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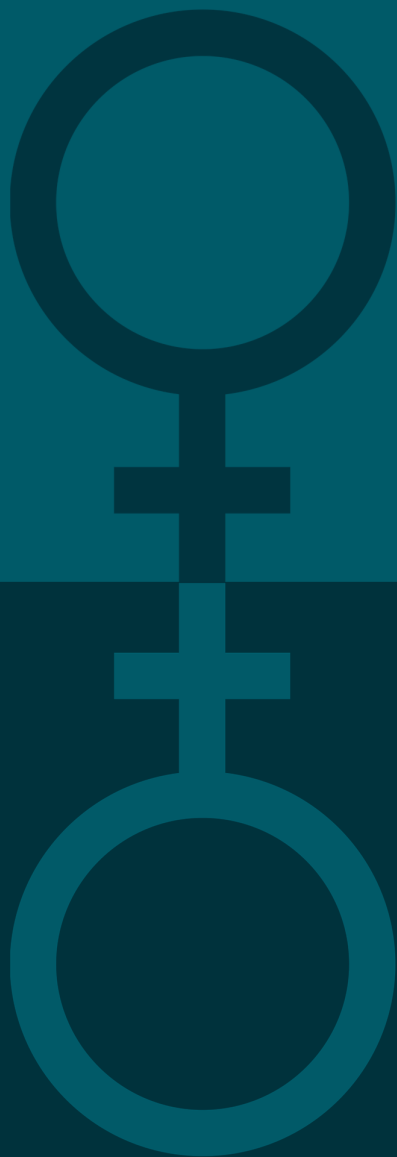
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# VIOLENCE AGAINST WOMEN

## KEY FINDINGS AND STRATEGIES TO TACKLE UNREPORTED CASES AND TO ENFORCE THE PROTECTION ORDER

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# FOREWORD

Violence against women<sup>1</sup> is a global pandemic phenomenon, which knows no social and economic boundaries and it affects women from all socio-economic backgrounds. The problem has to be addressed by all countries.

Violence against women represents a severe violation of human rights and it is rooted in women's inequality in the society. Its impact ranges from immediate to long-term multiple physical, psychological, social, economic consequences. It does not only affect the victims, but also the community and countries at large.

Violence against women can fit into several broad categories. It includes violence committed by individuals or by states. Some forms of violence committed by individuals are, for example, rape, domestic violence, sexual harassment, mob violence, honour killings and female genital mutilation. There are also forms of violence perpetrated or condoned by certain states such as war rape, forced sterilization, forced abortion, stoning and flogging.

It is difficult to estimate the full extent of violence against women, because it is still under-reported and stigmatized. It is unacceptable that many women still suffer in silence from crimes that wreck their lives, as many illegal acts often remain undisclosed.

Collaboration among stakeholders at national and international level must be strengthened and concrete strategies should be effectively put into practice in order to protect women against violence and to severely punish the perpetrators.

The purpose of this publication is to highlight the situation of violence against women in several European Union countries and to highlight common difficulties in ensuring better rights protection. Also, through this publication, a series of recommendations and strategies will be presented on how to improve the current legislative framework, as well as social and educational issues that play an important role in the fight against violence.

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<sup>1</sup> In this publication the term women is generally used for both adult women and girls.

# CHAPTER 1

## NATIONAL LEGISLATIVE FRAMEWORK ON THE PROTECTION OF WOMEN'S RIGHTS, VICTIMS OF VIOLENCE

### Section 1 Romania

The national legislative field is vast in this area, with regulations referring to various forms of violence against women: domestic violence, sexual violence, human trafficking, etc. Thus, besides the regulations contained in the Criminal Code<sup>2</sup> and the Criminal Procedure Code<sup>3</sup>, the adoption in 2003 of Law no. 217 on the prevention and combating of domestic violence is of relevance; it has been successively modified and republished, the last modification being made recently by Law no. 174/2018, which introduced the provisional protection order into the national law<sup>4</sup>. This normative act defines the forms of domestic violence, including not only physical and verbal violence, but also psychological violence, sexual, economic, social, and spiritual violence corresponding to the definitions under the international regulations (the Istanbul Convention ratified by Romania in 2016, respectively the Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing the Council Framework Decision 2001/220/JHA). At the same time, there must be mentioned both Law No. 211 of 27 May 2004 on certain measures to ensure the protection of victims of crime and Law No. 678/2001 on preventing and combating human trafficking, which regulates the rights of victims of crime, some of which are applicable only to victims of human trafficking.

In analysing the current legislation, it was found that women who are the victims of violent crimes are recognised as having a wide range of rights in judicial proceedings, as they are described in international regulations, but the application and enforcement of the rules governing these rights has many inconveniences, as it is showed below.

As far as the **right to information** is concerned, it is laid down in the domestic law, which establishes a series of obligations for the judicial body to which the victim is first presented, namely information about their rights (concerning services and organisations providing psychological counselling or any other forms of assistance to the victim, the criminal investigation body to which they may lodge a complaint, the right to legal assistance, the procedural rights of the injured party and the civil party, the means of obtaining forms of protection, including as a witness, the conditions and the procedure for granting financial compensation by the state, the right to be informed if the defendant is released in any way, the right to request financial compensation from the aggressor, etc.). This obligation of the

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<sup>2</sup> Adopted by Law No. 286/2009 published in the Official Gazette No. 510 on 24 July 2009 and entered into force on 1 February 2014.

<sup>3</sup> Adopted by Law No. 135/2010 published in the Official Gazette No. 486 on 15 July 2010 and entered into force on 1 February 2014.

<sup>4</sup> Law No. 217/2003 republished in the Official Gazette No. 205 on 24 March 2014, modified by Law No. 174/2018 published in the Official Gazette No. 618 of 18 July 2018, both available on [www.just.ro](http://www.just.ro).

authorities is respected in practice, the information being brought to the attention of the victim in a language he/she understands, in this sense being prepared a minute which is registered by the judicial body.

At the same time, the information is not presented in a synthetic manner or in a form adapted to the level of education of the victim, therefore often the victim is not able to understand his/her rights.

Regarding the **right to legal assistance and representation**, only victims of human trafficking have the right to legal assistance (in accordance with Articles 43 and 44 of Law No. 678/2001) in order to be able to exercise their rights in criminal proceedings provided by the law, in all phases of the criminal proceedings, and to uphold their claims and civil demands against those who have committed the offenses. On the other hand, Law No. 211/2004 regulates the free legal aid of the victims of certain offenses (including domestic violent crimes), but it is different from the mandatory one (which is ordered by the court in case of the victims of human trafficking and in the case of underage injured persons - Article 93 paragraph 4 Criminal Procedural Code) and is granted under restrictive conditions, according to Chapter IV of Law No. 211/2004. Free legal aid is granted to each victim throughout the trial, up to an amount equivalent to two basic gross national salaries set for the year when the victim has applied for free legal aid (therefore modest sums) and the necessary funds for granting free legal aid are ensured by the state budget, namely the budget of the Ministry of Justice. These provisions shall also apply accordingly when granting the amount necessary to enforce the judgment through which the victim is granted civil compensation.

However, on the other hand, there is no legal provision requiring, for example, the *ex officio* lawyer who assured the victim's legal assistance during the criminal prosecution phase to continue to assist him/her in the trial. This aspect is relevant because victims often need stability and perceive the change of defender in an unpleasant way. Other issues that arise in practice are related to the quality of performance of officially appointed defence counsellors, since such causes are distributed mainly to young attorneys, trainees or senior attorneys who do not always have specialised training or experience in interacting with victims. In addition, it is permissible to replace the appointed lawyer with another lawyer registered in the Bar Register for the provision of legal assistance. The victim, theoretically, has the right to request the change of the appointed lawyer, but in practice this rarely happens. On the other hand, it is the court's duty to ensure the fairness of the proceedings and to determine whether there is an effective lawyer's defence, in order to ensure equitable trial guarantees not just for the defendant, but for the victim, as well. At the same time, the court must ensure that the lawyer does not assist parties with conflicting interests in the matter (Art. 88 paragraph 4 of the Criminal Procedural Code).

Regarding the **right not to cooperate with law enforcement bodies**, it is found that this right is recognised for victims of human trafficking; if the victim does not wish to cooperate with the judicial authorities, they do not benefit from state assistance (but can benefit from assistance and protection services provided by non-governmental organisations). In practice, the refusal to attend hearings or to make statements in court may also be a consequence of non-respecting the reflection period to which the victim is entitled. Usually judicial bodies are more focused on obtaining evidences and less on respecting the victim's right to reflection (provided by Article 39<sup>2</sup> of Law 678/2001, i.e. 90 days).

In accordance with the provisions of Article 28, Law 217/2003, the victim of domestic violence may waive the examination of the application for the protection order in cases where the application was filed on their behalf by a prosecutor or other lawful persons, and in the

case in which the person protected by the protection order violates the provisions of the order, they will be obliged to cover the expenses incurred in issuing and enforcing the order, which may have a deterring effect among the victims. Also, one of the protection measures regulated by the law, namely to oblige the aggressor to keep a minimum distance from the victim and, if applicable, from family members, can be put into practice only if the protected persons express their consent for an electronic surveillance system which allow to verify if the aggressor respects his obligations.

Regarding the **right to protection of privacy and safety**, it is noted that the major fear of victims of rape, human trafficking and domestic violence is related to the advertising of criminal proceedings (especially the desire not to inform the family about what happened or to avoid disclosure of victim's identity or facts to general public through the publicity of the court hearing or press/media coverage).

The national legislation includes provisions related to the non-publicity of the hearing in the cases concerning the offense of trafficking of minors, and in the case of other offenses at the request of the victim, or ex officio the hearing can be declared as non-public if it is considered that a public hearing can affect state interests, morals, dignity or intimate life of a person, the interests of minors or justice (Article 322 Criminal Procedural Code). Measures are also taken to anonymize victim data included in court summons or judgments (sentences, decisions) when the information is replicated on the courts' portal ([www.just.ro](http://www.just.ro)) so that they cannot be identified as victims of human trafficking or rape, but these measures are not applicable to victims of other forms of violence (e.g. domestic violence).

Regarding the **right to protection of physical integrity**, according to the regulations in force, the medical assistance for victims of rape, human trafficking and other forms of violence (especially domestic violence) is ensured in accordance with the normative acts that regulate social insurance health, respectively validly expressed consent, given personally by the patient who is 18 years of age, written consent in case of risk, respecting the patient's will and right to refuse or stop the medical procedure, with the exception of cases mentioned by the law. The victim may undergo a forensic examination during the trial in order to ascertain the traces and consequences of a crime. It is very important, however, to inform the victim about the risk of advertising such medical data, since the defendant (personally or through a lawyer) can have access to medical records.

According to **the statistical data** communicated by the Superior Council of Magistrates regarding violent crimes during the period 2016-2018 (the last nine months of 2018), it is noted that the number of cases solved in first instance regarding offenses related to domestic violence (Article 199 Criminal Code) grew from 195 cases in 2016 to 296 in 2017, and in the first 9 months of 2018 there were already 259 cases. Of all these cases, the number of cases where women are victims is increasing, evolving from one-sixth of the total in 2016 to one-third in 2018.

Regarding the number of human trafficking cases (Article 210 Criminal Code) at the level of the Superior Council of Magistrates no such cases are recorded in the period 2016-2018, which does not correspond to the reality, in practice cases having such an object having a significant number. Therefore, the way of collecting information on this type of cases is flawed and it is necessary to reassess the way of centralising data on human trafficking. It is also noted that there is no separate evidence of cases regarding trafficking of minors.

In cases of sexual violence there is a decrease in the number of these files from 451 in 2016 to 387 in 2017 and 317 in the first 9 months of 2018. From the total number of these cases, the majority are cases in which the offense in question is rape, the offenses of sexual



assault are around 30 cases per year between 2016-2018. Furthermore, in 2016-2018, the number of female victims is more than half from the total number of rape cases, but in the case of sexual assault the number decreased to 8 such cases in 2018 (as opposed to 18 cases in 2016 and 21 cases in 2017).

On the other hand, it is found that according to the statistics one single case having as object the offense of sexual harassment was solved between 2016-2018 (2017), which again does not correspond to reality, one of the explanations being the victim's option not to report to authorities such facts, particularly because of the lack of information about forms of sexual harassment and how to identify this form of harassment in everyday life.

The analysis of statistics and legal provisions on domestic violence in particular lead to the conclusion that in fact there are not enough measures to prevent and combat violence against women, to respond to the victim's security needs. Often victims face the lack of a safe and tangible horizon due to multiple problems they would face in the case of a definitive separation from the aggressor: leaving home versus finding another home and paying rent, finding another job, ensuring the need for subsistence, for her and for her children, the identification of new educational institutions for children.

At the present moment, there are no sufficient social services capable to respond to the victim's need to gain independence and to rebuild her life from the beginning, in the event of a definitive separation from the aggressor. Many victims are affected by the lack of confidence in their own forces and in achieving economic independence and in ensuring subsistence needs for them and for their children through their own forces (e.g. in many cases, low levels of education, status of "housewife", lack of professional training).

An essential problem was the long-standing issue of introducing emergency protection measures, requiring a provisional emergency protection order, immediately applicable and on-site by the police officer in imminent danger situations. This legislative gap was resolved through Law No. 174/2018, which introduced the provisional protection order, but the lack of information regarding the legal provisions, means of intervention, available social services (e.g. many victims do not know about the existence of protection measures and how to obtain such an order).

## Section 2 Bulgaria

Bulgaria has just specifically criminalised some acts of (domestic and gender-based) violence against women. As the Istanbul Convention was recently pronounced unconstitutional by the Bulgarian Constitutional Court,<sup>5</sup> legislative amendments were adopted by Parliament to nevertheless strengthen the protection of women against violence.<sup>6</sup> Domestic violence is proclaimed aggravating circumstance for murder, incitement towards suicide, bodily injury, kidnapping, illegal deprivation of liberty, coercion, threat to commit a crime against someone, and, in a special definition, it is defined as systematic physical, sexual, or mental violence, economic dependence, forceful limitation of personal life, freedom and rights against a relative, (ex-)spouse, person with whom the perpetrator has a child, (ex-)co-

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<sup>5</sup> Constitutional Court of the Republic of Bulgaria (*Конституционен съд на Република България*), Decision N 13 of 27 July 2018 (Решение № 13 от 27 юли 2018 г.), available at

<http://constcourt.bg/bg/Acts/GetHtmlContent/f278a156-9d25-412d-a064-6ffd6f997310> (in Bulgarian)

<sup>6</sup> National Assembly of the Republic of Bulgaria, Amendments and Supplements to the Criminal Code Act (*Закон за изменение и допълнение на Наказателния кодекс*), 22 February 2019, available at

<http://dv.parliament.bg/DVWeb/showMaterialDV.jsp?idMat=134676> (in Bulgarian).

habitant or person with whom the perpetrator lives or has lived in the same household. The amendments mark the criminalisation and definition of stalking and mark a step towards ex officio penalisation of all medium bodily injuries between relatives and spouses, but, in a step back in comparison with the initial intentions, still leave those in a state of vexation caused by the victim to be tried upon complaint by the victim. Forced marriages are further criminalised. Procedure-wise, the amendments provide for informing a victim with special protection needs if the suspect/accused is released or escapes from detention in custody or prison. Whereas non-compliance with domestic violence protection orders and European Protection Orders is currently criminalised, aggravated punishment for repeated non-compliance is provided for.

The Criminal Code treats the murder of a mother, a biological child, a pregnant woman or a minor person, as an aggravated case of murder (Art. 116, par. 1, items 3-4, CC). Although such cases have not been publicised, honour killings can be subsumed under that provision.

Any bodily injury of a mother, a pregnant woman or a minor person, particularly in a torturous manner for the victim, is also considered an aggravated case of such injury (Art. 131, par. 1, items 3-5, CC). Although such cases have not been publicised, female genital mutilation can be subsumed under grave bodily injuries.

Coercion, i.e. making someone do, not do or endure something contrary to his/her will, using force, threat or abusing power, is also strongly relevant to (domestic) violence acts against women (Art. 143, CC), as well as threatening someone with a crime against his/her person, or property, or against the person or property of relatives, where the threat may invoke justified fear of materialising (Art. 144, CC). Threat is, however, if not against an official, again a crime only triable upon complaint of the victim (Art. 161, CC).

Sexual crimes (Art. 149 and following, CC), stemming from domestic violence acts, can in principle also be prosecuted and tried, but authorities are considered reluctant to investigate and sanction matters considered 'family affair'. No definition of marital rape exists in Bulgarian law.

Human trafficking (Art. 159a-Art. 159d) is criminalised and actively prosecuted in accordance with Bulgaria's international commitments.

Although the lack of statistics under uniform criteria is considered one of the most significant problems of Bulgarian criminal procedure and policy, several numbers for 2016-2017 can be cited in relation to this report's topic.

Concerning the available information on cases of domestic violence, in 2016 civil courts closed 3,045 cases, of which in 1,125 they honoured the victim's motion in full, in 149 – in part and in 308 cases the motion was denied. In 2017, there were 2,968 cases, of which in 1,008 the motion was honoured in full, in 152 – in part and in 298 the motion was denied. No disaggregated data was found about the number of women victims.<sup>7</sup>

Concerning cases of human trafficking, in 2016 the Prosecutor's Office identified 447 victims of trafficking, out of which 409 were women, while in 2017 there were 508 victims

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<sup>7</sup> Source: Supreme Judicial Council

identified, out of which 444 were women – an overwhelming majority showing women being disproportionately affected by this type of crime.<sup>8</sup>

Concerning cases of sexual crimes, including pornography, in 2016 courts closed 250 such cases, while the Prosecutor's Office reported on 177 underage and 317 minor victims of such crimes. In 2017, there were 201 closed cases, while the underage victims were 195 and the minors were 254. For the first half of 2018, there were 135 cases. No disaggregated numbers exist for the share of women victims and there is no direct relation between the victims reported by the Prosecutor's Office and the cases closed by courts.<sup>9</sup>

Honour killings and female genital mutilation have not been reported as such.

Prominent organisations have submitted numerous statements, regarding legislative gaps and weaknesses the amendments cited above are attempting to address. In particular, organisations have insisted<sup>10</sup> that all forms of domestic violence that led to bodily injury shall be prosecuted *ex officio*, in harmony with the Istanbul Convention and the CEDAW committee recommendations to Bulgaria of 2012.<sup>11</sup> The specific criminalisation of strangling and marital rape, as an aggravated case of rape, has also been proposed. A number of proceedings against Bulgaria before the CEDAW have also yielded recommendations towards the country's domestic violence protection system.<sup>12,13</sup> Weaknesses in domestic civil and criminal protection legislation enlisted by leading organisations have pointed to a low level of gender sensitivity in regulating crimes against persons in close relations. Experts have criticised current Criminal Code amendments as well as only criminalising systematic violence and offering partial protection to victims. Recent guidelines of the Prosecutor General<sup>14</sup> on handling domestic violence and other related cases have attempted to speed up and streamline such proceedings, but it remains to be seen how those will be implemented after the recent amendments.

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<sup>8</sup> Source: Prosecutor's Office of the Republic of Bulgaria, as cited by the National Commission for Combatting Trafficking in Human Beings

<sup>9</sup> Sources: Supreme Judicial Council and the Prosecutor's Office of the Republic of Bulgaria

<sup>10</sup> Alliance for Protection against Gender-Based Violence (2014): Предложения по Проекта на Наказателния кодекс свързани със сексуалното насилие и насилието, основано на пола [Proposals on the draft Criminal Code, related to sexual violence and gender-based violence]. Sofia: Alliance for Protection against Gender-Based Violence. <http://www.alliancedv.org/articles/>

<sup>11</sup> Committee on the Elimination of Discrimination against Women (2012): Concluding observations of the Committee on the Elimination of Discrimination against Women, Bulgaria. New York: Committee on the Elimination of Discrimination against Women

<sup>12</sup> Committee on the Elimination of Discrimination against Women, 'Views Communication No. 20/2008' (Forty-ninth session 11-29 July 2011) CEDAW/C/49/D/20/2008

<sup>13</sup> Committee on the Elimination of Discrimination against Women 'Communication No. 32/2011 Views adopted by the Committee at its fifty-second session, 9-27 July 2012' (Fifty-second session 9-27 July 2012) CEDAW/C/52/D/32/2011

<sup>14</sup> Prosecutor General of the Republic of Bulgaria (2018): Заповед № РД-02-09/30.04.2018 г. Относно: Утвърждаване на Указание за организацията на работа на Прокуратурата на Република България по преписки и досъдебни производства, образувани по съобщения за осъществено домашно насилие, за закана с убийство и за нарушена заповед за защита от домашно насилие [Order № РД-02-09/30.04.2018 on guidelines for the organization of work of the Prosecutor's Office of the Republic of Bulgaria on files and pre-trial proceedings instituted under complaints regarding domestic violence, threat to murder and violations of domestic violence protection orders, available at [https://prb.bg/bg/pub\\_info/opovestyavane-na-dokumenti/vtreshni](https://prb.bg/bg/pub_info/opovestyavane-na-dokumenti/vtreshni) (in Bulgarian)

### Section 3 Greece

In Greece, the legal framework on the protection of women against violent acts was recently amended through the introduction of the Istanbul Convention into the Greek legal system, along with provisions on domestic abuse (Law 4531/2018).<sup>15</sup>

Greece has also transposed the European and International legal instruments into the national law<sup>16</sup>. Part 4 of Law No. 4478/2017<sup>17</sup> introduced the Victims' Rights Directive (Directive 29/2012/EU) into the Greek legal order. The purpose of the law was to ensure that victims of crimes are properly informed, supported and protected while participating in criminal proceedings.

Law No. 3500/2006<sup>18</sup> is the main legal text that regulates domestic violence.<sup>19</sup> This law provides for the *ex officio* prosecution of crimes of domestic violence and the procedural regulations which aim at maintaining confidentiality of personal details, both of the victim and of the defendant. Law No. 3500/2006 also introduced a reconciliation (mediation) procedure in domestic violence cases (as an alternative to legal recourse). This procedure can be initiated by the competent Prosecutor in cases of domestic violence misdemeanours with the consent of the victim and as long as the defendant pledges that a) he/she shall not commit any act of domestic violence in the future (similar to a parole) and that – in case of cohabitation – he/she shall stay away from the family residence for a reasonable time if the victim so wishes, b) he/she will attend a therapy programme, specialised in domestic violence, organised by a public institution wherever and for as long as it is considered necessary by the therapists in charge and c) he/she will bear the obligation to offer restitution for any damages

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<sup>15</sup> Law 4531/2018 “(I) Ratification of the Council of Europe Convention preventing and combating violence against women and domestic violence and adjustment of Greek legislation” ((I) *Κύρωση της Σύμβασης του Συμβουλίου της Ευρώπης για την Πρόληψη και την Καταπολέμηση της Βίας κατά των γυναικών και της Ενδοοικογενειακής Βίας και προσαρμογή της ελληνικής νομοθεσίας*)(O.G. A 62/05-04-2018).

<sup>16</sup> Such as Directive 2012/29 of the European Parliament and Council establishing minimum standards on the rights, support and protection of victims of crime, which replaced the Council Framework Decision 2001/220/JHA, Regulation 235/2014 of the European Parliament of the Council of March 2014 establishing a financing instrument for democracy and human rights worldwide, Regulation 1381/2013 of the European Parliament and of the Council of 17 December 2013 establishing a Rights, Equality and Citizenship Programme for the period 2014 to 2020, the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) and the UN Human Rights Council resolution on Eliminating all Sorts of Violence against Women.

<sup>17</sup> Law 4478/2017 ‘IV) Implementation of Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime and replacing Council Framework Decision 2001/220/JHA and other provisions (IV)

*Ενσωμάτωση της Οδηγίας 2012/29/ΕΕ για τη θέσπιση ελάχιστων προτύπων σχετικών με τα δικαιώματα, την υποστήριξη και την προστασία θυμάτων της εγκληματικότητας και για την αντικατάσταση της Απόφασης – Πλαίσιο 2001/220/ΔΕΥ του Συμβουλίου και λοιπές διατάξεις*)(O.G. A91/23-06-2017).

<sup>18</sup> Law 3500/2006 “Addressing Domestic Violence and other provisions (*Για την αντιμετώπιση της ενδοοικογενειακής βίας και άλλες διατάξεις*)(O.G. A232/24-10-2006).

<sup>19</sup> It introduced a broader definition of family (Article 1 par. 2 a), which includes individuals: (a) relatives up to the fourth degree – *stricto sensu* definition; (b) who cohabit; and (c) special relationships (permanent partners, their children and minors who live with the family). The Law also includes the definition of the “victim of domestic violence” (Article 1 par. 3): (a) a person who belongs to the family, as prescribed by the law - against whom the criminalised behaviours take place or the crimes of Articles 299 (intentional homicide) and 311 (fatal injury) of the Greek Penal Code; (b) the underage member of the family before whom the aforementioned acts are committed

caused by the act of domestic violence, as well as the payment of fair compensation.<sup>20</sup> A number of judgments concerning cases of domestic violence with female victims have been decided under Law 3500/2006.<sup>21</sup>

Violence against women is also addressed through other articles of the Greek Criminal Code concerning crimes against personal liberty and security (Art. 322 et seq.) and crimes against sexual freedom and economic exploitation of sexual life (Art. 336 et seq.). Sexual harassment in the workplace is punished as a crime in paragraph 5 of Article 337.

There is no statistical data available concerning violence against women. Data appears to be available only for cases of domestic violence, trafficking and rape (other types of violence against women such as female genital mutilation and honour killings are not recorded). Yet even where statistical data is available, the information provided cannot assist in the proper assessment of violence against women.<sup>22</sup> Greek courts do not have a database to gather statistical data. Especially in relation to case-law, in general the decisions of Greek courts are not publicly available and third-parties cannot have access to copies without permission from the competent prosecutor. There are subscriber databases available for lawyers, yet not all decisions are published even there, since the publication relies on legal practitioners actually submitting decisions they have adjudicated (decisions are not automatically submitted by Courts). Decisions are usually published by NGOs or legal practitioners linked to the cases.<sup>23</sup> As a result, there is no way of knowing the outcome of cases adjudicated before the courts. However, since the beginning of the financial crisis, there has been a rise in the number of domestic violence cases in Greece.<sup>24</sup>

As evidenced by statistics from the Hellenic Police Headquarters, between 2014 and 2017 there were more than 13,700 incidents of domestic violence, with women accounting for about 70% of the victims.<sup>25</sup> In 2017 there were 3,134 cases of domestic violence with 4,243

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<sup>20</sup>Prosecutor Orders No. 74/2013 and No. 85/2011 of the First Instance Court of Thessaloniki Prosecutor, concern cases where the defendant failed to comply with the terms of reconciliation related to attending counselling and the criminal proceedings were reinstated.

<sup>21</sup>See for example Decisions Nos. 182/2014, 1213/2015, 1095/2015, 769/2015 and 508/2015 of the Supreme Court of Greece.

<sup>22</sup> For example, while data collected at police level records information on the victim, it is not possible to disaggregate this data by age. Consequently, it is not possible to determine if the numbers relating to women victims of domestic violence concern all female victims (all age groups) or only those who are 18 and over. On the other hand, data collected at justice level records information on the perpetrator but not on the victim. This was highlighted in EIGE, Greece: Recommendations to improve data collection on intimate partner violence by the police and justice sectors, 2018, available at: <https://eige.europa.eu/rdc/eige-publications/recommendations-improve-data-collection-intimate-partner-violence-police-and-justice-sectors-greece>.

<sup>23</sup> This was confirmed in an interview with the Director of the First Instance Court of Athens as well as the Head of the Supreme Court President's Secretariat. According to judicial authorities, a system was established in April 2018 but only for cases submitted after this period. What is more, the system does not appear to be fully operational.

<sup>24</sup>ActionAid Hellas, Domestic violence during the financial crisis – The perspective of professionals and suggestions to improve current policies, 2018, (*Η ενδοοικογενειακή βία κατά την περίοδο της οικονομικής κρίσης – Η οπτική των επαγγελματιών και προτάσεις βελτίωσης των εφαρμοζόμενων πολιτικών*), available in Greek at: [http://www.actionaid.gr/media/1858122/Domestic-Violence\\_GR\\_Final\\_2018\\_.pdf](http://www.actionaid.gr/media/1858122/Domestic-Violence_GR_Final_2018_.pdf).

<sup>25</sup>iefimerida.gr, At a worrying dimension cases of domestic abuse – 13700 incidents between 2014 and 2017, 27-01-2018, (*Ανησυχητικές διαστάσεις παίρνει η ενδοοικογενειακή βία -13.700 περιστατικά από το 2014 έως το 2017*), available in Greek at: <https://www.iefimerida.gr/news/392177/anisyhitikes-diaastaseis-pairnei-i-endoikogeneiaki-13700-peristatika-apo-2014-eos-2017>.

victims in total. At the same time, more than 760 incidents of rape were committed in Greece during the specific period of time, with the majority of victims being women.

According to the Greek General Secretary for Gender Equality (GSGE),<sup>26</sup> since 2012, when their network structures first operated, 25,079 women have been consulted and 1,518 women were accommodated in shelters. The hotline ‘SOS 15900’, since its introduction on 11-3-2011, has received a total of 37,482 calls. 5,088 calls were made in 2018, 4,116 (81%) of which concerned complaints of gender violence. At the same time, it should be noted that the number of trafficking cases has decreased: from 36 cases in 2014, to 33 cases in 2015, to 25 cases in 2016 and 21 cases in 2017.<sup>27</sup>

Overall, the legal framework is adequate, however its applicability in practice appears to be problematic. Comparison between data from the police and from the GSGE, as well as reports of NGOs<sup>28</sup> show that there is an under-reporting problem in cases of violence against women. Abuse in domestic violence is often not reported due to fear for the culprit, embarrassment and shame, denial or shock, a need to display a perfect family image to others, fear of guilt or feeling guilty, or even a need to protect the culprit.<sup>29</sup> Yet even when the victim builds up the courage to seek help, there are serious hurdles to overcome. Firstly, the victim is discouraged from the onset to contact the authorities and to seek help. Police authorities are not properly trained on communicating with victims and on informing them of their options.<sup>30</sup> Secondly, difficulty to provide demonstrable evidence for forms of violence, other than physical violence, discourage the victim from reporting the incident. For instance, psychological violence does not result in physical evidence such as bruising, etc., and therefore it is very hard to diagnose and to prove. It is thus vital that police authorities, lawyers and judges are aware of all forms of violence and know how to identify them. Thirdly, there are procedural deficiencies which often discourage victims from seeking legal recourse. For example, there is a grid of procedural laws which call for the participation of multiple authorities and by the time the case-file is transferred to each one, a long period of time goes by. Lengthy procedures diminish the notion of urgency and the victim, feeling that he/she is no longer a priority, will often resign.

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<sup>26</sup>GSGE, Press Release, Statistical Data of the GSGE structure network for the elimination of violence against women, November 2018, (Στατιστικά στοιχεία του δικτύου δομών της Γ.Γ.Ι.Φ. για την εξάλειψη της βίας κατά των γυναικών), available in Greek at:

<http://www.isotita.gr/%CE%B4%CE%B5%CE%BB%CF%84%CE%AF%CE%BF-%CF%84%CF%8D%CF%80%CE%BF%CF%85-%CF%83%CF%84%CE%B1%CF%84%CE%B9%CF%83%CF%84%CE%B9%CE%BA%CE%AC-%CF%83%CF%84%CE%BF%CE%B9%CF%87%CE%B5%CE%AF%CE%B1-%CF%84%CE%B7%CF%82/>.

<sup>27</sup>The information on trafficking was provided by the Greek National Rapporteur on the Trafficking in Human Beings.

<sup>28</sup>See for example ActionAid Hellas, Domestic violence during the financial crisis – The perspective of professionals and suggestions to improve current policies, 2018, (Ηενδοοικογενειακή βία κατά την περίοδο της οικονομικής κρίσης – Ηοπτική των επαγγελματιών και προτάσεις βελτίωσης των εφαρμοζόμενων πολιτικών), available in Greek at: [http://www.actionaid.gr/media/1858122/Domestic-Violence\\_GR\\_Final\\_2018\\_pdf.pdf](http://www.actionaid.gr/media/1858122/Domestic-Violence_GR_Final_2018_pdf.pdf).

<sup>29</sup>See GSGE, Manual for Advising on Violence, 2018, (Οδηγός Συμβουλευτικής για τη Βία), available in Greek at: <http://www.isotita.gr/wp-content/uploads/2018/07/%CE%9F%CE%B4%CE%B7%CE%B3%CF%8C%CF%82-%CE%A3%CF%85%CE%BC%CE%B2%CE%BF%CF%85%CE%BB%CE%B5%CF%85%CF%84%CE%B9%CE%BA%CE%A9%CF%82-%CE%B3%CE%B9%CE%B1-%CF%84%CE%B7-%CE%92%CE%99%CE%91.pdf>.

<sup>30</sup> Information based on interview with the NGO DIOTIMA.

On the other hand, victims that qualify for legal aid are often required to produce documents concerning their financial status or property status. This is particularly hard for immigrant women, who are also deprived of any translation services and therefore do not understand what is needed of them in order for their case to be investigated.

Even the reconciliation procedure described earlier presents a few deficiencies. Firstly, it only covers certain crimes of domestic abuse. This means that in cases of multiple offences parties can qualify for a reconciliation procedure for certain crimes, but not for others, which will have to be investigated under the standard criminal procedure, which lasts a lot longer. Secondly, there is no monitoring mechanism in place to ensure that the defendant will adhere to the terms of the reconciliation procedure. This means that in case of a recurrence in violent behaviour, the victim will bear the burden of reporting new incidents perpetrated against him/her. Finally, there is no provision for the rehabilitation or counselling of defendants with a history of alcoholism or drug addiction, which could potentially help in preventing and addressing cases of domestic abuse.

Last but not least, even lawyers appear to be unacquainted with the provisions and the procedures for cases of violence against women. According to NGOs, victims often complain of lack of support and knowledge from lawyers, whilst defence lawyers are at times too aggressive towards the victims and often exploit procedural provisions to stall potential trials or hearings.<sup>31</sup>

## Section 4 Italy

Women in Italy should be able to enjoy the same rights as men, as Article 3 of the Italian Constitution provides that all citizens have equal social dignity and are equal before the law, without distinction, *inter alia*, of sex. Nevertheless, Italian women still face difficulties in receiving protection from violent acts and accessing justice if they are victim of violence.

The current Italian legal system does not provide for measures aimed at specifically and exclusively protecting women, nor does it provide for aggravating circumstances when offenders act against women. In fact, the gender of the victim of a crime does not play any role in the Italian criminal justice system.<sup>32</sup>

The evolution of the national legal framework concerning violence against women reflects a shift in perspective on this issue. The offense of violence of women had been considered as “crime against public morality” until 1996. This changed with Law No. 66/1996,<sup>33</sup> which fully recognised this offense as a “crime against the person” and amended the Criminal Code to introduce provisions concerning this conduct. Among these provisions, Article 609 bis of the Criminal Code defines sexual violence as the act of forcing another person to commit or suffer sexual acts through means such as force, threat or abuse of authority, as well as deceit and abuse of the inferior position of the victim. This criminal behaviour is punished with imprisonment from 5 to 10 years. Article 609 bis, introduced into the Italian legal system to respond to socio-cultural changes and most importantly to

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<sup>31</sup>Information provided through an interview with the NGO DIOTIMA. See also: See GSGE, Manual for Advising on Violence, 2018, (*Οδηγός Συμβουλευτικής για τη Βία*), available in Greek at: <http://www.isotita.gr/wp-content/uploads/2018/07/%CE%9F%CE%B4%CE%B7%CE%B3%CF%8C%CF%82-%CE%A3%CF%85%CE%BC%CE%B2%CE%BF%CF%85%CE%BB%CE%B5%CF%85%CF%84%CE%B9%CE%BA%CE%AE%CF%82-%CE%B3%CE%B9%CE%B1-%CF%84%CE%B7-%CE%92%CE%99%CE%91.pdf>.

<sup>32</sup> The only exception is the crime of female genital mutilation.

<sup>33</sup> Law No. 66/1996 available on [www.gazzettaufficiale.it/eli/id/1996/02/20/096G0073/sg](http://www.gazzettaufficiale.it/eli/id/1996/02/20/096G0073/sg).

guarantee greater protection for victims of violence is aimed at protecting two different interests. On the one hand, this provision safeguards sexual freedom, understood as the right to self-determination in one's intimate sphere; on the other hand, it protects sexual inviolability understood as non-consensual acts against one's sexual sphere. In addition to the aforementioned provisions, Article 572 of the Criminal Code punishes with imprisonment from two to six years anyone who mistreats a family member or partner.

Another important achievement for the protection of women in Italy was reached with Law No. 7/2006,<sup>34</sup> which introduced in the Italian Criminal Code the crime of female genital mutilation (hereinafter FGM). This law sparked debate among those who deemed it necessary to draft legislation to outlaw FGM and to safeguard women who experience this practice, and those who were against any legal intervention on the issue. Currently, Articles 583 bis and 583 ter of the Italian Criminal Code prohibit the execution of all forms of FGM, punished with imprisonment from four to twelve years. In addition, the principle of extraterritoriality is implemented for this crime: accordingly, those who practice any form of FGM can be punished in Italy regardless of where the crime has been committed.

Another important piece of legislation for the protection of women is Decree Law No. 11/2009, which introduced into the Italian Criminal Code the crime of stalking under Article 612 bis. Stalking is defined as repeatedly threatening or harassing a person as to cause a persistent and severe state of anxiety, to generate fear for their own or someone else's safety or to force them to change their living habits. The penalty for this crime is imprisonment from six months up to five years and can be increased if the crime is committed by the victim's former partner, against vulnerable individuals or using IT tools. The introduction of this crime is particularly significant because Article 612 bis provides for special precautionary measures for the victims, allowing them to receive protection even before reporting the stalker.

In addition to legislative measures, a *National plan against gender-based violence and stalking* was officially enacted in November 2010 as a first attempt to develop an organic response to address violence against women in Italy.<sup>35</sup> This plan was followed in 2015 by the *Special plan against sexual violence and gender-based violence*,<sup>36</sup> which oversees the expansion of women's support services including anti-violence centres and women's shelters.

The Italian legal system also includes provisions aimed at preventing and suppressing domestic and gender violence, which are provided for in Decree Law No. 93/2013.<sup>37</sup> This legislative measure was adopted following the turn of extremely serious events affecting women and the concern in society resulting from them. Accordingly, the Italian Government deemed it necessary to increase the penalties for those committing violent acts against women and introduce precautionary measures to protect them. Although Decree Law No. 93/2013 is known as the "anti-femicide decree-law" it does not include a definition of "femicide" as the murder of a woman on the ground of gender, i.e. where the female gender of the victim is an essential and driving motive for the murder itself. As for the provisions included in the Decree Law, firstly Article 3(1) defines domestic violence drawing inspiration from Article 3 of the *Council of Europe Convention on preventing and combating violence*

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<sup>34</sup> Law No.7/2006 available on [www.gazzettaufficiale.it/eli/id/2006/01/18/005G0307/sg](http://www.gazzettaufficiale.it/eli/id/2006/01/18/005G0307/sg).

<sup>35</sup> Piano Nazionale contro la violenza di genere e lo stalking, 2010, available on [http://files.centro-antiviolenza.it/200000064-b166cb2613/piano\\_nazionale\\_antiviolenza.pdf](http://files.centro-antiviolenza.it/200000064-b166cb2613/piano_nazionale_antiviolenza.pdf)

<sup>36</sup> Piano d'azione straordinario contro la violenza sessuale e di genere, 2015, available on [http://www.interno.gov.it/sites/default/files/allegati/slide\\_pianocontroviolenza\\_7maggio2015.pdf](http://www.interno.gov.it/sites/default/files/allegati/slide_pianocontroviolenza_7maggio2015.pdf).

<sup>37</sup> Decree Law No. 93/2013, available on [www.gazzettaufficiale.it/eli/id/2013/08/16/13G00141/sg](http://www.gazzettaufficiale.it/eli/id/2013/08/16/13G00141/sg).



against women and domestic violence (Istanbul Convention).<sup>38</sup> Secondly, this Decree Law did not amend the provisions concerning the crime of murder, but only introduced changes to those crimes that are considered to involve an offense to “women as such” and reveal hazard for women, as those who commit these crimes may pose serious threats to the safety of the victim. These crimes include, among others, sexual violence, stalking and mistreatment against family members. Finally, Decree Law No. 93/2013 introduced a special form of legal aid for women victims of violence: while legal aid in Italy is generally granted upon meeting certain financial criteria, it is granted to women regardless of the income limits provided for by Italian law.

Overall, the Italian legal framework against violence against can be considered satisfactory. The several legislative measures introduced over the years have gradually bridged protection’s gaps concerning women. However, some problems and challenges persist in the applicability of these laws.

Firstly, the laws that are aimed at contrasting violence against women are not always applied with the required competence and rapidity. This problem is often referred to as “shyness” of legal professionals (prosecutors, judges, etc.) and law enforcement agents in interpreting these laws. As a result of this issue, relevant authorities are sometimes prevented from promptly adopting preventive measures to protect women in danger.

Secondly, although the current criminal sanctions punishing those who commit violence against women ensure hefty sentences and are fundamental to deter further crimes, they are not sufficient.<sup>39</sup> In fact, these sanctions are only applied *after* the violence has been perpetrated: instead, more preventive measures are considered necessary, in order to prevent further violent acts from taking place. In addition, while the so-called “anti-femicide decree law” introduced significant measures to protect women, the lack of the specific crime of “femicide” in the Italian legal system still represents a challenge in shifting the society’s perception of violence against women.

Thirdly, investigations and judicial procedures are often too lengthy to ensure that women are effectively protected. This is particularly problematic because it may lead violence-related crimes being statute-barred in pending trials. In addition, some violent acts against women are sometimes underestimated by legal professionals and, for this reason, cases filed by women victims of crimes are at risk of being eventually dismissed.

Finally, policies to prevent and raise awareness on the issue of violence against women need to be improved in order to be effective and make sure that women are aware of their rights and of the protection tools that they can resort to when they are victims of crimes.

Data concerning crimes related to violence against women is helpful to assess the significance of these crimes in Italy.<sup>40</sup> It can be observed that the number of cases of stalking and mistreatment against family members increased, while the number of reports for sexual aggression decreased. In addition, for all type of crimes, it is to be noted that the number of female victims is considerable. The difference between the number of crimes of violence against women reported and the number of convictions also appears evident. In this regard, it is necessary to consider the relevance of cases where the perpetrator is not identified, acquittals or other forms of discharge. Finally, it should be considered that the data on convictions refer to convictions during a specific timeframe and are not specifically related to

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<sup>38</sup> Italy was among the first European countries to ratify the Istanbul Convention in 2013 with Law No. 77/2013.

<sup>39</sup> Ministry of Economic Development, Reflections on stalking and violence against women, 2014, available on [https://www.mise.gov.it/images/stories/documenti/relazione\\_seminario\\_1\\_dicembre.pdf](https://www.mise.gov.it/images/stories/documenti/relazione_seminario_1_dicembre.pdf).

<sup>40</sup> At the time of writing, figures for 2018 were not available yet for several of the crimes object of this study.

the offences reported in the same year.

Sexual aggression		
	2016	2017
Reports	7633	4429
Final convictions	1450	1693

Stalking			
	2016	2017	2018* (1 August 2017 - 31 July 2018)
Reports	11425 <i>of which women: 9487</i>	13046	6437
Final convictions	1323	1468	-

Mistreatment against family members		
	2016	2017
Reports	13813	15707
Final convictions	2699	2818

## Section 5 Spain

In the Spanish context, the Organic Law No. 1/2004 on Integral Protection Measures against Gender based Violence<sup>41</sup> is the one that regulates violence against women. It is a pathfinding legislation in Europe for its feminist perspective; however, it only regulates the violence committed by the victim's partner or ex-partner. It is an integral norm, which not only approaches the punitive perspective, but also takes into account prevention and protection measures.

In spite of the legislative framework, from January 1, 2003 to January 15, 2019 there are 977 official deceased victims due to this form of violence. 54.8%<sup>42</sup> of the murders of women occur in the context of affective relationships. The years with a higher number of murders are: 76 (2008), 73 (2010) and 72 (2004)<sup>43</sup>. In 2018, 47 women were killed by their partners or ex partners, according to official data, and 97 according to Femicidio.net<sup>44</sup>. Twenty-nine of them were between 31 and 50 years old (61.7%).

Migrant women represent 9.6% of the women and 30% of the gender based violence victims<sup>45</sup>. Most of them are afraid to report the crimes they are victim of to the Police due to the possibility of being sanctioned by the immigration law as in some cases their residence permits depend on their partners; in theory, when they report gender based violence and their partners are condemned, they can apply for a residence and work permit<sup>46</sup> for five years. From 2005 to 2010, 2,519 foreign women victims of domestic and gender violence obtained a residence permit. From 2011 to December 2016, 7,387 women were documented for this reason.

Children are also direct and indirect victims of this violence: 39 were orphaned in 2017, 83<sup>47</sup> children were killed as a consequence of acts of gender violence, between 2010 and 2018, and only 27 are official cases (32.53%). In Spain there are official data registered by public bodies and unofficial data registered by other platforms such as Femicidio.net. Of the 87 cases covered by Femicide between 2010 and 2018, only 27 are registered by official bodies.

One of the main targets of the Integral Act was the creation of specialised courts for matters related to violence against women in every territory, as well as a Prosecutor's Office on gender based violence. There are 461 Courts with competence in violence against women, 106 of them are exclusive courts of violence and 355 compatible. They consist of 25 psychosocial teams, trained by psychologists, social workers and forensic doctors.

In some crimes of violence against women, the legal services of the Autonomous Communities and municipalities can also act as accusations in trials.<sup>48</sup> All of them and the victims can request protection orders.

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<sup>41</sup> Organic Law 1/2004: <https://goo.gl/yMPvpZ>

<sup>42</sup> State Observatory against gender based violence. X Report: <https://goo.gl/C8QYwN>

<sup>43</sup> Ministry of the presidency of the Government of Spain: <https://goo.gl/4TkW9g>

<sup>44</sup> Femicidio net's website: <https://goo.gl/N3HStH>

<sup>45</sup> GREVIO: Shadow report Spain <https://plataformaestambul.sombra.files.wordpress.com>

<sup>46</sup> Immigration Law and institutional information sheet: <https://goo.gl/7ymFCL>; <https://goo.gl/Yy5Xqg>

<sup>47</sup> Femicidio.net's web site: <https://goo.gl/N3HStH>

<sup>48</sup> Femicidio.net's web site: <https://goo.gl/UNENPt>

Protection Order is a court order that protects the victim from further abuse and includes a multi-disciplinary (criminal, civil and assistance) response.

In terms of punishment, convictions for habitual violence are not the majority (11.5% in 2017). Convictions for specific injuries are more common (55.9%). 83.7% of the people prosecuted are convicted, and it is very common for cases to be archived by court due to lack of evidence (41,18% in 2017)<sup>49</sup>.

During 2016, a total of 142,893 reports of gender-based violence were received. 5,941 women were advised by the free legal aid system. The right to free<sup>50</sup> and specialised legal assistance is recognised to all victims of gender-based violence and trafficking<sup>51</sup>, regardless of their financial resources. All bar associations have specialised lawyer teams in gender based violence and some also in human trafficking.<sup>52</sup> Specific training is mandatory. In addition to legal assistance, there is a telephone service, free and confidential, that leaves no trace: it is the 016 created in 2007. In 2016 received 85,318 calls, and in 73.1% of the cases calls were made by the victims. Also, since 2010 there is a telephone line for children and adolescents.

At the state level there is also the Victim's Legal Statute<sup>53</sup> (EJV) and the State Pact against gender violence. The EJV it is the transposition of the European Directive 2011/36/EU and grants protection to women who have suffered all kinds of violent crimes. The norm creates the Victim Assistance Offices.<sup>54</sup> The State Pact against Gender based Violence<sup>55</sup> includes all forms of violence against women in line with international treaties, regardless of who the aggressor is. The pact approves 214 measures to be applied in 5 years (2017/2021). Feminist organisations have denounced the lack of economic resources and the non-application of a major part of it, so far.<sup>56</sup>

All other crimes against women for the fact of being a woman, such as sexual violence, human trafficking for the purpose of sexual slavery, forced prostitution, forced marriages, female genital mutilation are regulated by the Criminal Code<sup>57</sup> and by other different regional laws, and therefore, are out of the special protection given by the Organic Act 1/2004. The latest reform of the Criminal Code, in 2015, includes "gender" as an aggravating circumstance for discrimination, already including gender, sexual orientation and sexual identity as aggravating factors<sup>58</sup>

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<sup>49</sup> Data from the General Council of the Judiciary and the observatory on domestic and gender violence. Annual report 2017 <https://goo.gl/56HLGU>

<sup>50</sup> Law and Regulation of Legal Aid in Spain: <https://goo.gl/vRpe4x>; <https://goo.gl/YfJJco>

<sup>51</sup> Government Delegation against Gender Violence <https://goo.gl/SdQ8JK>

<sup>52</sup> Spanish Bar Associations: <https://goo.gl/Q1Xc5f> (Madrid); <https://goo.gl/GEJmG5> (Balears); <https://goo.gl/rx4e1u> (Valencia) o <https://goo.gl/X9VWAu> (Murcia)

<sup>53</sup> Victim's statute: <https://goo.gl/DtbVBN>

<sup>54</sup> Ministry of Justice of the Government of Spain <https://goo.gl/um9UA2>

<sup>55</sup> State agreement on gender based violence: <https://goo.gl/N7vQiF>

<sup>56</sup> Shadow Report to GREVIO: <https://goo.gl/M4mgXe>

<sup>57</sup> The 15 keys to the reform of the Penal Code: <https://goo.gl/ud97qQ>

<sup>58</sup> Reform of the CP 5/2010, of June 22, which modifies the LO 10/95 of November 23, including discrimination based on sexual orientation and sexual identity. [elderecho.com](http://elderecho.com) <https://goo.gl/BQeDx6>

Spain lacks a comprehensive law on human trafficking, although it has scattered legislation, operating protocols and action plans, at local and state level.<sup>59</sup> There is also a specialised police team to identify the victims (UCO and UCRIF). Red Cross organisation estimates that 1 out of every 5 children arriving to Spain on a boat are victims of trafficking. In 2017,<sup>60</sup> 1,117 persons were identified as victims of human trafficking: 577 related to sexual exploitation, 533 for labour exploitation, 3 for begging, 3 for forced marriage and 1 for commission of criminal activities.

In addition to the state regulations, it is very important to mention the legislative and assistance developments made by territories. At regional level, in practice the 17 Autonomous Communities<sup>61</sup> have laws that formally do not restrict their action to partner violence and adapt to the other forms of violence recognised in the Istanbul Convention and the CEDAW. Some communities have directly recognised children as victims of violence if their mothers have suffered violence.<sup>62</sup>

All autonomous communities have comprehensive care centres for abused women and there are referral protocols between these women's shelters.<sup>63</sup> In many autonomous communities there are also specialised and comprehensive care centres, public management,<sup>64</sup> for the care of violence outside the couple. In many autonomous communities there are also specialised and comprehensive care centres, public management,<sup>1</sup> for the care of violence outside the couple and also shelters for women under private management. Emergency centres for sexual violence care are still unavailable,<sup>65</sup> although they are planned.<sup>66</sup> In addressing the fight against sexual violence, Spain has significant obstacles<sup>67</sup> that still need to be addressed. This, in relation to legislation, public policy, public awareness and creation of specific care resources. In Spain, the 'statistical treatment' of sexual violence is reduced to a Macro Survey every 5 years, which does not break down sufficiently or follow up adequately the issue of sexual violence. Police, judicial and prosecutorial reports are also available, though the number of sentences and the number of victims remains unclear. Sexual violence affects one out of two women,<sup>68</sup> which is more than 3,251,000 (13.7%). It is estimated that 1.5 million women (7.2% of those aged over 16)

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<sup>59</sup> National Plan Against Trafficking <https://goo.gl/eYR45U>

<sup>60</sup> 2017 Annual Report: Prevention and fight against human trafficking in Spain. <https://goo.gl/5tGKWu>

<sup>61</sup> The Organic Law 5/2005 of Madrid: <https://goo.gl/dWd2Bs>; Law 5/2008 <https://goo.gl/kgqy9f>

<sup>62</sup> Andalusian Law 7/2018, of July 30, which modifies Law 13/2007, of November 26, on preventive measures and comprehensive protection against gender violence: <https://goo.gl/AUm1Vz>

<sup>63</sup> State official newsletter <https://goo.gl/Bhvo2b>

<sup>64</sup> Integral Attention Centre for Women Victims of Sexual Violence in Madrid: <https://goo.gl/6SSY9c>

<sup>65</sup> Digital newspaper eldiario.es <https://goo.gl/soGcN8>

<sup>66</sup> Digital newspaper elboletin.com <https://goo.gl/g3X6EH>

<sup>67</sup> Amnesty International Report about sexual violence, 2018: <https://goo.gl/Dh3M4H>

<sup>68</sup> European Union Agency for Fundamental Rights: <https://fra.europa.eu/es>

have suffered sexual violence at some point in their lives outside the couple relationship.<sup>69</sup> Complaints about cases of mobbing and harassment at work are reported less than the European average and the Labour Inspectorate informed that from 2010 to 2015 only 3,472 actions for sexual harassment of 2,994 workers were made. From 2008 to 2015 there were only 49 convictions for harassment.<sup>70</sup> Femicidio has registered, since 2016, 89 sexual assaults.

In conclusion, the Spanish system does not comprehensively cover all forms of violence against women, as required by the international treaties and the Istanbul Convention, and in many cases makes the protective action dependent on the victim's police report. In practice, and despite the great progress of the last fifteen years, a life free of violence is not guaranteed due to the overload of the judicial system. Stereotypes and prejudices can still be found in the caring measures for survivors, together with a lack of specific resources. However, this said, we must emphasise that for cases of violence within the couple, Spain has a pathfinding legislation. With its feminist approach, the Organic Act N°1/2004 applies the triple approach required by Human Rights (prevention, protection and prosecution), creates specific bodies and requires specialised training for legal operators and social agents.

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<sup>69</sup> Macro survey on violence against women, 2015: [http://www.violenciagenero.igualdad.mpr.gob.es/violenciaEnCifras/estudios/colecciones/pdf/Libro\\_22\\_Macr oencuesta2015.pdf](http://www.violenciagenero.igualdad.mpr.gob.es/violenciaEnCifras/estudios/colecciones/pdf/Libro_22_Macr oencuesta2015.pdf)

<sup>70</sup> General Council of Psychology of Spain: [http://www.infocop.es/view\\_article.asp?id=7325](http://www.infocop.es/view_article.asp?id=7325)

## CHAPTER 2

# STRATEGIES TO TACKLE UNDERREPORTING CASES OF VIOLENCE AGAINST WOMEN

### Section 1 Legal Strategies

Significant gaps in legal frameworks remain. States throughout the world are still failing to live up to their international obligations and commitments when it comes to prevention and violence against women. Too many perpetrators are not held accountable. Impunity persists. Women continue to be re-victimized through the legal process. Comprehensive legislation provides the foundation for a holistic and effective response. Such legislation must be consistently enforced and monitored, and adequate resources must be allocated to address the problem. Personnel and officials in the field must have the skills, capacity and sensitivity to apply the spirit and letter of the law. Laws must inform a concerted effort that includes education, awareness raising and community mobilization. They must also contribute to tackling discriminatory stereotypes and attitudes, and they must mandate the research and knowledge-building that are necessary to support policy development.

Penal Codes should contain stronger legal provisions on the protection of women's rights. More progressive definitions and higher sentences for sexual crimes and other severe acts of violence, specific measures to prevent sentence reductions for perpetrators when committing acts such as of rape, honour killings, female genital mutilation, domestic violence etc.

Authorities - in consultation with women's rights groups and organisations - should enact and rigorously enforce legislation that defines and criminalizes violence against women, prescribes penalties for perpetrators and establishes better mechanisms of redress for victims.

States should remove from law those provisions related to women-victim burdensome main proceedings and procedural requirements for reporting and prosecuting these crimes.

States should establish special sections as components of each local, regional and supreme courts that exclusively to deal with such cases concerning violence against women. Also it would be beneficial to establish police special units to strengthen response towards violence against women. Where such mechanisms exist, stakeholders should annually review the performance and propose necessary improvements.

It is important to use the law to address violence against women. Addressing this type of violence is a problem that requires a comprehensive package of solutions, including legal ones.

The legislation should serve as a useful tool in supporting women to report cases of violence, to provide remedies to victims, and hold perpetrators accountable.

By analysing several EU states' legal framework, it can be noted that the lawmaker considered appropriate for certain types of less severe forms of violence to include in the

legislation the possibility of reconciliation and/or mediation among parties (injured party and aggressor). What needs to be clear from the very beginning is that all forms of violence against women should be treated as crimes and a proper criminalization should be stipulated in the law and should apply accordingly against perpetrators.

The law has an important symbolic and educative role. It can shape and change attitudes. Eradicating violence against women should mean that each person is aware that violence will not be accepted and tolerated. Legal provisions such as “the reconciliation of the parties will remove the aggressor's criminal liability” should be completely eliminated from a country’s legal framework. A policy of mandatory prosecution in such cases can have a positive effect, can reduce the risk of recidivism from the aggressor’s part.

Mediation among the injured party and the perpetrator in cases of violence against women is not a good strategy and should not be included in a country’s legislation. This procedure should not exist in cases of aggressions against women as it seeks to re-establish the relation between victim and aggressor and it can even create the context in which the victim is perceived (by community and society) as sharing to certain extent the responsibility for the violence directed towards her.

The police hold an important role in ensuring an effective response against violence. In recent years, many improvements have been done concerning police’s approach towards violence against women (i.e. domestic violence) but further steps still need to be performed. Sometimes police officers tend to respond to this type of violence by attempting to “mediate” for a reconciliation among parties, instead of undertaking for example an immediate arrest in cases of domestic/non-domestic aggressions against women. The law should provide specific instructions on how police officers should be trained, prepared to deal with cases involving women victims of violent acts. Strategies to help police handling violence against women include the following: provide appropriate powers of intervention in such cases, develop policy guidelines for using such legal powers, set up special police units and departments to respond to cases of domestic violence/and of other types of violence against women; train all ranks of police officers in the specificities of the phenomenon of violence against women. Police guidelines should approach aspects such as: define what violence against women is and how it manifests, setting out clear expectations from police’s behaviour in handling different incidents involving women from simple to severe forms, outline procedures for protecting women-victims, emphasize police responsibility in referring victims to appropriate support services, recognize police’s need to collaborate with other community service practitioners at all stages of investigation of cases of violence against women.

In addition to focusing on criminalization of the illegal acts, the law should also pay the right attention to address prevention of violence and comprehensive physical protection of women survivors of violence. Each country’s legislation should be a gender-sensitive one, acknowledging that women’s and men’s experiences of violence differ and that violence against women is a manifestation of historical unequal power relations between women and men and a continuous discrimination against women.

Careful and regular monitoring is a critical aspect that can ensure the legislation is implemented effectively and does not have any adverse and unforeseen effects towards women. Annual monitoring of legislation may reveal gaps in the law scope and effectiveness. Monitoring is more effective if it is conducted by institutional bodies in partnership with non-



governmental entities and with concrete feedback from women survivors of violence who are or were involved in legal proceedings as injured parties. This, in order to ensure that evaluations reflect how the law is experienced on the ground. Each country should have an inter-institutional commission for monitoring the implementation of legislation concerning violence against women.

Given the fear and intimidation often felt by women victims of violence from the part of their perpetrators, it is important that the legislation foresees the involvement of prosecutors in all cases related to violence against women. Legal framework, judicial practice should be pro-arrest and pro-prosecution towards all aggressors.

Legislation should explicitly prohibit mediation in all cases of violence against women, both before and during legal proceedings. Sometimes mediation is promoted as an alternative to criminal justice. However, a number of issues might arrive when it is used in cases of violence against women: it exempts cases from judicial scrutiny, it reflects an assumption that both parties are equally at fault for the violent act, and it reduces the offender accountability.

States legislations should provide for timely legal procedures and encourage fast-tracking of cases of violence against women, where appropriate. A common practice of delays in conducting a trial may increase the risk of retaliation against the complainant, particularly when the perpetrator is not into police custody.

Free legal aid should be always stipulated in the legislation without having to prove the level of income in order to benefit from it. Free and fast access to translators, because many times language barriers are a primary obstacle to immigrant survivors of violence when seeking help, protection and the accountability of the perpetrator(s).

Women survivors of domestic violence or violence in the workplace whose immigration status in a country is tied of their marital, family or employment status are often reluctant to report such violence to police. All states should amend their legislation in order to contain clear provisions on the fact that survivors of violence against women will not be deported or subjected to other punitive actions related to their immigration status when they would report such violent cases towards police or other authorities. States should allow immigrant women who are survivors of violence to confidentially apply for legal immigration status independently of the perpetrator.

National legislation should always provide the possibility of prosecution in the absence of the complaint formulated by the women, if the violence survivor was not able or did not wish to give a detailed statement. There are often situations when women are so afraid of perpetrators that they refuse to give testimony due to threats, shame and other reasons. Given the importance of the statement, some countries' lawmakers have chosen to adopt a policy of mandatory complainant or testimony without which the case cannot continue. However, this practice may deter the women from contacting police, from being part in the trial. Authorities should be able to continue investigations on the basis of other evidences, in the absence of a detailed victim's statement. Such an approach indicated that the crime is taken seriously by the justice system which can understand that due to emotional and post-trauma factors, the victim is incapable to provide a statement. In such cases, in absence a detailed statement, the victims are kept informed on a regular basis by the judicial authorities throughout the stages of the proceedings until the end of the trial.

Legislation should provide that sentences should be commensurate with the gravity of the crimes of violence against women and sentencing guidelines should be developed to ensure consistency in sentencing outcomes. Sentences imposed in cases of violence against women within countries have varied, been inconsistent and often informed by discriminatory attitudes held by justice officials regarding survivors of violence against women. Efforts have been undertaken to reduce sentencing discrepancies and to ensure that sentences in cases of violence against women are commensurate with the gravity of the crime committed. Experience shows that the introduction of sentencing guidelines may contribute to the normalization of sentences imposed in cases of violence against women.

Legislation on violence against women in many countries continues to contain provisions which absolve and/or provide lesser sentences for perpetrators of violence against women in certain circumstances. Legislation should provide for: increasingly severe sanctions for repeated incidents of domestic violence regardless of the level of injury - and increased sanctions for multiple violations of protection orders.

Legislation should provide that sentences in criminal cases may order the payment of proper compensation and restitution from the perpetrator to the survivor. Compensation may be an element in penalising perpetrators of violence against women but it should not substitute for other penalties, such as imprisonment. In all countries should exist a government-sponsored compensation program to entitle survivors of violence against women to apply and receive a fair amount of compensation.

Legislation should provide that violence against women may constitute persecution and that survivors of such violence should constitute “a particular social group” for the purposes of asylum law.

## Section 2 Social Strategies

The Committee on the Elimination of Discrimination against Women (CEDAW) has made specific recommendations regarding the access of women to justice<sup>71</sup> and violence against women<sup>72</sup> that are mandatory for all European signatory states of the Convention, being therefore committed to act with due diligence on human rights.<sup>73</sup> These recommendations represent a fundamental starting point for defining new social strategies that will make an effective contribution by helping victims of gender violence to get access to the justice and protection system.

The United Nations has offered a series of recommendations that should also be noted<sup>74</sup>:

- Systematic, ongoing efforts should be made to raise awareness of and train the various professional groups of the judiciary, the police, the staff of centres specialising in addressing gender violence and other resources, and services for women in this situation in the various countries, so that they can combat stereotypes and discriminatory attitudes, improve their understanding of intersectional forms of discrimination and

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<sup>71</sup>General recommendation No. 33 on women's access to justice: <https://goo.gl/Z7rMcP>

<sup>72</sup>General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19: <https://goo.gl/3s4wdG>

<sup>73</sup>Human Rights Due Diligence: <https://goo.gl/VenWBP>

<sup>74</sup>Report of the UN High Commissioner for Human Rights: <https://bit.ly/2S1mdS5>

violence that affect women and girls and apply rights-based methods that take into account cultural and gender differences.

- As far as possible, the training should be delivered by experts from the local communities that are suffering from discrimination.
- Monitoring, complaint and protection mechanisms should be implemented and services such as emergency telephone numbers, legal assistance, complaint centres, psychosocial support and post-traumatic care should be offered to assist and protect women and girls who find themselves in a situation of discrimination, racism and/or xenophobia.
- The systematic work of collecting, integrating and disseminating national data disaggregated in various ways should be increased, while at the same time respecting and safeguarding the right to self-identification and the protection of privacy, and indicators should be created to measure inequalities based on a combination of variables, such as race, ethnic origin, and religion for cases of gender violence.
- Intersectional forms of discrimination and violence against women and girls should be tackled in the context of racism, racial discrimination and xenophobia in the corresponding intergovernmental reviews, such as those relating to the Sustainable Development Goals and the universal periodic review.

It is important to emphasise that awareness-raising, prevention and care practices, and all those arising from policies against gender violence, must be built on the concept of intersectionality,<sup>75</sup> as a basic tool for creating policies that focus on human rights. It is essential to take into account overlapping violence in the case of migrant women, women with mental health problems or women who live in rural areas, in order to create and apply policies that are truly effective.

Also, Organic Law N°1/ 2004 and other similar laws state that protection measures must be provided from the perspective of community and intercultural work and some recommendations can be made in this regard:<sup>76</sup>

- Seek ways and places to meet that allow local organisations to play an active role in assisting and protecting women, with specific resources for this.
- Seek ways to guarantee that the views and voices of women are taken into account when drawing up public policies and strategies for improving prevention, protection and prosecution.
- Mobilise the community in order to contribute to preventing violence. An efficient way to do this is to listen to the proposals and experiences of local governments, community leaders, non-governmental organisations and women's groups or other specific groups.

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<sup>75</sup>Intersectionality: A Tool for Gender and Economic Justice: <https://goo.gl/LuuMHx>

<sup>76</sup>United Nations. Gender equality: <https://goo.gl/hwxwbg>

The signatories of the Istanbul Convention are obliged to carry out awareness-raising campaigns and adopt prevention measures. As part of the campaigns, they must tackle all levels, stages and forms of violence. In addition, they must look at all types of violence, beliefs, attitudes and certain behaviours that mask them. Stereotypes are a significant barrier to the effective protection of women, so that special campaigns must be implemented. The CEDAW has already condemned Spain because public officials reproduce stereotypes, proposing changes and compensation for women who file complaints.<sup>77</sup>

Various prevention campaigns have been implemented in Spain. One problem is that most of these<sup>78</sup> target women without making any reference to the attitudes and behaviour of men or the patriarchal social structure, so that blame can be apportioned. Therefore, one recommendation is that government policy needs to consider changes to legislation, education and advertising to make men responsible for their role in maintaining inequality, so that they see its effects on women and on themselves and accept their duty to become involved in promoting equality.

Another important strategy for raising awareness is the need to alter the formats of institutional messages so that the information is understandable, creating campaigns for different target groups and making the information fit each group. Before this, it is highly advisable to carry out population studies on beliefs and attitudes so that the campaigns meet the needs of the target population, each social group and its particular cultural differences, in addition to the harm produced by each type of offence. Campaigns against violence against women must place more emphasis on actively involving the environment of the person in the violent situation.<sup>79</sup>

Complementary, coordinated, intersectoral action at all levels of decision-making (local, national, and international) will increase the effectiveness of the campaigns, which must be implemented along with other social programmes, so as to create integrated prevention responses that tackle the links between the different types of violence, taking care not to use sexist or exclusive language.<sup>80</sup>

Some of the guiding principles on the prevention of violence are:<sup>81</sup>

- Give priority to preventing violence against women in all policies and programmes and ensure that the efforts are holistic.
- Assign sufficient, special resources to all sectors for prevention, awareness-raising and care activities.
- Seek political support for long-term, sustained investment in prevention.
- Create prevention strategies that tackle the causes of violence against women, especially the persistence of gender stereotypes.
- Set clear goals, defining what needs to be changed using prevention strategies

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<sup>77</sup>CEDAW Decision <https://goo.gl/ufsLaj>

<sup>78</sup>Example of a Spanish Government awareness-raising campaign focusing on men (exception and good practice) "Against sexual violence: #weareone" <https://goo.gl/pdhsyM>

<sup>79</sup>Analysis of the Advertising Campaigns for the Prevention of Violence against Women in Spain. Valencia, 2005 <https://goo.gl/PHE6ao>

<sup>80</sup>Analysis of the Advertising Campaigns for the Prevention of Violence against Women in Spain <https://goo.gl/o1U9nj>

<sup>81</sup>UN Secretary General. Ending violence against women. From words to action. <https://goo.gl/CiTwtu>

and how it is intended to make this change, by setting up a monitoring and assessment process.

- Ensure that the views and voices of women are taken into account, in particular by government bodies, non-government organisations, workers' and employers' organisations and local community leaders, in order to formulate effective, inclusive strategies.
- Engage men and boys proactively in creating and applying strategies for preventing male violence against women.
- Emphasise the fact that violence against women is unacceptable and its elimination is a public responsibility.
- Promote the safety of women, where necessary, by changing the physical environment.
- Conduct promotional campaigns and activities, especially campaigns designed to convey the message that violence against women is unacceptable.

As Spain's Organic Law 1/2004 notes, it is essential to conduct campaigns for particularly vulnerable groups of women: women with disabilities, women living in rural areas, older women, migrant women, and gypsy ethnic, among others.

Rural areas, where violence is more hidden and it is more difficult for the women to acknowledge its existence, are therefore places where significant work must be done to raise awareness of the violence and try to prevent it.<sup>82</sup> For migrant women it is necessary to take into account the need to ensure that the information reaches them in a clear, accessible language, both in the campaign messages and in contacts between them and the social actors involved. One possible way to work on these aspects could be for government departments to provide greater support to social organisations, so that community work and stronger partnerships serve as instruments for the prevention and assistance of gender violence. In Spain,<sup>83</sup> there has been noted the difficulty to access complaints in cases of sexual violence when women are in an irregular administrative situation.

In addition, prevention in the area of healthcare seems to be another very important aspect as many women go there with the intention, or not, of filing a complaint and it can be a place for detection and monitoring. It is essential that all healthcare personnel in all states receive gender violence training, on its detection and intervention, with guidelines for interviews and a knowledge of the specific action protocols, as well as their obligation to file a report should they become aware of an offence against women. In the case of Spain: 91% of women turn to public healthcare in cases of violence. In 2016, 17,479 cases were detected and 14,501 injury reports were sent to the courts. These were 8.7% of the total number of complaints filed, but only 3% of healthcare personnel receive training.<sup>84</sup>

Focusing on cooperation and participation, it can be said that promoting relations between feminist and human rights organisations (bodies specialising in care and advocacy)

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<sup>82</sup>European Parliament. 2017 Report on a European Parliament recommendation to the Council on the EU priorities for the 62nd session of the UN Commission on the Status of Women <https://goo.gl/yvDv2i>

<sup>83</sup> Aspacia Foundation. Report Against violence: complaint, prevention and repair. <https://goo.gl/DmSdyG>

<sup>84</sup>Shadow Report to GREVIO 2018. Istanbul Shadow Platform Spain). <https://goo.gl/KJbKYN>

and national and local social policy (local or regional depending on the State) is a good practice. One example is the 2017-2021 National Pact against Gender Violence, in which a total of 214 measures was adopted. It is felt that it is necessary for states to broaden the channels for participation and include non-governmental spokespersons in the creation and evaluation of plans and strategies for combating violence, and in the evaluation of public policy and judicial action against male violence.

Promoting the participation of women's groups will help to bring them closer to the legal and judicial institutions as there is a justified perception on the part of many migrants of hostility to and mistrust of the police system, as a result of police practices intended to sanction the migrants in an irregular administrative situation.

Another important recommendation in the area of care is that the professionals involved should have information, in addition to an appropriate special training. Local protocols (coordination, referral, protection) should be kept up-to-date with information on the communities and round tables promoted between the various professionals and regional community representatives who are involved with women, in order to create a common framework of care and good practices that fits the different localities and communities. In the area of attention to violence, it is important to take into account the special circumstances of the most vulnerable women, from the viewpoint of intersectionality.

In Spain, the good practice of the AMALGA Association,<sup>85</sup> which belongs to the Latin American and Caribbean Women's Health Network and is co-funded by the AIETI (Association for Research and Specialization in Women's Themes),<sup>86</sup> should be noted. Within its project "*Promotoras comunitarias por la igualdad: por una vida libre de violencias, construyendo redes de apoyo*" (Community promoters for equality: for a life free of violence, by building up support networks), the association trains migrant women to monitor situations of gender violence and it has created a network of women who form a monitoring and support network for other migrant women in situations of gender violence between couples.

The community networks that pay attention to other characteristics of women and not just to the fact that they are experiencing a history of violence could be an ideal place for providing comprehensive recovery processes, including not only possible financial compensation (through the courts or government departments), but also social and public recognition of the truth and help with restitution and psychological and emotional rehabilitation.

Another important recommendation that can be applied to all states is that they must collect detailed qualitative statistical data on each country's entire prevention, assistance, protection, justice and remediation system in order to evaluate and broadly monitor the effectiveness of their policies. The publication of this information is also a way to limit impunity, to conduct an analysis of the actual situation in order to improve public policy and a way to provide the survivors with remediation by acknowledging the facts publicly.

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<sup>85</sup>Amalgama Association website <https://goo.gl/w1AaUm>

<sup>86</sup>Research "Right to a life free of violence" of AIETI. <https://goo.gl/T6Pjat>

The need for public budgets is absolutely essential, and these can be combined with private contributions. It is very important for countries to ensure funding that specifies the staff and the opening hours and sets up public monitoring and control bodies. The financial contributions must be stable and ongoing so as to allow a comprehensive, long-term processes. It is understood that at least two lines of funding must coexist: state funding, to give coherence to the different types of violence, and regional or local funding, depending on how each state is organised, to provide direct attention to survivors, bearing in mind the characteristics of each area.

In conclusion, all the measures described above attempt to make all countries promote a stable network of social services that will cover remediation for the victims, promote proper, coordinated public awareness-raising and prevention policies, provide good communications between the different strata (legal, social and other) responsible for these policies and local organisations, and ensure that financial aid reaches the women who survive, as demanded by the Istanbul Convention.

### Section 3 Educational Strategies

This section addresses a series of **educational strategies** needed to be implemented in order to support victims of gender-based violence and implicitly to encourage them to report cases of violence to competent authorities, thus reducing the phenomenon of un-reporting.

This issue will be approached from three perspectives: addressing societal attitudes that normalise, condone or excuse violence against women, empowering victims of gender-based violence, and training criminal justice professionals on psychological trauma and trauma-informed approaches.

#### Addressing societal attitudes towards violence against women

According to the United Nations Statistics,<sup>87</sup> women across the world are subjected to physical, sexual, psychological and economic violence, regardless of their income, age or education. Around **one third of women worldwide** have experienced physical and/or sexual violence by an intimate partner or sexual violence by a non-partner at some point in their lives, both in developed and developing countries. In the majority of countries, **less than 40 per cent of the women who experienced violence sought help of any sort**. Among those who did, most looked to family and friends as opposed to the police and health services. In almost all countries with available data, the percentage of women who sought police help, out of all women who sought assistance, was **less than 10 per cent**. Women's reluctance to seek help may be linked to the widespread acceptability of violence against women. In many countries, both women and men believe that wife-beating is justified in certain circumstances. However, attitudes towards violence are beginning to change.

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<sup>87</sup> The World's Women 2015, Trends and Statistics, Chapter 6, Violence against Women, United Nations Department of Economic and Social Affairs, 2015.  
<https://unstats.un.org/unsd/gender/chapter6/chapter6.html>

For decades, women's rights activists, researchers, and programmers have emphasised how patriarchal systems shape social expectations in both functional and ideological terms to maintain male superiority over women. Feminist analysis underscores the numerous ways in which patriarchal gender norms and "hegemonic masculinities" - normative ideals that define and reinforce certain men's dominance, privilege and power - serve to produce gender hierarchies and validate men's use of violence against women.

Social constructs reinforce male hegemony over women. Men are, after all, the most common perpetrators of violence against women, and it's undeniable that most men still enjoy power over women in both the public and private spheres. Though efforts to raise women's status in society have been going on for decades, dismantling a gender hierarchy that's been ossified over centuries is a difficult mission.

Cultural and social norms are highly influential in shaping individual behaviour, including the use of violence. Norms can protect against violence, but they can also normalise, support and encourage the use of it. For instance, traditional beliefs that men have a right to control or discipline women through physical means makes women vulnerable to violence by intimate partners and places girls at risk of sexual abuse. Social tolerance of violent behaviour towards women is likely learned in childhood, seeing violence as an expression of masculinity, witnessing violence in the family, in the community, in the media or in other settings.

Equally, cultural acceptance of violence against women, including sexual violence, as a private affair hinders outside intervention and prevents those affected from speaking out and gaining support. In many societies, victims of sexual violence also feel stigmatised, which inhibits reporting.

The normalisation of gender-based violence is the acceptance that violence is an immutable part of life, that depictions of violence do not have real life consequences, and that it is the responsibility of the victim, not of the perpetrator, to prevent violence. The perpetuation of representations of men as intrinsically violent, the sexualisation of violence, and the romanticisation of violent sexuality contribute to a culture in which the crime is not given the due weight, victims and survivors do not come forward, and victims are blamed for the assault they suffered.

Blaming the victim is a phenomenon in which victims of crimes or tragedies are held accountable for what happened to them. Victim blaming allows people to believe that such events could never happen to them. Blaming the victim is known to occur in rape and sexual assault cases, where the victim of the crime is often accused of inviting the attack due to her clothing or behaviour.

One psychological phenomenon that contributes to this tendency of blaming the victim is known as **the fundamental attribution error**. When it comes to other people, we tend to attribute causes to internal factors such as personality characteristics and ignore or minimise external variables; even though situational variables are very likely present, we automatically attribute the cause to internal characteristics.

The fundamental attribution error explains why people often blame other people for things over which they usually have no control. The term **blaming the victim** is often used by



social psychologists to describe a phenomenon in which people blame innocent victims of crimes for their misfortune. In such cases, people may accuse the victim of failing to protect themselves from the event by behaving in a certain manner or not taking specific precautionary steps to avoid or prevent the event.

Examples of this include accusing rape victims, domestic violence survivors and kidnap victims of behaving in a manner that somehow provoked their attackers. Researchers suggest that **hindsight bias** causes people to mistakenly believe that victims should have been able to predict future events and, therefore, taken steps to avoid them.

Our tendency to blame the victim also stems in part from our need to believe that the world is a fair and just place. When something bad happens to another person, we often believe that they must have done something to deserve such a fate. Social psychologists refer to this tendency as the **just-world phenomenon**. We feel the need to believe that the world is just and that people get what they deserve because if we think that the world is not fair, then it becomes more apparent that *anyone* can fall victim to tragedy. You, your friends, your family, and your other loved ones. No matter how cautious and conscientious you might be, bad things can and do happen to good people. But by believing that the world is fair, by believing that people deserve what they get, and by blaming the victim, people are able to protect their illusion that such terrible things could never happen to them.

An essential step in encouraging women to report cases of gender-based violence is to educate the individuals (men, women, children), the families, the society to identify and understand the societal attitudes that normalise, condone or excuse violence against women and the negative impact it produces at all levels of life.

Frequently, due to the cycles and patterns mentioned earlier, violent behaviour continues to happen, because it is the only way people know how to relate to one another. Sometimes, this is due to the individuals' own background or family dynamics. Because of this, it can be difficult for a victim to realise he/she is part of a violent or abusive relationship. A way to help identify this is increasing awareness about the many faces that violence against women can take, such as: **physical violence**, **emotional violence**, **sexual violence**, **economic violence** (when one partner controls the other person's finances, forces economic dependency, or threatens the other person with economic control), **social violence** (when one partner controls the other person's social life, forcing them to social isolation), **symbolic violence** (the way media messages promote and perpetuate violence against women), **obstetric violence** (the dehumanisation of women, and control of their reproductive rights and choices), **teen dating violence** (control, abuse and/or aggressive behaviours that can occur in teen relationships).

Educational strategies should focus on transforming harmful gender and social norms through community mobilisation and group-based participatory education with women and men to generate critical reflections about unequal gender and power relationships.

A useful non-formal educational tool is “Voices against Violence”, a curriculum developed by World Association of Girl Guides and Girl Scouts and UN Women<sup>88</sup> which provides young people (5 to 25 years old) tools and expertise to understand the root causes of violence in their communities, to educate and involve their peers and communities to prevent such violence, and to learn about where to access support if violence is experienced.

The curriculum has six core learning outcomes that build participants’ knowledge and understanding in age-appropriate activities:

1. Starting to develop a safe and supportive space for children and young people to talk about gender inequality and violence against girls and young women.
2. Thinking about gender equality and what it means to be ‘me’. Understanding gender roles, norms and expectations and starting to promote equality.
3. Identifying and understanding different forms of violence against girls and recognise the warning signs of violence.
4. Supporting respectful relationships. Developing skills to form participants’ own relationships and support of friends.
5. Speaking out for girls’ rights and raising awareness of women and girls’ human rights.
6. Taking action to stop the violence. Developing and running a campaign event or activity within the local community to raise awareness about stopping violence against girls and young women.

The curriculum includes a handbook for peer educators that will help them deliver age-appropriate sessions, as well as age-appropriate non-formal educational activities. The youngest groups may start out with storytelling and games that prompt them to think about gender bias and stereotypes, while older age groups can organise poster competitions, visit and volunteer with local shelters, or develop local community-based campaigns and projects to address specific forms of violence against girls and women.

### **Empowering women and girls**

Empowering women and girls is a crucial factor influencing the decision of victims and witnesses of gender-based violence to report the crimes to the competent authorities. In a common understanding, empowerment is the process by which an individual becomes an agent of change. Therefore, empowerment is the process of increasing the capacity of individuals or groups to make choices and to transform those choices into desired actions and outcomes.

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<sup>88</sup> Voices against Violence - Handbook for group leaders, World Association of Girl Guides and Girl Scouts (WAGGGS) and UN Women, United Nations Entity for Gender Equality and the Empowerment of Women (UN Women), 2013, available at: <http://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2013/10/voicesagainstviolence-handbook-en%20pdf.pdf?la=en&vs=1455>

A central approach in the process of empowering women and girls is to **support them self-actualising their inner power, to know their own potential and to understand their rights**. The actions undertaken for this purpose should be performed not only at an individual level, but rather at a social one. Empowering women means empowering society, instilling a real sense of self-worth in women across society, so they can thrive. The process should also focus on increasing the degree of autonomy and improving the women political, social, economic and health status.

According to United Nations,<sup>89</sup> *Achieving change requires policy and programme actions that will improve women's access to secure livelihoods and economic resources, alleviate their extreme responsibilities with regard to housework, remove legal impediments to their participation in public life, and raise social awareness through effective programmes of education and mass communication. In addition, improving the status of women also enhances their decision-making capacity at all levels in all spheres of life, especially in the area of sexuality and reproduction. This, in turn, is essential for the long-term success of population's programmes.*

Educational strategies aimed at empowering women and girls should be present in all formal and non-formal educational contexts, at national and international level. The United Nations<sup>90</sup> proposes a series of steps to be taken in order to empower women and eliminate inequalities between men and women:

1. Establishing mechanisms for women's equal participation and equitable representation at all levels of the political process and public life in each community and society and enabling women to articulate their concerns and needs;
2. Promoting the fulfilment of women's potential through education, skill development and employment, giving paramount importance to the elimination of poverty, illiteracy and ill health among women;
3. Eliminating all practices that discriminate against women; assisting women to establish and realise their rights, including those related to reproductive and sexual health;
4. Adopting appropriate measures to improve women's ability to earn income beyond traditional occupations, achieve economic self-reliance, and ensure women's equal access to the labour market and social security systems;
5. Eliminating violence against women;
6. Eliminating discriminatory practices by employers against women, such as those based on proof of contraceptive use or pregnancy status;
7. If possible, providing by law regulations and other appropriate measures for women to help them combine the roles of child-bearing, breast-feeding and child-rearing with their participation in the workforce.

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<sup>89</sup> International Conference on Population and Development, Programme of Action, The United Nations Population Fund (**UNFPA**), 2004.

[https://www.unfpa.org/sites/default/files/event-pdf/PoA\\_en.pdf](https://www.unfpa.org/sites/default/files/event-pdf/PoA_en.pdf)

<sup>90</sup> International Conference on Population and Development, Chapter 4, Programme of Action, The United Nations Population Fund (**UNFPA**), 2004.

[https://www.unfpa.org/sites/default/files/event-pdf/PoA\\_en.pdf](https://www.unfpa.org/sites/default/files/event-pdf/PoA_en.pdf)

## Psychological trauma and trauma-informed approaches

Trauma is both the experience of, and a response to, an overwhelmingly negative event or series of events, such as interpersonal violence, personal loss, war or natural disaster, that can alter human neurobiology: brain and nervous-system function change. While neurobiological changes are not necessarily permanent, they can be long-lasting if not addressed appropriately.

Thus, the traumatic impact of physical and sexual violence often leads to harmful consequences for the victim that cause the victim to be reluctant to seek help from competent authorities, fearing that her involvement with the justice system can further exacerbate the existent trauma. The victim's ability to recover from the trauma of physical or sexual violence has been directly linked to the response of others to their trauma, particularly the response of law enforcement authorities to a victim who comes forward to report the crime. When systems and the service providers who work with victims of violence lack an understanding of the complex and lasting impacts of violence and trauma, they risk causing further harm. Therefore, it is crucial that law enforcement and other members of the criminal justice community are trained to use **trauma-informed approaches** with victims.

To be "trauma-informed" means to understand the neurobiology of trauma and the effect trauma has on the brain and memory. The amygdala, hippocampus, and prefrontal cortex in the brain experience profound changes following the trauma associated with violence. Further, traumatic stress increases the levels of cortisol and norepinephrine response. These changes can cause victims to suffer hyperarousal, intrusive thoughts and flashbacks, nightmares and sleep disturbances, and most importantly, changes in memory and concentration. Therefore, victims are often unable to provide chronological and coherent testimony to law enforcement. The impression of inconsistency that would in other contexts indicate unreliability as a witness is a natural consequence of the trauma that victims have experienced. Further, the changes to the brain can result in extreme anxiety, fear, and mistrust. These feelings, coupled with the shame, embarrassment, or guilt for what has happened to them, can make for particularly problematic interactions with the criminal justice system.

Traumatized individuals often undergo a process many professionals and victims do not commonly understand. Many professionals inside and outside law enforcement have been trained to believe that when an individual experiences a traumatic event, the cognitive (prefrontal cortex) brain usually records the vast majority of the event including the who, what, where, why, when, and how and the peripheral vs. central information. This approach often ignores the role of bottom-up attention of the more primitive portion of the brain during highly stressful or traumatic event. Therefore, when the criminal justice system responds to the report of a crime most professionals are trained to obtain this type of peripheral and higher level thinking and processing information often discounting the enhancement of memory traces – for what was attended, via bottom-up mechanisms and norepinephrine and glucocorticoid effects on the amygdala and hippocampus.

Unfortunately, collecting information about the event in this manner while overlooking how the memory and trauma shapes the memory may actually inhibit traumatic or highly stressful or fear producing memory and the accuracy of the details provided.

Trauma informed approach requires recognising symptoms of trauma and designing all interactions with victims of violence in such a way that minimises the potential for re-traumatisation. In particular, this approach emphasises the creation of physical, psychological, and emotional safety and well-being to address the unique experiences and needs of survivors and help them rebuild a sense of control, empowerment and self-sufficiency.

### **Core principles of trauma-informed practice**

1. Basic knowledge of the impacts of stress on the brain and body.
2. Ensuring that the physical and emotional safety of an individual is addressed.
3. The individual needs to know that the provider is trustworthy. Trustworthiness can be evident in the establishment and consistency of boundaries and the clarity of what is expected in regards to tasks.
4. Consistent emphasis on choice. The more choices an individual has and the more control they have over their service experience through a collaborative effort with service providers, the more likely the individual will participate in services and the more effective the services may be.
5. Recognising that a “difficult” behaviour may be the product of coping mechanisms and attempted self-protection in light of prior adverse experiences.
6. A “strength-based” approach which acknowledges people’s skills, notwithstanding the enormity and effects of overwhelming experiences with which they may be struggling.

Integrating trauma-informed education throughout the work of the criminal justice system will improve the quality of the act of justice and will better serve society by reducing harm inflicted to the victim during the criminal trial, thus encouraging reporting the cases of violence.

## CHAPTER 3

# THE PROTECTION ORDER FOR WOMEN VICTIMS OF DOMESTIC VIOLENCE

### Section 1 Romania

In the Romanian legislation there are regulations on measures to protect the victims of domestic violence, having relevance in this respect Law No. 217/2003 on the prevention and combating domestic violence, which has been successively modified and republished; the last modification occurred recently through Law no. 174/2018, which introduced the provisional protection order<sup>91</sup> into the national law.

The Protection Order (PO) is regulated as a protection measure taken under the law at the request of a person whose life, physical or mental integrity or freedom are endangered by an act of violence (including not only physical and verbal violence, but also psychological violence, sexual, economic, social, or spiritual violence) committed by a family member. Law No. 217/2003 provides for the definition of *family member*, enshrining a European vision of this notion, not being limited to an official relationship between the victim and the aggressor (spouse), but also including persons who have established similar relations with those between spouses or between parents and children, current or former partners, whether or not they lived with the aggressor, ascendants and descendants, as well as their brothers and sisters.

This form of protection can be requested not only by the victim (personally or by a representative), but also by the prosecutor or the representative of the competent authority or structure, at the level of the administrative-territorial unit, with responsibilities in the field of protection of victims of domestic violence or by the representative any provider of social services in the field of preventing and combating domestic violence, accredited according to the law, with the consent of the victim. If the request is made by other persons, the victim may drop the proceedings of the application for PO.

The PO is issued no later than 72 hours from referral by the civil court (the district court within whose territory the victim is resident or established) for a maximum period of 6 months. By the protection order, one or more of the following measures may be taken (at the victim's request): temporary evacuation of the aggressor from the family's home, regardless of whether he/she is the owner of the property right; reintegration of the victim and, where appropriate, of the children into the family's home; limiting the aggressor's right to use only a part of the common dwelling when it can be shared in such a way that the aggressor does not come into contact with the victim; accommodation/placement of the victim, with his/her consent, and, where appropriate, of the children, in a care centre; ordering the aggressor to maintain a minimum prescribed distance from the victim, the members of his/her family, or the residence, workplace or educational establishment of the protected person; the prohibition for the aggressor to enter certain places or designated areas that the protected person attends or visits regularly; requiring the aggressor to permanently wear an electronic

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<sup>91</sup> Law No. 217/2003 republished in the Official Gazette No. 205 of March 24, 2014, modified by Law No. 174/2018 published in the Official Gazette No. 618 of July 18, 2018, both available on [www.just.ro](http://www.just.ro).

surveillance system; prohibiting any contact, including by telephone, by mail or in any other way, with the victim; requiring the aggressor to surrender the weapons to the police; custody of minor children or establishment of their residence.

There is no mention in the law of the provision of evidence in such a procedure, providing for only the fact that evidence whose administration would require a long time is not admissible. The protection order is enforceable immediately and the appeal does not prevent its enforcement. After the expiry of the PO, a new application may be submitted in this respect if the legal conditions for issuing the PO are still met.

The Provisional Protection Order (PPO) was introduced in the Romanian legislation in 2018 and is different from the protection order (regulated since 2012), being basically a complementary tool to the protection order; the PPO is issued when there is an imminent risk for the life, physical integrity or freedom of a person to be endangered by an act of domestic violence, in order to diminish this risk. The PPO can be issued immediately by the police officer, it is enforceable, without term and without notice, with a validity of 5 days (calculated on hours, respectively 120 hours), with the possibility of extension until the issuance of the PO. After the police officer issues the PPO, the measure must be confirmed by the prosecutor within 48 hours, based on statements and evidence collected by the police officer. Subsequently, the prosecutor has the obligation to submit the PPO together with all the evidence in the case file to the judge, who shall decide upon the issuance of a PO (through an urgent procedure) until the completion of this PPO procedure, extending by law with the necessary time to complete the judicial procedure. The PPO can be challenged, but lodging an appeal does not prevent its enforcement.

The PPO is issued by the police officer based on the risk form<sup>92</sup>, whereby the police officer determines the degree of risk based on the on-site assessment. If the risk to the victim is high or very high, the police officer shall issue a PPO, setting out one or more measures prescribed by the law, but not all the measures available through the PO may be imposed in the case of the PPO, but only: temporary evacuation of the aggressor from the common dwelling, regardless of whether he/she is the owner of the property right; reintegration of the victim and, where appropriate, of the children into the common dwelling; ordering the aggressor to maintain a minimum prescribed distance from the victim, the members of his/her family, or the residence, workplace or educational establishment of the protected person; requiring the aggressor to permanently wear an electronic surveillance system; requiring the aggressor to surrender the weapons to the police;

Referral to the police can be made either at the request of the victim or by other persons who have been involved or assisted in acts of violence, or ex officio. In order to verify the referrals on domestic violence, the law provides express regulations regarding the evidence that can be taken by police officers, namely: finding through their own senses and recording those found in a document or by technical means; consultation of the databases to which they have access to according to the duties of the service and recording those found in a document; the statements of the persons involved in domestic violence, persons who have witnessed domestic violence and other persons who can provide information about the people involved in domestic violence; video or audio recordings or photos, regardless of where they come from; documents, including texts or postings in the online and/or mobile environment.

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<sup>92</sup> The form is established by Order No. 146/2578/2018 of 11 December 2018 on handling cases of domestic violence by police officers, this order being a joint one between the Ministry of Home Affairs and of the Ministry of Labour and Social Justice available at [www.mai.gov.ro](http://www.mai.gov.ro).

Compliance with the PPO and the PO is monitored by police officers; non-observance of the measures ordered by the two instruments constituting an offense is punishable by imprisonment from 1 month to 1 year. In the monitoring process, the police officer carries out permanent checks by all means in order to observe the measures ordered against the aggressor (home visits, gathering information from neighbours, victim's workplace, school, as the case may be). Also, after the PPO is issued, the police officer shall ensure that the rights of the aggressor are respected through the measures aimed at informing correctly about the PPO and guidance to a specialized social service for hosting and counselling.

Both POs and PPOs are issued only in cases of domestic violence, and by the year 2018<sup>93</sup> there have been no specific measures for the police to monitor the effectiveness of the PO implementation, but there was only the possibility for the civil court, along with the issuance of the PO, to order control measures such as requiring the perpetrator to report regularly to the police (a measure introduced in law in 2017), or periodic/spontaneous checks on the place of the aggressor (possibility only regulated in 2018), so that failure to comply with the measures ordered by the PO was often referred by the person protected by PO (if he/she wanted to inform the police about this)<sup>94</sup>. Moreover, requiring the aggressor to permanently carry an electronic surveillance system is a purely theoretical measure, with no real possibilities to be implemented or monitored, since such electronic bracelets or electronic surveillance systems have not been purchased in Romania, and the obligation to wear an electronic bracelet is provided for in the legislation since 2014 (Criminal Procedure Code) in cases of preventive measures, such as house arrest or judicial control.

## Section 2 Bulgaria

In Bulgaria, the *Law on Protection against Domestic Violence* (LPDV)<sup>95</sup> offers direct civil remedies against domestic violence<sup>96</sup> acts before regional courts within relatively short timeframes. Authorities cannot act *ex officio* and the launch of the proceedings is dependent on the will of the victim, which also poses some evidentiary challenges.

The motion for a protection order is submitted within one month of the domestic violence act (Art. 10, par. 1, LPDV) and the court schedules an open hearing within one month at the latest (Art. 12, par. 1, LPDV). Various means of evidence can be produced during the

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<sup>93</sup> Until the adoption of Law No. 174/2018, available on [www.just.ro](http://www.just.ro), respectively of Order No. 146/2578/2018 of 11 December 2018, available at [www.mai.gov.ro](http://www.mai.gov.ro).

<sup>94</sup> As regards cross-border situations, the Romanian law provides for the issuance of a European protection order in accordance with the provisions of Law No. 151/2016; the protective measures that may be taken are only a prohibition on the right to be in certain localities/places established by the court, the right to communicate with the protected person or to approach him/her, or to approach his/her home, workplace, school or other places where the protected person carries out social work.

<sup>95</sup> National Assembly of the Republic of Bulgaria (2005): Закон за защита от домашното насилие [Law on Protection against Domestic Violence] (State Gazette 27/29.03.2005), Sofia: National Assembly of the Republic of Bulgaria

<sup>96</sup> Domestic violence includes each act of physical, sexual, psychological, emotional or economic violence, as well as the attempt thereto, the coercive limitation of personal life, personal freedom and rights, committed against relatives, or persons, who are currently or have been in a familial relationship or co-habitation (Art. 2, par. 1, LPDV). For children, domestic violence also includes any act of domestic violence, committed in their presence (Art. 2, par. 2, LPDV).



proceedings (Art. 13-14, LPDV), but reliance only on the declaration of the victim is also possible (Art. 13, par. 3, LPDV).

If the court honours the motion, it issues a protection order with protection measures (Art. 5, LPDV), such as obliging the perpetrator to abstain from domestic violence; removing the perpetrator from the co-habited home for a term, determined by court; prohibiting the perpetrator to approach the victim, his/her place of living, work of social contacts and recreation; temporary placement of the child with the victimised parent; obliging the perpetrator of violence to take part in specialised programmes; referring victims to rehabilitation. A fine of 200 to 1000 BG Leva is also imposed (Art. 5, par. 4, LPDV). Most measures are imposed for a period of 3-18 months (Art. 5, par. 2, LPDV).

Bulgarian law also recognises the order for immediate protection, issued within 24 hours of submitting the motion, if it contains data on direct, immediate or subsequent danger for the life or limb of the victim (Art. 18, LPDV), in force until a protection order is issued or denied (Art. 19, LPDV).

In terms of problems in implementing domestic violence protection orders, there is no centralised register of such orders in Bulgaria, thus police officers called to a scene do not have advance information about their existence or violations. If the partners do not live in cohabitation, the victim cannot practically obtain a protection order, and cohabitation is also difficult to prove. LGBTI partnerships are not legalized in Bulgaria either, so they do not fall under the scope of the law.

In 2015, Bulgaria undertook long-awaited steps towards implementation of Regulation 606/2013 on mutual recognition of protection measures in civil matters by introducing a special chapter in the LPDV (Art. 23 and following, LPDV).

The execution of protection orders does not have detailed legislative regulation and concerns the practical capacity of institutions. The initiative to notify and prove a potential violation lies wholly with the protected persons. The control over the prohibition of domestic violence, removing the perpetrator from the co-habited home and the prohibition of approaching the victim is entrusted with police (Art. 21, par. 1-2, LPDV). Specialised programmes for perpetrators and victims are carried out with the executive or the relevant non-for-profit legal entities (Art. 6, par. 4, LPDV).

In 2015, Bulgaria also adopted the Law on the European Protection Order (LEPO).<sup>97</sup> It gives a list of protection measures, based on which an EPO is issued, i.e. prohibitions or restrictions for the person, causing danger (Art. 3, LEPO). Long-awaited amendments in the Bulgarian Criminal Procedure Code (CPC)<sup>98</sup> were also passed, enabling the practical implementation of victim protection measures.

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<sup>97</sup> National Assembly of the Republic of Bulgaria (2015): Закон за Европейската заповед за защита [Law on the European Protection Order] (State Gazette 41/5.06.2015), Sofia: National Assembly of the Republic of Bulgaria

<sup>98</sup> National Assembly of the Republic of Bulgaria (2005): Наказателно-процесуален кодекс [Criminal Procedure Code] (State Gazette 86/28.10.2005), Sofia: National Assembly of the Republic of Bulgaria

The regulation of protection measures in the Bulgarian Criminal Procedure Code is phrased in general terms and does not encompass particular gender specificities. As for the specifics of trying domestic and gender based violence-related criminal acts, the CPC allows for closed court hearings (Art. 263, par. 2, CPC). Therefore, taking into account gender specifics in prosecuting and trying acts within the scope of the present analysis is mostly left to the sensitivity and professional expertise of individual magistrates.

### Section 3 Greece

A female victim of domestic abuse (spouse or partner) can seek protection from the perpetrator in Greek courts. Apart from filing a lawsuit, protection measures can also be requested before civil courts. Restraining or protection orders can also be granted by criminal courts. Both courses can be used cumulatively and provide temporary results which usually last until the issuing of a final judgement on the main case.

Civil courts grant protection measures<sup>99</sup> (*ασφαλιστικά μέτρα*) as a temporary means for the protection of an individual who is in imminent peril of having their rights violated, until the civil court issues a final decision on the merits of a lawsuit. Protection measures do not require gathering of evidence, which is necessary for a decision on the lawsuit, yet the victim should be able to substantiate the imminent threat which calls for the protection measure. The case is usually examined one or two months after it has been filed and the decision is published a month later. However, an interim order can be requested in the meantime, which is issued within a matter of days.<sup>100</sup> Protection measures can be filed by anyone whose rights are being violated. This includes women who are not covered by the Domestic Abuse Law 3500/2006 (such as partners who do not share a home) and victims in general.

By applying for a protection measure before the civil courts, the victim can request from the court the issuance of an order against the perpetrator, which will force them to do or refrain from doing a specific action, such as leave the house, give custody of children to the applicant, stay away from the applicant (restraining order), or any other measure the applicant considers necessary, as long as they are able to justify it to the judge. It should be highlighted that the victim is not required to submit a complaint of domestic violence before the police or prosecutor. Through their written application the victim can ask the perpetrator to be detained and to pay a fine when the judicial order is violated. However, protection measures are temporary and if a lawsuit is not submitted within 30 days of their issuance, they expire. It should be added that recourse before the civil courts requires the hiring of an attorney and if the victim does not qualify for legal aid, the procedure is very expensive.

On the other hand, if the victim is in such an urgent situation, where contacting a lawyer is impossible, then she can contact the police or the prosecutor of the first instance court. A complaint (official or unofficial) of domestic violence is submitted without a fee and always forwarded by the police to the competent prosecutor, who is obliged to open an ex officio investigation into the situation. Under Law 3500/2006 on Domestic Abuse the police have an obligation to arrest the perpetrator within 48 hours and bring them immediately

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<sup>99</sup> According to Articles 682-783 of the Greek Code of Civil Procedure.

<sup>100</sup> Under Article 728 of the Greek Code of Civil Procedure.

before the criminal courts to be tried in accordance with the fast-track procedure (*διαδικασία αυτοφώρου*). If the perpetrator is not apprehended within 48 hours, or if the complaint is filed long after the incident took place, the procedure will take much longer. However, the victim can refer to the prosecutor handling the case and can request in writing the imposition of temporary protection measures. Law 3500/2006 also protects partners living in the same house, but partners living separately are not covered.

There is no available statistical data on the protection or restriction measures issued under civil or criminal law concerning violence against women.<sup>101</sup> According to a First Instance Court of Athens' representative, the civil procedure does not even distinguish between protection measures issued for domestic abuse or violence and protection measures issued for different causes. Nor is there any available data on victim's or perpetrator's characteristics.

On the other hand, the police and the prosecutors do not monitor the perpetrator's compliance with the protection measures or the restriction orders apart from very extreme cases and rarely in practice.<sup>102</sup> In fact, the victim bears the responsibility to notify the relevant authorities when a violation takes place. The victim is also obliged to always have a copy of the judicial order in hand. This is problematic in practice, since there are no guarantees for the victim's safety. If protection measures ordered by a civil court are violated, the victim has to submit a written complaint (paying the relevant fee) in order to initiate criminal proceedings against the perpetrator (for the separate crime of violation of a judicial order), and only in case of a violation of a restraining measure imposed under criminal procedure law, the police does have an obligation to arrest the perpetrator immediately. What is more, the victim bears the responsibility to notify third parties (their workplace, the shelter where they are staying etc.) of the restraining or protection measures, so that they know the perpetrator is banned from approaching them. In the case of victims of foreign origin, there are additional challenges, such as lack of supportive network, language barriers and uncertain legal status. There are cases of foreign women who ended up in detention due to the lack of a residence permit.<sup>103</sup> Finally, most victims do not qualify for legal aid and thus they have to bear all the costs of both procedures (hiring a lawyer, court fees, etc.).

## Section 4 Italy

The Italian legal system includes several measures concerning orders aimed to protect victims of violence.

The most important legislative instrument in this context is Law No. 154 of 2001,<sup>104</sup> which introduced patterns for provisional, quick and effective protection of victims. This law amended the Italian Civil Code by introducing a section concerning orders of protection against family abuse. As a result of this amendment, Article 342 bis of the Civil Code currently provides for measures for those who suffer significant damage of their physical or moral integrity or of

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<sup>101</sup>Information based on an interview with the Director of the First Instance Court of Athens carried out on 08-02-2019.

<sup>102</sup> Information based on an interview with the Director of the First Instance Court of Athens and the Head of the Protection Order Department of the First Instance Court of Athens both carried out on 08-02-2019.

<sup>103</sup> See The European Lawyers Foundation, Manual on the law relating to violence against women, May 2018, p. 38-39, available at: <http://elf-fae.eu/travaw/>

<sup>104</sup> Law No. 154 of 2001, available on [www.gazzettaufficiale.it/eli/id/2001/04/28/001G0209/sg](http://www.gazzettaufficiale.it/eli/id/2001/04/28/001G0209/sg).

their freedom as a consequence of the behaviour of their spouse or cohabitant. Victims of such behaviour can request the court to issue a protection order, as provided for by Article 342 ter of the Civil Code. The latter provision regulates the protection orders that a court can issue upon request of the victim, which include the order for the offender to cease the violent behaviour and the order of removal from the family house. Moreover, when deemed necessary, the judge may issue an order restraining the offender from approaching the places frequently visited by the victim (e.g. workplace, house of other relatives, etc.). Finally, since the removal of the perpetrator from the family house may lead the victim to be deprived of any economic resources, the judge can also order the offender to provide the victim with a periodic payment. The protective measures provided by Article 342 ter also include the possibility for the judge to decide that social services or mediation centres, as well as organisations supporting women victims of violence should be involved in the case to assist and provide psychological support to the victim.

The aforementioned forms of protection orders are aimed at protecting the victims after they have denounced the violence suffered and are issued by a judge after the victim's formal request. These orders last one year and may be extended for serious reasons.

In addition to the measures included in the Civil Code, the Italian legal framework concerning the protection of women victims of violence also includes criminal law remedies.

In particular, Decree Law No. 11 of 2009<sup>105</sup> introduced Article 282 ter of the Italian Criminal Procedure Code regulating protection orders aimed to specifically protect victims of stalking (a crime punished under Article 612 bis of the Criminal Code). By means of such orders, the judge may prohibit the perpetrator from approaching certain places usually frequented by the victim or to keep a certain distance both from the aforementioned places and the victim. When further protection requirements are needed, the judge may also order the perpetrator not to approach specific places usually frequented by close relatives of the victim or by persons who live with or are in a relationship with the victim. The rationale of this provision is to prevent any contacts between the victim and the offender who could otherwise continue his persecutory behaviours that could eventually lead to violence. In this sense, the Italian Supreme Court has been playing a key role in further specifying which behaviours may be prohibited for perpetrators of acts of violence against women. With judgement No. 5664 of 2015, for example, the Supreme Court stressed that in the prosecution of a crime of stalking, any form of contact with the offended person can be forbidden to the stalker, ranging from physically approaching the victim, to writing, texting, and even looking at her.<sup>106</sup>

In general terms, when protection orders are requested, two conflicting needs must be reconciled: on the one hand, judges shall limit the freedom of movement of the perpetrator to the extent that is strictly necessary for the protection of the victim; on the other hand, they shall ensure that the protection order is sufficiently detailed, so to prevent the victim from suffering further acts of violence.

According to Article 388 of the Criminal Code, offenders who violate protection orders are punished with imprisonment up to 3 years or with a fine from 103 to 1,032 euros. However, this penalty cannot be considered sufficient to guarantee that victims are protected after reporting the offender. Italian institutions do not provide any official centralized monitoring of the effectiveness of protection orders issued to protect women victims of violence and, in some cases, this prevents the victims from being effectively safeguarded against those who have already committed acts of violence against them.

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<sup>105</sup> Decree Law No. 11 of 2009, available on [www.gazzettaufficiale.it/eli/id/2009/04/24/09A04793/sg](http://www.gazzettaufficiale.it/eli/id/2009/04/24/09A04793/sg).

<sup>106</sup> Italian Supreme Court (*Corte di Cassazione*), Section V, judgement no 5664 of 2015.

## Section 5 Spain

In Spain there is a special protection order for cases of gender violence<sup>107</sup> against women committed by their partners or ex-partners, which gives the surviving woman a status, an authorisation to enable her to go to the Administration and exercise a set of rights as accommodation or economic benefits.

There is also another general type of protection for all offences<sup>108</sup>, consisting of similar criminal preventive measures (restraining orders, measures prohibiting communication, a prohibition on living in certain places) to which the survivors of gender violence by a partner or ex-partner can also have recourse, but this is not an authorisation that gives them access to resources or benefits.

Protection orders can consist of one or more criminal and/or civil measures. The most serious criminal penalty is detention (imprisonment), followed by, in 2017: restraining orders (17,233), prohibition on communication (16,641), suspension of the right to own or bear arms (3,068) and eviction from home (2,187). Among the civil measures, the POs granted have been for maintenance (4,953) and the allocation of housing (4,166).

With respect to children, PO measures are insufficient: 4.8% suspended guardianship and custody, 2.9% suspended visiting arrangements, 0.4% suspended parental rights and another 0.8% took other measures to protect the child against harm. Since 2015, at state level,<sup>109</sup> children have expressly been recognised as victims of gender violence and an emphasis has been placed on the obligation of judges to decree civil measures for the children who depend on the woman subjected to violence.

There are various systems of physical protection once the police has evaluated the risk to the woman. They include the ATENPRO<sup>110</sup> telephone service and the Comprehensive Monitoring System for cases of Gender Violence<sup>111</sup>, created in 2007, which is intended to coordinate the different public institutions in cases of violence, to offer follow-up and real, efficient protection, by sending out warnings, alerts and alarms when an incident or event is identified that could place the safety of the victim or her children at risk.

In general, the support and protection measures depend on the victim's having reported the violence, which is in clear contravention of Article 18.4 of the Convention. POs tend to be requested after a report is filed, which normally takes place at a police station. The average number of reports filed daily since 2007 is 362.4, ranging from 342 (in 2013) to 391 (in 2016)<sup>112</sup>. A PO can also be requested during the legal proceedings, even orally, if there are facts that grounding it. After the request, there is a maximum of 72 hours to hold a hearing and take measures. If a PO is granted, the measures will continue until a judgement is handed

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<sup>107</sup>Law 27/2003, of July 31, regulating the protection order for victims of domestic violence:

<https://goo.gl/MJzpVm>

<sup>108</sup>Precautionary measures in gender violence: Guard service in Fiscal.es: <https://goo.gl/Ptc24P>

<sup>109</sup>Organic Law 8/2015, of July 22, on the modification of the protection system for children and adolescents:

<https://goo.gl/6Q3Snh>

<sup>110</sup>Telephone service for attention and protection to gender violence victims: <https://goo.gl/4MCRjZ>

<sup>111</sup>VioGen System of the Secretary of State and Security, of the Interior Ministry <https://goo.gl/xbwG8N>

<sup>112</sup>Ministry of the Presidency. State Observatory against gender based violence. X Report: <https://goo.gl/C8QYwN>

down and may be altered or ratified at the hearing; civil measures must be expressly requested in another complaint filed during the following 30 days.

In 2017, at state level, 44,106 protection orders were sought, out of which 38,501 were filed with Gender Violence Courts. In other words, 13% of POs were filed with duty courts. From the POs dealt with by the special courts (GVC), 2% were ruled inadmissible, 30% were rejected and 68% were adopted. In other words, the ratio of orders to women victims is 24%.

Protection orders are considered to be too few, inefficient and insufficient, and figures continue to fall. Since January 2010, there has been a clear decline in the number of women who in December were considered by the police to be active cases of gender violence<sup>113</sup>. The regional differences in the number of POs granted and refused are substantial: although the national average for refusals is 30%, some regions exceed this figure in a worrisome manner: Catalonia (49%) Madrid (43%) and the Basque Country (40%).

In 2017, there were granted 26,044 POs which together with those still active from previous years, totalled 54,793 cases. Out of these, 27,607 had police protection, although this did not ensure their effectiveness. Sadly, in all the years for which the data are collected, women who had a PO in force and others who had been refused protection measures were murdered, as shown by the following table:<sup>114</sup>

Year	WOMEN OFFICIALLY MURDERED	COMPLAINT FILED	REQUEST FOR MEASURES	PO IN FORCE
2018	47	14	11	5
2017	51	12	8	6
2016	49	17	11	6
2015	60	13	8	4
2014	55	17	10	4
2013	54	11	9	4
2012	52	10	7	4

Because of the above, and the fact that 70% of convictions are for occasional offences (wounding, injuries) and not regular violence (in 2017<sup>115</sup> only 11.5% of proceedings were for regular violence), which automatically reduces the risk to the woman; the protection system provided by the Spanish legal system lacks comprehensive mechanisms to guarantee the right to life of women who suffer violence, a basic right that must be guaranteed by the state.

<sup>113</sup>Ministry of the Presidency. State Observatory against gender based violence. X Report: <https://goo.gl/C8QYwN>

<sup>114</sup>Ministry of the Presidency, relations with the courts and equality. Secretary of State for Equality and Government Delegation against gender violence. <https://goo.gl/C8QYwN> and reports from the General Council of the Judiciary <https://goo.gl/83P3aW>

<sup>115</sup>General Council of the Spanish Judiciary. Report 2017 <https://goo.gl/kfD4M9>

## CHAPTER 4

### IMPROVING THE EFFICIENCY OF THE PROTECTION ORDER

#### Section 1 Strengthening national legal framework

Analysing the legislation on the protection order, it is noted that although it has been successively amended in several Member States of the European Union<sup>116</sup> in order to ensure a greater effectiveness of the protection measures for victims of domestic violence offenses, there are many legislative gaps or difficulties in implementing the measures foreseen in the law on the protection order. In this context, we have several suggestions regarding the modification and application of the legislation in the field, namely:

1. In cases where the law provides that the Protection Order (PO) and the Provisional Protection Order (PPO) can only be issued in cases of domestic violence, leaving the victims of other violent crimes outside this type of protection (for example, rape, sexual assault or trafficking in human beings) that are not committed by family members; the legislation should be amended in order to enable victims of any other forms of violence than those addressed by the notion of domestic violence to request the issuance of a protection order.

2. As regards the access of a victim of violence to legal assistance, it is noted that the procedures for challenging the PPO, namely the issuance and challenging of the PO, the legal assistance of the person requesting the protection is not compulsory, but can be granted on request. Compulsory legal assistance in the case of a victim is required particularly since the law does not expressly provide what evidence the victim can claim in support of the application for the protection order and his/her application can be refused as he/she cannot prove (or does not know how to prove) the existence of the act of violence to which he/she has been subjected to.

Also, even when the victim is granted such assistance, this is not free of charge. While legislation generally provides for the possibility and conditions under which victims can receive free legal assistance, this is only granted if the victim has filed a criminal complaint and it is subject to the submission by the victim of several documents proving the financial situation, and this may be particularly difficult. At the same time, free legal assistance cannot be accessed quickly in urgent civil proceedings before the civil court with competence to issue the PO, but only if an offense has been committed, subject to the victim's cooperation with the law enforcement bodies.

In addition, the legal assistance of the victim after the legal proceedings or at the expiration of the protection measures previously taken by the court is not regulated. Therefore, if the protected person is allowed to apply for a new protection order, the defender who assured the victim's legal assistance as first protection measure should also be given the opportunity and obligation to further assist him/her in the subsequent proceedings. This aspect is relevant because victims often need stability and perceive the change of the defender in an unpleasant way, especially since undergoing a form of violence has obviously a strong psychological impact on the victim; it is necessary to prevent re-traumatization, for

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<sup>116</sup> For example, Romania, Bulgaria and Greece.

example by repeatedly recounting the situation that ended up with a form of violence to which the victim (who applies for protection) was subjected to.

3. The participation of the victim in the PO issuance procedure is achieved by summoning him/her; only in cases of special urgency the court can issue the PO without summoning the parties. Considering that most often the issuance of the PO is requested by the victim in order to evacuate the aggressor from the dwelling, the law should provide for the possibility of summoning the victim through the police unit in whose territorial range the victim resides, thereby avoiding the cases in which the summons is left, for example, in the mailbox and withheld/destroyed by the aggressor who lives with the victim.

4. In assessing the factual circumstances justifying or not the issuance of a provisional protection order, the risk form to be filled in by the seized officer containing the questions to be addressed to the victim should be standardized in a simple form with a limited number of questions (if possible, at least 5 questions - maximum 10 questions), thus removing those questions on information that can be obtained by simply accessing the police database or other authorities (for example, *if the aggressor had previously had problems with the law* is a piece of information that can be obtained quickly and easily by accessing the criminal records of the person). Also, police officers didn't undergo a specialized training for effective communication with victims of an act of violence (domestic and not only), respectively for a proper assessment of the degree of risk supporting or not the issuance of a PPO.

5. It should be provided that if the protected person violates the provisions of the order, he/she may be required to cover the expenses for issuing and enforcing the order only if it can be proved that the breach of the provisions of the protection order occurred in bad faith. Thus, there should be eliminated the possibility for the victim to be ordered to pay the costs for any breach (even a breach caused by the fear of the aggressor, for example), otherwise being obvious the deterrent character of the victim's access to the form of protection through PO.

6. The possibility of suspending the enforcement of the protection order should be removed from the law if an appeal is lodged against the judicial decision on the issuance of the PO or on making the grant of such a suspension conditional upon the payment of a security determined in accordance with the imposed criteria, for example in the procedural criminal law (the material situation of the aggressor, his/her legal obligations, etc.), so that the imposed security is not low and the aggressor would not be encouraged to adopt a violent behaviour through an easily obtained suspension of the protection order.

7. Legislation should provide for restrictive conditions for the revocation of the protection order, only in the case when the offender has complied with the imposed prohibitions or obligations, has underwent psychological counselling, psychotherapy, treatment for addiction or any other form of counselling or therapy prescribed or recommended for him/her or had been compliant with the safety measures, if such measures had been taken, according to the law; respectively, if a probation service (or another similar authority) carries out an assessment of the risk of repeated infringement according to its competences, indicating a sufficiently low degree of risk and the fact that the aggressor no longer presents a real danger to the victim of domestic violence or for his/her family.



In this context, the report on the risk of repeated infringement should be the responsibility of the probation service in the local community where is domiciled or is residing the person against whom the protection order has been issued.

At the same time, the establishment plan and the financial resources allocated to the probation services should be considerably increased, as they face difficulties in fulfilling their duties due to the lack of staff and financial resources, so that a rapid report on the risk of repeated infringement is not difficult to be achieved.

8. The law should provide for forms of assistance that can be immediately accessed by the victim, when the aggressor is the only carer of the family. Currently there are no social services that respond to the victim's need to gain independence and to rebuild a new life when he/she is finally separated from the aggressor and many of the victims are affected by the lack of confidence in his/her own forces in terms of livelihood needs for victims and their children, due either to low education or to lack of professional training. Therefore, the victim often chooses not to apply for a form of protection, due to the lack of confidence that he/she is able to ensure a standard of living for his/her and for his/her children in case of removal of the aggressor who supports the family.

9. Also, the authorities should take steps to avoid the risk of disclosure of data relating to the existence of domestic violence or to the status of a victim of domestic violence in case of implementation of measures to monitor compliance with the protection order.

Thus, with regard to monitoring compliance with the protection order, the law or its implementing regulations should provide for the possibility of appointing a police officer specialised in domestic violence issues within the local police unit who has direct contact with the person protected by the PO/PPO and can be promptly notified when the provisions of the PO/PPO are violated.

At the same time, gathering relevant information from the workmates of the victim/aggressor or from the educational establishment of the victim (as measures taken to monitor compliance with the PO) must be achieved by police officers in a discreet manner so as not to disturb the victim's activity at the mentioned places; media coverage or advertising, even unintentional, of the act of violence to which he/she was subjected to and which grounded the issuance of the PO/PPO may have a deterrent effect on the victim's access to this form of protection, as the major fear of the victims of domestic violence offenses is particularly related to the possibility of disclosing to the community in which they live or carry out their activities of interest the circumstances in which they became victims of such a form of violence.

10. Similar to the measures taken in the case of victims of trafficking in human beings, there should be created a normative framework to take measures aimed at anonymizing the data on victims of domestic violence offenses or persons requesting the issuance of a PO/PPO through court decisions or judgments (sentences, decisions) when information is replicated on courts or other authorities' portal in order not to be identified as victims of domestic violence.

11. In order to improve the effectiveness of the protection order, it would be necessary to introduce a complementary punishment in the case of the offense of non-compliance with the PO/PPO (and it should be introduced in the law that does not provide

for such criminalisation), namely the prohibition on a period of 1 to 5 years of the right to communicate with the victim or his/her family members, the persons with whom he/she committed the offense or other persons determined by the court or to approach them and/or the right to approach the home, workplace, school or other places where the victim carries out social activities under the conditions established by court.

12. Also, in case of underage children where there is no trial on their custody, the visits of the aggressor (to allow the establishment of personal relations with children when the aggressor is one of the parents) should be supervised, permitted under restrictive conditions, and should take place in the presence of a psychologist.

13. It is also noted that the obligation of the authorities involved in the issuance of the PO/PPO (police, prosecutor's offices, courts) to report cases of domestic violence (and not only) at the time of the final settlement of the case, for the collection of data *by a single central authority* with responsibilities in the field of combating and preventing domestic violence or other forms of violence; currently there is a poor system of collecting this information. Thus, the information available now does not reflect the reality of the cases of domestic violence or other types of violence, since there is no obligation (but only a recommendation) to report information or to produce statistics in this respect.

14. In order to increase the effectiveness of the protection order, it is also necessary to foster the civic spirit in this respect, with particular importance for the legal education in schools, including on domestic violence or other forms of violence or harassment.

Thus, legal education activities should be carried out with the voluntary participation of magistrates with pedagogical training and specialised in the settlement of such (civil or criminal) causes. At the same time, given that the participation of volunteer magistrates in such activities may be hampered by the limited length of their free time, as judges are extremely busy, volunteer magistrates should be partially relieved of their duties (for example, when they are given other administrative duties in the court, in addition to those related to the trial).

## **Section 2 Access to legal aid for victims requesting a protection order**

For many women victims of domestic violence, concerns over their ability to provide for themselves and their children are sometimes one of the reasons for staying in or returning to an abusive relationship. The protection order is an effective tool for stopping domestic violence. Legal assistance from lawyers is an important aspect in supporting women to obtain such a protection order and to request further preventive measures against their aggressors. In addition to support the survivors of domestic violence, the legal aid provided by lawyers can help their clients to gain economic independence and re-build their lives. Legal aid for victims of domestic violence can promote individual empowerment and self-reliance by giving women the tools and knowledge to access the court system to protect and exercise their rights.

The causes of domestic violence are complex and there is no single policy or program that can fully prevent it. But there is one critical and long-overdue step that once taken it can make a great deal of difference in the lives of these victims: ensuring they have access to legal help regardless of their financial ability to pay for these legal services.

By making an overall analysis of the situation, in many European countries it can be noted that victims of domestic violence do not always have an immediate and comprehensive access to legal assistance. To the extent that victims of domestic violence have adequate financial resources they can hire and pay a lawyer. But if the victim does not have sufficient financial resources, then she can try to benefit from legal assistance from state paid lawyers (ex-officio lawyers).

While perpetrators facing criminal charges have the right to a lawyer (mandatory legal assistance provided in the law), victims of domestic violence seeking a protection order are not entitled automatically to free legal aid, because this is considered in many countries as a civil matter and in such situation they have to follow a complex procedure to prove that they lack the financial resources to pay a lawyer. Therefore, if the victims are not assisted by a non-governmental organisation that might have a network of lawyers and thus to receive free legal assistance, they have to go through the “bureaucratic process” to request the so-called “state free legal assistance” by presenting a lot of documents about their low level of income. Besides the aspects related to the low level of income, in certain legislations there is stipulated the fact that victims of crimes who request free legal assistance must have notified the judicial authorities within a specified period of time.<sup>117</sup>

Women victims of domestic violence who cannot afford a lawyer can face complicated legal challenges on their own. Without appropriate legal assistance, they can lose the case, they can run the risk of not achieving a protection order from court, all these making impossible to escape the dangerous situation and to move forward with their lives.

Access to legal assistance for women victims of domestic violence needs to be addressed from a series of perspectives and issues commonly encountered in many countries.

1. Improving national legislation on the right to receive free legal assistance for women victims of domestic violence who request a protection order and who are engaged in further legal proceedings against their aggressors. Women victims of domestic violence and of other forms of aggression should not pursue a bureaucratic process where they have to prove with lot of documents their income level in order to receive free legal assistance. Legislative amendments are required for a number of articles that can be found in laws such as: law on certain protection measures for victims of crimes; law on the protection order; regulations and decisions on the provision of legal assistance by ex officio lawyers as they are issued by bars unions; law/governmental ordinances on judicial assistance in civil matters that can be granted in the form of: payment of the lawyer's fee, payment of the expert, exemption from court judicial fees, etc.

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<sup>117</sup> For example, in the Romanian legislation is stipulated that In order to receive free legal assistance, victims of crimes must report to the investigating authorities or to the court within 60 days from the date of the offense and the monthly income per victim's family member has to be at least equal to the minimum basic wage gross national income for the year when the victim filed the request for free legal aid (Law No. 211/2004 on certain measures for the protection of victims of crime)

2. Increasing the number of trained lawyers, specialise them in being able to properly assist women victims of domestic violence requesting a protection order/involved in judicial procedures against their aggressors. Fighting violence against women requires the full commitment of different professionals including lawyers. This is because violence will nearly always involve a criminal and/or civil claim and having a well-prepared lawyer is an essential point in achieving a successful result. Legal codes are different from one country to another, rules may vary in their specifics, but there are also legal standards related to violence against women at EU and international level that must be known by all legal professionals who come into contact with women survivors of domestic violence and of other forms of aggression. But not all lawyers, across the European Union representing women who experienced domestic violence, know a great deal about this topic. That is why it is important to educate lawyers across the EU on national and European legal instruments and available practices. Lawyers must have in-depth legal knowledge about the law in their own country as well as in some of the other European countries; they have to learn how EU regulations and international law can be drawn on in cases of violence against women. Annual training programmes following a well-comprehensive national curricula are more than necessary based on the current national and European context of violence against women. Such courses should at least approach topics such as: the dynamics of domestic violence, international and European legal framework (i.e. Istanbul Convention, Directive 2011/99/EU on the European Protection Order and other European directives and regulations); overcoming barriers and access to justice; civil and criminal justice response against domestic violence and other forms of aggression against women; how can lawyers who work with survivors of domestic violence can take a trauma-informed approach in their legal activity; the impact of trauma and dealing with it when assisting the victims in the legal procedures. The annual programme of training lawyers, as developed by bars associations, should include at least several training sessions on domestic violence and in the case of ex officio lawyers who want to assist such victims, they should be required to attend such trainings before receiving cases on this matter.

3. Improving cooperation between non-governmental organisations, private and state centres/shelters for women victims of domestic violence and bars associations, in order for the target group to have access to lawyers who can help them, advise them on legal steps that need to be followed in order to start legal actions against their aggressors. Opening a legal advice bureau in partnership with bar associations that aim to provide counselling and user-friendly information for women to enable them to recognize their rights, to raise awareness and consciousness on legal procedures that can be started against perpetrators.

4. Authorities should focus their attention on developing national referral mechanisms to provide legal assistance for women victims of violence. The rationale for developing appropriate referral systems is to promote a holistic approach to support women victims of domestic violence through a range of services including also legal assistance. Developing a referral system for legal aid does not necessarily mean establishing new services; actually this is about coordination of information, support,

assistance by credible institutions and organisations with a good competency in providing quality services. Institutions and organisations having as target group women victims of domestic violence can learn from the experience of stakeholders dealing with victims of human trafficking (women representing an important number from this target group) that in time developed national mechanism for the identification, referral and assistance. Institutions and organisations with competences in legal assistance, judicial procedures, issuing protection orders, Governmental agencies with competences on gender based issues can sign a memorandum of understanding setting out their respective roles and responsibilities to support access to free legal assistance for victims of domestic violence. The move towards a well-established and functioning mechanism of referral for legal assistance and other support services represents a mature step in ensuring better rights protection and assistance for women victims of domestic violence and of other forms of aggression. To establish a well functional national referral mechanism for legal assistance and other support services also means to take into account several steps such as: conduct needs assessment of current available services for legal aid, develop tools and strategies to address the legal issues related to the provision of such services, promote strategies that consist in active engagement of multiple stakeholders such as police, courts, bars associations/unions of bars, create sustainable networks among legal aid providers, ensure a constant exchange of best practices and lessons learned, develop monitoring and evaluation tools to assess the quality of the legal assistance and of other support services provided to women victims of domestic violence. As a referral system is highly dependent on the capacity of all responsible staff members working for the stakeholders who are part of a referral system, they should undertake a serious programme of training/preparation on the standard operating procedures and strategies that need to be applied in practice in order to ensure an efficient referral process for legal assistance and other support services for victims of violence who request a protection order or are involved in other judicial procedures in civil and criminal cases against perpetrators.

### **Section 3 Monitoring strategies on the efficiency of the protection order**

The Istanbul Convention<sup>118</sup> states that protection measures must be designed to respond to the specific needs of the women, including the children, and that they must be accessible to them. It is therefore necessary to broaden the perspective to include in these measures the subjectivity of women, and those dependent on them, in such situations of violence so as to guarantee comprehensive, effective protection. Factors such as personality, family history, a feeling of being at risk or previous offences must all be taken into account.

When defining gender-based violence, all international instruments<sup>119</sup> note that it not only includes the harm suffered due to the fact of their being women, but also that possible harm must be considered to be gender violence, as well and therefore it needs to be subject to protection. It is essential to assess the women who are in this situation in order to design

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<sup>118</sup>Istanbul Convention <https://goo.gl/n6YnzT>

<sup>119</sup>Beijing Declaration and Platform for Action <https://goo.gl/Tdt6Y1>

the protection measures that are needed in each individual case.

In regard to the measures to improve police procedures for applying protection orders (“PO”), a series of proposals has been made that are designed to understand, investigate and analyse the factors that prevent the provision of real protection:

- When a PO has not been granted: cases in which women requested one and it was refused, and they were attacked or killed by the person against whom the measures were requested (according to official sources, between 2012 and 2018, in Spain alone, 31 women<sup>120</sup> were killed after being refused protection measures).
  
- When protection measures have not been requested: cases in which neither the woman nor the Public Prosecution Service requested them, even though a complaint was filed and the existence of a risk was reported, and the woman ended up by being killed by the person against whom the complaint was filed (according to official data, between 2012 and 2018, 30 women were killed in Spain after filing a complaint without asking for protection measures).

It is therefore necessary to set up, after the investigation and analysis of the above-mentioned cases, a mechanism of punitive measures and the assignment of liability to the justice operators involved. This mechanism must in turn include the assessments made, in addition to the recommendations for remedying the procedures that prove to be detrimental to the design of protection mechanisms in each country. This is a way to prevent impunity in cases of human rights violations and could increase the trust of women in the institutions.

Taking into account police procedures, to effectively apply POs it is necessary to bear in mind the following actions:

- Police intervention will take place anywhere, public or private, in case of aggression or a risky situation. House raids will be carried out in cases of flagrant offences or with the permission of the residents or at least of the victim.<sup>121</sup> It is important to make a visual inspection, seize the elements of the assault and gather information on the possible witnesses.
  - Draw up a complete police report with all the evidence collected by the police – with specific information, including contact telephone numbers and previous known violent actions – so that collecting evidence is not the sole responsibility of the woman.
  - Regarding the aggressor: read him his rights, confiscate any weapons, if it is the case, and take him to the police station or courts, if appropriate.
  - Take into account the personal and cultural situations and contexts of the women, as well as their needs and the type of crime suffered.
  - Set up police units with special training in gender violence that provide assistance 24 hours a day, seven days a week.
  - Set up and improve the rooms in police facilities in which victims and

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<sup>120</sup>Ministry of the Presidency. State Observatory against gender based violence. X Report <https://goo.gl/C8QYwN>

<sup>121</sup>Guide with recommendations of the Canarian Local Police <https://goo.gl/kX2cbH>

witnesses are assisted, to prevent possible secondary victimisation:

- Separate waiting rooms so that they can be as relaxed as possible
- A room for children, if they are present, that suits their needs, so as not to be present while making the complaint
- A place that offers the necessary privacy for hearing the complaint
- Improve the risk assessments made at the police stations, by opening them up and having something other than a battery of set questions. Instead, a qualitative interview should be conducted by a person specially trained in this area, and, if this does not take place, a report along these lines from the specialised social services that are assisting the woman should be taken into account.
- Ensure that when filing the complaint at the police station, a senior lawyer is present, if the woman wishes, or other victim support services (such as a psychologist or an educator), as laid down in the European Directive<sup>122</sup>.
- Draw up a safety plan during the initial care received by the woman, either at the police station or from a specialised service.
- Set up an interview protocol for complaints that ensures that:
  - The entire history of possible gender violence by the aggressor, not only the occasional acts that have occurred recently, is retold, so as to make an in-depth analysis of the aggressor’s behaviour throughout the relationship and of the woman’s sense of fear and being at risk
  - The woman is asked specific questions about other acts of violence, not only physical, such as financial control, withholding documents, threats to her or family members, insults, etc.
  - The interview is conducted with empathy, active listening, friendliness and respect, so that the women are willing to describe the entire process of violence and not just the most recent episode.
- Give a copy of the report to the woman.
- It is mandatory to report the current risk in case she returns home after making the complaint and to take measures for her protection.
- It is mandatory for the judicial operators and police to inform the women of her right to regularise the administrative situation and how this can be achieved.
- It is mandatory to refer her to a comprehensive network of resources and inform her of the possibility of access to protected accommodation.
- After requesting a protection order, the aggressor is brought before a court before legal proceedings are commenced.
- Implement improvements in police follow-up, such as:<sup>123</sup>One single person is responsible for monitoring developments in the case and the measures adopted.

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<sup>122</sup>Directive 2012/29/EU of the European Parliament and of the Council, by which are established, the norms on the rights, the support and the protection of the crime victims. <https://goo.gl/8iQCtG>

<sup>123</sup>Good practices in police intervention in Gender Violence. Hera Project. City Council of Valencia. Local Police of Valencia. <https://bit.ly/2G1CiAT>

- Make sure that those responsible for supervising the case are always the same team
  - Provide access to the woman under protection measures to the police officer who has been assigned to monitor her and the developments in the case.
  - Create a file with the information required for effective protection (address, telephone numbers of the woman and family members, children's school, and protection measures for the home, places frequented by the aggressor, vehicles that she drives, photographs, a brief history of the case, and the criminal profile).
  - Contact the woman if she approves this, taking an active role in protection, not a passive one.
  - Create a police action protocol for situations in which the victim lives in the same place with her aggressor (urban areas with small populations, work places, schools, etc.).
- Implement re-assessments of the level of risk in situations of gender violence at the request of specialised social services that assist women in this situation.
  - In the risk assessments it is necessary to include the children and those dependent on the woman who is in a situation of gender violence.
  - Mandatory coordination between police units and healthcare providers while they are assisting the women in order to guarantee a stable and continuous flow of information and to minimise emergencies and risky situations.
  - In situations of violence involving dependent children: evaluate the immediate civil measures, such as supervised visits or at special centres, suspension of visiting rights, and even a recommendation to the competent court for the withdrawal of parental rights.
  - At the end of the measures regarding children, it must be required a psychosocial report on them in order to modify the measures and guarantee the best interests of the child.
  - Develop a system, helpline or some other specific tools to allow women to rapidly notify law enforcement agents of cases on the non-observance of the PO by the offender.
  - Implement or improve the technical system for electronic tagging devices by involving the administrative, political and security organisations, so as to promote their use for the assessment of "average risk" and only in exceptional cases for "low risk".
  - Electronic tagging systems cause the least inconvenience to women who need protection, being accessible to all women and easy to understand.
  - Implement an electronic database which is updated in real time and which can be accessed by the specialised care services for women, prosecutor's offices, police authorities and courts. A database of this kind could assist in the collection of statistical data.
  - In regard to the violation of POs, to implement electronic mechanisms allowing the logging of violations committed by aggressors, in order to take punitive measures if this is appropriate, avoiding at all times the re-victimisation of women.
  - Guarantee an adequate, stable budget for electronic tagging systems.



- Create outreach and publicity materials about POs in a clear, simple and comprehensible style and available in multiple languages, including:
  - Under what circumstances a person can obtain a PO
  - How to get a PO
  - Location or place where a person request a protection order
  - What measures can be considered for both women and children and other dependents
- Implement measures that lead to greater trust and closeness to law enforcement in these situations.
  - Promote conventions between state and local bodies, so that it is local law enforcement agencies that, after assessing the level of risk, can be responsible for protecting women in this situation, since they are the closest to them.
  - Local-level coordination boards on which the officers responsible for protecting the women participate, as well as the specialist social services and other local officials from basic services of particular importance in the area.
  - Design extrajudicial mechanisms ensuring the protection of women at high risk of gender violence, even when they do not report them.
  - Implement and expand all the protection measures and their improvements to all forms of gender violence.

The recommendations in this chapter promote the specialised training of police officers in order to properly address the complexity of this problem, by providing 24- hour resources, conducting interviews that are not limited to the most recent episodes of violence, on proper premises, making assessments of the risk that take into account subjective and objective factors, and implementing electronic systems that prevent breaches of the measures, among others. Finally, it is recommended that the common action guidelines should be unified and the set up protocols specify how police officers should handle such cases, in order to guarantee the protection of women.

Public bodies and institutions, especially the police are particularly responsible to prevent, protect and condemn an aggressive, discriminatory conduct against women in order to provide an effective protection.

## Annex – National Stakeholders

- Superior Council of Magistracy, Romania
- National Agency for Equal Opportunities for Women and Men, Romania
- Network for Preventing and Combating Violence Against Women, Romania (25 NGOs)
- National Commission for Combatting Trafficking in Human Beings, Bulgaria
- Prosecutor’s Office of the Republic of Bulgaria
- National Institute of Justice, Bulgaria
- Ministry of the Interior, General Directorate National Police
- Alliance for the Protection against Gender Based Violence, comprising 10 leading NGOs
- Supreme Judicial Council, Bulgaria
- Ministry of Foreign Affairs Office of the National Rapporteur on Trafficking in Human Beings (NRO), Greek National Rapporteur on Trafficking in Human Beings
- General Secretariat for Gender Equality - Ministry of Interior, Greece
- Director of the First Instance Court of Athens
- Head of the Supreme Court President’s Secretariat, Greece
- Head of the Single-Member Misdemeanours Court of Athens
- Head of the Athens Prosecutor Office
- Head of the Protection Orders Department of the First Instance Court of Athens
- Press Office of the Hellenic Police, Greece
- Research Centre for Gender Equality (K.E.th.I.), Greece
- DIOTIMA Centre for Women Research and Studies, Greece
- Action Aid, Greece
  
- National Institute of Statistics (*Istituto Nazionale di Statistica, ISTAT*)
- Ministry of the Interior, Central Administration of the Criminal Police (*Direzione centrale della Polizia Criminale*)
- Ministry of the Interior, Department of Public Security, Italy
- Ministry of Equal Opportunities, Italy
- Spanish Ministry of Interior
- State Observatory on violence against women
- General Council of the Spanish judicial authority
- Government delegation for gender violence
- State Attorney General's Office
- Spanish Ombudsman
- Basque Institute of Women (Emakunde)
- CEDAW Shadow Platform
- The network of Latin American women
- Femicide.net
- Aspacia Foundation
- Sortzen Organisation
- Women in conflict zone NGO
- The Spanish non-governmental organisation Medecins du Monde