to protection against physical violence is addressed in the teaching materials without taking into account its gender dimension, without taking into consideration the fact that girls and boys experience violence in a different way and therefore, as argued by GREVIO, in all the curricula for both primary and secondary schools "linkages would have to be made to gender roles, stereotypes and women's human rights as well as specific aspects related to domestic violence and violence against women as gender-based violence"³³⁰.

Moreover, as it was the case for Austria, it is important to note that teachers get access to online teaching material on a voluntary base and, since it remains extremely difficult to estimate the numbers of users and understand how many and which schools are actually able to guarantee that existing teaching materials are *de facto* used by their teachers to educate young students in a sensitive manner, GREVIO has also invited Danish authorities "to monitor how teachers make use of the existing teaching materials and how they approach issues related to domestic violence and violence against women"³³¹. Moving to Article 15 and the legal obligation to guarantee ensure initial and in-service trainings of professionals who deal with survivors or perpetrators of VAW, similarly at the case of Austria, the country report submitted by Denmark provides "a mixed picture regarding the level of specific trainings undertaken by members of the various professions"³³². Nevertheless, in great contrast with the Austrian situation, in Denmark judges are not only provided with many in-service courses and seminars about VAW and equal rights of men and women by the Court Administration, but they are also trained in order to being able to deal with perpetrators and, above all, with

³²⁸ GREVIO, "Baseline Evaluation Report Denmark", (n.261)26.

³²⁹ GREVIO, "First Country Report Denmark", (n.242)11.

³³⁰ GREVIO, "Baseline Evaluation Report Denmark", (n.261)26.

³³¹ Ibid.

³³² Ibid.

vulnerable victims in a proper and sensitive manner during criminal proceedings³³³. Moreover, it is important to note that if on the one side, the health-care professionals and the staff working in the various support services such as women’s shelters and rape centres have been considered by GREVIO as well-trained in order to individuate and effectively respond to survivors’ needs³³⁴, on the other side the independent body has strongly encouraged “the Danish authorities to introduce compulsory initial training for law enforcement agents, covering all forms of violence against women including domestic violence, and to ensure continuous in-service training modules for law-enforcement professionals throughout the country”³³⁵. Finally, focusing on Article 16 and the existence of treatment programmes for sex offenders, in the Danish country report it can be read that “the Danish Prison and Probation Service offers general treatment programmes for sexual perpetrators as a supplement or an alternative to imprisonment aimed at preventing perpetrators from re-offending”³³⁶. Taking into account that at the base of all treatment programmes for sex offenders there is always their voluntary participation³³⁷, GREVIO has also encouraged “the Danish authorities to use all available means to ensure such programmes are widely attended” in order to extend the possibility to be treated and to achieve behavioural change by adopting non-violent attitudes to the largest number of perpetrators of sexual violence³³⁸.

Closing the analysis of States’ compliance with Chapter III of the Convention with Monaco, many initiatives and campaigns have been organized mainly by the Department of Social Affairs and Health with the aim to promote family solidarity and to prevent intra-family violence by fostering family mediation³³⁹. Despite having welcomed Monaco’s efforts to raise awareness through the initiatives mentioned above and having appreciated its commitment toward the eradication of VAW that has been reaffirmed especially during the International Day for the Elimination of Violence against Women, GREVIO has nevertheless highlighted the fact that, because “children, dependent elderly people and the family as such appear to be the primary categories of persons and groups that these actions are seeking to protect, whereas the rights of

³³³ GREVIO, “First Country Report Denmark”, (n.242)13.

³³⁴ GREVIO, “Baseline Evaluation Report Denmark”, (n.261)26.

³³⁵ Ibid. 27

³³⁶ GREVIO, “First Country Report Denmark”, (n.242)14.

³³⁷ Ibid.

³³⁸ GREVIO, “Baseline Evaluation Report Denmark”, (n.261)29.

³³⁹ GREVIO, “First Country Report Monaco”, (n.243)22.

victims of violence, in the context of women’s rights in general, are not addressed to any great extent”, a stronger emphasis on violence against women as a gender-based phenomenon and the dimension of gender equality should be included in all the raising awareness activities and initiatives proposed by Monegasque authorities³⁴⁰. Analysing instead Monaco’s compliance with the Convention in terms of education, it must be noted that the academic curricula are basically organized on the model proposed by the “Education Nationale française” and they include civic education courses and educational activities focused on issues related to human rights, equality and stereotypes³⁴¹. Nevertheless, while particular attention has been focused on themes such as bullying, violations of privacy, child pornography images, insults and threats, and age of sexual consent, as it has been the case with the Monegasque raising-awareness campaigns mentioned above, the gender dimension of violence against girls and women and all the issues related specifically to gender equality, once again, do not seem to have been properly included and highlighted in the educational activities taking place in schools and, for this particular reason, GREVIO has encouraged Monegasque authorities to increase their efforts to ensure full compliance with Article 14 of the Convention that, beside formally requiring the production and distribution of “suitable teaching material on issues such as equality between women and men, non-stereotyped gender roles, mutual respect, non-violent conflict resolution in interpersonal relationships, gender-based violence against women and the right to personal integrity”, it also demands these thematics to be formally included in all the academic curricula at all levels of education³⁴². In terms of Article 15 and training of professional, in its country report Monaco makes reference to the Law No. 1.382 introduced into Monegasque legislation in 2011 to guarantee, *inter alia*, trainings for all the professionals (including law enforcement officers, judges and health-care professionals) that are supposed to work in contact with victims of violence, women in particular³⁴³. Even though several training sessions have been organized in order to consolidate and boost professionals’ ability to understand, communicate with and support victims of violence, lawyers did not receive the possibility to be trained on issues such as violence against women and domestic

³⁴⁰ GREVIO, “Baseline Evaluation Report Monaco”, (n.270)18.

³⁴¹ GREVIO, “First Country Report Monaco”, (n.243)23.

³⁴² GREVIO, “Baseline Evaluation Report Monaco”, (n.270)18-19.

³⁴³ GREVIO, “First Country Report Monaco”, (n.243)23.

violence and, more in general, all the trainings organized did not actually cover “the trauma suffered and the treatment needs which are specific to victims of sexual violence”³⁴⁴.

Therefore, despite GREVIO’s words of appreciation towards the reasonable good level of inter-agency awareness and cooperation confirmed by the broad-consultations that took place between all relevant Monegasque institutions with the aim to provide adequate training to all professionals, the independent body has recommended Monegasque authorities to guarantee the possibility to receive adequate training to all professionals (including lawyers) and to ensure that all training activities are designed taking a gender-based approach to violence which clearly requires the inclusion of gender equality and all the various forms of violence against women covered by the Istanbul Convention (including sexual violence) in the training of professionals³⁴⁵. Finally, as it has been reported by the Principality of Monaco itself, despite the peculiar characteristics of the country and its reduced occurrence of the phenomenon of VAW, treatment programmes for perpetrators of violence against women are also provided by the State as foreseen by Article 16 of the Istanbul Convention³⁴⁶. It is important to note that, with the entry into force of Law No. 1.382, Monegasque legislation has introduced treatment programmes for perpetrators of VAW mainly “as an alternative sentence or additional to a custodial sentence” by envisaging the possibility to be treated only when perpetrators are *de facto* convicted by a court³⁴⁷. Taking also into account the fact that perpetrators are not obliged but instead they are formally requested to express their consent to be treated³⁴⁸, GREVIO has urged “the authorities to take the necessary measures to encourage or require perpetrators of violence to attend programmes fostering responsible behaviour in order to combat any re-occurrence of acts of psychological, physical, sexual or economic violence, including in the domestic environment”³⁴⁹.

³⁴⁴ GREVIO, “Baseline Evaluation Report Monaco”, (n.270)20.

³⁴⁵ Ibid.

³⁴⁶ GREVIO, “First Country Report Monaco”, (n.243)25.

³⁴⁷ GREVIO, “Baseline Evaluation Report Monaco”, (n.270)20.

³⁴⁸ Ibid.

³⁴⁹ Ibid. 21

2.4 Protection and support for female rape survivors (Chapter IV)

Evaluating first of all the level of protection and support provided by Albanian authorities, it is important to note that according to GREVIO, Albania has made numerous efforts to comply with the Convention by setting up a comprehensive and multi-agency based system of protection and support of victims of violence: especially after the adoption of the 2006 Law on Domestic Violence, the first referral mechanism has been established and, despite the gaps and deficits that still have to be taken into account by authorities, many are the improvements that have increased the level of protection and support of victims of VAW in Albania³⁵⁰.

One of the main critical observations made by the independent body regards the fact that protection and support services in Albania do not seem to properly respond to all forms of violence against women, but almost exclusively to domestic violence³⁵¹: if on the one side in Albania's country report it can be read that "every part in the Referral Mechanism is a responsible authority when informed of a domestic or gender-based violence case"³⁵², on the other side GREVIO confirmed of being "extremely concerned that the majority of victims of sexual violence are likely to receive little or no protection"³⁵³. As a matter of fact, beside the fact that in Albania sexual violence and rape are still socially perceived and treated as taboos and therefore they are rarely reported and condemned, even the survivors who decide to report having been raped, a part from the possibility to enter hospitals and undergo medical and forensic examinations, they don't have any chance to approach rape crisis or sexual violence referral centres to get help in form of trauma support, psychological counselling or support during court proceedings because these centres simply do not exist³⁵⁴. Therefore, in order to comply with Article 25 of the Convention and to encourage reporting of sexual violence and rape, Albanian authorities have been urged to set up rape-crisis centres and/or sexual violence referral centres with the aim to provide support and address victims' needs³⁵⁵.

³⁵⁰ GREVIO, "Baseline Evaluation Report Albania", (n.247)33.

³⁵¹ Ibid.

³⁵² GREVIO, "First Country Report Albania", (n.240)41.

³⁵³ GREVIO, "Baseline Evaluation Report Albania", (n.247)41.

³⁵⁴ Ibid. 40

³⁵⁵ Ibid. 41

Focusing now on Austria, in the Baseline Report published by GREVIO the monitoring body has formally recognized not only the fact that various types of general and special support services are actually provided to victims of violence by Austrian authorities, but also the fact that the majority of these support services have been introduced before and therefore are not the results of the entry into force of the Istanbul Convention³⁵⁶. Considering the support specifically provided to rape survivors and victims of sexual violence, it is important to mention that in Graz, Eisenstadt, Innsbruck, Linz and Vienna there are actually five specialised counselling centres responsible to protect and provide support to victims of sexual violence (women and girls from the age of 14)³⁵⁷. Nevertheless, as it has been highlighted by GREVIO, “while each of the nine provinces in Austria provides the required violence protection centre for domestic violence and stalking victims, only five have a specialised counselling service for victims of sexual violence and rape and this is mainly due to the lack of adequate and/or sufficiently long-term funding for these services”³⁵⁸.

The tendency to concentrate efforts to eradicate domestic violence by, *inter alia*, increasing the number and the regional spread of domestic violence services only, tendency that as we have seen is shared as well by other countries evaluated by GREVIO, is also confirmed by the fact that referrals for victims of domestic violence are always ensured by Austrian law enforcement officers that, by contrast, are not obliged to refer for example rape cases to the existing specialized centres³⁵⁹. Based on the evident disparity that exists between the level of protection and support reserved to victims of domestic violence and to victims of any other type of violence, Austrian authorities have been urged to set up and properly fund sexual violence/rape centres also in the remaining four provinces where support and counselling are not currently provided in order “to ensure that the specialist support services meet the demands of victims, irrespective of the form of violence they experienced or the particular realities and compounding difficulties they face”³⁶⁰.

Concerning Denmark, it is important to note that beside the specialized treatments provided and reimbursed to all victims of crime (including victims of

³⁵⁶ GREVIO, “Baseline Evaluation Report Austria”, (n.254)31.

³⁵⁷ GREVIO, “First Country Report Austria”, (n.241)34.

³⁵⁸ GREVIO, “Baseline Evaluation Report Austria”, (n.254)31.

³⁵⁹ Ibid.

³⁶⁰ Ibid. 33

violence) by the Danish health system, women and girls above the age of 15 victims of sexual violence can at all times seek help and support in ten specialized centres which enable survivors to undergo to acute forensic-medical examinations and provide psychological counselling and other types of support independently of a referral from the general practitioner³⁶¹. Moreover, it is worth to mention that a part from the results of the forensic examinations, health professionals working in the centres also collect informations and details concerning the circumstances of the incidents and, in case the victims will freely decide to report the assault to law enforcement officers, all the informations obtained from the victims included in the centre's reports could also serve as additional evidence during investigation proceedings and later on during trials³⁶². Despite having formally recognized the "highly professional service for rape victims" offered in Denmark, GREVIO has nonetheless expressed its concern regarding the fact that victims have the opportunity to take advantage of only five sessions of psychological treatment and that, *de facto*, there is no guarantee the psychological support needed by victims will be automatically ensured to each one of them in the long-term and therefore, Danish authorities have been strongly encouraged by GREVIO to "ensure the necessary holistic, mid- and long-term psycho-social and other support for women victims of rape and sexual assault in an adequate geographic distribution"³⁶³. It could definitely be argued that Denmark has shown a rather high level of compliance with Article 25 of the Istanbul Convention.

Nevertheless, the same cannot be said about the Principality of Monaco. The only relevant information concerning the support for victims of sexual violence that has been included in the national report submitted by Monaco is the one referring to the existence of the so called "polyvalence" which is the mission conducted by two polyvalent social assistants responsible to deal with all kinds of social problems including violence against women³⁶⁴. Beside the support of these two social assistants essentially charged with informing the victims of violence about their rights and helping them to explain and describe the violence they have suffered³⁶⁵, Monaco does not even provide the possibility to undergo to forensic medical examination and, as it can be read

³⁶¹ GREVIO, "First Country Report Denmark", (n.242)22.

³⁶² GREVIO, "Baseline Evaluation Report Denmark", (n.261)35.

³⁶³ Ibid.

³⁶⁴ GREVIO, "First Country Report Monaco", (n.243)26.

³⁶⁵ Ibid.

in GREVIO's evaluation report, "where necessary, it is possible to request an expert opinion from French forensic examiners"³⁶⁶. Moreover, since the majority of medical certificates are written by Accident and Emergency doctors that generally haven't received adequate training on VAW and in particular sexual violence, the medical certificates are often not suitable to be used as medical evidence during trials mainly because important medical details are missing, patient's statements have not been properly written down or, as GREVIO reports, due to the fact that, despite a potential discrepancy between the injuries observed and the patient's statement, "conclusions as to whether the findings tally with the victims' account" are generally not included in the certificates by A&E doctors³⁶⁷. Therefore, in order to comply with Article 25 of the Istanbul Convention, Monegasque authorities have to guarantee to victims of sexual violence the possibility to undergo to forensic medical examination as well as adequate trainings have to be provided to health-care professionals with the aim to "avoid the risk of loss of evidence which is essential for any subsequent court proceedings"³⁶⁸.

2.5 Access to justice for female survivors of rape (Chapter VI)

Starting this comparative analysis from Albania, it must be immediately noted that in the country report submitted by the State, the whole section dedicated to the description of measures taken in terms of investigation, prosecution, procedural law and protective measures has been exclusively focused on the measures adopted in order to provide "a quick and coordinated response to domestic violence cases and ensuring protection of the victims"³⁶⁹. In fact, taking into account the level of law enforcement officers' response to VAW, despite the numerous improvements that have been made by Albanian authorities such as the rise in the number of women joining the police force which could not only tackle the social pervasiveness of sexist stereotypes but also positively affect and increase the low reporting rate of rape incidents, GREVIO has insisted on the necessity to guarantee all police districts dispose of trained professionals,

³⁶⁶ GREVIO, "Baseline Evaluation Report Monaco", (n.270)25.

³⁶⁷ Ibid.

³⁶⁸ Ibid.

³⁶⁹ GREVIO, "First Country Report Albania", (n.240)66.

including women psychologists, capable to properly deal with women victims of all forms of violence covered in the Convention and not only with those victims of domestic violence³⁷⁰. Moreover, it is also worth to mention that since the rape of an adult described by Article 102 of the Albanian Criminal Code constitutes a crime subject to private (and not public) prosecution, *de facto*, rape cases “can only be investigated and prosecuted upon complaint of the victim and terminate if the victim withdraws the complaint or forgives the perpetrator”³⁷¹. Hence, Albanian legislation does not seem to comply with the requirements set by Article 55 Paragraph 1 of the Convention on *ex parte* and *ex officio* proceedings and considering that “expecting victims of these forms of violence to initiate private prosecution proceedings against perpetrators ignores their reluctance to report and increases the risk of secondary victimisation or further violence”, national authorities have been urged to amend the CCA to ensure its conformity with the Convention³⁷². It is also worth to mention that, as it has been explained above, since the crime of rape of an adult described in Article 102 of the CCA is actually an offense that, according to Article 284 of the Albanian Criminal Procedure Code, can only be prosecuted from the moment a complaint is formally presented by the accusing harmed party, the attempt to conciliate is therefore foreseen by Article 338 of the Criminal Procedure Code³⁷³ and so Albanian legislation does not comply with the obligations deriving from Article 48 of the Convention that requires from state parties “to prohibit mandatory alternative dispute resolution processes, including mediation and conciliation, in relation to all forms of violence covered by the scope of this Convention”³⁷⁴. Finally, Albanian authorities’ exclusive focus on domestic violence can also be confirmed taking into account Article 57 and the obligation to provide legal aid to victims of all forms of violence.³⁷⁵ In fact, despite what has been reported by Albania according to which “the Legal Aid Law (No.10039/22.12.2008) provides for the possibility and obligation of the competent government bodies to cooperate with nonprofit organizations for providing free legal

³⁷⁰ GREVIO, “Baseline Evaluation Report Albania”, (n.247)56.

³⁷¹ *Ibid.* 60

³⁷² *Ibid.* 61

³⁷³ GREVIO, “First Country Report Albania”, (n.240)63.

³⁷⁴ Council of Europe, “*Convention on preventing and combating violence against women and domestic violence*”, p. 21, (Council of Europe, 2011), <<https://rm.coe.int/168046031c>> accessed 20 May 2018.

³⁷⁵ GREVIO, “Baseline Evaluation Report Albania”, (n.247)62.

aid for vulnerable persons who cannot hire a lawyer³⁷⁶” (emphasis added), victims of sexual violence and rape survivors’ chances to receive legal assistance from the state in order to be guaranteed effective access to legal remedies are in the words of GREVIO “non-existent”: this deficiency is not only due to the fact that the Legal Aid Law *de facto* provides legal aid only to victims of domestic violence, but also because legal assistance (whenever offered) is essentially provided by NGOs that do not receive sufficient funds from the government³⁷⁷. Therefore, the independent body has urged Albanian authorities “to take the necessary legislative and other measures to establish and fund appropriately an effective system of legal aid for the victims of all the forms of violence against women covered by the Convention and to recognise, support and promote the work of NGOs specialised in procuring legal assistance to victims”³⁷⁸.

Concerning Austria’s compliance with Chapter VI of the Convention, it is important to say that, despite having formally recognized that “all law enforcement agencies in Austria are trained and instructed to promptly respond to all forms of crime...including (those) in relation to the various forms of violence covered by the Convention”, GREVIO has highlighted as well some deficiencies in terms of guaranteeing adequate criminal investigations and in particular, in terms of collection of evidence by law enforcement officers³⁷⁹.

First of all, while approaching the issue of the collection of evidence, it is important to recall the fact that, as it has been already highlighted in the previous section, there are four provinces in Austria where no rape crisis centres exist and therefore, “rape victims are sent to a medical examination in hospital after reporting to the law enforcement agencies”³⁸⁰: in order to guarantee an adequate collection of evidence that can result extremely important at the time of prosecuting alleged rapists, more rape crisis centres with trained and specialized staff should be established and law enforcement officers should increase their efforts “to collect evidence from all available sources” by fostering their collaboration with these centres that give the

³⁷⁶ GREVIO, “First Country Report Albania”, (n.240)70.

³⁷⁷ GREVIO, “Baseline Evaluation Report Albania”, (n.247)62.

³⁷⁸ Ibid.

³⁷⁹ GREVIO, “Baseline Evaluation Report Austria”, (n.254)41.

³⁸⁰ Ibid.

possibility to victims of sexual violence and rape survivors to undergo forensic examinations³⁸¹.

Secondly, addressing instead the issue of reporting rape crimes, it has to be highlighted the fact that Austrian law enforcements agencies are making numerous efforts in order to guarantee a greater number of female police officers with whom victims of sexual violence and rape survivors could potentially feel more comfortable while reporting the violence suffered, but as confirmed by GREVIO, 14% of female police officers is not sufficient in order to encourage rape reporting and increase the reporting rate.³⁸² Focusing now on the obligations deriving from Article 55 of the Convention, it is important to highlight that, even if all crimes covered by the Convention (excluding the crimes related to sexual harassment) are prosecuted *ex-officio* by Austrian prosecutors³⁸³, the low number of criminal proceedings *de facto* opened by prosecutors seems to confirm their tendency to prosecute only the cases that are more likely to end with a conviction.³⁸⁴ Expressing its concern on the matter, in its report GREVIO has recalled the principle of due diligence enshrined in Article 5 of the Convention and strongly encouraged Austrian prosecutors to effectively ensure access to the criminal justice system to the victims of all forms of violence covered by the Convention independently of their chances to win the case in court³⁸⁵. Another controversial matter individuated by the independent body concerns the practice of victim-offender mediation offered by Neustart in cases of domestic violence that can be taken as an example in order to reaffirm that mediation or conciliation processes cannot be used to replace criminal justice proceedings mainly due to the fact that the purpose of Article 48 of the Convention is prohibiting systems of alternative dispute resolution to guarantee justice for victims and to end impunity of perpetrators³⁸⁶. Finally, to conclude in a positive note, in Austria “all victims of violence, serious threats and sexual offences are entitled to free psychosocial and legal court assistance”³⁸⁷: since victims are not only represented and legally advised during criminal proceedings but they are also psychologically prepared and supported at all stages of investigation and prosecution it

³⁸¹ GREVIO, “Baseline Evaluation Report Austria”, (n.254)42.

³⁸² Ibid,

³⁸³ GREVIO, “First Country Report Austria”, (n.241)56.

³⁸⁴ GREVIO, “Baseline Evaluation Report Austria”, (n.254)43.

³⁸⁵ Ibid.

³⁸⁶ Ibid. 44

³⁸⁷ GREVIO, “First Country Report Austria”, (n.241)57.

can definitely be argued that Austria comply with both Article 55 Paragraph 2 and Article 57 of the Convention³⁸⁸.

Concerning Denmark's compliance with Chapter VI of the Convention, it can definitely be said that the response of law enforcements officers when dealing with rape cases has significantly progressed over time and particular attention has been devoted by GREVIO to the project "Respect for rape victims" implemented by Danish authorities in 2016 with the aim to raise victims' level of satisfaction with the police officers' response during the report and subsequently to increase the rate of rape reporting³⁸⁹. Despite the discrete level of compliance with Article 50 of the Convention confirmed by the fact that in all the 12 police districts Danish law enforcements officers are trained to be able to deal with victims of all forms of violence covered by the Convention including rape and sexual assault and guidelines are available as well with the aim to instruct prosecutors, GREVIO identified few areas of improvements taking into consideration that first of all, the level of immediate response, prevention and protection offered by law enforcement officers significantly varies across the different police districts, secondly that the percentage of female law enforcement officers does not even reach 15% of the total number of Danish police officers, and thirdly that false preconceived beliefs especially about victims' post-traumatic stress disorder and trauma-related incoherence are widely held by the majority of police officers and, as a result, they foster negative attitudes towards rape survivors and preclude a significant increase in the rate of sexual violence and rape reporting³⁹⁰. Moreover, even if Denmark confirmed its compliance with Article 55 Paragraph 1 of the Convention by stating that "sexual violence is a crime prosecuted by the public", that "the police initiates an investigation upon receiving a complaint or ex officio when there is a reasonable presumption that a criminal offence that is pursued by the public has been committed" and that "if the investigation by the police so warrants, criminal proceedings are initiated by the Prosecution Service",³⁹¹ it is important to take also into account that in Denmark only 20% of all the rape cases reported actually ends in a conviction³⁹². GREVIO has clearly recognized and welcomed all the efforts made by Danish

³⁸⁸ GREVIO, "Baseline Evaluation Report Austria", (n.254)46-47.

³⁸⁹ GREVIO, "Baseline Evaluation Report Denmark", (n.261)49.

³⁹⁰ Ibid.

³⁹¹ GREVIO, "First Country Report Denmark", (n.242)49.

³⁹² GREVIO, "Baseline Evaluation Report Denmark", (n.261)51.

authorities to improve the response of prosecutors and courts but, nevertheless, as it has been the case also with Austria, it has also highlighted the urgent need to always guarantee effective investigation and prosecution of rape cases to all victims of sexual violence and rape by avoiding at all costs the occurrence of the phenomenon of rape case attrition³⁹³. Considering instead Article 48 of the Convention, in its country report Danish authorities make reference to section 2 of Act no. 467 of 12 June 2009, act that gives the possibility to both victim and perpetrator to take part in a process of Victim-Offender Mediation³⁹⁴. Nevertheless, Denmark's compliance with Article 48 is confirmed by the fact that both victim and perpetrator must consent to participate in the mediation, by the fact that the mediation only takes place (before or after criminal proceedings) only if the perpetrator has formally recognized his guilt and, above all, by the fact that the mediation "has no effect on the outcome of the criminal proceedings and does not replace a conviction"³⁹⁵. Concluding by evaluating the level of victim support guaranteed by Danish authorities during legal proceedings, it is important to note that, although victims of sexual violence and rape can formally ask to be assisted free of charge by a legal counsel during the whole investigation and prosecution phase³⁹⁶, police officers have the tendency to not inform the victims of this particular right³⁹⁷. Based on the evidence that "conviction rates for rape double in cases where women victims of rape have been assigned a victim support lawyer", Danish authorities have increased their efforts to guarantee access to legal aid to all rape survivors and, despite having welcomed Denmark's commitment on this particular matter, GREVIO has encouraged national authorities "to keep up their efforts in ensuring that all victims of violent crime and sexual violence are given access to victim support lawyers early into the investigation stage"³⁹⁸.

Finishing with the Principality of Monaco, the efforts made by the Monegasque authorities in order to guarantee an immediate and effective support to victims have been welcomed by GREVIO who has also recognized major improvements in terms of law enforcement officers' prompt and appropriate response and compliance with Article

³⁹³ GREVIO, "Baseline Evaluation Report Denmark", (n.261)51.

³⁹⁴ GREVIO, "First Country Report Denmark", (n.242)45.

³⁹⁵ GREVIO, "Baseline Evaluation Report Denmark", (n.261)47.

³⁹⁶ GREVIO, "First Country Report Denmark", (n.242)51.

³⁹⁷ GREVIO, "Baseline Evaluation Report Denmark", (n.261)53.

³⁹⁸ Ibid. 54

50 of the Convention³⁹⁹. Nevertheless, taking into consideration Article 48 of the Convention it must be noted that arbitration, transaction, conciliation and mediation are four alternative dispute resolution processes foreseen by Monegasque legislation and, as it has been stated by Monaco in its country report, there are no laws guaranteeing that these alternative dispute resolution processes won't be imposed by other means to victims of domestic violence⁴⁰⁰. Considering the cases in which the female partner of the couple is victim of domestic violence, and taking into consideration that Article 303 of the Monegasque Civil Code allows the judges to mandate the so-called Family Mediation Unit to mediate relations within the family, especially between partners in the process of separation⁴⁰¹, GREVIO has reaffirmed that imposing mandatory family mediation on couples in situations involving violence does not conform with the obligation deriving from Article 48 of the Convention “to prohibit alternative dispute resolution processes in cases of violence when such processes are mandatory and take the place of adversarial court proceedings”⁴⁰². Moreover, analysing Monaco's compliance with Article 55 Paragraph 1, since ex-parte proceedings are only foreseen in rare cases such as for example in case of family abandonment or abduction of a minor⁴⁰³, Monaco does not seem to comply with the above-mentioned legal provision. Finally, based on the fact that, according to the 2011 Law n° 1.378, free legal aid is guaranteed only to those people whose annual revenues do not exceed 20.000 euros, the Principality of Monaco does not comply either with Article 57 of the Istanbul Convention⁴⁰⁴.

2.6 GREVIO's evaluation: main findings

By comparing the definitions of rape provided by the four domestic legislations, it is clear that none of the countries evaluated by GREVIO has a legal definition of rape that fully complies with the requirements of Article 36 of the Convention. In fact, it is worth to recall that, in the case of Austria, GREVIO has highlighted the “slightly

³⁹⁹ GREVIO, “Baseline Evaluation Report Monaco”, (n.270)36.

⁴⁰⁰ GREVIO, “First Country Report Monaco”, (n.243)60.

⁴⁰¹ Ibid. 59.

⁴⁰² GREVIO, “Baseline Evaluation Report Monaco”, (n.270)35.

⁴⁰³ GREVIO, “First Country Report Monaco”, (n.243)69.

⁴⁰⁴ Ibid. 74

difference” between criminalizing all-non consensual sexual acts (as required by Article 36 of the Convention) and criminalizing all the sexual acts committed *against the will of the person* (as provided by Article 205 of the Austrian Criminal Code) by arguing that Austria runs the real risk to end up prosecuting only the cases in which the victims have manifestly/verbally expressed their non-consent, leaving without protection, support and justice a large percentage of rape survivors that might have freezed, remaining passive and without saying anything but that nevertheless did not consent.⁴⁰⁵

In terms of collecting data and providing accurate statistics about rape, it can be argued that there is a tendency widely shared by all the countries reviewed to avoid collecting data in a sex and age disaggregated manner. Moreover, the type of relationship between the perpetrator and the victims is hardly taken into account when collecting data and, as a result, it remains quite difficult to assess the magnitude of the phenomenon of sexual violence, including rape. Taking Denmark as an example, data are usually not sex-disaggregated mainly due to the gender neutral approach adopted by Danish authorities, approach that has been considered by GREVIO not as a manifestation of a high level of gender equality but, on the very contrary, as a failure to recognize VAW and sexual violence as a gendered phenomenon⁴⁰⁶. Finally, it is also important to note that the difficulties (not to say the lack of will) encountered by law enforcement agencies and prosecutors in collecting accurate data that have emerged from the comparative analysis actually reduce the chances to get a clear picture on the real number of rape cases *de facto* investigated and prosecuted ending with a conviction.

Focusing on the need and the measures adopted to prevent rape incidents from occurring in the very first place, many efforts have been made by all four countries evaluated by GREVIO and numerous measures have been generally adopted in order to tackle VAW, sexual violence and rape especially in terms of education, awareness raising and training of professionals. Nevertheless, it is crucial to highlight that, especially in the case of Albania and Monaco, all the improvements made in terms of mainstreaming gender related issues have been mainly focused on domestic violence and all the other forms of VAW covered by the Istanbul Convention have received little

⁴⁰⁵ GREVIO, “Baseline Evaluation Report Austria”, (n.254)35.

⁴⁰⁶ GREVIO, “Baseline Evaluation Report Denmark”, (n.261)20-21.

attention from national authorities while implementing prevention measures⁴⁰⁷. Moreover, GREVIO has also repeatedly highlighted the necessity to make a stronger emphasis on VAW as a gendered phenomenon and the need to adopt a gender-based approach to VAW has been considered as fundamental and crucial factor to take into proper account while designing awareness raising campaigns, educational curricula and training of professionals⁴⁰⁸.

As it has been the case with the prevention of rape incidents, numerous efforts have been also made by all the countries under-review in order to create a comprehensive and multi-agency based system of protection and support of survivors of VAW⁴⁰⁹. Nevertheless, with the exception of Denmark, once again support services have tententially been set up in order to respond almost exclusively to cases of domestic violence⁴¹⁰: the evident disparity between the level of protection and support reserved to victims of domestic violence and to victims of other types of violence has been mainly confirmed by the fact that rape centres either do not exist as in the case of Albania and Monaco or, if set up, they are not geographically distributed in order to cover all the provinces of a country such as in the example of Austria. Finally, it is also important to highlight the fact that GREVIO has strongly emphasized, especially in the case of Monaco, the importance of guaranteeing prompt forensic examination carried out by trained medical staff mainly to guarantee the existence of medical evidence to strongly support survivors' claims during the investigation and prosecution proceedings and to avoid cases of secondary victimization in which rape survivors' credibility and conduct are unfortunately but usually questioned⁴¹¹.

In terms of guaranteeing access to justice to female rape survivors, many are the challenges the four countries reviewed by GREVIO still have to face. First of all, even if free legal aid is guaranteed to victims of VAW in all countries except for Albania and, despite the positive example of Austria where psychological support is insured along with the free legal aid for the whole duration of investigation and prosecution

⁴⁰⁷ GREVIO, "Baseline Evaluation Report Albania", (n.247)29-30.

⁴⁰⁸ GREVIO, "Baseline Evaluation Report Monaco", (n.270)20.

⁴⁰⁹ GREVIO, "Baseline Evaluation Report Albania", (n.247)33.

⁴¹⁰ Ibid.

⁴¹¹ GREVIO, "Baseline Evaluation Report Monaco", (n.270)25.

proceedings⁴¹², female victims of VAW are generally not promptly informed about their rights. Moreover, despite the national efforts to guarantee a greater number of female police officers so that the low reporting rate of rape incidents could increase by tackling the social pervasiveness of sexist stereotypes, the percentage of female police officers is still very reduced. It is also worth to mention that, even in a country generally thought to be pioneer in terms of gender equality such as Denmark, false beliefs especially about victim's post-traumatic stress disorder and trauma-related incoherence are still widely held by law enforcement officers and, as a result, they foster negative attitudes towards rape survivors and preclude a significant increase in the rate of sexual violence and rape reporting⁴¹³. Additionally, the low number of criminal proceedings *de facto* opened by prosecutors seems to confirm the widely shared tendency to prosecute only winnable cases⁴¹⁴, namely those cases with strong proofs of evidence and that, by complying with the myth of "real rape", will more likely end with a conviction. Finally, it is also important to note that, even though GREVIO has clarified that "for the sake of brevity, the reports prioritise some provisions over others" and therefore "they do not present detailed assessments and conclusions on every provision"⁴¹⁵, the degree of state compliance with Article 54 of the Istanbul Convention establishing that "in any civil or criminal proceedings, evidence relating to the sexual history and conduct of the victim shall be permitted only when it is relevant and necessary"⁴¹⁶ hasn't been evaluated even if it might have contributed to better access the level of pervasiveness of RMA and of secondary victimization at the European level.

To conclude, despite the numerous improvements State Parties have made to comply with the Convention, further efforts are needed to eradicate the social pervasiveness of rape myths acceptance, to prevent gender-based violence against women and guarantee access to justice to female rape survivors.

⁴¹² GREVIO, "Baseline Evaluation Report Austria", (n.254)46-47.

⁴¹³ GREVIO, "Baseline Evaluation Report Denmark", (n.261)49.

⁴¹⁴ GREVIO, "Baseline Evaluation Report Austria", (n.254)43.

⁴¹⁵ GREVIO, "Baseline Evaluation Report Albania", (n.247)11.

⁴¹⁶ Council of Europe, "*Istanbul Convention*", (n.374)23.

CONCLUSIONS

This research focused on the social pervasiveness of rape myths acceptance, its corrosive effect on society's ability to prosecute and convict rapists and its implications in terms of guaranteeing effective access to justice to female rape survivors. Rape myths, namely false and preconceived notions of how a rape survivor 'should' behave before, during and after an attack, have been meticulously presented as factors influencing the social definition and perception of rape⁴¹⁷.

In order to understand the mechanism behind rape myths endorsement and the legal and social implications of rape myths acceptance, this work examined the functions of rape myths. Evidence suggests that rape myths are generally used as a cognitive schema to interpret information, to evaluate rape cases and to attribute the blame to either the alleged victim or perpetrator⁴¹⁸. Considering that rape myths can greatly influence the process of attribution of responsibility in rape cases, it has been highlighted the fact that whenever the characteristics and the experience of a rape survivor cannot match with the stereotyped descriptions of "real rape" and "genuine victim", rape survivors will be more likely to be considered in some way responsible and to be blamed for their own assault⁴¹⁹.

As a result of rape myths acceptance, rape survivors are often denigrated and blamed while rapists' violent tendencies are tacitly justified, legitimized and normalized. Bearing in mind that these preexisting stereotypes about rape are in a position to influence the way in which rape is defined and perceived by all the members of our society, including police officers and prosecutors⁴²⁰, this work has analysed the implications of rape myths acceptance in prosecutorial decision-making and criminal justice.

As the tendency to call into question the credibility of the alleged victims during the investigation process and to deal only with strong winnable cases presenting the

⁴¹⁷ Megan A. Alderden, "Processing of Sexual Assault Cases Through the Criminal Justice System", p. 16, (Ph.D, University of Illinois, 2008)

⁴¹⁸ Dan M., Kahan, "Culture, Cognition, and Consent: Who Perceives What, and Why, in Acquaintance-Rape Cases", p. 732, *University of Pennsylvania Law Review*, 158, 2010

⁴¹⁹ Kathryn M. Ryan, "The relationship between rape myths and sexual scripts: The social construction of rape", pp. 775, *Sex Roles*, 65, 2011

⁴²⁰ Alderden, (n. 417) 11

defining characteristics of “real rape”, seems to be widely shared among law enforcement officers, female survivors often avoid reporting being raped to the police in the very first place⁴²¹. To understand the under-reporting and the reasons behind the generally small percentage of trials that results in convictions, it has been explained that, while delivering a judgment, judges take into consideration both evidence-based legal factors (such as the presence of physical or forensic evidence, the presence of a weapon or a witness) and extralegal factors based on rape myths such as the victim credibility, the victim-suspect relationship and last but not least, the victim characteristics⁴²². Because of the social pervasiveness of rape myths acceptance and its implications in the manner in which law enforcement officers and criminal justice professionals investigate and prosecute rape cases, female rape survivors’ rights to access the justice system and to be equally treated and protected by the law, can and are generally, seriously compromised.

Considering that rape myths are usually the product of entrenched gender roles stereotypes and that, despite the legal improvements made in terms of violence against women resulted from the adoption of international instrument and the domestic reforms of civil and criminal codes, the ways in which rape survivors are often treated haven’t considerably improved⁴²³, the different feminist approach of the Ethics of Care has been chosen to frame the debate about how to tackle rape myths acceptance and to ensure access to justice to female victims of rape. As I have argued by resorting to the Ethics of Care, building “caring societies” entails fostering societies based on the existence of caring relations between their interdependent members that become actively involved in ensuring all people’s needs will be met and all people’s rights will be guaranteed and respected⁴²⁴.

Taking into specific account the European context and the importance of the entry into force of the Council of Europe Istanbul Convention, the aim of this research has been precisely to assess how the Convention has defined rape and to what extent it has contributed in creating a “European caring society” in which female rape survivors’

⁴²¹ Rachel M. Venema, “Making Judgments: How Blame Mediates the Influence of Rape Myth Acceptance in Police Response to Sexual Assault”, p. 2, *Journal of Interpersonal Violence*, 2016

⁴²² Alderden, (n. 417) 22-28

⁴²³ Ibid. 16

⁴²⁴ Virginia Held, *The Ethics of Care: Personal, Political, and Global*, p. 141, Oxford University Press, New York, 2006

rights to access the justice system and to be equally treated and protected by the law have been recognized and effectively guaranteed.

From the examination of the legal dispositions concerning rape contained in the Istanbul Convention and the comparative analysis of the four national reports submitted by State Parties to GREVIO and the baseline country evaluations published by this monitoring body, it has emerged that the Istanbul Convention constitutes a milestone in the history of women's human rights. The Convention clearly sets important and powerful standards at the regional and international level to contribute improving legislation and policies in order to prevent and eradicate rape⁴²⁵. The analysis of Article 36 of the Convention and its consent-based definition of rape has clearly confirmed that even if altering the legal definition of rape hasn't and won't automatically result in the modification of how rape is socially perceived and defined, nevertheless, it is of crucial importance to reform domestic criminal codes in order to guarantee access to justice and to remedies to all rape survivors⁴²⁶. Nevertheless, in line with the holistic approach adopted to draft the Convention, it remains of foremost importance adopting and implementing comprehensive policies to fight root causes and prevent violence against women in all its manifestations, as well as to support the victims and to effectively prosecute the perpetrators⁴²⁷. The transformative potential of the Convention to address violence against women in a comprehensive manner and, more specifically, to tackle the pervasiveness of rape myths acceptance has been also confirmed by the numerous improvements made by the four states evaluated by GREVIO, especially in terms of ensuring "far-reaching changes in attitudes and beliefs towards women, their role and status in society, their sexuality⁴²⁸" and prevent violence against women. Finally, the fact that in the States comments on GREVIO's reports national authorities have welcomed and generally accepted the monitoring body's findings confirms that, even if only four countries have been evaluated up until now, through the in-depth analysis of

⁴²⁵ OAS & CoE, "Regional Tools To Fight Violence Against Women: The Belém Do Pará And Istanbul Conventions", p. 90, 2014 <<http://www.oas.org/en/mesecvi/docs/mesecvi-coe-cswpub-en.pdf>> accessed 20 May 2018

⁴²⁶ Interview with Johanna Nelles, Violence against women expert, Council of Europe (Strasbourg, 15/06/2018)

⁴²⁷ Dubravka Šimonović, "Global and Regional Standards on Violence Against Women: The Evolution and Synergy of the CEDAW and Istanbul Conventions", p. 604, *Human Rights Quarterly*, 36, 2014

⁴²⁸ GREVIO, "GREVIO Baseline Evaluation Report Albania", p. 26, (Council of Europe, 2017), <<https://rm.coe.int/grevio-first-baseline-report-on-albania/16807688a7>> accessed 22 May 2018

the various national contexts and the mobilization of its expertise to advise and support national authorities, GREVIO has already developed the credibility and legitimacy necessary to have a real impact in combating and preventing violence against women and domestic violence⁴²⁹.

To conclude, the Istanbul Convention clearly constitutes the most important milestone to achieve the goal of creating a “European caring society”. Nevertheless, in terms of implementation and despite the numerous improvements State Parties have made to comply with the Convention, eradicating the social pervasiveness of rape myths acceptance and fostering a European caring society in which access to justice is effectively guaranteed to female rape survivors will require a strong commitment and further efforts to improve a system that is already working but needs to be improved.

Considering that many States Parties to the Convention have already and are currently demonstrating great interest in sharing among them good examples of implementation of specific provisions of the Convention, the existence and the proper functioning of GREVIO’s monitoring and evaluation mechanism will hopefully continue to provide a vital forum to coordinate the fight against all manifestations of gender-based violence and to enable the exchange of best practices among States Parties⁴³⁰.

Considering the urgent need to address the issues concerning rape which has been also confirmed by the recent developments with the La Manada case in Spain and, being the very first piece of work focusing on GREVIO’s evaluation of state compliance with the Istanbul Convention specifically concerning rape, my research can contribute to the existing debate on this specific matter by providing a clear picture of the current “European reality of rape” highlighting both the social pervasiveness of rape myths acceptance and the transformative potential of the Istanbul Convention. Nevertheless, taking into account that only four Baseline Evaluation Reports have been published and that new ones will be released by GREVIO, future researches will be needed to actualize, update and further complement this work by hopefully presenting the picture of a social, cultural and legal environment in which rape is not tacitly supported and justified anymore.

⁴²⁹ Interview with Johanna Nelles, (n.427)

⁴³⁰ Ibid.

BIBLIOGRAPHY

Books and Articles

Abbey Antonia, Zawacki Tina, Buck Philip O., Clinton A. Monique, & McAuslan Pam, "Alcohol and sexual assault", pp. 43–51, *Alcohol Research and Health*, 25, 2001.

Abbey Antonia, Zawacki Tina, Buck Philip O., Clinton A. Monique, & McAuslan Pam, "Sexual assault and alcohol consumption: What do we know about their relationship and what types of research is still needed?", pp. 272–303, *Aggression and Violent Behavior*, 9, 2004.

Abrams Dominic, Viki G. Tendayi, Masser Barbara & Bohner Gerd, "Perceptions of stranger and acquaintance rape: The role of benevolent and hostile sexism in victim blame and rape proclivity", pp. 111–125, *Journal of Personality and Social Psychology*, 84, 2003.

Acock Alan C. & Ireland Nancy K., "Attribution of blame in rape cases: The impact of norm violation, gender, and sex-role attitude", pp. 179-193, *Sex Roles*, 8, 1983.

Adam-Curtis Leah E. & Forbes Gordon B., "College women's experiences of sexual coercion: a review of cultural, perpetrator, victim, and situational variables", pp. 91–122, *Trauma, Violence, & Abuse*, 5, 2004.

Alderden Megan A., "Processing Of Sexual Assault Cases Through The Criminal Justice System", (PhD, University of Illinois 2008).

Alderden Megan A. & Ullman Sarah E., "Gender difference or indifference? Detective decision making in sexual assault cases", pp. 3-22, *Journal of Interpersonal Violence*, 27, 2012.

Aliment Ruby, "Saying Yes: How California's Affirmative Consent Policy Can Transform Rape Culture", pp. 187-228, *Seattle Journal for Social Justice*, 14, 2015.

Allison Julie A. & Wrightsman Lawrence S., "Rape: The misunderstood crime", 1993, In Susan J. Lea (Ed.), "A discursive investigation into victim responsibility in rape", pp. 495–514, *Feminism Psychology*, 17, 2007.

Anderson Irina & Doherty Kathy, "Psychology, sexuality and power: constructing sex and violence", 1997, In Susan J. Lea (Ed.), "A discursive investigation into victim responsibility in rape", pp. 495– 514, *Feminism Psychology*, 17, 2007.

Anderson Kirsten, "Violence against women: state responsibilities in international human rights law to address harmful masculinities", pp. 173-197, *Netherlands Quarterly of Human Rights*, 26, 2008.

Anderson Kathryn, Cooper Harris, & Okamura Linda, "Individual differences and attitudes toward rape: A meta-analytic review", pp. 295–315, *Personality and Social Psychological Bulletin*, 23, 1997.

Banda Fareda, "Blazing a trail: the African Protocol on Women's Rights comes into force", pp. 72-84, *Journal of African law*, 50, 2006.

Basow Susan A. & Minieri Alexandra, "You owe me: Effects of date cost, who pays, participant gender, and rape myth beliefs on perceptions of rape", pp. 479-497, *Journal of Interpersonal Violence*, 26, 2011.

Beichner Dawn & Spohn Cassia, "Modeling the effects of victim behavior and moral character on prosecutors' charging decisions in sexual assault cases", pp. 3-24, *Violence and Victims*, 27, 2012.

Bell Susan T., Kuriloff Peter J. & Lottes Ilsa, "Understanding attributions of blame in stranger rape and date rape situations: An examination of gender, race, identification, and students social perceptions of rape victims", pp. 1719-1734, *Journal of Applied Social Psychology*, 24, 1994.

Ben-David Sarah & Schneider Ofra, "Rape perceptions, gender role attitudes, and victim perpetrator acquaintance", pp. 385-402, *Sex Roles: A journal of Research*, 55, 2005.

Bieneck Steffen & Krahe Barbara, "Blaming the victim and exonerating the perpetrator in cases of rape and robbery: Is there a double standard?", pp. 1785-1797, *Journal of Interpersonal Violence*, 26, 2011.

Bohner Gerd, Eyssel Friederike, Pina Afroditi, Siebler Frank, & Viki G. Tendayi, "Rape myth acceptance: affective, behavioral, and cognitive effects of beliefs that blame the victim and exonerate the perpetrator", pp. 17-45, In Miranda Horvath, & Jennifer Brown (Eds.), "Rape: Challenging contemporary thinking", London, Routledge, 2013.

Bohner Gerd, Reinhard Marc-André, Rutz Stephanie, Sturm Sabine, Kerschbaum Bernd & Effler Dagmar, "Rape myths as neutralizing cognitions: Evidence for causal impact of anti-victim attitudes on men's self-reported likelihood of raping", pp. 257–268, *European Journal of Social Psychology*, 28, 1998.

Bohner Gerd, Siebler Frank & Schmelcher Jürgen, "Social norms and the likelihood of raping: Perceived rape myth acceptance of others affects men's rape proclivity", pp. 286–297, *Personality and Social Psychology Bulletin*, 26, 2006.

Boux, Holly Jeanine & Daum Courtenay W., "At the Intersection of Social Media and Rape Culture: How Facebook Postings, Texting and Other Personal Communications Challenge the Real Rape Myth in the Criminal Justice System", pp. 149-186, *Journal of Law, Technology and Policy*, 2015.

Brady Eileen C., Chrisler Joan C., Hosdale D. Christine, Osowiecki Dana M. & Veal Tracy A., "Date rape: Expectations, avoidance strategies and attitudes toward victims", pp. 427–429, *Journal of Social Psychology*, 13, 1991.

Bridges Judith S., "Perceptions of date and stranger rape: A difference in sex role expectations and rape supportive beliefs", pp. 291-307, *Sex Roles*, 24, 1991.

Briere John & Malamuth Neil M., "Self-reported likelihood of sexually aggressive behaviour: attitudinal versus sexual explanations", pp. 315–323, *Journal of Research in Personality*, 17, 1983.

Briere John, Malamuth Neil M. & Check James V.P., "Sexuality and rape-supportive beliefs", pp.398- 403, *International Journal of Women's Studies*, 8, 1985.

Bryden David P. & Lengnick Sonja, "Rape in the criminal justice system", pp. 1194-1384, *Journal of Criminal Law and Criminology*, 87, 1997.

Burgess Gerald H., "Assessment of rape-supportive attitudes and beliefs in college men: Development, reliability, and validity of the rape attitudes and beliefs scale", pp. 973-993, *Journal of Interpersonal Violence*, 22, 2007.

Burt Martha, "Cultural myths and supports for rape", pp. 217–230, *Journal of Personality and Social Psychology*, 38, 1980.

Burt Martha, "Justifying personal violence: A comparison of rapists and the general public", pp. 131– 150, *Victimology: An International Journal*, 8, 1983.

Burt Martha & Albin Rochelle, “Rape myths, rape definitions and probability of conviction”, pp. 212–230, *Journal of Applied Psychology*, 11, 1981.

Bustamante Arango Diana Marcela & Vásquez Henao Paola Andrea, “La convención Belém Do Pará un balance de su aplicación en la jurisprudencia de la corte interamericana, a 16 años de su entrada en vigor”, pp. 15-35, *Civilizar.Ciencias Sociales y Humanas*, 11, 2011.

Campbell Rebecca, “Rape survivors’ experiences with the legal and medical systems: Do rape victim advocates make a difference?”, pp. 30-45, *Violence Against Women*, 12, 2006.

Carimico Graceann, Huynh Thuy & Wells Shallyn, “Rape and Sexual Assault”, pp. 359-410, *The Georgetown Journal of Gender and the Law*, 17, 2016.

Chapleau Kristine M. & Oswald Debra L., “Power, sex, and rape myth acceptance: Testing two models of rape proclivity”, pp. 66–78, *Journal of Sex Research*, 47, 2010.

Chapleau Kristine M. & Oswald Debra L., “Status, threat, and stereotypes: Understanding the function of rape myth acceptance”, pp. 18-41, *Social Justice Research*, 26, 2013.

Chapleau Kristine M., Oswald Debra L. & Russell Brenda L., “How Ambivalent Sexism Toward Women and Men Support Rape Myth Acceptance”, pp. 131–136, *Sex Roles*, 57, 2007.

Check James V.P. & Malamuth Neil M., “An empirical assessment of some feminist hypotheses about rape”, pp. 414–423, *International Journal of Women's Studies*, 8, 1985.

Check James V.P. & Malamuth Neil M., “Sex role stereotyping and reactions to depictions of stranger versus acquaintance rape”, pp. 344–356, *Journal of Personality and Social Psychology*, 45, 1983.

Chinkin Christine, “Violence against women: the international legal response”, pp. 23-28, in Sweetman Caroline et al. (ed.), *Women and rights*, Oxfam, 1995.

Clarke Allyson K. & Lawson Karen L., “Women’s judgments of a sexual assault scenario: The role of prejudicial attitudes and victim weight”, pp. 248-264, *Violence and Victims*, 24, 2009.

Cohn Ellen S., Dupuis Erin C. & Brown Tiffany M., “In the eye of the beholder: Do behavior and character affect victim and perpetrator responsibility for acquaintance rape?”, pp. 1513-1535, *Journal of Applied Social Psychology*, 39, 2009.

Cook, Rebecca J., “Enforcing women's rights through law”, pp. 8-15, In Sweetman Caroline et al. (ed.). *Women and rights*. Oxfam, 1995.

Costin Frank, “Beliefs about rape and women's social roles”, pp. 319–325, *Archives of Sexual Community and Applied Social Psychology*, 1, 1991.

Costin Frank & Schwarz Norbert, “Beliefs about rape and women's social roles: A four-nation study”, pp. 46–56, *Journal of Interpersonal Violence*, 2, 1987.

Dalbert Claudia & Filke Eva, “Belief in a personal just world, justice judgments, and their functions for prisoners”, pp. 1516-1527, *Criminal Justice and Behavior*, 34, 2007.

De Vido Sara, “ The ratification of the Council of Europe Istanbul Convention by the EU: a step forward in the protection of women from violence in the european legal system”, pp. 69-102, *European Journal of Legal Studies*, 9, 2017.

Du Mont Janice, Miller Karen-Lee & Myhr Terri, “The role of 'real rape' and 'real victim' stereotypes in the police reporting practices of sexually assaulted women”, pp. 466–486, *Violence Against Women*, 9, 2003.

Duff Simon & Tostevin Amy, “Effects of gender, rape myth acceptance, and perpetrator occupation on perceptions of rape”, pp. 249 - 261, *Journal of Criminal Psychology*, 5 , 2015.

Edwards Katie M., Turchik Jessica A., Dardis Christina M., Reynolds Nicole & Gidycz Christine A., “Rape myths: History, individual, and institutional-level presence, and implications for change”, pp. 761-773, *Sex Roles*, 65, 2011.

Egan Rachel & Wilson Janet Clare, “Rape Victims' Attitudes to Rape Myth Acceptance”, pp. 345- 357, *Psychiatry, Psychology and Law*, 19, 2012.

Eigenberg Helen, & Garland Tammy, “Victim blaming”, pp. 21-36, In Laura J. Moriarty (Ed.), “*Controversies in Victimology*”, Newark, NJ: Elsevier Press, 2008.

Ellison Louise & Munro Vanessa E., “Reacting to rape: exploring mock jurors' assessments of complainant credibility”, pp. 202-19, *British Journal of Criminology*, 49, 2009.

Epstein Joel & Lagenbahn Stacia, "The Criminal Justice System and community response to rape", National Institute of Justice, Washington DC: US Department of Justice, 1994.

Estrich Susan, *"Real rape"*, Cambridge, MA: Harvard University Press, 1987.

Eyssel Friederike & Bohner Gerd, "Schema effects of rape myth acceptance on judgments of guilt and blame in rape cases: The role of perceived entitlement to judge", pp. 1579–1605, *Journal of Interpersonal Violence*, 26, 2011.

Feild Hubert S., "Juror background characteristics and attitudes toward rape", pp. 73-93, *Law and Human Behavior*, 2, 1978.

Feldman-Summers Shirley & Palmer Gayle C., "Rape as viewed by judges, prosecutors, and police officers", pp. 19-40, *Criminal Justice and Behavior*, 7, 1980.

Ferzan Kimberly Kessler, "Consent, Culpability, and the Law of Rape", pp. 397-440, *Ohio State Journal of Criminal Law*, 13, 2016.

Fetchenhauer Detlef, Jacobs Gabriele & Belschak Frank., "Belief in a just world, causal attributions, and adjustment to sexual violence", pp. 25-42, *Social Justice Research*, 18, 2005.

Field Hubert S., "Juror background characteristics and attitudes toward rape: Correlates of jurors' decisions in rape trials", pp. 73–93, *Law and Human Behaviour*, 2, 1978.

Finch Emily & Munro Vanessa, "Juror stereotypes and blame attribution in rape cases involving intoxicants", pp. 25–38, *British Journal of Criminology*, 45, 2005.

Flowe Heather D., Ebbesen Ebbe B. & Putcha-Bhagavatula Anila, "Rape Shield Laws and Sexual Behavior Evidence: Effects of Consent Level and Women's Sexual History on Rape Allegations", pp. 159-175, *Law and Human Behaviour*, 31, 2007.

Fonnow Mary Margaret, Richardson Laurel & Wemmerus Virginia, "Feminist rape education: Does it work?", pp. 108–121, *Gender and Society*, 6, 1992.

Frese Bettina, Moya Miguel & Megí as Jesús L., "Social perception of rape: How rape myth acceptance modulates the influence of situational factors", pp. 143–161, *Journal of Interpersonal Violence*, 19, 2004.

Friedman Elisabeth Jay, “Re(gion)alizing Women’s Human Rights in Latin America”, pp. 349-375, *Politics and Gender*, 5, 2009.

Furnham Adrian, “Belief in a just world: Research progress over the past decade”, pp. 795-817, *Personality and Individual Differences*, 34, 2003.

Gawaya Rose & Mukasa Rosemary, “The African women's protocol: A new dimension for women's rights in Africa”, pp. 42-50, *Gender & Development*, 13, 2005.

Glick Peter & Fiske Susan T., “The Ambivalent Sexism Inventory: Differentiating hostile and benevolent sexism”, pp. 491-512, *Journal of Personality and Social Psychology*, 70, 1996.

Green Eva G.T., Thomsen Lotte, Sidanius Jim, Staerkle Cristian & Potanina Polina, “Reactions to crime as a hierarchy regulating strategy: The moderating role of social dominance orientation”, pp. 416–436, *Social Justice Research*, 22, 2009.

Grubb Amy & Harrower Julie , “Understanding attribution of blame in cases of rape: An analysis of participant gender, type of rape and perceived similarity to the victim”, pp. 63–81, *Journal of Sexual Aggression*, 15, 2009.

Grubb Amy & Turner Emily, “Attribution of blame in rape cases: A review of the impact of rape myth acceptance, gender role conformity and substance use on victim blaming”, pp. 443-452, in *Aggression and Violent behaviour*, 17, 2012.

Gruber Amy, “Rape Law Revisited”, pp. 279-298, *Ohio State Journal of Criminal Law*, 13, 2016.

Gunn Rita & Linden Rick, “The impact of law reform on the processing of sexual assault cases”, pp. 155–177, *Canadian Review of Sociology and Anthropology*, 34, 1997.

Gurnham David, “Victim-blame as a symptom of rape myth acceptance? Another look at how young people in England understand sexual consent”, pp. 258–278, *Legal Studies*, 36, 2016.

Hammond Elizabeth M., Berry Melissa A. & Rodriguez Dario N., “The influence of rape myth acceptance, sexual attitudes, and belief in a just world on attributions of responsibility in a date rape scenario”, pp. 242-252, *Legal and Criminological Psychology*, 16, 2011.

Hayes-Smith Rebecca & Levett Lora, “Student perceptions of sexual assault resources and prevalence of rape myth attitudes”, pp. 335-354, *Feminist Criminology*, 5, 2010.

Hayes Rebecca H., Lorenz Katherine & Bell Kristin A., “Victim Blaming Others: Rape Myth Acceptance and the Just World Belief”, pp. 202–220, *Feminist Criminology*, 8, 2013.

Held Virginia, “*The Ethics of Care: Personal, Political, and Global*”, Oxford University Press, New York, 2006.

Held Virginia, “Can the Ethics of Care Handle Violence?”, pp. 115-129, *Ethics and Social Welfare*, 4, 2010.

Hellum Anne & Aasen Henriette S., “*Women’s Human Rights, CEDAW in International, Regional and National Law*”, Cambridge: Cambridge University Press, 2013.

Horvath Miranda & Brown Jennifer, “Alcohol as drug of choice; is drug assisted rape a misnomer?”, pp. 417–429, *Psychology, Crime and Law*, 13, 2007.

Horvath Miranda & Brown Jennifer, “The role of alcohol and drugs in rape”, pp. 219–228, *Medicine, Science and the Law*, 46, 2006.

Iconcis Rosemary, “Rape myth acceptance in college students: A literature review”, pp. 47–52, *Contemporary Issues in Education Research—Second Quarter*, 1, 2008.

Jenkins Megan J. & Dambrot Faye H., “The attribution of date rape: Observer's attitudes and sexual experiences and the dating situation”, pp. 875–895, *Journal of Applied Psychology*, 17, 1987.

Jensen Inger & Gutek Barbara, “Attributions and assignment of responsibility in sexual harassment”, pp. 121–136, *Journal of Social Issues*, 38, 1982.

Jordan Jan, “Perfect victims, perfect policing? Improving rape complainants’ experiences of police investigations”, pp. 699-719, *Public Administration*, 86, 2008.

Jost John T. & Kay Aaron C., “Exposure to benevolent sexism and complementary gender stereotypes: Consequences for specific and diffuse forms of system justification”, pp. 498–509, *Journal of Personality and Social Psychology*, 88, 2005.

Kahan Dan M., “Culture, Cognition, and Consent: Who Perceives What, and Why, in Acquaintance- Rape Cases”, pp. 729-814, *University of Pennsylvania Law Review*, 158, 2010.

Kenig Sylvia & Ryan John, “Sex differences in levels of tolerance and attribution of blame for sexual harassment on a university campus”, pp. 535–549, *Sex Roles*, 15, 1986.

Johnson Kim K.P. & Workman Jane E., “Blaming the victim: Attributions concerning sexual harassment based on clothing, just-world belief and sex of objects”, pp. 382–400, *Family and Consumer Sciences Research Journal*, 22, 1994.

King Laura L. & Roberts Jennifer J., “Traditional Gender Role and Rape Myth Acceptance: From the Countryside to the Big City”, pp. 1-20, *Women & Criminal Justice*, 21, 2011.

Konradi Amanda & Burger Tina, “Having the last word: An examination of rape survivors’ participation in sentencing”, pp. 351-395, *Violence Against Women*, 6, 2000.

Kopper Beverly A., “Gender, gender identity, rape myth acceptance, and time of initial resistance on the perception of acquaintance rape blame and avoidability”, pp. 81–93, *Sex Roles*, 34, 1996.

Krahe Barbara, “Victim and observer characteristics as determinants of responsibility attributions to victims of rape”, pp. 50–58, *Journal of Applied Social Psychology*, 18, 1998.

Kruehwitz Judith & Payne Elaine Johnson, “Attributions about rape: Effects of rapist force, observer sex and sex role attitudes”, pp. 291–305, *Journal of Applied Social Psychology*, 8, 1978.

Langhinrichsen-Rohling Jennifer, Shlien-Dellinger Rania K., Huss Matthew T. & Kramer Vertrie L., “Attributions about perpetrators and victims of interpersonal abuse”, pp. 278-288, *Journal of Interpersonal Violence*, 4, 2004.

Larcombe Wendy, “The “ideal” victim v. successful rape complainants: Not what you might expect”, pp. 131-148, *Feminist Legal Studies*, 10, 2002.

Leary Mary Graw, “Affirmatively Replacing Rape Culture with Consent Culture”, pp. 1-56, *Texas Tech Law Review*, 49, 2016.

Lees Sue, “*Carnal knowledge: Rape on trial*”, London: Women's Press, 2002.

Levenson Jill S., Brannon Yolanda N., Fortney Timothy & Baker Juanita, “Public perceptions about sex offenders and community protection policies”, pp. 1-25, *Analyses of Social Issues and Public Policy*, 7, 2007.

Lonsway Kimberly A. & Fitzgerald Louise F., “Attitudinal antecedents of rape myth acceptance: A theoretical and empirical reexamination”, pp. 704–711, *Journal of Personality and Social Psychology*, 68, 1995.

Lonsway Kimberly A. & Fitzgerald Louise F., “Rape myths: In review”, pp. 133–164, *Psychology of Women Quarterly*, 18, 1994.

Lonsway Kimberly A., Welch Susan & Fitzgerald Louise F., “Police training in sexual assault response: Process, outcomes, and elements of change”, pp. 695-730, *Criminal Justice and Behavior*, 28, 2001.

Lucas Todd, Alexander Sheldon, Firestone Ira & Lebreton James M., “Belief in a just world, social influence and illness attributions”, pp. 258-266, *Journal of Health Psychology*, 14, 2009.

Lyon Matthew R., “No Means No?: Withdrawal of Consent during Intercourse and the Continuing Evolution of the Definition of Rape”, pp. 277-314, *The Journal of Criminal Law and Criminology*, 95, 2004.

Masser Barbara, Lee Kate & McKimmie Blake M., “Bad women, bad victim? Disentangling the effects of victim stereotypicality, gender stereotypicality and benevolent sexism on acquaintance rape victim blame”, pp. 494-504, *Sex Roles*, 62, 2010.

Mennicke Annelise, Anderson Delaney & Kennedy Stephanie, “Law enforcement officers’ perception of rape and rape victims: A multimethod study”, pp. 814-827, *Violence and Victims*, 29, 2014.

Moor Avigail, “She dresses to attract, he perceives seduction: A gender gap in attribution of intent to women’s revealing style of dress and its relation to blaming the victims of sexual violence”, pp. 115-127, *Journal of International Women’s Studies*, 11, 2010.

Morrison Andrew, Ellsberg Mary & Bott Sarah, “Addressing Gender-Based Violence: A Critical Review of Interventions” , pp. 25-51, *The World Bank Research Observer*, 22, 2007.

Muehlenhard Charlene L., “Nice women” don't say yes and “real men” don't say no: How miscommunication and the double standard can cause sexual problems”, pp. 95–108, *Women and Therapy*, 7, 1988.

Murphy Sharon B., Edwards Katie M., Bennett Sidney, Bibeau Sara Jane & Sichelstiel Julie, “Police reporting practices for sexual assault cases in which “the victim does not wish to pursue charges.”, pp. 144- 156, *Journal of Interpersonal Violence*, 29, 2014.

Nelles Johanna & Petitpas Elise, “The Istanbul Convention: new treaty, new tool”, pp. 83-86, *Forced Migration Review*, 1, 2015.

Nussbaum Martha, “Capabilities And Social Justice”, pp. 123-135, *International Studies Review*, 4, 2002.

Nussbaum Martha, “*Creating capabilities*”, Belknap Press of Harvard University, Cambridge, 2011.

Ocran Christine, “Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa”, pp.147-152, *African Journal of International and Comparative Law*, 15, 2007.

Ortiz-Barreda Gady & Vives-Cases Carmen, “Legislation on violence against women: overview of key components”, pp. 61-72, *Pan American Journal of Public Health*, 33, 2013.

Patterson Debra, “The linkage between secondary victimization by law enforcement and rape case outcomes”, pp. 328-347, *Journal of Interpersonal Violence*, 26, 2011.

Payne Diane L., Lonsway Kimberly A. & Fitzgerald Louise F., “Rape myth acceptance: Exploration of its structure and its measurement using the Illinois Rape Myth Acceptance Scale”, pp. 27–68, *Journal of Research in Personality*, 33, 1999.

Peterson Zoë D. & Muehlenhard Charlene L., “Was it rape? The function of women’s rape myth acceptance and definitions of sex in labelling their own experiences”, pp. 129-44, *Sex Roles*, 51, 2004.

Pope Elena & Shouldice Michelle, “Drugs and sexual assault: A review”, pp. 51–55, *Trauma, Violence and Abuse*, 2, 2001.

Prentice Deborah A. & Carranza Erica, “What women and men should be, shouldn’t be, are allowed to be, and don’t have to be: the contents of prescriptive gender stereotypes”, pp. 269-81, *Psychology of Women Quarterly*, 26, 2002.

Robinson G. Erlick, "International perspectives on violence against women – Introduction", pp. 155-156, *Archives of Women's Mental Health*, 6, 2003.

Ryan Kathryn M., "The relationship between rape myths and sexual scripts: The social construction of rape", pp. 774-782, *Sex Roles*, 65, 2011.

Simms Calvin M., Noel Nora E. & Maisto Stephen A., "Rape blame as a function of alcohol presence and resistant type", pp. 2766–2776, *Addictive Behaviors*, 32, 2007.

Šimonović Dubravka, "Global and Regional Standards on Violence Against Women: The Evolution and Synergy of the CEDAW and Istanbul Conventions", pp. 590-606, *Human Rights Quarterly*, 36, 2014.

Simonson Kelly & Subich Linda Mezydlo, "Rape perceptions as a function of gender-role traditionality and victim–perpetrator association", pp. 617–634, *Sex Roles*, 40, 1999.

Sleath Emma & Bull Ray, "Comparing rape victim and perpetrator blaming in a police officer sample: Differences between police officers with and without special training.", pp. 646-665, *Criminal Justice and Behavior*, 39, 2012.

Smith Ronald E., Keating John P., Hester Reid K. & Mitchell Hermann E., "Role and justice considerations in the attribution of responsibility to a rape victim", pp. 346-57, *Journal of Research in Personality*, 10, 1976.

Soothill Keith, "The Changing Face of Rape", pp. 383-392, *British Journal of Criminology*, 31, 1991.

Spohn Cassia, White Clair & Tellis Katharine, "Unfounding sexual assault: Examining the decision to unfound and identifying false reports", pp. 161-192, *Law & Society Review*, 48, 2014.

Stahl Tomas, Eek Daniel & Kazemi Ali, "Rape victim blaming as system justification: The role of gender and activation of complementary stereotypes", pp. 239–258, *Social Justice Research*, 23, 2010.

Stoll Laurie C., Lilley Terry G. & Pinter Kelly, "Gender-blind sexism and rape myth acceptance", pp. 28-45, *Violence against women*, 23, 2017.

Suarez Eliana & Gadalla Tahany M., "Stop blaming the victim: A meta-analysis on rape myths", pp. 2010- 2035, *Journal of Interpersonal Violence*, 25, 2010.

Taylor Kristin L., “Treating Male Violence against Women as a Bias Crime”, pp. 575-594, 76 B.U. L. Rev. 575, 1996.

Temkin Jennifer & Krahe Barbara, “*Sexual assault and the justice gap: A question of attitude*”, Oxford, UK: Hart Publishing, 2008.

Tuerkheimer Deborah, “Affirmative Consent”, pp. 441-468, *Ohio State Journal of Criminal Law*, 13, 2016.

Ullman Sarah E., “Social reactions, coping strategies and self blame attributions in adjustment to sexual assault”, pp. 505–526, *Psychology of Women Quarterly*, 20, 1996.

Ullman Sarah E. & Townsend Stephanie M., “Barriers to working with sexual assault survivors: A qualitative study of rape crisis center workers”, pp. 412-443, *Violence Against Women*, 13, 2007.

Venema Rachel M., “Making Judgments: How Blame Mediates the Influence of Rape Myth Acceptance in Police Response to Sexual Assault”, pp. 1–26, *Journal of Interpersonal Violence*, 2016.

Venema Rachel M., “Police officer schema of sexual assault reports: Real rape, ambiguous cases, and false reports”, pp. 872-899, *Journal of Interpersonal Violence*, 31, 2016.

Viki G.Tendayi, Abrams Dominic & Masser Barbara, “Evaluating stranger and acquaintance rape: The role of benevolent sexism in perpetrator blame and recommended sentence length”, pp. 295–303, *Law and Human Behavior*, 28, 2004.

Viljoen Frans, “An Introduction to the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa”, pp. 11-46, *Washington and Lee Journal of Civil Rights and Social Justice*, 16, 2009.

Vrij Alder & Firmin Hannah R., “Beautiful thus innocent? The impact of defendants' and victims' physical attractiveness and participants' rape beliefs on impression formation in alleged rape cases”, pp. 245-255, *International Review of Victimology*, 8, 2001.

Wall Anne-Marie & Schuller Regina A., “Sexual assault and defendant/victim intoxication: Jurors' perceptions of guilt”, pp. 253–274, *Journal of Applied Social Psychology*, 30, 2000.

Weiss Karen G., “Boys will be boys and other gendered accounts: An exploration of victim’s excuses and justifications for unwanted sexual contact and coercion”, pp. 810-834, *Violence Against Women*, 15, 2009.

Weldon S. Laurel & Htun Mala, “Feminist mobilisation and progressive policy change: why governments take action to combat violence against women”, pp. 231-247, *Gender & Development*, 21, 2013.

Whatley Mark A., “Victim characteristics influencing attributions of responsibility to rape victims: A meta-analysis”, pp. 81–95, *Aggression and Violent Behavior*, 1, 1996.

Wolfendale Jessica, “Provocative Dress and Sexual Responsibility”, pp. 599-624, *The Georgetown Journal of Gender and the Law*, 17, 2016.

Yamawaki Niwako, “Rape perception and the function of ambivalent sexism and gender-role traditionality”, pp. 406–422, *Journal of Interpersonal Violence*, 22, 2007.

Yamawaki Niwako, Darby Ryan & Queiroz Adriane, “The moderating role of ambivalent sexism: the influence of power status on perception of rape victim and rapist”, pp. 41-56, *The Journal of Social Psychology*, 147, 2007.

Zawati Hilmi M., “Rethinking Rape Law”, pp. 31-43, *Journal of International Law & International Relations*, 10, 2014.

Official Documents

Albanian Women Empowerment Network, “Contribution from AWEN to GREVIO”, 2016, <<https://rm.coe.int/report-awen-final-draft-jan-17/1680717e19>> accessed 22 May 2018.

Austrian NGO- Coalition, “ Austrian NGO Shadow Report to GREVIO” , 2016, <http://www.aodef.at/images/04_news/news_2016/GREVIO-Schattenbericht_2016.pdf> accessed 22 May 2018.

Council of Europe, “Convention on preventing and combating violence against women and domestic violence”, (Council of Europe, 2011), <<https://rm.coe.int/168046031c>> accessed 20 May 2018.

Council of Europe, “Rape Of Women, Including Marital Rape” (Committee on Equal Opportunities for Women and Men 2009) <<http://www.refworld.org/pdfid/4b2f4ddd14.pdf>> accessed 13 March 2018.

Danish Institute of Human Rights, “Contribution from the DIHR to GREVIO”, 2017, <https://menneskeret.dk/sites/menneskeret.dk/files/media/dokumenter/international_rapportering/int_rapport/dihr_contribution_to_the_grevio_report_2017.pdf> accessed 22 May 2018.

Danish Women's Council (Kvinderaadet), “Danish NGO-Shadow Report to GREVIO”, 2017, <http://www.kvinderaadet.dk/files/Danish_NGO_report_2017_GREVIO.pdf> accessed 22 May 2018.

European Women's Lobby, “Report Of Activities And Outputs For The Project: Europe Mobilises Against Rape And For The Council Of Europe Istanbul Convention As A Tool For Change” (2014)
<https://www.womenlobby.org/IMG/pdf/ewl_public_report_act_against_rape_20140425.pdf> accessed 21 May 2018.

GREVIO, “Albania’s comments on GREVIO's draft final report on the implementation of the Istanbul Convention”, (Council of Europe, 2017) <<https://rm.coe.int/final-comments-of-the-albanian-government-on-the-first-report/16807688aa>> accessed 23 April 2018.

GREVIO, “Austria’s comments on GREVIO's draft final report on the implementation of the Istanbul Convention”, (Council of Europe, 2017), <<https://rm.coe.int/final-comments-gov-austria/168074fd70>> accessed 23 April 2018.

GREVIO, “Denmark’s comments on GREVIO's draft final report on the implementation of the Istanbul Convention”, (Council of Europe, 2017), <<https://rm.coe.int/comments-of-the-danish-government-on-grevio-s-first-report/16807688bd>> accessed 22 May 2018.

GREVIO, “First Country Report submitted to GREVIO by Albania”, (Council of Europe 2018), <<https://rm.coe.int/ic-cp-inf-2018-3-fre/168078406a>> accessed 22 May 2018.

GREVIO, “First Country Report submitted to GREVIO by Austria”, (Council of Europe 2016), <<https://rm.coe.int/16806ee8b2>> accessed 22 May 2018.

GREVIO, “First Country Report submitted to GREVIO by Denmark”, (Council of Europe, 2017), <<https://rm.coe.int/16806dd217>> accessed 22 May 2018.

GREVIO, “First Country Report submitted to GREVIO by Monaco”, (Council of Europe 2016), <<https://rm.coe.int/16806a6b70>> accessed 22 May 2018.

GREVIO, “GREVIO Baseline Evaluation Report Albania”, (Council of Europe, 2017), <<https://rm.coe.int/grevio-first-baseline-report-on-albania/16807688a7>> accessed 22 May 2018.

GREVIO, “GREVIO Baseline Evaluation Report Austria”, (Council of Europe, 2017), <<https://rm.coe.int/grevio-report-austria-1st-evaluation/1680759619>> accessed 22 May 2018.

GREVIO, “GREVIO Baseline Evaluation Report Denmark”, (Council of Europe, 2017), <<https://rm.coe.int/grevio-first-baseline-report-on-denmark/16807688ae>> accessed 22 May 2018.

GREVIO, “GREVIO Baseline Evaluation Report Monaco”, (Council of Europe, 2017) <<https://rm.coe.int/grevio-report-monaco/168074fd6b>> accessed 22 May 2018.

GREVIO, “Monaco’s comments on GREVIO's draft final report on the implementation of the Istanbul Convention”, (Council of Europe, 2017) <<https://rm.coe.int/final-comments-gov-monaco/168074fd6f>> accessed 22 May 2018.

GREVIO, “Recommendation on the implementation of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence by Albania”, (Council of Europe, 2018) <<https://rm.coe.int/reccomendation-cop-albania/1680783ffa>> accessed 22 May 2018.

GREVIO, “Recommendation on the implementation of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence by Austria”, (Council of Europe, 2018) <<https://rm.coe.int/reccomendations-cop-austria/1680783ffb>> accessed 22 May 2018.

GREVIO, “Recommendation on the implementation of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence by Denmark”, (Council of Europe, 2018), <<https://rm.coe.int/reccomendations-cop-denmark/1680783ff9>> accessed 22 May 2018.

GREVIO, “Recommendation on the implementation of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence by Monaco”, (Council of Europe, 2018) <<https://rm.coe.int/reccomendations-c-op-monaco/1680783ffc>> accessed 22 May 2018.

International Commission of Jurists, “*Women’s Access to Justice for Gender-Based Violence A Practitioners’ Guide*”, Practitioner Guide nr. 12, February 2016.

Network for psychopathy and stalking-affected, “Shadowreport to GREVIO about Denmark and the Istanbul Convention”, 2017, <<https://drive.google.com/file/d/0B7KXvHk1XY3GWGpJa2tIZTM5Yk0/view>> accessed 22 May 2018.

Organization of American States and Council of Europe, “*Regional Tools To Fight Violence Against Women: The Belém Do Pará And Istanbul Conventions*”, pp. 1-109, 2014 <<http://www.oas.org/en/mesecvi/docs/mesecvi-coe-cswpub-en.pdf>> accessed 20 May 2018.

Secretariat of the monitoring mechanism of the Council of Europe Convention on preventing and combating violence against women and domestic violence, “Steps In The First (Baseline) Evaluation Procedure Of The Council Of Europe Convention On Preventing And Combating Violence Against Women And Domestic Violence (Istanbul Convention)”, (Council of Europe 2016) <<https://www.coe.int/en/web/istanbul-convention/steps-in-the-first-baseline-evaluation-procedure>> accessed 17 April 2018.

United Nations Department of Economic and Social Affairs, “The World’s Women 2015, Trends And Statistics” (United Nations Department of Economic and Social Affairs 2015) <<https://unstats.un.org/unsd/gender/chapter6/chapter6.html>> accessed 2 May 2018.

UN Women, “Progress Of The World’S Women 2011-2012: In Pursuit Of Justice” (UN Women 2012) <<http://www.unwomen.org/en/digital-library/publications/2011/7/progress-of-the-world-s-women-in-pursuit-of-justice>> accessed 10 April 2018.

Women's Association "Refleksione", “Contribution from the Women's Association "Refleksione"”, 2017, <<https://rm.coe.int/168070a745>> accessed 22 May 2018.

World Health Organization, “Global And Regional Estimates Of Violence Against Women: Prevalence And Health Effects Of Intimate Partner Violence And Non-Partner Sexual Violence” (2013) <http://apps.who.int/iris/bitstream/handle/10665/85239/9789241564625_eng.pdf?sequence=1> accessed 19 May 2018.

Internet Sources

Basic Documents - Ratifications Women”, (Cidh.org, 2018)

<<http://www.cidh.org/Basicos/English/Basic14.Conv%20of%20Belem%20Do%20Para%20Ratif.htm>> accessed 29 April 2018.

Blús Anna, “Sex Without Consent Is Rape. So Why Do Only Nine European Countries Recognise This?”, Amnesty International (2018)

<https://www.amnesty.org/en/latest/campaigns/2018/04/eu-sex-without-consent-is-rape/?utm_source=twitt> accessed 4 May 2018.

Cebeira Belaza Monica, “Por Qué Los Jueces Consideran Que No Hay Violación Y Sí Abuso Sexual” *El Pais* (2018)

<https://politica.elpais.com/politica/2018/04/26/actualidad/1524742454_508812.html> accessed 6 May 2018.

Council of Europe, “CEDAW launches General Recommendation No. 35 on gender-based violence against women”, (Council of Europe, 2017)

<<https://www.coe.int/en/web/istanbul-convention/-/cedaw-launches-general-recommendation-35-on-gender-based-violence-against-women>> accessed 03 July 2018

El Pais, “Los Hechos Probados De La Sentencia Del Caso De La Manada” (2018)

<https://politica.elpais.com/politica/2018/04/26/actualidad/1524750769_505497.html> accessed 6 May 2018.

European Institute for Gender Equality, “Study To Identify And Map Existing Data And Resources On Sexual Violence Against Women In The EU” (*EIGE*, 2018)

<<http://eige.europa.eu/gender-based-violence/eiges-studies-gender-based-violence/study-identify-and-map-existing-data-and-resources-sexual-violence-against-women-eu>> accessed 19 May 2018.

APPENDIX

1. Interview with Johanna Nelles, Violence against women expert, Council of Europe (Strasbourg, 15/06/2018)

Rachele Daffara: My thesis is focusing on the pervasiveness of rape myths acceptance at the European level and the main aim of my research is to evaluate what is the potential of the Istanbul Convention and also the contribution of GREVIO's Baseline evaluation in creating a "European Caring Society". Theoretically speaking, by saying "European Caring Society" I refer to the so called Ethics of Care of Virginia Held that argues that in order to create a "caring society" it is necessary to ensure the existence of caring relations between its interdependent members, members that become actively involved in ensuring all people's needs will be met and all people's rights will be guaranteed and respected. So, in order to answer to my research question I decided to analyze and compare GREVIO's evaluation of Albania, Austria, Denmark and Monaco taking into account provisions that specifically refer to rape and rape myths acceptance and therefore I conducted my comparative research taking into account five different factors: the legal definition of sexual violence, including rape so Article 36, data collection and thus Article 11, all the prevention and the protection provisions of the Convention (in the case of protection in particular Article 25), and finally the measures related to access to justice for female rape survivors. In fact, the very first part of my research has been entirely devoted to the explanation of the phenomenon of rape myths acceptance and its consequences in terms of guaranteeing access to justice to female rape survivors.

I have to admit, at the beginning of my analysis I honestly thought that I would have found various things GREVIO was actually "doing wrong" but I have to say that it has been difficult to find appropriate questions to make today and that overall I am positively surprised and impressed with GREVIO's work. Nevertheless, I have some questions for you.

So, here comes the first one.

By comparing the definitions of rape provided by the four domestic legislations examined by GREVIO, it results that none of the countries evaluated- not even Austria- has a legal definition of rape that fully complies with the requirements of Article 36 of the Convention.

Johanna Nelles: Yes, but Austria's provision on rape is really close. There is only a tiny detail that is not quite as required by Article 36 of the Istanbul Convention.

Rachele Daffara: Yes, of course, that is why I said fully comply. So, beside urging or strongly encouraging national authorities to amend their respective criminal codes and comply with Article 36 of the Convention, is there something else that GREVIO could do to achieve this goal and contribute to bring about this change? I'm thinking about the debate that has raised after the sentence of the La Manada Case in Spain: so we have a state that has formally ratified the Convention, we have a case where this 18 years old girls was actually raped by five people and there are also videos because she was even filmed. I mean, it was a clear case with a typical rape scenario and the girl can even be considered the "perfect victim" and still, we have judges that are excusing the perpetrators, that did not give let's say a wider, an expansive interpretation of their national legislation in order to comply with the Convention: they could have taken into account what the Convention says because Spain ratified the Convention but they did not and, as a matter of fact, one of the judges has even recognized stealing the girl's phone as the only crime committed.

So in the light of this, beside monitoring and evaluating states' compliance with the Convention is there something that can be done and, if yes, what can be done by GREVIO? As I wrote in my question list, while we were focusing on human trafficking back in Cyprus we discussed the 2009 Model Law against Trafficking in Persons developed by the United Nations Office on Drugs and Crime (UNODC) to assist States in implementing the United Nations Convention against Transnational Organized Crime. For example, could GREVIO do the same with the Istanbul Convention by designing a Model Law adaptable to the needs of each State whatever its legal tradition/context and social, economic, cultural and geographical conditions are?

Johanna Nelles: That's an interesting thought. And a difficult question. There are several answers and several ideas that come to my mind in response to your question. First of all, I think that the question of the legal definition of the crime of rape is only one aspect of arriving at good outcomes because there are great differences in the way rape is defined and yet some judges manage to achieve really good convictions in cases that are even less clear. To me, it's more about the question of implementation and the work that goes around building the case, it is how you build a case. And of course the issue is not only the judge because he's at the very end of the justice chain: we have to start from the beginning. What is crucial is the moment a rape is reported, it is the collection of evidence, it's whether law enforcement agencies are willing or instructed to look for supporting evidence or if they are just going to focus on what the victim has said. A lot of investigating officers seem to think that the only thing to do is to speak to the victim and if she doesn't want to speak, if she doesn't want to say anything, well then there is no case. And this is the case also with domestic violence: often, there is not enough done to find witnesses, whereas for other types of crime witnesses are more readily identified and questioned. Has anybody seen anything or heard anything? You walk around the whole building, you ask questions, you ask the neighbors. There is not enough good police work around rape and that is problematic. Without enough evidence collected at the early stage the case is going to be sent to the prosecution and the prosecutor is going to look at it not being able to do much especially because it is also a question of timing, you have to act fast, quickly, you cannot wait 3 to 6 months to interrogate and ask people if they have heard or seen something. So the prosecutor won't have much choice really, but even if the case is sent to Court, it is there that it is going to end because of the lack of sufficient evidence. At every single step of the way things need to be improved: this requires practical skills as the collection of evidence, but also a change in attitudes and the value that the police, prosecutors and the judges attribute to these cases.

Without specialist units who really want to work on these cases and who have acquired specialist knowledge, outcomes in rape cases are unlikely to improve. One thing that seems to be working well is having specialist police units that investigate sexual offences and then specialist prosecution units. Such pooling of specialist knowledge seems to make a great difference but then of course, issues of gender bias and attitudes

of judges remain. Merely focusing on changing the definition of rape will not be enough because it takes time for changes to the law to translate into new/different jurisprudence. It is important to find a way to accompany changes to the criminal code with seminars, awareness-raising, and training. When it comes to training, the independence of the judiciary is often inferred because judges can not be required to attend in-serving training. Training is always voluntary, making it difficult to reach out to judges that are not already interested in the subject.

Coming to the Model Law on rape, my answer would be that the Istanbul Convention and the standard set by the Council of Europe are a lot more detailed and a lot more specific in terms of wording than conventions at the global level. Within the Council of Europe which is composed of a relatively small and homogeneous group of 47 member states, where the majority (but not all) have a similar legal tradition, it is easier to achieve a higher level of specificity when it comes to the obligations and this is the approach of the Istanbul Convention. The Convention sets out the behaviors that must be criminalized and if we look at the criminal law section, it is already quite detailed, but how exactly national provisions are worded, that is up to the member states. I don't think there would be a lot of acceptance among the member states if GREVIO would issue a model of legislation at this stage. Maybe at the end of the Baseline Evaluation Procedure if GREVIO's findings show that most state parties struggle with the right approach, then there might be enough reasons to say that there is a fundamental problem with the level of understanding and the level of implementation in relation to Article 36 that additional help would be required. At this stage, with four evaluation reports published, it would be too early for such a step. Although this may indicate that it will, take much more time, I would like to highlight another important point: there is a lot of discussion underway among the member states because many demonstrate a high degree of good will when it comes implementing the Istanbul Convention. They are interested in finding out how others do it so there is a lot of discussion at different levels between state parties to share good examples of implementation of specific provisions of the Convention. This might not be very visible, but there is a high degree of interest in sharing experiences and learning from each other.

Rachele Daffara: Thank you very much for your exhaustive answer. My second question instead is about Article 54 of the Convention. Article 54 of the Istanbul Convention provides that “Parties shall take the necessary legislative or other measures to ensure that, in any civil or criminal proceedings, evidence relating to the sexual history and conduct of the victim shall be permitted only when it is relevant and necessary”. Of course this article is extremely important in terms of avoiding the questioning of victim credibility during the investigation and prosecution phases. Even though GREVIO has clearly stated in every single Baseline Evaluation Report that “for the sake of brevity, the report prioritizes some provisions over others” and therefore “it does not present detailed assessments and conclusions on every provision”, the degree of state compliance with Article 54 has not been evaluated. Why is that? Is there any particular other reason? Don’t you think that taking it into proper account this Article and evaluate state compliance with it might have contributed to better access the level of pervasiveness of RMA and of the phenomenon of secondary victimization and victim blaming at the European level?

Johanna Nelles: In its evaluation reports, GREVIO aims at a thematic structure in Chapter V and VI. Under the heading of sexual violence, the relevant criminal law provisions of this form of violence are being discussed, while in Chapter VI, issues regarding the investigation and prosecution of sexual violence and rape cases are discussed.. Together, they offer sufficient room to discuss any issues to do with the poor handling of rape cases, and this would include questioning in relation to a victim's sexual history. the aim is to group everything together, rather than having too many different headings. It was not an attempt to leave it out but to avoid another heading. It is also important to note that it is very difficult to verify and evaluate properly this provision because in order for GREVIO to do that it would mean exchanging with a sufficiently large number of judges to examine their approaches and case law. Examining national case law in national languages is at a level of detail that GREVO cannot realistically achieve. Instead, GREVIO researches into any academic studies that may have examined national case law on rape and sexual violence, where available.

Rachele Daffara: Thank you very much, I still have two more questions.

Going back to something that we have already highlighted before, which is the tendency well shared by all the countries evaluated by GREVIO to concentrate efforts to eradicate and to respond almost exclusively to cases of domestic violence, GREVIO has used the words "evident disparity between the level of protection and support reserved to victims of domestic violence and to victims of other types of violence". Beside highlighting this tendency during the evaluation process, what has been GREVIO's practical response? Is there any action, any initiative or activity that GREVIO or the Council of Europe have already programmed or implemented in order to make the countries to understand that yes, it is great to fight against domestic violence, but that all the other forms of gender-based violence deserve equal attention?

Johanna Nelles: GREVIO's mandate is limited to monitoring the implementation of the Istanbul Convention, which means it does not program projects or activities in member states of the Council of Europe. This is the prerogative of the Equality Division of the Council of Europe, which implements co-operation projects in a range of member states, including states that haven't yet ratified the Convention to help them ratify it in the future. Our colleagues responsible for this work are aware of the dominance of domestic violence and, as a result, seek to ensure the national authorities' understanding that the Istanbul Convention is not only on domestic violence but that it requires implementation in relation to all forms of gender-based violence such as sexual violence and rape for example. In the case of Austria it is interesting to note that the Government, in its comments on the report of GREVIO, have accepted GREVIO's finding that most policy attention has focused on domestic violence. This is a good example of how the work of GREVIO can have an impact.

Rachele Daffara: And the last question, as I said before and as I have argued in my research by resorting to the Ethics of Care, building "caring societies" entails fostering societies based on the existence of caring relations between their interdependent members that become actively involved in ensuring all people's needs will be met and all people's rights will be guaranteed and respected. So in your opinion, to what extent has the Istanbul Convention contributed in creating a "European caring society" in which female rape survivors' rights to access the justice system and to be equally treated and protected by the law have been recognized and effectively guaranteed?

Johanna Nelles: The Istanbul Convention is the most important starting point to achieve that goal because it sets legally binding standards on how to treat rape victims and deal with their cases and on how to properly investigate and prosecute these crimes. Nevertheless, in terms of implementation I think we cannot speak of a "caring society" yet because it does not seem that to date we are at that level and there is a lot of work that still has to be done. As GREVIO publishes more and more evaluation reports, the spotlight will be on the fact that this is a big issue. Also, the #Me Too campaigns that have emerged at the national level are greatly helping. The testimonies and stories which women and girls in so many countries have shared publicly constitute the evidence that we need to show that this is a really big problem. The Istanbul Convention provides the legal standards that are needed to ensure such acts are prevented, and where they did happen, that women and girls feel believed and supported and can go through with a case. Taken together, these two are big drivers for change. The four evaluations by GREVIO have shown that we are not quite there yet the system is working to some extent, but it needs to be improved.