

# A SAFETY NET

# BUILDING

FOR MIGRANT  
AND REFUGEE  
WOMEN



 ATHENS 2017

## INDEX

ON GOOD AND BAD LEGAL AND  
ADMINISTRATIVE PRACTICES FOR  
COMBATING GENDER-BASED VIOLENCE

## TABLE OF CONTENTS

|   |    |
|---|----|
| <b>1. INTRODUCTION</b> .....  | 4  |
| <b>1.1. OBSERVATIONS ON COMMON FEATURES AND PRACTICES AMONG THE PARTNER COUNTRIES</b> .....           | 4  |
| <b>1.2. GAPS AND SHORTCOMINGS IN THE LEGAL FRAMEWORK(S) FOR THE PROTECTION TO GBV SURVIVORS</b> ..... | 6  |
| <b>2. BAD PRACTICES</b> .....   | 8  |
| <b>2.1. BAD PRACTICES IN ACCESS TO ASYLUM</b> .....   | 8  |
| <b>2.2. BAD PRACTICES IN RELATION TO THE ADMINISTRATIVE AUTHORITIES</b> .....                         | 11 |
| <b>2.3. BAD PRACTICES IN RELATION TO POLICE AND INVESTIGATIVE AUTHORITIES</b> .....                   | 13 |
| <b>2.4. BAD PRACTICES IN RELATION TO PROSECUTING AND JUDICIAL AUTHORITIES</b> .....                   | 14 |
| <b>3. GOOD PRACTICES</b> .....  | 16 |
| <b>3.1. GOOD PRACTICES IN RELATION TO THE LEGAL FRAMEWORK</b> .....                                   | 16 |
| <b>3.2. GOOD PRACTICES IN RELATION TO THE ADMINISTRATIVE AUTHORITIES</b> .....                        | 17 |
| <b>3.3. GOOD PRACTICES IN RELATION TO THE JUDICIAL AUTHORITIES</b> .....                              | 19 |
| <b>4. CONCLUSION</b> .....  | 21 |
| <b>4.1. PROPOSALS FOR GOOD PRACTICES IN LIGHT OF THE FINDINGS</b> .....                               | 21 |

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# 1. INTRODUCTION

Adopting an integrated approach to combating Gender-Based Violence (GBV) among all actors and parties involved, is crucial for the development of an integrated strategy to end GBV as well as for the effective protection of the victims. To this purpose, the programme “Building a safety net for migrant & refugee women”, aims at identifying, with the cooperation of three NGOs specialised in the field, the legal and administrative practices followed by different categories of professionals working with GBV issues, in particular administrative officers (mainly in asylum procedures), police officers, lawyers, prosecutors, prosecutors for minors and judges. The above list comprises the main agents in the public sector involved in the management of cases of violence against women. Bad practices are examined mainly with reference to the police and the judicial authorities (including prosecuting authorities) as well as administrative authorities, with a focus on asylum procedures.

For the purposes of this study, the term public administration executives is used to refer to those public officers who are involved, directly or indirectly, in the provision of support to GBV survivors, such as nursing staff in public hospitals, local government social services staff, staff of counselling centres or other supporting structures within each country as well as asylum officers.

Next to identifying and explaining good and bad legal and administrative practices, the aim of this study is to also contribute to the public debate on violence against women and help improve the protection afforded to the victims, especially those who belong to more vulnerable populations, such as refugee and migrant women.

The practices presented below, have been recorded in Greece by DIOTIMA and in Italy by DIFFERENZA DONNA, organisations that are both equipped with a large and experienced legal team, and in Spain by SURT that successfully introduced legal assistance within the context of this project. The report examines practices that directly contravene the corresponding national and European legal framework as well as practices, which although not explicitly mandated by law, are considered as good practices, because they manage to fulfill more effectively the *rationale* and purpose of the legislation. As regards Greece in particular, the data were drawn from DIOTIMA’s work during the implementation of legal assistance/legal aid and empowerment programmes for GBV victims.

We would like to thank our colleagues from Italy and Spain that have brought to light these practices through their national reports and references.

## 1.1. OBSERVATIONS ON COMMON FEATURES AND PRACTICES AMONG THE PARTNER COUNTRIES

Greece, Spain and Italy have transposed into their legal frameworks on the status of third country nationals and refugees and on violence against women (VAW) the relevant EU standards, including the 2011/95/EU Qualification Directive, the 2013/33/EU Reception Conditions Directive and the 2011/36/EU Directive on Preventing and Combating Trafficking in Human Beings (Anti-Trafficking Directive). All three countries take part in the Common European Asylum System (CEAS) and share therefore some common legal standards, which allow for a comparative analysis. Furthermore, all the above states have ratified the Istanbul Convention (2011) and the Refugee Convention (1951).

All of the states above have established services and provisions for the protection of GBV victims and all of them have expanded them to also include migrant and refugee women, adapting them to the needs of women of foreign origin and to their legal status. It is a well-known fact, affirmed most recently in a report on the reception of refugees and asylum seekers prepared by the Department of Civil Rights and Constitutional Affairs of the EU Parliament, that women traveling alone are at serious risk of falling victims of sexual and gender-based violence, both during the journey and inside the reception centres. Despite widespread awareness of this issue among Member States, a homogenous transposition of the relevant EU standards in the respective national systems has not been achieved to this day. Furthermore, although women at risk as well as GBV survivors are considered a particularly vulnerable group, challenges in the practice of all the states above remain, resulting in underreporting of VAW, gaps in the identification of victims of VAW (incl. THB) and inefficient protection.

At the same time, despite the serious efforts and the progress made on the protection of the victims, one of which is the ratification of Directive 2012/29/EU establishing minimum guarantees for the rights, support and protection of victims of crime, the rights of women are still not fully safeguarded by State actors. The poor protection of the rights of women is a bad practice, common in all three countries. This general finding is analysed in more detail immediately below.

Female migrants, who are victims of gender-based violence, often end up in detention and reception centres after having suffered different forms of GBV, either in their country of origin and/or in the country of reception or during their journey. While being detained, there are no adequate safeguards in place to guarantee that they will be held separately from the trafficker or the abusive person, a practice which contravenes the applicable protection framework and undermines the fight against gender-based violence. At the same time access to information, advice and interpretation by female service providers, specialised in gender issues, is hardly provided, if ever. As a result, many GBV survivors fail to be identified in a timely manner and do not get referred to the appropriate institutions/agents for further assistance (whether state- or non state- run) and remain therefore exposed to high risks of (re)victimization.

Gender-based prejudices and sex stereotypes still persist among police and administrative authorities, occasionally also judicial ones. Bad practices are also observed in this respect, although there has been some improvement in the last years. Concrete examples are discussed further on.

Admittedly, it cannot be overlooked that the three Mediterranean countries, Spain, Italy and Greece have been the first entry point for massive flows of refugees and migrants since 2015. Given the significantly high numbers of underage girls among those populations, who are often the target of gender-based violence, it is reasonable to conclude that the overall figure of women and girls possibly affected by GBV is more than half of the refugee and migrant population reaching Spain, Italy and Greece. Undoubtedly, addressing the phenomenon with efficiency, poses great challenges for the countries under examination.

## 1.2. GAPS AND SHORTCOMINGS IN THE LEGAL FRAMEWORK(S) FOR THE PROTECTION TO GBV SURVIVORS

In Spain, gaps in the legislation have resulted in a decrease of about 2% per year in the number of permits issued to third country nationals; by contrast, the number of permits granted to EU foreign nationals has steadily increased. Migrant associations, trade unions and social-services oriented NGOs have linked this worrying trend to the so-called “*sudden irregular situation*” phenomenon (*irregularidad sobreenvenida*); namely when regularised migrants lapse back into irregularity mainly because they remain unemployed for a year and lose thus the opportunity to renew their permits. The risk of social exclusion is thereby significantly heightened. Analogous patterns have also been observed in Greece. The difficulty in maintaining a legalised status is obviously even greater for women victims of GBV.

The European Commission has responded to Spain with a Letter of formal notice for its failure to transpose the Asylum Procedures Directive 2013/32/EU into the national legislation. As regards the Reception Conditions Directive 2013/33/EU, Spain’s notification of the full transposition of the Directive is currently being evaluated. The European Union also sent a reasoned opinion due to failure of notification of the transposition of the Asylum Qualification Directive 2011/95/EU and Spain notified its partial transposition.

The Spanish Aliens’ law has also been amended in order to establish mechanisms allowing potential victims of trafficking to have a temporary residence permit, provided however that they cooperate with the authorities.

It is noteworthy that both the Spanish and Greek criminal code require the occurrence of a violent act or intimidation as proof of sexual abuse, instead of mere lack of consent. In Spain, violence exerted through less physically forcible means (e.g. use of drugs or alcohol to incapacitate the victim) are considered as milder forms of sexual assault and, consequently, attract lesser sentences. The seriousness of the crime is linked to penetration, arguably reflecting a ‘phallogentric’ approach to sexual violence. Such requirements limit significantly the criminal treatment of sexual violence, since the characterisation of an incident as rape depends on the existence of “resistance” against the perpetrator; this restricts considerably the meaning of “against her will”. Consequently, the evidential process focuses on a concept of resistance, which is interpreted by “male terms”, i.e. by seeking proof of resistance in terms of externalised physical resistance.

In Greece, adult victims of gender-based violence –except for survivors of human trafficking– are in principle obliged to testify against the offender in the context of a public hearing, in the absence of alternative procedures provided by law.

In Italy, a new law passed in 2011 extended the detention time to a maximum of 18 months i.e. nine times longer than in the past. In addition to that, decree n. 113/2018, in force since October 2018, introduces amendments to the asylum system and other security measures and anti-mafia provisions that adversely impact on asylum seekers’ rights. In short, the main changes are: the abolition of humanitarian protection and the introduction of some strictly defined conditions for the issuance of short term permits, which cannot be convert into work permits; the obligation for asylum seekers to remain only in the big CPA and CAS until their cases have been decided on; the 6-month extension of the administrative detention of foreigners awaiting expulsion; the increase of the number of crimes that exclude from international protection; the impossibility for asylum seekers to get

a residence and identity card before the decision on their status has been issued; the provision that in cases where an appeal lodged through legal aid is declared inadmissible, the lawyer will not get paid.

Another issue of great concern in Italy's legislation is the risk of victims of human trafficking being deported as undocumented immigrants due to gaps in the identification framework. In addition to that, the relevant rules provides for the possibility to grant a special residence permit to victims of trafficking even in the absence of criminal proceedings, as long as the element of exploitation emerges during interventions of assistance by local social services. However, this last condition seems to unnecessarily restrict the scope of protection.

Furthermore, according to the Italian immigration law, the permit to stay is granted by the immigration authorities to foreign victims of domestic violence upon the consent of the public prosecutor who is overseeing the individual woman's case. This is in itself restrictive, not only because it depends the protection of the victim on the institution of criminal proceedings against the perpetrator, but also because it shifts the burden of reporting the abuse or violence to the woman. Most of the times, these women do not dare to report the actions of their partners because they are afraid.

Finally, under Law 125/2008 on "urgent measures in the field of public security", a harsher sentence is imposed if the offender was residing in the country irregularly at the time of committing the crime (in judgment 249/2010, the Constitutional Court found this aggravating circumstance to be in breach of the Italian Constitution); meanwhile, all immigrants, including EU citizens, are served with an expulsion order if sentenced to more than two years' imprisonment.

## 2. BAD PRACTICES

### 2.1. BAD PRACTICES IN ACCESS TO ASYLUM

In Spain and in Greece, a key characteristic of the asylum system is the acceleration of the procedures, reflected in the addition of an “asylum claim *admissibility* examination” phase and the imposition of geographical restrictions on the applicants. In particular, in the case of Spain, applications submitted at the borders’ control points of Ceuta and Melilla (reception centres), are examined first in respect of their admissibility and not the merits. Only if the application is found admissible, may the applicant move to Iberian Peninsula and his/her asylum claim will be examined in substance. This means that GBV survivors remain in large unprotected during that first phase. In Greece, the border procedure applies to all applicants who arrive through the islands of the Aegean Sea. However, only those who hold a nationality with a recognition rate above 25% have their applications examined with regards to the admissibility of the claim. For the rest, the application is directly examined in its merits by the Asylum Service.

In Spain, difficulties are observed in conducting a separate analysis of the gender dimension of asylum applications, even though the relevant tools exist, e.g. there are the UNHCR guidelines, assuming that there are no national tools. Furthermore, in the absence of adequate identification mechanisms of vulnerable groups and especially victims of trafficking, many GBV victims are not properly identified. The Ministry of Interior was not in a position to provide any statistics regarding victims of trafficking in human beings identified in the CIE of Spain because “*computer applications do not register the place where the possible victims of trafficking have been identified*”.

Criticism has also been voiced with regard to the unfavorable treatment of specific nationalities with low refugee status recognition rates (especially from Sub-Saharan Africa); their applications are often presumed unfounded without a thorough examination of possible gender-based persecution.

In addition to that, persons who apply for asylum at the Spanish borders or in airports are obliged to remain in spaces set up on an *ad hoc* basis, with restricted freedom of movement, until their application has been admitted to the normal proceedings. This can affect in an adverse manner the interviews of vulnerable groups, such as victims of trafficking.

Many of the cases documented in Spain involve denial of entry, refoulement to the Spanish border and obstacles to accessing the asylum points. Even when a person is already inside the Spanish territory, he/she can be removed at any time, bypassing control by border guards. It follows that the principle of non-refoulement is not adequately respected, the consequences of which can be particularly harsh for victims of GBV. In large this is connected with the specificities of the asylum system in the southern borders of Spain, where asylum seekers, both men and women, are forced to remain until their asylum claim has been considered admissible – a practice similar to the border procedures followed in the Aegean islands, which will be discussed immediately below.

A further aggravating factor is the absence of a uniform administrative practice for the identification of GBV victims. Formal identification is crucial to ensure that victims can exercise their rights; thus, without a uniform practice by the state, their identification is being jeopardized (cases of Ceuta and Melilla).

Another adverse practice followed in Spain, is that the admissibility of asylum applications submitted at the borders and in the CIEs is subject to an assessment procedure that lacks transparent criteria

and adequate safeguards. This explains to an extent the higher number of rejections and non-admissions compared to applications examined in the mainland, but also increases further the vulnerability of those applicants who are victims of GBV.

Finally, UNHCR's guidelines on the different forms of gender-based violence (human trafficking, forced marriage and female genital mutilation) as well as on asylum requests related to sexual orientation and gender identity grounds are in practice not followed.

As far as Greece is concerned, the procedure followed to examine asylum requests from LGBTQI persons is in many respects inappropriate. The type of questions asked when interviewing a LGBTQI person do not conform to the UNHCR's guidelines; there is no uniform interview pattern for this category of applicants; and the relevant training is incomplete. At the same time, due to the high turnover of employees there is a constant need for repeated training sessions, which do not always happen in practice. As a result, in many cases gender identity is being investigated in a manner which is inappropriate or even abusive, while gender stereotypes are reproduced both during the interview and the decision itself. For example, it is not uncommon for the applicant's allegations on his/her sexual orientation to be considered unreliable for the mere fact that the applicant places his/her identity awareness after childhood.

In the Aegean Islands, where a special procedure is followed, it has been noticed that the classification of "vulnerability" is being applied in an arbitrary manner, which lacks legal basis, namely by grading a person's vulnerability as low, medium or high with unclear criteria. Notably, Law 3907/2011 which lays down the legal framework for asylum procedures in light of international standards defines vulnerable groups in a very concrete manner. Article 14 par. 8 states that: *'As vulnerable groups shall be considered for the purposes of this law: a) Unaccompanied minors, b) Persons who have a disability or suffering from an incurable or serious illness) The elderly, d) Women in pregnancy or having recently given birth, e) Single parents with minor children, f) Victims of torture, rape or other serious forms of psychological, physical or sexual violence or exploitation, persons with a post-traumatic disorder, in particularly survivors and relatives of victims of ship-wrecks, g) Victims of trafficking in human beings. Persons belonging to vulnerable groups can remain in Reception and Identification Centres in special areas until completion of the procedures laid down in article 9, without prejudice to the deadlines set out in paragraph 2 above. Reception and Identification Services shall take special care to cater for the particular needs and the referral of families with children under the age of 14, especially infants and babies'.*

Even in cases where the victims have been recognised as highly vulnerable, they are nonetheless obliged to stay on the islands for months, until their interview has been conducted. By way of illustration, in one case the victim, a citizen of the Democratic Republic of the Congo - DRC, had received a certification of high vulnerability by the Hellenic Center for Diseases Control and Prevention but remained geographically restricted on Lesbos for months; merely because the Asylum Service considered that the examination of the asylum application should be completed first. It was not until very recently (October 2018) that this practice changed: the certification of vulnerability lifts the geographical limitation. Even so, the interview continues to be conducted on the island, obliging the victims to return to the precarious conditions of the island for their asylum interview, months after having been transferred to a safe place.

Furthermore, in the case of Greece, GBV survivors are not always identified and protected in an effective manner, despite the existence of GBV actors (mainly UNHCR's GBV focal points) on the

islands. Notably, even in cases where the woman in the family has been identified as vulnerable, her children's status remains connected to that of their father. With the rest of her family restricted to the island the woman cannot in practice exercise her right to move to mainland leaving her children behind. In both Greece and Spain, following recent legislative amendments, EASO experts are involved in the asylum procedures at the borders; a practice which has been heavily criticized by NGOs for its overall inadequacy and raises questions as to whether the EASO experts are subject to EASO's or the Asylum Service's guidelines and how an integrated administrative practice can be ensured.

Another issue of concern is the risk of refoulement: many cases of suspected refoulement at the borders have been recorded by NGOs. Such flagrant violations of the principle of non-refoulement can have devastating results for victims of gender-based violence. Violations of the "non-refoulement" principle have also been reported also in Spain, mainly in the form of collective "push-backs" of persons approaching Ceuta and Melilla. In its recent decision on *N.D. and N.T. v. Spain*, the ECHR acknowledged that the push-back of the applicants constituted a violation of Article 4 Protocol 4 (prohibition of collective expulsions) and Article 13 (right to an effective remedy) of the ECHR. In Italy, the police practice of "screening" the profile of the newcomers by means of questionnaires during a "pre-identification" phase to distinguish migrants from refugees, has been regarded as a "covered" practice of collective expulsions, because it results in denial of access to asylum procedures. It is apparent that women and specifically GBV survivors are exposed to increased risks of harm due to these practices.

In Italy the following issues of concern have been observed: Italian law provides hardly any guidelines on how the reception system should be set up, leaving the management of the centres to different private firms and NGOs that do not necessarily have the right skills and/or expertise in migration issues. In fact, call for bids on managing reception centres are won on the solely basis of the lowest economic offer, without adequate consideration of the quality of services provided and/or the operators' skills/capacities.

In addition to that, between October 2015 and January 2016, hundreds of delayed rejection orders were issued in Sicily, without having been preceded by individual interviews and no copies were provided to the persons concerned.

Furthermore, given that EASO experts are currently also involved with the processing of asylum claims and relocation procedures in Italy, questions similar to the ones mentioned earlier in connection to the Greek procedure and EASO, apply here as well.

Moreover, dubiously quick assessments are often carried out in Italy in order to distinguish asylum seekers from economic migrants. Cases have been reported where the individuals were asked to indicate the reason why they came to Italy and had to choose from a pool of four answers: to seek work, to escape poverty, to reunite with the family or to seek asylum. Most of the migrants and refugees were not capable of properly filling in the form: in many instances the procedure took place right after the refugees had been rescued at sea and had just landed, being obviously still under the shock of a long and risky journey; very often they were unable to understand what was required, because the available mediators provided support only in respect of four languages and could not cover all the different areas of origin of the migrants.

In addition to that, in the case of Italy, the administrative authorities are often inclined to reject asylum applications on grounds which reflect gender-based stereotypes (the most common being

that the woman was unreliable because she had abandoned her children in the country of origin) and sexist prejudices. The authorities also often doubt the reliability of women engaged in sex working due to their difficulty in specifying the facts in respect of time and place, overlooking the fact that this is a common characteristic among women who have been persecuted or have suffered traumatic experiences because of their gender/because of being a woman.

Another significant weakness in the Italian system is the apparent lack of recognition of the special needs of refugee women in migrant reception centers (case of a refugee woman victim of severe violence who had no adequate support in the centres where she was being hosted).

Furthermore, although UNHCR recommends gender-sensitive procedures including by means of asking open-ended and specific questions, which ensure an open and supportive environment that helps establish trust, and/or choosing female interpreters and interviewers, many women reported the absence of gender-sensitive questions or a reassuring environment during the interviews.

Notably, on the 3<sup>rd</sup> of August 2016, a Memorandum of Understanding was signed between the Italian and Sudanese police authorities. The agreement provides that, upon request, the Sudanese police should collaborate in identifying and repatriating Sudanese nationals who have not applied for asylum. In implementation of the agreement, Italy returned 40 Sudanese nationals to Khartoum on the 24<sup>th</sup> of August 2016.

It should be mentioned that, in some cases, women who had suffered female genital mutilation (FGM) and reported their condition to the medical staff of the reception centres, did not receive any medical certification, which could have been useful for the asylum evaluation process.

Finally, although human trafficking, especially of Nigerian women, is a well-known fact and can provide sufficient grounds for granting refugee status, the percentage of rejection of this type of applications remains high. The recent deportation of 70 women while their appeal against the first instance rejection of their asylum application was pending, is not only a violation of their rights but indicates a general failure to offer adequate protection and effectively avert the risk of re-trafficking.

## **2.2. BAD PRACTICES IN RELATION TO THE ADMINISTRATIVE AUTHORITIES**

In Spain, although the detention of asylum seekers or vulnerable categories is not allowed by law, in practice, several cases have been reported concerning the detention of unaccompanied children and victims of trafficking. To a large extent this is attributable to the lack of timely identification of a person as a minor or as a victim of trafficking respectively.

Furthermore, in Italy, Greece and Spain, foreign women who are GBV survivors are entitled to a residence permit on “humanitarian grounds”, even if their stay in the country has been irregular. In Greece and in Italy, however, requests for residence permits from victims of domestic violence are sometimes treated as abusive. In such cases the Greek Ministry of Internal Affairs may request additional documents which are not legally necessary. Many different obstacles may also arise during this procedure because of the authorities’ attitude (in one case, a woman who went to apply for residence permit as a victim of domestic violence was told that it was not possible because the offender was not a husband). Lawyers working with women’s shelters in Italy also reported that when women ask for a permit due to being victims of domestic violence, it is spread the bias of the false-

hood of the denouncement because it is being considered just as instrumental to obtain the permit, despite the low number of requests for such permits. According to the available data, only 30 permits under article 18 bis Immigration law were issued in 2015. The victims often risk experiencing “secondary victimisation” during the criminal proceedings as they are often not believed by the judicial authorities.

In the case of Greece, only a partial picture of the situation on ground is possible, as the relevant data (with basic indicators) are available only through the SOS-line for GBV victims and the police. However, these data are not unified in order to allow common conclusions. In addition to that, due to the lack of adequate interpreters, practitioners in the Counselling Centres are often obliged to request the assistance of either other female guests hosted in the shelter, or of the guests’ children. This is not consistent with the principle of confidentiality and does not guarantee a professional level of communication with the woman-victim of gender-based violence. At the same time, lawyers appointed to work with the Counselling Centres are selected from a general list of legal aid lawyers and there is thus no guarantee that the lawyers will have specific knowledge of GBV issues.

In Italy, migrants are often deported to countries with worrying human rights records. Moreover, human rights abuses are also observed in the Italian hotspots, where force is often used in the context of the identification process against migrants who refuse to get fingerprinted. Furthermore, except for women victims of human trafficking, there are no up-to-date reports regarding women survivors of gender-based violence present in the Italian hotspots.

As regards status regularisation, victims of THB are in practice only able to obtain a residence permit if they decide to cooperate with the police and testify against the traffickers; notwithstanding the fact that the law, as stressed earlier, provides for the possibility to grant a special permit without initiating criminal proceedings, as long as the element of exploitation emerges during interventions of assistance by local social services. As regards the number of residence permits issued to victims of THB, by the end of August 2016, a total of 494 permits had been issued under Article 18 of the Consolidated Immigration Act, out of which 139 were granted to Nigerian women. This is a very small number compared to the number of Nigerians who arrived in Italy in 2016 and were refused international protection, even though they had been identified as THB victims by NGOs.

In Italy, although the detention of undocumented migrants who are awaiting deportation constitutes an exceptional measure under immigration law, in practice it is the sole measure applied also to undocumented women. The detention centre of Ponte Galeria remains the unique structure where undocumented women are detained. They are usually victims of GBV, THB or have suffered GB persecutions in their countries of origin.

As regards “assisted repatriation programmes” there are not enough safeguards in place to protect women sent back to their countries of origin from the risk of re-trafficking or GBV. This is the case not only in Italy but also in Greece.

Finally, concerns about the protection of the victims’ family rights have arisen in respect of the refusal of the Italian Ministry of Interior to grant family reunion permits (in one such case a migrant woman was denied permission to bring to Italy her daughters who were at high risk of FGM in their home country).

### 2.3. BAD PRACTICES IN RELATION TO POLICE AND INVESTIGATIVE AUTHORITIES

In the case of Greece, many incidences have been recorded that reveal widespread patterns of inadequate victim protection. Cases of discouraging the victim from lodging a formal complaint, due to the belief that the optimal solution lies within the family (a trend observed during trainings by DIOTIMA) include: requiring a fee to register a complaint, a condition not foreseen in penal law; 'warning' that both sides, i.e. both victim and the perpetrator, will be apprehended if the case has no merit and simply registering the facts in the 'incident book' (in one case the police did not open a criminal file for domestic violence when informed about the incident, even though this crime is prosecuted *ex officio*; instead, the police placed an entry into the incidents book); suggesting to the victim that it is better not to arrest the perpetrator in the context of the '*flagrante delicto*' to avoid '*making matters worse*' (reinforcing thereby most victims' belief that the complaint will make the situation worse) or to flee from his/her house as the offender will have no where to stay.

Cases that create high insecurity to the victim about the police's ability to protect him/her include: in one recorded incident both victim and perpetrator were transferred within the same police car; in another case, the victim was interpreting to her husband the content of her complaint against him due to the lack of interpretation services; in a third case, the police officers did not register a lawsuit from a woman from Eritrea due to lack of interpreters. In addition to that, the long waiting time in the police station until the victim has filed the complaint, does not help protect a victim possibly already experiencing post-traumatic stress and could even deter him/her from testifying. Even worse, it is not unheard of for the victim to be arrested following the initiation of criminal proceedings by the prosecutor for false countenance.

In Greece, incidents of total ignorance of the concept of stalking and of how to address other forms of violence have also been recorded (in one case the victim of a brutal rape was asked whether she considered her behaviour and clothes to have been provocative; in another case the police officer did not know the meaning of 'stalking')

Greek police do not always provide the necessary information to the victims who want to file a complaint against the perpetrator or provide insufficient information. In particular, they often do not inform the victims of domestic violence that their forensic examination is imperative, but give them the "choice" not to be subjected to this "additional suffering"; an omission which can significantly weaken the success prospects of their criminal file for personal injury. A case has also been documented where the rape victim had not been informed that the police officers could -with the assistance of a public prosecutor- arrest the perpetrator (since the perpetrator had already been convicted with a final decision); instead the police asked the victim to arrange for an appointment outside the perpetrator's house for the police to arrest him.

In the case of Greece, misconduct towards foreign victims has been documented on a regular basis, with the police demonstrating "tolerance" towards the violence denounced by the victims and attributing it to their different cultural background.

Greek police officers occasionally seem to be unaware of or simply disrespectful to the law. There have been cases where the law was not applied: victims, resorting to police stations after having suffered domestic violence were arrested or detained due to lack of travel documents.

Another area of concern is the extent of the involvement of police officers themselves in GBV. Field

research conducted in Greece in November 2016 comprising 38 interviews directly with female residents in three camps, sex-disaggregated data from a survey conducted with 278 camp residents, 40.6% of whom were women, and 58 semi-structured interviews with service providers operating in camps and settlements, revealed that 11,5% of women reported violence perpetrated by police or security staff in Greece.

In Italy, concerns about the protection of minors mainly revolve around the lack of recognition of the need to protect minors who are victims of sexual exploitation and prostitution (in one case a minor was served with administrative fines for practicing prostitution, each one of which was over 100€; in other words, instead of being protected from sexual exploitation, the minor was sanctioned for it).

A list of formal indicators to recognise gender-based violence also seems to be missing (in one case, a migrant woman who had been a victim of violence both in Italy and in her home country, was nonetheless led to a migrant detention centre).

## **2.4. BAD PRACTICES IN RELATION TO PROSECUTING AND JUDICIAL AUTHORITIES**

In Spain, there have been reports about cases of migrant women being discriminated in respect of access to justice (in cases where they lack command of the local language or they have a low educational level and are expected to make complex statements before the court, as a result of which their credibility is being questioned).

In Greece, many accused are eventually acquitted acquittals occur due to a new testimony from the victim that he/she does not want to proceed with the case or that it was all a misunderstanding, even in cases where a forensic report has been included in the file. Judges are inclined to describe the incident as a "misunderstanding" or "exaggeration", if the plaintiff declares that she agrees to "settle" the case.

It has also been reported that the courts do not always take GBV into account when ruling on the communication rights of the father, whether this involves violent behavior towards the child or in front of the child.

Another element that greatly impacts on the final decision and the victim's overall psychology, is the insistence of some judges to settle cases during custody trials (e.g. the judge asking the victim in front of the perpetrator whether they could 'fix' the situation or refusing to investigate the allegations of GBV or effectively forcing the party to compromise).

There have also been cases where notwithstanding the efforts to accelerate the proceedings before the Greek courts, the decisions were nonetheless issued many months later. Especially in cases where legal aid has been requested, the decision could in principle be issued as late as 25 days after the victim's application. Finally, worrying judicial practices have also been observed in proceedings affecting minor victims; a 'delayed' decision to complain against the offender risks being characterized by the Prosecutor for Minors as poor exercise of parental custody by the mother.

Acquittals of abusive spouses by the Italian judicial authorities have also been recorded, often on grounds that the victim filed a complaint in order to receive the residence permit granted to victims of domestic violence.

In Italy, as is sometimes the case also in Greece, parental performance is often being judged without taking due account of the coercive conditions that the abuse imposes on the affected woman. In the case of a Roma woman, the lack of appropriate competences and specialised skills to identify and recognise the indicators of domestic violence, led to failure to provide social support and the eventual suspension of parental responsibility for her children (the Roma woman being a victim of domestic and/or gender-based violence).

## 3. GOOD PRACTICES

### 3.1. GOOD PRACTICES IN RELATION TO THE LEGAL FRAMEWORK

In Spain, the main legal instrument against GBV i.e. Law 1/2004 on Comprehensive Protection Measures against Gender-based Violence, lays down a definition of gender-based violence equivalent to that of intimate partner violence, aiming to combat not only violence exerted against women by their present or former spouses, but also by men with whom they maintain or have maintained analogous affective relations, with or without cohabitation.

The Spanish Criminal Code establishes female genital mutilation as a separate crime (Article 149), whereas different provisions in civil law and minors' protection legislation lay down the measures that can be applied when minors are at risk of being subjected to FGM.

In addition to that, Law 12/2009 explicitly foresees for the first time the right to subsidiary protection. This provision is important because it opens the door for individuals who do not meet the requirements to acquire refugee status to nonetheless obtain some level of protection against the risk of being returned to their home countries. The same law also introduced changes in the Spanish Criminal Code to ensure harsher sentences in cases of male intimate partner violence against women, as this is considered an aggravating circumstance; and coercion and minor threats are considered crimes and not misdemeanors.

The Spanish Asylum Law provides that applicants for international protection who lack the necessary financial means, shall be provided with shelter and social services in order to ensure that their basic needs are met. In the first reception phase, asylum seekers also receive coverage of personal expenses for basic necessities: transportation, clothing, training in social and cultural skills, host country language classes, vocational and lifelong training. They are also provided with access to leisure activities and childcare.

In Spain, if an asylum application gets rejected, the Asylum Law makes reference to the possibility of allowing residence for humanitarian reasons as foreseen in the Aliens' Law, namely through the issue of a one-year residence permit which may be granted in different situations, including "*being a victim of crime of domestic violence, provided that a judicial decision has established the status of victim*". Moreover, the 2009 amendment of the Spanish Law on the Rights and Freedoms of Foreign Citizens, established that migrant women victims of gender-based violence, regardless of their current administrative situation, are entitled to a residence and work permit once a protection order has been passed or a report by the Public Prosecutor has been issued. This legal amendment corrected the earlier legal uncertainty of victims suspending the deportation proceedings in case they had been initiated.

Finally, an interesting provision is found in Catalonia, in Act 5/2008, which mentions the right of women to eradicate sexist violence. Act 5/2008 adopts an innovative definition which encompasses violence committed by intimate partners and other perpetrators in different spheres. The act defines "sexist violence" (sometimes translated as "male-based violence") as: "*violence that is exercised against women in a display of the discrimination and inequality entailed in a relationship system that enshrines the power of men over women*". This encompasses different types of violence including: physical and psychological violence, sexual violence and economic violence. Moreover, the law states that sexist violence may occur in different contexts: partnerships, family, employment,

social life or inside the community (the latter including sexual violence and harassment perpetrated by non-partners, human trafficking, FGM, forced marriages, violence in armed conflicts and violence against sexual and reproductive rights).

A good practice documented in relation to Greek law is the provision for harsher punishments in domestic violence cases since 2006 (with a recent law amendment in 2018), as well as the possibility for victims of domestic violence to regularise their stay.

The ratification of the Istanbul Convention via Law 4531/05-04-2018 was also a positive albeit quite delayed step in the right direction.

The provision of Greek law that it is not necessary for THB survivors to collaborate with the police in order to regularise their stay in the country is also essential for ensuring their safety without obliging them to make a decision they are not yet ready to uphold. It also helps lay down the necessary conditions for the victim to subsequently provide his/her informed consent to submit an official complaint against the perpetrators of THB.

In Italian Immigration Law, the legal status of women suffering from GBV is also protected: first with the establishment of a permit to stay for humanitarian reasons – the most common type of permit requested by undocumented women suffering from GBV (excluding THB) – and second with the introduction of a specific permit to stay for victims of domestic violence (Article 18 bis Immigration Law).

It is also positive that victims of sexual exploitation are not only eligible for a special residence permit, but can benefit from a program of social integration and assistance programmes.

Moreover, Italy recognises “stalking” as a form of violence against women (introduced in the Penal Code since 2009), as well as a legal justification for empowering the victim by granting him/her lawful residence; stalking is thus recognised as one of form of violence which justifies granting leave to stay for foreign victims of domestic violence (the other grounds being family abuse and mistreatments, personal injury, kidnapping, sexual violence).

Finally, Italy has also adopted measures to protect women-victims of gender-based violence when they testify as witnesses.

### **3.2. GOOD PRACTICES IN RELATION TO THE ADMINISTRATIVE AUTHORITIES**

Spain is the only country in the context of this study which collects data on GBV (police, judiciary support services), disaggregated by country of origin and the specific forms of GBV suffered by migrant women. The systematic and analytical manner in which GBV data are maintained is a good practice that could be adopted by the administrative authorities in other countries.

A remarkable achievement of the Spanish authorities is the recognition of refugee status to twelve women and their minor children trafficked for the purpose of sexual exploitation in the last quarter of 2016. In addition, the OAR communicates to the specialised unit on organised crime of the National Police all cases in which signs of trafficking have been found, in compliance with the 2011 Framework Protocol for Victims of Trafficking.

A further good practice is the implementation of vocational and host language training courses in the Spanish reception centres for asylum seekers to facilitate integration.

It is noteworthy that some autonomous communities collect regional data: following the entry into force of the Catalan law against GBV, which includes FGM and forced marriage as forms of community-based GBV, the Catalan police registered 14 cases of female genital mutilation as well as 14 cases of forced marriages in 2016.

Moreover, recent changes in the examination procedure before the Spanish Office of Asylum of Refuge have resulted in higher recognition rates of asylum applications, including trafficking cases, have prompted further training of professionals and have enhanced cooperation with expert NGOs in the identification process. In this connection, a noteworthy practice has been the development of a reception and support network managed by NGOs and subcontracted by the Ministry of Employment and Social Services.

In Spain, there has been a higher investment in the training of professionals active in the field. At the same time there has been increased cooperation with expert NGOs for the purposes of victim identification, especially with NGOs active not only in the field of asylum but also specialized in gender: CEAR/CCAR (gender persecution) and ACATHI (gender persecution for sexual orientation), SICAR and Proyecto Esperanza (trafficking). All these actions are the result of consecutive legal and political measures. As of the end of 2016 there were 10 NGOs managing the reception system for asylum seekers, whereas until 2014, only 3 NGOs managed such reception places (Red Cross, CEAR and Accem).

In the particular context of Spain NGOs have gone from managing around 1,000 places in August 2015 to 4,607 places as of March 2017 and with the prospect of managing more than 8,000 places, given the funding calls of 2017-2018. Achieving this, necessitated the participation in the management of the reception places of new organisations, with experience in migration and not only asylum, , in addition to the three organizations mentioned earlier that had traditionally managed the places within the host system for more than thirty years.

Furthermore, a good practice documented in Barcelona is the access of undocumented migrants to the training courses of the Municipal Employment Promotion Institute. At the same time, the Municipality of Barcelona promotes subsidised employment contracts to help provide the necessary documentation to migrants through employment.

These good practices are obviously related to the way administrative structures are set up in Spain. The powers of the municipal authorities appear to be of a broader scope compared to those of the Greek municipalities, as they enable them to also formulate policies. They also show how the effective implementation of protection and support policies can be better achieved at the local level. After all, the last practice – promoting subsidised employment contracts – has also found support with the municipality of Athens.

In Greece, a good practice in relation to conducting trainings with the co-operation of different actors, was the training program designed and implemented by DIOTIMA in cooperation with KEK Dimitra, under the LEXOP transnational project, *“Lex-operators - all together for women victims of intimate partner violence”*, in the framework of the European program Daphne III, with the participation of partners from Italy, Spain, France, Germany and Greece. The program aimed at training, raising awareness and networking of all professionals involved in combating and combating violence

against women and at paving the path towards the formation of a "*service continuum*". This program was conducted from March to April 2012.

Another training program by DIOTIMA, addressing primarily lawyers, was implemented some months ago in Athens and Piraeus, in recognition of the need to upgrade legal aid not only in terms of knowledge but also of building a supportive network.

Another positive step has been the co-operation of the Greek Asylum Service with EKKA and the referral of cases to DIOTIMA where there were indications, during the registration or in the course of the asylum interview, that the applicant might be a victim of gender-based violence, especially human trafficking. Unfortunately, this practice has not been systematised yet and is dependent on the initiative and availability of the officer on duty.

Another good practice worth mentioning has been the presence –albeit limited– of special sociologists and psychologists in some police stations to help receive victims of violence, in a pilot project of the Ministry of Citizen Protection. Networking activities of the Counseling Centers with the police stations, have also contributed greatly in the area of awareness-raising and have facilitated inter-departmental referrals.

In Italy increased sensitivity towards certain forms of gender-based violence has also been reported: female genital mutilation is one such form, although previous FGM does not automatically lead to the acceptance of an asylum application, neither to its rejection though; forced marriage may amount to persecution or risk of serious harm, in particular where there is fear for reprisals due to the victim's objection, and can therefore lead to subsidiary protection; domestic violence, as a form of persecution, mainly entitles to humanitarian protection; honour crimes may be characterised as persecution; trafficking, in particular of Nigerian women, may be considered persecution and entitle women to refugee status because of their membership to a particular social group.

Other good practices worth mentioning are the different channels of collaboration between the *Differenza Donna* NGO and certain CAS and SPRAR centres in Rome and the Lazio Region. Since 2015 *Differenza Donna* has been collaborating with different Italian Territorial Commissions for Recognition of International Protection such as the ones in Rome and Frosinone, in order to help identify and protect women victims of THB by conducting interviews and including women in protection projects. The majority of these women are hosted in CAS centres with which *Differenza Donna* actively collaborates in the areas of identification of THB indicators, integration into the Italian culture, access to health and psychological care. This collaboration has also helped sensitise the CAS officers on the situation of women victims of human trafficking, sexual and labour exploitation and their specific needs. *Differenza Donna*, along with other partners, which are part of the Anti-trafficking Lazio Network, and the Lazio region representatives, will soon start training sessions on women victims of THB to various CAS centres situated in Rome and Lazio.

Finally, the Italian National Statistical institute has the capacity to keep relevant GBV data in a systematic manner, which is a prerequisite for combating and effectively addressing GBV.

### **3.3. GOOD PRACTICES IN RELATION TO THE JUDICIAL AUTHORITIES**

In all three countries there has been significant progress among the judicial authorities when handling GBV cases. A higher number of judges are informed and trained and more protection is thus provided to the victims. In Spain a very important step forward has been the establishment of

special courts that deal with Intimate Partner Violence cases. This could serve as an example also for other countries.

In a promising move the Spanish courts have declared unlawful the imposition of geographical restrictions on asylum seekers whose applications pass the admissibility phase, even though the situation on the ground has not completely changed yet.

## 4. CONCLUSION

In all three cases, it is evident that the role of the State is crucial: to uphold the proper implementation of the legal framework and to prevent violations and the replication of gender-based stereotypes by the officers in charge.

Naturally, the need to find solutions for the long term support of the victims of gender-based violence remains compelling; experience shows that temporary protection is vital for the first level of support, but if this effort is not continuous, the risk of re-victimisation remains real.

### 4.1. PROPOSALS FOR GOOD PRACTICES IN LIGHT OF THE FINDINGS

A good practice comprises the implementation of information and awareness-raising campaigns to sensitise and educate the public on gender bias, gender-based discrimination and violence, especially against women, immigrants and Roma. More often than not the victims are not aware of their own rights.

A good practice is the organization of specialised training workshops and capacity-building seminars for police forces, judges and other relevant professional categories (for example, by social workers conducting research on cultural diversity in relation to foreign families) to help prevent discriminatory attitudes and raise awareness.

A good practice is the implementation of an awareness-raising campaign on FGM and other traditional harmful gender practices.

A good practice comprises the provision of specialised legal assistance and psycho-social support to women victims of GBV. DIOTIMA's legal aid program has been met with positive responses by both professionals and women themselves, many of whom noted that they had not built such a relationship of trust with their previous lawyers, whether appointed by themselves with a fee or assigned through the free legal aid scheme.

A good practice is the presence of sociologists and psychologists inside police stations to help facilitate the reception of victims of gender-based violence.

A good practice is granting the victim leave to stay, even in cases where the woman already owns a family permit. In fact, a common fear among foreign women is that their spouse or parent may deny them the necessary cooperation to have their residence permit issued or renewed, and therefore run the risk of being repatriated. It is thus obvious that the lack of an autonomous permit to stay is a real obstacle to reporting GBV in intimate relationship.

A good practice includes reporting and raising awareness about the inadequacy of the hospitality structures and reception system (lack of adequate resources and capacities) to provide the necessary support to women victims of GBV.

A good practice comprises actions aimed at networking the police station with Advice Centres for awareness raising purposes and for case referrals.

A good practice is the institutionalization of the obligation of the police to keep records that are sent to the General Secretary for the Gender Equality and to other competent institutions with regard to the number of withdrawn complaints about domestic violence, independent of the development of any criminal processes.

A good practice is the design of a complaint mechanism within the housing structures of abused women, while providing for a specific code of conduct that will ensure the quality of the services provided.

A good practice involves training all employees (professional and auxiliary staff of shelters for GBV victims) to combat xenophobic attitudes and behaviors, as well as recognise cultural diversity; the everyday life of victims of violence – in their majority women – and the fragile psychological balance of the victims and that of their children is heavily influenced by external behaviors and the existence or not of a support network.

A good practice is the constant cooperation of hostels for abused women with female interpreters to ensure confidentiality and to obtain the factual background of the foreign woman.

A good practice is ensuring that the woman who is a victim of abuse takes active part in all decisions affecting her life and in any legal actions, after being fully informed, in order to help restore her sense of autonomy prevent the risk of dependency on public structures or professionals, but also to ensure future consistency with the decisions taken.

A good practice is to carry out the police investigation in an expeditious and timely manner so that the victim does not suffer additional suffering and mental testing.

A good practice is to lift the detention of women who report domestic violence and are then sued by the perpetrators for false denunciations, since this prospect can discourage victims from filing a complaint and leaves the minors which the victim has under her protection exposed to a number of dangers.

A good practice is avoiding formulating a judicial opinion on a case within minutes of first contact with the minor but taking into consideration the findings of social research instead. Due to lack of awareness of the more specific aspects of child psychology, judges usually ignore the fact that in a family crisis the children "invest" emotionally on the basis of their own "survival" strategy that is often unrelated to the facts; hence a hasty evaluation of the situation can easily mislead the judge also on custody matters. To the extent that there are no "Family Courts" staffed and equipped with supportive advisory services, it is impossible for a judge with mainstream educational and legal background to adequately cope with the specific needs of a family. 'Gender stereotypes are not just stereotypes'. Regrettably there is no immunity to such stereotypes and dealing with them requires a constant struggle. In this connection, good practice means the organization of a specialised training program for judges in order to help prevent and better respond to gender bias, violence and discrimination against migrant women.

In the end, there is a still lot that needs to be done, but the findings and our own experience reveal a slow yet growing progress.



**The General Secretariat for Gender Equality (GSGE)** of the Greek Ministry of Interior is the governmental agency competent to plan, implement, and monitor gender equality and GBV policies.

It has developed an integrated Network of 61 Units for preventing and combating violence against women and has placed GBV high in its agenda.



**The Research Centre for Gender Equality (KETHI)** was founded in 1994, having a dual focus both on conducting social research on gender equality issues and also using this knowledge, to propose and implement specific policies, practices and actions to promote gender equality.



**CRWI Diotima** is a GBV-specialized NGO, national stakeholder expert in EIGE's database, with a long experience in gender equality and GBV field and in migrant women's integration and rights protection.



**Differenza Donna** is an ever growing women's NGO, active in the implementation of specific interventions in safeguarding migrant women's rights and especially GBV protection and previous transnational project experience.



**Surt** is a well established women's NGO with an excellent record of previous work with gender equality, GBV and also migrant integration experience. It has a wide regional network of collaborations, a great experience in transnational projects and a good capacity in service provision.