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Un análisis preliminar de la intersección entre el control coercitivo como manifestación de la violencia de género y el estatus migratorio de las víctimas en Irlanda y España

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Summary: Introduction. 1. Intersectionality and access to remedies. 2. Historical overview of the context in Ireland and Spain: lack of intersectionality. 3. Migration law and policy, examples from Ireland and Spain —effects of the law on victims of domestic violence. 3.1. Ireland. 3.2. Spain. 4. Concluding thoughts: the doctrinal and beyond. Bibliography.

Abstract: This article enquires into states' obligations to provide remedies for domestic violence when the right-claimants are in a context of precarious, insecure or irregular migration status ("migration status precarity"). Through an exploration of the laws and policies in place in two case studies, Ireland and Spain, this article questions the role of law in ensuring that barriers posed by migration statuses do not hamper women's access to remedies for intimate partner violence. This article posits that, in the case studies examined, the criminalisation of domestic violence and coercive control does not automatically serve as an avenue to remedies when it intersects with migration status. Rather, it can be a tool of (negative) regulation of women's right to live a life free from gender-based violence. It argues that the states' lack of remedying an unequal access to remedies due to hurdles posed by migration statuses creates distinct categories of more or less deserving victims/survivors depending on their citizenship and migration statuses.

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Keywords: Gender-based violence, domestic violence, human rights, migration status, non-discrimination.

Resumen: Este artículo examina la obligación de los Estados de proporcionar recursos en situaciones de violencia de género cuando las demandantes de dichos recursos se encuentran en una situación administrativa precaria, insegura o irregular en cuanto a su estatus migratorio (“precariedad del estatus migratorio”). A través de un análisis de derecho comparado entre diferentes políticas y leyes relacionadas con la materia en los ordenamientos jurídicos de Irlanda y España, este artículo cuestiona la efectividad de la ley para garantizar el acceso a la tutela judicial efectiva de las mujeres víctimas de violencia de género, con independencia de su estatus migratorio. Tras el análisis comparado, el artículo plantea que, en los ordenamientos jurídicos estudiados, la criminalización de la violencia de género, incluyendo su manifestación de control coercitivo, no se traduce en un acceso automático a remedios para las víctimas cuando entra en juego su estatus migratorio. Por el contrario, la situación administrativa irregular puede dificultar el derecho a las mujeres a disfrutar de una vida libre de violencia de género. Finalmente, plantea que la pasividad del Estado en cuanto a garantizar el acceso a recursos en igualdad de condiciones a todas las mujeres, independientemente de su estatus migratorio, fomenta la creación de distintas categorías de víctimas, con un nivel de protección otorgado que varía según su situación administrativa.

Palabras clave: Violencia de género, control coercitivo, derechos humanos, estatus migratorio, no-discriminación.

Introduction²

In the last decade, domestic violence has been increasingly conceptualised in academic, advocacy and legal debates as coercive control (Stark 2009). Such momentum has prompted a number of law reform initiatives in various European jurisdictions, which have sought to explicitly criminalise it (*Serious Crime Act 2015*; *Domestic Violence Act 2018*; *Domestic Abuse (Scotland) Act 2018*). Criminal reform, in this light, has been presented as a step forward towards the fight against gender-based violence (GBV) and advancing women's rights. The role and reliance on the criminal law to eliminate forms of GBV and to remedy its survivors has been a site for feminist discursive struggle and debate (Larrauri 2018; Kapur and Cossman 2018). As critical race and postcolonial feminists continue to show (Coker 2005; Kim 2018; Tapia 2018), inquiring into the role of law in different social contexts, imbued with specific power structures, is key to unveil and dismount the hierarchies created and maintained by states in allowing rights claims.

Specifically in relation to coercive control, legal reform has attracted a wealth of academic commentary critical of its criminalisation (Walklate and Fitz-Gibbon 2019; Walklate *et al.* 2018; Barlow *et al.* 2019; Tolmie 2018). Yet, there has been little in depth inquiry into how the operationalisation of these laws may affect victim/survivor communities differently. For migrant women exercising their rights, the law can have a double role. In the context of claiming remedies for domestic violence or coercive control, on the one hand, the law provides the basis for remedy. On the other hand, the law can also act as 'a border-reinforcer' (Brems *et al.* 2019). The latter is especially true of immigration norms and policies, which often disadvantage women in exercising their rights, and create conditions that enable and facilitate violence (Peroni 2018). Thus, it becomes crucial to analyse legal responses to domestic violence in light of the socio-political structures that may hamper migrant women's rights, such as immigration policies and laws.

This article examines some of the issues arising in relation to migrant women's access to remedies for domestic violence and coercive control, when the right-claimants are in a context of precarious,

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insecure or irregular migration status. These include migration statuses that, given their precarity due to temporality, dependency or irregularity, can be weaponised by the perpetrator as a further form of control (Voolma 2018). I discuss various migration statuses collectively in order to highlight the sharedness of “state-sponsored vulnerability” (Magugliani 2021) posed by “migration status precarity”. Through an exploration of human rights norms, soft law, and the legal and policy frameworks in place in two case studies, Ireland and Spain, this article aims to provide a preliminary, doctrinal analysis into the law as an avenue to remedy domestic violence in the context of “migration status precarity”. Broadly, the article examines the potential role of the law in ensuring that all women can access remedies for intimate partner violence. More specifically, it questions whether the criminalisation of domestic violence short of effective immigration reform can ensure safe remedy-seeking for migrant women.

The focus on legal reform is justified because it is generally the criminalisation of forms of GBV that facilitate victims/survivors’ access to legal remedies. The scope here is limited to analysing access to domestic civil and criminal measures, understood as the gateway to remedies. Other important procedural layers of the right to access remedies, such as independent impartial and competent tribunals, timely and expeditious proceedings, and fairness of redress, are outside of the scope of this article (Shelton 2015). The article discusses substantive legal issues present in the two jurisdictions examined. I make use of the concept “domestic violence” to refer to a form of GBV in intimate relationships. Article 3 (b) of the Council of Europe Convention on preventing and combatting violence against women and domestic violence (henceforth, “Istanbul Convention”), defines domestic violence as:

“all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim”.

Coercive control, as a central tenet of domestic violence, is conceptualised here as analogous to psychological violence, and prohibited under Article 33 of the Istanbul Convention (GREVIO 2018).

I argue that the criminalisation of domestic violence does not automatically serve as an avenue to remedies. Rather, when the criminalisation intersects with precarious migration statuses, it may lead to the state’s (negative) regulation of women’s right to live a life free

from GBV. This differential treatment corresponds to a statist hierarchy of deservingness, according to migrant victims/survivors citizenship and migration status. This argument is developed in three parts. First, I identify states' obligation to provide remedies to *all* victims/survivors of domestic violence, including for coercive control, without unlawful discrimination. Second, I contextualise the issue of domestic violence in Ireland and Spain, enquiring into the process of introducing legal sanctions against domestic violence, and exploring the socio-political discourse and legal regulation of domestic violence against migrant women. Third, through the analysis of law and policies applicable in the two jurisdictions chosen, I evaluate the tension between the legal obligation to intervene in domestic violence contexts, and the state's "sovereign prerogative" to regulate migration according to the immigration framework status quo.

1. Intersectionality and access to remedies

Since the recognition, in the 1990s, of domestic violence as a global issue of public and structural nature, international and regional human rights law has placed on states the well-established threefold obligation to prevent GBV, protect victims/survivors and prosecute perpetrators (UN CEDAW Committee 1992; 2017; Council of Europe 2014; African Union 2005; OAS 1994). To varying degrees of precision, human rights instruments and treaty monitoring bodies have recommended states parties to adopt measures that enable the implementation of women's right to be free from GBV. These measures include the availability of judicial remedies (UN CEDAW Committee 2017, para. 29(a); 1992, para. 24(i)). In so doing, the obligation to protect women from and prevent GBV, has encompassed states' obligation to adopt civil and criminal provisions against all forms of GBV (UN CEDAW Committee 2017, para. 29).

Since Crenshaw's influential work on intersectional discrimination (Crenshaw 1989; 1994), intersectionality has been used to highlight how systems of power, social hierarchies and oppressions produce unique experiences of violence and shape potential exit avenues for women situated at different social intersections (see for example: Josephson 2005; Das Dasgupta 2005; Coker 2005; Sokoloff 2008). In light of this recognition, human rights documents, building on non-discrimination principles, have conferred upon states the obligation to address intersectional discrimination, "based on sex and gender (...) linked with other factors that affect women, such as race,

ethnicity, religion or belief, health, status, age, class, caste and sexual orientation and gender identity" (UN CEDAW Committee 2010, para. 18). Consequently, the obligation to provide remedies for GBV has been construed as encompassing the underlying obligation to ensure effective and equal access to rights, regardless of intersectional locations such as gender, ethnicity/race, sexual orientation or migration status (UN CEDAW Committee 2017, para. 12; Council of Europe 2014, para. 4). In particular, the CEDAW Committee stated in its General Recommendation 35 the following:

"because women experience varying and intersecting forms of discrimination, which have an aggravating negative impact, the Committee acknowledges that gender-based violence may affect some women to different degrees or in different ways, so appropriate legal and policy responses are needed" (UN CEDAW Committee 2017, para. 12).

On the question of migrant women seeking remedies for breaches of their rights, a body of literature highlights that formal laws and policies may obstruct the exercise of migrant rights. For example, Siobhán Mullally has posited that, "border norms (...) follow migrants within the territorial borders of states and entrench distinctions not just between citizens and non-citizens, but also between categories of migrants" (Mullally 2014). Indeed, there are various ways in which irregular or precarious migration statuses function to preclude access to rights. Erez, Adelman and Gregory have enumerated these obstacles in their work on the intersections of immigration and domestic violence as including, not exclusively: disadvantages in economic and social status, including economic instability and marginalisation; lack of trust in law enforcement and other state agencies; or lack of control over legal status and knowledge (Erez et al 2009). Lourdes Peroni discusses a number of these barriers, which she calls "intersecting borders of inequality", and argues that discussing them as structural in relation to inequalities is "analytically useful because it suggests something that lies outside the individual or group and thereby directs the gaze outwards" to the state (Peroni 2018).

States not only have an obligation to provide remedies for domestic violence without unlawful discrimination, but also an active role in creating and maintaining these structural barriers. On this basis, it is necessary to examine to what extent human rights norms suggest what measures states could or should take to address these specific barriers, and to remedy the consequences and inequalities they produce.

To some extent, human rights norms and soft law have tentatively addressed these issues, although arguably, not in great detail nor with particular urgency. For example, CEDAW General Recommendation 35 recommends state parties to “repeal (...) all laws that prevent or deter women from reporting GBV” including restrictive immigration laws (UN CEDAW Committee 2017, para. 31(c)). In its General Recommendation No 26 on the rights of women migrant workers, the CEDAW Committee encourages state parties to ensure that women migrant workers can access services, including for domestic violence, “regardless of immigration status” (UN CEDAW Committee 2008, para. 26 (i)). The Committee has also reminded states of their obligation to protect the basic rights of undocumented women migrant workers, including access to remedies and justice where their life is in risk of cruel and degrading treatment (UN CEDAW Committee 2008, para. 26 (l)). In this vein, the Committee recommended that states “repeal or amend laws and practices that prevent undocumented women migrant workers from using the courts and other systems of redress” (UN CEDAW Committee 2008, para. 26 (l)).

The failure to delineate more specifically the nature or form these guarantees should take is in line with the wide margin conferred upon states to implement human rights norms in their domestic settings. For instance, non-binding human rights documents and NGO reports have highlighted the straightforward and important measure of establishing “firewalls” between different state agencies to ensure that undocumented women can effectively access “their rights to access to justice, protection, health and education” (Council of Europe Gender Equality Strategy 2019) without fear of retribution due to precarious migration status. State’s implementation of firewalls could be recommended as a measure to address victims/survivors’ fears that law enforcement or state agencies will trigger immigration enforcement procedures if they report abuse (PICUM, n.d.).

The Istanbul Convention, as the most comprehensive international specialised treaty on GBV and domestic violence, enacted the most specialised obligations in terms of protecting migrant victims/survivors of GBV. The Convention enshrines general obligations following non-discrimination principles, already recognised in CEDAW’s General Recommendations, arguably now customary law (UN CEDAW Committee 2017, para. 2). Article 4 of the Istanbul Convention, reads: “measures to protect the rights of victims shall be secured without discrimination on any ground”, including race, colour, or migrant or refugee status (Council of Europe 2014 Art 4(3)). According to the Convention’s Explanatory Report, the drafters aimed to remedy the

dependency facilitated by dependent migration status, where it can function as a barrier for victims/survivors to exit abusive relationships through Article 59 (Council of Europe 2011, para. 301). It states:

1. Parties shall take the necessary legislative or other measures to ensure that victims whose residence status depends on that of the spouse or partner as recognised by internal law, in the event of the dissolution of the marriage or the relationship, are granted in the *event of particularly difficult circumstances*, upon application, an autonomous residence permit irrespective of the duration of the marriage or the relationship. The conditions relating to the granting and duration of the autonomous residence permit are established by internal law.
2. Parties shall take the necessary legislative or other measures to ensure that victims may obtain the suspension of expulsion proceedings initiated in relation to a residence status dependent on that of the spouse or partner as recognised by internal law to enable them to apply for an autonomous residence permit.
3. Parties shall issue a renewable residence permit to victims in one of the two following situations, or in both:
 - a. where the competent authority considers that their stay is necessary owing to their personal situation;
 - b. where the competent authority considers that their stay is necessary for the purpose of their co-operation with the competent authorities in investigation or criminal proceedings.

The drafters' intention to ensure "that the risk of losing their residence status should not constitute an impediment to victims leaving an abusive and violent marriage or relationship" (Council of Europe 2011, para. 302) suggests that Article 59 should be broadly implemented. Nevertheless, the provision has certain limitations, the most important of which being that it only applies to a particular context: migrant victims/survivors of any form of violence prohibited under the Convention whose status is dependent on the spouse or partner—who either perpetrates or condones the violence (Council of Europe 2011, para. 302). Autonomous residence permits given under this basis must be of the victim/survivor's own right and be granted irrespective of the relationship or marriage duration. In conferring an autonomous permit, states are directed to take into account a number of circumstances to determine whether the victim/survivor meets the requirements of "particularly difficult circumstances" (Council

of Europe 2011, paras 305, 307). Despite this guidance, it is left to the state's internal law to establish *inter alia*, the conditions and length of the autonomous residence permit and or what amounts to "a particularly difficult circumstance" (Council of Europe 2011, para. 303).

Needless to say, Article 59 is a welcome development. It has, however, not escaped critical appraisal by a number of authors. Vladislava Stoyanova discusses a number of concerns in relation to Article 59. She highlights that the provision only offers a narrow relief as *post-facto* remedy rather than a challenge to the power imbalances placed by immigration norms (Stoyanova 2018, 58). Stoyanova also describes that narrow interpretations of the key requirement of "particularly difficult circumstances" may require more than victimhood under the Convention; and she raises related questions arising from the formality and evidence required for the applicant to be formally considered a victim (Stoyanova 2018, 62-65). These issues confer the state with possibilities to control those who might be granted protection under Article 59 (Stoyanova 2018, 67). Even in applicable contexts, states may choose to implement the provision restrictively. For example, by excluding from eligibility those victims/survivors holding a status no longer dependent on the perpetrator due to complexities posed by the relationship or by the national immigration laws and policies themselves (Stoyanova 2018, 69).

Catherine Briddick has been slightly more optimistic in relation to some of these concerns. She argues for an interpretation of the provision in light of the Convention's non-discrimination object and purpose so that "particularly difficult circumstances" cannot be interpreted as requiring a higher threshold of violence, but rather a link between "the experience of violence with marriage/relationship and the victim's subsequent loss of migration status" (Briddick 2020, 1026). Briddick, however, joins Stoyanova in her concern that the "dependent" requirement can be interpreted narrowly by states to require that, at the time of application, the status is dependent on the perpetrator. She argues for an interpretation where the victim/survivor would have had a dependent status at "the time *any* of the factors the provision mentions arose, when for example, violence occurred, or when the relationship ended" (Briddick 2020, 1026).

The most crucial shortcoming in Article 59 is its reductive approach to barriers posed by migration status, as it only provides somewhat specific guidelines in relation to dependent statuses. Even with expansive interpretations of Article 59, I argue that aiming to redress solely the dependence and barriers posed by a *dependent* migration

status as conceived under Article 59 leaves many victims/survivors with precarious statuses behind. The powers conferred to perpetrators in the context of directly dependent statuses may be seen as more prone to exploitation than irregular or insecure status alone. However, in light of states' obligation under the Istanbul Convention's Article 4 to ensure all women can live free from violence, and to abolish laws and practices discriminating against women, I posit that Article 59 should have extended the eligibility in order to be a protective tool for women whose migration status hinders access to remedies and safety.

The Group of Experts on Action against Violence against Women (GREVIO)'s reports on the state parties implementation of Article 59 evidences the extremely complex contexts, legal differences and rights attached to migrant statuses (see for example: GREVIO 2017, para. 196; GREVIO 2020, para. 305). The reporting confirms that domestic differences in conferring autonomous residence permits impact on the availability of, or difficulty attached to remedy seeking. Differential access to remedies reinforce levels of deservingness attached to migration statuses. In light of racial underpinnings of Europe's borders and immigration policies (Reynolds 2021) these levels of attached "deservingness" may also produce a substructure that falls along racist and classist lines.

2. Historical overview context in Ireland and Spain: lack of intersectionality

Spain and Ireland socio-politically recognised domestic violence as a structural issue practically around the same time, in the 1980s, coinciding with the international recognition of the issue. Both jurisdictions share a past of state-enabled gender discrimination, patriarchal domination and violence over women, that albeit to a lesser extent, still manifests itself today.

The Irish Republic was proclaimed in 1916, promising "an independent state guaranteeing equality for all women and men" (Mullally 2006, 120). However, the 1937 Constitution was deeply imbued by conservative Roman Catholic beliefs, placing men and state at the centre of the nation, and the family as *the* most fundamental social institution. The family as a unit (a married man and woman) was conferred with "inalienable and imprescriptible rights" to be protected by the state (Mullally 2006, 123). The Irish Constitution clearly establishes that a woman's place is in the home (Irish Constitution, Article 41.2.2), but as Mullally posits, Article 41.2 "concern to protect"

did not translate into support or empowerment for women within the domestic context (Mullally 2006, 127).

Ireland enacted in 1976 the first provision setting out the state's obligation to intervene in domestic violence cases —the Family Law (Maintenance of Spouses and Children) Act 1976, s22. According to Louise Crowley, the 1976 Act had significant shortcomings in the state's unequal weighing of the different rights at stake, with the perpetrator having an advantageous position "both as a member of a family unit deserving of significant deference by the State, and also as traditionally the property owner" (Crowley 2019, 140). The 1996 the Domestic Violence Act provided greater protection to victims/survivors, but it was not until 2018, with the enactment of the newer Domestic Violence Act, that the Irish state showed an evident willingness to leave aside its previously light and ineffective approach to intervention in domestic violence cases (Crowley 2019, 149).

In Spain, until Franco's dictatorship ended in 1975, the position of women in Spanish society was characterised by a similar context to that of Ireland. The Francoist regime imposed a social and political model that stripped women of their autonomy and rights, and boxed them squarely into a homemaker role (Ortiz Heras 2006). Since women were under the subjugation of the men in the family, obedience was expected of them, and therefore GBV was not only unchallenged but normalised (Gil Ambrona 2008, 489). García Sánchez, in her work on the genesis of Spain's governmental policy against GBV, explains that official recognition only started to flourish in relation to the issue of patriarchal violence around 1982 (García Sanchez 2016, 395).

In the Spanish context, violence in intimate relationships was first outlawed in 1989 through the adoption of the "habitual violence" provision in the Penal Code —with each "instance" of harm legally considered with the lower penalty of "falta", analogous to a misdemeanour (García Sanchez 2016, 400). This provision, found in Article 425 of the 1989 Penal Code, was later modified to carry a higher sentence (Antón García 2013, 15). As Antón García narrates, with the reform of the LO 11/2003 on Concrete Measures in relation to Citizenship Security, Domestic Violence and Social Integration of Aliens, habitual violence became regulated under Article 173.2 of the Penal Code, and "occasional violence" under Article 153.2 (Antón García 2013, 16). The most important piece of relevant legislation is the LO 1/2004 on Integrated Protection Measures against Gender Violence (*Ley Orgánica 1/2004, de 28 de diciembre, de Medidas de Protección Integral contra la Violencia de Género*). The LO 1/2004, discussed in more detail below, was enacted in the 2000s but started to be conceived in 1997 (García Sanchez 2016).

The legal regulation of family issues through women's protection from domestic violence in Ireland and Spain did not straightforwardly encompass a sensitive approach to migrant women specificities, such as the vulnerabilities posed by different migration statuses. This could be a consequence of the "otherness" attached to the migrant subject, both in Ireland and Spain. In Ireland, a relevant debate on the citizenship status of children took place in the early 2000s. Mullally explains, this reveals that the special place given to the family under Article 41 of the Irish Constitution was not extended to migrant families (Mullally 2008). Mullally highlighted the alterity attached to migrant women, in particular, as threatening "the racial homogeneity of the nation" (Mullally 2008, 270). This racism prioritised the protection of Irish borders (Lentin 2006), before the protection of migrant families and bodies.

Reilly *et al's* critical review of Ireland's policy response to GBV as it affects migrant women, contends that there is "very little recognition" of the existence of GBV against migrant women in Ireland (Reilly, Sahraoui, and McGarry 2021). National strategies superficially include the adoption of actions to improve service provision for minoritized women, taking into account intersectional concerns (COSC and the Department of Justice and Equality 2016 Action 2.1100; Department of Justice and Equality 2017). As Reilly *et al* observe, despite the Irish Government "National Strategy for Women and Girls 2017-2020: Creating a Society for All" features a "rhetorical commitment to recognizing intersectionality and addressing forms of multiple discrimination, none of the Strategy's 139 actions directly addresses issues affecting migrant women" (Reilly, Sahraoui, and McGarry 2021). Indeed, migrant women's rights groups, such as Migrant Women na hEireann have complained of the prevalent "lack of inclusion of migrant specific issues in the national discourse on domestic violence" through a campaign under the banner #weareheretoo (European Website on Integration 2020). The banner arguably underscored that the Covid-19 Government's campaign "#stillhere" on domestic violence entirely overlooked migrant women specific requirements to seek safety, as detailed below.

Spain's LO 1/2004 did contain a broad non-discrimination provision, establishing "victims" right to access all those enshrined within the law, regardless of their "origin, religion, or any other condition or personal or social circumstance" (LO 1/2004, Art 17 (1)). Despite this broad approach in LO 1/2004, it was not until reform of the law LO 4/2000 on the Rights and Freedoms of Foreigners in Spain and their social integration (*Real Decreto 557/2011, de 20 de abril, por*

el que se aprueba el Reglamento de la Ley Orgánica 4/2000, sobre derechos y libertades de los extranjeros en España y su integración social, tras su reforma por Ley Orgánica 2/2009. “Alien’s law”) that specific provisions were not put in place to remedy migration status’ vulnerabilities to GBV. Similarly to Ireland, Spanish migrant women’s organisations continue to highlight the added barriers migrant women face when accessing remedies from the state (Monteros 2021).

The section below hones in on the frameworks of protection against domestic violence with migration status laws and regulations and its intersections in more detail.

3. Migration law and policy, examples from Ireland and Spain —effects of the law on victims of domestic violence

Immigration control has been a phenomenon justified under the international law principle of state sovereignty (Peroni 2018). Policies and laws regulating migration in domestic jurisdictions, *de jure* establish control over many areas of migrants lives, with often negative impacts on access to rights. This section, doctrinally explores the frameworks that have criminalised domestic violence and coercive control in Ireland and Spain and their intersection with migration statuses. Both jurisdictions are bound by the Istanbul Convention (Treaty Office, n.d.). As outlined above, they share a similar socio-historical past, and they have different legal approaches to domestic violence. For this reason, they constitute interesting case studies to explore the tensions arising from the intersection between states’ obligation to remedy GBV and their “sovereign right” to protect borders.

3.1. Ireland

In Ireland, data collected prior to the Covid-19 pandemic suggests that almost 20% of women using support services for GBV are migrant women, although disaggregated data are not available, with the wealth of different migration statuses going unreported (AkiDwA 2019). This percentage includes EU/EEA nationals who, due to freedom of movement regulations, *a priori* do not have precarious migration status and non-EEA nationals, who after 90 days stay in Ireland need immigration permission to stay (Immigrant Council of Ireland 2018). The regulation of non-EEA citizens’ legal stay is governed by the Immigration Act 1999 and the Immigration Act 2004.

The statute setting out victims/survivors' remedies for domestic violence is the Domestic Violence Act 2018, which introduced additional civil law protection measures and criminalised coercive control. The Domestic Violence Act 2018 does not define domestic violence or coercive control, and the statute is not accompanied by statutory guidance. However, an analysis of the legal elements of the offence highlights that any control and coercion exercised through migration status falls squarely within the prohibited behaviours. The Act sets out in section 39 that a person commits an offence when they "knowingly and persistently" engage in the impugned harmful behaviour. This behaviour should have a "serious effect" on the victim/survivor which has to provoke fear or lead a substantial impact to her day-to-day activities. This substantial impact should take the form of a serious alarm or distress provoked by the perpetrator's behaviour. A "serious effect" must be considered *likely* to arise due to the perpetrator's behaviour by a *reasonable person*. In this context, it is fully plausible to consider precarious migration status as an element enhancing vulnerability to violence but also, as a form of control through migration status. The latter could, thus, be considered criminal behaviour, if it is weaponised "knowingly and persistently" by the perpetrator and it has the relevant effect on the victim/survivor.

Notwithstanding the potential weaponisation of migration statuses to exercise control over victims/survivors of domestic violence, the parliamentary debates on whether and how to outlaw coercive control behaviours obliterated any potential migration-specific barriers when implementing and operationalising the offence, or when applying for civil law domestic violence protections contained therein ("Seanad Deb 1 Mar 2017, vol 250, no. 8"; "Seanad Deb 4 July 2017, vol 252, no. 11"; "Seanad Deb 28 November 2017, vol 253, no. 9"; "Seanad Deb 30 Nov 2017, vol 254, no. 11"). Admittedly, parliamentary debates cannot possibly cover all possible concerns arising from the operationalisation of a statute. However, lack of recognition or debate around migration status-enabled coercive control must be highlighted as a missed opportunity. The same can be argued for this recent legal reform which failed to include a statutory non-discrimination provision in relation to access to services for GBV. This would have provided a much needed statutory footing to the state obligation to provide remedies without discrimination. At the very least, these failures showcase a broader state indifference toward ensuring the accessibility of remedy provision to all migrant victims/survivors.

A recent report on An Garda Síochána, Ireland's police force's internal policy in relation to crime reporting and immigration status, showed that the policy calls police officers not to investigate someone's immigration status when they report a crime (Gallagher 2020). The same report explains that once the case has concluded, migration status information may be referred to the Garda National Immigration Bureau for investigation at the discretion of the Garda ethnic liaison office. An Garda Síochána's 2017 Domestic Intervention Policy includes a section on diversity, recognising Ireland's multi-cultural society and citing the right to formal equality before the law. Yet, it does not cite the procedure followed when tensions arise between domestic violence and breaches of immigration law (An Garda Síochána 2017). In view of this, Hanly observes the little contribution that the police have officially made in practically encouraging migrant women to come forward (Hanly forthcoming).

In relation to the obligations posed by Article 59 of the Istanbul Convention, the Irish Naturalisation and Immigration Service published the Domestic Violence Guidelines in 2012 (Irish Naturalisation and Immigration Service 2012). The guidelines clarified a process that, prior to this publication, was unknown to the public. With no statutory footing, the guidelines lay out the possibility of accessing autonomous residence permits if one is a victim of domestic violence. Notably, the guidelines apply when the applicant's status is dependent upon a family member, in line with Istanbul's Article 59(1) (Hanly forthcoming). This gives relevant victims/survivors the opportunity to obtain an independent status if they fear losing their status due to the breakdown of a marriage or civil partnership in the context of domestic violence (Foreman 2018).

Although the existence of the guidelines represents a positive development for providing greater clarity to victims/survivors, it is essential to expose its shortcomings. The guidelines provide a broad definition of domestic violence, explain how to apply for independent status, set out the evidence required to support an application, and the potential immigration stamps that may be obtained. The guidelines leave out, *a priori*, all of those survivors who, like dependent-permit holders, have a status that is weaponisable by the perpetrator through control or coercion or other means. The guidelines also raise concerns regarding transparency and accountability. The decision-making process is unspecified, as permits are granted at the minister's discretion and the guidelines provide no avenues for appeal.

The guidelines' construction also gives rise to confusion. In relation to women's right to live a life free from domestic violence, albeit not expressly referred to as such, the guidelines' introduction states:

“Migrants may have additional vulnerability in this area in that the person committing domestic violence may say ‘if you report this you will lose your immigration status’. **This is not true.** *Domestic violence should always be reported and you do not have to remain in an abusive relationship in order to preserve your entitlement to remain in Ireland* (emphases in the original)”.

In a somewhat contradictory move, closer to the conclusion, the wording departs from such a broad assertion to clarify, that in fact, the:

“policy is only aimed to provide the possibility for *lawfully resident victims* ... to obtain immigration status independent of the perpetrator. The arrangements outlined above do not apply where the victim is unlawfully present.” (Irish Naturalisation and Immigration Service 2012)

Immediately below, the guidelines state that domestic violence victims/survivors (allegedly also those with insecure immigration status) “should” report to the police, even where they cannot adhere to the guidelines. The argument underpinning this assertion may be that police reports may be evidence of domestic violence which can, for example, serve in immigration determinations. However, as stated, there is no official, public and clear information regarding how the police handle information relating to breaches of immigration law. Thus, it is highly unlikely that victims/survivors whose immigration status is insecure or irregular, and not dependent on the perpetrator, will be willing to approach any law enforcement agency, including those with the power to provide remedies.

The lack of transparency in the guidelines, but also the absence of readily available, state-sponsored public information, recognised—generally—as an obligation under Article 19 the Istanbul Convention, is a testament to the state’s disregard to ensuring remedies are provided without unlawful discrimination to migrant women. In a briefing document before the adoption of the INIS guidelines, Domestic Violence Coalition submitted that the administration’s approach to providing autonomous residence permits was “very positive and humane” and that the determination process has a “reasonable and relatively short processing time, regardless of the immigration status of the applicant requiring assistance” (Domestic Violence Coalition 2012). Nevertheless, this praise was juxtaposed with the organisation’s concern regarding the “hidden” nature of this remedy, arising from the process’ lack of public advertisement (Domestic Violence Coalition 2012). With the presence of the guidelines, the situation remains

concerning, given the absence of clearly disseminated information and the arguable obscurity of the guidelines. Lack of publicly available information, for those who need it, means no reassurance, which, in the context of the extreme difficulties to leave abusive relationships (Chantler 2006), easily precludes access to remedies.

3.2. Spain

Data published by the Consejo General del Poder Judicial in 2020 details that 33% of GBV victims/survivors are of foreign origin (Consejo General del Poder Judicial, n.d.). Similarly to Ireland, data are not disaggregated, and therefore, it is not possible to determine the different migration statuses involved. In contrast to the Irish Domestic Violence Act 2018, the Spanish LO 1/2004 is a holistic law, setting out a range of measures on domestic violence, including chapters on sensitisation, prevention, education, and health-service provision as well as judicial measures. The law defines “gender violence” similarly to the definition of “domestic violence under the Istanbul Convention, as violence between partners and ex-partners, ‘which, as a manifestation of discrimination, inequality and power relationships between men and women, men exercise against women, where they are of have been married, or have or have had an intimate relationship, even without cohabitation” (translated by the author *Ley Orgánica 1/2004, de 28 de diciembre, de Medidas de Protección Integral contra la Violencia de Género* Art 1.1).

As its own title indicates, the LO 1/2004 provides a gendered understanding of the phenomenon, as “the most brutal symbol of the existent (gendered) inequality in (...) society” and includes two general statutory non-discrimination provisions. Article 17 recognises women’s equal right to service provision and judicial assistance as victims/survivors regardless of their origin, religion, and any other condition or personal or social circumstance. Moreover, Article 32(4) requires that different social groups are treated “specially” if “given their personal and social circumstances they are at greater risk to suffer gender-based violence, or have greater issues in accessing services provided by this law” (Merino 2012, 26). The law does not suggest what this special treatment may entail.

In relation to the special states’ obligations described above, the Spanish Government’s report to GREVIO prior to its monitoring evaluation under the Istanbul Convention reads that autonomous residence permits may be conferred in the following circumstances:

(1) when a marriage or relationship dissolves in “particularly difficult circumstances”, (2) if the spouse or partner (and abuser) is deported where her status depended upon his’, (3) if her personal situation makes it necessary, (4) if her cooperation is required for cooperation with authorities in the investigation of criminal proceedings, (5) when she may have lost her status as a result of forced marriage. Similarly to Ireland, autonomous residence permits will be relevant to non-EU/EEA migrants, as EU/EEAs will have status security due to freedom of movement rights (Spanish Government 2019).

The laws regulating the government’s cited scenarios are as follows. In 2009, the Organic Law 4/2000 on the Rights and Freedoms of Foreigners in Spain and their social integration, known as LOEX and referred here as the Alien’s Law, was reformed through the Royal Decree 557/2011 of 20 April 2009. The reform added Article 31bis to the Alien’s Law, recognising the possibility to request an autonomous residence permit in cases of domestic violence —as an exceptional circumstance under humanitarian grounds—, and including not only status-dependent women but also women in an irregular migration situation. No such scenario was conceived in the previous immigration framework (Merino 2017). A further regulatory development of the Alien’s Law in 2011 added Articles 131 *et seq* setting out further procedural details in relation to temporary residence and work permits for victims/survivors of GBV (Merino 2012, 35; *Real Decreto 557/2011, de 20 de abril, por el que se aprueba el Reglamento de la Ley Orgánica 4/2000, sobre derechos y libertades de los extranjeros en España y su integración social, tras su reforma por Ley Orgánica 2/2009*). Thus, there are two differentiated scenarios: status-dependent victims/survivors, and irregularly present victims/survivors.

In both scenarios, the conferral of autonomous residence status is conditioned upon the victim/survivor getting formal victim status. This requires the victim/survivor’s provision of hard evidence of domestic violence in the form of “a protection order (...) issued in her favour or a report sent by the Prosecutor’s Office which shows the existence of evidence of gender violence” (Spanish Government 2019, 63). This precondition is not exclusive to migrant women, rather it is linked to the LO 1/2004’s requirement of victim status accreditation in order for victims/survivors to access the rights provided therein. In the cases of irregular presence, notwithstanding the formal possibility of obtaining autonomous residence permits, difficulties to access remedies are exacerbated. Article 131 reads that where a woman is in a situation of irregularity and has had a sanctioning proceeding initiated against her due to her status, this will be paused. Yet, the

law also states that where these have not been initiated, a decision to initiate proceedings for what would be a grave breach of immigration law (irregular presence under 53.1 a) of the LO 4/2000) will be taken upon finalisation of the criminal process. The latter exposes women to a heightened threat of deportation which is “direct consequence” of reporting the violence (Merino 2012, 35).

GREVIO’s analysis of the framework in place under Article 59 stated that Spain is in “full compliance” with the Convention’s requirements. In relation to irregularly present women, however, the expert group highlighted the uncertainty that they face when reporting for “fear that the protection order will be rejected” (GREVIO 2018, para. 281). In these cases, Muñoz-Ruiz has observed that women must report the violence officially with only a mere hope that official recognition of victimhood will be made (Muñoz-Ruiz 2014, 62). Otherwise, the law will not protect them against investigation and prosecution on their status, which, though overlooked by GREVIO, must be stressed as highly problematic.

4. Concluding thoughts: the doctrinal and beyond

A preliminary analysis of the two frameworks shows stark differences between the jurisdictions and how domestic violence norms and migration frameworks intersect. It also shows that even in the context of a *de facto* full compliance with general and specific human rights obligations to provide remedies to migrant women for domestic violence, access to remedies continues to be conditioned by an apparent hierarchical consideration of migrant bodies. Migrant women with dependent statuses are prioritised at the top of the structure, to the detriment of those holding other statuses, including those irregularly present.

Autonomous residence permits, are arguably remedial by nature as they provide women freedom from migration-related coercion. These are dealt with in both jurisdictions within the realm of immigration (Merino 2012). In both cases, it appears that migration control precedes women’s right to safety and remedies, as neither system offers a path for migrant survivors to access remedies regardless of their status. Similarly, neither system remedies coercion and control exercised through the weaponization of migration status. This can be argued to amount not only state-sponsored vulnerability (Magugliani 2021), but state-sponsored and enabled coercive control (Ballantine 2019). For migrant women, and especially those irregularly present,

accessing safety in the two jurisdictions is either contingent on faith in a “humane” determination of their application in Ireland’s case, and in the Spanish case, to hoping for a victim-status conferral that acknowledges their right to be free from violence. Moreover, beyond the shared difficulties to access remedies when in an irregular position, concerns in relation to other barriers posed by migration status precarity are present in both contexts but arise from different grounds. Thus, in both cases, further empirical research becomes necessary.

In Ireland, the main concern revolves around the lack of reassurances, or information on migrant women’s rights and how the guidelines operate. Obtaining empirical data will be critical to determine how the policy-enabled ministerial and police discretion plays out in decision-making. In Spain, despite the detailed framework in place, empirical research becomes necessary in order to discern how the operationalisation of it works in practice. The formal victimhood status requirement in Spain makes it fertile ground for differences in applications, injustices and revictimisation. Ethnographic research undertaken by Rodríguez Luna and Bodelón González evidences issues in the judicial treatment of victims/survivors in court, including “resistance” to investigate violence beyond specific incidents (Rodríguez Luna and Bodelón 2015). This is especially relevant regarding the negative impact that this noted resistance may have in victims/survivors of coercive control, difficult to evidence.

Further scrutiny should also be placed on Muñoz-Ruiz’s highlighted differences arising from victimhood accreditation in different socio-economic contexts (Muñoz-Ruiz 2014). For example, in different inabilities to evidence the harm, conditioning factors such as the socio-economic dependency on the perpetrator, and/or fear that victims/survivors’ irregular status may be punished, including with deportation. These have all been reported in a recent Spanish NGO report titled “Tirando del Hilo”, which offers invaluable qualitative insight both into migrant women’s experiences of violence, and their remedy-seeking efforts (Monteros 2021).

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