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**When victims of domestic violence are
migrants or minorities:
women at intersection in Europe**

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When victims of domestic violence are migrants or minorities: women at intersection in Europe

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Abstract

Essere donne e allo stesso tempo appartenere a un contesto culturale extra-europeo o a una minoranza culturale rende più vulnerabili le vittime di violenza domestica. Partendo dallo studio di Kimberlè Crenshaw sulle donne Afro-Americane vittime di abusi domestici, si dimostrerà come la prospettiva intersezionale applicata ai casi di donne migranti o appartenenti a minoranze culturali può demarginalizzarle dalla loro condizione e facilitarne l'accesso al diritto di denunciare i loro persecutori e di trovare protezione. In questo senso viene affrontata l'analisi del rischio incontrato da donne straniere vittime di violenza domestica, il cui permesso di soggiorno è legato a quello del marito o del convivente, di cadere nella trappola della cd. *subordinazione intersezionale*, dato dall'impatto simultaneo di una politica anti-immigrazionista e dalla violenza inferta dai partner. Da un altro punto di vista, il metodo intersezionale sarà applicato nella disamina della normativa e giurisprudenza sulla richiesta di protezione internazionale, evidenziando la violenza domestica come una forma di discriminazione di genere e allo stesso tempo rilevando come criteri di valutazione delle domande di asilo siano spesso improntati a standard "maschili" o "occidentalmente femminili". L'ultima parte di questo articolo si sofferma sulla riluttanza riscontrabile in alcuni casi da parte delle autorità europee nel perseguire gli autori di violenza domestica quando la vittima è una donna straniera o appartiene a una minoranza culturale.

Being a woman and at the same time being from a non-European cultural context or belonging to a minority makes one more vulnerable to being a victim of domestic violence. Taking, as a reference, the study of Kimberlè Crenshaw on female African American victims of domestic abuse, this research aims to demonstrate how the intersectional perspective applied to cases of female migrant or minority victims of domestic violence can demarginalize their access to the right to report their persecutors and to find protection. In fact, one aspect of the issue dealt with in this research concerns the risk for female migrant victims of domestic violence whose permit

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of stay is linked to the one of their husband to fall into an intersectional subordination trap, created by the simultaneous impact of an anti-immigration policy and spouse abuses. From the perspective of an asylum seeker's claim, intersectionality is a useful approach to domestic violence instead of using gender discrimination moving from a "male-standard assessment" and a "western-woman standard assessment" of asylum claims. The last part of the article points out the reluctance of the European authorities to accept domestic violence reports when the victim is a migrant or minority woman.

1. Introduction

The issue of domestic violence in Europe affects prevalently women: the WHO has estimated that one in five women in Europe has been victim of domestic violence¹. The lack of precise data from Eurostat however at European level does not allow any indication of the percentage of those women who are migrants or belonging to minorities, but many multidisciplinary studies² have recognized the "double trouble"³ faced by them as victims of domestic violence.

This paper sets out to highlight the obstacles to accessing to justice, in certain cases of intimate-partner violence, experienced by migrant or minority women due to their identity traits.

Women who migrated from developing countries in order to escape war, poverty and violence often live in Europe without family support, friends, finances⁴ nor trust in the host country's justice system. Furthermore, some of them come from countries where the submission of women is socially deep rooted. Thus, they could end up being defenseless when their partners, accustomed to patriarchal and misogynist conceptions, misuse the social isolation and cultural subordination of women, abusing and depriving them of their private freedom to self-determination⁵.

In other words, migrant women are more exposed to domestic violence because of the double ground which characterizes their identities: the gender and the non-European origin. Sex, nationality, migrant status and cultural background correspond to multiple axes of power of subordination, such as sexism and racism that together interact simultaneously to generate a unique vulnerability.

These are some of the reasons why such women deserve recognition and protection by the host country as a group that is particularly vulnerable to domestic violence. The issue of the effective response by the host state to the domestic violence experienced by migrant women will be tackled in this article from a social-judicial perspective through the intersectional method.

Translating K. Crenshaw's study on female Afro-American victims of domestic abuse in the different context, that is Europe, the condition faced by female migrant or minority victims of domestic violence will be examined through the intersectional dimension. Crenshaw found that the location of women of color at the intersection of race and gender had experiences of domestic violence qualitatively different than those of white women⁶. These vulnerabilities are a result of living away from the country of origin and point out the necessity to consider their claim as intersectional. This would give them more efficient access to judicial remedies against their intimate partners violence.

¹ <http://www.euro.who.int/en/health-topics/health-determinants/gender/data-and-statistics>

² European Union Agency for Fundamental Rights, *Violence against Women: An EU-Wide Survey*, Publications Office of the European Union, 2014. L. De Schrijver, T. Vander Beken, B. Krahé and I. Keygnaert, *Prevalence of Sexual Violence in Migrants, Applicants for International Protection, and Refugees in Europe: A Critical Interpretive Synthesis of the Evidence*, in *International Journal of Environmental Research and Public Health*, 2018, vol. 15, 1979. J. Pescinski, *Ending Violence Against Migrant Women, 2015* [accessed on <https://ourworld.unu.edu/en/ending-violence-against-migrant-women>].

³ Using Sandra Fredman's (Professor of Law in the Faculty of Law at the University of Oxford) expression from S. Fredman, *Double Trouble: Multiple Discrimination and EU law*, in *European Anti-discrimination Law Review*, 2005, vol. 5.

⁴ F. Staiano, *The Human Rights of Migrant Women in International and European Law*, Torino, Giappichelli, 2016, p. XIII.

⁵ Swiss Federal Department of Home Affairs DFP, Federal Office for Gender Equality, information sheet 19: Domestic violence in the migratory context, January 2015.

⁶ K. Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Colour*, in *Stanford Law Review*, 1991, vol. 43, p. 1245.

The interest for this specific group as a subject of the research is given by the high percentage of the female migrants mass flux towards Europe which has been registered, especially in the last decade, and by the presence of minority groups such as Romani people, who follow their own culture and traditions. The UN International Migration Report 2017⁷ showed that the female share of the migrant flux in Europe was 52%. Eurostat statistics also indicated that in 2016 45% of the non-EU member countries immigrants who live in Europe were women⁸. This group, as pointed out even by the European institutions⁹, is at particular risk of domestic violence. This crime has a disproportionate impact on women, as a type of “gender-based violence”¹⁰ and a violation of women's fundamental rights with respect to dignity, equality and access to justice. Coming from communities marked by a strong patriarchal culture, they are *de facto* isolated by the language barrier and by family pressure to suffer in silence. As a result they are unable to express their frustration and are limited in accessing facilities for victims of domestic violence. Hence the importance of dealing with this issue, using the intersectional perspective to unveil the obstacles which migrant women come up against when victims of domestic violence, asking the host State authorities for protection.

This article takes into consideration three different hypotheses of intersectional situations faced by migrant women as victims of domestic violence and, by analyzing the way through the law or judicial authorities tackling it, it finds out when the intersectional dimension is encountered and when it fails to be recognized: the first concerns the possibility of issuing a residence permit vis-à-vis victims of domestic violence, the second assumes this violence as a prerequisite for granting refugee status and the last one considers the intervention against migrant women victims of violence.

This paper will make an in-depth examination of the normative response provided for cases of irregular migrant women or those whose stay permit is linked to the one of their spouses who in reporting the intimate partners abuse to police may face the further risk of losing the right to stay legally as a consequence.

The intersectional method will also allow an analysis of the solution found by certain EU Member State's administration of judicial offices in handling domestic violence perpetrated on female asylum seekers in their country of origin, considering the domestic violence as a persecution and a well-founded reason to apply for international protection: under this perspective, domestic violence is assumed as a form of persecution as it can be traced back to one of the reasons for the application of the 1951 Refugee Convention.

At the end, the article deals with the reluctance of the State authorities to intervene in cases of domestic violence when the victim is a migrant women: the intersectional dimension emerges from the analysis of the conduct which tolerates domestic violence when inferred by a man on a women and by a non-national or minority on another non-national or minority.

⁷ United Nations International Migration Report 2015, available at http://www.un.org/en/development/desa/population/migration/publications/migrationreport/docs/MigrationReport2017_Highlights.pdf [accessed on 28/06/2018].

⁸ Eurostat, 2016. Data available at http://ec.europa.eu/eurostat/statistics-explained/index.php/Migration_and_migrant_population_statistics#Migrant_population [accessed on 28/06/2018]

⁹ Resolution 1697 (2009) of the Parliamentary Assembly of the Council of Europe; Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence; FRA 2014, Violence against women: an EU-wide survey.

¹⁰ As stated in the Istanbul Convention, art. 3.

2. Domestic violence implications on residence status: developments ascertained in Europe thanks to the implementation of the *Council of Europe Convention on preventing and combating violence against women and domestic violence* (a.k.a. Istanbul Convention)

In "Mapping the margins"¹¹ K. Crenshaw found that there are many sites where structures of power intersect. Specifically as far as episodes of domestic violence are concerned, she observed that migrant women of color have a higher possibility of experiencing discrimination in accessing protection because of their immigration status, and also due to other reasons such as poverty, male subordination, child care responsibility. As pointed out in this research, the violence suffered by these migrant women was exacerbated by the effects of the USA marriage fraud provisions of the Immigration and Nationality Act¹² - before 1990 -, under which they could risk deportation if they reported and left their spouses. Therefore, in addition to the fragility of their gender migrant women of color suffered because of the marriage fraud provisions which implied the impossibility to seek protection against their abusers without the fear of being expelled from the USA. In this manner the battered migrant women were indirectly discriminated against by the immigration provision, while American women did not encounter any hurdles linked to their legal status in order to access justice. This disparity was then eliminated with an amendment to the Immigration and Nationality Act on 1990 which allowed the battered spouses with conditional permanent residence status to be granted a waiver for hardships caused by domestic violence¹³.

The intersectional subordination trap experienced by migrant women of color in the USA due to the simultaneous impact of anti-immigration policy and spousal abuse, which were not even intentionally produced, also appeared in Europe.

Sandra Fredman was perhaps one of the first scholars in Europe to raise this issue from a legal perspective, stating that "many black and migrant women dare not to speak out against domestic violence, due to language difficulties, lack of knowledge of sources of protection and threats of deportation"¹⁴. Indirect discrimination may thus appear when immigration law or policy does not provide specific provisions that protect female migrant victims of domestic violence and thus does not consider the intersectional dimension of the violence suffered by this group¹⁵.

A recent study of the European Parliament addressing the issue of the implications of migration policy in the EU in cases of undocumented or illegal women victims of domestic violence in Europe argues in favor of the adoption of legal measures allowing the victims to report the violence endured and be granted protection from abuses¹⁶. This solution is supported not only in the perspective of the defense of the fundamental human right of freedom from any type of violence, as stated by the European Charter of Fundamental Rights and the European Convention of Human Rights. It is also in compliance with the principle of non-discrimination, as stated in the Istanbul Convention¹⁷.

¹¹ K. Crenshaw, *supra*, 1991, p. 1247.

¹² Under the 1988 US marriage fraud provision an alien spouse with permanent resident status conditioned to the one of her husband could have lost her legal status if the Attorney General had found the marriage improper.

¹³ K. Crenshaw, *supra*, 1991, pp. 1245-1250.

¹⁴ S. Fredman, *Double Trouble: Multiple Discrimination and EU law*, in *European Anti-discrimination Law Review*, cited, p. 13.

¹⁵ V.T. Thronson, *Domestic violence and Immigrants in Family court*, in *Juvenile and Family court Journal*, 2012, vol 6, pp. 64-66. E. Erez, M. Adelman, C. Gregory, *Intersections of Immigration and Domestic Violence Voices of Battered Immigrant Women*, in *Feminist Criminology*, 2009, vol. 4.1, pp. 32-56.

¹⁶ European Parliament Study, *Access to shelter of undocumented migrant women fleeing domestic violence: the legal and practical situation in the Member States*, 2013.

¹⁷ Article 4, § 3, of the Istanbul Convention, requiring to the Parties of the Convention "particular measures to protect the rights of victims", which "shall be secured without discrimination on any ground such as sex, gender, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, sexual orientation, gender identity, age, state of health, disability, marital status, migrant or refugee status, or other status".

In other words, all women have to be granted the right to have access to justice without any discrimination related to, *inter alia*, migrant status. Therefore migrant women with an expired residence permit or with a permit conditioned by the one of their husband should be allowed to seek protection against domestic violence. This is also stated expressly in the same Istanbul Convention which in art. 59 recommends the States to provide a residence permit to victims of violence. In the last decade, thanks to the ratification of the Istanbul Convention, many European States have introduced a special stay permit to protect female migrant victims of violence in order to remedy the indirect discriminatory effect which could stem from the immigration law against this specific group. This is the case in Italy where in 2013 a new type of residence permit for humanitarian reasons was introduced, adding art. 18-*bis* to Immigration Legislative Decree 286/1998. This provision allowed many women both young and old to have protection from violence even without a regular and autonomous permit to stay.¹⁸

The introduction of a residential permit for female victims of domestic violence into the Italian immigration legal framework was also strongly suggested by the above-mentioned European Parliament study. This is seen in the recommendation provided for by art. 59 of the Istanbul Convention¹⁹. Nevertheless²⁰, some years before the insertion of the art. 18-*bis* Immigration Decree, and precisely in 2010, an Italian judge²¹ recognized that a woman abused by her husband has the right to reside in Italy even given the lack of the requisite strictly required by the law. The case, judged by the Court of Novara, raised concerns for the rejection of an application for a long-term residence permit delivered by a Russian woman on the grounds of her marriage with an Italian citizen. The public administration denied the permit alleging the lack of cohabitation between the spouses, without considering the domestic violence suffered by the applicant as the main reason for the temporary separation. The couple no longer lived together as the drug addict husband had been incarcerated as a precautionary measure after the applicant had reported him to the authorities for committing physical abuse and sexual violence against her. Despite the violence suffered, the Russian woman did not intend to leave her husband and declared that she reported him with the hope that he would be brought to a rehabilitation facility to treat his drug addiction. It is interesting to observe that the judge pronounced himself in the sense of granting the long-term residence permit to the applicant, reasoning on the basis of the ECHR, the Charter of Fundamental Rights of the European Union²² and the Italian Constitution²³. In particular the Court found a prejudice against migrant women who are burdened by the joint effects of the Italian criminal system of protection from domestic violence and the Italian immigration law. A disparity was observed in the enjoyment of *the freedom of self-determination in relation to ethical and moral sphere*²⁴, and thus the right to ask for and obtain protection against domestic violence without triggering a legal mechanism which implies the paradoxical measure of the expulsion of the victim. The Court compared the event of domestic violence endured by the applicant migrant woman with the same experienced by an Italian woman and concluded that *the fact that precautionary measures involve putting an end to cohabitation - ranging from removal from the conjugal home to precautionary detention - does not negatively impact victims, who can still freely determine their marital situation*²⁵.

Therefore the application of the norm by the Italian public administration in the sense of the automatic cancellation of the right to reside as a consequence of the lack of cohabitation between spouses created a clear discrimination between immigrant women and Italian women. Furthermore the Court concluded that this lesser protection, resulted from the interpretation of the provision carried out by

¹⁸ B. G. Bello, *From books to action: Has protection against discrimination become intersectional in Italy?*, in *Sociologia del Diritto*, 2016, vol. 2, p. 196.

¹⁹ Art. 59 (Residence status) of the Istanbul Convention.

²⁰ As F. Staiano noticed in her study on the of the Critical Race Theory to the European context: F. Staiano, *Bringing Critical Race Theory to Europe: the case of immigrant women*, in *European Journal of Legal Studies*, 2015, vol.8 No.2, p. 96.

²¹ Tribunale di Novara, judgment of 1^a March 2010, R.G. 926/2009. See F. Staiano, 2015, pp. 93-94.

²² Art. 8 of the ECHR (Right to respect for private and family life), and in art. 7 of the CFREU.

²³ Art. 29, § 2, of the IC and art. 117, § 1, IC.

²⁴ Tribunale di Novara, judgment of 1^a March 2010, R.G. 926/2009. See F. Staiano, 2015, pp. 93-94.

²⁵ *Ut supra*.

the Central Police Station [*Questura*]²⁶, was not compatible with the principle of non-discrimination as guaranteed by International and European provisions as well as by Italian constitutional law. The judge of the case stated that the public administration should have decided in the favor of the concession of a stay permit, since *the possibility to react to family abuse with the means set forth by the State is guaranteed without any difference to any person present on the national territory, preventing the status of Italian citizen or third-country national woman married to an Italian citizen, or legal resident on other grounds, from being able to affect her negatively*²⁷.

The judgment of this case is interesting under two profiles. First because the “intersectional location” was intercepted of the female migrant victim of domestic violence and the aggravating role of the subordination effects of the immigration law in the applicant's personal situation. In fact, the judge recognized the negative and discriminatory implication of the legal provision implemented by Central Police Station [*Questura*] which it had specifically had on the applicant as a woman, migrant and as a victim of violence, even if this impact was not labelled as “intersectional” and was not about “intersectional discrimination”. Secondly this case is compelling because the judge achieved the same result as the newly -added art. 18-*bis* of the Italian Immigration Act²⁸ and thus granted the effective protection from domestic violence even to a migrant woman, thanks to the adoption of an interpretation of the national law throughout principles and rights settled in the ECHR and the CFRE²⁹, in order to ensure the “principle of the *maximum expansion of protection*”, offered by the multilevel European system in the matter of fundamental rights³⁰.

Despite the introduction of the specific measure, art. 18-*bis* Immigration Decree represents an important evolution in terms of the formal recognition of the need for protection for migrant women victims of domestic violence, it must however be underlined that currently this legal instrument used in seeking protection comes up against certain obstacles in its effective application. As reported last year by the Parliamentary Commission of Inquiry into Femicide³¹, mentioning Internal Ministry data, from 2013, the year of the introduction of art. 18-*bis*, to the end of 2017, only the low number of one hundred and eleven of these special residence permits were granted to migrant women victims of domestic violence.

There are many reasons³² why nowadays this legal provision still fails to find a full operative application: to trigger the procedure to access the benefits of art. 18-*bis* it is required that the victim reports the domestic violence endured to the Central Police Station [*Questura*]. This is not always known by the victims or the procedure is perceived by them as being too difficult and long to benefit from. Moreover a lack of knowledge of the measures and the procedures emerges even among law operators who work in battered women's shelters and at the same time a widespread mistrust exists among judicial authorities in granting such kind of stay permit: it is quite common that the truthfulness of migrant women victim's status is often questioned as their request to access legal protection is seen with mistrust as an attempt to obtain the stay permit. This behavior is evident in a case³³ where the

²⁶ *Questura* based the rejection of the applicant's request on article 10 of the Legislative Decree No. 30/2007, implementing the European Directive 2004/38/EC. This provision states that after three months later the entry in Italy, the relative of the Italian citizen (spouse, parent, son or daughter) can ask to *Questura* of the place of residence the concession of the residence permit.

²⁷ Tribunale di Novara, judgment of 1^a March 2010, R.G. 926/2009. See F. Staiano, pp. 93-94.

²⁸ Added by art. 4, §1, Legislative Decree 14^a August 2013, No. 93, converted with amendments by Law 15^a October 2013 No. 119 and attached to the Legislative Decree 25^a July 1998 No. 286, *alias* Testo Unico sull'Immigrazione (TUI).

²⁹ Charter of Fundamental Rights of European Union.

³⁰ W. Chiaromonte, *A proposito della tutela multilivello dei diritti fondamentali nel sistema giurisdizionale europeo: il diniego della carta di soggiorno opposto al coniuge non convivente di un cittadino dell'Unione*, 2010, article published on <http://www.europeanrights.eu>

³¹ http://www.senato.it/japp/bgt/showdoc/17/SommComm/0/01066513/index.html?part=doc_dc-allegato_a

³² As Ilaria Boiano an Italian Lawyer and Feminist activist of the association *Differenza Donna* and ASGI, has pointed out in I. Boiano, *La doppia violenza contro le donne migranti, quando la legge diventa un ostacolo in più*, 2018, article published on <http://www.ingenere.it/articoli/uscire-violenza-per-donne-migranti-piu-difficile>.

³³ This case was sponsored by the lawyer Teresa Manente, head of the legal department of the *Differenza Donna* association.

judge for the preliminary hearing considered the migrant woman, who reported her husband for serious mistreatment, not plausible since she required the residence permit *ex art. 18-bis*. The judge then made his closing arguments pronouncing a judgement of "no ground for proceeding". Following the appeal proposal, the Court of Cassation³⁴ intervened in the case and annulled the decision of the judgment which had been appealed against: the Court highlighted the patent illogicality of the interpretation given by the judge *a quo* who with discriminatory prejudice considered the victim's report of domestic violence against her husband as a way to obtain the stay permit, without focusing instead on the crime of domestic violence inflicted on the woman.

Therefore, even if *art. 18-bis* has the potential to reach migrant women at intersection, it is still necessary to overcome prejudices against migrant victims of domestic abuse and to adopt an intersectional method to deal with such cases in order to better implement the law and grant access to social protection programs.

It has to be added that in the last few years many other European States have adapted their legislation in order to ensure effective legal protection to female victims of domestic violence with an irregular or dependent stay permit.

This is the case of France, where if a migrant woman lodges a complaint of domestic violence and her spouse, partner, cohabiting partner or former partner is convicted for that acts of violence, she is granted a residence permit without any charge. The legislative reference is contained in *art. L.316-4* of the *Code de l'entrée et du séjour des étrangers et du droit d'asile* (CESEDA) and was introduced with an amendment in 2014³⁵ in compliance with the Istanbul Convention³⁶.

Moreover, The Netherlands immigration law gives protection to migrant women victims of domestic violence. The Dutch system does not distinguish whether the victim is regularly resident or not in order to grant protection, but the two cases are treated slightly differently. If the victim had a residence permit which was dependent upon her partner for less than five years and her relationship has come an end, she is eligible for an independent permanent humanitarian residence permit. The woman has to prove that there was domestic violence within the relationship. In particular, she must demonstrate domestic violence with documents from the police or Public Prosecution Service and documents from the care services. Otherwise, if the migrant woman does not have a residence permit for the Netherlands and is a victim of domestic violence, she can apply for a residence permit. In order to obtain a temporary humanitarian residence permit, she must then prove that there has been domestic violence but has also to demonstrate that she cannot escape the domestic violence by settling in her country of origin³⁷.

Another interesting case is given by the Belgium legislative adaptation to the Istanbul Convention enforced since 2016 that allowed migrant women victims of abuse to access social and legal programs against domestic violence³⁸. Before that year, as was documented by Human Rights Watch, there were several cases in which women who came to Belgium from outside the EU as family migrants received an order of expulsion after they left abusive spouses³⁹. Not even the legal changes advanced in 2007 which allowed migrants to retain residency rights only if they came forward and reported family violence, showing evidences that the treatment endured⁴⁰ had caused the function to encourage victims

³⁴ Italian Court of Cassation, judgment No. 16498/2017.

³⁵ Reformed by Loi n. 2014-873 du 4 Août 2014.

³⁶ *In the event of the final conviction of the accused, a resident permit may be issued to a foreign national who has lodged a complaint for an offence mentioned in the first paragraph of Article 132-80 of the Criminal Code. The issue of the permit provided for in the first paragraph of this article may not be refused on the grounds of cessation of married life.* Art. L. 316-4 CESEDA, translated by The French League for Human Rights (LDH - Ligue des droits de l'Homme).

³⁷ Legal data from Dutch Immigration and Naturalization Service-Ministry of Justice and security, Domestic violence, honour-related violence, human trafficking, abandonment and your residence permit. January 2018, Publication No. 3092.

³⁸ European Commission – European Migration Network: Country Factsheet Belgium 2016, p. 2 [accessed on https://ec.europa.eu/home-affairs/sites/homeaffairs/files/02a_belgium_country_factsheet_en_1.pdf].

³⁹ See <https://www.hrw.org/report/2012/11/08/law-was-against-me/migrant-womens-access-protection-family-violence-belgium>.

⁴⁰ Law of 15th December 1980 relating to the access to the territory, residence, establishment and removal of foreigners (the

to denounce their persecutor. In fact, in that way, even if the charge did not bring about the effect of the loss of the right to stay, the residence permit maintained by the women remained associated with that of their partner. In this way, the victims of domestic violence could not be granted full protection, distancing them from their aggressive partners.

Switzerland, instead, ratified the Istanbul Convention in December 2017 then to be implemented on April 1st 2018, forcing other regulatory developments to follow the adoption of the Convention itself, as is demonstrated in art. 50 of the Aliens Federal Law⁴¹. This provision sets down that people who come to Switzerland with a family reunification permit have no independent right to reside in the State. And in the case of separation, the right to reside can be extended only if the marriage has lasted at least three years and the person is successfully integrated or if serious personal reasons make necessary the continuation of the stay in the State. Among those serious personal reasons, the jurisprudence has included even the infra-conjugal violence, but it is required that the violence suffered should be such as to justify the application of art. 50, § 1, let. b), L. Str. The Federal Tribunal considers it enough to trigger the application of such rule on condition that the violence is so serious as to put at risk the physical integrity of the spouse, but who has nonetheless to present evidences to certify the aggressive conduct of the partner, such as medical certifications and criminal report to police officers. Furthermore, the Tribunal carries on the evaluation even with regard to the personal interests of the victim to remain in Switzerland after the separation for domestic violence, taking into account the eventuality that the social reintegration in the country of origin could be compromised by the fact of the marital separation. Nevertheless, such strict criteria do not always grant protection to victims of domestic violence who are subjected to the risk of leaving the country as a consequence of separation⁴².

These specific provisions of European States work in different ways against discrimination which a neutral immigration law may trigger and its presence in the normative systems means the extension of the effective guarantee of human rights even to women "located at the intersection".

3. The need for an intersectional approach in evaluating female asylum seekers' application based on domestic violence claims as a form of gender persecution

In the last decade of this century Europe has been affected by a huge mass migration flux especially from the Middle-Eastern and sub-Saharan countries and North Africa. Eurostat reports that, over the 2015-2016 period, of the people from non-European countries who sought asylum 32% were women⁴³. The sequence of events that pushed women coming from extra-European countries to seek asylum in Europe may be connected with the unbearable discrimination and persecution suffered in their country of origin because of their sex. This could be enough to demand that the Courts deputed to judge on the life of these people have to carry out an assessment that considers the peculiarity of their situation, inasmuch as women. But what it is needed is a legal approach which makes it possible to discover forms of persecution or treatment that violate human rights, in a way that by looking at the life of the female applicants can recognize situations which are the effects of the interaction of certain aspects of identity, such as gender, race, nationality, class, religion and which for this very reason deserve international protection.

"Aliens Act").

⁴¹ Swiss Federal Department of Home Affairs DFP, Federal Office for Gender Equality. Information sheet 19: Domestic violence in the migratory context, January 2015.

⁴² *Ut supra* 33.

⁴³ Data reported by the Open Migration web platform <https://openmigration.org/en/analyses/the-number-of-women-seeking-asylum-in-italy-and-who-they-are/> [accessed on 25/01/2018].

As will be argued in the following part, a decision to deny or to grant a refugee status which lacks the recognition a persecution suffered by reason of the intersectional location of the woman itself generates an intersectional discrimination to the detriment of the female applicant. Hence the importance of conducting a gender-oriented evaluation of asylum seekers claims as a filter for the acknowledgment of the existence of founded reasons to grant protection.

The necessity of gender-oriented assessments has been highlighted by many scholars and studies with regard to the impact of the international asylum law on intersectional claims with perseverance from the first year of this century to nowadays⁴⁴.

In Europe ten years later, in a general report on the condition of migrant women ENAR⁴⁵ pointed out the importance of the lack of awareness in considering the claim for asylum by women from a male perspective⁴⁶.

As mentioned in the ENAR report, research has shown that there is still great disparity among EU Member States in tackling claims of gender-based persecutions, which is problematic in the current legal system which obliges asylum seekers to apply in the first EU country they enter. The EU Institutions efforts to handle the issue are visible in the choice to include in the Council Directive 2004/83/EC a specific provision on art. 9, § 2, letter f) where it is specified that by “persecution” with the aim of the refugee's definition it can be referred even to acts of a gender-specific nature.

This specification added to art. 9 of the Directive, made after the publication in 2002 of the *UNHCR Guidelines on international protection: gender-related persecution within the context of art. 1 A-2 of the 1951 Convention and/or its 1967 Protocol relating to the status of refugees*. This Guideline was provided in order to create a soft-law instrument for jurists to interpret the Geneva Convention with awareness of the possible gender-dimension of the claim to refugee status, given the absence of a specific reference in the original text of the Convention to the sex or gender grounds⁴⁷.

This guideline is a useful tool to ensure proper consideration even to women claimants in refugee status determination and to encompass asylum claims based on cultural type of persecution which particularly afflict women in cases such as the female genital mutilation, sexual violence and discrimination.

Even if various EU States have introduced guidelines which require gender to be taken into account by caseworkers considering asylum claims, such as the United Kingdom and Sweden, it must still be advised by EU Institutions in a report⁴⁸ on the difficulty by Member States to recognize the pe-

⁴⁴ R. Bacon and K. Booth, *The Intersection of Refugee Law and Gender*, in *UNSW Law Journal*, 2000, vol. 3; J. Olsson, *Women refugees and integration in the US society: the case of women from Bosnia and the former Yugoslavia who resettled in the United States*, Virginia State University, 2002; S. Martin, *Refugee and displaced women: 60 years of progress and setbacks*, in *Amsterdam Law Forum*, 2011, vol. 3, No. 2; S. Ratković, *The location of refugees female teachers in the Canadian context: “not just a refugee Woman!”*, in *Refuge*, 2013, vol. 29, No. 1; E. Olivito, *Gender and Migration in Italy: A Multilayered Perspective*, Farhnam, Ashgate, 2016.

In fact, in 2000 the UNSW Law Journal published an article which raised the issue of how to handle the intersection of gender and refugee law under the 1951 Geneva Convention which did not specifically address this case: Bacon and Booth argued that “*from a legal perspective, women fleeing harm inflicted upon them by reason of their gender may encounter a number of barriers to gaining refugee status under the Refugees Convention definition. For example, women may face difficulties in establishing the existence of a nexus between the types of harm they fear, and a Convention ground, such as political opinion, nationality or religion. There may also be policy concerns preventing women from claiming refugee status on the basis that they are members of a particular social group, that is, “women”*”.

⁴⁵ European Network against Racism.

⁴⁶ According to ENAR Fact Sheet 42, *Gender and Migration*, February 2010, p. 1, “*a particular feature is that these women may often be motivated by the desire to escape political, cultural and social restrictions in their country of origin. While such restrictions affect women and men in the same way, their impacts may be quite different depending on the gender of the individual. Some women, for example, migrate in order to escape from oppressive family or marital relationships*”.

⁴⁷ The UNHCR Guideline distinguished between the terms “gender” and “sex”. Gender is referred to the relationship between women and men based on socially or culturally constructed and defined identities, status, roles and responsibilities that are assigned to one sex or another, while sex to a biological determination; see H. Crawley and T. Lester, *Comparative analysis of gender-related persecution in national asylum legislation and practice in Europe, Switzerland*, UNHCR, 2004, pp. 141-142.

⁴⁸ Policy Department for Citizen's Rights and Constitutional Affairs at the request of the FEMM Committee (Women's rights

cularities of the female asylum seekers' claims⁴⁹.

To demonstrate how the practice works differently from the written guidelines, an emblematic ECtHR case-law must here be mentioned, *N. v. Sweden*⁵⁰, concerning the failure of Sweden in recognizing the refugee status to an Afghan woman, ignoring how gender impacts the applicant's application for asylum. The applicant of the case is Ms N., an Afghan woman who applied for asylum with her husband to the Swedish Migration Board in 2004. Her first asylum request was delivered together with that one of her husband, Mr X, and was founded on political persecution grounds. She added also that she had shown her political stance by acting as a teacher for women, which was not accepted in her country of origin. The couple's application was rejected by the Migration Board in 2005. During the appeal to the Swedish Migration Court, Ms N. declared that she had separated from X and intended to obtain a divorce although X was opposing it. By separating from X, she broke with Afghan traditions which meant that she risked serious persecution if forced to return to her country of origin. Despite the applicant's reasons, the Migration Court rejected the appeal in 2007, stating that the applicant had not demonstrated that she had a well-founded fear of persecution because of her previous work as a teacher of women and since she had not formally divorced X but just separated from him. The applicant did not face a concrete and individual risk of persecution for having broken Afghan traditions, because she had not had an extramarital affair, for which reason there was no risk that she would be convicted of adultery and sentenced to death. The applicant's appeal against the judgment to the Migration Court of Appeal was refused. Again in 2008, the applicant requested the Migration Board to re-evaluate her case and stop her deportation, alleging new grounds. Ms. N. claimed that the situation in Kabul had worsened considerably since the Migration Board's previous decision. She further alleged that she now had a well-founded fear of persecution upon return to Afghanistan since she had started a relationship with a Swedish man, an act of adultery which is punished with the death penalty in Afghanistan. She also submitted a letter from the UNHCR Regional Office for the Baltic and Nordic Countries which warned about the condition and treatment of the women in Afghanistan. Nevertheless the Migration Board refused to reconsider the applicant's case as she had failed to invoke any new circumstances of importance and the deportation measure was confirmed. Therefore Ms. N. turned to the ECtHR, claiming the violation of art. 3 ECHR. Following the guidelines on the assessment of Afghan female asylum seekers application proposed by the UNHCR⁵¹, the ECtHR observed that women are at particular risk of ill-treatment in Afghanistan if they are perceived as not conforming to the gender roles ascribed to them by society, tradition and even the legal system. Furthermore it found that there were substantial grounds for believing that if deported to Afghanistan, the applicant would face various cumulative risks of reprisals from her husband X, his family, her own family and from the Afghan society. For these reasons, the Court declared the violation of art. 3 ECHR.

This case-law is interesting mainly under two profiles: first because it demonstrated that certain European States, such as Sweden in this specific case, albeit having signed the 1951 Geneva Convention, have contradictory approaches to the recognition of gender-related persecution. In fact, despite the high resonance of the 2002 UNHCR Guideline on gender-related persecution as a main tool for interpreting the Geneva Convention, Sweden had chosen to produce its own Gender Guidelines which explicitly state that gender cannot define a Particular Social Group and subsidiary status only is provided to asylum-seekers with gender-related claims⁵².

Therefore *de facto* a political position of the State on the matter of gender-based persecution impeded the female applicant from being recognized as a refugee. A less strict approach on the gender matter and an open view on the whole personal situation of the applicant could have led to granting

and gender equality) of the European Parliament. See S. Sansonetti, *Female refugees and asylum seekers: the issue of integration*, 2016.

⁴⁹ See also EP Report, *Female refugees and asylum seekers: the issue of integration*, 2016, pp. 12-13.

⁵⁰ European Court of Human Rights, 10th July 2010, *N. v. Sweden*, No. 23505/09.

⁵¹ The UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Afghan Asylum-Seekers of July 2009, § 34 of the ECtHR case *N. v. Sweden*.

⁵² H. Crawley and T. Lester, *Comparative analysis of gender-related persecution in national asylum legislation and practice in Europe, Switzerland*, UNHCR, 2004, p. 3.

protection as a beneficiary according to the International Treaty and Guidelines.

The second aspect which emerges from this case is the missed opportunity of the ECtHR to recognize an intersectional discrimination stemming from the asylum refusal by Swedish Courts to the detriment of the applicant. In fact the Swedish Government rejected Ms. N.' asylum request using not just a "male-standard assessment", considering the personal experience of the applicant as if she was an Afghan man, but even a "western-woman standard assessment", underrating the threats she was submitted in reason of her being a woman in Afghanistan without taking into account the different cultural and political context of such country. However the ECtHR was not demanded to pronounce on a matter of discrimination: the applicant's lawyers in fact alleged only a breach of the right set down in art. 3 of the convention without combining it with art. 14 ECHR which protects against discrimination. Even if the ECtHR has shown sensitivity to the multiple and intersecting ways women's rights are put at risk in Afghanistan⁵³, this case might have even been an occasion to speak out about the intersectional discrimination experienced by female asylum seekers in access to refugee status, or in other words, to residence permits in the European host country.

An emblematic and interesting judgment on this issue was furthermore delivered by the Immigration and Asylum Chamber of the UK Upper Tribunal. On 2016 an Albanian woman appealed against the Tribunal's rejection of her international protection request based on the domestic violence inflicted by her husband in her country of origin. In that place the claim of the applicant as a gender-based persecution was not recognized and specifically the Court refused to consider the victim of an intimate partner's violence as a refugee. The Upper Tribunal⁵⁴ instead reasoned in the sense of acknowledging the applicant as a member of particular social group in two ways: as a woman and as a victim of domestic violence. The judge of that Tribunal argued that the claimant was entitled to international protection as a victim of domestic violence and that the claimant in Albania could choose between leaving her husband and facing the risk of social ostracization because of her broken relationship or remaining in it and suffering such treatment, even taking into account that Albania could not grant to the victim effective protection, because she had a relative who was a police officer who would hinder the ordinary application of the law. It is interesting to notice that in this case the approach adopted by the Court was focused on considering all the facets of the woman's personal reasons for applying for asylum in the UK, and thus it intercepted persecution as a relevant element for the claim but also the vulnerability given by the intersection of three factors, or better being woman and the victim of domestic violence in a State where the society and institutions strive to accept that intimate partner violence is a harmful practice to be condemned.

Another interesting case, is represented by a recent judgment⁵⁵ of the Italian Court of Cassation in 2017. The Court of Cassation deemed deserving of refugee status the gender-based persecution experienced by a Nigerian asylum seeker who, after the death of her husband, refused to marry her brother-in-law in compliance with the local religious customary law and because of this and also the lack of protection from Nigerian authorities, which was forced to leave her country of origin. It is interesting to notice that the Italian Court of Cassation achieved such result, relying on the duty of the Italian Government to grant the enforcement of the principles stated in the Istanbul Convention, which became executive in Italy with Law 77/2013, and also based on the soft-law 2002 *UNHCR Guidelines on international protection*. The Court of Cassation applied the interpretative line stated in this last soft-law tool, specifically the meaning of "persecution" to the case when the woman is limited in the enjoyment of her rights because of her refusal to comply with traditional religious dispositions linked to gender. In this explanation the action of the intersectional method is to be seen: what was experien-

⁵³ As was observed by Alexandra Timmer in the article *Strasbourg Court shows itself sensitive to the plight of Afghan women* for the Strasbourg Observers [\[https://strasbourgobservers.com/2010/07/20/strasbourg-court-shows-itself-sensitive-to-the-plight-of-afghan-women/#more-434\]](https://strasbourgobservers.com/2010/07/20/strasbourg-court-shows-itself-sensitive-to-the-plight-of-afghan-women/#more-434), the ECtHR considered many human rights reports on the condition of the Afghan women and took into consideration the combination of domestic violence, sexual ownership by men, social stigma, vulnerable economic status experienced by women in Afghanistan in order to evaluate the applicant's claim.

⁵⁴ Upper Tribunal (Immigration and Asylum Chamber), 12^a December 2016, AA 12842 2015.

⁵⁵ Corte di Cassazione, 24^a November 2017, no. 28152/2017.

ced by the Nigerian widow was the result of the overlapping of several factors⁵⁶.

Such case shows the importance of an intersectional approach in the legal operation of fitting the experiences of the female asylum seekers within the international protection law in order to establish if the stay permit as refugees has to be granted.

4. The reluctance of the EU State authorities to intervene in the private sphere in cases of domestic violence denounced by migrant, refugee or minority women as an intersectional discriminatory conduct

The issue of domestic violence suffered by migrant, refugee or minority women is relevant while considering the reactions of the social-justice actors in combating such kinds of crimes: the lack of attention will be highlighted that is reserved by European authorities to reports of domestic violence when the victims are migrant or minority women trying to emerge from the intersectional dimension of the phenomenon. Such spread of “culturalist conduct”⁵⁷ goes together with the other barriers in accessing to justice with which migrant women are confronted, such as the barriers discussed above. On the one hand the precarious migration status of the battered women often hinders the victim in reporting their partners, on the other hand their past experience of domestic violence suffered in the country of origin is often not recognized by the administrative office in charge of their asylum claim with the result that the women frequently have no trust in the justice system of the host country⁵⁸. Reports and research have stressed the persistent reluctance of the State institutions to intervene in cases of domestic violence in the “private” sphere, as a way to avoid intrusion in others’ traditions⁵⁹. This trouble can be further aggravated by a culturalist perception of migrant communities which attribute violent practices or abuses to the “other” culture, with the consequence that authorities are less inclined to intervene to protect women⁶⁰. As far as migrant women are concerned, a study has pointed out the importance of this issue particularly in France and Italy: with regard to France, the study concluded that migrant women are often not considered in policies on domestic violence, partly because of the importance of universalism⁶¹. Instead, in Italy the reason of the lesser consideration given by the state authorities to migrant women’s reports of domestic violence is quite the opposite: culturalism, or better

⁵⁶ *Ut supra*.

⁵⁷ This expression was introduced in Euro-Mediterranean Human Rights Network, *Violence against Migrant and Refugee Women in the EuroMed Region* by Jane Freedman Bahija Jamal [financed even by the European Commission], 2008, p. 18, available at http://www.cittametropolitana.bo.it/sanitasociale/Engine/RAServeFile.php/f/women_EMHRN.pdf [accessed on 18th November 2018].

⁵⁸ Thesis supported in this paragraph requires a clarification. In the socio-juridical literature on this topic, a double approach to female migrant or minority victims of domestic violence by their male compatriots has been highlighted: a) the assumption of this part of the article, b) in some cases foreign or minority men are perceived to be more violent and therefore migrant or minority women appeared to be protected even more. This argument was in particular implicitly mentioned by K. Crenshaw in *Mapping the Margins* in *Stanford Law Review*, 1991, vol. 43 pp. 1252- 1258, when, about the Politicization of Domestic Violence, pointed out the enormous difficulty in getting statistical data on violence against migrant or minority women perpetrated by their partners, as these data could had been exploited politically to justify oppressive police tactics and other discriminatory practices against Black and Latinos men.

⁵⁹ E. Postl, F. Di Donato, M. Nocenzi, F. Deriu, L. Sommo, *Condizione femminile e welfare*, Roma, Apes, 2011, p. 233; Euro-Mediterranean Human Rights Network, *Violence against Migrant and Refugee Women Jane Freedman Bahija Jamal in the EuroMed Region* by Jane Freedman Bahija Jamal, 2008.

⁶⁰ E. Kofman et al. in *Gender and International Migration in Europe: Employment, Welfare and Politics*, London, Routledge. 2000, p. 101 observe that *the case of domestic violence exemplifies the tolerance of practices in the private sphere on grounds of non-intervention in the customs of others*.

⁶¹ Euro-Mediterranean Human Rights Network by Jane Freedman Bahija Jamal, 2008, p. 31.

the interpretation of the intimate partner's violence against women as a result of cultural differences⁶². If universalism does not consider minority women differently in taking into account the greater vulnerability to which they are exposed, culturalism is instead the tendency to underline the difference of a group, given by the culture, and find in it a sort of justification. Two different approaches which in practice lead to the same result: the downsizing of the urgency of domestic violence claims raised by migrant women.

To grasp the effects of such conduct the concept of intersectionality is helpful. In fact, an intersectional perspective in the analysis of the state authorities' responses to reports made by migrant or minority women can show that the amount of attention paid to them is determined by their condition "at intersection". A practical example of this, can be found in the recent ECtHR case *Talpis v. Italy*⁶³: the application concerned the alleged failure by the Respondent State, Italy, to provide protection and support to a Moldavian woman who suffered several episodes of violence by her husband, of Moldavian-origin too, which ended in the murder of the applicant's son and the attempted murder of the woman. The facts of the case involved several episodes of violence. After a first attack against the woman and her daughter by the husband, which was not lodged in a formal charge, in 2012, Ms. Talpis filed a complaint against him and requested protection measures as a consequence of a second episode of persecution from the husband who threatened her with a knife in order to force her to have sexual relations with his friend. A judicial investigation was opened for ill-treatment of the family, serious bodily harm, and threats of violence⁶⁴. But the police questioned Ms. Talpis for the first time seven months after her complaint, and thus she mitigated her allegations, which apparently led the judge to close the case concerning the ill-treatment of the family and threats of violence. The proceedings for bodily harm remained open and ended two years later with a fine of 2000 euros for the husband. Then again, in 2013 the husband attempted to hit her and fatally wounded their son and wounded Ms. Talpis. In the last suit the courts sentenced the husband to life imprisonment for murdering his son and attempting to murder his wife, for carrying a prohibited weapon, and for ill-treating Ms. Talpis and her daughter.

The Court condemned Italy for failing to protect the lives of the applicant and her son declaring the violation of art. 2 ECHR and for failing to protect the women against domestic violence, declaring the violation of art. 3 ECHR. Furthermore, the Court found a violation of art.14 ECHR in conjunction with art. 2 and art. 3 ECHR, since *discriminatory judicial passivity [of the police] created a climate that was conducive to domestic violence* causing thus a gender discrimination⁶⁵. It is interesting to notice that no references emerged from the applicant's claim to the fact that Ms. Talpis and her family were Moldavian by origin and the Court focused the examination of the violation of the principle of non-discrimination on the ground of gender, only hinting at the ground of the non-national origin of the applicant. In fact the judgment contains a couple of key passages which are meaningful in order to consider the claim from an intersectional perspective: first, the Court mentioned the ISTAT Report on violence against women that revealed the high percentage of foreign women who experienced domestic abuse in Italy⁶⁶. Second, two paragraphs below that information, the evaluation was given by the CEDAW Committee on Italian Law 38/2009⁶⁷, concerned about the high prevalence of violence against women and girls, as well as the persistence of sociocultural attitudes that tolerate domestic violence, as well as being concerned about the lack of data on violence against immigrant women and girls, Roma and Sinti⁶⁸. It is no coincidence that the Court mentioned that specific data on non-Italian origin women, especially when it reported the CEDAW assessment: the particular fact that the appli-

⁶² *Ut supra*, p. 49.

⁶³ European Court of Human Rights, 18th September 2017, *Talpis v. Italy*, no. 41237/14.

⁶⁴ Art. 572 (ill-treatment by the family) Italian Criminal Code, art. 582 ICC (serious bodily harm), art. 612 ICC (threats of violence).

⁶⁵ § 141 *Talpis v. Italy*, No. 41237/14.

⁶⁶ § 55.

⁶⁷ Law Decree 23rd February 2009 n. 11 converted into Law on 23rd April, 2009 No. 38 *Urgent measures on public security and the fight against sexual violence, as well as on persecutory acts*.

⁶⁸ § 57.

cant was Moldavian by origin as well as her husband did not escape the attention of the Court that in a certain way wanted to emphasize but failed to give enough weight to include it as a factor of discrimination. It is impossible to affirm that here the ECtHR missed an opportunity to recognize an intersectional discrimination under art. 14 ECHR, because of the lack of evidence- first of all statistical data- that the Italian authorities were less active in intervening in cases of domestic violence against migrant or minority women, but surely the interest of the Court for the minority group of women who experience intimate partner violence hits positively.

However, more alarming and documented cases of State authorities reluctance to accept complaints of domestic violence concern Romani women in particular in Hungary, Czech Republic, Poland and Romania. In fact many sources, such as Human Rights Watch stated that in Hungary it is very difficult for Roma women to seek assistance outside their communities and, in particular, from State authorities, whom they do not trust: the same report indicated that, although the Hungarian Criminal Code was changed in 2013 to include domestic violence offenses, the new law is "not functioning in practice", and even less so for Roma women⁶⁹. It is quite disconcerting to notice a documented case of a Romani woman, from Hungary, who just a couple of decades ago, in March 2000, was granted refugee status by the Canadian Immigration and Refugee Board when it was found that she had unsuccessfully sought protection from the authorities in Hungary, where state protection was considered "rarely available to victims of domestic abuse" and as a Roma she was "more likely to be treated with direct hostility" by the authorities, therefore at risk of further persecution if sent back to her country of origin.⁷⁰ In the same way as the Hungarian authorities, in a similar case, also the Spanish ones failed in the recent past to grant protection to a Gypsy woman, who successfully sought asylum in the United States in April 2001. The woman provided evidence that, as a member of a Gypsy community she could not have sought protection from the Spanish authorities who were said to have a "hands off" approach to matters they consider internal to the community thus basing her asylum claim on the approach of the authorities who denied the "universality" of Romani women's rights⁷¹.

With regard to the specific minority group of Romani women, prejudice and discrimination in the justice system are a significant problem⁷². Crimes committed against them, such as domestic violence, are often left uninvestigated and unprosecuted as "gypsy" matters and or private matters. Even according to UNIFEM, *it is precisely these women who have the least access to mechanisms for justice*⁷³. This is because it is commonly believed, even among police officers, that Roma women accept being beaten by their husbands as a cultural practice in Romani communities. In other words, domestic violence amongst Roma is seen as a problem "internal" to the Romani community and the police should not interfere.

Such reluctance on the part of certain EU State authorities to intervene in the private sphere in cases of domestic violence denounced by migrant or minority women can therefore be described as an intersectional discriminatory conduct, a social aspect that has aggravated the condition of vulnerability to which the victims are exposed, by reason of their gender and their non-EU or cultural origin.

⁶⁹ Research Directorate, Immigration and Refugee Board of Canada, Ottawa, *Hungary: Domestic violence, including in Roma communities; implementation of legislation; state protection and support services, including in Miskolc, Debrecen and Budapest (2014-June 2015)*, 2015. Available at <http://www.irb.gc.ca/Eng/ResRec/RirRdi/Pages/index.aspx?doc=455986&p1s=1>

⁷⁰ Refugee Women's Resource Project, *Asylum Aid, Romani Women from Central and Eastern Europe: A 'Fourth World', or Experience of Multiple Discrimination*, 2002, p. 58, available at <https://www.asylumaid.org.uk/wp-content/uploads/2013/02/Romani-Women-from-Central-and-Eastern-Europe-A-Fourth-World.pdf>

⁷¹ *Ut supra* 63, p. 57.

⁷² C. I. Ravnbøl, *The Human Rights of Minority Women: Romani Women's Rights from a Perspective on International Human Rights Law and Politics*, in *International Journal on Minority and Group Rights*, 2010, vol. 17, p. 10.

⁷³ UNIFEM (United Nations Development Fund for Women), *Race, Ethnicity and Violence Against Women*, 2001.

5. Conclusion

This article has addressed the issue of the domestic violence experienced by migrant or minority women: given as a foreword that being a woman and at the same time being from a non European cultural context makes the victims of domestic violence more vulnerable, the hurdles faced by those women to access to justice were shown in an intersectional perspective. Taking as a reference the study of Crenshaw on African American women victims of domestic abuse, this research has set out to demonstrate how the intersectional perspective applied to cases of migrant women victims of domestic violence could de-marginalize their condition of access to the right to report their persecutors and find protection. Three aspects of the response of certain European state justice systems to migrant or minority women reports were examined: first, the implications of reports of domestic violence on the victim's administrative right of residence in the host State; second, the consideration of domestic violence as a form of gender persecution and discrimination as a founding reason to grant international protection; third, the reaction of the State social actors and State authorities to domestic violence cases when the victim is a migrant woman.

In the first part of the article, it was observed that the positive impact of the implementation of art. 59 of the Istanbul Convention, which recommends that States provide a residence permit to the victims of violence: a provision which is inter-sectional sensitive, since it is aimed to include protection justice programs even for women who have no independent right of residence on the territory. Thanks to its ratification, many European States introduced a special stay permit to protect female migrant victims of violence. This was the case of Italy, France, The Netherlands and Belgium.

In the second part of the article the intersectional approach to domestic violence was explored through case law examination, as a way to recognize gender discrimination and to move on from a "male-standard assessment" and a "western-woman standard assessment" of asylum claims. Such perspective makes it possible to consider all the facets of the woman's personal reasons for applying for asylum and thus it intercepts persecution as a relevant element for the claim but also the vulnerability given by the intersection of the mentioned factors.

The last part of the article was committed, from a sociological point of view, to dealing with the issue of the reluctance of the EU State authorities to intervene in the private sphere in cases of domestic violence denounced by migrant or minority women as a intersectional discriminatory conduct. Cases were reported of the unwillingness of the authorities to intervene to protect women belonging to certain cultures. Such state authority behavior is not always recognized as a conduct which negatively affects the fate of minority women victims of domestic violence: to tackle this issue this paper examined under such perspective the recent ECHR judgment *Talpis v. Italy* on domestic violence endured by a non-national woman pointing out the Court's missed opportunity to give relevance to this theme. Furthermore, a portion was reserved for Romani women as a group particularly targeted by prejudices and who have fewer possibilities to access social protection programs. Therefore it was demonstrated that the intersectional perspective in the analysis of the state authorities' responses to reports made by migrant or minority women can reveal that the lesser attention paid to them is determined by their condition "at intersection" and a specific attention to this issue is needed in order to grant them equal access to justice in cases of domestic violence.

To conclude, steps forward have been made at normative level to correct the double standard of migrant or minority women victims of domestic violence given by their condition of being located "at intersection". Nevertheless, this issue still needs to be addressed at policy level in order to raise the awareness of the vulnerability of such groups and to grant them full and equal protection.