

# **Domestic Violence within EU: Experiencing the Intimate Terrorism behind Closed Doors**

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## **Abstract**

The family often equates with sanctuary – a place where individuals seek love, safety, and security. However, for many, it is a place that imperils lives and breeds some of the most severe forms of violence perpetrated on women and girls by those they should be able to trust. Domestic violence is a global phenomenon found in all human societies. The ubiquity of this kind of violence, which knows no borders, transcends cultures and encompasses all social classes, is rooted within the patriarchal system and the systemic domination of women by men. It has imprisoned women in (un)affectionate relationships, where everything stays in-house, covered up and protected by intimacy. The magnitude of the issue became extraordinarily prominent during the Covid-19 pandemic. Staying at home on a mandatory basis is considered a fertile ground for violence, where seclusion with the potential aggressor increases the risk of abuse and hampers access to assistance and protection services. Although EU legislation is in place to address specific forms of violence against women, what emerges is a picture of extensive abuse. This study will emphasize the social context and cultural norms that nourish domestic violence and the fundamental human rights at risk, jeopardizing the own lives of abused women. This paper concludes that the passivity displayed by state and law-enforcing machinery, along with the scarce and under-resourced support services, create an unsafe environment for the victims, even after the separation from the abuser. Victims are perpetually vulnerable to re-victimization and human rights violations because authorities worldwide still approach this issue as a private concern, despite the calls from the international community for a human-rights-based approach with consolidated state accountability.

*“The undersigned hereby declares that this thesis is entirely my own work and it has been submitted to the Department of Balkan, Slavic and Oriental Studies and International and European Studies in partial fulfillment of the requirements for the Degree of Master of Arts in Human Rights and Migration Studies. I declare that I respected the Academic Integrity and Research Ethics and I avoided any action that constitutes plagiarism. I know that plagiarism can be punished with revocation of my master’s degree.”*

*Signature”*

A handwritten signature in black ink, appearing to be 'M. H. H.', written over a horizontal line.

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## Introduction

This dissertation aims to provide an EU regional dataset on the extent, nature, and consequences of domestic violence. In its various forms, gender-based violence is endemic in communities and countries around the world, cutting across class, race, age, religious and national boundaries (EIGE, 2014:3). Domestic violence, in particular, continues to be terrifyingly familiar and accepted as "normal" within too many societies. It has devastating consequences for the women who experience it and a traumatic effect on those who witness it, particularly children. It constitutes a violation of human dignity and, in its worst form, it transgresses the fundamental right to life. Furthermore, it is considered an extreme expression of inequality on the ground of sex and results in preventing women and girls worldwide from being equal participants in society (Violence against women: an EU-wide survey Main results, 2014:7). Such form of violence tends to be intentionally perpetrated and committed for the specific purposes of intimidation, punishment, humiliation, and maintenance of stereotypical roles linked to gender. It impedes women from having sexual autonomy and moral integrity, while also undermines their sense of self-esteem and reduces their physical and intellectual capacities. It usually occurs in situations where women may seem free to leave but are held prisoner by fear of further violence against themselves and their children or by lack of resources, family, legal, or community support. As a result, most survivors/victims suffer in silence, and even nowadays, they cannot seek help.

While the imprint of physical abuse may be more 'visible' than psychological scarring, recurring humiliation and threats, forced isolation, and denial of economic resources are more subtle and insidious forms of violence. Its intangible nature makes it harder to define and report, leaving the woman in a situation where she often feels mentally destabilized and powerless. Jurists, human rights experts, and activists have argued that the physical, sexual and psychological abuse, sometimes with fatal outcomes, inflicted on women is comparable to torture in both its nature and severity. Those victimized cannot make their own decisions, voice their own opinions or protect themselves and their children for fear of further repercussions. As a result, their human rights are denied, and their lives are stolen from them by the ever-present threat of violence (UNICEF Office of Research - Innocenti, 2019:3-4; WHO, 2021).

This dissertation focuses on ways to assess the effectiveness of current measures taken by States to address domestic violence, and advance understanding of why women and girls continue to be vulnerable to such form of violence. These twin research aims have been met through an extensive study of relevant literature and the comparative examination of three EU Member States' legislation – France, Italy, and Spain - regarding the criminalization of domestic violence as stipulated by the

Istanbul Convention. With this aim in mind, this paper, divided into seven sections, will first present the necessary clarification of domestic violence, including analyzing the specific forms that constitute such abuse and identifying the phenomenon's roots (Chapter 1). The following section deals with the detrimental impacts of abuse within the domestic setting on women, children, and society (Chapter 2). In Chapter 3, this thesis examines the ideological, economic, psychological, and structural factors that prevent women from reporting incidents of abuse. Chapter 4 focuses on the legislative framework relative to domestic violence, including the international treaties, the soft law, and the customary law contributing to the protection of the victims. Chapter 5 outlines the legal interventions made by the three states of concern towards eradicating domestic violence, including the criminal sanctions and the civil remedies. In effect, domestic abuse has been thoroughly examined through the lens of the relevant international legal framework to determine the scope of state responsibility regarding acts of gender-based violence committed by non-state actors. Next, Chapter 6 reports on the assistance and protection services granted to survivors, and the rehabilitation services provided for the perpetrators. Finally, this study argues for a multi-pronged model of action and cooperation emphasizing the development of initiatives aimed at improving policies on the prevention of violence against women and on victims' protection (Chapter 7).

# Chapter 1: Clarifying Domestic Violence

Domestic violence is undoubtedly the most common form of violence against women. It may materialize in various forms and encompasses all “acts of physical, sexual, psychological or economic violence that occur within the familial or domestic unit or between former/current spouses/partners, whether or not the perpetrator cohabits with the victim.” As a term, it essentially includes two dimensions: intimate-partner violence (IPV) between current or former spouses or partners and inter-generational violence, which typically includes physical abuse and neglect, sexual assaults, and psychological violence against minors. Given the various elements encompassed by definition insofar, domestic abuse is characterized by a continuum of violent attacks rather than describing one single offense (Coe Convention, 2011; Ellialti, 2015).

## 1.1. Types of Domestic Abuse

### A. Physical Violence

Physical violence is expressed through physically aggressive acts such as kicking, biting, slapping, beating, or even strangling. At times, women are severely injured and, in some cases, die as a result of their injuries. Prevalence data across 161 countries showed that over a quarter of women aged 15-49 years had been subjected to physical violence by their intimate partner at least once in their lifetime (ISTSS,2016:2; WHO, 2021). Based on data from a broad – 2014 EU survey, the exposure of women to physical violence usually involves a combination of violent acts in the same incident or an accumulation of various acts of physical violence over time across several incidents. More than half of the women experiencing physical violence before 15 identified their father as a perpetrator. Another male relative, such as uncle, grandfather or cousin, was responsible for 10% of the cases (Violence against women: an EU-wide survey Main results, 2014:128-130).

### B. Sexual Violence

Sexual abuse may take the form of rape, sexual assault, sexual slavery, forced pregnancy, defilement, sexual harassment, incest, and trafficking for sexual exploitation. More than 1/10 of women in an EU survey, had suffered sexual violence involving the use of force since the age of 15. Of those women, approximately 100% indicated that the perpetrators were men. In contrast to physical violence, women often experience sexual violence in childhood from perpetrators outside the core family. Every fourth woman experienced sexual violence from a male acquaintance



(Violence against women: an EU-wide survey Main results, 2014:128-130). Considering the taboo in most countries surrounding incest or sexual abuse against children makes sexual violence one of the most invisible forms of domestic abuse. Because the crime is perpetrated most often by male relatives in a position of trust, the child's rights are usually sacrificed to protect the name of the family and that of the adult perpetrator (UNICEF Office of Research - Innocenti, 2019:4-5). The crux of the low criminalization rates lies within the significant deviations among the criminal legal systems concerning the rape and sexual assault definitions and the conditions under which offenders are prosecuted. Despite any advances, what emerges is a broad picture of rare convictions and high percentages of re-victimization (Special Rapporteur on violence against women, 2021:3).

### **C. Psychological Violence**

This form of violence is more difficult to define across cultures and countries as it can take different forms. It is mainly expressed as controlling behavior. Trying to keep the victim from visiting family or relatives, insisting on knowing where she is, getting angry if she speaks to other men, or suspecting her of being unfaithful, constitute typical examples of coercive control. Psychological violence might also include stalking, humiliation in public or private, forbidding the victim to leave the house or locking them up, and making them watch pornographic material against their wishes. Psychological abuse might even appear as blackmailing with or without abuse of children: threatening to take the children away from the victim, threatening to hurt them, or even hurting them. Research indicates that approximately 1/2 of women have experienced some form of psychological violence in their relationships (Violence against women: an EU-wide survey Main results, 2014:72-74). When it comes to children, perpetrators may use coercive control against their offspring after their ex-partner has separated from them to punish the latter. Coercive control against minors can include intimidation, stalking, emotional manipulation, interwoven with periods of seemingly 'caring' and 'indulgent' behavior, such as buying expensive presents and at the same time blaming the victim's side for the problems created in the family. In reality, they often create a charming public persona, making it difficult for victims to seek help and be believed (Katz, 2020:310-312).

### **D. Economic Violence**

Economic violence is the form of violence that is least reflected in national legislation. Even the Istanbul Convention does not require its criminalization. Instead, it is linked to psychological violence and the broader concept of domestic violence. The blurred boundaries in the context of criminalization accommodate the absence of economic violence from national legislation as a specific offense (Tackling violence against women and domestic violence in Europe The added value of the Istanbul

Convention and remaining challenges Policy Department for Citizens' Rights and Constitutional Affairs Directorate-General for Internal Policies PE, 2020:50). The most common forms of economic violence include preventing a woman from making decisions about family finances or shopping independently and forbidding her to work outside the home. Considering the results demonstrated in the 2014 EU survey, approximately 1/5 of women in total have experienced economic violence during the relationship (Violence against women: an EU-wide survey Main results, 2014:75-76).

## **1.2. Roots of Domestic Violence**

Violence tends to be socially accepted as something that happens to women. This robust belief is attributed to establishing the female gold standard of being weak, vulnerable, and easily exploitable. Although cultural mores, religious practices, economic and political conditions may set the precedence for initiating and perpetuating domestic abuse, committing violence must be better understood as a choice that the individual makes out of various options. This section concentrates on the importance of macro system-level forces (such as social norms) and individual-level variables (such as observing violence between one's parents while growing up) in the etiology of gender-based violence within the domestic setting.

### **A. Societal Factors**

First and foremost, the unequal position of women in relationships and within the society constitutes a global system-level factor related to gender inequality that is strongly associated with familial violence and abuse. Violence tends to occur in societies in which men are viewed as superior and possess economic and decision-making power. These gender norms are reflected in the gender roles and behaviors that society regards as appropriate for men and women, negatively influencing women's access to resources and their involvement in decision-making at all levels. In the past, religious and historical traditions have even authorized the physical punishment of wives as a means of conflict resolution under the notion of women's ownership. The concept of ownership, in turn, validates control over women's sexuality, which in many legal systems is considered a prerequisite to ensure patrilineal inheritance. Women's sexuality is also tied to the concept of family honor in many societies. Traditional norms in these societies may even allow the killing of 'errant' women suspected of defiling honor of the family by indulging in forbidden sex behavior (Scott, 2016:6-8).

## **B. Individual Variables**

Although one cannot underestimate the importance of macro system-level forces in the development of gender-based violence, individual-level factors also play essential roles in the perpetuation of abusive behaviors.

- **Age**

Young age is considered a risk factor for being either a victim or perpetrator of domestic violence. Partner violence had the highest prevalence in the youngest age group (18–29 years old) on most measures. The exception to this result is the prevalence of partner violence since the age of 15, which tends to be slightly higher among 30- to 59-year-old women than younger and older age groups. The lowest domestic violence rate is indicated among women who are 60 years old or older, with physical and sexual violence decreasing with age (WHO, 2012:4-5).

- **Education**

The prevalence of physical and sexual partner violence since the age of 15 tends to be higher among women whose partner has not completed primary education than women whose partner has tertiary education. Research suggests that the increased women's access to education, resources, and decision-making is associated with lower intimate partner violence levels. On the other hand, it is strongly supported that educational disparity within a relationship can be linked to feelings of emasculation on the part of the offender and higher levels of partner violence, especially where women possess a higher level of education (WHO, 2021).

- **Vocational Occupation & Financial Security**

Unemployment and poverty are indicated as solid factors that could increase the likelihood of perpetrating domestic violence. More particularly, a decrease in income and the presence of economic stress appear to facilitate tension and fortify the previously existing risk factors for domestic violence (Anurudran et al., 2020; Gulland, 2020). The psychological consequences of suddenly being out of the workforce may range from anxiety, irritability, and anger to depression and post-traumatic stress disorder (van Gelder et al., 2020). In some cases, feelings of emasculation and inferiority against a hardworking and successful wife could exacerbate violent interactions within the domestic unit. On the other hand, financial exploitation could be one of the main reasons for the perpetrators to prevent their victims from escaping. The risk of violence increases during the Covid-19 pandemic,

with the 2020 report of the UN Department of Economic and Social Affairs confirming that the new societal conditions have led to greater levels of unemployment, financial insecurity, and emotional pressure (Ertan et al., 2020:1-3).

- **Equal say concerning Household Resources**

Domestic violence prevalence also tends to rise when women feel that they do not have an equal say in the household resources. For example, more than 1/4 of women who experienced physical and sexual violence by their partner since 15 indicated that they did not have an equal say in the household's resources. These prevalence data contradict to a great extent the below 1/10 of domestic violence victims who were equally able to decide on the use of the household resources (Violence against women: an EU-wide survey Main results, 2014:44-46).

- **Alcohol & Drugs Abuse**

Prevalence of physical and sexual violence is also markedly higher among women whose partner gets drunk frequently (Violence against women: an EU-wide survey Main results, 2014:37-39). Fine sense of discrimination and fair judgment is lost under the influence of these substances, with muscle strength and social power ruling over the dependent and defenseless women and children (UNICEF Office of Research - Innocenti, 2019:7-8). Especially during the Covid -19 era, where bars and restaurants are limited to take-out service in few communities, domestic violence perpetrators who consume alcohol may be even be more likely to do so in the home, increasing the risk for the entire household (Mahase, 2020:1).

- **Violence in childhood & later experiences: Re-victimization**

Women who are currently experiencing bad health, are limited in their daily activities because of health problems, or consider themselves disabled in some way tend to indicate a higher prevalence of physical, sexual, or psychological violence in childhood. It is suggested that childhood experience of physical or and sexual abuse or even witnessing interparental violence, are associated with a three- to a four-fold increase of risk of reporting emotional abuse by an intimate partner or other persons later in life (Scott, 2016:6-8). When it comes to perpetrators, research has shown that boys exposed to domestic violence are more likely to display violent behavior within the domestic unit as adults (Violence against women: an EU-wide survey Main results, 2014:132-134).

## **Chapter 2: Impact of Domestic Violence**

Gender-based violence in the household must be understood as an act that denies a woman the ability to exercise her rights. Domestic violence has social, economic, and political consequences for society since it perpetuates a system of discrimination against women and subordination of more than half the population. Over time, women's physical injuries and mental disturbance either interrupt or end their educational and career paths leading to economic dependence. In addition, family life gets disrupted, which has a detrimental impact on children, including poverty (when a divorce or a separation occurs) and a loss of faith in the family institution. These sequelae affect the quality of life of individuals and communities and have long-standing effects on social order and cohesion.

### **2.1. On Women**

Injuries caused by domestic violence incidents may range from mild bruises and lacerations to severe fractures or even death. Physical health consequences may even be indistinct and emerge over the long term. For instance, women who were subject to violent attacks during childhood may be bothered by menstrual problems, gastrointestinal symptoms, and various chronic pain syndromes in later life. Domestic violence can also directly affect women's sexual and reproductive health, such as sexually transmitted infections through forced sexual intercourse within marriage or indirect pathways. For example, often it is difficult for women to negotiate contraceptive methods with their partners. In addition, sexual assaults and rape can lead to undesired pregnancies and the dangerous complications of resorting to illegal abortions. Studies have also found substantial levels of physical domestic violence during pregnancy. Violence during pregnancy has been linked with miscarriage, traumatic brain injury, premature birth, low-birth-weight or even maternal mortality (Dicola and Spaar, 2016; Ellsberg et al., 2008).

For some women, the incessant insults and tyrannies which constitute emotional abuse may be more painful than the physical attacks because they effectively undermine women's security and self-confidence. Fear, anger, frustration, confusion, and sadness are common effects of partner violence. Survivors often internalize the verbal abuse from their partner/violent relative and may even blame themselves for their situation. Common traumatic stress responses include post traumatic stress disorder, depression, anxiety, eating disorders, self-harm, unsafe sexual behavior, and alcohol/drug abuse problems. Being fatally depressed and demeaned by their abuser, there might seem no other escape from a violent relationship except suicide. Except for such trauma reactions, survivors may experience difficulties in new relationships, as partner abuse affects emotional

regulation, facial interpretation, and reading of social cues (Michalopoulou et al., 2015).

## **2.2. On Children: Intergenerational Transmission of Violence**

For many children, their house is far from a haven of rest. These children are not only victims of vicious abuse, but they often watch one parent violently assaulting another, hear the distressing sounds of violence, or may be aware of it from many telltale signs. Behavioral changes may include excessive irritability, fear of being alone, sleep problems, toilet training difficulties, and language development issues. Furthermore, the emotional distress caused to children may also result in eating difficulties, psychosomatic disorders such as chronic headaches and abdominal pain, or even suicidal tendencies. Other studies suggest social development is also corroded. Children may lose their competence to feel compassion for others. Others may feel socially isolated or unable to make stable friendships due to social discomfort or mental confusion over what is acceptable. In other words, exposure to domestic violence during childhood is associated with difficulties in making successful role transitions into early adulthood. These difficulties, in turn, are associated with depression, feelings of helplessness, low self-esteem, and interpersonal dependency during the adult years.

According to the Social Learning Theory, children of violent parents use violence because they have observed more functionally positive than negative consequences of violence and have formed positive outcome expectations for using the behavior. For example, a child who witnesses a father hit a mother may observe the deference shown by the mother toward the father and other outcomes consistent with the father's wishes. Additionally, children who are abused acknowledge the controlling effect that the abuse has on their behavior. Many studies have demonstrated that children from violent homes are up to three times more likely to exhibit signs of more aggressive behavior, such as bullying. There is a strong potential that this will become a continuing cycle of violence for the next generation (Behind Closed Doors The Impact of Domestic Violence on Children, 2006:6; Riedl et al., 2019). Nevertheless, not all children become victims or abusers. Many adults who were raised within a violent home environment are diametrically opposed to violence of all kinds. According to children's specialists, children deep down know that domestic violence is wrong and want it to stop (Bevan and Higgins, 2002:223-225; Wolf and Foshee, 2003:309-311).

### **2.3. On the Society**

Domestic violence constitutes a heavy burden on numerous sectors of the social system and quietly, yet dramatically, affects the development of a nation. Batterers cost nations fortunes in law enforcement, health care, lost labor, and general progress in development. According to estimations from the European Institute for Gender Equality, the cost of gender-based violence across the EU is €366 billion a year. Intimate partner violence, in particular, which shot up during the Covid-19 pandemic, makes up 48 % or €174 billion of the total cost. Recognizing the enormous financial burden of gender-based violence will contribute to better-informed decision-making in the domestic violence elimination agenda and further support the comprehensive policy development process (EIGE, 2021; 2017 focused actions to combat violence against women, 2016).

#### **A. Loss of Economic Output**

First and foremost, domestic violence causes lost economic output due to its detrimental impact on women's employment. Low education and low skills combined with restricted mobility will increase women's risk of unemployment, affect job performance, and reduce earnings. There has been growing acceptance that states cannot reach their full potential as long as women are prevented from fully participating in society. This statement can be justified due to the measurable time taken off work through sick pay leaves and the less easily measurable lost work productivity or even lost jobs attributed to physical injuries or fatal violence. The lost economic output has wider ramifications for the society as a whole since everyone would benefit from high productivity and a high output economy.

#### **B. Health Service Costs**

Gender-based violence causes a host of health risks that put additional strain on health systems' resources. A variety of health services responding to the health consequences of domestic violence are lumbered up, including the emergency department attendances and medical treatment for the physical injuries suffered or the self-harm and suicide attempts associated with mental health sequelae from the abuse. In addition to the cost of treatment for physical injuries, domestic violence puts more strain on the specialist psychological healthcare services for acute and longer-term mental health impacts. Except for that, forensic medicine is significantly burdened with the task of recording violence, assessing injuries or causes of death, and collecting evidence for the criminal justice system.

### **C. Social Welfare Costs**

Lastly, there are two types of relevant legal sectors, the criminal justice and the civil justice, that receive extra burden caused by domestic abuse. The criminal justice system costs include police service costs, legal aid, court/trial costs, forensic services, prison costs, conditional sentencing and probation costs, offender programs, and the cost of second-generation crime. On the other hand, the cost of domestic violence impacts for civil justice includes the costs of injunctions, housing aid, financial assistance, legal costs of divorce, and its associated cost relating to child custody, family support, and visits or therapy programs. The public purse primarily funds both sectors, though some of the victim/survivor's civil legal costs are borne by the victim/survivor (EIGE, 2014:29-31; Human Rights Council, 2019:3).



## Chapter 3: Under-report

Ideological, economic, psychological, and structural factors enter into play when women have to decide how they will deal with the abuse they are subjected to. The very private nature of the violence creates a vast number of evidentiary challenges for report and prosecution (Handbook on effective prosecution responses to violence against women and girls Criminal Justice Handbook Series, 2014:1-2). Only one in three victims across Europe is willing to disclose violence incidents which are relatively severe and therefore more likely to come to the attention of the police. Even higher rates for reporting domestic violence reflect that women often experience several incidents of abuse before they decide to report. In most cases, the victims are most likely to indicate either that they preferred to resolve the situation themselves or with the assistance of family and friends. But despite the several barriers, many abused women eventually leave their partners, often after multiple attempts and years of violence (Gracia, 2006; Scott, 2016:4-5). Factors related to a woman leaving from an abusive relationship for good appear to include an escalation in violence severity, realizing that the abusive partner will not change, and recognizing that the violence is affecting her children (WHO, 2012:3).

According to reports by the European Union parliament, an inverse trend was documented concerning the reporting of domestic violence cases, which rose by a third following the first lockdown during the Covid-19 pandemic (Blaskó and Papadimitriou, 2020:13-14). The World Health Organization also indicated a 60% increase (fivefold increase compared to 2019) in emergency calls in several European member states. Although governments are issuing orders for school and business closures, enforce transportation restrictions to minimize the transmission of the virus, and urge individuals to implement “social distancing,” unfortunately, not all of them feel safe and secure in the isolation of their home. Especially for those who were already struggling against domestic violence, home in the Covid-19 context is often a setting where physical, psychological, and sexual abuse exacerbates (Gulland, 2020; Mahase, 2020:1). Reports of increasing rates of domestic abuse are beginning to surface all around the EU, with Italy, France, and Spain being among the countries with most of the –at least documented- cases (Ertan et al., 2020:1-3).

France noted one of the highest rates of murders linked to domestic violence in Europe. In 2019, 146 women were killed by a partner or ex-partner. More than 40% of the victims had suffered constant violence, and nearly half of those had reported it to the police (The Guardian, 2021). During the lockdown, the statistics indicated a 30% increase in domestic violence reports and a 42% increase in complaints. Moreover, calls to the national helpline have tripled (Tackling violence against women and domestic violence in Europe The added value of the Istanbul Convention and remaining challenges Policy Department for Citizens’ Rights and Constitutional Affairs Directorate-General for Internal Policies PE, 2020:138). Until the beginning

of May 2021, the authorities counted 39 domestic abuse incidents that led to femicides so far this year (BBC News, 2021).

Data provided by the Italian authorities also indicated that domestic violence reports are rising. According to the EU research agency Eures, the number of femicides in a family setting from January to October 2020 was 81, down from 85 in the same period in 2019 (Rome, 2020). Additionally, the national network of shelters for women (DIRE) showed that 2.867 women contacted 80 shelters from March 2 to April 5, 2020. Of concern is that one-quarter of the total requests included women reaching such a network for the first time in their lifetime, meaning that women are under constant control by their perpetrators and unable to ask for help (Bellizzi et al., 2020). During the second lockdown, there was a 33% increase in the numbers of “new contacts,” and calls made to the national helpline increased further by 73% compared to 2019 (EuroMed Rights, 2020:3-4).

According to the 2020 annual report published by the Spanish Government Delegation for Gender Violence, 43 women have been assassinated by their partners or ex-partners. The year 2019 closed with 55 domestic violence femicides, the highest number in five years (País, 2020; Weil, 2020:111). During the Covid-19 pandemic, there was a sharp drop in complaints being made to the police, which can be partly attributed to movement restrictions on freedom of movement. Nevertheless, the number of women contacting support services via email or social media increased by as much as 700% (BurgenBarcelona, 2020). Until the end of May 2021, the Spanish authorities counted 14 women killed by their current/former partner (Madrid, 2021).

This developing global trend of increasing domestic abuse reports may only depict the tip of the iceberg, as many women still find themselves imprisoned within their own homes and unable to inform the authorities (Campbell, 2020:1-2). Most of them cannot make calls because they fear being overheard by abusive partners or stopped leaving home (Shreeves and Prpic, 2020). Perpetrator-imposed restraints and continual surveillance of social media, the Internet, and cell phones may reduce victims' access to support services. There have also been reports of misinformation used by intimate partners related to the extent of quarantine measures and the threat of contagion as a mechanism of abuse (Wood et al., 2021). This Chapter presents the main reasons behind the reluctant attitude of victims to abandon their abusive relationship.

### **3.1. The Psychological Impact of Violence & Secondary Victimization**

When the perpetrator is a family member, victims often suffer the emotional scars of guilt, betrayal, and fear or may face disbelief when disclosing to the non-

offending caregiver. Especially underaged girls might exhibit fear of getting in trouble, shame, or even losing the love of the perpetrator. Violence tends to negatively impact their sense of privacy, safety, and well-being and may result in significant mental trauma. Such trauma might even affect the victim's ability to coherently recount her experience. Victims may face extreme difficulty remembering precise details of the violence or experience negative feelings when doing so. The trauma might also result in delayed or "inaccurate" reporting. Victims often require feeling safe and supported before reporting. Therefore they might report after they have arrived at a safe location or after they have talked to family, friends, or support persons.

### **3.2. Fear of Retaliation**

Evidence suggests that the majority of abused women are not passive victims. Instead, they often adopt strategies to maximize their own safety and that of their children. What might be understood as a woman's inaction to multiple assaults may result from the calculated risk - assessment about how to protect herself and her children. Victims may experience specific threats and pressure from the perpetrator against prosecution. Others might fear that the perpetrators will become more violent if they report and participate in the criminal justice process. Research on domestic violence indicates that in most cases, victims' fears are accurate. Often reporting and testifying against the perpetrator might be seen as ending the relationship and may dramatically increase the victim's risk of severe injury or death at the hands of her intimate partner.

### **3.3. Mistrust or Fear of the Criminal Justice System**

Even when women and girls report, the rates of perpetrators being charged and convicted are meager, alongside high levels of withdrawal of complaints to the police and prosecutors. The inadequacy of the institutional response to violence is illustrated by the extended time taken to process cases before the courts. Another arising issue is that the criminal justice system, including prosecutors, is not immune to social and cultural values that support or tolerate violence against women. Thus, they do not always regard such violence with the same seriousness as other forms of violence. Criminal justice professionals may further condone or falsely believe that women and girls bring violence by their actions, such as arguing with a spouse or boyfriend, dressing provocatively to go out, or walking alone at night. In some cases, a victim's past sexual history may be used to discredit her complaint, or the victim must prove she resisted the perpetrator. Especially victims of sexual violence tend to be less satisfied than victims of physical violence with the help received. Approximately one in four victims of sexual abuse do not contact the police because of feelings of shame

and embarrassment. In other cases, the victim might be afraid of the criminal justice process itself, from undergoing a forensic medical examination (e.g., blood or urine samples for toxicological tests, swabs for detecting biological material) to testifying in court. The victim may also fear that she will be arrested on unrelated criminal matters, i.e., illegal immigration status or drug use (Special Rapporteur on violence against women, 2021; Violence against women: an EU-wide survey Main results, 2014:62-70).

### **3.4. Fear of Stigmatization or Pressure from Community**

Women tolerate extremely unhealthy relationships, and many women cannot imagine another way of living together. They may further blame themselves for the abuse since cultural norms tell them that they are liable for maintaining the harmony of the family group. They must therefore, make greater sacrifices because any failure or transgression may be grounds for punishment. Suppose the family and the couple is considered to be the only socially reasonable goal for women. In that case, it is difficult for them to do anything but aspire to establish and preserve a household of their own, even at the cost of their integrity. A failure in the private sphere would be tantamount to admitting failure in life as a whole. Family, friends, or even her children might also pressure her to drop the case in spousal abuse situations. Possibly the victim may fear she will lose her status in her community, or her husband might leave her if she continues the prosecution. In addition, she might hold religious beliefs that prevent her from leaving the marriage. Special considerations should be guaranteed when dealing with girl victims, as they sometimes face extraordinary pressure from the perpetrator and the non-offending family members to withdraw their complaints so to keep the family together (Bradbury-Jones and Isham, 2020).

### **3.5. Women's Economic Position**

In domestic violence cases, the victim may be economically dependent upon the perpetrator and share children and a residence with him. The victim may lack job skills that prevent her from supporting herself and her children and therefore feel that staying with the perpetrator is in the children's best interest. Leaving might mean she will be homeless. The victim may also fear the perpetrator will lose his job due to criminal conviction, which impacts the family's financial situation. The victim might further lack legal immigration status. It is also common enough for women to be unaware of the available support services, or the support services to not accommodate the victims' characteristics (disability, substance abuse, mental illness, type of violence experienced). In some cases, the victim might not be able to afford the costs associated with filing a case or securing a certified medical report to support her claim (Barbara et al., 2020:1240).

### **3.6. "Sexist" Lockdown Measures & Lack of Safety "Nests"**

Schools, churches, and assistance services such as shelters are all considered to be critical staples in family life. These institutions often offer crucial emotional support and provide an opportunity for relief from abusive home environments. Unfortunately, the closures of those institutions during the Covid-19 pandemic mean that the most significant sources of reports will automatically disappear, resulting in declined detection of domestic violence (EuroMed Rights, 2020:21). Children are especially vulnerable during this unprecedented period of isolation as child care centers and educational facilities are necessarily shut down (Humphreys, Myint, and Zeanah, 2020). In addition, many women and girls face multiple and intersectional forms of discrimination, and are at risk of further marginalization including, but not limited to, women and girls from minorities, indigenous, migrant and rural communities, older women, and women with disabilities, who have even more limited access to protection services, such as shelters.

The increase in domestic violence cases is also happening at a time where services are being disrupted, do not exist, or function at a reduced capacity. For instance, the health system is particularly overwhelmed with Corona virus-infected people, which might imply more difficulties finding available medical care or reaching out such services for fear of catching the virus. Moreover, given that routine medical care visits are being adjourned, clinicians miss the opportunities to detect and prevent maltreatment. Furthermore, women's shelters might be either overcrowded or closed down to minimize the risk of infections. On the other hand, police intervention seems to be an inadequate response to domestic violence. Due to social restrictions and police engagement in new roles such as coordination and enforcement of local lockdowns, victims and bystanders may be less likely to contact the police (Wood et al., 2021).

Regarding the criminal justice and civil justice system, the situation remains alarming. In practice, courts guarantee protection orders, but all filings for divorces have been suspended and crucial judicial decisions on civil protection orders, child custody and most family law cases have automatically been postponed for 3-6 months. Moreover, court's offices are hardly providing basic services and all pending cases with high degrees of conflict/violence involved are not reaching hearings and are left almost entirely in the hands of the parties involved, implying that way serious risks for the women and the children exposed to such abuse. In effect, new family/custody cases which increased during the Covid-19 era are impossible to have been treated in courts in a short timeframe. Protection is therefore quite being denied and what emerges is a picture of a well-established cultural sexism that transcends even the governmental layers and any political actions to uphold gender equality within the context of a global health crisis (EuroMed Rights, 2020:8-12).

## Chapter 4: The Rule of Law

Until relatively recently, in most EU Member States, domestic abuse was considered a private issue in which the states played only a limited role. However, since the 1990s, violence against women has emerged as a human rights concern that warrants legal and political recognition and an area where State Parties are considered liable for the victims' protection. Moreover, international law and other customary and soft law human rights legal instruments recognize the right of women to receive adequate protection against all forms of abuse, including domestic violence.

### 4.1. International Treaties relative to Domestic Violence

The widespread existence of domestic violence has contributed to establishing legally binding provisions against this phenomenon in several Conventions. The first milestone towards eradicating gender-based violence was the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) in 1979. CEDAW prescribed criminalization of any form of discrimination against women within its Article 2 (Handbook on effective prosecution responses to violence against women and girls Criminal Justice Handbook Series, 2014:7-9). Building on the global developments paved by the UN, the Istanbul Convention (2011) is today the most progressive binding international instrument on the subject of violence against women and domestic violence. It is the only regional treaty that defines domestic violence in its Article 3(b), as: "All acts of physical, sexual, psychological or economic abuse that take place within the domestic unit or between former/current spouses/partners, whether or not the perpetrator cohabits with the victim" (Tackling violence against women and domestic violence in Europe The added value of the Istanbul Convention and remaining challenges Policy Department for Citizens' Rights and Constitutional Affairs Directorate-General for Internal Policies PE, 2020:44).

As of September 2021, the Istanbul Convention has been signed by all EU Member States, and ratified by 21 (Austria, Belgium, Croatia, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovenia, Spain and Sweden). In addition, the EU itself signed the Convention in 2017, demonstrating a strong political commitment to combat violence against women within the area of its competencies (Shreeves and Prpic, 2020). Unfortunately, there are still six EU-Member States (Hungary, Bulgaria, Latvia, Lithuania, the Czech Republic, Slovakia) that have just signed the Istanbul Convention without any ratification, which practically means it will not enter into force (Blaskó and Papadimitriou, 2020:13-14). Furthermore, one of its first state parties, Turkey, notified its withdrawal from the convention in March 2021, which took effect on 1 July 2021. Legitimately, we wonder what the current situation of

victims of domestic violence during the COVID pandemic might be in those countries that have formally not recognized violence against women as a real threat.

Although the sole purpose of the Convention is to prevent and combat violence against women and girls, misinformation campaigns about the term “gender” and spurious allegations by certain governments and interest groups that the Convention undermines the notion of “traditional family” and religion are resulting in a few countries failing to ratify the Convention. For instance, Parliaments in Slovakia and Hungary have rejected proposals to ratify the Convention and in Bulgaria, the Constitutional Court has ruled that the Convention is inconsistent with its Constitution. It was also the groundbreaking move of Turkey that led to similar threats in Poland where there is a pending request by the Prime Minister to the Constitutional Tribunal to withdraw Poland from the Istanbul Convention and to create a new convention on the “rights of the family” instead (European Parliament, 2021; [www.amnesty.org](http://www.amnesty.org), 2021).

The protection of minors’ victims/witnesses of gender-based violence is also granted by the 1989 UN Convention on the Rights of the Child (CRC) (Article 19). Under CRC, “States Parties shall take all appropriate measures to protect the child from all forms of physical or mental abuse, neglect, maltreatment or exploitation, including sexual violence” (Ellialti, 2015). Furthermore, in case of domestic violence inflicted on persons with disabilities, the 2006 Convention on the Rights of Persons with Disabilities (CRPD) encapsulates in Article 16 the right to “be free from exploitation, violence, and abuse, specifically including protection from domestic violence” (Harpur and Douglas, 2014:416-417). Regarding domestic violence experienced by foreigners, developments in international human rights standards have led an increasing number of EU member states to recognize threats to life or freedom based on “race, religion, nationality, political opinion, or membership of a particular social group”, and forms of sexual violence, including rape, as forms of gender-related persecution within the meaning of Article 1, A(2) of the 1951 Convention Relating to the Status of Refugees (UNHCR Asylum Lawyers Project, 2016:4; United Nations, 2019).

The EU-Member States have also committed themselves in Declaration no. 19 on article 8 of the Treaty on the Functioning of the European Union (TFEU), to combat all kinds of violence against women and to take the necessary acts to prevent and prosecute these acts through inter-institutional cooperation (Article 82) and coordinated standard practices concerning criminal matters (Article 83) (TFEU, 2012:53). Additionally, the 2009 Charter of Fundamental Rights of the European Union established rights relevant to domestic violence, including the right to equality of both sexes in all areas (Article 23), the right to life (Article 2), the right to respectable private and family life, home and communications (Article 7) and the right of the child to seek protection (Article 24) (Tackling violence against women and domestic violence in Europe The added value of the Istanbul Convention and

remaining challenges Policy Department for Citizens' Rights and Constitutional Affairs Directorate-General for Internal Policies PE, 2020:24-25).

Overall, some of the key human rights treaties addressing domestic violence are:

- The 1951 Convention Relating to the Status of Refugees (1951 Refugee Convention)
- The 1979 Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)
- The 1989 United Nations Convention on the Rights of the Child (CRC)
- The 2006 Convention on the Rights of Persons with Disabilities (CRPD)
- The 2009 Charter of Fundamental Rights of the European Union
- The 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence (CoE Istanbul Convention)
- The 2012 Treaty on the Functioning of the European Union (TFEU)

#### **4.2. International Customary Law: Obligations of the States**

International customary law, which is considered as evidence of a general practice accepted as law (International Court of Justice, Article 38(1b)), is of high importance regarding the issue of domestic violence, primarily because the acknowledgment of a principle as part of international law accredits paramount validity to the criminalization of domestic abuse. Nevertheless, not all countries are signatory parties to the relevant agreements; Or even if they have signed, they do not strictly comply with the guidelines. One of the main obstacles against eliminating domestic violence is the widely accepted notion that the State is not responsible for private conduct. However, state accountability for coercive control within the familial setting was justified in the United Nations (2007) report stating that the State can be held responsible for a systematic failure to uphold women's rights—to life, health, and equality. Security, dignity, autonomy, and liberty are rights that are universally recognized as worthy of state protection, whether state actors perpetrate the violations or not. In this sense, coercive control becomes a political issue that denies women their well-established civil liberties. States can, therefore, be held responsible for violence in the private sphere if they do not create effective laws, fail to uphold whatever laws they pass or enforce the law in a discriminatory fashion. Human rights scholars and activists developed three doctrines that have to be seriously considered when dealing with the issue of domestic violence, so to ensure respect for each and every one of those rights (Libal and Parekh, 2009:1478-1483; Roush, 2011).



## **A. "Due diligence" Standard**

The legal concept of "due diligence" refers to the minimum effort a state must commit to meet its obligations to protect individuals from abuses of their rights. The requirement of due diligence has been adopted in several international human rights instruments, such as General Recommendation 19 of the CEDAW Committee, Article 4 of DEVAW, and Article 5 of the Istanbul Convention. The CEDAW Recommendation 19 established a robust definition of violence against women and mandated that "full implementation of the Convention requires states to take positive measures to eliminate all forms of violence against women." In incorporating this standard, DEVAW declared that all U.N. member states have a duty to "pursue by all suitable means and without delay, a policy of eliminating violence against women," including "due diligence to prevent, investigate and, punish acts of violence against women, either those acts are committed by State or by private actors." In light of the due diligence standard, state obligations were outlined within the Istanbul Convention, including effective legal measures (penal sanctions, civil remedies, and compensatory provisions), preventive practices (public information and education programs to change gender attitudes), and protective strategies (counseling, rehabilitation action, and support services) for victims or those at risk of violence.

## **B. Equal protection of the Law**

The second doctrine is related to the concept of equality. Suppose it can be proved that law enforcement discriminates against female victims in violence-related cases. In that case, the State may be held accountable for violating international human rights standards of equality. Article 26 of the International Covenant on Civil and Political Rights (ICCPR) provides that "all persons are entitled without any discrimination to the equal protection of the law." Furthermore, CEDAW, in Article 2, requires State parties to "pursue by all suitable means and without delay a policy of eradicating discrimination against women," which includes the duty to reform or abrogate existing laws, regulations, and customs that constitute discrimination against women." The CEDAW Optional Protocol, adopted in 1999, led the basis for states addressing victims of domestic violence, a group usually outside law enforcement, as it enabled individual women to bring claims against a government, including claims of international prosecution against individuals who perpetrate domestic violence.

## **C. Domestic violence as Torture**

Another school of thought argues that domestic violence is considered a form of torture and should be duly addressed. This very concept suggests that, depending on the severity and the circumstances giving rise to state responsibility, domestic

violence can constitute "torture or cruel, inhuman, and degrading treatment or punishment" under the ICCPR Convention (Article 7) and the Convention against Torture (CAT). It is argued that domestic violence involves the very four critical elements that constitute torture: "(a) it causes severe physical and or mental pain, it is (b) intentionally inflicted, (c) for specified purposes, and (d) with some form of official involvement, whether active or passive." Proponents of this argument call for domestic violence to be understood and treated as a form of torture and, when less severe, ill-treatment. Applying a human rights framework that recognizes domestic violence as torture and fulfilling the states' responsibilities to protect women can be powerful tools in eliminating violence against women.

Suppose the abovementioned three approaches to address domestic violence were adopted and fully implemented under a joint action plan by the States. In that case, it could be possible to deconstruct the false dichotomy between the public-private divide, which has so long restricted efforts to put domestic violence on the national agenda (Handbook on effective prosecution responses to violence against women and girls Criminal Justice Handbook Series, 2014:23-24).

### **4.3. International Soft law concerning Domestic Violence**

Soft law has been very important in international domestic violence law, where states have been reluctant to commit to legally binding treaties when trying to balance the cost of the violation of personal freedoms against the well-established cultural norms and social standards. Resolutions, declarations, guidelines, recommendations, or reports are essential to the soft law surrounding domestic violence. To start with, the Declaration on the Elimination of all Forms of Violence against Women (1993 UN Declaration) represents the first international instrument ever to solely concern itself with violence against women, albeit in a non-binding fashion. Although it does not clearly define domestic violence, Article 2(a) of the text refers to violence occurring in the family and covers physical, sexual, and psychological violence, whether occurring in public or private life. Building on the 1993 UN Declaration, the Beijing Declaration and Platform for Action (1995) goes further and urges States in a non-binding way to enact and/or reinforce sanctions in domestic legislation to punish and remedy the wrongs done to women and girls who are subjected to violence, whether in the home, the workplace, the community or society (Hasselbacher, 2010:193-196).

The next benchmark for the criminalization of violence against women was the adoption of the Rome Statute of the International Criminal Court in 1998. Under the Rome Statute, rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, and other forms of sexual violence are enumerated as crimes

against humanity (Article 7) and as war crimes in the context of armed conflict (Article 8) (Special Rapporteur on violence against women, 2021:10). A special interpretation of domestic violence was also found as a reference within the Declaration 19 to the Final Act of the Treaty of Lisbon (2007), referring to Article 8 of TFEU, which states that the phrase ‘eliminate inequalities between women and men’ here should be read as including actions to combat all kinds of domestic violence in EU policies (Tackling violence against women and domestic violence in Europe The added value of the Istanbul Convention and remaining challenges Policy Department for Citizens’ Rights and Constitutional Affairs Directorate-General for Internal Policies PE, 2020:24-25).

Although the human rights law does not encompass a treaty solely referring to the protection of victims of crimes, in 2012 the European Commission adopted a pack of legislative proposals to enhance the victims' rights. One of the proposals included the EU Victims’ Directive establishing minimum standards on the rights, protection, and support of victims of crime. According to the EU Victims’ Directive, all victims of crime shall have access to support services, protecting particularly vulnerable persons and preventing ‘secondary victimization by the criminal justice system’. Notably, the Victims’ Directive variously recognizes victims of gender-based violence, victims of sexual violence, and victims of violence in a close relationship as vulnerable due to the nature or type of crime the victims have fallen. To ensure homogeneity regarding the tools used by the judicial authorities, the package of legislative proposals included two additional instruments, the 2011/99/EU Directive (criminal European Protection Order) and the No 606/2013 Regulation (EU) (civil European Protection Order), which allow judicial authorities to issue orders to enable competent authorities in another EU Member States to continue the protection on their territory of victims, as they move between the Member States. Both Protection Orders encompass the recognition of protection order of persons whose life, physical, psychological or sexual integrity, dignity, or personal liberty may be at risk (EIGE, 2014:17).

Considering the recurring offending of domestic violence perpetrators, the United Nations adopted in 2005 a framework on how to enhance the protection of child victims and witnesses, including girl victims of gender-based violence, in the criminal justice system. The Guidelines on "Justice in Matters involving Child Victims and Witnesses of Crime", recognize that girls are particularly vulnerable and shall be treated with dignity and be protected from any form of discrimination such as age-related barriers or arguments about limited credibility regarding their full participation in the justice process (Handbook on effective prosecution responses to violence against women and girls Criminal Justice Handbook Series, 2014:48-50).

The CEDAW Committee provides further recommendations to Member-states to suppress domestic in women and girls and ensure that laws against all forms of gender-based violence provide sufficient protection to all women while treating them with respect towards their integrity and dignity. In particular, the Committee urges Member-states to respect and protect the human rights as enshrined in the CEDAW and highlights their obligation to prevent, prosecute crimes that constitute domestic violence and provide reparation to avoid re-victimization. The Committee also highlights the responsibility of States to provide survivors with special aid and safety in the form of accessible, high-quality, and gender- and age-appropriate services and justice mechanisms such as legal aid, health-care, psychosocial support, and compensation, among others (IV. General Recommendations adopted by the Committee on the Elimination of Discrimination Against Women, 1992).

The GREVIO experts' team also offers guidance about an improved criminal response to violence and reform of the criminal definition of domestic violence to ensure it is based on a harmonized and commonly accepted notion without regional variations that imperil the lives of victims. Furthermore, GREVIO recalls the importance for the authorities to persist in their efforts to promote and foster a gendered understanding of violence against women as a violation of their human rights and violence which disproportionately affects women because they are women. Lastly, GREVIO stresses the potential offered by the Istanbul Convention as a legally binding instrument that the authorities may invoke to override any conflicting norm or practice (GREVIO Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), 2019:17-18).

Lastly, the Special Rapporteur provides instructions towards governmental authorities in their efforts to combat domestic violence. In the latest report, the Special Rapporteur urges governments to collaborate in their approach against domestic violence with due diligence requirements to respect the victims' human rights, prosecute offenders, and provide compensation to the victims. Moreover, the Special Rapporteur expressed the need to adopt a human-rights approach to domestic violence and all actions towards eradicating domestic violence not to affect the dignity of those affected (Special Rapporteur on violence against women, 2021).

Overall, some of the key human rights soft law instruments addressing domestic violence are:

- The 1993 Declaration on the Elimination of all Forms of Violence against Women (1993 UN Declaration)
- The 1995 Beijing Declaration and Platform for Action
- The 1998 Rome Statute of the International Criminal Court

- The 2005 United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime,
- The 2007 Declaration 19 to the Final Act of the Treaty of Lisbon
- The 2011/99/EU Directive (Criminal European Protection Order)
- The 2012 EU Victims' Directive
- The No 606/2013 EU Regulation (Civil European Protection Order)

## **Chapter 5: Regional Interventions: Legal Remedies**

Putting an end to domestic violence must be an essential policy objective for any government committed to protecting human rights for all. Over the past 30 years, many necessary steps have been taken in several Council of Europe member states. However, regional legislation is often insufficiently enforced, with victim's services being scarce or inadequately funded and sexist attitudes prevailing over any human rights claims. Moreover, the available legislation and support vary significantly from one country to the next, creating considerable disparities in protection. The Covid-19 pandemic gave prominence to the importance of preventive measures and joint action plans to combat domestic violence (The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention): Questions and answers, 2014:2).

The Istanbul Convention, in Article 7, requires that State Parties adopt and implement 'effective, comprehensive and coordinated policies to prevent and combat all forms of violence against women and girls. Coordinated and holistic policies are best achieved where all relevant national organizations, authorities, and institutions draw up a National Adaptation Plan (NAP) tackling the various forms of violence. France and Italy adopted a NAP/strategy on violence against women and domestic violence since the ratification of the Istanbul Convention. On the other hand, Spain had already a NAP/strategy on violence against women and domestic violence before the ratification of the Istanbul Convention (Tackling violence against women and domestic violence in Europe The added value of the Istanbul Convention and remaining challenges Policy Department for Citizens' Rights and Constitutional Affairs Directorate-General for Internal Policies PE, 2020:77).

### **5.1. Criminal Sanctions**

One step towards upholding women's right to equal protection under the law is to enact domestic violence legislation that prohibits violence against women explicitly. States, however, vary in their criminal justice approach to domestic violence. While domestic violence includes a range of controlling and coercive behaviors, not all may be defined as crimes. Most States do not have domestic violence as a specific criminal offense; instead, the criminal law tends to cover physical violence. Psychological or economic violence appear to be more challenging to be defined as crimes, and some jurisdictions require a certain threshold to meet before the conduct becomes criminal. Depending on the jurisdiction, the discretion to proceed with a prosecution may also lie with the police if it is a misdemeanor or common assault (Violence against Women Psychological violence and coercive

control Policy Department for Citizens' Rights and Constitutional Affairs Directorate-General for Internal Policies PE 650.336-April 2020 EN STUDY, 2020: 20-21).

## **A. Physical Violence**

### **France**

The French national legislation covers all forms of domestic physical violence against women and minors under the Act No. 2006-399, and under the Law 2010-769, which set forth new means of protection in any of the various familial structures. More particularly, “harassing one's spouse, partner, or co-habitant by repeated acts that degrade one's quality of life and cause a change in one's physical or mental state of health” is punishable by a penalty of a maximum of three years in prison and a €45,000 fine. The penalty is increased to five years and a fine of €75,000 if the resulting incapacity to work is over eight days (*Id.* art. 31.). In case domestic violence completely incapacitates the victim for work or is done in the presence of a minor (Article 46, paragraph d), it is punishable by up to 10 years in prison and a fine of €150,00 if the harassment causes the victim to commit or attempt suicide. Nevertheless, the French law does not apply aggravating circumstances to offenses such as murder and threats. Additionally, in case of violence resulting in death (Articles 222-7 of the Criminal Code), violence resulting in mutilation or permanent disability (Articles 222-9), violence resulting in total incapacity for work for more than eight days (Articles 222-11) or less than or equal to eight days or having resulted in no incapacity for work (Articles 222-13), the aggravating circumstances cannot be applied if the acts are not committed "by the victim's spouse or partner or the partner linked to the victim by a civil solidarity agreement" (Gouv.fr, 2021).

### **Italy**

Physical integrity is covered under Article 572 (domestic violence), Article 575 (murder), Article 581 (beatings), and Article 582 (personal injury) of the Italian Penal Code. Although all acts of physical violence against women, including minor offenses, undergo ex officio investigation and prosecution, the offense of bodily injury is prosecutable only upon the victim's complaint (GREVIO Group of Experts on Action against Violence against Women Domestic Violence (GREVIO), 2019:70). When it comes to punishment, Article 9(2) amends Article 572 (domestic violence), increasing the punishment to three to seven years' incarceration. Furthermore, the penalty is increased by half if the offense is committed in the presence of or against a minor/pregnant woman/disabled person or if weapons are used. Additionally, Article 12(1) adds article 583-quinquies to the Criminal Code, punishing someone who

causes permanent deformation or disfigurement of an individual's face with eight to fourteen years' imprisonment (www.loc.gov, 2019).

## **Spain**

Physical abuse in a relationship would fall under the criminal offenses of homicide (Articles 138 to 145), injuries (Articles 147 to 156 ter), and ill-treatment (Article 153) within the Spanish legislation. Article 153 of the Criminal Code provides the possibility of imposing a prison sentence of three months to one year, or alternatively, doing community work for a period of 31 to 80 days. In case an offense is perpetrated in the presence of minors, using arms, whether in the shared domicile or the victim's residence or on failure to comply with the terms of a sentence or with precautionary measures included in section 48 of the Criminal Code (prohibition to approach, reside or communicate), aggravating circumstances are applied with these cases being subject to a sentence of prohibition of possessing firearms and barring individuals from exercising authority, guardianship, custody or fosterage for a period of six months to three years. Moreover, the Organic Act 38/2002 introduced fast trials for minor offenses enabling domestic violence cases to be determined within 15 days from the offense (De La Fuente Méndez, 2008; www.legislationline.org, 2017).

## **B. Psychological Violence**

### **France**

Psychological violence is covered by a general provision (Article 222-14-3) of the French Criminal Code, as well as by two provisions specific to domestic violence relating respectively to moral harassment in private life between spouses, partners, cohabitants, or ex-partners (Article 222-33-2-1) and harassment outside a marital relationship (Article 222-33-2-2). But despite any legal advancement, victims encounter serious obstacles with law enforcement authorities when filing complaints, especially when they are not accompanied by physical violence. In particular, victims are not always referred towards UMJs (Service d'Unité Médico-Judiciaire/Medico-Judicial Unit Service) and, even when they are, the assessment of psychological repercussions is not always sufficient. From a procedural point of view, medical certificates issued by UMJs based on victims' statements alone are sometimes even put into question by magistrates. Stalking is another form of psychological violence, criminalized under Article 222-33-2- 2 of the current Criminal Code and covering harassment perpetrated by a current or former partner. Since 2016, there has also been a dedicated offense, namely that of "revenge porn" (Article 226-2-1), prosecuting cyberstalking (GREVIO Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), 2019:55-59; Loc.gov, 2020).



## **Italy**

Following the relevant case law of Italian courts, for violent conduct to qualify as domestic psychological ill-treatment, it must be characterized by the systematic nature of the violent conduct and the criminal intent of inflicting psychological harm to the victim/or violating her dignity. Ill-treatment is therefore categorized as a crime of habitual nature and is subject to ex officio prosecution. Where the systematic nature of the violent psychological conduct cannot be proven, the perpetrator might be held to account under crimes such as battery (Article 581), bodily harm (Article 582), and threat (Article 612), which are prosecutable ex parte and may fall within the jurisdiction of lower courts. In case of recurring violence, violence against vulnerable or in the presence of children, and abuse with the use or under the threat of a weapon (Art. 46, Istanbul Convention), the Italian law applies aggravating circumstances in determining the sentence. Nevertheless, when the offense results in severe psychological harm, there is again limited implementation of such circumstances indicating the insufficient legal recognition of the severe impacts caused by psychological violence (GREVIO Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), 2019:13-14).

The crime of stalking is also criminalized by the Italian Law No 38/2009 as a heinous form of psychological abuse. The offense carries a maximum sentence of six and half years, and those participating in group attacks face a maximum sentence of 14 years. Cyberstalking is also punished under new addendum of Article 10(1), 612-ter to the Criminal Code, with offenders unlawfully disseminating sexually explicit images or videos without the consent of the persons represented ("revenge porn"), being sentenced to imprisonment from one to six years and a fine €5,000–€15,000 (www.loc.gov, 2019).

## **Spain**

Several specific offenses exist within the Spanish Criminal Code to cover the different manifestations of psychological violence in intimate relationships: intimidation and threats (Article 171, paragraphs 4 and 5), coercion (Article 172, paragraph 2), and mental damage or other harm inflicted without necessarily causing an injury (Article 153). In addition, Article 173, paragraph 2, criminalizes physical and mental violence against a member of the domestic unit. However, it again seeks to capture the repeat nature of such abuse by requiring the "habitual use of violence." All legal provisions ensure heightened sentences where these offenses have been committed in the presence of a child. Nevertheless, most domestic psychological violence cases are prosecuted and punished under Article 153 and Article 173, which encompass physical abuse. The low convictions rates of domestic psychological violence perpetrators are also verified by several NGOs offering services to survivors.

Stalking is also criminalized under Article 172 of the Spanish Criminal Code. Of concern, however, is the fact that victims are asked to prove that the insistent and repeated threatening behavior of the stalker has caused them a serious alteration of their daily routine. This despicable practice reverses the burden of proof by focusing on the behavior of the victim rather than that of the perpetrator. Moreover, Article 197 (paragraph 7) criminalizes the dissemination, disclosure, or transfer to third parties of any images or videos (even though they may have been initially obtained with consent) depicting a person in an intimate or naked/nude condition, harming this person's intimacy. The offense of cyberstalking is punished by a custodial sentence ranging from three months to one year (GREVIO Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), 2020:55-61).

### **C. Sexual Violence**

#### **France**

Offenses relating to sexual violence are covered by the provisions of the French Criminal Code concerning rape and sexual assault (Articles 222-22 et seq. and Article 227-25). Most recently, Law No. 2018-703 introduced several innovations, including the extension of the definition of rape to acts of penetration imposed on a victim but committed on the perpetrator, the extension of the statute of the limitation period for rape of children from twenty to thirty years and the introduction of a new aggravating circumstance for sexual assault committed against a victim to whom a substance altering their ability to control their behavior without their knowledge. While welcoming these advances, the GREVIO team of experts notes that the legislator has not revisited the definition of sexual assault and rape as acts necessarily qualified by the use of violence, coercion, threat, or surprise. In other words, the legal definition of sexual offenses is not explicitly based on the violation of the victim's free and unequivocal consent. The French case law is consistent in the fact that there is the notion that everyone has the right to refuse sexual intercourse.

The inadequacy of judicial treatment is particularly pronounced in cases of marital rape, rape of women with disabilities, and paternal incestuous rape. In practice, about 70 to 80% of complaints of sexual violence between family members, especially marital rapes, escape conviction because of the so-called judicial practice of "correctionnalisation". This practice makes it possible to reclassify the crime of rape as a sexual assault offense and to try it before a criminal court instead of the court of assize, provided that the victim does not object. "Correctionnalisation" has serious procedural consequences, such as a reduction in the statute of the limitation period, the hearing periods, the amount of damages attributable, and the quantum of the sentence. Both the GREVIO team and the Special Rapporteur are particularly

concerned about such a practice, which minimizes the seriousness of rape and places the burden of the system's dysfunction upon the victims, in denial of their rights.

In the context of such a discussion, the issue of sexual violence against children could be re-examined. Indeed, the Law No. 2018-703 renounced the presumption that children under 15 cannot consent to any sexual act with an adult. In the absence of a position on the matter in the Istanbul Convention, the current situation is unsatisfactory in that the age limits fall within the remit of the general provisions on rape and sexual assault, and in that no solution is provided to the need to protect children from sexual relations to which they cannot give their free and informed consent (GREVIO Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), 2019:55-57; Special Rapporteur on violence against women, 2021:3).

## **Italy**

The current definition of the offense of sexual violence in Italian criminal law is the result of the enactment of Law No. 66/1996, which qualified sexual violence as a crime against personal freedom, moving away from the previous definition of sexual violence as a crime against public morality. Under the terms of Articles 609-bis and 609-octies of the Criminal Code, sexual violence is qualified as encompassing “all sexual acts committed either by one or more persons, with the use of violence, threat, abuse of authority, abuse of the condition of physical or psychological inferiority of the victim or by misleading the victim as to the perpetrator's identity”. The crux of the matter is that, sexual violence is again not defined as an offense based on the lack of consent given as the result of the women's free will (Article 36, Istanbul Convention).

The Istanbul Convention (Article 55, paragraph 1), places on parties the obligation to secure that investigations shall not wholly rely upon the report or complaint and that any proceedings underway may resume even after the victim has dropped her statement of complaint. Nevertheless, the offense of sexual violence is prosecutable only upon a complaint of the victim except where the violence is qualified by one of the aggravating circumstances described in Article 609- septies, paragraph 2, of the Code (sexual violence committed against a child or by a public official), where offenses are prosecutable *ex officio*. Furthermore, the offense of sexual violence does not apply in cases of unwanted physical contact of a sexual nature involving parts of the victim's body other than her genitalia or erogenous zones (Tackling violence against women and domestic violence in Europe The added value of the Istanbul Convention and remaining challenges Policy Department for Citizens' Rights and Constitutional Affairs Directorate-General for Internal Policies PE, 2020:58).

## **Spain**

The Spanish Criminal Code distinguishes between two primary forms of sexual offense: sexual assault, including rape, and sexual abuse, also including penetration. Sexual assault (Articles 178 and 180) constitutes a serious crime that requires violence or intimidation to be qualified as such. Sexual abuse (Articles 181 and 182) is a less serious criminal offense, where the absence of the victim's consent is the qualifying element. Valid consent is precluded where the act is perpetrated against unconscious persons or persons with a mental disorder or committed by overcoming the victim's will through the use of drugs or similar substances (Article 181, paragraph 2). The sentencing range differs between the two, and penetration without consent can lead to a prison term of four to 10 years.

The practice of the judiciary to apply both offenses (sexual assault and sexual abuse) has caused widespread public indignation. It illustrates an improper understanding of the use of force and intimidation and the reactions this may trigger in victims of rape. Research on the neurobiology of sexual trauma shows that "freezing" (or so-called "tonic immobility") is a common reaction by victims associated with subsequent post traumatic stress disorder and severe depression. For this reason, the Supreme Court of Spain's clarified under a resolution that now serves as guidance to lower courts that the offense of rape may apply not only to cases in which physical violence is used but also where other factors indicate that the victim did not consent, such as intimidation. However, according to legal experts, regional courts still qualify cases where the victim does not consent but does not resist either, as sexual abuse instead of rape, even where the surrounding circumstances demonstrate intimidation. Moreover, numerous judicial decisions seem to reproduce stereotypes or apply excessively formalistic interpretations to diminish the perpetrator's criminal liability or even blame the victim (GREVIO Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), 2020:57-58).

## **D. Economic Violence**

### **France**

Although the Istanbul Convention does not include economic violence among the acts of violence that parties are required to criminalize, this type of violence is mentioned in Article 3b of the Convention. More particularly, domestic violence encompasses "all acts of physical, sexual, psychological or economic violence occurring within the family or household or between former/current spouses/partners." In line with Article 3b of the Istanbul Convention and extending

the protection granted to victims of economic domestic violence, the French legislation foresees that, spouses shall be protected from theft when it concerns 'documents essential to their daily life, such as identity documents, relating to an alien's residence or residence permit, or means of payment under the Law No. 2006-399. In addition, non-payment of child maintenance is considered a serious offense under Article 227-3 of the Criminal Code. The problem of unpaid alimony has been remedied to some extent by the establishment of a guarantee mechanism in 2016 through the Agency for the Recovery of Unpaid Maintenance Payments (ARIPA). Despite any advances, the procedures for processing applications through ARIPA proceed with with delays of up to several months or even years, without necessarily leading to the recovery of maintenance payments. In addition, the amount awarded at the end of the recovery procedure is sometimes less than the amount of maintenance initially fixed by the judge when debtors flee or organize their insolvency in a fraudulent manner (GREVIO Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), 2019:13-14).

## **Italy**

Economic violence is not recognized by the Italian Penal Code, and therefore no protection can be provided (Tackling violence against women and domestic violence in Europe The added value of the Istanbul Convention and remaining challenges Policy Department for Citizens' Rights and Constitutional Affairs Directorate-General for Internal Policies PE, 2020:58).

## **Spain**

The Spanish Organic Law 1/2004 has been recognized as one of the most progressive and comprehensive legislation on gender-based violence worldwide. Although it provides effective protection for cases of physical and psychological domestic violence, several barriers exist for women seeking help from the authorities for sexual and economic violence that are not covered by the Organic Law 1/2004 (GREVIO Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), 2020:12-14).

## **5.2. Civil Remedies**

### **A. Emergency barring orders and Protection orders**

Article 53 of the Istanbul Convention foresees restraining or protection orders to protect victims from further violence. Protection orders may take the form of

emergency or ex parte orders, temporary orders issued without notice to the defendant, which generally last a short time, and longer-term protection orders that usually require a full hearing before a judge with the respondent present. Protection orders may contain various measures to keep victims safe, including ordering the batterer to stay a specific distance from the victim and her children, removing the batterer from the family residence, and providing financial assistance to the victim. However, based on data from a 2020 study, only nine European countries, including France, cover the four forms of violence in the scope of the protection order available in cases of domestic violence (GREVIO Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), 2019:7).

## France

The French Law 2010-769, set forth new means of protection against violence available to participants in any of the various familial structures (marriages, civil partnerships, and cohabitation). More particularly, Articles 515-9 to 515-13 of the Civil Code introduced a new tool, the protective order (*ordonnance de protection*) rendered by a family judge, which permits the protection of the victim, including legal aid, eviction of the violent spouse/partner/co-habitant and rendering a decision on which party will be financially responsible for the family housing. The protection order makes it possible to implement without waiting for a complaint to be lodged. Furthermore, the protective order may prohibit the violent spouse from contacting the victim and his children and from owning a firearm or any other type of weapon. It may also allow the victim to hide where she is domiciled and to rule on the custody of the children, even prohibiting a child from leaving French territory without the authorization of both parents (*Id.arts.1,3.*). Violation of any of the measures set by the family judge is punishable by a maximum of two years of imprisonment and a €15,000 fine (*Id.art.5.*) The protection measures are valid for four months and may be extended if a divorce or separation request has been filed (*Id. art. 1.*).

Victims of domestic violence may also benefit from tele-protection if they wish. Since 2014, it has been possible to grant the enforcement of a protection order via a “high danger telephone” (TGD), a remote protection device allowing the victim to alert the public authorities in case of danger, seven days a week/24 hours a day. The number of TLDs currently deployed is 694, and a delivery of nearly 700 TGDs is planned as part of the new public contract for the period 2018-21 (Tackling violence against women and domestic violence in Europe The added value of the Istanbul Convention and remaining challenges Policy Department for Citizens’ Rights and Constitutional Affairs Directorate-General for Internal Policies PE, 2020:80-83).

On July 30, 2020, a new law was signed aiming to better protect victims of domestic violence. This new law introduced wearing an electronic bracelet in cases in

which the violence or threats of violence are punishable by at least five years of imprisonment (*Id.* art. 6.). In practice, a violent spouse or partner may be required to wear a geolocation bracelet that automatically alerts women (through a device given to keep on them at all times) and police if abusers come within a certain distance of their victims. If the accused oversteps the minimum distance, he will be instantly contacted by the service monitoring the devices, and police will intervene. If the perpetrators refuse to wear the bracelet, the judge can order prosecutors to open a criminal inquiry. As of Friday, September 25, 2020, the French devices, which resemble a sports watch, are being rolled out in five jurisdictions under a pilot scheme, with an eye to being deployed across France by early 2021 as part of a broader government crackdown on domestic violence.

Despite the positive expectations of this new measure, critics said the tracking system was flawed because both abuser and victim must consent to be tracked. This could leave victims open to manipulation or coercion. For example, if the victim has been manipulated or threatened by the abuser and told not to use one, she may not, and the system will not go ahead. Abusers could also use the excuse that the device – which comes with a charger and has a battery life of 48 hours – has run out of charge. Besides the above, domestic violence is a complicated offense, where different emotions are all tangled up. Ex-partners share property, a history, children, many memories. While rare, they can even decide to meet their abusers in an area off the predetermined radar of the GPS tracker (BBC News, 2021).

## **Italy**

The Italian legislation appears to provide protection orders only in cases of physical and psychological domestic violence. More particularly, Articles 282-bis and 282-ter of the Criminal Code under the Law No. 154/2001 regulate barring and restraining orders if any individual within the family faces a serious prejudice to their physical or psychological integrity or liberty (Articles 342-bis and 342-ter) (Tackling violence against women and domestic violence in Europe The added value of the Istanbul Convention and remaining challenges Policy Department for Citizens' Rights and Constitutional Affairs Directorate-General for Internal Policies PE, 2020:80-83). The petition for a protective measure can be started regardless of any criminal proceeding unless the violence qualifies as the offense of ill-treatment, in which case it is subject to ex officio prosecution. The barring/restraining order may be issued by the judge *inaudita altera parte*, in which case it is followed – within a maximum deadline of 15 days – by a hearing at which the judge decides whether to uphold or revoke the protective measure. Protection orders have a maximum duration of one year but may be extended in the presence of “serious motives”. No time limits apply to their issuance.

Under Article 387-bis to the Criminal Code, those who violate temporary removal orders from the family home or the prohibition against approaching places frequented by the injured person, are punished with six months to three years of imprisonment. Additionally, the violation of civil protection orders gives rise to the crime punished under Article 388, paragraph 1, of the Criminal Code of “willful failure to fulfill a measure issued by a judge,” an offense which, however, can only be prosecuted upon the victim’s complaint. Since the entry into force of Law No. 69 of 19 July 2019, the enforcement of a precautionary measure may be effected with the use of electronic devices, and the violation of such a measure subjects the offender to a criminal sanction.

Under the administrative Law No. 119/2013, a victim of domestic violence may apply for a police warning (*ammonimento*) requiring the offender to cease the offensive behavior instead of lodging a criminal complaint. Under Article 3 of this law, where police officials are notified of an offense of battery (Article 581 of the Criminal Code) or grievous bodily harm (Article 582), the chief of police may caution the offender to refrain from further violence and suspend any authorization of firearms’ ownership. Law No. 119/2013 further introduced Article 384-bis granting law-enforcement agencies the power to bar from the family household the perpetrator caught in the act of committing various crimes, including severe injuries and serious threats. Another important protective mechanism introduced by the law is the mandatory arrest in *flagrante delicto* for the ill-treatment offenses, pursuant of Article 380, paragraph I-ter, of the Code of Criminal Procedure. A violation of the police warning automatically triggers the start of criminal proceedings. Owing to the nature of these offences as habitual crimes, the most prominent difficulty in applying the latter provision is the need to gather evidence of the reiteration overtime of the offensive conduct within the short interval allowed by the procedure (48 hours) (EIGE, 2016; GREVIO Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), 2019:73-74).

More recently, the Italian Parliament introduced Law n.69 of 19 July 2019, better known as the “Codice Rosso” Law (Code Red Law). This new law modified the Italian Criminal Procedure Code regarding maltreatment in family, with any victim protection measures being adopted more quickly. In fact, there is a provision investigation fast-tracked, and there will be a court hearing within three days (72 hours) (Nittari et al., 2021; [www.loc.gov](http://www.loc.gov), 2019).

## **Spain**

Protection orders for victims of domestic violence have been in existence in Spain since 2003. Nevertheless, the Spanish legislation appears to cover only physical, sexual, and psychological types under Articles 544bis and 544ter of the Law



of Criminal Proceedings that foresee precautionary measures and protection orders, including bans on contact, communication, and residence with the victim. These measures can be ordered *ex officio* or upon a request by a legitimate party (such as the victims or their family members) (Tackling violence against women and domestic violence in Europe The added value of the Istanbul Convention and remaining challenges Policy Department for Citizens' Rights and Constitutional Affairs Directorate-General for Internal Policies PE, 2020:80-83). Any protection order is valid for 30 days, and if the victims or their legal representatives initiate a family law procedure, they may be extended for another 30 days until the court decides to modify or cancel them. Thus, protection measures seem to involve children as long as they are with their mother. It is unclear, however, whether contact bans apply to children specifically, including while at school.

Article 173 of the Criminal Code offers the possibility for protection orders to be issued within 72 hours. Moreover, the specialist violence against women courts operate an around-the-clock system that allows protection orders to be issued fast. Nevertheless, they do not qualify for emergency barring orders as required by Article 52 of the Istanbul Convention so to ensure that a perpetrator of domestic violence may be ordered to vacate the residence of the victim in situations of immediate danger without forcing them to hurriedly seek safety in a shelter or elsewhere (EIGE, 2016). The Organic Act 13/2003 further allowed the adoption of the precautionary pretrial detention measure, even if the criminal offense is punished with less than two years of prison, to prevent the risk of new actions against the legal rights of the victim. In addition, the Organic Act 15/2003 introduced the obligatory imposition of the additional penalty of a protection order in any case of domestic violence (sections 49, 57, and 153), and the Act 27/2003 enabled the adoption of precautionary measures by the Examining Magistrate's Court, including legal support, healthcare, psychological and economic support, emergency accommodation, and support for dependent sons and daughters (De La Fuente Méndez, 2008; [www.legislationline.org](http://www.legislationline.org), 2017).

In terms of ensuring compliance with protection orders, the Spanish authorities also made significant efforts to monitor the movement of domestic abusers. Likewise France and Italy, an electronic monitoring tool operating as a GPS tracking device monitors the distance between both perpetrator and victim, issuing a warning if the perpetrator moves into a restricted area (GREVIO Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), 2020:67-68).

Overall, women's organizations and legal practitioners working with domestic violence cases, whether in France, Italy, or in Spain, report that, at times, victims' requests for safety measures remain unheeded, and the risk they are exposed to is underestimated. Judges seem reluctant to issue precautionary measures (particularly

where there is no physical violence) and there are significant delays of up to several months before a hearing is held or until the issuance of the order. Additionally, they tend to minimize the risks signaled by a breach of such measures or even seek to reach a compromise between the victim and the perpetrator rather than taking a position on the request for a protection order, an approach which would reflect a severe misunderstanding of the dynamics of violence against women (EIGE, 2016; GREVIO Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), 2019:73-74).

## **D. Compensation**

### **France**

Compensation can be obtained from the perpetrator in the context of criminal proceedings. Victims may also submit a claim for compensation to the Compensation Commission for Victims of Crime (CIVI), subject to conditions tied to the victim and the nature and consequences for the victim of the crime suffered. When these conditions are not met, the victim may, after obtaining a final sentence, refer the matter to the Recovery Assistance Service (SARVI), which may, however, only pay the victim 30% of the sum obtained before the criminal court with a maximum of 3,000 euros, offering to assist the victim in recovering the balance from the offender (GREVIO Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), 2019:51).

### **Italy**

Victims of criminal acts may file a request for compensation from the perpetrator either during criminal proceedings or by bringing a separate civil lawsuit. According to several NGOs, victims hardly ever pursue this legal route. To claim compensation during a criminal trial, a victim must become a party to the proceedings. This entails that she is required to back prosecution with her testimony and to supply supporting evidence. Legal practitioners report that this requirement frequently backfires as it shifts the courts' focus from the offender's conduct to that of the victim and exposes her to the courts' scrutiny as to what constitutes a "reliable" victim. Under the enduring stereotype that a "reliable" victim is fragile, remissive, and unwilling to pursue compensation, victims are met with disbelief and subjected to frequent secondary victimization. Even if criminal courts rule on the victim's right to compensation, victims' access to full compensation is hindered due to the delays and the additional costs involved in instituting separate civil proceedings that act as a deterrent to pursuing further action and can furthermore be detrimental to the victim by affording the perpetrator further time to organize his insolvency. Moreover, there

are no uniform criteria for assessing and quantifying damages, particularly moral damages.

Following the adoption of Law 167/2017, and in line with the EU Directive 2004/80/EC, state compensation can be awarded to a victim where compensation cannot be obtained from the perpetrator. The state indemnity is limited to covering any documented medical or social welfare-related expense, save for cases of murder or sexual violence, for which compensation can serve to cover other types of expenditure as well. The actual payment of the state indemnity remains, however, subject to the availability of funds. It is furthermore capped by a maximum threshold which varies depending on the nature of the offense and is not always suitable to represent an "appropriate" compensation. Available data show that very few women victims benefit from this scheme. Taking into account the inadequacy of its scope to encompass all forms of violence covered by the Istanbul Convention, a new law was adopted, Law No. 4/2018, which introduced the duty of the prosecuting authority to request the attachment of the perpetrator's assets as the provisional payment of 50% of the estimated damages, from the moment a conviction is handed down and the extension to the orphans of victims of femicide so to benefit from the aforementioned state compensation scheme (GREVIO Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), 2019:57-59).

## **Spain**

Compensation for criminal acts suffered can be claimed from the perpetrators either during criminal proceedings or by instituting civil proceedings after the criminal proceedings have been concluded. However, several barriers stand in the way of women victims of violence receiving compensation in practice. A recent study demonstrated that, more than one-third of victims of sexual violence do not receive any compensation from the convicted perpetrator, and where they do receive, the average payment is only 25% of the total amount and takes five years. The reasons for such low payments include the low use of measures by the authorities offered by the Criminal Procedural Code to ensure payments after conviction. Declarations of insolvency that perpetrators may make without any investigations ordered by the court may also stand in the way of compensation. The payment of compensation is more likely in cases where the sentence is a fine since a fine can only be paid once the compensation has been fully reimbursed to the victim. Similarly, where the suspension of a prison sentence is conditional on the payment of the compensation ordered, payments are made in full.

If compensation cannot be obtained from the perpetrator, Law 35/1995 offers a subsidiary compensation regime for survivors of violent offenses and crimes against sexual freedom. It applies only to serious offenses resulting in serious physical or

psychological harm or death, and proof of permanent incapacity with a degree of disability of at least 33% or temporary incapacity of more than six months is required. This sets the threshold very high, and the procedure to obtain state compensation is perceived as cumbersome. For example, a forensic examination report must document the level of harm, and a prosecutor's report is required to confirm the facts. Additionally, applications must be submitted within one year of the criminal act – unless criminal proceedings have been instituted. To continue with the legal provisions ensuring compensation to domestic violence victims, Article 27 of the comprehensive protection law, implemented by Royal Decree 1452/2005, guarantees financial aid to victims whose income is below a specific threshold and whom, due to their age, social circumstances, or lack of general education or special skills, have particular difficulty finding a job.

Furthermore, Law No. 117/1988, as amended by Law 18/2015 (known as the Vassalli law), enables anyone who has suffered unfair damage because of an unlawful judicial act or sentence, a judicial decision marred by gross negligence, or a denial of justice, to claim compensation. The request for compensation shall be lodged with the Prime Minister after exhausting all other available means of redress, including appeals before higher courts. According to civil society representatives and lawyers, however, the Vassalli law is hardly ever applied to investigate the responsibility of magistrates for poorly handling cases of violence against women. Under the Vassalli law, specific provisions aim to ensure payment of therapy and psychological counseling for victims of sex offenses who suffer psychologically. However, the number of applications made is very low and of them only 15% are granted. Furthermore, long delays in the processing of applications lead to significant waiting periods for psychological therapy, in a country where alternative, free services for victims of sexual violence are extremely rare (GREVIO Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), 2020:51).

## **E. Custody, Visitation rights & Safety**

### **France**

There are several mechanisms to ensure that the interests and safety of the child are given priority in court decisions on parental authority and its exercise in the event of domestic violence. First, the total or partial withdrawal of parental authority may be pronounced by a criminal judge when one parent is convicted of violence committed against the other parent, or independently of any criminal conviction, by a civil judge "when the child witnesses pressure or violence, of a physical or psychological nature, exerted by one of the parents on the other, which endangers the child's safety, health or morality." Moreover, in the context of issuing a protection order, the exclusive exercise of parental authority may be assigned to the victim

temporarily, and prosecutors shall be informed without delay by the judge because of violence likely to endanger one or more children.

Despite the development of these legislative solutions, civil society representatives and available research indicate that they are rarely enacted due to the lack of coordination between civil and criminal justice. In practice, the withdrawal of the perpetrator's parental authority remains exceptional, even in the event of a final criminal conviction, irrespective of the persistence of the danger to the mother and child. Apart from cases of withdrawal of parental authority, the joint exercise of parental authority, in particular in the form of alternate residence, is generally maintained, in disregard of the tendency of parents who perpetrate violence to exploit parental authority in order to maintain their control and influence over their ex-spouse and children.

In cases where the judge confers exclusive custody to the victim in the child's interests, the existing solution for reconciling the exercise of visitation rights with the safety of the child and parent victim of violence is based on the so-called mediated meeting spaces. However, in addition to the fact that the availability of these spaces is variable on French territory, the existing spaces are not equipped to organize parent-child meetings in a neutral place in the event of conflictual relationships. In the absence of suitable arrangements, mothers usually feel that the only way to protect their children from violence is to refuse to comply with decisions on visitation rights. In such a case, the French legislation introduced the "measure of accompaniment under protection," which aims to prevent the father's violence against the mother by providing for the child to be accompanied by an adult excluding other family members during the exercise of visitation rights (GREVIO Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), 2019:52-54).

## **Italy**

Following the enactment of Law No. 54/2006, Italian civil courts are bound by the principle of shared custody as the default solution applying in cases of separation or divorce. Figures from ISTAT reveal that, shared custody is applied in nearly 90% of such cases. There is no express obligation under applicable laws for statutory agencies to ensure that, in the determination of custody and visitation rights, incidents of violence are taken into account, as required by Article 31, paragraph 1, of the Istanbul Convention. Nevertheless, several provisions of the Civil Code allow giving priority to the child's best interest over and above the principle of shared parenting. More particularly, under Article 330 of the Civil Code, courts may decide the forfeiture of parental authority in such cases where a parent violates or neglects his parental duties or abuses his or her authority to the serious detriment of the child.

Moreover, Article 333 of the Civil Code contemplates removing the parent from the family home where the parent's conduct does not justify revoking his or her parental responsibility but appears to be detrimental to the child. In addition, Article 337-quarter of the Civil Code provides that exclusive custody may be granted to a parent if entrusting the custody to the other parent would be contrary to the child's interest. In light of ensuring the effective implementation of these provisions, Law Decree No. 93/2013 introduced the duty of the prosecuting authority to inform juvenile courts of any pending criminal proceeding involving a crime of ill-treatment committed against a child or by the parent of a child against the other parent.

Nevertheless, these provisions appear to be rarely used to protect children who have witnessed violence against their mothers, even in cases where the violence has led to sentencing or other measures, including protection orders, against the perpetrator. Moreover, victims' abuse claims by their partner are often dismissed, and mothers are even blamed for their children's reluctance to meet their violent father. Consequently, civil courts not only fail to detect instances of violence, but they tend to ignore them. This practice can lead to situations where victims are pressured into dropping criminal charges against the perpetrator, on the assumption that maintaining such charges pacifies the family and contributes to reaching an agreed settlement on the issues of custody and visitation (GREVIO Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), 2019:59-61).

## **Spain**

The Spanish legal system offers judges a wide range of possibilities to suspend, limit, or otherwise regulate the exercise of parental rights of parents who have been abusive towards their spouses or children. The criminal offenses most relevant to partner and intergenerational domestic violence described under Article 171 (intimidation and threats), Article 172 (coercion), and Article 173 (physical and mental violence against a member of the domestic unit) all allow judges to bar perpetrators from exercising their parental rights as part of a criminal sentence, as does Article 55 for domestic violence perpetrators ordered to serve a custodial sentence of 10 years or more – irrespective of the nature of the offence. Additionally, Article 544 ter and quinques of the Criminal Procedural Code regulate the modalities for the suspension or limitation of parental authority as a (pretrial) protective measure. The suspension or regulation of parental authority, guardianship, or custody of alleged perpetrators is also foreseen within Article 65 & 66 of the Organic Act 1/2004. Lastly, civil law prohibits joint custody where a parent is subject to criminal proceedings for domestic violence (Article 92, paragraph 7, of the Civil Code), and visitation rights may be limited or suspended where serious circumstances warrant this (Article 94).

Regarding the visitation regime, there are family meeting points to ensure supervised visitation, for example, by mothers who are under a protection order decided on by judges. However, they usually provide services to families where violent incidents went undetected or were not considered serious enough to bar visitation. Furthermore, the level of their staffing and their quality of interventions is low. In addition, their general ability to guarantee the physical and psychological safety of children (and their mothers) and to recognize and/or address signs of violence or its long-term impact on children is extremely insufficient.

Despite any positive measures, criminal judges seem reluctant to suspend or limit parental rights, both in pretrial rulings and in final sentences. Although the Spanish civil law bans shared custody in cases where a parent is subject to criminal proceedings for domestic violence, shared custody, and extensive visiting rights are often granted to convicted perpetrators. Visiting rights and arrangements are frequently ordered or maintained despite evidence of violence and abuse provided by children themselves or professionals. Grave concerns have been raised due to the persistent assumption among judges, and some professionals within family services, that children who express fear of their father have been manipulated by their mothers. In practice in court, only children over the age of 12 are heard, and their concerns are frequently dismissed or not investigated (GREVIO Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), 2020:52-53).

## **F. Residence status**

In the migration and asylum context, the Istanbul Convention requires first and foremost that residence status laws and asylum procedures should not neglect the situation of women who live in violent relationships, women victims of sexual exploitation, or those suffering other forms of violence. In particular, residency laws must provide for the possibility of issuing autonomous residence permits to women in special situations, such as domestic violence (Article 59, Istanbul Convention).

### **France**

Within the French legislation, the Code on the Entry and Residence of Foreigners & the Right of Asylum (CESEDA) includes provisions aimed at enabling foreign women victims of domestic violence to obtain an autonomous residence permit under certain conditions. In addition, Law No. 778 of 10 September 2018 strengthened the protection afforded to foreign women victims of violence. In pursuance of the Law No. 778, a foreign woman married to a French national may obtain a temporary residence card in the event of continued marriage beyond a period of three years. Nevertheless, women may retain their right to a temporary residence

card in the event of the breakdown of the relationship, where this breakdown is attributable to acts of domestic violence. This right may be conferred to the victim regardless of whether she has filed a complaint against the perpetrator or obtained a protection order for the acts of violence. Foreign women living in France for family reunification may also benefit from similar protection. However, civil society representatives pointed out that there are significant territorial disparities in applying the aforementioned conditions for issuing a residence permit. Considerable delays in issuing residence permits, contrary to the provisions on minimum time limits provided for in CESEDA, may also hinder the trajectories of victims.

Access to a protection order is the cornerstone of the protection granted to foreign victims who live in a couple with a foreign national residing legally on French soil without following the family reunification procedure. Indeed, these victims can obtain a renewable residence permit on condition that they have previously obtained a protection order. The title is renewed as long as the protection order is renewed. The Act No. 2018-778 strengthened this system by providing, on the one hand, that if the protection order has not been renewed, the residence permit may nevertheless be renewed if a complaint has been lodged and, on the other hand, that women benefiting from temporary residence permit automatically obtain a residence card in the event of the perpetrator's final conviction. Despite any advances, concerns have been raised regarding the length of the procedures for issuing orders, as well as the low rate of their issuance, placing the victim in an extremely precarious situation.

Since 2018, the administrative situation of women has deteriorated in a context of suspicion towards foreigners. This trend has reportedly led to a hardening of prefectures' practices on the grounds that women claim to be victims to access a right of residence. While taking note of the instruction of 28 February 2018, which recalls that proof of violence can be provided by any means, without requiring either a protection order or a complaint, the shadow report submitted to the GREVIO even showed that women in an irregular situation sometimes go to the police station or gendarmerie to file a complaint about violence and are arrested themselves (EIGE, 2016; GREVIO Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), 2019:67-72).

## **Italy**

Article 18-bis of Legislative decree No. 286/98 provides that a residence permit of one year can be issued for humanitarian reasons in case law-enforcement authorities or social services verify a situation of violence against a foreign woman, threatening her safety. In theory, the residence permit can be issued only in cases of serious and repeated domestic abuse and provided the victim faces a "real and present danger" to her integrity. However, in the case of psychological or economic domestic



abuse, the authorities often fail to acknowledge as qualifying high-risk situations. Women who separate from a violent partner have even more difficulties obtaining a residence permit because of the perfunctory assumption that the separation is enough to put an end to the risk of violence. In case of losing the residence permit due to the departure from Italy for a period over six months (also, in case of residence permits lasting more than two years, for a period that exceeds half the duration of the residence permit), it can be reverted where such a departure is attributable to "serious reasons," in pursuance of the applicable regulation; nevertheless, forced marriage is not mentioned as qualifying as a serious reason, nor is it recognized in practice as such (paragraph 4 of Article 59) (GREVIO Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), 2019:79-80).

## **Spain**

Both Article 31a of the Organic Law 4/2000 on the Rights and Freedom of Foreigners in Spain and their Social Integration (LOEX), amended by Organic Law 10/2011 as well the corresponding Article 133 of Royal Decree 557/2011 (RELOEX) include provisions that are in full compliance with the requirements of Article 59 of the Istanbul Convention. In effect, women who derive their residence status from their spouses or partners as well as those of irregular immigration situation can turn to the authorities for protection, for example, by requesting a protection order, and will, if granted or otherwise recognized as a victim of intimate partner violence under Organic Law 1/2004, be given leave to remain in Spain. Although the authorities can grant five-year temporary residence permits for migrant women victims of intimate partner violence, a protection order, an official document from the prosecutor, or a conviction of the perpetrator is required. On the other hand, Article 59bis of the LOEX and Articles 140-146 of the RELOEX allow women victims of forced marriage to obtain a temporary residence and work permit if they are recognized as victims of trafficking so to be forced in arranged marriages.

While the overall number of applications is still rising and the proportion of permits granted remains significant, the prevalence rates of partner violence against women of non-Spanish origin are high, and many of these women will have derived their residence permit from the abuser. In that view, concerns have been raised regarding the uncertainty that irregular migrant women face when reporting partner violence and subsequently requesting a protection order. The fear that the protection order will be rejected contributes to a reluctance by many to take such a step. Because where protection orders are denied, a deportation order will follow (EIGE, 2016).

## **G. Gender-based Asylum Claims**

Regarding asylum procedures, the Istanbul Convention requires states parties to ensure that gender-based violence may be recognized as a form of persecution within the meaning of the 1951 Refugee Convention (Article 60, paragraph 1). It also requires Member states to secure that the grounds for asylum listed in the 1951 Refugee Convention are interpreted as gender-sensitive (Article 60, paragraph 2).

### **France**

The GREVIO experts' team welcomed the measures taken in 2015 to ensure that procedures followed by the competent asylum authorities – namely the OFII (Office for Immigration and Integration), which grants decent material conditions of reception to asylum applicants and the French Office for the Protection of Refugees and Stateless Persons (OFPRA), which determines refugee status – as gender-sensitive. The asylum reform in 2015 required OFPRA under Article 723-3 of CESEDA, to define specific examination procedures that are considered necessary for the exercise of the rights of an applicant on the grounds of his or her particular situation or vulnerabilities, in particular those related to violence against women. The 2015 reform also provided the possibility for all the female asylum seekers, to be interviewed by OFPRA individually, without their family members being present, and to be assisted by a third party (a lawyer or an accredited representative from an authorized association) of her choice during the interview. In addition, Article L723-6, paragraph 5, of the CESEDA provided the possibility of being interviewed by an official and an interpreter of the applicant's preferred sex.

However, OFPRA – based on the wording of CESEDA Article L711-2 – tends to grant the refugee status based on gender-related persecution with limitation to the grounds of “membership of a certain social group”, without a gender-sensitive interpretation of other grounds of persecution based on race, religion, nationality, political opinion, forced marriage or female genital mutilation risks. Serious vulnerabilities may therefore be poorly detected, and the authorities do not necessarily take into account all the persecutions that migrant women may face (GREVIO Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO),2019:71-74).

### **Italy**

The right to asylum is formally recognized under Article 7, paragraph 2a, of the Legislative Decree No. 251/2007, which refers to “acts of physical or psychological violence including sexual violence”, and under Article 8, paragraph 1d,

referring to “acts directed against a particular social group” for the purposes of qualifying acts of persecution. Moreover, the legislative Decree No. 18/2014 explicitly acknowledges the relevance of gender to substantiate asylum claims and recognizes genital mutilation as grounds for recognizing refugee status. Since November 2018, foreign victims facing gender-based violence could receive humanitarian protection status under Article 5, paragraph 5, item 6, of the Consolidated Act on Immigration, in case they could not be entitled to refugee status and subsidiary protection status. Under this form of protection, police headquarters (questure) could issue a residence permit for foreign citizens seeking asylum who were deemed not to qualify for refugee status under the terms of the 1951 UN Refugee Convention but still required protection. From a procedural point of view, the legislation further provides for the prioritization of cases involving people with specific needs, including survivors of gender-based violence, and for women seeking asylum to be interviewed, as much as possible, by female interviewers and interpreters.

Nevertheless, the figures provided in state reports show a high rejection rate for women’s asylum claims, and of those who receive protection, the majority gain only humanitarian or subsidiary protection rather than refugee status. While the authorities have adopted guidelines for the standardization of identification and the referral of potential trafficking victims that are seeking asylum, similar comprehensive guidelines have not been issued for gender-based violence survivors. Due to the lack of a systematic and co-ordinated identification process, concerns have been raised that gender-based violence-related claims may not emerge during the refugee status determination process (GREVIO Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), 2019:80-82).

## **Spain**

The right to asylum is firmly established both in Article 13.4 of the Spanish Constitution and in Law 12/2009 regulating the Right to Asylum and Subsidiary Protection. Additionally, Articles 3 and 7 of the Asylum Law specifically recognize persecution on the grounds of gender and sexual orientation. To continue with, Article 6 of the Asylum law specifies that acts of persecution may include acts of physical, psychological and sexual violence. Furthermore, Article 46 of the Asylum Law sets out special procedural guarantees and treatment of persons with specific needs, including victims of physical, psychological, sexual violence, and trafficking survivors. Nevertheless, the absence of an implementing decree has resulted in the application of different procedures based on the entry point. At border entry points, such as international airports, asylum applications are subject to an accelerated procedure concluded within four days with the possibility of an administrative appeal. For arrivals at sea, the ordinary asylum procedure applies, and applications may also

be lodged after the initial 72-hour clearing period in detention-like conditions in police facilities. Practitioners in this field have shared their concern that such accelerated procedures are carried out in a manner that effectively prevents women from disclosing experiences of violence. Moreover, the detention-like conditions do not create an environment of trust and support that is necessary for sharing sensitive information. In this context, crucial information is missed, and women who have suffered severe gender-based violence such as genital mutilation are incredibly reluctant to disclose it, even when they know that the latter can represent grounds for seeking asylum (GREVIO Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), 2020:72-74).

## **Chapter 6: Protection & Support Measures**

Special protection needs to be offered to women in the aftermath of abusive relationships, and perpetrators must be closely monitored to counteract the potential for violent recidivism against women. In fact, one in six women who had been abused by their previous partner experienced violence after their break up or after their marriage dissolution. The Istanbul Convention foresees the setting up of both general and specialized support services (Evidence for Action, 2020; WHO, 2021). Article 20 of the Convention clarifies that such services should include ‘legal and psychological counseling, financial assistance, housing, education, and training in finding employment. However, not all Member States have established universal, free of charge victim support services. In particular, nineteen European Member States, including France, Italy, and Spain, have both general and specialized support services in place.

### **6.1. Shelters**

Accommodation (Article 23, Istanbul Convention) is one of the most vital and common forms of assistance for domestic violence victims and their children. European instruments call for one space or family space in a shelter per 7,500 to 10,000 people. In industrialized countries, women’s shelters provide support to domestic violence victims, usually offering a 24-hour hotline, psychosocial support groups, basic child-care, and legal services. Nevertheless, given that shelters are expensive, NGOs in developing countries are hard-pressed to provide shelter for victims and focus instead on providing legal advice and psychosocial support (UNICEF Office of Research - Innocenti, 2019:17-18).

#### **France**

The latest activity report of the leading network of specialist organizations, the National Network on Women Solidarity (FNSF), indicated that in 2017 there were 2,713 places available for accommodation in specialized facilities. For the same period, the state report submitted to the GREVIO experts’ team provided a total of “4,875 places for general and adapted accommodation, including 1,789 new places created since 2014 to better meet the needs of the public. Given the feedback from NGOs regarding the new places created within generalist centers, concerns had been raised about the conditions under which victims find themselves in non-specialist and mixed structures, where they may be exposed to greater risks of violence. In this context, additional questions can be raised regarding the situation of victims, who, for lack of options other than accommodation in such facilities where their safety is not ensured, find themselves spending the night without shelter. Partial data provided by several services indicate that even the largest municipalities have only a symbolic

number of dedicated places. Due to the lack of specialist services, domestic violence victims with specific needs, such as women living in rural areas, women with disabilities, foreign women, asylum seekers, and children, have currently even more limited access to adequate accommodation.

Although not providing some form of accommodation, there are also 120-day help centers in 100 departments and 200 support and counseling centers, mainly run by NGO networks, which provide legal information, guidance, and support to women victims in their dealings with law enforcement agencies, judicial/medical/social services and in their professional undertakings. It was demonstrated, however, that 71% of women were unaware of existing services (Tackling violence against women and domestic violence in Europe The added value of the Istanbul Convention and remaining challenges Policy Department for Citizens' Rights and Constitutional Affairs Directorate-General for Internal Policies PE, 2020:84-87).

## **Italy**

Following the reform enacted by Constitutional Law No. 3/2001, the provision of general support services, particularly social and health services, is characterized by elevated levels of local autonomy. General services are more widely available in the northern and central regions of the country and tend to be dispersed in the south and the islands. Furthermore, several women's NGOs report that insufficient training often leads to staff in general services harboring a cultural attitude that questions victims' credibility and exposes them to secondary victimization. This has a severe impact on victims with certain vulnerabilities, such as women with disabilities, who are at higher risk of being prejudiced and treated with negligence by the unskilled staff when approaching support services. The evaluation of the GREVIO experts' team also identified a tendency of the general health services that operate according to the general guidelines for emergency wards (known as the Pink Code), to over-rely on the readiness and to pressure women into filing a criminal complaint. A victimized woman who does not file a complaint is therefore not deemed credible and is seen as insufficiently "deserving" of help (GREVIO Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), 2019:47-49).

## **Spain**

Article 19 of the Organic Law 1/2004 sets out extensive obligations for the autonomous communities to provide integrated social assistance for intimate partner violence victims— through general and specialist support services. Nowadays, there are some shelters, albeit few, that are locally or privately run. A difference is made between crisis centers, which provide up to 15 days of accommodation and assistance

in a situation of immediate need, and shelter houses, which offer medium-to-long-term accommodation, psychological support and legal assistance (up to one year) in facilities with specialist staff. All autonomous communities offer at least one crisis center and one shelter house, but the number of places per capita differs strongly from one to another. In 2017, there were a total of 1.689 places available in shelter houses, 82 of which clearly fall short of the per capita ratio of one family place per 10.000 head of population as required by the Istanbul Convention. The situation is even worse for women above the age of 65, those of foreign origin, others with disabilities, and girls. Moreover, the practice of obliging women to file a police report in some regions in terms of admitting victims to shelters creates feelings of discouragement to seek help because there is no anonymity (GREVIO Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), 2020:41-45).

## **6.2. Helplines**

The Istanbul Convention (Article 24) requires the establishment of nationwide round-the-clock (24/7) free-of-charge helplines for domestic violence victims, maintaining confidentially or even anonymity. According to the mapping carried by a 2020 study, all the EU countries except Luxembourg and Slovenia have helplines in place available 24/7. However, the helplines may not be specialized for domestic abuse victims.

### **France**

The main helpline for the support of domestic violence victims is ('3919') "Violences Femmes Info," created and managed by the FNSF since 1992. It provides victims, anonymously and in several languages, with information about their rights and advice on the support services available to them. The ('3919') helpline even signed an agreement with the child protection helpline ('119'), reflecting that way the awareness that the protection of women victims cannot be carried out in isolation from that of child victims/witnesses of such violence. The main issue is that the main helpline does not operate 24/7, and callers are redirected to existing emergency numbers, which, in GREVIO's view, do not meet the criteria set out in the Istanbul Convention. On the other hand, some specialized helplines such as that for intimate partner violence for the French-speaking population: Ecoute violences conjugales, ('0800 30 03'), are available 24/7, and the 'service-public.fr' platform offers support 24/7 in the form of a chat with specially trained law enforcement officials.

In addition, the "SOS ViolsFemmes informations" telephone line ('0 800 05 95 95 95') managed by the NGOs Feminist Group Against Rape, offers a free and anonymous service on sexual violence. Other helplines run by NGOs offer support

services to gender-based violence victims with specific vulnerabilities, such as women with disabilities (“Ecoute Violences Femmes Handicapées”), or respond to requests for emergency accommodation (‘115’, the so-called “SAMU social” emergency telephone platform). Following protective initiatives that were implemented by other states (e.g., Australia), a national telephone helpline, ‘Do not Hit’ was launched for perpetrators, the first of its kind in France with male volunteers who are trained to help men and refer them to available services, so to re-evaluate their role in the family and society (GREVIO Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), 2019:46).

## **Italy**

Since 2006, the authorities offer a public-service telephone number (‘1522’) for victims of gender-based violence. Following the entry into force of Law No. 38/2009, the helpline specifically addresses victims of stalking as well. The service is run by the NGO “Telefono Rosa” and can be accessed free of charge 24/7. The helpline is available in Italian, English, French, Spanish, and Arabic and provides information concerning the available general and specialist support services. Although the helpline receives annual state support of approximately 615.000 euros, women’s NGOs running specialist services report that co-ordination between the helpline and anti-violence centers could be further improved to ensure all victims are properly referred and receive the required support (GREVIO Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), 2019:52-53).

## **Spain**

The national telephone helpline (‘016’) was set up in 2007, offering support and counseling, regarding intimate partner violence. It operates 24/7, ensures full anonymity and confidentiality, and is available in 52 languages. Access for callers with disabilities is ensured through visual interpretation services, textphone and an online chat forum (‘www.telesor.es’). The service provides free information on resources and rights, social services, financial assistance, shelter, and legal advice (Tackling violence against women and domestic violence in Europe The added value of the Istanbul Convention and remaining challenges Policy Department for Citizens’ Rights and Constitutional Affairs Directorate-General for Internal Policies PE, 2020:87-95). All the existing regional helplines seem to be linked up with the national helpline ‘016’, and calls made by minors are referred to the ANAR Helpline for Children and Adolescents, (‘900 202 010’). ATENPRO is another helpline that was created in 2005 to support intimate partner violence victims 24 hours a day (EIGE, 2016). According to the latest reports, the highest number of active users of ATENPRO was registered during 2020, with almost 14.5 thousand active users (Statista, 2021).



### **6.3. Rape crisis or sexual violence referral centers**

Considering that sexual violence victims require dedicated services and specific responses, the Istanbul Convention specifically requires setting up specialized services in the form of rape crisis or sexual violence referral centers. The centers must provide medical and forensic examination, trauma support and counseling for victims whether or not the victim has filed a complaint (Article 25). Additionally, such centers should ideally be available in hospitals per every 200.000 inhabitants, with sufficient geographical spread in rural areas and cities (Tackling violence against women and domestic violence in Europe The added value of the Istanbul Convention and remaining challenges Policy Department for Citizens' Rights and Constitutional Affairs Directorate-General for Internal Policies PE, 2020:161).

#### **France**

Victims of rape and sexual violence are referred to the forensic units located in hospitals (UMJs - Unité Médico Judiciaire), where a medical examination allows collecting evidence and detecting sexually transmitted diseases. However, victims' access to UMJs is severely restricted due to the absence of UMJs in some departments and the prior requirement to file a complaint. Although there are some pilot projects that do not require the victim to file a report before conducting a forensic examination, such as the Centre d'Accueil d'urgence des victimes d'agressions (CAUVA) of the University Hospital Centre (CHU) of Bordeaux and the Centre d'accueil spécialisé pour les agressions (CASA) de Rouen or the Memorial Hospital Centre of Saint Lô, they are limited in number given the population and the size of the French territory (GREVIO Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), 2019:47).

#### **Italy**

In Milan, the Soccorso Violenza Sessuale e Domestica (Sexual and Domestic Violence Aid - SVSeD) operates a public antiviolenza service placed at the emergency department of obstetrics and gynecology of the Scientific Institute for Research, Hospitalization and Healthcare (IRCCS), in Policlinico Hospital. The SVSeD was established in 1996 and offers health care, social, psychological, and legal support to victims of sexual abuse and domestic violence 24 hours every day of the year. The center complies with the required risk assessment standards, respecting the victim's informed consent, and confidentiality. Another such center is reported to operate at the Sant'Anna hospital in Turin. Moreover, all accident and emergency services in major Italian hospitals have the necessary facilities, equipment and staff prepared to receive victims of sexual assault. However, access to effective treatment

remains problematic in smaller hospitals that lack specialist staffing, with victims being directed to the local antiviolence centers with which the hospitals co-operate (Barbara et al., 2020).

## **Spain**

Sexual violence referral and rape crisis centers exist mainly in provincial capitals, and may be offered in hospital settings or by specialist services such as the CIMASCAM (Centro de Atención Integral a Mujeres Víctimas de Violencia Sexual de la Comunidad de Madrid) and AMUVI in Andalusia. However, their numbers are not nearly sufficient to ensure the provision of medical and forensic examination, trauma support, and counseling of victims throughout the country. Of the 17 autonomous communities, only seven report the existence of a specialist service for victims of sexual assault and rape, leaving large parts and, in particular rural areas, under-served. These disparities seem to be linked to differences in regional laws and policies, including whether or not sexual violence is covered by local legislation (GREVIO Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), 2020:46-47).

## **6.4. Protection and support of Child Witnesses**

Article 26 of the Istanbul Convention requires that the provision of protection and support services to victims of violence take account of the rights and needs of child witnesses and include age-appropriate psychosocial counseling. Nevertheless, child witnesses' access to protection and support services is mostly dependent on the ability of the professionals concerned, particularly those involved in child protection, to recognize the violence.

## **France**

The Paris Institute of Victimology is one of the few institutions providing care for the psycho-traumatic consequences of domestic violence to child victims, often with long waiting times of up to months. Although the authorities have developed guidelines on the impact of domestic violence on children, the generalist structures such as the centers offering medical, psychological, and pedagogical ambulatory care (CMPP) remain insufficiently equipped to identify child witnesses/victims of violence and to offer them services addressing specifically the consequences of the violence to which they have been exposed (GREVIO Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), 2019:48). High-profile cases, such as the case of Association Innocence en Danger v. France and Association

Enfance et Partage v. France, as it is analyzed below, epitomize the failure of the authorities to protect children victims/ witnesses of domestic abuse.

### **Case-law**

Association Innocence en Danger v. France and Association Enfance et Partage v. France (4 June 2020)

This case concerned the death in 2009 of an eight-year-old girl due to abuse by her parents. Two French child protection associations lodged the applications. Both associations complained in particular that the French authorities had failed to protect the child from parental abuse. The first applicant also complained about the need to establish the existence of gross negligence to engage the State's liability for the malfunctioning of the justice system. The Court determined that there had been a violation of Article 3 (prohibition of torture and inhuman or degrading treatment), finding that the system had failed to protect the child from severe abuse by her parents, leading to her death. The Court further held that the report of suspected ill-treatment sent by a head-teacher in 2008 had triggered the State's positive obligation to carry out investigations. It concluded that the measures taken by the authorities between the time of that report and the child's death had not been sufficient to protect the child from severe abuse by her parents (ECHR.coe.int., 2021).

### **Italy**

Although the protection and support to child victims and child witnesses of intra-family violence constitute a separate goal (Priority area 2.4) of the ongoing NAP on violence against women, large geographical disparities exist in the response of social services, and in funding. The decisive point of the problem lies in the tendency of social services to minimize violence, overlook the danger it poses to the safety and well-being of the mother and the child, and blame victims for the problematic relationship between the violent father and the child. However, one of the most important steps taken towards the protection of child victims, was the adoption of Law No. 4/2018 that reinforced the support for children who become orphans due to the killing of one of their parents at the hands of the other. Protection measures introduced by the Law No. 4/2018 include, among other things, the disbursement of scholarships and the financing of training, counseling services to help find employment, and increasing funds for foster families during the 2019–21 period (Art. 8(1)(a) & 8(2) (www.loc.gov, 2019).

## Spain

Since the adoption of Organic Law 8/2015, children are included in the scope of holistic support and protection offered if they are underage or under the guardianship or custody of women who are victims of intimate partner violence. A recent change was also made to Article 156 of the Civil Code, removing the requirement of both parents' consent for psychological counseling and support for children. Concerns were, however, shared that in practice, abusive parents still need to be informed of any counseling offered to their children, leaving women and the children themselves in fear of retaliation if they do opt for counseling. Although these psychological services are, in principle, available both for children residing within and outside of domestic violence shelters, the level of provision is not nearly sufficient to meet the demand especially in rural areas, mainly due to regional discrepancies in funding (GREVIO Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), 2020:47-48).

### 6.5. Batterer Interventions (BIPs)

Efforts to prevent the perpetuation of domestic violence also include working with perpetrators. Some of these efforts have been developed into formal programs for batterers to hold them responsible and alter their behavior to end their use of violence. Victim–offender mediation is an instrument of restorative justice, a new paradigm of justice that is considered to promote conflict resolution through responsabilization, reparation, and reconciliation instead of punishment. The use of victim-offender mediation in penal matters is seen as a participatory option complementary or alternative to traditional criminal procedure. It may be provided only for misdemeanors, requiring that the offender has agreed not to commit any further domestic violence, participate in a special counseling/ therapy program, and undertake reparation to the victim, where possible. Although the Istanbul Convention demands signatory states prohibit mandatory alternative conflict resolution, including mediation and conciliation (Article 48), most European countries do have experience with (voluntary) forms of restorative justice interventions for domestic violence cases. The prohibition of alternative conflict resolution is based on the notion that victims could never enter the mediation process on an equal basis with the perpetrator, because the perpetrator would always be more powerful and dominant, and the State would be responsible for avoiding the re-privatization of domestic violence (Drost, Haller and Hofinger, 2015; Mannozi, 2013).

## France

Under the French law, mediation is excluded in domestic violence cases unless the victim expressly requests it and cannot occur if further violence is committed. In addition, a circular of 4 October 2010 established the principle of the presumption of non-consent to criminal mediation in the event of a referral to the family court for a protection order. Legal practitioners have reported, however, that, in practice, the victim is rarely the initiator of a mediation request because the magistrates usually propose it. In such circumstances, the risk is that a victim's acceptance of mediation may conceal her inability or reluctance to refuse for fear of future violence or retaliation by the perpetrator. The statutory failure to identify the risk factors regarding mediation is manifested through Article 373-2-10 of the Civil Code, under which a family court judge may not oblige parents to meet with a mediator in a situation of domestic violence but may propose it to them. Additionally, under Article 255-1° of the Civil Code, the family court judge can order the spouses to meet with a mediator in order to explain to them the purpose and procedure of the mediation measure, with no exception foreseen in the event of violence within the couple (Tackling violence against women and domestic violence in Europe The added value of the Istanbul Convention and remaining challenges Policy Department for Citizens' Rights and Constitutional Affairs Directorate-General for Internal Policies PE, 2020:36).

The French legislature further introduced the concept of restorative justice in a general way and specified that it responds to the needs of both the victim and the offender, adopting a new criminal law (Law n° 2014–896), also known as 'Taubira Law' (Article 10-1). Nevertheless, mediation can only be applied to adults and mostly in the pre-sentencing phase, and it is mainly recommended for violent offenses, such as physical and moral abuse. There are 22 institutions running such offender programs within the prison environment, as required by the Taubira Law. However, there are several obstacles to the implementation of this restorative justice system. In practice, the programs vary throughout the country in terms of approach, duration, and type of participants. For example, some programs last only three or four days, which is likely not to be enough to change the behavior of perpetrators. Moreover, the use of this type of mechanism is not systematic and is not always structured within an inter-institutional response involving victim-protection services (GREVIO Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), 2019:36-37).

## Italy

According to evidence imparted by the GREVIO experts' team, mediation processes are de facto enforced upon victims during child custody processes, running

counter to the requirement of Article 48 of the Istanbul Convention. This finding is backed by recent research in this area showing that professionals usually fail to identify domestic violence and label it as conflict. In effect, the "parental couple" is often dissociated from the "marital couple," and mediation is therefore applied, as a rule, ignoring the violence and assuming that it is not a parenting issue. The leading national network implementing perpetrator programs is Relive. Relive numbers 24 member organizations, concentrated primarily on northern and central Italy. Relive is considered a bright example of such a network, solidly anchored to internationally recognized best practices and mindful of the requirements of the Istanbul Convention. Several other perpetrator programs are run by entities not affiliated to Relive. In Emilia-Romagna, such programs include the Centers LDV or 'Let us break free from violence' based on a public-private partnership, financed by the healthcare system and following the operating standards promoted by Relive. However, there are some private entities that manage BIPs and do not necessarily follow a harmonized approach in line with the Istanbul Convention.

Given the lack of stringent standards endorsed by the authorities that apply to these programs, Law No. 119/2013 introduced several legislative changes. One such change sets forth law-enforcement officials' duty to issue a warning for acts of domestic violence to inform the perpetrator about the opportunity to attend a program. It would appear, however, that the limited role that statutory agencies play in promoting perpetrator programs transpires from data provided in Relive's shadow report. In particular, most men attending their programs (approximately 45%) are self-referred. A smaller proportion (39%) of perpetrators joining the programs do so following a non-mandatory referral by the judicial system, but most of them only after being sentenced for gender-based violence and through the collaboration of probation services (GREVIO Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), 2019:41-42).

## **Spain**

Article 42 of Organic Law 1/2004 established BIPs as an essential intervention both inside and outside of prisons, providing the possibility of the suspension or substitution of the penalty when the jail penalty is under two years. Article 44, paragraph 5, of Organic Law 1/2004 expressly prohibits mediation in cases of intimate partner violence that come before specialist courts. In this context, the GREVIO experts' team points to the risk that mediation in family law may be proposed in divorce proceedings in cases where women did not previously disclose abusive experiences or in cases where the mediators disregarded any events before the mediation process.

The voluntary in-prison programs were initiated in the early 2000s and were harmonized to become the program called “PRIA” in 2010. Until 2017, “PRIA” was implemented in 49 custodial centers. Moreover, the voluntary custodial program PICOVI is dedicated to people convicted of violent behavior, including domestic violence offenders. In addition to programs in custodial settings, the court-mandated 10-month perpetrator program PRIA-MA was developed in 2010 as a form of alternative sentencing. Nevertheless, the GREVIO monitoring body indicated through a detailed report, that less than one-third of perpetrators sentenced to an alternative to prison is ordered by a judge to attend PRIA-MA. In contrast, the vast majority are sentenced to some form of community service or are dealt with by urgent proceedings and terminate with plea bargains (GREVIO Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), 2020:61-64). Outside of the prison, few community-based batterer programs exist that would allow voluntary participation, but they seem to receive little funding. Finally, very few of them seem to incorporate the notion of ensuring the safety of the victims as a primary concern, nor do they seem to be implemented in close coordination with specialist women’s support services, as required by Article 16, paragraph 3, of the Istanbul Convention.

Overall, although restorative justice may have been provided in the rigid law of European countries and became part of their public law discourse, implementation is often hampered. The enforcement of penal mediation is often hindered by offenders’ own unwillingness to co-operate. The need for mutual agreement is not a vain argument since about 40% of protagonists turn down mediation. Alongside victims’ frequent unwillingness to report, the interruption of mediation can also be attributed to the mediator’s attitude, who naturally focuses on putting things right for the system rather than the individual. Several studies have summarized the results of BIPs and conclude that batterers who do not complete the programs present a higher likelihood of recidivism than those who do complete it. At the same time, research also shows that completing treatment is usually associated with only minimal decreases in relapse. In effect, some of these intervention programs have drop-out rates of around 50%, and many men showing high levels of resistance to change (Faget, 2021; Ferrer-Perez and Bosch-Fiol, 2016).

## **Chapter 7: Interventions to Domestic Violence**

Along with victim safety and offender accountability, preventing risk factors that nurture violence is a core element of a human rights approach to domestic abuse. According to the Istanbul Convention, effective prevention of domestic violence requires promoting "changes in the social and cultural patterns of behavior to eradicate prejudices, customs, traditions and other harmful practices based on the idea of women's subordination or stereotyped roles for women and men.

### **7.1. Prevention Strategies**

#### **A. Promotion of Gender Equality through Education**

First and foremost, establishing examples of healthy, equal, and loving relationships can be achieved through positive educational strategies. Attitudes and behavioral patterns are shaped very early in life. Educational establishments have therefore, an essential role in promoting human rights and equality between women and men. Article 14 of the Istanbul Convention requires the design of teaching material that promotes gender equality, non-stereotyped gender roles, mutual respect, positive conflict resolution strategies in interpersonal relationships, and the right to personal integrity (UNICEF Office of Research - Innocenti, 2019:17-18). But despite the efforts made by most European Member states, the reality within the schools remains disappointing. Examining the practices of the Member States of concern, only Spain, under Organic Act 8/2013 for the Improvement of the Quality of Education, established a common education framework in line with the Article 14 of the Istanbul Convention. Nevertheless, in GREVIO's view, its potential has not become part of the formal curricula (Article 6).

Teachers play a crucial role in identifying children who may be victims of violence. However, not all educators receive initial and in-service training concerning gender-sensitive matters. In that respect, the Spanish Organic Act 1/2004 (Article 7c) established the legal obligation of education authorities to ensure that teaching staff receive adequate training. In the case of Italy, there is no mandatory training for teachers on the topics covered by Article 14 of the Istanbul Convention. However, one of the aims of the National Strategic Plan on Male Violence against Women (2017-2020) is to introduce compulsory initial and in-service training for teachers on equal opportunities and on the prevention of gender-based violence, in cooperation with specialist women's NGOs. In France, the sensitivity to equality issues varies greatly because the training of the educational staff on these subjects remains not compulsory.



When it comes to sex education, it is generally not part of the formal curricula. Even when touched upon during other courses, the focus is again highly oriented towards health information, such as contraception or the prevention of sexually transmitted infections. Discussion about issues of consent, self-esteem, mutual respect, or prejudices that cause discrimination and violence are generally omitted. Concerns have been shared that insufficient or even absent sexual education in school causes young people to turn to the content of sexual nature available online and elsewhere, which, in many instances, perpetuates sexist behavior and gender stereotypes. In the case of France, sexuality education for students has been a legal obligation under the French Law No. 2001-588, which provides for at least three annual sessions per homogeneous age group. Likewise, the Italian Ministry of Health and the Italian Ministry of Education have been working since 2015 on the “National Guidelines for Education to Affectivity, Sexuality and Reproductive Health in Schools”, following the WHO Guidelines on Sexual Education. Nevertheless, strong opposition from anti-gender movements, relayed by local authorities and media, have created an intimidatory environment pressuring schools into bringing many such projects to a halt by raising fears among parents about alleged attempts to introduce their children to the “theory of gender”. In the case of Spain, a reform of sexual education is currently underway.

In the context of higher education the situation is not better, since the issue of violence against women is addressed only in a limited number of graduate university courses, as well as in certain specialist master’s degrees. A positive step was taken in 2016 by the French Ministry of Culture that set up a network of "persons responsible for the prevention of discrimination", in each higher education school, providing training on how to prevent and handle sexual and gender-based violence and harassment (GREVIO Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), 2020:30-31).

## **B. Community Mobilization through Awareness Campaigns**

Awareness campaigns can also help reverse social attitudes that tolerate violence against women by questioning patterns of violent behavior accepted by families and societies. For instance, media campaigns explicitly speaking to men about the need to take responsibility and promoting programs that assist men to overcome abusive behavior could help individuals recognize, accept, and stop the violence. The media could further contribute by acting as identification and education mechanisms by informing people about the magnitude of the problem, its forms, and women's rights. In addition, public awareness campaigns to encourage witnesses to intervene could significantly affect reports and prosecution (EIGE, 2020:29-32). Especially during the Covid-19 pandemic, awareness campaigns about available services (e.g., hotlines, telehealth, respite services, shelters, rape crisis centers) must be made known to the general public so to raise the visibility of the crisis, to show the

victims that support is still available and inform the public that the restrictions for abusers still apply (Usher et al., 2020:549-551). Responding to the urgent UN call, many governments and non-profit organizations have already implemented noteworthy strategic plans to eliminate domestic abuse during the lockdown periods. However, a thorough examination of the official data shows that effective intervention programs have been widely implemented only in countries with high economic statuses (Ertan et al., 2020:3-4).

A bright campaign initiative was launched by pharmacies in France promoting emergency warning systems to help persons indicate that they are at risk by introducing code words to alert the staff. Women experiencing domestic violence can visit the nearest pharmacy and requesting a Mask-19, the staff will ask for personal information and alert the authorities. Mask-19 has now been adopted across Spain, as well as in Germany, Italy, Greece, and Norway (BBC News, 2020; Gulland, 2020). Additionally, a French feminist organization used the favored French bread to fight against domestic abuse. The "NousToutes" ("MeToo" in French) collective initiated an awareness campaign called "Baguettes against domestic violence," with approximately 1,000 participatory bakeries across France. The loaves' bags provide information on hotlines to call and educational messages to help identify domestic abuse. The choice of the bread bag as communication means is far from frivolous. According to France's Bread Observatory, the French eat 10 billion baguettes every year. Bakeries may be some of the most easy-to-reach places for vulnerable women, as even the most isolated of them may typically leave the house to buy their morning bread (News, ABC, 2021).

Besides the Mask-19 campaign, ordering a pizza can save a life of a domestic violence victim in Italy. More particularly, the charity ActionAid launched a campaign called "Call4Margherita" to raise awareness about the lack of support for women at risk of domestic abuse. The concept was inspired by a 35-year-old woman who called the police in August 2020 and feigned ordering a pizza to save her life from her violent partner. The agent who received the call understood the urgent request for help, sent officers to the address provided for the "pizza delivery," and the abuser was arrested. "Margherita" is the symbolic name of the survivor who pretended to make the pizza order and represents all the women who are unable to seek help. However, it is also the name of the pizza which will become a symbol of the fight against domestic violence. Various pizzerias in Milan, Bologna, Rome, and Naples have collaborated with ActionAid in the "Call4Margherita" campaign, with the pizzas being delivered in a red box made especially for the campaign (Hughes, 2020).

### **C. Women's Economic Empowerment**

Women's economic vulnerability is a crucial factor of their powerlessness and voicelessness within intimate relationships. Women's access to and control over economic resources is considered necessary to attain power and autonomy within the domestic setting. Researchers around the globe have demonstrated that women's ability to control income enhances their empowerment through increased self-confidence, greater power in marital relationships, and increased decision-making in the household. Moreover, women use the resources more efficiently than men, such as devoting a higher proportion of income to family well-being, especially to children's nutrition. When it comes to productive assets, women's land ownership is a crucial determinant of their well-being, especially in agrarian societies. Additionally, women's access to social support from the state, kin network and women's organizations also enhances their bargaining power. In the long run, control over productive assets, social support, and control over income are the critical factors for women's participation in political activities. Women's empowerment could be therefore achieved by enacting anti-discrimination laws, reducing socio-economic disparities, and altering divorce, property, and estate regulations (GREVIO Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), 2020:36-37).

In effect, several initiatives were set up by the European Member States to support domestic violence survivors financially and to adopt inclusive employment policies for victims of partner violence. More particularly, the Italian Law Decree No. 80/2015 introduced a particular leave period of three months for victims employed in the public or private sector, as well as specific categories of self-employed women. The Italian Law further allowed victims to reduce their working schedule while retaining their full pay and pension benefits. Additionally, Law No. 124/2015 enabled working women, victims of violence, to move to another Public Administration of a different Municipality. These measures aimed to grant the victim the necessary time to organize her recovery from the violence without renouncing her employment. Nevertheless, the data provided by the authorities indicate that fewer than 100 women per year benefit from special paid leave (UN Special Rapporteur on Violence against Women, its Causes and Consequences, 2018:8).

Likewise, Spain enacted specific workplace-related measures in Articles 21 and 22 of Organic Law 1/2004. These new measures allowed victims to be absent from work, change their workplace, and temporarily suspend employment with reserve of position or terminating their employment contracts without any penalties. By enabling victims to adapt their professional obligations to their situation, the authorities show that they foster the importance of flexible employment arrangements for working women breaking free from abusive relationships. Additionally, under the

National Adaptation Plan (measure 128 of the State Pact), a new program was established to improve the social and labor market integration of unemployed women survivors and to ensure their economic independence from their perpetrators. The program included individualized support in the labor integration process, basic and professional skills training, incentives for self-employment initiatives, and incentives for businesses to employ gender-based violence survivors. Furthermore, several other measures seek to ensure women's economic empowerment, such as single payments for six months for those without a job or earnings below the minimum wage (Article 27 of Organic Act 1/2004). Nevertheless, women's access to employment-related measures and economic benefits still remains challenging (GREVIO Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), 2020:41-43).

#### **D. Gender- Sensitivity Training for Professional Personnel**

The initial and in-service training for professionals coming into contact with victims of gender-based violence is a legal obligation enshrined within regional legislation of the European Member States of concern. In particular, Article 51 of the French Law No. 2014-873 and Articles 310 & 312 of the Organic Spanish Law 5/2018 foresee compulsory training courses for professionals coming into contact with women at risk of domestic violence. Additionally, training initiatives at a national level were carried out in Italy in the framework of the European “Daphne” program, providing the S.A.R.A. (Spousal Assault Risk Assessment), S.I.L.Vi.A (Stalking Risk Assessment for Victims and Authors), “A.Vi.Cri (Attention for Victims of Crime) and Mu.T.A.Vi (Multimedia Tools Against Violence) projects on risk assessment under the coordination of the Italian Interior Ministry Department of Public Security. Nevertheless, what emerges is a picture of insufficient services provided to victims, mainly due to the incompetent training of the staff. In practice, most prosecutors, judges, and medical professionals adhere to traditional values that foster male dominance within the familial institution.

The healthcare system is considered as well-placed to identify women who have been abused and refer them to responsible services. The vast majority of women visit a health facility at some point in their lives, either to receive medical treatment for themselves or their children. However, the healthcare system has usually been unresponsive to women suffering from domestic abuse. Research illustrates that not all health professionals receive training on intimate partner violence and that a high percentage expresses reluctance to address this in a coordinated and culturally sensitive manner (U.N. Special Rapporteur on violence against women, its causes and consequences, 2018; van Gelder et al., 2020).

Except for the healthcare staff, the police are particularly well-positioned to assist domestic abuse survivors. However, very often, their prejudices, lack of training, and reluctance to intervene in domestic abuse cases hinder them from dealing effectively with such forms of violence. Only police officials assigned to the family protection brigade seem to have systematic access to continuous training on domestic violence. Judicial police officials also appear to have access to in-service training regarding care of sexual assault victims and domestic violence intervention protocols. However, the continued training of judges is left to their discretion, and the figures provided by the authorities on the number of judges who have accessed relevant training are relatively low. In addition, the absence of specific training for dealing with child victims and child witnesses of domestic violence has led to a negative impact on decisions regarding custody and visitation. Prosecutors, other civil servants, and judges seem not to consider the detrimental effects of related posttraumatic stress disorder on testifying in court. The sensitization of the judiciary to gender issues is therefore considered critical, and law schools must include relevant courses in their programs (Goicolea et al., 2013).

The peculiarities of the violent crimes committed against women within the domestic setting also require the intervention of community workers to assist and support the victims (Violence against women: an EU-wide survey Main results, 2014:51-53). Nevertheless, several women's groups report that many community workers in general support services do not possess sufficient knowledge on violence and do not apply a gendered approach. This leads to improper interventions, including in the context of custody and visitation arrangements, where they use to assimilate violence to conflict and often fail to recognize the consequences of witnessing violence on children. Shortcomings can be also observed in the training and supervision of other categories of officials dealing with domestic abuse victims, such as those in charge of receiving and processing women's asylum applications. It is, therefore, critical to train law enforcers and other professionals who come into contact with victims to better understand gender violence, to appreciate the trauma of the victim, and to take proper evidence for criminal proceedings if secondary institutional victimization is to be eliminated (G.R.E.V.I.O. Group of Experts on Action against Violence against Women and Domestic Violence (G.R.E.V.I.O.), 2020:30-35).

### **E. Leveraging 'Obligatory' Reporting as a Tool to combat Domestic Violence**

Since the protection and support of victims is firmly connected with the assessment skills of professionals to identify a risky situation, any confidentiality rules should be clarified so that professionals can report abuse without reluctance. Article 28 of the Istanbul Convention, encourages EU Member States to review their legislation and practitioner guidelines to ensure that professionals are obliged – under appropriate conditions – to inform the police when there is a real suspicion that a

woman has been subjected to violence (UNICEF Office of Research - Innocenti, 2019:10-11).

Within the French legislation, only professionals in the civil service are required to report crimes of which they become aware in the discharge of their duties. Other professionals, particularly doctors who have a private practice, are exempted from obligatory reporting. However, they may report violence without consent of the victim, if the victim is a child or in case the victim is an adult, unable to protect themselves because of their age or state of health (Article 226-14, Criminal Code) (BBC, 2020). Likewise, Articles 361 and 362 of the Italian Criminal Code require members of any public administration or public service, to report any offense they discover, provided the offense is subject to ex officio prosecution. Nevertheless, the shadow report submitted to GREVIO by AIDOS and the EndFGM network indicates that health professionals are specifically not keen on reporting cases of female genital mutilation because they deem the penalty for parents extremely severe and not in line with the best interest of the child, especially in light of the possible withdrawal of parental rights (GREVIO Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), 2019:55-56).

In the case of Spain, the Criminal Procedure Law requires those who learn of some public offense by virtue of their profession (including medical professions) to immediately report it if it were a flagrant crime (Article 262). Failure to report is liable to punishment by a fine (Article 259). Since 2007, and in compliance with Article 32 of the Organic Act 1/2004, a Common Protocol for a Healthcare Response to Gender Violence was adopted that foresees the notification of a case to the legal authority through issuing grievous bodily or psychological harm and medical reports, informing the victim about this communication and recording it on the victim's medical history file. In case of medical treatment following a sexual assault in intimate partner violence, the protocol requires healthcare personnel to immediately inform the police to request the intervention of forensic doctors. Moreover, some autonomous communities have introduced standardized screening systems for all women who seek medical help – irrespective of the reason. However, mandatory reporting seems again to constitute a barrier preventing some women from seeking medical care (GREVIO Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), 2020:48-49).

## **Conclusion - Recommendations**

Gender-based abuse continues to be a global epidemic that kills, tortures, and maims – physically, psychologically, sexually, and economically, women. It constitutes one of the most pervasive human rights violations, denying women and girls equality, security, dignity, and their inherent right to enjoy substantial freedoms. Even though most societies outlaw gender-based violence, violations against women's human rights are often tolerated under the garb of cultural norms or religious practices. Especially when the violation takes place within the home, the abuse is effectively condoned by the tacit silence and passivity displayed by the state agents and the law-enforcing machinery. The global dimensions of this violence are alarming, as highlighted by studies on the incidence and prevalence of domestic violence. Except for regional deviations in the patterns and trends of violence, no society can claim to be free of such violence (UNICEF Office of Research - Innocenti, 2019:1-2).

The failure to see the oppression of women as political results in the exclusion of sex discrimination and gender-based violence from the human rights agenda. Female inferiority runs so deep that it is still viewed as inevitable or even natural rather than seen as a politically constructed reality maintained by patriarchal interests. The physical territory of this political struggle over what constitutes women's human rights is women's bodies. The importance of control over women can be seen in the intensity of resistance to laws and social changes that control women's bodies, women's reproductive rights, and freedom of sexuality. If violence and domination are understood as a politically constructed reality, it is possible to imagine deconstructing that system and building more just interactions between the sexes (Bunch and Carrillo, 1991:10-12).

### **A. Law & Policy Reform**

Although monitoring bodies such as the GREVIO experts' team and the UN Special Rapporteur welcome the legal, protective, and prevention measures taken by the French, Italian and Spanish authorities to eliminate domestic violence, their efforts do not fully comply with the minimum standards established by the international human rights instruments. Therefore, it would be necessary to intensify efforts to advance de jure and de facto gender equality, particularly by strengthening mechanisms to ensure that normative texts and legislative amendments are subject to a preliminary assessment of their impact on equality. Additionally, it is crucial to establish more effective legal measures against economic and psychological violence and eliminate discrimination that hinders access to protection mechanisms, especially for young women, women living in rural areas, older women, and women with

disabilities. Notable improvements shall be specifically noted considering the lengthy criminal procedure, the non-respect of civil protection measures, and the inadequate pecuniary and detention sanctions against perpetrators.

Especially during the Covid-19 pandemic, States should adopt relevant measures and services, ensuring access to courts and other competent authorities entrusted with issuing protection orders for all forms of violence against women. The orders must be easily accessible and adequately adapted to the COVID-19 context, including access to e-protection orders or e-emergency orders available online and ex parte enabling the authorities to order a perpetrator to vacate the residence or prohibit the perpetrator from entering the residence or contacting the victim. To this end, authorities are invited to examine the desirability of developing shared and harmonized definitions that provide a common and unequivocal reference terminology on violence against women, following the principles and definitions of international instruments.

## **B. Enhanced Support for NGOs**

Given the magnitude of domestic violence and its consequences for individuals and society, NGOs have worked in partnership with government agencies and international organizations to provide a diversity of services, education, and awareness programs, including disseminating information concerning the civil liberties and rights women shall enjoy under the terms of international conventions and national laws. Additionally, NGOs have a fundamental role in bringing pressure on governments to ratify or withdraw their reservations to international human rights instruments. Governments should, therefore, support the efforts of NGOs to expand the network of legal aid offices to which victims can turn for assistance, and to establish more effective cooperation with them, providing more stable and sustainable funding opportunities so that there is a sufficient number of safe shelters, along with remote psychological counseling services especially in the COVID-19 context (Istanbul Convention, Article 9) (EuroMed Rights, 2020:8-12; Special Rapporteur on violence against women, its causes and consequences, 2020:21-24).

## **C. Importance of a Coordinated Response**

Even though violence against women has been on the political agenda of the European Union for a long time, to this day, there is no general EU legal instrument directly providing for the criminalization of this epidemic. Complying with the general multi-agency and comprehensive approach promoted by the Istanbul Convention, Article 18, paragraph 2, parties shall ensure that appropriate mechanisms in place provide practical cooperation among the judiciary, public prosecutors, law



enforcement agencies, local and regional authorities and NGOs. Typically, a coordinated community response (CCR), such as the Duluth Model, is a formally established system of information sharing and coordination that includes a system of networks, agreements, processes, and applied principles and connects relevant stakeholders in a unified approach to domestic violence as equally accountable. Once such a coordinated response is put into place, implementation and enforcement become a priority, requiring the cooperation and sensitization of the police and the judicial system.

All the relative actors must treat domestic violence as a public matter rather than a private one to be left to the family. Such interventions shall aim to protect women's rights as victims rather than seek to preserve the integrity of families. Negotiating common understandings among agencies lessens the negative impact of fragmented philosophies and responses on the victims of domestic violence. These understandings will eventually make central the victims' experience of violence and will allow the authorities to focus on the punishment of the perpetrator and the reparation of the survivors. To this day, however, serious deviations have been observed among the EU-Member states concerning offense definitions, criminalization, and reparation actions (GREVIO Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), 2020:39).

Overall, the States' response to cope with the Covid-19 pandemic failed to take women's specific needs into account, either in terms of protection from violence, healthcare or access to justice, due to their general lack of gender perspective. Despite any positive measures taken by the European States, the Covid-19 outbreak showed that governments did not give any priority to women's right for equal protection and that the high principles enshrined within the Istanbul Convention were neither respected nor implemented. In effect, the Covid-19 health crisis seemed to exacerbate a pre-existing public health problem by increasing the severity and frequency of domestic abuse incidents, thus demonstrating the need to adopt significant and long-term measures. Never before has a health emergency brought to the surface the close link between a crisis and the increase in violence against women and girls, not only in low-middle-income countries but across the globe. This unprecedented crisis has highlighted the limits of current preventive strategies against domestic violence and showed that still much needs to be done. This pandemic might be an opportunity to reconsider the world of tomorrow and to make greater efforts so to completely eradicate the plague of violence (Bellizzi et al., 2020; GREVIO, 2021).

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