

Gender-based violence within the asylum procedure

*Analysis of the legal and policy framework at the international
and national level in Croatia*



Croatian Law Centre



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1. Introduction

This report provides an overview of the most relevant international, regional and national legal standards and policy relating to gender-based violence (GBV) within the context of forced displacement. Additionally, the report seeks to provide recommendations for enhancing the Croatian legal and policy framework pertaining to GBV within the asylum procedure.

GBV is ‘an umbrella term for any harmful act that is perpetrated against a person’s will, and that is based on socially ascribed (gender) differences between males and females. It includes acts that inflict physical, sexual or mental harm or suffering, threats of such acts, coercion, and other deprivations of liberty. These acts can occur in public or in private.’¹

GBV is a human rights violation that affects all aspects of an individual’s well-being. It can compel people to flee, and it also occurs during flight and refuge. Although all individuals must be protected against GBV, the vulnerability of women and girls to GBV is heightened.² The most common types of GBV are rape, sexual assault, physical assault, forced marriage and child marriage, denial of resources, opportunities or services, psychological or emotional abuse, and female genital mutilation (FGM), among other forms of harm. Many of these harmful acts are criminalised by national legal systems around the world, although some – including harmful traditional practices – may be tolerated, with or without legal sanctions. Nonetheless, there is still a lack of legislation addressing GBV in many countries, with existing laws often insufficient, or poorly enforced, whether as a result of lack of resources or will. As a result, GBV against girls and women in particular, remains widespread, and those responsible often go unpunished.³ Consequently, women and girls in particular may be compelled to flee gender-related harm amounting to persecution, whether at the hands of State or non-State actors, giving rise to international protection needs.

¹ Inter-Agency Standing Committee (IASC), *Guidelines for Integrating Gender-Based Violence Interventions in Humanitarian Action*, 2015, available at: https://interagencystandingcommittee.org/sites/default/files/migrated/2015-10/2015-iasc-gender-based-violence-guidelines_lo-res.pdf.

² *Ibid.*

³ UN Committee on the Elimination of Discrimination against Women, *General recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19 (1992)*, 26 July 2017, CEDAW/C/GC/35, available at: <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-recommendation-no-35-2017-gender-based>.

2. International and European standards on GBV within the asylum procedure

2.1. International standards

The international legal framework on GBV consists of various conventions and declarations, complemented by guidelines, general comments and other recommendations, whose purpose is to combat GBV, with most specifically aimed at GBV against women. Those pertaining to GBV within the context of forced migration will be analysed in current chapter, including texts primarily focussed on related concepts such as gender and asylum rather than specifically on GBV and asylum.

The *Convention Relating to the Status of Refugees*⁴ (1951 Convention) defines who is considered a refugee, outlines their rights, and sets out the legal obligations of states to protect them, including the key principle of *non-refoulement*. According to Article 1(A)(2) of the 1951 Convention, a refugee is someone who ‘owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.’

UNHCR’s *Guidelines on International Protection No.1: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*⁵ (the Guidelines) play a crucial role in interpreting and implementing the provisions of the 1951 Convention by providing guidance on recognizing gender-related persecution in order to correctly apply the refugee definition. The document highlights that ‘historically, the refugee definition has been interpreted through a framework of male experiences, which has meant that many claims of women and of [LGBTQI+ individuals] have gone unrecognised’ (paragraph 5).

The Guidelines provide clarity regarding the definition of gender and sex, and reiterate that gender-related claims ‘may be brought by either women or men, although due to particular types of persecution, they are more commonly brought by women’ (paragraph 3). They outline forms of gender-related persecution, including GBV, and provide guidance on assessing discrimination

⁴ UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, available at: <https://www.refworld.org/legal/agreements/unga/1951/en/39821>.

⁵ UN High Commissioner for Refugees (UNHCR), *Guidelines on International Protection No. 1: Gender-Related Persecution Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees*, 7 May 2002, available at: <https://www.refworld.org/policy/legalguidance/unhcr/2002/en/31754>.

amounting to persecution, as well as on potentially applicable grounds for recognising refugee status in such cases.

The *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW) provides ‘a gender-sensitive interpretation of human rights law and protects women from sex- and gender-based discrimination with regard to all the human rights contained in the Universal Declaration of Human Rights and other human rights instruments.’⁶

In 2014, in order to provide guidelines to States in regard to refugee women in particular, the Committee on the Elimination of Discrimination against Women issued *General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women* (General recommendation No. 32).⁷

General recommendation No. 32 notes that gender-related forms of persecution are typically ‘forms of persecution that are directed against a woman because she is a woman or that affect women disproportionately’ (paragraph 15), and seeks to ensure that State parties apply a gender-sensitive perspective when interpreting the five grounds for refugee status as stipulated in the 1951 Convention. It also encourages States to explicitly include sex and/or gender, in their domestic asylum legislation and policies, as specific grounds of persecution.

Gender-related persecution

Even though gender is not explicitly listed among the grounds for persecution stipulated in the 1951 Convention, it has a significant impact on the nature of persecution or harm experienced by women in particular, and on the underlying reasons for such treatment.⁸ Gender-related persecution refers to all claims where gender is a relevant factor in determining refugee status,⁹ and which includes forms of persecution directed against women because they are women or that affect women disproportionately.¹⁰ The Guidelines on International Protection No.1 outline how gender – and sexual orientation – can influence or dictate the type of persecution or harm suffered, and the reasons for this treatment, noting that this could include acts of sexual violence or exploitation, family or domestic violence, trafficking, coerced family planning, FGM, or punishment for transgression of social mores, for example – all of which can be considered acts of gender-based violence. The Guidelines underline that international human rights and criminal

⁶ CEDAW, *General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women*, CEDAW/C/GC/32, 5 November 2014, available at: <https://www.refworld.org/legal/general/cedaw/2014/en/102146>.

⁷ *Ibid.*

⁸ Guidelines on International Protection No. 1, para. 6

⁹ *Ibid.*, para. 1

¹⁰ General recommendation No. 32, para. 15

law clearly identify certain acts as violations, such as sexual violence, and support their characterisation as serious abuses, amounting to persecution. They note that these acts inflict severe pain and suffering, both physical and mental, and are persecutory whether perpetrated by State or private actors. The many forms of harm and GBV that can lead to gender-related persecution include national laws or regulations that arise from harmful traditional practices or norms which typically affect women, and that are not in conformity with international human rights standards, such as legal frameworks which contain ambiguities or loopholes that make it challenging to effectively criminalize and prosecute those involved in FGM, or laws allowing for child marriage. In some cases, States may have prohibited such harmful practices, but they are tolerated or condoned, or the State is not in a position to stop them effectively. Alternatively, countries may have enough protections in place such that a survivor of GBV may not be found to be in need of international protection.

If the consequences for not adhering to a policy or breaking a law that has a gender dimension are excessively harsh, this too could amount to persecution, e.g. punishing women for disobeying strict dress codes with detention or fines. Even if certain laws or policies are not inherently at variance with international human rights standards, implementation methods that result in substantially harmful consequences for the individuals involved may also constitute persecution – for example, family planning policies enforced through the use of forced abortions and sterilisations.¹¹

Although discrimination may not normally amount to persecution itself, a pattern of discrimination on cumulative grounds could be considered persecutory, as well as if the discrimination leads to consequences of a substantially prejudicial nature, such as restrictions on earning a livelihood or accessing education. Sometimes discrimination manifests itself in the State's failure to provide protection to individuals for certain types of harm, due to its policy or practice, resulting in serious harm, and this too can be considered persecution.¹²

Agents of Persecution

Both government and non-government actors could be potential agents of persecution in GBV-related cases. While persecution is often associated with official authorities, acts by private individuals can also be deemed persecution if tolerated by the authorities or if authorities refuse, or are unable to provide protection. Noting also that ‘in many gender-related claims, the difficult issue for a decision-maker may not be deciding upon the applicable ground, so much as the causal

¹¹ *Guidelines on International Protection No. 1*, paras. 10, 11, 12 and 13

¹² *Ibid.*, paras. 14 and 15

link: that the well-founded fear of being persecuted was for reasons of that ground,’¹³ the Guidelines on International Protection No.1 provide guidance on establishing the causal link in case of risk of persecution at the hands of a non-State actor in particular, where the absence of State protection may be Convention-related, even in the event that persecution itself cannot be attributed to a Convention ground.

In the event of risk of persecution by a non-government actor (e.g. a partner, relatives, local community) that is related to a 1951 Convention ground, a causal link between the well-founded fear and the Convention grounds is established, regardless of State protection. If the State cannot or will not protect, for reasons related to a Convention ground, a link is also established, even if the threat or persecution is unrelated to those grounds.¹⁴ For example, a violent crime against a woman could be financially motivated only, but they may not be protected by the State as the State may believe the woman violated a religious code or other social norm.

It is also helpful to underline that CEDAW requires States to ensure effective protection of women who are at risk of being harmed even where a persecutor is a non-State actor (Article 2[e]).

The importance of gender-sensitive interpretation of the five 1951 Convention grounds in GBV-related asylum cases

The Guidelines on International Protection No.1 state that ‘it is also important to be aware that in many gender-related claims, the persecution feared could be for one, or more, of the Convention grounds. For example, a claim for refugee status based on transgression of social or religious norms may be analysed in terms of religion, political opinion or membership of a particular social group,’ with claimants not required to accurately identify the reason for which they have a well-founded fear of persecution.¹⁵ Indeed, ‘in some cases, the emphasis given to the social group ground has meant that other applicable grounds, such as religion or political opinion, have been over-looked.’¹⁶

When assessing an asylum claim it is necessary to take into account the fact that many women in particular are facing persecution due to a characteristic or opinion that is attributed or imputed to them, on account of the characteristics or affiliations of her relatives, colleagues or community. Fear of persecution can be based on one or a combination of several grounds, and an applicant is not obliged to identify these explicitly. It is very often the case that gender-related asylum claims,

¹³ *Ibid.*, para. 20

¹⁴ *Ibid.*, paras. 19 and 21

¹⁵ *Ibid.*, para. 23

¹⁶ *Ibid.*, para. 28

including GBV-related cases, are based on a combination of grounds, and it is necessary for decision makers to examine the claim comprehensively from a gender perspective.

Persecution may manifest in gender-specific forms, as noted above, i.e. in different ways for men, women, boys and girls.¹⁷ In addition to the particular social group ground, the Guidelines highlight possible applicability of the religion ground (where for example failure to abide by certain codes may be perceived as evidence of holding unacceptable religious opinions), and the ground of political opinion – where there may be some overlap, especially in societies with little separation between religious and State institutions and laws.

In cases of persecution for reasons of race or nationality, persecution may be experienced differently by women and men. For example, ‘the persecutor may choose to destroy the ethnic identity and/or prosperity of a racial group by killing, maiming or incarcerating the men, while the women may be viewed as propagating the ethnic of racial identity and persecuted in a different way, such as through sexual violence or control of reproduction.’¹⁸

In states with rigid religious norms, women who deviate from assigned roles or codes may face persecution, which may include acts of GBV. Refusing to conform to these norms can lead to punishment, creating a well-founded fear of religious persecution. Non-compliance can be perceived as holding unacceptable religious opinions, putting women at risk of harm for their beliefs or practices. Addressing these situations is vital when comprehensively assessing asylum claims related to religious persecution.¹⁹

Similarly, non-conformist activities may be seen as holding an unacceptable political opinion, which does not have to be necessarily expressed. Women can be attributed the opinions of their family members or male relatives and persecuted for their activities, rather than their own. Political opinion is therefore to be understood broadly, and may include an opinion as to gender roles, or non-conformist behaviour (of an individual or their family) which leads the persecutor to impute a political opinion, and the Guidelines recall that the nature of women’s and men’s political activities in certain contexts often differs in such a way that reflects dominant gender roles. An example may be refusal of FGM for oneself or one’s child, or campaigning against ‘honour’ crimes.²⁰

Membership of a particular social group

¹⁷ *Ibid.*, para. 24

¹⁸ *Ibid.*, para. 24

¹⁹ *Ibid.*, para. 25

²⁰ *Ibid.*, paras. 32, 33 and 34

Gender-related asylum claims are most often analysed with an emphasis on belonging to a particular social group. ‘A particular social group is a group of persons who share a common characteristic other than their risk of being persecuted, or who are perceived as a group by society. The characteristic will often be one which is innate, unchangeable, or which is otherwise fundamental to identity, conscience or the exercise of one’s human rights.’²¹ Indeed, being a woman is an immutable characteristic, and that given the different treatment women receive in society, it is clear they are also perceived as a different social group to men, subject to different treatment in certain countries, which can amount to persecution²² The Guidelines remind us that group size is irrelevant, and not all members need be at risk of persecution, with the group also not needing to be cohesive or voluntary in nature.²³

Although gender-based asylum claims, including GBV-related cases, are often examined in relation to this eminently applicable Convention ground, it remains important to apply a holistic approach and not overlook grounds such as religion and political opinion, when considering a claim. A combination of Convention grounds may also be applicable, taking into consideration intersectional aspects of persecution, in light of the specific circumstances of each case.²⁴

Procedural guarantees

It has long been held that ‘protection of refugee women not only requires a gender-sensitive interpretation of the refugee definition, but also a gender-sensitive refugee status determination procedure.’²⁵ All general procedural guarantees in the asylum procedure apply in gender-related asylum cases, however these acquire particular relevance in cases of GBV.

Procedural guarantees in the asylum process for gender-related claims, including those involving GBV, are crucial for ensuring a fair and comprehensive examination of an individual's refugee status. These guarantees help address the specific challenges and vulnerabilities that individuals may face due to gender-based persecution and GBV, such as being reluctant to tell one’s story, out of shame or fear, or struggling to tell it in a coherent manner, on account of trauma. Clarifications regarding the application of these procedural guarantees are provided by General recommendation No. 32 and the Guidelines on International Protection No. 1, including the following aspects:

²¹ *Ibid.*, para. 29

²² *Ibid.*, para. 30

²³ *Ibid.*, para. 31

²⁴ *Ibid.*, paras. 28 and 30

²⁵ Cambridge University Press, *Summary Conclusions: Gender-Related Persecution*, June 2003, available at: <https://www.refworld.org/policy/legalguidance/cup/2003/en/49407>.

- a. Women who seek asylum should be able to submit an independent asylum claim and be interviewed separately from their family members, especially their partners or male relatives.²⁶ Sometimes, family members are agents of persecution, and every applicant should be allowed to present their case freely and without fear.
- b. Women asylum seekers must receive clear information about the refugee status determination process and how to access it. Additionally, they should be provided with legal advice in a language and manner they understand. This includes informing them of their right to request a female interviewer and interpreter.²⁷
- c. It is important to promote a supportive and reassuring environment that may encourage asylum seekers, particularly survivors of trauma, torture, and sexual violence, to share their accounts. This includes making childcare available during the interview, so that an asylum seeker may present her claim, which may involve sensitive information, without the presence of her children.²⁸
- d. Interviewers should introduce themselves and interpreters, explaining their roles and the purpose of the interview. Asylum seekers must be assured of the strict confidentiality applicable in relation to the procedure and should be specifically informed that information given will not be shared with family members. Interviewers should clarify they are not trauma counsellors and during interviews, they should maintain a neutral, compassionate, and objective approach, avoiding intimidating gestures and allowing claimants to present their case with minimal interruptions.²⁹ The use of both ‘open-ended’ and specific questions may help reveal gender issues relevant to the asylum claim.³⁰
- e. For survivors of sexual violence or trauma, additional interviews may be necessary to build trust and gather essential information. Interviewers should be responsive to the emotional needs of claimants and halt interviews if the claimant experiences emotional distress.³¹

²⁶ *Guidelines on International Protection No. 1*, para. 36(i) and *General recommendation No. 32*, paras. 42 and 50(a)

²⁷ *Guidelines on International Protection No. 1*, para. 36(ii) and (iii) and *General recommendation No. 32*, para. 50(b)

²⁸ *Guidelines on International Protection No. 1*, para. 36(iv) and *General recommendation No. 32*, para. 50(e) and (f)

²⁹ *Guidelines on International Protection No. 1*, para 36(v) and (vi) and *General recommendation No. 32*, para. 50(d)

³⁰ *Guidelines on International Protection No. 1*, para. 36(vii)

³¹ *Guidelines on International Protection No. 1*, para. 36(viii)

- f. Interviewers should use all available means to gather evidence, including seeking gender-relevant information from reliable sources on human rights in the applicant's country of origin, especially focusing on aspects relevant to gender-related claims.³²
- g. Interviewers should take into consideration that ‘the type and level of emotion displayed during the recounting of her experiences should not affect a woman's credibility’ and that cultural differences and trauma play an important role in determining behaviour. It may be appropriate to seek objective psychological or medical evidence in some cases. Precise details of sexual assault are unnecessary, but information on events, circumstances, and details surrounding the act, including motivation, may be required. It should also be noted that some women may be unaware of the reasons for their abuse.³³
- h. Mechanisms for appropriate referral to psychosocial counselling and support services should be ensured, both prior to and after the asylum interview.³⁴

Evidentiary standards and credibility

Applying the correct standard and burden of proof in gender-related asylum claims, including those involving GBV, is crucial for ensuring the fair and just evaluation of an applicant's eligibility for refugee status.

Assessing an applicant's credibility in these kinds of asylum cases is particularly important, especially given the frequent scarcity of factual evidence that could corroborate a GBV-related claim. Giving due consideration to the impact of trauma and post-traumatic stress disorder (which as noted above, may affect a claimant's engagement in the refugee status determination, or RSD procedure) and related difficulties, such as late disclosure of evidence (as applicants may not understand its relevance) or a lack of GBV-specific Country of Origin Information (COI), are also underscored in the guidance documents elucidating international standards on GBV and gender-related asylum claims.

The Guidelines note that ‘in relation to gender-related claims, the usual types of evidence used in other refugee claims may not be as readily available.’ In order to overcome the absence of statistical data or reports on violence (possibly attributable to under-reporting or a lack of State prosecution), alternative sources of information, such as written or oral testimonies from women facing similar situations, non-governmental organizations, international bodies, or independent

³² *Guidelines on International Protection No. 1*, para. 36(ix) and (x) and *General recommendation No. 32*, para. 50(h)

³³ *Guidelines on International Protection No. 1*, para. 36(xi)

³⁴ *Guidelines on International Protection No. 1*, para. 36(xii) and *General recommendation No. 32*, para. 50(j)

research, can prove valuable in shedding light on the issue and substantiating a claim based on GBV.³⁵

International standards regarding credibility emphasize that the assessment of asylum applications should consider the challenges asylum seekers face in presenting evidence and the need that interviewers are sufficiently trained to manage GBV-related claims, and those of applicants with other specific vulnerabilities. As noted above, the impact of trauma, fear and shame, which may result in disordered recounting of an experience, should not result in adverse credibility findings.

2.2. European standards

Under the Common European Asylum System (CEAS), the European Union (EU) has implemented a range of regulations, decisions and directives, of which those of importance in addressing GBV and gender-related claims include *Directive 2011/95/EU*³⁶ (Qualification Directive), *Directive 2013/32/EU*³⁷ (Procedural Directive) and *Directive 2013/33/EU*³⁸ (Reception Conditions Directive), while at the level of the Council of Europe, the most significant is the *Convention on Preventing and Combating Violence against Women and Domestic Violence*³⁹ (Istanbul Convention) ratified also by the EU on 28 June 2023.

In February 2024, the European Parliament and Council reached political agreement on the European Commission's proposal for a *Directive on combating violence against women and domestic violence from March 2022*, resulting in the first EU legislation on addressing GBV.⁴⁰ The Directive was then adopted in April 2024.⁴¹

³⁵ *Guidelines on International Protection No. 1*, para. 37

³⁶ *Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)*, OJ L 337, 20.12.2011, available at: <https://eur-lex.europa.eu/eli/dir/2011/95/oj>.

³⁷ *Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast)*, OJ L 180, 29.6.2013, available at: <https://eur-lex.europa.eu/eli/dir/2013/32/oj/eng>.

³⁸ *Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast)*, OJ L 180, 29.6.2013, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013L0033>.

³⁹ Council of Europe, *The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)*, November 2014, ISBN 978-92-871-7990-6, available at: <https://www.coe.int/en/web/gender-matters/council-of-europe-convention-on-preventing-and-combating-violence-against-women-and-domestic-violence>

⁴⁰ European Commission, *Commission welcomes political agreement on new rules to combat violence against women and domestic violence*, 6 February 2024, available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_24_649.

⁴¹ *Directive (EU) 2024/1385 of the European Parliament and of the Council of 14 May 2024 on combating violence against women and domestic violence*, PE/33/2024/REV/1, OJ L, 2024/1385, 24.5.2024, available at: <https://eur-lex.europa.eu/eli/dir/2024/1385/oj/eng>.

The EU's asylum legislation and policies acknowledge that women asylum seekers and refugees are in a highly vulnerable position, with specific needs which require targeted protection responses. The European Parliament has observed that, despite the firm policy commitments, there is no consistent, gender-sensitive approach to women seeking protection in the EU, and has put forth the Resolution on the Situation of Women Refugees and Asylum Seekers in the EU,⁴² in which recommendations for a comprehensive gender-sensitive approach are outlined, such as 'violence-related asylum claims should be dealt with in a way that protects women from secondary victimisation during the asylum process,' and 'any list of safe countries of origin should not result in less favourable procedural treatment for women whose claims for asylum are based on fear or experience of gender-based violence.' The Resolution also called for 'Member States to give reasons for positive asylum decisions in order to make available useful data on the consideration given to gender-based violence and to ensure transparency as to the grounds on which asylum claims have been granted under the Convention,' and urged Member States to 'implement or strengthen mechanisms to monitor overcrowded reception centres in the EU, in which minimum standards to mitigate gender-based violence do not necessarily apply, in order to prevent the harassment of women and children from continuing also in the country of arrival.'

The Qualification Directive sets out the standards for the eligibility of third-country nationals or stateless persons as beneficiaries of international protection. It harmonizes rules regarding the conditions for granting refugee status or subsidiary protection status across Member States. The Qualification Directive incorporates gender-sensitive international standards applicable to the RSD procedure, such as:

- a. Issues arising from an applicant's gender, including gender identity and sexual orientation must be taken into account when determining 'membership of a particular social group.'⁴³
- b. Gender-sensitive assessment of an asylum application must be carried out in order to determine if the experiences an applicant has had or might face amount to persecution or serious harm.⁴⁴
- c. The general and personal circumstances (gender included) must be assessed when considering whether an applicant has access to protection against persecution or serious harm in a certain part of the country of origin (internal protection).⁴⁵

⁴² European Parliament, *Resolution of 8 March 2016 on the situation of women refugees and asylum seekers in the EU*, 2015/2325(INI), available at: https://www.europarl.europa.eu/doceo/document/TA-8-2016-0073_EN.html.

⁴³ *Qualification Directive*, Preamble, paragraph 30

⁴⁴ *Ibid.*, Article 4, paragraph 3(c)

⁴⁵ *Ibid.*, Article 8, paragraph 2

- d. Acts of sexual violence and acts of a gender-specific nature are explicitly stipulated as forms of acts of persecution an applicant could face.⁴⁶
- e. ‘Gender related aspects, including gender identity, shall be given due consideration for the purposes of determining membership of a particular social group or identifying a characteristic of such a group.’⁴⁷
- f. Member States shall provide – under the same eligibility conditions as nationals – adequate healthcare, including psychological, to beneficiaries of international protection who have specific needs, such as, people who have undergone torture, rape or other serious forms of psychological, physical or sexual violence.⁴⁸

The *Procedural Directive* further highlights that special procedural guarantees may be due to certain applicants, such as survivors of sexual violence (Preamble, paragraph 29), and stresses that ‘examination procedures should be gender-sensitive,’ including organising interviews ‘in a way which makes it possible for both female and male applicants to speak about their past experiences in cases involving gender-based persecution’ (Preamble, paragraph 32). It also recalls the possibility of issuing separate decisions in cases involving multiple applicants (dependents), ‘in particular in cases involving gender, sexual orientation, gender identity and/or age-based persecution’ (Article 11[3]).

The *Reception Conditions Directive* is also part of the CEAS, and outlines the rights and conditions that should be provided to asylum seekers during the processing of their application. It emphasizes the importance of respecting asylum seekers’ dignity and fundamental rights, and contains provisions to prevent GBV in reception settings and ensure survivors access appropriate medical and psychological care and support. The respect of these provisions may assist in the processing of GBV and gender-related claims, since this helps create a supportive environment in which the RSD procedure is carried out.

The *Istanbul Convention* is the first legally binding regional instrument that specifically focuses on combating gender-based violence and protecting the rights of victims. Its application can ‘enhance women’s ability to have their claims for protection recognised in a process that does as little secondary harm as possible’ by requiring States Parties to ensure GBV can be recognised

⁴⁶ *Ibid.*, Article 9, paragraph 2(a) and (f)

⁴⁷ *Ibid.*, Article 10, paragraph 1(d)

⁴⁸ *Ibid.*, Article 30, paragraph 2

as a form of persecution, and ensure that the grounds for asylum in the 1951 Convention are interpreted in a gender-sensitive manner.⁴⁹

The *Istanbul Convention* contains specific provisions related to asylum-seeking and refugee women, and stipulates that the implementation of principles and standards set out in the Convention ‘shall be secured without discrimination on any ground such as (...) migrant or refugee status, or other status.’⁵⁰

Provisions that are specific to refugee and asylum-seeking women are contained in Articles 59, 60 and 61. Article 59 obliges States party to the Convention to ensure autonomous residency status for survivors of violence, whilst Article 60 obliges them to ensure that gender-based violence against women is recognised as a form of persecution within the meaning of Article 1(A)(2) of the 1951 Convention and as a form of serious harm giving rise to complementary/subsidiary protection. It also requires a gender-sensitive interpretation to be given to each of the 1951 Convention grounds and that applicants are granted refugee status when it is established that the persecution they fear is based on one or more of these grounds. Finally, it obliges States to develop gender-sensitive reception procedures and support services for asylum-seekers as well as gender guidelines and gender-sensitive asylum procedures. This lends binding legal weight to the recommendations outlined by the *Guidelines on International Protection No.1* and the CEDAW *General Recommendation No. 32* discussed above.

The *Istanbul Convention* acknowledges that gender-sensitive laws are just a starting-point, and that practical implementation is crucial for achieving effective protection. As such, and in order for States to uphold their international obligations, women and girls need asylum procedures that are gender-sensitive, ensuring their safety and supporting their ability to share their experiences.⁵¹ Article 61 reiterates the *non-refoulement* principle, including the obligation that no victim of gender-based violence against women in need of protection, regardless of her immigration or residency status, be returned to any country (including in the context of safe third country transfer procedures) where her life would be at risk or where she might be subjected to torture or inhuman or degrading treatment or punishment. This requires comprehensive analysis of the risk, including whether an aggressor is present in a third country; whether domestic violence is occurring in a family subject to transfer, and what specific GBV-related protections

⁴⁹ Council of Europe, *Gender-Based Asylum Claims and Non-Refoulement: Articles 60 and 61 of the Istanbul Convention*, December 2019, available at: <https://www.refworld.org/docid/5e6289bf4.html>.

⁵⁰ *Istanbul Convention*, Article 4, paragraph 3.

⁵¹ Council of Europe, *Gender-Based Asylum Claims and Non-Refoulement: Articles 60 and 61 of the Istanbul Convention*, December 2019, pp. 11 – 12, available at: <https://www.refworld.org/docid/5e6289bf4.html>.

are available or not in the receiving state. Indirect *refoulement* is also prohibited by this and the other human rights instruments discussed above.⁵²

The European Convention on Human Rights (ECHR)⁵³ contains protections relevant to GBV cases, including the right to life (Article 2), the prohibition of torture and inhuman or degrading treatment or punishment (Article 3), the prohibition of slavery and forced labour (Article 4), the right to liberty (Article 5), the right to protection of physical and mental integrity (Article 8), and the prohibition of discrimination (Article 14). The provisions of the ECHR and other instruments have given rise to jurisprudence in relation to GBV and gender-related asylum claims, as will be analysed in the following section.

3. European case law on GBV within the asylum procedure

3.1. European Court of Human Rights

In its cases related to gender-based violence, the European Court of Human Rights (ECtHR) relies on the international and regional legal framework, and related texts such as those produced by the CEDAW Committee. The prohibition on torture and inhuman or degrading treatment or punishment (Article 3 of the ECHR) has been considered by the Court in numerous cases in relation to State failure to protect women from violence, which the ECtHR considers a form of discrimination against women. See, for example, *Opuz v. Turkey*,⁵⁴ *Eremia v. Moldova*,⁵⁵ *Halime Kiliç v. Turkey*,⁵⁶ *M.G. v. Turkey*,⁵⁷ *Talpis v. Italy*,⁵⁸ and *Volodina v. Russia*.⁵⁹

In GBV cases examined by the ECtHR in the context of forced displacement, the situation and incidents in countries of origin, transit and asylum are considered. If cases concern GBV committed on the territory of a State Party to the ECHR, it is treated as a criminal offense that the State must prosecute, and the ECtHR assesses whether the state has taken all necessary measures to fulfil its obligations, whilst if the violence was committed outside the territory of the

⁵² Council of Europe, *Gender-Based Asylum Claims and Non-Refoulement: Articles 60 and 61 of the Istanbul Convention*, December 2019, pp 47, available at: <https://www.refworld.org/docid/5e6289bf4.html>.

⁵³ Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950, ETS 5, available at: https://www.echr.coe.int/documents/d/echr/convention_ENG.

⁵⁴ ECtHR, *Opuz v. Turkey*, Application no. 33401/02, 9 September 2009.

⁵⁵ ECtHR, *Eremia v. Moldova*, Application no. 3564/11, 28 August 2013.

⁵⁶ ECtHR, *Halime Kiliç v. Turkey*, Application no. 63034/11, 28 June 2016.

⁵⁷ ECtHR, *M.G. v. Turkey*, Application no. 646/10, 22 March 2016.

⁵⁸ ECtHR, *Talpis v. Italy*, Application no. 41237/14, 18 September 2017.

⁵⁹ ECtHR, *Volodina v. Russia*, Application no. 41261/17, 9 July 2019.

respondent State, the ECtHR considers it as a potential basis for international protection and assesses State obligations accordingly.

When deciding to return a GBV survivor to a ‘safe third country’ without examining the merits of their asylum application, the host country is obliged to fulfil certain duties, as clarified by the ECtHR in its Grand Chamber judgment in the case of *Ilias and Ahmed v. Hungary*.⁶⁰ The State must carefully assess whether there is a real risk that an asylum seeker in a receiving country (whether it is an EU member or not) will be denied access to an appropriate asylum procedure – this means an asylum procedure that provides specific guarantees for risk assessment and protection against direct or indirect expulsion to the country of origin if the assessment indicates the individual may face harm upon return. If the asylum procedure in the receiving country does not provide sufficient guarantees, in accordance with the provisions of Article 3 of the ECHR, States must not return a survivor to the country in question. The ECtHR’s test for determining whether a host country has taken adequate measures to assess the suitability of the asylum system in the receiving country involves examining two key factors. First, it considers whether the authorities of the removing country have taken into account generally available information about the receiving country and its asylum system, in an appropriate manner and on their own initiative. Secondly, it looks at whether asylum applicants are given sufficient opportunity to demonstrate that, in their specific case, the potential receiving country does not qualify as a safe third country.

The Court has also established jurisprudence regarding the risk of *refoulement* in GBV-related cases. In line with the ECtHR’s practice, the risk of GBV must surpass a certain threshold in order to be covered by Article 3 of the ECHR. The Court has acknowledged in various instances that specific gender-based risks satisfy the criteria outlined in Article 3 of the Convention, for example in relation to stoning for adultery (*Jabari v. Turkey*⁶¹); FGM (*R.B.A.B. v. Netherlands*;⁶² *Sow v. Belgium*,⁶³ and *Omeredo v. Austria*⁶⁴); honour killings and forced marriage (*A.A. and Others v. Sweden*⁶⁵); ill-treatment inflicted by family members for marrying someone of a different religion (*R.D. v. France*⁶⁶); ill-treatment of a separated woman (*N. v. Sweden*⁶⁷); lack of a male support network (*R.H. v. Sweden*⁶⁸); situations of widespread sexual violence (*M.M.R*

⁶⁰ ECtHR, *Ilias and Ahmed v. Hungary*, Application no. 47287/15, 14 March 2017

⁶¹ ECtHR, *Jabari v. Turkey*, Application no. 40035/98, 11 October 2000

⁶² ECtHR, *R.B.A.B. v. Netherlands*, Application no. 7211/06, 7 June 2016

⁶³ ECtHR, *Sow v. Belgium*, Application no. 27081/13, 19 January 2016

⁶⁴ ECtHR, *Omeredo v. Austria*, Application no. 8969/10, 10 September 2010

⁶⁵ ECtHR, *A.A. and Others v. Sweden*, Application no. 34098/11, 24 October 2010

⁶⁶ ECtHR, *R.D. v. France*, Application no. 34648/14, 16 June 2016

⁶⁷ ECtHR, *N. v. Sweden*, Application no. 23505/09, 20 July 2010

⁶⁸ ECtHR, *R.H. v. Sweden*, Application no. 4601/14, 10 September 2015

*v. the Netherlands*⁶⁹), and forced prostitution and/or return to a human trafficking network (*L.O. v. France*⁷⁰).⁷¹

3.2. Court of Justice of the European Union (CJEU)

The judgments of the ECtHR, binding on the Member States of the Council of Europe, refer to violations of individual rights and freedoms guaranteed by the ECHR. However, their enforcement can depend on the willingness of Member States and implementation, overseen by the Committee of Ministers, may take time. On the other hand, decisions of the CJEU, whose goal is to interpret and strengthen EU law and ensure its uniform application, can be more enforceable, because EU law has a direct effect on EU Member States, and as such, national courts are obliged to apply the judgments of the CJEU.

In 2024, the CJEU issued two judgments on issues pertaining to GBV within the asylum system, and one judgment in a case concerning gender-related persecution more broadly, which indirectly addressed GBV.

In January 2024, the CJEU rendered its judgment in the case C-621/21⁷² concerning a survivor of forced marriage and domestic violence who stated that return to her country of origin would place her at risk of further GBV (honour crime, forced marriage) and possibly death. The CJEU emphasised that GBV against women can constitute a form of persecution and that women as a whole can be considered a particular social group, as defined by Article 10(1)(d) of the Qualification Directive, justifying a grant of refugee status.

The Court further held that, in the event a national court decides that the conditions for refugee status are not met in a specific case, threats of violence or death by family or by an applicant's community for breaching cultural, religious, or traditional norms, could amount to 'serious harm' under the Qualification Directive, meriting a grant of subsidiary protection (paragraph 80).

The Court brought another significant judgment in joined Cases C-608/22 and C-609/22,⁷³ involving two Afghan women who contested the Austrian authorities' refusal to grant them refugee status by arguing that the situation of women under the new Taliban regime warranted

⁶⁹ ECtHR, *M.M.R v. the Netherlands*, Application no. 64047/10, 4 November 2010

⁷⁰ ECtHR, *L.O. v. France*, Application no. 4455/14, 18 June 2015

⁷¹ European Court of Human Rights, *Guide on the case-law of the European Convention on Human Rights – Immigration*, updated on 31 August 2022, pp. 28 – 19, available at: <https://www.refworld.org/jurisprudence/caselawcomp/echr/2022/en/124136>.

⁷² CJEU, C-621/21, *WS v. Intervyuirasht organ na Darzhavna agentsia za bezhantsite pri Ministerskia savet*, 16 January 2024, available at: <https://curia.europa.eu/juris/document/document.jsf?jsessionid=D4CCA27D45DEFC53669AEE62C1E84B27?text=&docid=281302&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=25776349>

⁷³ CJEU, Joined Cases C-608/22 and C-609/22, 4 October 2024, available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:62022CJ0608>.

such status. The Court found that certain discriminatory measures against women in Afghanistan under the Taliban, such as forced marriage and the lack of protection against GBV, qualify as acts of persecution (paragraph 43). It further held that other measures, such as restrictions on education, employment, and freedom of movement, cumulatively constitute persecution due to their deliberate and systematic application (paragraph 44). The Court further stated that in asylum applications from Afghan women, it is unnecessary to prove a specific risk of persecution, as their nationality and gender alone are sufficient grounds for asylum (paragraph 57).

In another case brought before the CJEU, C-646/21,⁷⁴ which provides further insights on settings in which the risk of GBV may give rise to international protection, two Iraqi girls had waited over five years for their asylum claim to be assessed in the Netherlands. During this time, the applicants adopted the values, norms and conduct of their peers, including and strong beliefs in gender equality. In its response to the domestic court's request for the CJEU's opinion on preliminary questions, the Court concluded that a group consisting of women and girls with a shared belief in gender equality can have a distinct identity in the country of origin and may be regarded as belonging to 'a particular social group,' which may give rise to refugee status, as it may result in persecution (paragraph 64) – including through acts of GBV.

4. Croatian legal and policy framework on GBV within the asylum procedure

This chapter provides an overview of the legal and policy instruments related to GBV and international protection on the national level. In addition to the international and regional laws applicable in Croatia, discussed above, domestic texts relating to GBV and the asylum procedure include the *Constitution of the Republic of Croatia*⁷⁵ and the *Act on International and Temporary Protection*⁷⁶ as well as corresponding by-laws, policy documents and court practice. Other relevant laws include the *Criminal Code*,⁷⁷ the *Act on Protection from Domestic Violence*,⁷⁸ the *Act on Gender Equality*,⁷⁹ the *Act on Suppression of Discrimination*,⁸⁰ the *Social Welfare Act*,⁸¹

⁷⁴ CJEU, Grand Chamber, Case C-646/21, *K and L v. Staatssecretaris van Justitie en Veiligheid*, 11 June 2024, available at: <https://curia.europa.eu/juris/document/document.jsf?text=&docid=286987&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1&cid=12532451>.

⁷⁵ *Constitution of the Republic of Croatia* (OG Nos. 56/90, 135/97, 113/00, 28/01, 76/10, 5/14).

⁷⁶ *Act on International and Temporary Protection* (OG Nos. 70/15, 127/17, 33/23).

⁷⁷ *Criminal Code* (OG Nos. 125/11, 144/12, 56/15, 61/15, 101/17, 118/18, 126/19, 84/21, 114/22, 114/23, 36/24).

⁷⁸ *Act on Protection from Domestic Violence* (OG Nos. 70/17, 126/19, 114/22, 36/24).

⁷⁹ *Act on Gender Equality* (OG Nos. 82/08, 69/17).

⁸⁰ *Act on Suppression of Discrimination* (OG Nos. 85/08, 112/12).

⁸¹ *Social Welfare Act* (OG Nos. 18/22, 46/22, 119/22, 71/23, 156/24).

the *Family Act*,⁸² the *Act on Police Duties and Powers*,⁸³ and the *Labour Act*.⁸⁴ The *Foreigners Act*⁸⁵ is also of relevance for rejected asylum seekers, as it takes vulnerability into account in return procedures, including in relation to GBV.

Although Croatia's legal and policy framework, in relation to violence against women generally, has been characterised as 'largely gender-neutral' (i.e. that it doesn't take into account individuals' gender-specific experiences),⁸⁶ the legal framework governing asylum contains some gender-sensitive provisions.

The *Act on International and Temporary Protection (AITP)* governs international protection in the Republic of Croatia and serves to incorporate into the Croatian legal system certain international and regional standards concerning GBV in the context of displacement.

In its Article 4, the definition of vulnerable groups includes 'victims of trafficking in human beings, torture, rape or other psychological, physical and sexual violence, such as victims of female genital mutilation.'⁸⁷ Article 14(3) stipulates that 'if it is possible, applicants shall be provided *ex officio* with an interpreter of the same sex in order to ensure a full account of the reasons for the application or for other justified reasons,' whilst Articles 34(3) and 35(5) provide for the same in respect of the official receiving an asylum submission and conducting an applicant's hearing. A further GBV-sensitive provision relates to the special procedural and reception guarantees stipulated in Article 15, whereby 'appropriate support shall be provided for applicants in relation to their personal circumstances, among other aspects their age, gender, sexual orientation, gender identity, disability, serious illness, mental disorder, or as a consequence of torture, rape or other serious forms of psychological, physical or sexual violence, for the purpose of exercising the rights and obligations referred to in this Act.' The *AITP* obliges the competent authorities to ensure they have sufficient capacities for the application of the aforementioned guarantees and obliges all those who implement the relevant laws and by-laws to enable their realization in practice. It further stipulates in the same article that 'the procedure of recognising the personal circumstances of applicants shall be conducted continuously by specially trained police officers, employees of the Ministry and other competent bodies, from the

⁸² *Family Act* (OG Nos. 103/15, 98/19, 47/20, 49/23, 156/23).

⁸³ *Act on Police Duties and Powers* (OG Nos. 92/14, 70/19).

⁸⁴ *Labour Act* (OG Nos. 93/14, 127/17, 98/19, 151/22, 46/23, 64/23).

⁸⁵ *Foreigners Act* (OG Nos. 133/20, 114/22, 151/22).

⁸⁶ Council of Europe, Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), *Baseline Evaluation Report Croatia*, 2023, p. 6, available at: <https://rm.coe.int/baseline-evaluation-report-on-croatia/1680ac76c9>.

⁸⁷ This is echoed in the *Foreigners Act*, where 'victims of human trafficking, victims of torture, rape or other forms of psychological, physical or sexual violence such as victims of female genital mutilation' are also explicitly recognised as vulnerable groups (Article 182[2]).

moment of the expression of intention to apply for international protection to the service of the decision on the application,' and establishes that in cases in which applicants are in need of special procedural rights (including survivors of sexual violence), and when it is not possible to provide the appropriate support, the accelerated procedure and border procedures will not be applied. In Article 22(1)(5), acts of sexual violence and acts 'of a gender-specific nature' are also explicitly stipulated as forms of persecution an applicant could face.

Legislation governing reception settings is also GBV-sensitive, with the *Ordinance on the Realisation of Material Reception Conditions*⁸⁸ seeking to ensure appropriate accommodation arrangements for vulnerable individuals, with provision of psychosocial care.

Strategic policy documents related to GBV adopted in recent years at the national level include the National Strategy on Protection against Domestic Violence for the period 2017-2022,⁸⁹ the National Plan for Gender Equality for the period 2022-2027⁹⁰ and corresponding Action Plan for Gender Equality for the period until 2024,⁹¹ the National Anti-Discrimination Plan for the Period 2017-2022,⁹² the National Plan for the Suppression of Sexual Violence and Sexual Harassment for the period 2022-2027 and corresponding Action Plan for the period until 2024,⁹³ and the National Plan for Combating Human Trafficking for the period from 2022 to 2027.⁹⁴ Furthermore, the first Rules of Procedure in Cases of Sexual Violence were adopted in 2012, with updated versions adopted in 2018 and 2023,⁹⁵ in order to standardize procedures for victims of sexual violence regardless of their age, location, gender and/or other personal characteristics;

⁸⁸ *Ordinance on the realisation of material reception conditions* (OG Nos. 135/15, 61/19).

⁸⁹ *National Strategy on Protection against Domestic Violence for the period 2017-2022*, September 2017, available at: <https://mrosp.gov.hr/UserDocsImages/dokumenti/MDOMSP%20dokumenti/Nacionalna%20strategija>

⁹⁰ *National Plan for Gender Equality for the period 2022-2027*, March 2023, available at:

<https://ravnopravnost.gov.hr/UserDocsImages/dokumenti/Nacionalni%20plan>

⁹¹ *Action Plan for Gender Equality for the period until 2024*, available at:

<https://ravnopravnost.gov.hr/UserDocsImages/dokumenti>

⁹² *National Anti-Discrimination Plan for the Period 2017-2022*, available at:

<https://pravamanjina.gov.hr/UserDocsImages/dokumenti/Nacionalni%20plan>.

⁹³ *National Plan for the Suppression of Sexual Violence and Sexual Harassment for the period 2022-2027 and Action Plan for the Suppression of Sexual Violence and Sexual Harassment for the period until 2024*, available at: https://mrosp.gov.hr/UserDocsImages/dokumenti/Socijalna%20politika/Dokumenti/NACIONALNI%20PLAN%20ZA%20SUZBIJANJE%20SEKSUALNOG%20NASILJA%20I%20SEKSUALNOG%20UZNEMIRAVANJA%20do%202027.g_final.pdf and

<https://mrosp.gov.hr/UserDocsImages/dokumenti/Socijalna%20politika/Dokumenti/AKCIJSKI%20PLAN%20ZA%20SUZBIJANJE%20SEKSUALNOG%20NASILJA%20I%20SEKSUALNOG%20UZNEMIRAVANJA%20O%202024.%20g.pdf>.

⁹⁴ *National Plan for Combating Human Trafficking for the period from 2022 to 2027*, available at:

<https://vlada.gov.hr/vijesti/paket-poreznih-izmjena-upucen-u-saborsku-proceduru-usvojen-nacionalni-plan-za-suzbijanje-trgovanja-ljudima/43254?lang=hr>.

⁹⁵ *Rules of Procedure in Cases of Sexual Violence*, (OG No. 70/18), available at: https://narodne-novine.nn.hr/clanci/sluzbeni/2018_08_70_1418.html, and *Rules of Procedure in Cases of Sexual Violence*, 2023, available at:

<https://ravnopravnost.gov.hr/UserDocsImages/dokumenti/Protokol%20o%20postupanju%20u%20slu%C4%8Daju%20seksualnog%20nasilja/2023/Protokol%20final.pdf>.

train all stakeholders from State institutions, bodies and civil society organizations on the options, rights and obligations within reporting processes and care for survivors; have long-term impact in reducing sexual violence; establish systematic and effective mechanisms for protection and assistance to victims, and to ensure timely and compassionate care.⁹⁶

Croatia has made progress in developing policies related to the protection of individuals from GBV, however the specific challenges faced by refugees and asylum seekers are not generally explicitly recognized within the existing framework. Current policies and strategies do not always address forms of GBV that may have been perpetrated against refugees and asylum seekers, such as forced marriage, FGM, and 'honour crimes.' Recognizing the specific forms of GBV faced by refugees and asylum seekers may further strengthen efforts undertaken to address their specific needs.

Data on GBV in the asylum procedure is limited, with some insights available from reception settings, although it is important to note that these may not be representative. Indeed, data is never a precondition for taking action against GBV, and under-reporting is assumed to be prevalent in all contexts globally. In her Annual Report for 2023⁹⁷ the *Ombudsperson for Gender Equality* presented statistical data gathered by the Ministry of the Interior on the number of applicants for international protection who survived some form of GBV. In 2023, 64 survivors of GBV were identified in the Reception Centres for Applicants for International Protection in Zagreb and Kutina, of which 49 (77%) were female and 15 were male (23%).⁹⁸ In relation to the asylum procedure, however, the Ministry of Interior does not disaggregate data on grounds for persecution, meaning it is not possible to analyse the number of asylum claims related to GBV. This lack of disaggregated data also impedes efforts to monitor whether decision-making processes in the Croatian asylum system align with international and European standards.

The need for establishing a clear and effective referral system to the national prevention and response mechanism for survivors of GBV who are accommodated in the reception centres for applicants for international protection resulted in the development of a *Standard Operating Procedure on the Prevention and Response to Sexual and Gender-Based Violence in Reception Centres for Applicants for International Protection*⁹⁹ in 2021, in order to enhance the quality and

⁹⁶ *Ibid.*, preamble.

⁹⁷ *Annual Report of the Ombudsperson for Gender Equality 2023*, available at: https://www.prs.hr/application/uploads/Izvje%C5%A1%C4%87e_o_radu_Pravobraniteljic.pdf.

⁹⁸ *Ibid.*, p. 242.

⁹⁹ Ministry of the Interior, UNHCR, International Organization for Migration, Croatian Red Cross, Médecins du Monde ASBL - Dokters van de Wereld VZW, Croatian Law Centre, Jesuit Refugee Service Croatia, Association for Psychological Support, *Standard Operating Procedure on the Prevention and Response to Sexual and Gender-Based Violence in Reception Centres for Applicants for International Protection*, 2021.

speed of referrals to the national mechanisms. The document outlines guiding principles for supporting people who have experienced GBV, as well as the procedures, roles, and responsibilities for service providers involved in the prevention and response to GBV in reception centres for asylum seekers in Croatia.

In addition to legal and policy documents, it is also relevant to note jurisprudence in relation to GBV and asylum in Croatia. From the practice of the Constitutional Court, judgment U-III-557/2019¹⁰⁰ of 11 September 2019 is of note. It concerns an applicant for international protection whose first application was rejected, and whose subsequent application was dismissed. In the first application, the applicant cited the state of war and fear of the regime in her country of origin as the basis for seeking protection, while in the subsequent application she cited her family situation, i.e. that she is a victim of domestic violence and FGM, as the basis for seeking protection. The applicant was initially interviewed by a male interviewer, with a male interpreter. Neither the Administrative Court, nor the High Administrative Court upheld her appeal against the rejection of the asylum claim, following which the applicant filed a constitutional complaint with the Constitutional Court. The Administrative Court had assessed the applicant's allegations as unfounded, unconvincing and unspecific,¹⁰¹ and rejected all evidentiary proposals, except for the hearing of the applicant, stating that it did not give credence to the applicant's statements given earlier, so it considered that there was no need to present other evidence.¹⁰² The Administrative Court concluded that the fact that the applicant had already survived FGM did not give rise to refugee status, and that surviving domestic violence cannot be a basis for granting asylum.¹⁰³ It did not accept the applicant's explanation that during the initial proceedings she did not state physical and psychological abuse by her family members, due to fear, discomfort and shame, and because she was warned that everything she said would affect the assessment of the merits of her application.¹⁰⁴

The Constitutional Court was therefore called to decide on whether the Interior Ministry's treatment of the subsequent application for international protection respected international minimum standards in order to enable a fair and effective procedure and whether they thoroughly examined all the claims and evidence presented by the applicant during the procedure.¹⁰⁵ The Court upheld the complaint, annulled the judgment of the High Administrative Court of the

¹⁰⁰ Constitutional Court of the Republic of Croatia, *U-III-557/2019*, 11 September 2019, available at: <https://sljeme.usud.hr/Usud/Praksaw.nsf/C12570D30061CE54C125847400330C25/%24FILE/U-III-557-2019.pdf>.

¹⁰¹ *Ibid.*, para. 2(14)

¹⁰² *Ibid.*

¹⁰³ *Ibid.*

¹⁰⁴ *Ibid.*

¹⁰⁵ *Ibid.*, para. 5(10)

Republic of Croatia and the judgment of the Administrative Court in Zagreb and referred the case to the Administrative Court in Zagreb for retrial. The decision highlighted that inconsistencies in the applicant's claims did not diminish the overall credibility of her application, and that the lower courts' conclusion that her claims of fear were unconvincing because she was informed about confidentiality was incorrect. The Court pointed out that it is unreasonable to conclude that there were no reasons why the applicant could not speak openly about her psychological trauma earlier, in front of two men, especially taking into account that sexual violence is an extremely traumatic experience that leaves severe and long-lasting consequences. The competent courts were also obliged, applying the principle of the benefit of the doubt, to evaluate the applicant's allegations, taking into account the cultural context and the applicant's situation as a victim of FGM (thereby recognised as vulnerable). The Constitutional Court found that by declining to admit additional evidentiary proposals by the applicant, the Administrative Court in Zagreb made it impossible for her to prove the merits of her application, thus depriving her of the effective guarantees of a fair procedure. Finally, the Constitutional Court found that as a result of the above, her rights as an applicant for international protection, protected by Article 23, paragraph 1 of the Constitution (on the prohibition of ill-treatment) and Article 3 of the ECHR (on the prohibition of torture, inhuman or degrading treatment), were rendered ineffective, meaning that the competent authorities did not act in accordance with this constitutional protection and the ECHR's prohibition on torture.¹⁰⁶

This constitutional decision stands out as an example of positive practice aligned with the international and European standards related to GBV in the context of displacement analysed above. As such, the decision not only establishes an important precedent, but also serves as a foundation for strengthening the right to asylum for survivors of GBV, ensuring that their experiences are recognized and adequately protected in the future.

5. Recommendations for strengthening Croatian legislation, policy and practice on GBV within the asylum system

Croatia's legal framework on international protection is harmonized with the relevant EU legislation¹⁰⁷ and international standards, including in relation to GBV.

¹⁰⁶ *Ibid.*, paragraph 5(13) and 5(14)

¹⁰⁷ *Annual Report of the Ombudsperson for Gender Equality*, 2021, available at: https://www.prs.hr/application/uploads/Godi%C5%A1nje_izvje%C5%A1%C4%87e_2021_FINAL.pdf

Despite this legislative framework, challenges in implementing GBV-related regulations within the asylum system do remain. The Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) of the Council of Europe highlighted gaps in research and data collection in their 2023 report on Croatia,¹⁰⁸ including the absence of systems to track asylum applications based on GBV, hindering trend monitoring as well as assessments of the system's effectiveness. Specialized training for legal professionals, social workers and healthcare professionals was found to be insufficient, with a lack of tailored trainings for professionals generally to respond to GBV among migrant and asylum-seeking women (paragraph 99). The report further encourages the authorities to strengthen provision of information to GBV survivors about their rights, including by ensuring information on support services is disseminated in an accessible manner with regard to languages understood by survivors (paragraph 131). The lack of victim-centred and empowering services for GBV survivors other than those who are victims of domestic violence, including migrant and asylum-seeking women, was also highlighted (paragraph 146). Additionally, although FGM is criminalized, GREVIO notes that there is still a limited understanding of this issue within the broader context of addressing the experiences of displaced women (paragraph 223). The implementation of procedural and reception guarantees in the asylum system is also highlighted as facing obstacles (paragraph 320), as well as the limited CSO access to reception centres, which reduces the possibility of providing timely, specialist assistance to women during their time spent in reception centres for asylum seekers (paragraph 328). As such, the following recommendations may be considered by legislators, policy-makers and practitioners working with forcibly displaced survivors or those at risk of GBV.

Access to information

- Provide information on the asylum process, including on the right to request a female interviewer and interpreter and the right to legal representation and advice ahead of the initial asylum interview; available assistance services, and reporting and complaint mechanisms in case of GBV and human trafficking.
- Ensure that all the aforementioned information is provided in languages that refugees and asylum seekers can understand, and in a way that is age-appropriate.

Coordination and skills

¹⁰⁸ Council of Europe, Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), *Baseline Evaluation Report Croatia*, 2023, paras. 52, 65 and 72, available at: <https://rm.coe.int/baseline-evaluation-report-on-croatia/1680ac76c9>.

- Ensure the availability of a sufficient number of both male and female interviewers, interpreters, police officers, social workers, and other practitioners.
- Ensure regular training and relevant tools and guidance are provided to practitioners on topics such as how to detect and appropriately refer cases of GBV; what to do and not in the event of a disclosure, and how to address GBV under the 1951 Convention. Training on trauma-informed and gender-sensitive interviewing must also be extended to interpreters.
- Strengthen the collaboration between Government authorities, civil society and other experts in order to maintain efficient responses to the needs of GBV survivors.

Procedural guarantees and evidentiary standards

- Ensure that the principle of *non-refoulement* is respected, by ensuring gender-sensitive and GBV-sensitive application of international and European human rights and refugee law standards. This, along with other recommendations below, can be achieved through strengthening the asylum system's capacities – financial, material and in terms of human resources.
- Apply gender-sensitive interview techniques, including by establishing a supportive interview environment, allowing sufficient time for elaboration of an applicant's story, and childcare during the interviews. Particular attention should also be given to the way in which confidentiality is communicated to applicants. This could be achieved through frequent training on trauma-sensitive interviewing techniques.
- Ensure that late disclosure of GBV does not automatically or negatively affect an assessment of an applicant's credibility.
- Ensure the availability of gender-sensitive country of origin information (COI) that may assist in substantiating a claim, especially where regular COI sources do not sufficiently cover the gender-specific risks typically faced by women and girls.
- Ensure a gender-sensitive approach while interpreting possible grounds for giving rise to international protection.

Reception conditions

- Ensure that accommodation facilities adequately meet the specific needs of vulnerable individuals and groups (including through accessible reporting channels for GBV-related issues).

- Ensure timely provision of relevant support services for vulnerable groups, including counselling, psychological support and healthcare (encompassing sexual and reproductive healthcare for GBV survivors).

Data

- Ensure collection and analysis of disaggregated data that would enable insights into the identification of GBV or other gender-related grounds for persecution. Monitoring trends in recognition rates in such claims could facilitate policy-making and decision-making on the use of resources to ensure the asylum system is gender-sensitive – for example, through planning for interpreters and interviewers, and by strengthening psychosocial support available to applicants.

Legal sources

1. UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, available at: <https://www.refworld.org/legal/agreements/unga/1951/en/39821>.
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