



WOMEN'S RIGHTS

PERSPECTIVE ON THE EU CHARTER OF FUNDAMENTAL RIGHTS

→ FULFIL Project
Protecting and Promoting Fundamental Rights
of Migrant Women in the European Union

REPORT 2024

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Abbreviations

CAT - Committee Against Torture

CEDAW (Committee) - (Committee for the) UN Convention for the Elimination of All Forms of Discrimination Against Women

CJEU - Court of Justice of the European Union

CRC - Convention on the Rights of the Child

EC - European Commission

ECHR - European Convention on Human Rights

ECtHR - European Court of Human Rights

EIGE - European Institute for Gender Equality

EU - European Union

FEMM (Committee) - European Parliament's Committee on Women's Rights and Gender Equality

FGM - Female Genital Mutilation

FRA - European Union's Fundamental Rights Agency

GREVIO (Committee) - Group of Experts on Action against Violence against Women and Domestic Violence that monitors the implementation of the Council of Europe Convention on preventing and combating violence against women and domestic violence
Convention by the Parties.

ILO - International Labour Organisation

IOM - International Organisation for Migration

Istanbul Convention - Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence

LIBE (Committee) - European Parliament's Committee on Civil Liberties, Justice and Home Affairs

SRHR - Sexual Reproductive Health Rights

TEU - Treaty of the European Union

TFEU - Treaty on the Functioning of the European Union

UN - United Nations

UNHCR - United Nations Refugee Agency

VAWG - Violence against women and girls

1. Introduction

Equality between women and men constitutes a key value for European societies, the protection of women's human rights, and is a priority for all EU Member States. The EU Charter of Fundamental Rights enshrines this pivotal principle in Article 23 –*"Equality between women and men must be ensured in all areas"*. This principle derives from Article 8 of the TFEU which outlines the EU's commitment to eliminating inequalities, as well as to promoting equality between women and men. In addition, the EU Charter expresses its commitment to the realisation of a *de jure* and *de facto* equality in several other articles, such as the right to equality before the law (Article 20) and the right to non-discrimination (Article 21). Nevertheless, this attempt falls short as women's concerns are often considered only in a limited way, and are not visible across all provisions of the Charter.

The United Nations Fourth World Conference on Women in Beijing in 1995 established "gender mainstreaming" as the global strategy for promoting equality between women and men, and in 1997, the United Nations Economic and Social Council, in the agreed conclusions 1997/2, defined "gender mainstreaming" as:

*"[...] the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels. It is a strategy for making women's as well as men's concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetuated. [...] Gender mainstreaming does not replace the need for targeted, women-specific policies and programmes or positive legislation [...]"*¹

Along with the implementation of a "gender mainstreaming" approach, specific measures to tackle discrimination against women and girls are needed to achieve *de facto* equality between women and men. Introduced in the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) Article 4², **special temporary measures**³ are necessary to eradicate historic and systemic disadvantages that women have faced. As part of such measures, the European Union *"has consistently promoted positive action as a measure that Member States should adopt in order to advance the broader aim of equality between men and women"*⁴

¹ United Nations Office of the Special Adviser on Gender Issues and Advancement of Women (2002) *Gender Mainstreaming: an Overview*. Available at: <https://www.un.org/womenwatch/osagi/pdf/e65237.pdf>.

² United Nations (1979) *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*. Adopted 18 December 1979 and entered into force 3 September 1981. United Nations General Assembly. Available at: <https://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>.

³ The UN Committee on the Elimination of Discrimination Against Women, issued two General Recommendations (No. 5 and No. 25), providing guidelines to States Parties on temporary special measures to tackle discrimination against women.

⁴ European Commission, Directorate-General for Justice and Consumers, McCrudden, C. (2019) *Gender-based positive action in employment in Europe – A comparative analysis of legal and policy approaches in the EU and EEA – A special report*, Publications Office. Available at: <https://data.europa.eu/doi/10.2838/770680>.



Men’s violence against women is a widespread issue affecting millions of women worldwide. As of today, tradition, culture and religion serve as justifications for a variety of socially accepted behaviours and norms that grossly hinder women’s rights. According to recent data from the World Bank, almost one in three—or 736 million—women above the age of 15 across the world have become victims of intimate partner violence or non-partner sexual violence at least once in their lifetime⁵.

Besides constituting a flagrant violation of the EU Treaties, violence against women is a form of discrimination against women and girls and a huge obstacle to achieving equality between women and men. As stated by CEDAW⁶, a pioneering treaty advancing pivotal rights and outlining state obligations in eliminating and combating discrimination against women:

“ [...] *discrimination against women* violates the principles of equality of rights and respect for human dignity, *is an* obstacle to the participation of women, on equal terms with men, *in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity*”⁷.

According to Article 3 of the Istanbul Convention⁸, “*gender-based violence against women*” *means* “violence that is directed against a woman because she is a woman or that affects women disproportionately”. The Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), also emphasised that “**a** gender-neutral approach fails to recognise domestic violence as a social mechanism that helps keep women in a subordinate position to men”⁹.

Recent monitoring reports adopted by the GREVIO experts on the implementation of relevant provisions of the Istanbul Convention by State Parties, highlight the failure of many EU states to consider specific situations and needs of women during the evaluation of asylum claims. The experts also highlight the risks at which migrant women victims of domestic violence are placed, when they are in the situation of legal and administrative dependency on their

⁵ Brix, H. and Fu, H. (2023) *International Women’s Day 2023: Three Important Facts (and charts) from the World Bank’s Gender Data Portal*, *blogs.worldbank.org*. Available at: <https://blogs.worldbank.org/opendata/international-womens-day-2023-three-important-facts-and-charts-world-banks-gender-data>.

⁶ United Nations (1979) *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*. Adopted 18 December 1979 and entered into force 3 September 1981. United Nations General Assembly. Available at: <https://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>.

⁷ *Ibid.*

⁸ Council of Europe (2011) *Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)*. Adopted May 2011 and entered into force in August 2014. Available at: <https://rm.coe.int/168046031c>.

⁹ Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) (2020a) *1st General Report on GREVIO’s Activities Covering the Period from June 2015 to May 2019*. Available at: <https://rm.coe.int/1st-general-report-on-grevio-s-activities/16809cd382>.

spouses or partners¹⁰. Similarly, the Council of Europe points to a **lack of migration and asylum policies sensitive to the rights of women or inclusive of specific protection and support mechanisms**¹¹. The Resolution 2244 (2018) of the Parliamentary Assembly of the Council of Europe on Migrant, Refugee and Asylum Seeking Women and Girls, recommends a wide range of measures in order to facilitate the integration and protection of migrant women¹². The resolution calls on Member States of the Council of Europe to ensure a focus on women in the design, implementation, evaluation and follow-up of all integration policies for migrants and refugees.

This report's scope is two-fold: demonstrating on one hand that **the rights enshrined in the Charter are not gender neutral** since their application for women is often more onerous in terms of litigation, and additionally to highlight that **legal professionals must be adequately trained** in defending the rights of this specific target group so that their activity is effective and so that positive results obtained in litigation activate a virtuous circle which amplifies the protection. As such, it is of the utmost importance that a genuinely **meaningful women's rights approach** is adopted: "[...]as the Charter is supposed to provide the foundations for an EU bill of rights, it is therefore, essential that it creates an environment that is sensitive to the needs of women for greater inclusiveness"¹³.

Decision making is another area where discrimination against women remains blatant. As stated by the Report on the United Nations to the Fourth World Conference on Women in Beijing (1995), nowhere is the gap between *de jure* and *de facto* equality among men and women greater than in the area of decision-making¹⁴. Still today, despite international commitments and obligations, in Europe and globally, the significant overrepresentation of men in decision-making positions remains. In Europe, women represent only 33.4% of ministers, 33% of members of parliament and 29.4% of members of regional assemblies¹⁵. In the case of migrant women, despite the fact that female migrants (in comparison to their male counterparts) have been documented as demonstrating greater motivation for integration and networking, as well as voluntary and civic engagement¹⁶, they remain at the margins of dominant political and decision-making institutions and discourses.

¹⁰ See, for example, GREVIO country reports on Austria, Belgium, Denmark, Finland and France, among others.

¹¹ Council of Europe (2019a) *Protecting the Rights of Migrant, Refugee and Asylum-Seeking Women and Girls*. Available at: <https://rm.coe.int/prems-089319-gbr-2573-protecting-the-rights-of-migrant-refugee-and-asy/168096608a>.

¹² Council of Europe Parliamentary Assembly (2018) *Resolution 2244: Migration from a gender perspective: empowering women as key actors for integration*. PACE website. Available at: <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=25183>.

¹³ Guerrina, R. (2003a) 'Gender, Mainstreaming and the EU Charter of Fundamental Rights', *Policy and Society*, 22(1), pp. 97–115. Available at: [https://doi.org/10.1016/s1449-4035\(03\)70015-0](https://doi.org/10.1016/s1449-4035(03)70015-0).

¹⁴ United Nations (1995) *Report of the Fourth World Conference on Women, Beijing, 4-15 September 1995*. Available at: <https://www.un.org/womenwatch/daw/beijing/pdf/Beijing%20full%20report%20E.pdf>.

¹⁵ European Institute for Gender Equality (EIGE) (2022) *Browse Gender Statistics | Gender Statistics Database | 1st Quarter 2022, European Institute for Gender Equality*. EIGE. Available at: <https://eige.europa.eu/gender-statistics/dqs>.

¹⁶ European Network of Migrant Women et al. (2018) *Smart Volunteering For Migrant Women: Perceptions, Experience and Barriers among Migrant Women, NGOs and Private Sector in Six European Countries*. Available at: <https://www.migrantwomennetwork.org/wp-content/uploads/2018/10/SMART-REPORT-ENOMW-2.pdf>.



2. Aim of the report

As the first legally binding fundamental rights primary legislation of the European Union, the EU Charter is a crucial legal instrument for human rights in the EU, postulating that “*equality between women and men must be ensured in all areas*” (Article 23) and that the Charter has the same legal value as the Treaties (Article 6 of the TEU). Nevertheless, as emphasised by the Council of Europe report on “Protecting the rights of migrant, refugee and asylum-seeking women and girls”¹⁷, migrant women still face heightened risks and persistent barriers that inhibit their full enjoyment of rights: “*despite the existence of women centred norms and policies, reports from international and civil society organisations have highlighted systemic weaknesses in the responses to the risks faced by women migrating to and within Europe, notably in the last years*”¹⁸.

This report aims to provide a comprehensive overview, through the lenses of equality between women and men, women’s rights, and the fundamental rights enshrined in the EU Charter of Fundamental Rights, particularly as they pertain to the experiences of migrant women. We will provide an overarching view of the Charter’s history and its current interpretation in relation to some of the rights enshrined in the Charter, which are of paramount importance for the effective protection of migrant women. This analysis will demonstrate how the Charter can be used by legal practitioners, as a tool for advancing equality between women and men, non-discrimination and access to justice, as well as ways in which it should be improved/ interpreted/ amended/ used to provide an approach sensitive to the specific needs of migrant women, as well as women as a group.

3. Terminology

The report will use the following terminology to shed light on the pervasive power relations hampering women’s and girls’ enjoyment of their rights and fundamental freedoms, thus perpetuating their unequal position in *all* areas of society. Furthermore, this terminology provides a framework for understanding women’s structural historical oppression resulting from patriarchal societies: women have systematically been set aside, or are absent from international law discourses. Their rights have consistently been denied. We encourage decision-makers to use these definitions and concepts when working on legislative texts and policies.

¹⁷ Council of Europe (2019b) *Gender Equality Strategy: Protecting the Rights of Migrant, Refugee and Asylum-Seeking Women and Girls*. Available at: <https://rm.coe.int/prems-089319-gbr-2573-protecting-the-rights-of-migrant-refugee-and-asy/168096608a>.

¹⁸ *Ibid*

Asylum-seeking women: under Art.14 of the Universal Declaration of Human Rights, everyone has the right to seek and enjoy asylum from persecution in other countries. An asylum-seeker is an individual who has fled their country and is seeking protection from persecution and serious human rights violations in another country, but who has not been legally recognised as a refugee yet.

This includes those women waiting for their application results, those who express the intent to apply for international protection, those who have seen their application rejected and those possessing an expulsion order. In these various situations, their undocumented status can last for an extended period which hinders these women's access to certain rights, protection and services (for example, healthcare or maternity services) and places them at high risk of male violence and retraumatisation, sexual and labour exploitation, trafficking, marginalisation and social exclusion¹⁹.

Coercive control: Coercive control refers to a repeated or continuous controlling, oppressive, dominating or restraining behaviour towards another person within the context of an interpersonal relationship, with negative effects on the victim. Coercive control is primarily committed by men against women within a context of power. As such, it represents an integral part of the continuum of male violence against women and girls, and ought to be addressed within this framework. While coercive control goes beyond psychological violence and can be associated with other forms of violence against women, it should not be used to mask, dismiss or prevent the qualification and prosecution of said forms of violence as such.

Domestic violence: According to the Istanbul Convention, domestic violence refers to 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. It includes coercive control of the victim through repeated acts of intimidation, threats, humiliation and others.²⁰ In this document, we also take the view that domestic violence encompasses verbal violence that should be dissociated from psychological violence.

Due diligence: Requires states to take a level of care or activity in the exercise of their duties to ensure the enjoyment of human rights, and to act in good faith. For instance, States Parties to CEDAW must act with due diligence, meaning that States are accountable for all discrimination against women committed by State and non-State actors, in both private and public spheres, including preventing, prohibiting, identifying, providing redress, imposing sanctions for discrimination, as well as promoting women's rights and accelerating *de facto* equality.

¹⁹ Salimi Khaligh, H., Ahrabare, A. and Zobnina, A. (2022a) *Undocumented Migrant Women in Europe: A Neglected Chapter in Fundamental Rights Protection*. European Network of Migrant Women (ENoMW). Available at: <https://www.migrantwomennetwork.org/2022/06/23/new-report-undocumented-migrant-women-a-neglected-chapter-in-fundamental-rights-protection/>.

²⁰ Council of Europe (2011) *Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)*. Adopted May 2011 and entered into force in August 2014. Available at: <https://rm.coe.int/168046031c>.



Femicide: Expanding on the *Latin American Model Protocol for the investigation of gender-related killings of women*, femicide in this document is defined as “the murder of women because they are women, whether it is committed within the family, a domestic partnership, or any other interpersonal relationship, or by anyone in the community [or wider society], or whether it is perpetrated or tolerated by the state or its agents”. Femicide exists in direct and indirect forms, with different categories, such as the murder of women as a result of intimate partner violence; torture and misogynistic slaying of women; killing of women and girls in the name of honour; targeted killing of women and girls in the context of armed conflict; dowry-related killing of women; killing of aboriginal and indigenous women and girls because of their sex; female infanticide; FGM-related deaths; accusations of witchcraft; other types of femicide connected with gangs, organised crime, drug dealers, and human trafficking²¹; killing of women in prostitution; forced suicide, etc. Globally, killings committed by intimate partners or family members make up 55 % of all femicides²².

Forced labour: All work or service which is exacted from any person who, under any circumstances, has not offered themselves voluntarily²³.

Forced marriage: Forced marriage is a form of violence against women that entails serious violations of fundamental rights, and in particular of women’s and girls’ rights to physical integrity, physical and mental health, sexual and reproductive health, education, private life, freedom and autonomy. Neither culture, custom, religion, tradition nor so-called “honour” can justify such violations.

“Honour” crime: Any act whereby a family or community member kills, maims, burns, injures, tortures or harms a woman or a girl with the aim of restoring family “honour” and reputation, on the ground that, by her life choices, her desire for emancipation, her refusal of marriage, her sexual, social or romantic life, her sexual orientation, or any particular behaviour²⁴ she “has transgressed cultural, religious, social or traditional norms or customs of appropriate behaviour”²⁵.

21 United Nations Economic and Social Council (2012) *Vienna Declaration on Femicide*. Available at: https://www.unodc.org/documents/commissions/CCPCJ/CCPCJ_Sessions/CCPCJ_22/_E-CN15-2013-NGO1/E-CN15-2013-NGO1_E.pdf.

22 United Nations Office on Drugs and Crimes (UNODC) and UN Women (2023) *Gender-Related Killings of Women and Girls (Femicide/Feminicide)*. Available at: <https://www.unwomen.org/sites/default/files/2023-11/gender-related-killings-of-women-and-girls-femicide-feminicide-global-estimates-2022-en.pdf>.

23 International Labour Organization ILO (1930) *C029 - Forced Labour Convention, 1930 (No. 29), Article 2(1)*. Available at: https://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C029.

24 Council of Europe (2019b) *Istanbul Convention: Safe from Fear Same from Violence: Crimes Committed in the Name of so-called ‘Honour’*. Available at: <https://rm.coe.int/honor-crimes-web-a5/1680925835>; Council of Europe Parliamentary Assembly (2021) *Resolution 2395: Strengthening the Fight Against so-called ‘Honour’ Crimes*. PACE.coe.int. Available at: <https://pace.coe.int/en/news/8448/strengthening-the-fight-against-so-called-honour-crimes>.

25 Council of Europe (2011) *Article 42 of the Convention on preventing and combating violence against women and domestic violence (Istanbul Convention)*. Available at: <https://rm.coe.int/168046031c>.

Intersectional discrimination: Intersectionality describes the unique forms of discrimination, oppression and marginalisation that can result from the interplay of two or more grounds of discrimination, such as sex and race, sex and migration status or migration status and religion, for example. Migrant, refugee and asylum-seeking women and girls in Europe face persistent inequalities as well as specific barriers to protection and enjoyment of their fundamental rights. As a group, they are at the intersection of multiple systems of structural oppression (patriarchy, colonialism, and capitalism) and, as a result, they face multiple forms of violence (male violence, racism, exclusion, administrative violence, etc.). Among migrant women, some belong to other discriminated groups (women with disabilities, lesbian women, underage girls, single mothers, etc.)²⁶.

Legally binding document: A document that carries formal legal obligations for the parties involved, by which they are bound. This includes: Treaties, Conventions, EU directives and EU Charter, etc.

Migrant women: Encompasses migrant, refugee, and asylum-seeking women. According to the UN's International Organization for Migration, a migrant woman is an umbrella term, not defined under international law, reflecting the common understanding of a person who moves away from her place of usual residence, whether within a country or across an international border, temporarily or permanently, and for a variety of reasons²⁷. We follow this inclusive definition, which considers that the term migrant covers all forms of movements, including fleeing from war, persecution and disasters linked with the climate crisis.

Non-binding document: A document that does not carry formal legal obligations for the parties involved. However, it can indicate an emerging rule of international or European human rights law. This includes recommendations, EU resolutions, EU agency or EU institution reports, etc.

Non-State actors: The United Nations Security Council defined non-state actors as “any individual or entity not acting under the lawful authority of the State” (Resolution 1540, 2004).

Non-State Torture (NST): NST is torture that is committed by non-state actors, in public or private, in relationships, perpetrated within families, in human trafficking, in prostitution, in pornographic exploitation, by violent individuals, groups and gangs. It may be that it is dismissed as socio-cultural, traditional, or religious acts or norms, and can be committed during migration, displacement, in humanitarian and civil unrest, for example.

²⁶ *Ibid.*

²⁷ International Organization for Migration (IOM) (2016) *Glossary: Key Migration Terms*, *iom.int*. IOM. Available at: <https://www.iom.int/key-migration-terms>.



Pornography: From a general perspective, pornography is defined as the image or representation of one or several persons engaged in real or simulated sexually explicit conduct. Since the mid-2010s, online platforms for sharing sexual content have appeared, leading to the exponential growth of the commercial pornography market. In the pornography industry, the pornographers recruit, entice, or obtain people - mostly women - for the purpose of photographing, filming or recording a live commercial sex act. The business of pornography is a system of oppression and sexual exploitation which plays a direct part in the continuum of violence against women and girls, as well as the preventing equality between women and men. The overarching similarities between pornography and traditionally recognised forms of prostitution, in terms of recruiting techniques, methods, and consequences on the victims, leads this report's authors to consider pornography as filmed prostitution.

Prostitution: Prostitution is the purchase of a sexual act, that the European Parliament defined as the solicitation, acceptance or obtainment of a sexual act from a person in a situation of prostitution in exchange for remuneration, the promise of remuneration, the provision of a benefit in kind or the promise of such a benefit²⁸. To avoid the circularity of this definition, we chose to replace "from a person in a situation of prostitution" with "from another person". We also acknowledge and highlight that the majority of persons in prostitution are women and girls²⁹.

Reproductive Exploitation: In this document, the term "reproductive exploitation" is used with the understanding that there is no agreed EU level or international legal definition of it. Reproductive exploitation shall include the prohibition of abortion, forced abortion, forced reduction of embryos, forced pregnancy, surrogate motherhood and surrogate egg retrieval, as practices rooted in inequality between women and men and as manifestations of structural discrimination against women.

Sex disaggregated data: Any data on individuals that is cross-classified by sex, presenting information separately for women and men, girls and boys, allowing for measurement of differences between women and men on various social, cultural and economic dimensions. When data is not disaggregated by sex, it is more difficult to identify existing and potential inequalities. Statistics on violence against women, or equality between women and men, rely on these sex-disaggregated data to reflect the realities of the lives of women and men in order to create evidence-based policies intended to reduce existing gaps.

Sexual Exploitation: In this document, the term "sexual exploitation" is used with the understanding that there is no agreed EU level or international legal definition of it. Sexual exploitation shall include the exploitation of prostitution, as per the Palermo Protocol and EU Anti-Trafficking Directive, as well as pornography, rape and other forms of sexual violence, FGM, forced marriage, etc. It is generally understood as the abuse of vulnerabilities and/ or differential power and/ or trust, to obtain acts of a sexual nature.

²⁸ European Parliament (2023) *European Parliament resolution of 14 September 2023 on the regulation of prostitution in the EU: its cross-border implications and impact on gender equality and women's rights (2022/2139(INI))*, Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:C_202401767.

²⁹ *Ibid.*

Substantive equality or de facto equality: Substantive equality goes far beyond creating formal legal equality for women (where all are equal under the law) and means that governments are responsible for the impact of laws. This requires governments to tailor legislation to respond to the realities of women’s lives. Striving for substantive equality also places a responsibility on governments to implement laws, through governance that takes into account the women’s rights perspective and functioning justice systems that meet women’s needs. Substantive equality is a concept expressed in the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). It recognises that because of historic discrimination, women do not start on an equal footing to men.

Victim: In the context of this document, which constitutes a legal analysis, victims are understood as persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or impairment of their fundamental rights, through acts or omissions that are in violation of laws operative within any given states, including those laws proscribing criminal abuse of power³⁰.

Violence against women and girls: The term “violence against women” means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life. Violence against women shall be understood to encompass, but not be limited to, the following:

(a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation.

(b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;

(c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.³¹

³⁰ United Nations General Assembly (1985) *Resolution 40/34: Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-basic-principles-justice-victims-crime-and-abuse>.

³¹ United Nations (1993) *Declaration on the Elimination of Violence against Women Proclaimed by General Assembly Resolution 48/104 of 20 December 1993*. United Nations. Available at: https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.21_declaration%20elimination%20vaw.pdf.



The Istanbul Convention defines gender-based violence against women as violence that is directed against a woman or a girl *because* she is a woman or that affects women and girls disproportionately³². It is understood as a violation of human rights and a form of discrimination against women and shall mean all acts of violence that result in, or are likely to result in, physical, sexual, psychological, or economic harm or suffering to women and girls, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.

For the purpose of the report we chose to use the terminology “violence against women and girls” and/ or “male violence against women and girls” to address the important sex-specific aspect of this type of violence.

4. Methodology

The methodology of this report takes a **multidisciplinary and comprehensive approach** to the analysis of the EU Charter from a women’s rights perspective. Every article of the EU Charter is analysed separately. This analysis relies on existing studies, academic articles, grey literature (i.e. publications outside traditional means of publishing and distribution) and jurisprudence as well as several human rights instruments for the protection of women’s rights. Furthermore, where relevant, it also refers to the results of the FULFIL survey targeting legal practitioners across the EU on the use of the EU Charter to support migrant women, as well as interviews conducted with psychotraumatology experts on the barriers faced by migrants in the justice system and how these contribute to their traumatic experiences.

In order to enhance the Charter’s potential, this report relies on several international human rights instruments (Treaties and Conventions as well as soft law) which have either dedicated attention to the rights of women, including migrant women, or that deal with the rights of migrants as a group, albeit in a “gender neutral manner” but of relevance to migrant women.

³² Council of Europe (2011) Article 3(d) of the Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention). Available at: <https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treaty-num=210>.

Besides the Charter, the EU has increasingly adopted legislation concerning several aspects linked to the fundamental rights of migrant women^{33,34,35,36,37,38,39,40}. At the time of publication of this report, the European Union institutions are negotiating a text for a new directive on combating violence against women, and domestic violence.

Recent literature suggests that **women's concerns are yet to be fully integrated across policies and domains**. Roberta Guerrina⁴¹ has argued that “despite the superficial benefits of the Charter to the cause of women’s rights, it failed to mainstream gender in EU politics”. The author adds that “despite its potential, gender mainstreaming, as currently deployed by European institutions, has failed to achieve a more sensitive representation of the diversity of women’s interests within European policy making circles”. In the same way, A. Irigoien has emphasised that the “gender-blind European responses to the crises of the first decade of the Treaty of Lisbon have contributed—among other factors—to the deterioration of the EU’s democratic structures and procedures, and have also, in turn, contributed to restraining

33 Council of the European Union (2000a) *Council Directive 2000/43/EC of 29 June 2000 Implementing the Principle of Equal Treatment between Persons Irrespective of Racial or Ethnic Origin (Racial Equality Directive)*, Europa.eu. Available at: <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32000L0043>.

34 Council of the European Union (2004) *Council Directive 2004/81/EC of 29 April 2004 on the Residence Permit Issued to third-country Nationals Who Are Victims of Trafficking in Human Beings or Who Have Been the Subject of an Action to Facilitate Illegal Immigration, Who Cooperate with the Competent Authorities*, Europa.eu. Available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32004L0081>.

35 Council of the European Union (2004) *Council Directive 2004/113/EC of 13 December 2004 Implementing the Principle of Equal Treatment between Men and Women in the Access to and Supply of Goods and Services*, Europa.eu. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32004L0113>.

36 European Parliament and Council of the European Union (2008) *Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on Common Standards and Procedures in Member States for Returning Illegally Staying third-country Nationals*, Europa.eu. Available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32008L0115>.

37 European Parliament and Council of the European Union (2011a) *Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography, and Replacing Council Framework Decision 2004/68/JHA*, Europa.eu. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32011L0093>.

38 European Parliament and Council of the European Union (2011b) *Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on Standards for the Qualification of third-country Nationals or Stateless Persons as Beneficiaries of International Protection, for a Uniform Status for Refugees or for Persons Eligible for Subsidiary Protection, and for the Content of the Protection Granted (recast)*, Europa.eu. Available at: <https://eur-lex.europa.eu/eli/dir/2011/95/oj>.

39 European Parliament and Council of the European Union (2011c) *Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on Preventing and Combating Trafficking in Human Beings and Protecting Its Victims, and Replacing Council Framework Decision 2002/629/JHA*, Europa.eu. Available at: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32011L0036>.

40 European Parliament and Council of the European Union (2012) *Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime, and Replacing Council Framework Decision 2001/220/JHA*, Europa.eu. Available at: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32012L0029>.

41 Guerrina, R. (2003b) ‘Gender, Mainstreaming and the EU Charter of Fundamental Rights’, *Policy and Society*, 22(1), pp. 97–115. Available at: [https://doi.org/10.1016/s1449-4035\(03\)70015-0](https://doi.org/10.1016/s1449-4035(03)70015-0).



progress on gender equality and exacerbating gender inequality across different member states”⁴².

It should be noted that the European’s Commission **Gender Equality Strategy 2020-2025**⁴³ states very clearly that the inclusion of a **women’s rights** perspective in *all* EU policies and processes is crucial to reach the goal of equality between women and men:

“The Commission will enhance gender mainstreaming by systematically including a gender perspective in all stages of policy design in all EU policy areas, internal and external. The strategy will be implemented using intersectionality – the combination of gender with other personal characteristics or identities, and how these intersections contribute to unique experiences of discrimination – as a cross-cutting principle”.

The **EU Gender Action Plan III**⁴⁴ clearly states the need to make EU engagement for equality between women and men more effective in order to address the root causes of that inequality. The Action Plan reinforces the need to adopt **a transformative approach**, which entails examining, questioning, and changing rigid social norms of so-called “gender roles” and imbalances of power which disadvantage women and girls and generate discrimination. Furthermore, it encourages the implementation of a **human rights-based approach**, which places the principles of non-discrimination and countering inequalities at the centre of all action. This approach must include **supporting migrant women** to fully exercise their human rights, and an emphatic demand for redress when those rights are violated. Moreover, the Action Plan accentuates the importance of **addressing intersectionality** thus concluding that the focus should be on the **most disadvantaged women**, such as indigenous women, women belonging to racial/ ethnic, religious, linguistic or cultural minorities, forcibly displaced, migrant, undocumented, economically and socially deprived women⁴⁵, as well as women impacted by violence and women with disabilities, among others.

⁴² Irigoien, A. (2021) ‘The Treaty of Lisbon and the Gender-blind Responses to the EU crises: Impact on the Quality of European Democracy’, *Política y Sociedad*, 58(1), p. e71939. Available at: <https://doi.org/10.5209/poso.71939>.

⁴³ European Commission (2020) *Gender Equality Strategy*, [commission.europa.eu](https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/gender-equality/gender-equality-strategy_en). Available at: https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/gender-equality/gender-equality-strategy_en.

⁴⁴ European Commission (2020a) *Gender Action Plan – Putting Women and Girls’ Rights at the Heart of the Global Recovery for a Gender-Equal World*, *European Commission - European Commission*. Available at: https://ec.europa.eu/commission/presscorner/detail/en/IP_20_2184.

⁴⁵ *Ibid.*

This report provides a comprehensive women’s rights-sensitive analysis of the fundamental rights enshrined in the Charter, thus taking into account **women’s persistent, far-reaching and widespread, human rights violations**. Moreover, this report emphasises the **intersectional and multiple forms of discrimination** endured by migrant women (related to language, ethnicity, legal status), thus hindering the full enjoyment of their rights, particularly when it comes to exercising them in redress, or to activating mechanisms for their protection and enforcement.

The analysis assesses whether the articles of the Charter encompass a “gender mainstreaming” approach - such approach being understood as a crucial strategy in the advancement of women’s human rights. Furthermore, it examines **whether the provisions correspond to international normative standards and recommendations**⁴⁶ in particular the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on preventing and combating violence against women, and domestic violence (Istanbul Convention), as well as other relevant instruments (such as recommendations or guidelines) that protect migrant women’s rights.

⁴⁶ Spurek, S. (2016) *An Analysis of the Victims’ Rights Directive from a Gender Perspective*, European Institute for Gender Equality. Available at: <https://eige.europa.eu/publications-resources/publications/analysis-victims-rights-directive-gender-perspective>.



5. The fundamental rights of migrant women

As highlighted by the European Commission in its Action Plan on Integration and Inclusion 2020-2027⁴⁷, migrant women face “*additional challenges as they tend to have lower proficiency in the host country language, weaker social networks and greater responsibilities for childcare and family*”, while they also face “*additional obstacles to integration compared to migrant men and boys, often having to overcome structural barriers linked to their being both a migrant and female*”. Besides facing barriers specific to their legal status, migrant women are at the intersection of several systems of discrimination related to sex, race, ethnic origin, language, religion or belief, economic status, age, disability, sexual orientation and other characteristics. This makes them vulnerable to multiple forms of discrimination and violence. Failures in the justice system may lead women who already lack systemic protection to “*fall through the cracks*”, as described in the European Commission’s 2020 Rule of Law Report⁴⁸.

Migrant women face an increased risk of being victims of crimes such as human trafficking⁴⁹ (especially for the purpose of sexual exploitation), forced marriage, men’s violence) including sexual violence and abuse⁵⁰), so-called traditional harmful practices⁵¹, torture and femicide as well as sex-based or racist discrimination. Fear of losing their legal status, racist violence, and cultural relativism (i.e. justifying crimes based on cultural differences) are some other deterrents of reporting for migrant women. They further face challenges in accessing support services, independently of their residence status⁵².

Many gaps exist in the EU and international legal frameworks in terms of migrant women protection from violence. In cases of domestic violence for example, migrant women represent a specific group at risk due to their frequent legal and economic dependence

⁴⁷ European Commission et al. (2020a) *Action Plan on Integration and Inclusion 2021-2027*. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020DC0758&from=EN>.

⁴⁸ European Commission Directorate-General for Justice and Consumers (2020) *2020 Rule of Law Report - Communication and Country Chapters, commission.europa.eu*. Available at: https://commission.europa.eu/publications/2020-rule-law-report-communication-and-country-chapters_en.

⁴⁹ Council of Europe (2019c) *Gender Equality Strategy: Protecting the Rights of Migrant, Refugee and Asylum-Seeking Women and Girls*. Available at: <https://rm.coe.int/prems-089319-gbr-2573-protecting-the-rights-of-migrant-refugee-and-asy/168096608a>.

⁵⁰ Tan, S.E. and Kuschminder, K. (2022) ‘*Migrant Experiences of Sexual and Gender Based Violence: a Critical Interpretative Synthesis*’, *Globalization and Health*, 18(1). Available at: <https://doi.org/10.1186/s12992-022-00860-2>.

⁵¹ Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) (2020b) *1st General Report on GREVIO’s Activities Covering the Period from June 2015 to May 2019*. Available at: <https://rm.coe.int/1st-general-report-on-grevio-s-activities/16809cd382>.

⁵² European Commission (2020) *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions EU Strategy on Victims’ Rights (2020-2025)*, *Europa.eu*. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DC0258>.

on perpetrators, among other factors.⁵³ Law enforcement authorities often overlook the relationship between EU law and the Istanbul Convention (which all EU Member States have signed and most EU Member States have ratified, and which the EU ratified on the 28th of June 2023). This legal framework protects victims regardless of their citizenship status, even though it is often not applied in practice.

Women have a particular experience of the European asylum system, which is often not equipped to support those fleeing men's violence or systemic sex-discrimination. Pleading asylum on the basis of sex-based persecution is possible, but there is no harmonised way to do so⁵⁴, and hence discrepancies between Member States are striking.

Lack of access to information and legal assistance is one of the major challenges faced by asylum seeking and migrant women. ENOMW has witnessed that organisations managing reception do not have lawyers sufficiently trained to provide legal assistance for women and girls who have specific lived experiences of violence and abuse. In particular, the cases that involve male violence that should be treated as a basis for asylum under the Geneva conventions UNHCR guidelines N1, the Istanbul convention and CEDAW, are frequently not being treated as such. When cases are prepared, the sexist and sexual violence that women have suffered leading to their decision to flee, may be downplayed as "insignificant" compared to, for example, political persecution. Rarely - if at all - women and girls' asylum cases are viewed from the perspective of persecution of a group on the basis of characteristic of sex even when such persecution is well documented such as in the case of Afghanistan. Furthermore, women are not assisted in disclosing and documenting such abuse as this type of violence is not well understood by the overall legal system and legal professionals working in the area of asylum.

The lack of psychotraumatological expertise of legal professionals and/ or the lack of engagement with experts and organisations with expertise in work on VAWG and its traumatic consequences, further exacerbates the situation as it limits the information and legal assistance that women receive, and reduces the chances of success of their applications. As a result, many applications are rejected in the first instance, and some only win on appeal, when additional elements concerning VAWG are added to the case, if the applicant is lucky enough to come across a feminist legal expert willing to assist her case. In addition, there is an overall lack of lawyers assisting asylum cases, many of them working *pro bono* and overwhelmed with the workload. As a result, women and girls' cases do not receive the attention they deserve. In addition, the information provided to women often excludes information on the rights and freedoms to which they are entitled, not only as asylum seeking individuals but as women on EU soil, under such instruments as the EU Charter of fundamental rights, the EU Anti trafficking directive, the Victims' rights directive, and the Istanbul Convention.

53 Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) (2020c) *1st General Report on GREVIO's Activities Covering the Period from June 2015 to May 2019*. Available at: <https://rm.coe.int/1st-general-report-on-grevio-s-activities/16809cd382>.

54 UN Women (2017) *Report on the Legal Rights of Women and Girls Asylum Seekers in the European Union. UN Women Europe and Central Asia Regional Office* . Available at: https://eca.unwomen.org/sites/default/files/Field%20Office%20ECA/Attachments/Publications/2017/WOMEN%20AND%20GIRLS%20ACCESS%20TO%20ASYLUM%20IN%20THE%20EUROPEAN%20UNION_for%20web.pdf.



There are no EU-wide, binding sex-specific guidelines on refugee status, asylum and reception⁵⁵, leaving much to the discretion of Member States and their fluctuating and increasingly difficult to navigate migration policies. The recent Council of Europe Recommendation on protecting the rights of migrant, refugee and asylum-seeking women and girls⁵⁶, for example, which includes an important array of measures targeting the fundamental rights of migrant women and girls, remains a non-binding instrument, with no enforcement compulsion for Member States.

Another example can be found in the area of health, particularly regarding maternal, sexual-reproductive health and mental health, access to whose services migrant women- especially when undocumented- face severe restrictions, despite the European Parliament's Resolution stating that "*the right to health is a fundamental human right*" and therefore encourages "*Member States to de-link health policies from immigration control*"⁵⁷. Specific challenges faced by migrant mothers in pre- and post-natal care are also emphasised in the European Commission Action Plan on Integration and Inclusion⁵⁸.

Taking into account this holistic view of the human rights landscape in the EU, and the centrality of the Charter in protecting fundamental rights, we acknowledge the existence of provisions guaranteeing several fundamental rights for migrant women, but also recognise their lack of enforcement. ENOMW's 2022 report⁵⁹ on the fundamental rights of undocumented migrant women in the EU has highlighted that this group has been and remains a neglected chapter of the Union's history.

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55 *Ibid.*

56 Council of Europe (2022) *Recommendation CM/Rec(2022)17 of the Committee of Ministers to Member States on Protecting the Rights of migrant, Refugee and asylum-seeking Women and Girls*, *Coe.int*. Available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680a69407.

57 European Parliament (2014) *European Parliament Resolution of 4 February 2014 on Undocumented Women Migrants in the European Union (2013/2115(INI))*, *Europa.eu*. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52014IP0068%2801%29>.

58 European Commission et al. (2020) *Action Plan on Integration and Inclusion 2021-2027*. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020DC0758&from=EN>.

59 Salimi Khaligh, H., Ahrabare, A. and Zobnina, A. (2022b) *Undocumented Migrant Women in Europe: A Neglected Chapter in Fundamental Rights Protection*. European Network of Migrant Women (ENoMW). Available at: <https://www.migrantwomennetwork.org/2022/06/23/new-report-undocumented-migrant-women-a-neglected-chapter-in-fundamental-rights-protection/>.

6. The human rights of migrant women in international and European Union law

International human rights instruments have historically emerged as “gender-neutral” tools, failing to address the systemic oppression faced by women, and by migrant women in particular. “Gender-neutral” legislation has been described by EIGE as *“legislation that is drafted in universal terms, ignoring gender-specific situations and power relations between women and men that underpin sex-and gender-based discrimination, including gender-based violence against women”*⁶⁰. In this regard, the Convention on the Elimination of All forms of Discrimination against Women (CEDAW), the second most ratified human rights treaty in the world, has been a landmark instrument set out to not only protect women as a group from sex-based discrimination and to ensure women’s *de facto* equality, but to **codify in law the necessity, and the importance, of special measures that State-parties are bound to introduce in order to eradicate historic and systemic discrimination against women** (CEDAW, Article 4).

In its General Recommendation number 28 on the Core Obligations of State-Parties⁶¹ the CEDAW Committee explicitly recognises that *“identical or neutral treatment of women and men might constitute discrimination against women if such treatment resulted in or had the effect of women being denied the exercise of a right because there was no recognition of the pre-existing gender-based disadvantage and inequality that women face”*.

Gradually, we have seen increasing evolution in this realm, with some international human rights tools, European Union laws and soft law instruments recognising the need for *“gender mainstreaming”* in constructing public policies and in tackling systemic injustices. Similarly, special temporary measures, positive action in particular, have been acknowledged by the EU as an essential tool in achieving equality between women and men and non-discrimination of women. However, such measures have been mostly limited to the area of employment. Furthermore, according to the European Commission, *“[t]here is considerable confusion among states as to how positive action [...] is described nationally, and some significant differences as to what the term positive action means nationally compared with the EU usage”*⁶².

⁶⁰ European Institute for Gender Equality (EIGE) (2024) *Glossary: Gender-neutral Legislation*, European Institute for Gender Equality. Available at: <https://eige.europa.eu/publications-resources/thesaurus/terms/1353>.

⁶¹ Committee on the Elimination of Discrimination against Women (2010) *General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*. Available at: <https://www.refworld.org/legal/general/cedaw/2010/en/77255>.

⁶² European Commission, Directorate-General for Justice and Consumers, McCrudden, C. (2019) *Gender-based positive action in employment in Europe – A comparative analysis of legal and policy approaches in the EU and EEA – A special report*, Publications Office. Available at: <https://data.europa.eu/doi/10.2838/770680>.



7. The history of the Charter

Fundamental rights initially remained outside the scope of the European Union, which in its genesis intended to be no more than an economic union. It did not take long to conclude that such separation would not stand, and in 1969 we saw the first decision by the CJEU concerning fundamental rights, stating that the Union was competent to address this matter (*Stauder v. Statdt Ulm*, 1969, C-11/70). During the 1970s, the CJEU also acknowledged fundamental rights as general principles of law, long before they were acknowledged as sources of EU Law in the Lisbon Treaty⁶³.

While the CJEU has a long tradition of upholding fundamental rights, the process to enshrine fundamental rights in the Union's fundamental texts by political institutions has been a long one, with non-binding declarations and resolutions, as well as the 1986 Single European Act, being the only Union normative text to refer to fundamental rights until then, as well as the inclusion of fundamental rights "*as general principles of Community law*" in Article F of the Treaty on the European Union, signed in Maastricht in 1992⁶⁴.

With the increasing understanding of the EU as a union of values with a strong emphasis on the defence of human rights, the Charter of Fundamental Rights of the European Union was "solemnly proclaimed" in the year 2000. The document was developed by a Convention, set up by the European Council, which was made up of representatives of national governments, heads of state, members of national and union parliaments and the president of the Commission. The Charter was initially created to be a non-binding, soft law instrument. As contended by D. Anderson and Cian C. Murphy: "*the genesis of the Charter lies in the decision of the European Court of Justice, in Opinion 2/94, in that the EC Treaty as it then stood did not grant competence to the European Community to accede to the European Convention of Human Rights ("ECHR"). Following the Opinion, the Member State governments might have amended the Treaties to provide a legal basis for accession to the Convention*"⁶⁵.

Even though the Charter of Fundamental Rights was the first binding fundamental rights legal instrument in the Union, it was the result of decades of solidifying the EU's tradition as an upholder of human rights, a theme indissociable from European integration. The preamble of the Charter is very explicit in describing a European Union tradition of common values, while respecting diversity, connected to so-called universal values enshrined in other international human rights instruments.

⁶³ European e-Justice Portal (2020) *Part I - Protecting Fundamental Rights within the European Union, e-justice.europa.eu*. Available at: https://e-justice.europa.eu/563/EN/part_i__protecting_fundamental_rights_within_the_european_union.

⁶⁴ Facchi, A., Riva, N. and Parolari, P. (2021) 'Values in the EU Charter of Fundamental Rights a Legal-Philosophical Analysis with a Focus on Migrants' Rights', *Ratio Juris*, 34(1), pp. 3–5. Available at: <https://doi.org/10.1111/raju.12308>.

⁶⁵ Anderson Q. C., D. and Murphy, C.C. (2011a) *Working Paper: The Charter of Fundamental Rights: History and Prospects in Post-Lisbon Europe*, *cadmus.eui.eu*. Available at: <https://cadmus.eui.eu/handle/1814/17597>.

The sources of the Charter, according to the preamble, include “*the constitutional traditions and international obligations common to the Member States, the Treaty on European Union, the Community Treaties, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Community and by the Council of Europe and the case-law of the Court of Justice of the European Communities and of the European Court of Human Rights*”. This provision supports the inclusion of CEDAW as a source of the Charter, for example.

The Charter became legally binding in 2009, upon ratification of the Lisbon Treaty by the Member States, becoming a primary source of Union Law under Article 6 of the Treaty. With the adoption of the Charter, and its binding nature, a new understanding of the EU as a Union of rights emerged, fundamental to the internal and external identity of the Union. Despite the Charter being the most important binding legal source of European law in the field of fundamental rights, the nature of EU law has led to many of the rights recognised by the Charter being “*de-fundamentalised*”, “*as their specification and guarantee is delegated to national legislation*”⁶⁶.

The rights in the Charter have also been weakened, in the case of Poland and the UK, upon the signing of Protocol 30 of the TFEU, in which the countries state that “*the Charter does not extend the ability of the Court of Justice of the European Union, or any court or tribunal of Poland or of the United Kingdom, to find that the laws, regulations or administrative provisions, practices or action of Poland or of the United Kingdom are inconsistent with the fundamental rights, freedoms and principles that it reaffirms*”, among other limitations to the scope of the Charter⁶⁷.

Since its drafting stages, the Charter has received criticism, namely on “the use of sexist language, the lack of gender mainstreaming, and [...] not taking a clearer stance on the support of equality between women and men”⁶⁸. Sexist elements have, however, remained in the translation of the Charter to some languages, including the use of generic masculine in the Charter’s English, Spanish, French, Italian and Portuguese versions, which further contributes to the construction of the subject of human rights, and more broadly, the subject of law which holds rights, as male-centred and patriarchal.

⁶⁶ Staiano, F. (2014) *Family Life and Employment of Immigrant Women in the European Legal Space Gender Bias of Legal Norms and the Transformative Potential of Fundamental Rights*. PhD Thesis. Available at: https://cadmus.eui.eu/bitstream/handle/1814/33452/2014_Staiano.pdf?sequence=1&isAllowed=y.

⁶⁷ Anderson Q. C., D. and Murphy, C.C. (2011b) *Working Paper: The Charter of Fundamental Rights: History and Prospects in Post-Lisbon Europe*, cadmus.eui.eu. Available at: <https://cadmus.eui.eu/handle/1814/17597>.

⁶⁸ López Medel, M. (2022) ‘Sexist drafting and translation of the Charter of Fundamental Rights of the EU’, *Revista de Lenguas para Fines Específicos*, 28(1), pp. 157–172. Available at: <https://doi.org/10.20420/rife.2014.309>.



8. The Charter and the European Court of Justice - a critical outlook

The CJEU's role as a human rights court has evolved, ultimately contributing to broadening the scope of EU law. Despite its non-binding nature in 2000, the first decision mentioning the Charter only occurred in 2006, in case C-540/03⁶⁹. Today, legal practitioners show less reluctance to invoke the Charter in the CJEU: The President of the Court estimated, in 2018, that around 10% of all cases handled by the CJEU concern fundamental rights, namely those guaranteed in the Charter⁷⁰.

The CJEU must interpret fundamental rights, as recognised by the Charter, in accordance with the constitutional framework of the Union and the myriad of texts generated on fundamental rights, including treaties and directives. Furthermore, the connection between the CJEU and the ECtHR operates through the Charter, in which *“according to Article 52(3) of the Charter, the rights contained therein which ‘correspond to’ Convention rights should have ‘the same meaning and scope’ as those laid down by the Convention”*⁷¹.

This extends not only to the rights contained in the Convention, but also to the case law of the ECtHR, with numerous CJEU decisions analysing the Strasbourg Court's jurisprudence⁷².

Some limitations to the CJEU's potential as a human rights court must be acknowledged and critically assessed. An important limitation to the scope of the Charter relates to the fact that the Charter is solely applicable *“to the Member States only when they are implementing Union law”*- as enshrined by Article 51(1). This means that the Charter is not applicable to all matters of fundamental rights: *“the Charter is only applicable if the case concerns not only a Charter provision but also another norm of Union law. There must be a provision or a principle of Union primary or secondary law that is directly relevant to the case”*⁷³. This required link with another norm of Union law for the Charter to be applied leads to the aforementioned *“de-fundamentalisation of rights”*.

⁶⁹ Anderson Q. C., D. and Murphy, C.C. (2011c) *Working Paper: The Charter of Fundamental Rights: History and Prospects in Post-Lisbon Europe*, *cadmus.eui.eu*. Available at: <https://cadmus.eui.eu/handle/1814/17597>.

⁷⁰ Rosas, A. (2022) 'The Court of Justice of the European Union: A Human Rights Institution?', *Journal of Human Rights Practice*, 14(1), pp. 204–214. Available at: <https://doi.org/10.1093/jhuman/huac020>.

⁷¹ *Ibid.*

⁷² *Ibid.*

⁷³ Rosas, A. (2012a) 'When Is the EU Charter of Fundamental Rights Applicable at National Level?', *Jurisprudencija: Mokslo darbu žurnalas*, 19(4), pp. 1269–1288. Available at: <https://philpapers.org/rec/ROSWIT-7>.

Some limitations can also be identified in cases of intersectional discrimination. This is evident when it comes to the intersection between being a woman and being a migrant, which increases exponentially the possibility of fundamental rights' breaches. In these cases, the Charter provides no clear methodology, which can result in intersectional discrimination being overlooked, with cases being framed as pertaining to only one ground of discrimination, possibly overlooking how the fact of being a woman is fundamental to a certain subject's experience of discrimination.

Some differences can be observed when it comes to CJEU's approaches in these cases - as opposed to the ECtHR. The ECtHR has notably considered cases of complex discrimination (such as, for example, in *BS v. Spain*⁷⁴, concerning discrimination towards a black migrant woman in prostitution), whereas the CJEU has never done so⁷⁵. The same can be said about multiple discrimination - which takes place when someone is discriminated against for more than one reason⁷⁶. Although this concept is included in the Racial Equality Directive⁷⁷, it is rarely addressed by the Court⁷⁸. Finally, in the field of asylum law, the Court has faced several issues in the enforcement of the principles of mutual recognition and mutual trust among Member States⁷⁹.

74 The European Court of Human Rights (2012) *CASE OF B.S. v. SPAIN (Application no. 47159/08)*. Available at: <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-112459%22%5D%7D>.

75 Solanke, I. (2021) 'The EU Approach to Intersectional Discrimination in Law', in *The Routledge Handbook of Gender and EU Politics*. Routledge.

76 European Union Agency for Fundamental Rights (2013) *Multiple discrimination in healthcare - Q&A*, fra.europa.eu. Available at: <http://fra.europa.eu/en/content/multiple-discrimination-healthcare-qa>.

77 Council of the European Union (2000b) *Recital 14 in Council Directive 2000/43/EC of 29 June 2000 Implementing the Principle of Equal Treatment between Persons Irrespective of Racial or Ethnic Origin*, eur-lex.europa.eu. Available at: <https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX:32000L0043>.

78 Solanke, Iyiola, Chapter in *The Routledge Handbook of Gender and EU Politics, The EU approach to intersectional discrimination in law*. 2021, Routledge.

79 Rosas, A. (2012b) 'When Is the EU Charter of Fundamental Rights Applicable at National Level?', *Jurisprudencija: Mokslo darbu žurnalas*, 19(4), pp. 1269–1288. Available at: <https://philpapers.org/rec/ROSWIT-7>.



9. Rethinking the EU Charter from a Women’s Rights Perspective

→ Article 1 - Human Dignity

Human dignity is inviolable. It must be respected and protected.

The foundational principle of human dignity is enshrined in the Charter’s Preamble, emphasising indivisible, universal values such as human dignity, freedom, equality, and solidarity, as well as the 1948 Universal Declaration of Human Rights’ preamble. Several international, regional and national instruments, case law and practice recognise the central role of human dignity. At the EU level, it is enshrined in the constitutions of over twenty Member States and the ECtHR referred to the need to respect it in several judgements⁸⁰.

The dignity of the human person is not only a fundamental right in itself but also constitutes the basis of fundamental rights. In its judgement of 9 October 2001 in Case C-377/98 *Netherlands v European Parliament and Council*, the Court of Justice confirmed that a fundamental right to human dignity is part of Union law, **resulting in the acknowledgement that the other rights in the Charter cannot be used to harm a person’s dignity as human dignity is the substance behind all the Charter’s rights**⁸¹. In another ruling of 14 October 2004 (case C-36/02, *Société Omega*), the Court of Justice considered that the Community legal order tends to ensure respect for human dignity as a general principle of law.

It results that human dignity is absolute and must be respected, even where a right is restricted. For example, in the well-known French “dwarf-throwing” case⁸², the right to work was restricted in the name of human dignity. However, human dignity has never been restricted by the courts in the name of another right. In the “dwarf-throwing” case, the French Conseil d’État ruled that respect for human dignity is a component of public order. Through this notion, the judge showed that public order cannot be regarded as purely “material and external” and **covers a conception of humanity of which the public authorities are the guarantors**. Some authors believe that dignity is “*the fifth component of public order, after tranquillity, safety, health and public morality*”⁸³.

⁸⁰ In the European Court of Human Rights Case *Tyrer v. United Kingdom* (*Application no. 5856/72*)(1978) 32, Series A no. 26 para 33: “Thus, although the applicant did not suffer any severe or long-lasting physical effects, his punishment – whereby he was treated as an object in the power of the authorities – constituted an assault on precisely that which it is one of the main purposes of Art.3 to protect, namely a person’s dignity and physical integrity”.

⁸¹ The Court of Justice of the European Union (CJEU), 9 October 2001 in Case C-377/98 *Netherlands v European Parliament and Council*, ECR I-7079, 70 — 77. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61998CJ0377>.

⁸² Conseil d’État (2017) 27 Octobre 1995, *Commune De Morsang-sur-Orge Et Ville d’Aix-en-Provence*, Conseil d’État. Available at: <https://www.conseil-etat.fr/decisions-de-justice/jurisprudence/les-grandes-decisions-depuis-1873/conseil-d-etat-27-octobre-1995-commune-de-morsang-sur-orge-et-ville-d-aix-en-provence>.

⁸³ Lebreton, G. (2001) ‘Ordre Public Et Dignité De La Personne humaine: Un Problème De Frontière’, in Bruilant (ed.) *L’ordre Public : Ordre Public Ou Ordres publics, Ordre Public Et Droits Fondamentaux : Actes Du Colloque De Caen Des Jeudi 11 Et Vendredi 12 Mai 2000*, pp. 353–368. Available at: <https://dialnet.unirioja.es/servlet/articulo?codigo=625948>.

The application of human dignity can potentially apply to all EU policy areas, including equality, security, prevention of torture, privacy, development of personality, fair employment, decent housing⁸⁴. Therefore, human dignity is also strictly connected to equality between women and men and women's rights. According to the CEDAW, "*discrimination against women violates the principles of equality of rights and respect for human dignity*"⁸⁵. Human dignity serves as a lens through which violence against women can be viewed. Recognising it as a violation of human dignity, the EU has, since the 1990s, elevated the issue to a fundamental rights concern with legal and political ramifications⁸⁶.

The Council of Europe Convention on Action against Trafficking in Human Beings frames human trafficking as a violation of human rights and an affront to human dignity, necessitating enhanced protection for victims⁸⁷. In the same way, sexual exploitation in prostitution and pornography should be considered as an attempt to undermine women's human dignity, as it is intertwined with their objectification, as well as public humiliation and degradation, while the principle of safeguarding human dignity is aimed to ensure protection from degrading or inhuman acts that could reduce persons to the status of an object.

The majority of the content on pornographic online platforms shows attempts to dehumanise women by depicting degrading situations which can characterise the intentional element of torture⁸⁸. In addition to humiliating women because they are women, most of these platforms are based on categorisations and keywords linked to the ethnic origins of the people portrayed. The scenes are associated with numerous racist stereotypes rooted in colonial practices and theory⁸⁹. The European Court of Human Rights has had occasions to point out that "[...] *tolerance and respect for the equal dignity of all human beings are the foundation of a democratic and pluralist society*. It follows that it is in principle considered necessary, in democratic societies, to sanction or even prevent all forms of expression which propagate, incite, promote or justify hatred based on intolerance [...], *if care is taken that the 'formalities' imposed are proportionate to the legitimate aim pursued*". (*Erbakan v. Turkey*, 6 July 2006, § 56). For a large part, online pornography could be considered within this framework.

84 Jones, J. (2012) 'Human Dignity in the EU Charter of Fundamental Rights and Its Interpretation before the European Court of Justice', *Liverpool Law Review*, 33(3), pp. 281–300. Available at: <https://doi.org/10.1007/s10991-012-9121-9>.

85 United Nations (1979) *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*. Adopted 18 December 1979 and entered into force 3 September 1981. United Nations General Assembly. Available at: <https://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>.

86 European Union Agency for Fundamental Rights (2014) *Violence Against Women: an EU-Wide Survey Main Results*. Available at: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2014-vaw-survey-main-results-apr14_en.pdf.

87 Guerrina, R. (2003c) 'Gender, Mainstreaming and the EU Charter of Fundamental Rights', *Policy and Society*, 22(1), pp. 97–115. Available at: [https://doi.org/10.1016/s1449-4035\(03\)70015-0](https://doi.org/10.1016/s1449-4035(03)70015-0).

88 Haut Conseil à l'Égalité (2023) *PORNOCRIMINALITÉ Mettons fin à l'impunité de l'industrie pornographique*. Available at: https://www.haut-conseil-egalite.gouv.fr/IMG/pdf/hce-vio-rapport_pornocriminalite-v11-bdef.pdf.

89 Ahrabare, A., Questiaux, L. and Piques, C. (2023) 'La pornographie, système mondial de violation des droits humains, d'oppression sexiste, raciste et pédocriminel', *Droits et Libertés newspaper*. Available at: <https://www.ldh-france.org/wp-content/uploads/2023/02/DL200-Dossier-4.-La-pornographie-systeme-mondial-de-violation-des-droits-humains.pdf>.



The principle of non-patrimoniaity of the body is linked to the concept of human dignity. Following this principle, an exploitation of the body of others, generally consented to by default by the deprived/ vulnerable individual and under pressure from others, has been, and should be considered a violation of human dignity. It calls on dignity as a principle to promote the abolition of these practices through a public order of protection. If we refer to comparative law, this concept has been formulated in different ways depending on national legislations: “non-commercialisation, unavailability, extrapatrimoniaity”, bearing in mind that some legislations refer cumulatively to these different notions⁹⁰. Nonetheless, in essence, the principles of unavailability and that of non-patrimoniaity serve respectively to “remove the body from the free power of the individual will”⁹¹ and “to ensure respect for the dignity of the human person”⁹². The latter also makes it possible to justify the inviolability and prohibition of patentability of the human body. In short, the body cannot be reduced to an item of property, since it is consubstantial with the person. Thus, although, neither human dignity nor the principle of non-patrimoniaity of the human body are defined, for example, by the European Court of Human Rights, it can be considered that a proper application of the aforementioned principles would lead to the recognition of sexual exploitation as an affront to human dignity.

In particular, the practice of exhibiting women in windows in so-called “red light districts” in countries where prostitution is legalised, amounts to their dehumanisation and sexual reification. By extension, it feeds the pervasive “rape culture” entrenched in the patriarchal idea that all women should be available to satisfy the “sexual needs” of men. If we reason by analogy, the practice of “human zoos” in Europe throughout the 19th and 20th century, has been greatly denounced as a violation of human dignity and as a practice perpetuating harmful stereotypes with the effects of animalising and objectifying Black women, men and children. Those practices consisted in the public exhibitions of human beings belonging to non-European ethnic groups - what were commonly termed “races” - for commercial purposes. Animalisation, essentialisation, and commercialisation are pertinent descriptions of what these exhibitionary performances represented⁹³, which can also be applied to the purpose and effects of exhibiting women in windows for commercial purposes.

The offence of **trafficking** in human beings is generally understood by jurisprudence as encompassing two elements: A material element consisting of the recruitment, transport transportation, transfer, harbouring or receipt of a person, or the giving or transferring of control control over them, and a moral element: the objective of putting someone in conditions **contrary to human dignity**.

⁹⁰ Feuillet-Liger, B. and Oktay-Özdemir, S. (2017a) *La non-patrimoniaité Du Corps Humain : Du Principe À La Réalité* | *Lgdj.fr*, www.lgdj.fr. Panorama International. Available at: <https://www.lgdj.fr/la-non-patrimoniaite-du-corps-humain-du-principe-a-la-realite-9782802757160.html>.

⁹¹ Gobert, M. (2000) ‘M. Gobert (sous La dir. de), Médecine, Bioéthique Et droit. Questions Choiesies’, *Revue internationale de droit comparé*, 52(1), pp. 263–265. Available at: https://www.persee.fr/doc/ridc_0035-3337_2000_num_52_1_18162.

⁹² Feuillet-Liger, B. and Oktay-Özdemir, S. (2017b) *La non-patrimoniaité Du Corps Humain : Du Principe À La Réalité* | *Lgdj.fr*, www.lgdj.fr. Panorama International. Available at: <https://www.lgdj.fr/la-non-patrimoniaite-du-corps-humain-du-principe-a-la-realite-9782802757160.html>.

⁹³ Abbattista, G. (2021) ‘Dehumanizing the Exotic in Living Human Exhibitions’, in M. Kronfeldner (ed.) *The Routledge Handbook of Dehumanization*. Routledge. Available at: <https://doi.org/10.4324/9780429492464>.

The Council of Europe Convention on preventing and combating violence against women and domestic violence defines sexual harassment as “any form of unwanted verbal, non-verbal or physical conduct of a sexual nature with the purpose or effect of **violating the dignity of a person**, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment, is subject to criminal or other legal sanction”. Thus, positioning the violation of human dignity as an intrinsic component of this form of sexual violence.

In line with standards set in the **Convention for the Protection of Human Rights and Dignity of the Human Being**, forced sterilisation of women and girls also constitutes a violation of human dignity. This offence is committed if surgery is performed which has the purpose or effect of terminating a woman’s or girl’s capacity to naturally reproduce, if this is done without her prior and informed consent.

In the context of **asylum** law and procedures, it is essential to recognise violence against women and girls (genital mutilation, forced marriage, rape and sexual violence, prostitution, etc.) as a violation of women’s human dignity, based on which the victims should be granted asylum⁹⁴. Furthermore, according to the Istanbul Convention, migrant women should be granted an autonomous residence permit if their residence status depends on their abusive spouse or partner, and violence against women should be considered as a form of persecution when interpreting the **1951 Geneva Convention**⁹⁵. The ECtHR jurisprudence also recognised the need for “an autonomous residence permit [for women] in the event of particularly difficult circumstances” in the context of the **Family Reunification Directive’s** implementation⁹⁶.

Upholding human dignity should be central to EU policies regarding migrants, notably in the context of reception conditions. The CJEU ruled that the respect of human dignity means that persons seeking international protection, cannot be deprived of the standards laid down in the **Reception Conditions Directive**, even for a temporary period of time⁹⁷. This is particularly relevant for women, as the lack of specialised assistance in reception centres and of specific protections in relocation or removal operations can amount to violations of their human dignity. The same applies for border checks, where accelerated procedures may result in overlooking vulnerabilities thus generating further episodes of victimisation for women.

⁹⁴ Council of Europe (2014) *DGII – Directorate General of Democracy Directorate of Human Dignity and Equality Equality and Human Dignity Department and Co-ordination and programming: Office of the Director General of Programmes Strategic Programming and Resource Mobilisation Joint Note on Human Dignity*. Available at: <https://rm.coe.int/16806508b9>.

⁹⁵ European Women’s Lobby (2000) *EWL opinion on a gender perspective in the drafting of a European Union Charter on Fundamental Rights*. Available at: https://www.europarl.europa.eu/charter/civil/pdf/con120_en.pdf.

⁹⁶ European Union Fundamental Rights Agency and Council of Europe (2020) *Handbook on European Law Relating to Asylum, Borders and Immigration*. Available at: https://unipd-centrodirittiumani.it/public/docs/fra-2020-handbook-law-asylum-migration-borders-2020-ed_en.pdf.

⁹⁷ CJEU, Case C-179/11, *Cimade, Groupe d’information et de soutien des immigrés (GISTI) v. Ministre de l’Intérieur, de l’Outre-mer, des Collectivités territoriales et de l’Immigration*, 27 September 2012, para 56.



Planned destitution (i.e. where social and economic exclusion is used as a policy tool to control migration, especially as a deterrent) constitutes a violation of human dignity. The EU has a positive obligation to protect socio-economic rights for all persons in its territory, regardless of their legal status. Migrant women's risk of destitution is high, given that they are often dependent on their perpetrators (e.g: partners or employers). Therefore, such policies increase the chances that they will be barred access to their social and economic rights at several stages of their migration experience.

→ **Article 2 - Right to life**

1. *Everyone has the right to life.*
2. *No one shall be condemned to the death penalty, or executed*

The right to life is a universal and historical right, in the sense that it is not only enshrined in the Charter⁹⁸, but rather is present in several international human rights instruments, such as the Universal Declaration of Human Rights (Article 3), the International Covenant on Civil and Political Rights (Article 6) and the ECHR (Article 2). It is also enshrined in the Constitutional Law of EU Member States⁹⁹. The ECtHR has clarified that the right to life entails positive and negative obligations: i.e. that States must protect life not only by refraining from the intentional and unlawful taking of life but also by enforcing appropriate measures to safeguard the lives of those within its jurisdiction¹⁰⁰, as well as, in the procedural dimension, thus States must investigate any suspicious deaths¹⁰¹. In the EU, these obligations, applicable through Article 52 (3), arise when based on a particular EU competence, in line with Article 6(1) of the TEU.

The right to life has been linked to the right to be granted **asylum** and the **principle of non-refoulement** when someone's life is in jeopardy for a set of protected reasons. Regulation (EU) No 656/2014 of the European Parliament and of the Council of 15th May 2014¹⁰² explains

⁹⁸ Guerrina, R. (2003d) 'Gender, Mainstreaming and the EU Charter of Fundamental Rights', *Policy and Society*, 22(1), pp. 97–115. Available at: [https://doi.org/10.1016/s1449-4035\(03\)70015-0](https://doi.org/10.1016/s1449-4035(03)70015-0).

⁹⁹ European Union Agency for Fundamental Rights (2015) *Article 2 - Right to life, European Union Agency for Fundamental Rights*. Available at: <https://fra.europa.eu/en/eu-charter/article/2-right-life#national-constitutional-law>.

¹⁰⁰ European Court of Human Rights (2022) *Guide on Article 2 of the European Convention on Human Rights - Right to life* (updated on 31 August 2022). Available at: https://www.echr.coe.int/documents/d/echr/Guide_Art_2_ENG.

¹⁰¹ Grant, S. (2016) *Dead and Missing Migrants: The Obligations of European States under International Human Rights Law, mediterraneanmissing.eu*. Available at: <https://missingmigrants.iom.int/sites/g/files/tmzbdl601/files/publication/file/Mediterranean-Missing-Legal-Memo-290816.pdf>.

¹⁰² European Parliament and Council of European Union (2014) *Regulation (EU) No 656/2014 of 15 May 2014 establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union*. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0656>.

that the principle of *non-refoulement* shall be interpreted according to threats faced on the basis of an individual's "*race, religion, nationality, sexual orientation, membership of a particular social group or political opinion*", yet fails to acknowledge sex as a threatening factor to the right to life. Women who are human rights defenders are also at a particular risk to their life in their countries of origins, which should warrant adequate international protection¹⁰³.

Directive 2011/95/EU, on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, fails to acknowledge either sex, or violence against women and girls as grounds for international protection. However, an Advocate General of the CJEU has recently acknowledged, for example, that refugee status may be granted on the basis of a woman's risk of suffering from domestic violence, honour crimes or forced marriage, with potential risk to her life, in her country of origin¹⁰⁴.

According to the UN General Comment No. 36 of the International Covenant on Civil and Political Rights¹⁰⁵, '[s]tates parties must [...] allow all asylum seekers claiming a real risk of a violation of their right to life in the State of origin access to refugee or other individualised or group status determination procedures that could offer them protection against refoulement'. This implies refraining from 'deporting, extraditing or otherwise transferring individuals to countries in which there are substantial grounds for believing that a real risk exists that their right to life under Article 6 of the Covenant would be violated [...]'¹⁰⁶. In its negative dimension, the right to life demands that States investigate any potential state or individual's responsibility underlying the death of a migrant person. An example of how such duty may be breached is present in the ECtHR's *M.H. and others v. Croatia*¹⁰⁷, in which a six-year old girl died on the border between Croatia and Serbia while migrating, after her whole family had already requested to be granted asylum in Croatia.

Positive obligations to protect life, according to the UN, include **special protection to persons in vulnerable situations**, encompassing witnesses to crime and victims of domestic violence, violence against women and human trafficking, unaccompanied migrant children, children in situations of armed conflict, asylum seekers, refugees and stateless persons. In the case of persons suffering from serious illnesses, providing adequate healthcare to "*illegally staying third-country nationals*", during the entire duration of the judicial proceedings underlying

¹⁰³ UN Women (2022) *Recommendations: Protection of women human rights defenders at risk in migration contexts*, *reliefweb.int*. Available at: <https://reliefweb.int/report/world/recommendations-protection-women-human-rights-defenders-risk-migration-contexts>.

¹⁰⁴ Court of Justice of the European Union (2023) *Opinion of Advocate General Richard De La Tour Delivered on 20 April 2023 (1) Case C-621/21(W.S. v. Intervyuirasht organ na Darzhavna agentsia za bezhantsite pri Ministerskia savet third party: Predstavitelstvo na Varhovnia komisar na Organizatsiyata na obedinenite natsii za bezhantsite v Bulgaria)*, *curia.europa.eu*. Available at: <https://curia.europa.eu/juris/document/document.jsf?text=&docid=272702&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1#Footnote77#>.

¹⁰⁵ UN International Covenant on Civil and Political Rights (CCPR) (2019) *General Comment No. 36 on Article 6: right to life*. Available at: <https://www.ohchr.org/en/calls-for-input/general-comment-no-36-article-6-right-life>.

¹⁰⁶ *Ibid.*

¹⁰⁷ European Court of Human Rights (2022) *First Section Case of M.H. and Other v. Croatia (Applications nos. 15670/18 and 43115/18)*, *hudoc.echr.coe.int*. Available at: <https://hudoc.echr.coe.int/fre?i=001-213213>.



their expulsion, as well as suspending the effects of such proceedings if there is a real risk of deterioration of their health conditions if the expulsion is enforced, is a right which has been acknowledged in the CJEU *case C-562/13 - Centre public d'action sociale d'Ottignies-Louvain-la-Neuve v. Moussa Abdida*¹⁰⁸.

Undocumented migrant women in the EU who are pregnant face increased barriers to healthcare that is adequate in ensuring their safety, such as incurring the full cost of the antenatal care in 16 countries, or the cost of childbirth in 11 countries, according to a study by the Center for Reproductive Rights¹⁰⁹. The protection of the right to life of these women demands that they be granted accessible universal healthcare that is tailored to their economic capacity and does not place them in debt or lead them to avoid seeking healthcare.

The deaths of migrant people when seeking to enter the EU may be framed in terms of the breach of positive obligations of the EU to prevent violations of the right to life¹¹⁰. However, according to the EU's guiding principles, the right to life has to accommodate each State's sovereignty in establishing its migration policy and border control. The CRC, enshrining the right to life in its Article 6, must be regarded in this respect, taking the best interests of the child into account and providing special protection, whether in the case of loss of life of the parents and/ or other relatives, or in instances of risk to the life of the child. In this regard, sea crossings are another area of danger. Reports indicated instances of coast guards ignoring distress calls or providing inadequate responses, leaving individuals in dire conditions (e.g. without food or water). Disturbing accounts have been documented including desperate measures such as taking sleeping pills to endure prolonged stays at sea. Even after rescue, coast guards were reported to have left migrants in difficult conditions during long waiting times for registration and processing (e.g. under intense sunlight or without clothes) or the police was reported to have left migrants in the middle of nowhere with no instructions nor support¹¹¹.

108 Court of Justice of the European Union (2014) Judgment of the Court (Grand Chamber), 18 December 2014. Case C-562/13 - Centre Public D'action Sociale d'Ottignies-Louvain-La-Neuve V Moussa Abdida, Europa.eu. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62013CJ0562>.

109 Center for Reproductive Rights (2020) *Perilous Pregnancies - Report on Barriers in Access to Affordable Maternal Health Care for Undocumented Migrant Women in the European Union*. Available at: <https://reproductiverights.org/wp-content/uploads/2021/03/Updated-GLP-EUROPE-PerilousPregnancies-2020-Web.pdf>.

110 Stoyanova, V. (2020) *Anti-smuggling and Anti-trafficking Measures - Are they compatible with the EU Charter of Fundamental Rights?*, *delmi.se*. Available at: https://www.delmi.se/media/nssf2ux5/delmi-report-2020_4-eng.pdf.

111 European Network of Migrant Women (2023) *Input to the European Union Asylum Report*. Available at: [ENOMW's Input to the Asylum Report 2024 - European Network of Migrant Women \(migrantwomennetwork.org\)](https://migrantwomennetwork.org/).

The right to life of migrant women is also at stake when **human trafficking, as well as sexual exploitation and prostitution** occur. The enforcement of the principle of non-refoulement is recommended by CEDAW in its General Recommendation No. 38 (2020) on trafficking in women and girls in the context of global migration¹¹², when their right to life is at stake.

In another context, possible death of women through **femicide** is a threat to their right to life¹¹³. Case-law of the ECtHR has sometimes convicted States for their failure to prevent femicide in cases of domestic violence (though ‘femicide’ is not explicitly named as the phenomenon at stake) – see, for example, *A and B v. Georgia*; *Opuz v. Turkey*; *Y and others v. Bulgaria*¹¹⁴. This implies that States have a positive obligation to ensure that appropriate risk assessment is carried out by law enforcement agencies, and that they act accordingly, by enforcing preventive measures. However, the Strasbourg Court does not always acknowledge the particular vulnerabilities of migrant women, such as in *Kurt v. Austria*, which overlooked the particular challenges migrant women face when interacting with law enforcement, including discrimination and language and cultural barriers¹¹⁵.

As opposed to the ECHR, the EU Charter has actually established the **prohibition of the death penalty** in its core provisions. Furthermore, all EU Member States are parties to Protocol No. 6 of the ECHR¹¹⁶, which expressly abolishes the death penalty in times of peace, as well as Protocol No. 13¹¹⁷, which abolished the death penalty in all circumstances. Due to the prohibition of the death penalty enshrined in the Charter, the right to life is connected to the principle of non-refoulement when someone may face the death penalty upon deportation (Article 19(2)), though exceptions may arise due to bilateral extradition agreements (such as that between the EU and the USA).

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112 UN Committee on the Elimination of Discrimination Against Women (2020) *General recommendation No.38 on trafficking in women and girls in the context of global migration*. Available at: <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-recommendation-no38-2020-trafficking-women>.

113 European Institute for Gender Equality (EIGE) (2021) *Resources about the Concept of Femicide*, EIGE. Available at: https://eige.europa.eu/gender-based-violence/femicide?language_content_entity=en (Accessed: 5 December 2023)

114 European Court of Human Rights (2022) *Section V, Case of A AND B v. GEORGIA (Application no. 73975/16)*, *echr.coe.int*. Available at: <https://hudoc.echr.coe.int/fre?i=001-215716> ; European Court of Human Rights (2009) *Section III, Case of OPUZ v. TURKEY (Application no. 33401/02)*, *echr.coe.int*. Available at: <https://hudoc.echr.coe.int/fre?i=001-92945> ; European Court of Human Rights (2022) *Section IV, Case of Y and Others v. Bulgaria (Application no. 9077/18)*, *echr.coe.int*. Available at: <https://hudoc.echr.coe.int/fre?i=002-13609>.

115 For a critical intersectional analysis of this judgement, see blogpost by Lisa Maria Weinberger (2021) *Kurt V Austria: a Missed Chance to Tackle Intersectional Discrimination and gender-based Stereotyping in Domestic Violence Cases*, *Strasbourg Observers*. Available at: <https://strasbourgobservers.com/2021/08/18/kurt-v-austria-a-missed-chance-to-tackle-intersectional-discrimination-and-gender-based-stereotyping-in-domestic-violence-cases/>.

116 Council of Europe (1983) *Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty*. Available at: https://www.echr.coe.int/documents/d/echr/library_collection_p6_ets114e_eng.

117 Council of Europe (2002) *Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances*. Available at: <https://rm.coe.int/1680081563>.



Finally, the right to life has been weaponised in the discourse surrounding women's **reproductive rights**, namely the right to abortion, such as in CJEU's *Case C-418/18 P. - Puppinck and others v. European Commission*¹¹⁸, in which the right to present and execute a European Citizen's Initiative which was founded on the concept of the right to life as originating in conception, which effectively undermined the right to abortion, was denied to the complainants. In this regard, the UN has clarified, in General Comment No. 36 of the International Covenant on Civil and Political Rights¹¹⁹, several limitations to each State's prerogative to regulate voluntary termination of pregnancy, namely '*where the life and health of the pregnant woman or girl is at risk, or where carrying a pregnancy to term would cause the pregnant woman or girl substantial pain or suffering, most notably where the pregnancy is the result of rape or incest or where the pregnancy is not viable*', **as well as prevent the need to resort to unsafe abortions. Articles 12 and 16 of the CEDAW refer to women's reproductive rights, and the CEDAW Committee has framed the issue of unsafe abortion as one of breach of the right to life**¹²⁰.



Article 4 - Prohibition of torture and inhuman or degrading treatment or punishment

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

The prohibition of torture hallows one of the most fundamental values of democratic societies¹²¹. As argued by Steven Greer, the prohibition of torture is considered a "cardinal axiom of international human rights law", forming part of customary international law and enjoying the status of a *jus cogens* norm - a peremptory norm of general international law¹²².

¹¹⁸ Court of Justice of the European Union (2019) *Judgment of the Court (Grand Chamber) of 19 December 2019. Case C-418/18 Patrick Grégor Puppinck and Others v European Commission*. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62018CJ0418>.

¹¹⁹ UN Center for Civil & Political Rights (2019) *General Comment No. 36 on the International Covenant on Civil and Political Rights*. Available here: <https://www.ohchr.org/en/calls-for-input/general-comment-no-36-article-6-right-life>.

¹²⁰ For a more detailed overview of CEDAW and the right to abortion, as well as reproductive rights in general, see Center for Reproductive Rights (2008) *Abortion and Human Rights - Government Duties to Ease Restrictions and Ensure Access to Safe Services*. Available at: https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/BRB_abortion_hr_revised_3.09_WEB.PDF.

¹²¹ Reidy, A. (2003) *The prohibition of torture: A guide to the implementation of Article 3 of the European Convention on Human Rights*. Council of Europe . Available at: <https://www.refworld.org/reference/research/coe/2003/en/67101>.

¹²² Greer, S. (2015) 'Is the Prohibition against Torture, Cruel, Inhuman and Degrading Treatment Really "Absolute" in International Human Rights Law?', *Human Rights Law Review*, 15(1), pp. 101-137. Available at: <https://doi.org/10.1093/hrlr/ngu035>.

Despite its significance, torture has historically been interpreted from a male-centric point of view, where a prisoner, “deprived of freedom” is subjected to torture at the hands of the State, thus reinforcing the prevalent public/ private divide that feminist scholars have long strived to dismantle and has inevitably rendered invisible women’s concerns and experiences of violence. **As argued by Jeanne Sarson and Linda MacDonald¹²³, Non-State Torture (NST) is a blatant human rights violation and a failure to take seriously women and girl’s NST victimisation disclosures.** The authors define this concept on the following terms: Non-State torture (NST) is torture committed by non-State actors, in public or private, in relationships, perpetrated within families, in human trafficking, in prostitution, in pornographic exploitation, by violent groups and gangs, dismissed as socio-cultural, traditional, or religious acts or norms, and can be committed during migration, displacement, in humanitarian and civil unrest, for example. Besides leading to secondary revictimisation, this disregard can also contribute to the silencing, abandonment, and isolation of victims.

In January 2008, the Special Rapporteur on Torture, Manfred Nowak, submitted a noteworthy report that provided a remarkable contribution to the emergence of an international norm that condemns several forms of violence against women.¹²⁴ The Special Rapporteur highlighted three particular forms of violence that -due to their level of atrocity and widespread character- *may amount to torture*: domestic violence was named as one of them¹²⁵.

Days after, the United Nations Committee against Torture (UNCAT) issued the long-awaited General Comment no. 2 (in paragraph 18), a milestone achievement in addressing forms of gender-based violence when perpetrated by non-State actors, such as torture, drawing up the State’s concrete due diligence obligations in preventing such acts of torture. **The Committee upheld that specific forms of violence against women, such as domestic violence, female genital mutilation, rape, and human trafficking fall within the legal framework of the Convention against Torture (CAT)**¹²⁶. The Committee’s pronouncement is of the utmost importance as it elevates these crimes when perpetrated by non-State actors to the *plateau* of torture: a *jus cogens* norm of peremptory and non-derogable character. The commentary also highlights the importance of “*gender-sensitive approaches*” in assessing

¹²³ Sarson, J. and MacDonald, L. (2021) *Women Unsilenced - Our Refusal to Let Torturer-Traffickers Win*, books.friesenpress.com. FriesenPress. Available at: <https://books.friesenpress.com/store/title/119734000164461020/Jeanne-Sarson-and-Linda-MacDonald-Women-Unsilenced>; Jones, J., Sarson, J., & MacDonald, L. (2018) How non-state torture is gendered and invisibilized: Canada’s non-compliance with torture committee recommendations, in J. Méndez, & M. Sáez (Eds.), *Gender Perspectives on Torture: Law and Practice*, Center for Human Rights & Humanitarian Law Anti-Torture Initiative, American University Washington College of Law, Washington, DC, p. 33-56.

¹²⁴ Meyersfeld, B. (2010) *Domestic violence and International Law*. Hart Publishing, p.71.

¹²⁵ UN Special Rapporteur on torture and other cruel, inhumane or degrading treatment or punishment to the context of domestic violence, Manfred Nowak (2008) *Promotion And Protection Of All Human Rights, Civil, Political, Economic, Social And Cultural Rights, Including The Right To Development* (UN Doc. A/HRC/7/3). Available at: <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F7%2F3&Language=E&DeviceType=Desktop&LangRequested=False>.

¹²⁶ UN Committee Against Torture (2008) *General Comment No. 2: Implementation of Article 2 by State Parties* (U.N. Doc. CAT/C/GC/2). Available at: <https://undocs.org/Home/Mobile?FinalSymbol=CAT%2FC%2FGC%2F2&Language=E&DeviceType=Desktop&LangRequested=False>.



the ways women and girls are subjected to torture or ill-treatment whilst drawing attention to the importance of the principle of non-discrimination and its key interpretative role¹²⁷.

In 2019, the Special Rapporteur on Torture concluded in its Interim Report that “*regardless of questions of State Responsibility and individual criminal culpability*” [...] **domestic violence** always amounts to cruel, inhuman or degrading treatment or punishment **and oftentimes amounts to physical, sexualised or psychological torture**.

The dichotomy between public and private in international human rights law has been strongly criticised by feminist scholars¹²⁸, as it ignores the systematic widespread violence endured by women in the private sphere, in a context outside of the State’s purview thus far protected by the right to privacy. Only recently has domestic violence become considered an issue worthy of regulation under international human rights law, and addressed substantively by the European Court of Human Rights (EtCHR) in 2007 in the case of *Kontrová v. Slovakia*. Although the Court has dedicated a focused attention to the prohibition of torture enshrined in Article 3 of the ECHR, so far it has not attributed the level of severity of torture to specific acts of domestic violence.

Content hosted in pornographic platforms often includes acts that are criminalised under international and European law, such as torture, inhuman or degrading treatment or punishment, incitement to commit crimes, racism, and sexual violence. These offences are presented as fiction and sexualised which often leads to them being overlooked by judicial systems. The Council of Europe Parliamentary Assembly has thus recalled that this industry has very real consequences and hinders women’s equal access to their rights and freedoms¹²⁹. Pornography platforms today are contributing to the normalisation of extreme forms of violence against women that are being sexualised, including acts of torture and barbarism. Tens of millions of videos are available online and show women and girls degraded, dehumanised, inferiorised and objectified, *because they are women*. In the same way, racism and paedo criminality are part of the pornographic discourse, and reach a paroxysmal level on pornography platforms¹³⁰. **A study carried out by the French High Council for Equality Between Women and Men in March 2023 on the main pornographic sites (Pornhub, Xhamster, Xnxx, XVideos) highlighted that 13,898 videos were referenced under the keyword “Torture”.** The same study highlighted hundreds of thousands of videos referenced under keywords associated with dangerous to lethal violent practice such as “gagging”, “choking” and “BDSM” [*bondage, discipline (or domination)*,

¹²⁷ *Ibid*, para. 20, 22.

¹²⁸ Wright, S., Charlesworth, H. and Chinkin, C. (1991) ‘Feminist Approaches to International Law’, *American Journal of International Law*, 85, p. 629. ; Copelon, R. (2003) ‘International Human Rights Dimensions of Intimate Violence: Another Strand in the Dialectic of Feminist Lawmaking’, *Journal of Gender, Social Policy & the Law*, 11(2), p. 867. Available at: <https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1412&context=jgspl>; Edwards, A. (2006) ‘The “Feminizing” of Torture under International Human Rights Law’, *Leiden Journal of International Law*, 19(2), pp. 356–357. Available at: <https://doi.org/10.1017/s0922156506003359>.

¹²⁹ Council of Europe Parliamentary Assembly (2021) *Resolution 2412, Gender aspects and human rights implications of pornography*, *pace.coe.int*. Available at: <https://pace.coe.int/en/files/29579/html>.

¹³⁰ Haut Conseil à l’Egalité (2023) *PORNOCRIMINALITÉ: Mettons fin à l’impunité de l’industrie pornographique*. p.4 Available at: https://www.haut-conseil-egalite.gouv.fr/IMG/pdf/cp_rapport_pornocriminalite_hcebis.pdf.

sadism, and masochism [as a type of sexual practice, ndlr]. Professor Tea Freddriksson of the Stockholm Institute of Criminology states that “rape culture” is very present in the narratives of the BDSM community and that it advocates for “victim blaming” (inversion of guilt) and trivialisation of the violence committed.

A 2018 study analysing more than 400 court cases where crimes were committed in the so-called “BDSM” context, between 1996 and 2014 in England and the United States, established the **very high prevalence of so-called “BDSM” practices with sadistic rape, torture and violent murder, as well as human trafficking, prostitution, sexual exploitation and acts of torture against children**¹³¹. A major study (including 27 other pre-studies) by the University of Psychology in Bangor (Wales) titled “The neuropsychological outcomes of non-fatal strangulation in domestic and sexual violence: A systematic review” highlights the serious consequences of BDSM, particularly for women and associates this type of violence with **“intimate terrorism” against women disguised as “consensual fantasy”**. The UK organisation We Can’t Consent To This has published several studies highlighting the use of the “rough sex defence” by perpetrators of violence against women and femicides in legal proceedings¹³². The normalisation of the confusion between sexuality and violence has been fueling types of crimes against women, including strangulation (also called “breath play” by some). These types of violence encompass a patriarchal dimension with most of the perpetrators being men and most of the victims being women¹³³. According to the organisation Women’s Aid, one woman is strangled to death by her partner every two weeks in the UK. Research describes the terrible damage suffered by victims of strangulation, with the onset of symptoms sometimes delayed by days or weeks. Damage can include stroke, cardiac arrest, miscarriage, incontinence, seizures, paralysis, speech impairment and other forms of long-term brain damage and death¹³⁴.

When looking at the trivialised online content depicting humiliation and degradation of women, it is possible to reason by analogy with what is judged to be degrading and inhuman treatment in police custody, where individuals are considered vulnerable because they are under the authority and power of the forces of law and order, insofar as the women here are in an entirely comparable position: isolated, as well as physically and psychologically constrained by the perpetrators. We can recall the international outcry when the abuses and acts of torture committed by American soldiers in Abu Ghraib prison in Iraq were revealed: naked prisoners dragged on leashes, beaten, sexually assaulted and subjected to electric

¹³¹ Peters, R. (2018) ‘Sadomasochism: Descent into Darkness, Annotated Accounts of Cases, 1996-2014’, *Dignity: A Journal of Analysis of Exploitation and Violence*, 3(2). Available at: <https://doi.org/10.23860/dignity.2018.03.02.02>.

¹³² Mackenzie, F. (2020) *We Can’t Consent To This - Consent Defences and the Criminal Justice System*. Available at: <https://publications.parliament.uk/pa/cm5801/cmpublic/DomesticAbuse/memo/DAB73.pdf>.

¹³³ WCCTT Analysis (2020) *Referencing BBC/Comres 2019 research on women’s experience of violence in sex*, wecantconsenttothis.uk. ; Snow, L (2020) LMU. pre-published research Survey on women’s experiences of non-consensual violence in sex.

¹³⁴ Bichard, H. et al. (2021) ‘The neuropsychological outcomes of non-fatal strangulation in domestic and sexual violence: A systematic review’, *Neuropsychological Rehabilitation*, 32(6), pp. 1–29. Available at: <https://doi.org/10.1080/09602011.2020.1868537>.



shocks. In 2004, certain photos showing rapes, inmates covered in excrement or showing signs of physical abuse were even censored by the US administration. In pornography, similar practices are elevated to the status of sexual fantasies, shaking up “sexual normativity”. Likewise, **humiliation, cruel or sadistic staging, abuse of authority, any act whose purpose or effect is to cause terror or a feeling of inferiority such as to break the moral or physical resistance of the victims, shall be understood as entailing a violation of Article 4 of the EU Charter of Fundamental Rights, which prohibits torture**. The fact that the perpetrators are not agents of the State does not alter the reality of the asymmetry of power between the perpetrator and the victim.

In a plethora of seminal case-law (*Opuz v. Turkey*, *Bevacqua and S. v. Bulgaria*, *Valiuliené v. Lithuania* and *Volodina v. Russia*) the Court found violations of Article 3 of the Convention as a result of State authorities’ failure to adopt positive obligations, concluding that the violence suffered by the applicants was sufficiently serious to amount to ill-treatment, yet remained silent *vis-à-vis* the link to torture. As argued in 1994 by R. Copelon’s *avantgarde* article¹³⁵ on the recognition of domestic violence as an egregious form of violence and torture, violence in the private sphere *is always torture*: “a system of terror” and social control. **Like torture, domestic violence, female genital mutilation, rape, trafficking and other forms of violence against women and girls are clear manifestations of dehumanization that humiliate, intimidate, diminish, isolate and deprive the victims of any dignity**. Yet, all these forms of heinous violations **remain unnoticed and their eminent risk downplayed**.

Women detainees - especially undocumented women who are particularly vulnerable - also face serious human rights violations which, in some cases, may amount to torture. The difficult situation for women in immigration detention can be exacerbated by conditions of isolation, inhumane and degrading treatment, and inadequate access to legal counsel and healthcare. An illustrative case from January 2013 highlights the alarming mistreatment of a pregnant migrant woman at Cedars detention centre near Gatwick Airport in the UK. Security officers, employing “substantial force,” tipped her wheelchair and restrained her feet when she resisted. Shockingly, officials in the UK presently refuse to postpone the removal of detainees alleging assault during removal, even when such allegations were supported by medical evidence. This practice impedes investigations into complaints, making it arduous for detainees, who are often deported, to maintain contact for follow-up inquiries. Safeguarding the dignity, privacy, and overall well-being of women detainees within all detention facilities is of paramount importance. A robust commitment to thoroughly investigate allegations by women detainees concerning discriminatory, cruel, or degrading treatment is key in light of the legally binding obligations imposed by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Ensuring accountability through the prosecution and appropriate punishment of perpetrators is imperative for creating an environment that upholds the fundamental human rights and safety of women in detention.

¹³⁵ Copelon, Rhonda (2003) *International Human Rights Dimensions of Intimate Violence: Another Strand in the Dialectic of Feminist Lawmaking*, the Journal of Gender, Social Policy and Law. Council of Europe, *Human Dignity*. Available at: <https://rm.coe.int/16806508b9>.

→ **Article 5 - Prohibition of slavery and forced labour**

1. *No one shall be held in slavery or servitude.*
2. *No one shall be required to perform forced or compulsory labour.*
3. *Trafficking in human beings is prohibited.*

The prohibition of slavery and forced labour encompasses a wide array of human rights violations, with women, and in particular migrant women, being especially vulnerable to many such forms. There is significant overlap between human trafficking, slavery, and forced labour, as expressly stated in Article 3 of the Palermo Protocol - the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women, and Children, supplementing the United Nations Convention against Transnational Organised Crime¹³⁶.

In the field of **labour**, today, we know women remain underrepresented in formal work (which is referred to as the *gender employment gap*), but overrepresented in unpaid and informal forms of labour, such as domestic work and child-rearing. They are also underpaid in relation to men (which is referred to as the *gender pay gap*). This context refers to the more mainstream forms of labour discrimination women face. However, the most vulnerable women in society may additionally encounter a series of forms of violence and discrimination, namely taking the form of **forced labour** and **labour exploitation**, which particularly affects migrant women. The lack of adequate migration policies, which are women-centred and human-rights based, increases the vulnerability of migrant workers to exploitation.¹³⁷

Domestic workers are a particularly vulnerable group. In most countries, they are not entitled to contribution-based social benefits. They also have limited access to public services such as healthcare and childcare. **This sector of the reproductive economy, although vital, is often not sufficiently regulated by labour law and not subject to inspections.** This affects around 8.5 million migrant women in Europe, most of whom are overqualified. According to the IOM, during the COVID crisis, their human rights were violated in multiple ways due to a lack of protection: unfair dismissals, physical and sexual violence, low wages, lack of access to healthcare, etc. **The most widespread problems are low wages and long working hours. Their position of administrative and material dependence on their employers results in an unequal balance of power when it comes to negotiating pay or days off.** Employers regularly demand unpaid overtime. There is also a hierarchy of domestic workers according to their ethnic origin: Albanian women in Greece and Moroccan women in Spain have even less bargaining power with their employers.

¹³⁶ United Nations (2000) *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime*, United Nations. Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/protocol-prevent-suppress-and-punish-trafficking-persons>.

¹³⁷ UN Committee on Economic, Social and Cultural Rights (CESCR) (2016) *General comment No. 23 on the right to just and favourable conditions of work (Article 7 of the International Covenant on Economic, Social and Cultural Rights)*, E/C.12/GC/23. Available at: <https://www.refworld.org/legal/general/cescr/2016/en/122360>.



ILO's Forced Labour Convention¹³⁸, the first international legal instrument regulating this matter, dates back to 1930 but failed to foresee particular provisions targeting the forms of exploitation faced by women. Furthermore, ILO's two conventions on child labour¹³⁹ fail to mention the particular vulnerability of girls, or to address specific measures which need to be implemented in relation to this vulnerable group. In 2011, the ILO adopted the Domestic Workers Convention¹⁴⁰, this time particularly protecting migrant women, as they are often exploited in settings of domestic work¹⁴¹. However, as of today, only nine EU States have ratified this convention, and, even though in 2014, the EU's Council adopted a Decision authorising Member States to ratify it, according to the European Parliament members, "*since then [...] the Commission has taken no relevant steps to support the ratification of ILO Convention*"¹⁴².

In the EU, several safeguards are in place in order to protect migrant women, nationally and at EU level, in the field of labour. However, there remains a distinction between the rights granted to EU citizens workers and migrant workers.

Besides the provisions in the Charter, EU law also forbids the employment of irregularly staying third-country nationals under particularly exploitative working conditions, for example, through Directive 2009/52/EC¹⁴³. Article 2, paragraph i) of this Directive defines '*particularly exploitative working conditions*' as '*working conditions, including those resulting from gender-based or other discrimination, where there is a striking disproportion compared with the terms of employment of legally employed workers which, for example, affects workers' health and safety, and which offends against human dignity*'.

This Directive establishes that temporary residence permits should be issued to persons in these situations when judicial proceedings have been initiated if they comply with criminal investigations into their employers. Similarly, the 2004 Directive on the residence permit of

138 International Labour Organization (1930) *C029 - Forced Labour Convention*, 1930 (No. 29) , Forced Labour Convention, (No. 29). Available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C029.

139 International Labour Organization (ILO) (1973) *C138 - Minimum Age Convention*, 1973 (No. 138). Available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312283:NO (1973) and ILO (1999) *C182 - Worst Forms of Child Labour Convention*, 1999 (No. 182). Available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182.

140 ILO (2011) *C189 - Domestic Workers Convention*, 2011 (No. 189). Available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C189 (2011)

141 European Union Agency for Fundamental Rights (2017a) *Out of sight – migrant women exploited in domestic work*. FRA.europa.eu. Available at: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-migrant-women-labour-exploitation-domestic-work_en.pdf.

142 European Parliament Parliamentary Questions (2023) *Question for written answer E-002273/2023 to the Commission, submitted on 19/07/2023*. Available at: https://www.europarl.europa.eu/doceo/document/E-9-2023-002273_EN.html.

143 European Parliament and Council of the European Union (2009) *Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals*, Available here: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32009L0052>.

victims of trafficking in human beings¹⁴⁴ establishes the right to a residence permit when victims cooperate with the competent authorities. Civil society organisations have, however, often stressed that more safeguards for reporting are necessary, namely considering that victims of human trafficking are extremely vulnerable to reprisals from offenders and even from law enforcement, and may face further victimisation when reporting. The 2022 Council of Europe Recommendation on protecting the rights of migrant, refugee and asylum-seeking women and girls¹⁴⁵ stresses, in the section on non-discrimination, intersectional issues and elimination of stereotypes, the need for Member States to take measures to encourage reporting without fear of removal for undocumented migrant victims of human trafficking or domestic violence.

Those who are undocumented often fear negative consequences for their residency and citizenship rights in the future, should they report their situation to the authorities. While the Directive foresees that Member States may provide free legal aid to victims of human trafficking, this is not mandatory. The issue of access to justice by victims of human trafficking, and ensuring adequate safeguards for victims of human trafficking, for labour or sexual exploitation, should be at the forefront of any system fighting human trafficking.

A connection can be drawn between migration, labour and incarceration. According to the UN's Bangkok Rules, in Rule 66, “[f]oreigners are vastly overrepresented in the criminal justice system of many countries, particularly those with a large migrant labour force. The rise in their numbers can partly be attributed to the increasingly punitive measures being adopted against «aliens» in many countries. Trafficked women find themselves behind bars, having been convicted of crimes against public morality, prostitution or breaking immigration rules, although they themselves are the victims of poverty, false promises, coercion and exploitation”.

Inside prison settings, prison labour is often considered an exception to the prohibition of forced labour, with women working in prison often being underpaid, or not paid at all, as well as working under dire conditions. This exception is often legally foreseen, including in the domestic legislation of Member States and the ECHR. According to the ILO, “[u]se of *prison labour is not forced labour, per se. However, prison workers should be hired to companies only on a voluntary basis, and conditions with regard to wages, benefits and occupational safety and health should be comparable to conditions for free workers*”¹⁴⁶. Legislation should

144 Council of the European Union (2004) *Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities*, Available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32004L0081>.

145 Council of Europe (2022) *Recommendation CM/Rec(2022)17 of the Committee of Ministers to Member States on protecting the rights of migrant, refugee and asylum-seeking women and girls* (Adopted by the Committee of Ministers on 20 May 2022 at the 132nd Session of the Committee of Ministers). Available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680a69407.

146 International Labour Organization (ILO) (2015) *A Handbook for Employers & Business Special Action Programme to Combat Forced Labour*. Available at: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/instructionalmaterial/wcms_099624.pdf.



ensure that adequate labour conditions are provided to those incarcerated, as to any human rights holder, since any exceptions to human rights ultimately decrease their strength¹⁴⁷.

Trafficking in human beings is an extreme form of violence. Certain forms of trafficking such as trafficking linked with forced marriage or trafficking for the purpose of sexual exploitation affect women and girls disproportionately: according to the European Commission¹⁴⁸, “[n] *early three quarters (72%) of all victims in the EU and 92% of the victims trafficked for sexual exploitation are women and girls*”. According to the UN General Assembly resolution of 2022, 12 million child and forced marriages occur every year globally, whereas the effects of the COVID-19 pandemic were projected to result in more than 13 million additional cases. Most of the victims of child and forced marriages are girls and women¹⁴⁹. Child marriage is a form of forced marriage in which at least one of the parties is under 18, with the majority of child marriages involving girls, according to the CEDAW Committee¹⁵⁰. Forced marriages are, in general, “*marriages in which one and/or both parties have not personally expressed their full and free consent to the union*”. In its revision proposal for the Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims in 2021, the European Commission stated that “exploitation” in the scope of the trafficking definition shall include forced marriage. This disposition was adopted in April 2024 by the European Parliament which also included exploitation of surrogacy among the causes of trafficking.

The EIGE has issued a series of recommendations on specific measures targeted towards women and girls in anti-trafficking actions, including identification, support and access to justice¹⁵¹. In international law, the CEDAW Committee has issued General Recommendation 38 on trafficking in women and girls in the context of global migration¹⁵². It identifies the root causes of **trafficking in women and girls** as socio-economic injustice, discrimination in migration and asylum regimes, demand that fosters exploitation and leads to trafficking,

147 For a critical analysis of prison labour rights under international human rights law and the case law of the ECtHR, see Höni, J. and Jost, G. (2022) ‘Human Dignity Is Inviolable... Unless You Are a Prisoner?: A Brief Analysis of the Current Status of Prison Labour Under International Law’, *Völkerrechtsblog*. Available at: <https://doi.org/10.17176/20221223-001440-0>.

148 European Commission (2021) Communication From The Commission To The European Parliament, The Council, The European Economic And Social Committee And The Committee Of The Regions on *EU Strategy on Combating Trafficking in Human Beings 2021- 2025*. Available at: eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021DC0171.

149 UN General Assembly (2022) *Resolution A/C.3/77/L.19/Rev.1 on child, early and forced marriages*. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/LTD/N22/683/04/PDF/N2268304.pdf?OpenElement>.

150 UN Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women (2019), *Joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women; General comment No. 18 of the Committee on the Rights of the Child on harmful practices*. Available at: <https://www.ohchr.org/en/documents/general-comments-and-recommendations/joint-general-recommendation-no-31-committee>.

151 European Institute for Gender Equality (EIGE) (2018) *Regulatory and legal framework, European Institute for Gender Equality*. Available at: <https://eige.europa.eu/gender-based-violence/regulatory-and-legal-framework#2014> (Last accessed: 7 October 2023)

152 UN Committee on the Elimination of Discrimination Against Women (2020) *General recommendation No.38 on trafficking in women and girls in the context of global migration*. Available at: <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-recommendation-no38-2020-trafficking-women>.

situations of conflict and humanitarian emergencies and, finally, the use of digital technology in trafficking. The 2005 Council of Europe Convention on Action against Trafficking in Human Beings¹⁵³ takes a “gender-mainstreaming” approach to combating trafficking, establishing measures to promote gender equality when protecting victims.

The TFEU defines human trafficking as a serious and transnational crime in Title 5, Article 83, Paragraph 1. This allows the EU to legislate on this matter, making it a part of the limited number of criminal law issues that the EU is competent to legislate about, as it is rightly understood that the transnational nature of this crime warrants the need for transnational solutions.

The EU acknowledges that “*women and girls form the vast majority of victims of trafficking in human beings, both in and outside the EU, and are mostly trafficked for the purposes of sexual exploitation*”¹⁵⁴, and the Victims’ Rights Directive¹⁵⁵ foresees human trafficking as a form of “gender-based violence”, in Recital 17. Furthermore, the European Parliament has issued a Resolution¹⁵⁶ which recognises the increased vulnerability of (undocumented) migrant women and the heightened risk of their exploitation in prostitution, as well as labour exploitation, including in the domestic sphere. It also calls for the protection and support of these women, including the acknowledgment that they have particular reasons to be granted asylum or residence permits on humanitarian grounds¹⁵⁷. The European Parliament Committee has recently stated that ‘*on average, 70 % of the individuals in prostitution in the EU are migrant women and that trafficking for the purpose of sexual exploitation mostly affects women and girls coming from the east of the European Union*’¹⁵⁸.

153 Council of Europe (2005) *Convention on Action against Trafficking in Human Beings*. Available at: <https://rm.coe.int/168008371d>

154 European Commission (2020) *A Union of Equality: Gender Equality Strategy 2020-2025*. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020DC0152> ; European Commission (2021) *EU Strategy on Combating Trafficking in Human Beings 2021- 2025*. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021DC0171>.

155 European Parliament and Council of the European Union (2012) *Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA*. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32012L0029>.

156 European Parliament (2014) *Resolution of 4 February 2014 on undocumented women migrants in the European Union* (2013/2115(INI)). Available at: [European Parliament resolution of 4 February 2014 on undocumented women migrants in the European Union \(2013/2115\(INI\)\)](https://www.europarl.europa.eu/press-room/en/infobox-item-attachment-item/infobox-item-attachment-item/20140204_IPRES_RES(2014_0004)_EN) (europa.eu)

157 For more European Parliament Resolutions impacting this topic, see the Appendix of Julia Sundin, University Paper, *You don't have to put on that red light A frame analysis of the European Parliament's position on prostitution 2014–2021*. 2023, Lund University Publications, available here: <https://lup.lub.lu.se/luur/download?func=downloadFile&recordId=9105559&fileId=9105565>

158 European Parliament (2023) *European Parliament resolution of 14 September 2023 on the regulation of prostitution in the EU: its cross-border implications and impact on gender equality and women's rights (2022/2139(INI))*, Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:C_202401767.



It is known that perpetrators of human trafficking often prey on victims' lack of knowledge of their fundamental rights¹⁵⁹, as well as on victims who are particularly vulnerable, either due to their sex, their migration status, their history of violence in the family or in relationships, their economic status, and/ or their dependence on alcohol, drugs and other substances, among other factors. According to CEDAW General Recommendation No. 26 on women migrant workers¹⁶⁰, undocumented migrant women workers are particularly vulnerable to exploitation, as they are socially excluded and their access to minimum labour rights may be limited by fear of denunciation.

Article 8 of the EU Anti-Trafficking Directive¹⁶¹ establishes the principle of non-prosecution or non-application of penalties to victims, a principle recognised in international human rights law¹⁶², which stems from the understanding that victims of human trafficking are evidently unable to consent to being trafficked and to any subsequent actions controlled by the trafficker¹⁶³.

This principle is also foreseen in Rule 66 of the UN's Bangkok Rules (¹⁶⁴):

“Trafficked persons are sometimes treated as criminals rather than as victims, whether in States of destination, transit or origin. In States of destination, they may be prosecuted and detained because of irregular migration or labour status. Alternatively, immigration authorities may simply deport them to the State of origin if their immigration status is irregular..”

As stated, human trafficking, as a transnational problem, requires harmonised solutions in order to have transnational effects. However, the lack of harmonisation of laws on what constitutes different forms of exploitation and “purposes” of trafficking across EU Member States hinders the effectiveness of national and EU policies. A study requested by the

159 European Union Agency for Fundamental Rights (2017b) *Out of sight – migrant women exploited in domestic work*. FRA.europa.eu. Available at: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-migrant-women-labour-exploitation-domestic-work_en.pdf.

160 UN Committee on the Elimination of Discrimination Against Women (2008) *General recommendation No.26 on women migrant workers*. Available at: <https://www.refworld.org/docid/4a54bc33d.html>.

161 European Parliament and Council of the European Union (2011) Recital 14 in *Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA*. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011L0036>.

162 For more on the history and rationale of the non-punishment principle, see UN The Inter-Agency Coordination Group against Trafficking in Persons (2020) *Issue Brief - Non-punishment of Victims of Trafficking*. Available at: https://www.unodc.org/documents/human-trafficking/ICAT/19-10800_ICAT_Issue_Brief_8_Ebook.pdf United Nations Office On Drugs And Crime (UNODC) (2014) *Strengthening Crime Prevention and Criminal Justice Responses to Violence against Women*. Available at https://www.unodc.org/documents/justice-and-prison-reform/Strengthening_Crime_Prevention_and_Criminal_Justice_Responses_to_Violence_against_Women.pdf.

163 Also foreseen in Article 4, section b) of Council of Europe Convention on Action Against Trafficking in Human Beings adopted in 2005 and came into force in 2008.

164 United Nations Office on Drugs and Crime (UNODC) (2010) *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders ('the Bangkok Rules')*. Available at: https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf.

FEMM Committee¹⁶⁵ found, for example, that the greater the asymmetry between national prostitution regulations, the greater the number of victims of human trafficking for sexual exploitation, while also strengthening organised crime activities overall in the EU. The proposal for a Directive on combating violence against women and domestic violence¹⁶⁶ brought forward by the European Commission in March 2022, appears to have been a missed opportunity to bring this harmonisation forward, even though prostitution constitutes a form of ‘sexual exploitation’, which, as defined in the TFEU, is one of the Eurocrimes forming the legal basis for this Directive (along with ‘computer crimes’).

The Resolution¹⁶⁷ voted in September 2023 in Plenary Session by the European Parliament however, clearly states that prostitution fuels human trafficking (51% of trafficking cases in the EU are for sexual exploitation, with women and girls accounting for 87% of these victims), and that the decriminalisation of prostituted people, alongside the criminalisation of the buyers of sexual acts is an effective way to tackle this phenomenon. It promotes exit and support programs (housing, health, employment) for victims of prostitution to enable them to build a life free from violence and exploitation.

The methods used by the pornographic industry could, for a large part, be subject to repression under the heading of the fight against trafficking in human beings, in accordance with the definition adopted by the Palermo Protocol (2000). Indeed, women and children are recruited, transported, supplied and obtained for sexual acts, through the use of several forms of coercion, including deception, abduction, abuse of authority or of a situation of vulnerability, and for which the pornography pimps achieves exorbitant financial benefits. Therefore, as stated in the Model Law on Trafficking in Persons (UNODC, 1990), pornography can be considered a form of sexual exploitation. Pornography has been highlighted as a cause of human trafficking in international cases of gross human rights violations such as the Zona Diva’s case. In South America, the ‘escort service’ Zona Divas was prosecuted for trafficking at least two thousand women from Venezuela, Colombia, Argentina, Costa Rica and Paraguay. Deceived by an offer of a modelling job, these women were confined and forced to produce sex videos that were posted online on Pornhub. Many of these women were tortured and killed. In EU law, the Directive 2011/93/EU on “combating the sexual abuse and sexual exploitation of children and child pornography”, recognises that « *sexual exploitation* » includes “recruiting”, “profiting from” or “otherwise exploiting” the prostitution or pornography of another person (in this context, a child) is a form of sexual exploitation.

165 European Parliament (2021) *The differing EU Member States’ regulations on prostitution and their cross-border implications on women’s rights*. Available at: [https://www.europarl.europa.eu/RegData/etudes/STUD/2021/695394/IPOL_STU\(2021\)695394_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2021/695394/IPOL_STU(2021)695394_EN.pdf)

166 European Commission and Directorate-General for Justice and Consumers (2022) *Proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence*, issued on 8 March 2022. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0105>.

167 Di Nicola, A. (2021) *The differing EU Member States’ regulations on prostitution and their cross-border implications on women’s rights*. Policy Department for Citizens’ Rights and Constitutional Affairs - Directorate-General for Internal Policies. Available at: [https://www.europarl.europa.eu/RegData/etudes/STUD/2021/695394/IPOL_STU\(2021\)695394_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2021/695394/IPOL_STU(2021)695394_EN.pdf).



→ Article 7 - Respect for private and family life

Everyone has the right to respect for his or her private and family life, home and communications.

The concept of the family is a historical core topic of feminist organising and legal theory, as are the concepts of the public and private spheres, which have been problematised by that which is often referred to as the second wave of feminism, with further iterations in subsequent waves, up to the present. It is fair to say that, when the Universal Declaration of Human Rights stated, in its Article 16, that the family is “*the natural and fundamental group unit of society*”, it did not foresee how the constitution of this unit (its ‘natural’ characteristics), and even the centrality of it, would come to be questioned in the following decades. Thus, naturally, the right to private and family life is one where these tensions on the definitions of family, as well as on drawing the line between the public and the private domains, are evident. This impacts legislation and its interpretation by legal practitioners – law in the books, and law in action – in potentially discriminatory ways, and requires that lawmakers ensure the equality of all families before the law.

On the one hand, equality in the family has not always been present in the law for women, and is not present in reality for all women and in all societies. Men have, in many previous historical regimes, been the sole legal holders of rights relating to entering into contracts, the assets of the family, decisions regarding other family members (including both women and children, as well as any dependants), as well as, oftentimes, the sole earners, creating a material and symbolic dependence of wives on their husbands. The CEDAW was a pioneer international human rights instrument in acknowledging the need to change the unequal roles in families, recognising the unseen value of child rearing and domestic work, while promoting the sharing of responsibilities in couples. CEDAW General Recommendation number 21¹⁶⁸ further discusses the rights of women in terms of their right to family life.

On the other hand, the family unit is not always composed of a man and woman, and not all women are heterosexual, even though international law has long ignored that reality (and sometimes still does). Many authors have stressed how heteronormativity is pervasive in the law’s concept of the family, with family law being “*a key site for the transmission of gender norms with regard to adult relationships and the parenting of children*”, heavily influencing “*the formation of legally recognized relationships; the attribution of legal parenthood; the division of marital property on divorce; and arrangements for post-separation parenting*”¹⁶⁹. This is evident in the particular legal issues which same-sex couples, as well as same-sex parents and their children, face in the EU.

¹⁶⁸ UN Committee on the Elimination of Discrimination Against Women (1994) *General Recommendation No. 21 on Equality in Marriage and Family Relations*. Available at: <https://www.refworld.org/docid/48abd52c0.html>.

¹⁶⁹ Hunter, R. (2023) ‘The Reproduction of Gender Difference and Heteronormativity in Family Law’, in *Gender Perspectives in Private Law*. Springer Link, pp. 29–41. Available at: https://link.springer.com/chapter/10.1007/978-3-031-14092-1_2.

For EU Citizens, the Directive 2004/38 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States¹⁷⁰ ensures the right to freedom of movement. However, its definition of “family member” does not ensure the protection of same-sex partnerships, by inscribing, in Article 2(2)(b), that “*the definition of «family member» should also include the registered partner* if the legislation of the host Member State treats registered partnership as equivalent to marriage”. This conditional right is ever more threatened as movements against the rights of same-sex couples rise in several EU Member States, with EU Law being unable to guarantee these rights adequately.

Migrant people in same-sex relationships may be discriminated against in terms of their right to reunification with their partner, if Member States do not recognise these as legitimate relationships before the law. The ECtHR has found that the denial of this right to same-sex couples, amounts to a breach of the right to private and family life, as well as the right to non-discrimination (see, for example, *Pajić v. Croatia*¹⁷¹), as it constitutes unequal treatment of same-sex and heterosexual relationships before the law.

From another perspective, the right to family life is often at stake in the context of migration, as is, importantly, the principle of the best interest of the child, when minors are a part of the family unit. The separation of families is a typical consequence of migration, or even the genesis of it, with families choosing or being forced to separate so that one or some of its members will hopefully reach the country of destination, with the other family members attempting to follow them later under family reunification procedures. Family reunification is a right under Article 44 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families¹⁷², and the 2022 Council of Europe Recommendation on protecting the rights of migrant, refugee and asylum-seeking women and girls¹⁷³ recognises it as ‘*both a secure pathway to safety for migrant and refugee women and girls and a protective factor in the host country*’. In the EU, unaccompanied minors can be sponsors in family reunification procedures. The right to asylum, foreseen in Article 18 of the Charter, may therefore be applied jointly with Article 7 in some instances.

170 European Parliament and Council of the European Union (2004) *Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (Text with EEA relevance)*, *lex-europa.eu*. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32004L0038>.

171 European Court of Human Rights (2016) Section II *Case of PAJIĆ v. CROATIA (Application no. 68453/13)*, *echr.coe.int*. Available at: <https://hudoc.echr.coe.int/fre?i=001-161061>.

172 UN General Assembly resolution 45/158 (1990) *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*. Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-protection-rights-all-migrant-workers>

173 Council of Europe (2022) *Recommendation CM/Rec(2022)17 of the Committee of Ministers to Member States on protecting the rights of migrant, refugee and asylum-seeking women and girls*. Available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680a69407.



Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification for third country nationals¹⁷⁴ is one of the main instruments of EU Law in regard to ensuring that members of the nuclear family (defined as spouses and minor children) are granted entry into and residence in a Member State by family members of a third country national residing lawfully in that Member State in order to preserve the family unit, with Member States having the possibility to extend this right to other familial bonds outside of the nuclear family. It should be interpreted, in light of Article 24 (2) of the Charter, according to the child's best interest.

Family reunification, while being a right on its own, is also framed by the EU as a means to ensuring integration and promoting economic and social cohesion¹⁷⁵. It has been argued that this might be taking precedence in the interpretation of this right by the ECtHR, with the level of integration of the immigrant, financial and labour considerations and other socio-economic characteristics being used to determine the adequacy of the right to family reunification¹⁷⁶. It is worth stressing that the EU should pursue family reunification as an end in itself, and not a means to integration, as it is a human right.

A 2023 Asylum Database Report¹⁷⁷ points to socio-economic status being an important obstacle to family reunification, with Member States establishing minimum requirements in terms of income (on the side of the sponsor and/ or the family), as well as administrative fees associated with the procedure - which the CJEU has determined should be reasonable and proportionate¹⁷⁸. Furthermore, socio-economic conditions may also influence the rights holders' ability to remain together as a family unit. The Report defends the need for the EU to broaden the scope of family reunification and adequately foresee that these procedures are feasible and not overly burdensome on the sponsor and their family.

Other important limitations exist to the right to family reunification, with potential discriminatory effects. According to FRA, in several EU Member States (including Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Finland, Germany, Latvia, Luxembourg or Sweden), only unmarried children can be beneficiaries in family reunification procedures, similarly to the provision in Article 44 of the International Convention on the Protection of

174 For an accessible summary, see Publications Office of the European Union (2018) *Summary of Directive 2003/86/EC on the right to family reunification*. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=legissum:l33118>.

175 Council of the European Union (2003) *Recital 4 of the Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification*. Available at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:251:0012:0018:en:PDF>.

176 Milios, G. (2018) 'The Immigrants' and Refugees' Right to "Family Life": How Relevant are the Principles Applied by the European Court of Human Rights?', *International Journal on Minority and Group Rights*, 25(3), pp. 401–430. Available at: <https://www.jstor.org/stable/26557901>.

177 European Council on Refugees and Exiles (2022) *Not there yet: Family reunification for beneficiaries of international protection*. Available at: <https://asylumineurope.org/wp-content/uploads/2023/02/Family-Reunification.pdf>.

178 Court of Justice of the European Union (2012) *Case C-508/10, 26 April 2012 - European Commission v Kingdom of the Netherlands*, [curia.europa.eu](https://curia.europa.eu/juris/document/document.jsf?text=&docid=122161&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=147052). Available at: <https://curia.europa.eu/juris/document/document.jsf?text=&docid=122161&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=147052>.

the Rights of All Migrant Workers and Members of Their Families¹⁷⁹. This rule may be unfit to guarantee the best interest of the child, especially taking into account the gendered dimension of child marriage, namely the phenomenon of forced marriage of girls, in which they are more vulnerable to several forms of violence, including sexual abuse¹⁸⁰.

While family reunification is a protected right, it is of particular importance to ensure that women migrating to Europe through this pathway obtain a legal status independently from their partners. In instances where migrant women's legal status is linked to their spouse's, the situation of dependency can lead to the inability for women to seek support in cases of abuse and violence. In Belgium for instance, despite the fact that the country is a State Party to the Istanbul Convention, there is no automatic right to independent legal status for migrant women who are victims of domestic abuse, nor does the law provide a possibility for migrant women victims of domestic violence to make an application independently from their marriage or partnership with an abusive partner. In addition, there is no obligation not to deport a victim of male violence following the end of her residence permit. Under French law, an independent legal status (under the notion of family and private life) may be granted, through a protection order from the court, to a migrant woman whose legal status is dependent on her abusive partner or family member, even if the marriage is ended. Such a protection order can also be requested when an adult is threatened with forced marriage. However, in practice, several procedural and administrative barriers hinder the actual exercise of the right.

Unequal treatment also takes place in the case of divorce. The CJEU has found¹⁸¹ that the different treatment enshrined in Directives 2004/38/EC (Articles 7 and 13) and 2003/86/EC (Article 15), in the case of divorce, does not breach the Charter's Article 20 and the principle of equal treatment. In practice, this means that different conditions for the retention of residency status apply whether the third-country national is married to a Union citizen or to another third-country national, with more requirements being put forth in the case of marriage of a migrant person to an EU citizen. This distinction furthers the inequality in relationships between migrant women and EU citizens, potentially putting them at risk of violence at the hands of their partners¹⁸².

179 United Nations (1990) International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-protection-rights-all-migrant-workers>.

180 Psaila, E. et al. (2016) *Study for the FEMM Committee - Forced Marriage from a gender perspective*. European Parliament and Directorate General For Internal Policies Policy Department C: Citizens' Rights And Constitutional Affairs. Available at: [https://www.europarl.europa.eu/RegData/etudes/STUD/2016/556926/IPOL_STU\(2016\)556926_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2016/556926/IPOL_STU(2016)556926_EN.pdf).

181 Court of Justice of the European Union (2021) *Press Release No 147/21 on Case C-930/19, X v. Belgian state (Right of residence in the event of domestic violence)*, [curia.europa.eu](https://curia.europa.eu/jcms/upload/docs/application/pdf/2021-09/cp210147en.pdf). Available at: <https://curia.europa.eu/jcms/upload/docs/application/pdf/2021-09/cp210147en.pdf>.

182 For more on this judgement and a critical analysis of the inequality between EU citizens and migrant persons that it enshrines, as well as the risk it represents for (potential) victims of domestic violence, see Strumia, F. (2022) 'Speaking too little, yet saying too much. The wrong signals about EU values: X. v. Belgian State', *Common Market Law Review*, 59 (4), pp. 1195 – 1218. Available at: <https://doi.org/10.54648/cola2022077>.



The question of who has the right to form a family or not, as imposed in some EU countries, also calls for an analysis of modern eugenic practices. Eugenics is the harmful theory of “human race improvement”, which can be defined as the study of how to manage reproductive abilities in order to increase the occurrence of heritable characteristics regarded as desirable by society or groups within a society. This theory gained popularity during the early 20th century. Eugenicists worldwide believed that they could perfect human beings and eliminate so-called social ills through genetics and heredity. Some EU countries, in their practices relating to who can form a family or not, demonstrate an adherence to eugenic practices which target particularly vulnerable groups, mostly affecting the reproductive rights of women of said groups. Eugenic practices are a profound form of discrimination which may, in its ultimate form, lead to the genocide of a community. They are expressly prohibited by Article 3 of the Charter, on the right to the integrity of the person, which forbids “*eugenic practices, in particular those aiming at the selection of persons*”.

A historically common, and yet prevalent, eugenic practice is compulsory or forced sterilisation of women. Forced sterilisation is the involuntary or coerced removal of a person’s ability to reproduce, often through a surgical procedure referred to as a tubal ligation. Forced sterilisation is a human rights violation and can constitute an act of genocide, discrimination, torture, and gender-based violence against women¹⁸³, as also highlighted by the CEDAW Committee, which has urged parties to the Convention to prevent coercion in regard to fertility and reproduction¹⁸⁴.

This is a form of violence to which women with disabilities are particularly vulnerable, either under the guise of providing medical care or through the consent of persons other than the rightsholder, such as parents or legal guardians¹⁸⁵. Defenders of the practice often argue that it is in the best interest of the woman or girl with a disability. However, in light of Article 23 of the Convention on the Rights of Persons with Disabilities, they have the right to found and maintain a family and to retain their fertility on an equal basis with others and, in light of Article 25 of the same Convention, informed medical consent is paramount in any health procedures which women with disabilities undergo.

Racial or ethnic minorities may also be vulnerable to this practice, sometimes through systemic plans targeting particular communities. Roma women activists have identified reproductive rights as a key area for action, during the first international conference on the rights of Roma women in 2007, ‘Our Voices Heard’¹⁸⁶. The UN Committee against Torture (CAT) has framed the continued involuntary sterilisations of Roma women in Slovakia¹⁸⁷ without their

183 OHCHR *et al.* (2014) *Eliminating forced, coercive and otherwise involuntary sterilization: an interagency statement*. Available at: https://iris.who.int/bitstream/handle/10665/112848/9789241507325_eng.pdf.

184 UN Committee on the Elimination of Discrimination Against Women (1992) *General Recommendation No. 19: Violence Against Women*. Available here: <https://www.refworld.org/docid/52d920c54.html>.

185 Human Rights Watch (2011) *Sterilisation of Women and Girls with Disabilities – A briefing paper*. Available at: <https://www.hrw.org/news/2011/11/10/sterilization-women-and-girls-disabilities>.

186 Council of Europe (2022) *Research on the Barriers of Roma Women’s Access to Justice in Four Countries – Bulgaria, Greece, Italy and Romania*. Available at: <https://rm.coe.int/research-on-the-barriers-of-roma-women-s-access-to-justice-in-four-cou/1680a7cd27>.

187 ECHR cases concerning this practice include *V.C. v. Slovakia*, *N.B. v. Slovakia* and *I.G. and others v. Slovakia*.

free and informed consent as a form of torture, and the Special Rapporteur on Violence against Women, its Causes and Consequences has categorised involuntary sterilisation as a form of violence against women. Other countries, such as the Czech Republic¹⁸⁸, have also incurred in this systemic practice. Some argue that involuntary sterilisation always amounts to torture, as a form of “*severe pain or suffering*”¹⁸⁹. While countries have reviewed their policies, it is important that safeguards continuously ensure the informed consent and the self-determination of women when consenting to such procedures, and no medical professionals should pressure or force women to undergo such a radical procedure.

Women prisoners are often forgotten when it comes to the right to family life, as are their children, with regard to the principle of the best interest of the child. The Nelson Mandela Rules¹⁹⁰ establish, in Rule 28, that women’s prisons must have special accommodations for prenatal and postnatal treatment and care, as well as, in rule 29, that the decision on whether the child should stay with their mother in prison shall follow the best interest of the child. An actual enjoyment of motherhood, under the circumstances of incarceration, is possible and should be promoted by States, as a form of respect for prisoners’ human rights, as well as an acknowledgement of the importance of family ties and connections for rehabilitation and reintegration into society.

Image-based sexual violence against women- notably the publication of intimate or sexual material online -also constitutes a more and more widespread form of violation of women’s and girls’ fundamental rights to private life. One in 10 women in the European Union has experienced cyber-harassment since the age of 15, including having received unwanted and/ or offensive sexually explicit emails or SMS messages, or offensive and/ or inappropriate advances on social networking sites¹⁹¹. That type of violence is of specific nature due to resulting exponential dissemination which can amount to the “social death” of the person. The dissemination of an image of this nature on the internet, even in a private context, is irreversible and irremediable. The images necessarily escape the victims, and the right to be forgotten is technically impossible. Moreover, this is a flagrant violation of the right to privacy and the right to dignity, both of which are protected by the EU Charter of Fundamental Rights and the ECHR.

188 Amnesty International (2021) *Czech Republic: Hard won justice for women survivors of unlawful sterilization*, [amnesty.org](https://www.amnesty.org/en/latest/press-release/2021/07/czech-republic-hard-won-justice-for-women-survivors-of-unlawful-sterilization/). Available at: <https://www.amnesty.org/en/latest/press-release/2021/07/czech-republic-hard-won-justice-for-women-survivors-of-unlawful-sterilization/>.

189 Sifris, R. (2010) ‘Conceptualising Involuntary Sterilisation as “Severe Pain or Suffering” For the Purposes of Torture Discourse’, *Netherlands Quarterly of Human Rights*, 28(4), pp. 523–547. Available at: <https://doi.org/10.1177/016934411002800402>.

190 UN General Assembly (2015) *Resolution 70/175, United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*. Available at: <https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/NelsonMandelaRules.pdf>.

191 European Union Agency for Fundamental Rights (2014) *Violence against women: An EU-wide survey*, p. 104. Available at: [Violence against women: an EU-wide survey. Main results report | European Union Agency for Fundamental Rights \(europa.eu\)](https://www.efra.europa.eu/en/violence-against-women)



→ Article 21 - Non-discrimination

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
2. Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, and without prejudice to the special provisions of those Treaties, any discrimination on grounds of nationality shall be prohibited.

The right to non-discrimination is the corollary of the **principle of equality**: everyone is equal before the law. It is, therefore, a principle present in a multitude of human rights instruments¹⁹², as well as the Constitutions of Member States, though they are usually not as far reaching as the Charter in terms of the grounds for discrimination covered by this provision. Some legal instruments are particularly dedicated to one (or more) type of discrimination, such as the UN's 1981 Convention on the Elimination of Discrimination Against all Women, and the ILO's 1958 Discrimination (Employment and Occupation) Convention¹⁹³. Many others simply include non-discrimination provisions, such as the Charter. Non-discrimination, as it connects to the principle of equality, is framed as one of the core values of the European Union, in line with Article 2 of the TFEU.

Article 19 of the TFEU puts forth that the Council may legislate on matters of discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. Article 23 of the Charter, establishing equality between women and men, is a concrete manifestation of the principle of non-discrimination, as is Article 157 of the TFEU, which establishes the principle of equal pay for equal work between men and women. Similarly, CEDAW's Article 11, section d), establishes the right to equal remuneration, which is further analysed in General Recommendation No. 13¹⁹⁴. Article 21 of the Charter uses the expression "*such as*" before enumerating a series of admissible grounds of discrimination, which has led many to interpret this list of discrimination grounds as **non-exhaustive**. In the ECtHR, Article 14 has been interpreted in a similarly wide lens, as referring to any personal characteristic by which persons or groups of persons are distinguishable from each other (see *Kjeldsen, Busk Madsen and Pedersen v Denmark*¹⁹⁵).

¹⁹² For an overview, see the introduction to UN Committee on the Elimination of Discrimination Against Women (CEDAW) General Recommendation No. 28 (2010) on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women. Available at: <https://www.refworld.org/docid/4d467ea72.html>

¹⁹³ International Labour Organizations (1958) *C111 - Discrimination (Employment and Occupation) Convention, 1958 (No. 111)*. Available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C111

¹⁹⁴ UN Committee on the Elimination of Discrimination Against Women (1989) *General Recommendation No. 13: Equal remuneration for work of equal value*. Available here: <https://www.refworld.org/docid/52d925754.html>.

¹⁹⁵ European Court of Human Rights (1976) *Court (CHAMBER) Case of Kjeldsen, Busk Madsen and Pedersen v. Denmark (Application no. 5095/71; 5920/72; 5926/72), Coe.int*. Available at: <https://hudoc.echr.coe.int/fre#>.

In the CEDAW, discrimination is defined in Article 1 as *'any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field'*, a definition which is similar to that in Article 1 of the UN's Convention on the Elimination of All Forms of Racial Discrimination.

Non-discrimination is not just about the duty of States to not discriminate, or even to prevent others from discriminating, but also about developing the conditions for equality. For this reason, international conventions and legislative documents which establish the principle of non-discrimination often clarify that measures of affirmative action - i.e., favouring persons from disadvantaged groups in the pursuit of a more equal distribution of resources and opportunities - shall not be considered discriminatory (such as, for example, Article 5, number 4 of the Convention on the Rights of Persons with Disabilities¹⁹⁶).

In the EU, the Race Discrimination Directive¹⁹⁷ establishes this principle under Article 5, through the concept of **positive action**. The same takes place in the Framework Equality Directive establishing a general framework for equal treatment in employment and occupation¹⁹⁸, under Article 7. Similarly, CEDAW General Recommendation No. 28¹⁹⁹ clarifies that *"identical or neutral treatment of women and men might constitute discrimination against women if such treatment resulted in or had the effect of women being denied the exercise of a right because there was no recognition of the pre-existing gender-based disadvantage and inequality that women face"*.

Under Article 2 of the CEDAW, signatory States should pursue policies towards the elimination of violence against women, with the General Recommendation No. 28 on the Core Obligations of States Parties under Article 2²⁰⁰ clarifying that *"[t]he policy must identify women within the jurisdiction of the State party (including non-citizen, migrant, refugee, asylum-seeking and stateless women) as the rights-bearers, with particular emphasis on the groups of women who are most marginalised and who may suffer from various forms of intersectional discrimination."*

196 UN Sixty-first session of the General Assembly by resolution A/RES/61/106 (2006) *Convention on the Rights of Persons with Disabilities*, Adopted on 12 December 2006 and Entry into Force: 3 May 2008. Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities>.

197 Council of the European Union (2000c) *Council Directive 2000/43/EC of 29 June 2000 Implementing the Principle of Equal Treatment between Persons Irrespective of Racial or Ethnic Origin*, *lex.europa.eu*. Available at: <https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX:32000L0043>.

198 Council of European Union (2000) *Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation*, *lex.europa.eu*. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32000L0078>.

199 UN Committee on the Elimination of Discrimination Against Women (2010) *General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*. Available at: <https://www.refworld.org/docid/4d467ea72.html>.

200 *Ibid.*



Therefore, not only is it clear that all women should be the target of national policies to end violence against women, but also that migrant women should be particularly considered, as especially vulnerable rights subjects. The principle of intersectionality is also present in the Committee on the Elimination of Racial Discrimination's General recommendation No. 35 on Combating racist hate speech, in light of the International Convention on the Elimination of All Forms of Racial Discrimination²⁰¹.

Women often experience multiple biases²⁰². However, in cases of **intersectional discrimination**, sex is often a ground for discrimination which is invisibilised. An example lies in the several cases before the CJEU regarding whether employers could prohibit the wearing of the Islamic headscarf (as a form of religious symbol) in the workplace, or whether it amounted to discrimination on religious grounds. In this case, the fact that this is a potential form of discrimination that only Muslim women may experience (since only women wear the headscarf) was erased in the Court, which inevitably leads to a less complete analysis of the matter, as several commentators have pointed out²⁰³.

Violence against women is understood as a form of sex-based discrimination. As put forth by the Proposal for a Directive on combating violence against women and domestic violence, “[s]uch violence is rooted in gender inequality being a manifestation of structural discrimination against women”, while also stating that the effects of violence against women may be exacerbated in cases of discrimination based on other grounds. The ECHR has also found that violence against women and girls is a form of discrimination, as well as, more concretely, that domestic violence amounts to discrimination²⁰⁴, such as in *Tkheldize v. Georgia* (²⁰⁵), a case of femicide in which the applicant's daughter was abused and ultimately killed by her partner. Relevant statistical data was used to show the systemic failures to protect women and their increased vulnerability to domestic violence. In many such cases, the lack of an appropriate legal framework to tackle violence against women and the systemic inertia of the authorities has led the Strasbourg Court to find that there has been discrimination on the basis of sex, and sanctioned the States to fulfil their positive obligations in this regard, such as in *Volodina v. Russia*²⁰⁶.

201 UN Committee on the Elimination of Racial Discrimination (CERD) (2013) *General recommendation No. 35: Combating racist hate speech, 26 September 2013, CERD/C/GC/35*. Available at: <https://www.refworld.org/docid/53f457db4.html>.

202 European Union Agency for Fundamental Rights (FRA) (2021) *Encouraging Hate Crime Reporting- The Role of Law Enforcement and Other Authorities Report*, Luxembourg. Available at: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2021-hate-crime-reporting_en.pdf.

203 For a critical look into this debate, see Gutiérrez-Solana Journoud, A. (2021) ‘Unveiling Complex Discrimination at the Court of Justice of the European Union: the Islamic Headscarf at Work’, *Feminist Legal Studies*, 29(2), pp. 205–230. Available at: <https://doi.org/10.1007/s10691-021-09458-2>.

204 Several relevant cases can be found in the European Court of Human Rights (2022) Guide on Article 14 of the European Convention on Human Rights and on Article 1 of Protocol No. 12 to the Convention. Available at: https://www.echr.coe.int/documents/d/echr/Guide_Art_14_Art_1_Protocol_12_ENG.

205 European Court of Human Rights (2021) *Section V Case of Tkheldize v. Georgia (Application no. 33056/17)*, *echr.coe.int*. Available at: <https://hudoc.echr.coe.int/fre?i=002-13336>.

206 European Court of Human Rights (2019) *Third Section Case of Volodina v. Russia (Application no. 41261/17)*, *echr.coe.int*. Available at: <https://hudoc.echr.coe.int/fre?i=001-194321>.

Harassment at work is considered a form of discrimination on grounds of sex by Directives 2004/113/EC, 2006/54/EC and 2010/41/EU. The new proposal for a Directive on combating violence against women and domestic violence suggests several measures to increase protection for victims of such crimes. The first ILO global survey on experiences of harassment at work²⁰⁷ has found that migrant women were 8.7 percentage points more likely than migrant men to have experienced violence and harassment, and that migrant women were also more likely than non-migrant women to face any form of violence and harassment.

➔ **Article 23 - Equality between women and men**

Equality between women and men must be ensured in all areas, including employment, work and pay.

The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

The European Union is anchored in values of equality, social fairness, freedom, democracy and human rights. The Treaty on the Functioning of the European Union (TFEU) and the Charter of Fundamental Rights of the European Union provide the basis to combat all forms of discrimination, establishing **equality as a cornerstone of EU policies**.

The EU has a long-standing commitment to equality between women and men. The principles of equality and non-discrimination are at the heart of the European Union. These principles are enshrined in the Treaty on European Union (Article 2) proclaiming these values as the foundational principles of the Union. The Treaty of Amsterdam (Articles 2 and 3) strengthened the EU's legal commitment to gender mainstreaming by formalising equality between women and men as a specific goal and a horizontal objective. Equality is also a fundamental component of the European Pillar of Social Rights, particularly regarding equality (Principle 2). Indeed, equality between women and men constitutes an integral component of human rights, essential to upholding the rule of law and fostering resilient democracies; it is a prerequisite to ensure freedom, security, justice, inclusion, and overall well-being for the entire European society.

An important facet of the right to equality between women and men is women's rights to live free of violence. Male violence against women is a structural violation of women's human rights and is recognised as such by a plethora of international human rights instruments. Much progress has been made, yet there is still a long way to go. As stated by the CEDAW Committee on its General recommendation 35, "*Gender-based violence against women [...] remains pervasive in all countries of the world, with high levels of impunity*". A plethora of universal and regional treaties were adopted during recent years to tackle several forms

²⁰⁷ International Labor Organisation (ILO) (2022) *Experiences of Violence and Harassment at Work: A global first survey*. Available at: <https://doi.org/10.54394/IOAX8567>.



of violence experienced by women, be it in the public or private sphere; yet private forms of violence, such as domestic violence, remain on the margins, legitimated by public/private divides, away from State's purview thus-far, and protected by the right to privacy. The trivialisation of violence happening in a private setting has assumed an increased preponderancy, especially in the pandemic context.

As argued by Edwards, before the 1990s *"violence against women was not seen as a major issue"* nor *"as an issue at all"*. Nonetheless, occasional references were made to certain forms of violence such as, *"rape, prostitution, physical assault, mental cruelty, child marriage, forced marriage"*. The UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was adopted in 1979 and no reference was made to violence against women.

It was not until 1993 at the World Conference on Human Rights in Vienna that women's rights were deemed human rights. The UN General Assembly Declaration on the Elimination of Violence against Women (DEVAW) was a landmark recognition of violence against women as a human rights issue, stemming from *"historically unequal power relations between men and women"*, that actively undermines women's rights. In the same year, the first Special Rapporteur on Violence against Women was appointed.

At regional level, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (also known as the Convention of Belém do Pará) was adopted in 1994 as the first treaty in history that contemplated the issue of violence against women. In 2005, the Protocol to the African Charter on Human and Peoples' Rights on the Human Rights of Women (Maputo Protocol) entered into force. The Protocol is certainly "ahead of its time", superseding CEDAW and general recommendation No. 19 in many aspects. Economic harm is duly recognised as a form of violence, unlike in the Protocol's ancestors.

As correctly argued by Fareda Banda, it is of the utmost importance to acknowledge this particular type of violence, *"given women's economic vulnerability and dependence on men, including husbands and fathers"*. In 2019, the Committee of Ministers of the Council of Europe adopted a ground-breaking recommendation that advanced the first international juridical definition on sexism, acknowledging that *"sexism is reinforced by gender stereotypes affecting women and men, girls and boys, and runs counter to achieving gender equality and inclusive societies"*. This recommendation associates violence against women with sexism, asserting that sexism can lead to other forms of violence, as part of a "continuum of violence" that excludes, discriminates, intimidates, and diminishes. The list of international legal instruments that currently address violence against women goes on.

To summarise, Article 23 of the EU Charter of Fundamental Rights is a cornerstone of women's rights within the European Union. It reflects the Union's unwavering commitment to equality between women and men, setting a clear framework for action and progress. Nevertheless, effective implementation, enforcement, and continuous advocacy are essential to ensure that the principles enshrined in this article translate into tangible improvements in the lives of women across the EU.

→ Article 35 - Health care

Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all the Union's policies and activities.

The EU Charter on Fundamental Rights upholds the right of all individuals to access preventive healthcare and to receive medical treatment in accordance with the laws of their respective Member States. This principle is reinforced by Article 24, which emphasises that children are entitled to necessary protection and care, and by Article 31, which establishes the right to work under healthy and safe conditions.

The human right to health first appeared at the international level in the Constitution of the World Health Organisation (WHO) in 1946 and was later included in Article 25 of the Universal Declaration of Human Rights in 1948. It has since been embedded in different legally binding treaties, with the most comprehensive provision of the right to health enshrined in the 1966 United Nations (UN) International Covenant on Economic, Social and Cultural Rights (ICESCR). In its Article 12, the ICESCR enshrines the recognition of everyone's right to enjoy "the highest attainable standard of physical and mental health".

Mental health is an integral part of health and it was recognised by the European Commission as a state of well-being in which individuals realise their own abilities and can cope with the stresses of life and contribute to their community.²⁰⁸ The Commission also states that *"mental illness is associated with many forms of inequalities and special attention must be paid to people in vulnerable situations. Individuals may belong to one or more vulnerable groups at the same time, such as for example single mothers in poverty or disabled people recovering from severe illness [...] Women are almost twice as likely as men to experience depression. This is due to a multitude of factors such as biology, life circumstances and cultural stressors. Victims of gender-based violence (GBV) are particularly vulnerable and the Commission will enhance the protection and support to victims of gender-based violence, including cyber violence, through the implementation of the EU's upcoming obligations under the Istanbul Convention and the EU's future directive on violence against women and domestic violence. The Commission will address the prevention and combating of harmful practices against women and girls and establish an EU network on the prevention of gender-based violence and domestic violence. Postnatal depression and other mental health issues that can arise during pregnancy and afterwards must be addressed, to protect the mental health of both children and women."* In addition, for the European Commission, *"Refugees and displaced persons, notably those fleeing from war; persecution or conflict (such as displaced people from Ukraine) are more prone to develop mental health problems and early responses are needed to reduce distress [...]"*

²⁰⁸ European Commission (2023) *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a Comprehensive Approach to Mental Health COM(2023) 298 final*, europa.eu. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2023%3A298%3AFIN>



Moreover, according to the Convention on the Elimination of Discrimination against Women (CEDAW), General Recommendation No. 24 (Women and Health), *“while biological differences between women and men may lead to differences in health status, there are societal factors that are determinative of the health status of women and men and can vary among women themselves. For that reason, special attention should be given to the health needs and rights of women belonging to vulnerable and disadvantaged groups, such as migrant women, refugee and internally displaced women, the girl child and older women, women in prostitution, indigenous women and women with physical or mental disabilities”*.

Women are more likely than men to be confronted with external risk factors for **mental health**. These include male aggression, familial and communal dominance rooted in patriarchy, detrimental customs, administrative violence, exploitation in both sexual and professional realms, insufficient social backing, and economic hardships such as unemployment and poverty²⁰⁹. According to the Report of the European Network of Migrant Women on migrant women's mental health and wellbeing²¹⁰ (October 2021) *“during migration, in addition to living with pre-migration traumatic experiences, many women encountered different stressors, such as restrictions and barriers in access to housing, education, health, career; low or no income, the burdensome and unwelcoming processing of their asylum cases, lack of governmental support and discrimination in the services, which left them with feelings of anxiety, depression, and post-traumatic stress disorder. Some of these women often linked their negative emotions such as stress and anxiety to loss of professional status and having no power over their lives - they felt like they had ‘become a nobody’ and it is highlighted the importance of overcoming language barriers, the gaps in the intercultural understanding of the professionals, long waiting times to see a mental health specialist, lack of access to basic information, lack of awareness about services and the cultural taboos about mental health within the migrant communities..”*²¹¹

The right to health encompasses also the right to reproductive health and rights, which is clarified by the 1994 Cairo Declaration on Population and Development, defining for the first time reproductive health. This Declaration makes it clear that reproductive health is not solely the absence of disease but rather a complete physical, mental and social well-being. As evidenced by the International Conference on Population and Development (ICPD), reproductive rights are not a new set of rights. Indeed, they comprise certain human rights already recognised in national laws, international human rights documents and other consensus documents. The fulfilment of sexual and reproductive health rights does not happen in a void: these rights are intrinsically connected to other human rights such as the right to life, the right to equality, the right to family life, the right to privacy and the right to be free from degrading and inhuman treatment.

²⁰⁹ Arbid, A. and Ahrabare, A. (2022) *Worldplaces: Meaningful Engagement and Integration of Migrant Women*, [migrantwomennetwork.org](https://usercontent.one/wp/www.migrantwomennetwork.org/wp-content/uploads/WORLDPLACES-TOOLKIT-Migrant-Women-Engagement-WEBFINAL-.pdf), p. 36. Available at: <https://usercontent.one/wp/www.migrantwomennetwork.org/wp-content/uploads/WORLDPLACES-TOOLKIT-Migrant-Women-Engagement-WEBFINAL-.pdf>.

²¹⁰ European Network of Migrant Women (2021) *Migrant Women's Mental Health & Wellbeing*, p. 25. Available at: <https://usercontent.one/wp/www.migrantwomennetwork.org/wp-content/uploads/Mental-Health-Report-FINAL-Oct-2021.pdf>.

²¹¹ *Ibid* p. 25

According to the Beijing Platform for Action, the human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, and to do so free of coercion, discrimination and violence.

Sexual and reproductive health rights (SRHR) constitute an essential element of comprehensive healthcare provision and are protected as human rights in such instruments as the International Covenant on Economic, Social and Cultural Rights and CEDAW. Health rights, in particular sexual and reproductive health rights, are fundamental women's rights which should be enhanced and cannot in any way be watered down or withdrawn as their realisation is an essential element of human dignity and is intrinsically linked to the achievement of equality between women and men and combating violence against women and girls.²¹²

In its General comment No. 22 (2016), the Committee on Economic, Social and Cultural Rights (CESCR) has identified a plethora of barriers that, as of 2023, still hamper or prevent women's full enjoyment of their sexual and reproductive health rights. These barriers, ranging from criminalisation of abortion to lack of sexuality education or accessible and accurate information on abortion, contraception, sexually transmitted infections or maternal health, account for clear violations of women's human rights. Women have suffered disproportionately from the hardships of the COVID-19 pandemic, by being at the front-line of health service provision -especially nurses, midwives and community workers- and by performing most of the care work. Indeed, the pandemic has exponentially intensified demand for care work, particularly of older persons and ill family members. Simultaneously, violence in the private sphere and violence against women in general, remains a pervasive issue- a '*shadow pandemic*' that must be stopped. There cannot be *de jure* or *de facto* equality while women's concerns are not being taken seriously.

Medical assistance provided at borders often does not take into account the sex-specific needs of women and girls, in particular, sexual and reproductive health, menstruation, pregnancy, or breastfeeding. The frequently reported absence of specialist medical assistance to the victims of rape is cause for alarm. More generally, gynaecological services for women are not seen as essential services in the context of medical care provided upon arrival. Additionally, screening at borders upon arrival hinders women's reporting of victimisation and abuse. Disclosing abuse requires time, the victim's realisation of her lived experience and trust-building with experienced professionals- elements practically impossible to ensure in the screening processes at border arrivals.

Access to sexual and reproductive health rights and services remain a significant impediment to the achievement of equality between women and men. It is of the utmost importance that States prioritise the protection of women and girls' sexual and reproductive health rights and adopt concrete measures that ensure women and girls' access to comprehensive sexuality education and information, eliminate any legal practical

²¹² European Parliament (2021b) *REPORT on the situation of sexual and reproductive health and rights in the EU, in the frame of women's health*, [www.europarl.europa.eu](https://www.europarl.europa.eu/doceo/document/A-9-2021-0169_EN.html). Available at: https://www.europarl.europa.eu/doceo/document/A-9-2021-0169_EN.html.



or social barrier and finally, enforce accountability mechanisms that entail investigation and prosecution of the perpetrators, whilst providing adequate remedies to the victims.

According to the Report - A9-0169/2021 of the Committee on Women's Rights and Gender Equality of the European Parliament (the FEMM committee) on the situation of sexual and reproductive health and rights in the EU, in the frame of women's health, the European Parliament calls for zero tolerance of sexual violence and violence against women, including trafficking, FGM and child / forced marriage, forced abortion, sex-selective abortion, sexual and reproductive exploitation, and sexual enslavement through religious coercion.

However, in practice, there are many networks trafficking women for reproductive exploitation and a black market in which the children born from this exploitation are sold. On 8 February 2021, Members of the European Parliament debated measures to combat trafficking in human beings. On this occasion, it was stated that human trafficking also applies to the process of surrogacy and illegal adoption²¹³. Europol in its 2021 report Threat Assessment on Serious Organised Crime in the EU (SOCTA 2021)²¹⁴, refers to "*forced participation in criminal activities, forced begging and obtaining economic and social benefits by using their identity, trafficking for organ and tissue removal.*" According to the Joint Investigation on migrant women and reproductive exploitation in the surrogacy industry by ENoMW and ICASM²¹⁵, women are also trafficked to participate in surrogacy programs, to sell their newborn babies, as well as to enter into sham marriages and to be subjugated as victims of domestic slavery, with elements of reproductive exploitation. The investigation noted that women recruited to and used in surrogacy, egg donation and forced pregnancies are often very vulnerable both economically and socially²¹⁶. In April 2024, the European Parliament adopted a revised version of the EU Anti-Trafficking Directive that defined the "exploitation of surrogacy" as a distinct form of trafficking that EU States must eradicate, including through adopting measures addressing the demand for it²¹⁷.

213 European Parliament (2023b) *Human trafficking: MEPs Want Strong Focus on Victims' Rights | News | European Parliament*, www.europarl.europa.eu. Available at: <https://www.europarl.europa.eu/news/en/press-room/20230929IPR06110/human-trafficking-meps-want-strong-focus-on-victims-rights>.

214 According to Europol and the European Union (2021), traffickers abuse their victims to force them into begging, to involve them in forced crime, to force organ and tissue harvesting and, sometimes, to obtain financial and social benefits by using their identity. Women are also trafficked to participate in illegal surrogacy programmes, to sell their newborn babies, to enter into sham marriages and to be victims of domestic slavery. As with other types of human trafficking, the recruitment of victims is increasingly taking place online. Victims are lured by false job offers, advertisements for marriage to strangers and offers to buy babies. Most victims of trafficking are homeless, mentally or physically disabled, single parents with children, or elderly.

215 European Network of Migrant Women (ENoMW) and The International Coalition for the Abolition of Surrogate Motherhood (ICASM) (2022) *Joint Investigation: Migrant Women and Reproductive Exploitation in the Surrogacy Industry*, pp. 31–32. Available at: <https://www.migrantwomennetwork.org/wp-content/uploads/ENG-Final-Migration-and-surrogacy.pdf>.

216 *Ibid*

217 European Parliament (2023) *Amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims* (COM(2022)0732 – C9-0431/2022 – 2022/0426(COD)), 16.04 2024

Irrespective of the elements of trafficking which are always present in the transaction whereby a new-born becomes a commodity, and which may also involve trafficking of the child's birth-mother, this form of reproductive exploitation almost always involves women in a state of financial necessity who may enter this activity for the betterment of their family, and sometimes under pressure from male figures in their lives such as fathers, husbands, or brothers. Surrogacy, along with procedures like oocyte extraction and coerced pregnancies, should be seen as a violation of the dignity of women, a violation of their autonomy over their own bodies and of their reproductive rights, and a breach of the principles that promote and ensure equality between women and men. Additionally, when these practices occur across international borders, they often involve the coerced relocation of women while domestically they may entail restrictions on their freedom of movement, further infringing upon their freedom of movement.

Likewise, obstetric violence and gynaecological violence are realities that many women experience without even identifying these as violations of their rights. These serious violations of women's human rights are often concealed and regrettably overlooked. Acts such as the practice of medical procedures without informed consent, physical, psychological, and verbal abuses, denial of anaesthesia, support, or respect for a woman's choices during childbirth, vividly highlight the widespread prevalence of these practices.

As mentioned by Resolution 2306 (2019) of the Parliamentary Assembly of the Council of Europe on 'Obstetric and Gynecological Violence, these grave violations take place in the privacy of medical consultation or childbirth. Women are victims of practices that are violent or that can be perceived as such. These include inappropriate or non-consensual acts, such as episiotomies and vaginal palpation carried out without consent, fundal pressure, or painful interventions without anaesthetic. Sexist behaviour in the course of medical consultations has also been reported.

The need for monitoring and combating obstetric violence is emphasised by various international institutions:

- A report presented to the United Nations Assembly in 2019, recommends that states promote informed consent and prevent obstetric violence through measures such as monitoring healthcare services, collecting and annually publishing data on the percentage of caesarean sections, vaginal births, episiotomies, and other treatments related to childbirth, obstetric care, and reproductive health services²¹⁸.
- The Council of Europe Parliamentary Assembly's resolution on Obstetric and Gynecological Violence urges health and equality ministries to collect data on medical procedures during childbirth and cases of gynaecological and obstetric violence, to conduct studies on this issue, and to publish them²¹⁹.

²¹⁸ Simonovic, D. (2019) *A Human rights-based Approach to Mistreatment and Violence against Women in Reproductive Health Services with a Focus on Childbirth and Obstetric Violence : Note / by the Secretary-General*, digitallibrary.un.org. Available at: <https://digitallibrary.un.org/record/3823698?ln=en&v=pdf>.

²¹⁹ Parliamentary Assembly of the Council of Europe (2019) *Resolution 2306 (2019) Obstetrical and gynaecological violence*, assembly.coe.int. Available at: <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=28236>.



- The European Parliament, in a 2020 resolution on the situation of fundamental rights in the European Union²²⁰, states that “cases of gynaecological and obstetric violence have been increasingly reported in various Member States”. It takes a clear position in 2021 in another resolution where it “[r]eminds that violations of sexual and reproductive rights, including sexual, gynaecological, and obstetric violence and harmful practices, constitute a form of gender-based violence against women and girls”²²¹.

10. Conclusions

The European Union has a plethora of legal instruments aimed at protecting, promoting and fulfilling women’s human rights. The fundamental rights of women are enshrined in the EU Charter that is yet to reach its potential to advance women’s rights and substantive equality.

The “gender neutrality” in policy and practice, and the acts of omission by states, i.e. failing to acknowledge and address certain forms of wide-spread and structural discrimination against women, can amount to discrimination against women in and of itself. When the EU Charter is applied or interpreted without a due regard to the specific circumstances of individual women victims of discrimination and violence, and/ or without a due regard to the socio-economic and legal context that reproduces and exacerbate sex, ethnic origin, or legal status inequalities, it may inadvertently hamper victims’ access to their fundamental rights. Cumulatively, it may also prevent the Union from fulfilling its obligation to enforce the principle of equality between women and men.

Migrant, including intra-EU, refugee and asylum-seeking women suffer multiple and intersecting forms of discrimination that should be viewed in the context of surrounding circumstances and unequal power relationships that these women are often forced to endure. In order to do justice to the victims, and to uphold the rule of law, migration authorities processing asylum claims, law enforcement processing cases of male violence, or legal professionals, and judiciaries processing cases involving migrant women, require an application of women’s rights oriented, victim-centred and trauma-informed approach.

A true application of such approach can only be achieved through a combined effort of and a collaboration between specialist women’s rights organisations, including migrant women’s organisations, and state authorities. The former are in the unique position to provide guidance to the latter to protect the victims and prevent a repetition of crime or injustice.

²²⁰ European Parliament (2020) *European Parliament resolution of 26 November 2020 on the situation of Fundamental Rights in the European Union - Annual Report for the years 2018 - 2019 (2019/2199(INI))*, www.europarl.europa.eu. Available at: https://www.europarl.europa.eu/doceo/document/TA-9-2020-0328_EN.html.

²²¹ European Parliament (2021) *European Parliament resolution of 16 September 2021 with recommendations to the Commission on identifying gender-based violence as a new area of crime listed in Article 83(1) TFEU (2021/2035(INL))*, Europa.eu. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021IP0388>.

The latter has the power to enforce and monitor the implementation of such approach. It has also a duty and an obligation to treat everyone equally before the law, and to create the conditions where equality before the law is not interpreted to preclude special measures, differentiated treatment or mainstreaming of the principle of equality between women and men as stipulated in the core international and European instruments guaranteeing fulfilment of women's rights.

11. Recommendations

- I. **Member States should ensure that migrant, refugee, and asylum-seeking women and girls do not face discrimination on any grounds.**
- II. **Member States should adopt the necessary measures to enhance the ability of undocumented migrant women and girls to access their fundamental rights,** and for those who are victims of violence against women or trafficking in human beings, to report such crimes without fear of removal.
- III. **Member States should adopt a child rights-based approach** to migrant, refugee, and asylum-seeking girls, which takes account of the age and specific vulnerable situations and needs of girls.
- IV. **Migrant, refugee, and asylum-seeking women and girls must be provided with relevant and accessible information and advice in a way and in a language that they can understand.** This should also cover the right to interpreters (including sign-language interpreters), legal professionals, and intercultural mediators.
- V. **Member States should ensure the deployment of specific protection mechanisms,** including places in women-only accommodation facilities (or with at minimum separate rooms and bathrooms for women and men), dedicated safe spaces for women and girls, and spaces for confidential interviews with service providers alongside the presence of psychosocial support and translators.
- VI. **Member States should ensure migrant women's access to legal advice and free legal aid** which should be granted, under the conditions provided for by internal law, in order to support migrant, refugee, and asylum-seeking women and girls who are victims of any forms of violence against women and/ or trafficking in human beings, through criminal, administrative and civil proceedings, as appropriate, including the pursuit of compensation claims and legal redress against the perpetrators.
- VII. **Member States should tackle administrative barriers to facilitate access to health services:** simplifying, translating, and diffusing rules on the process for accessing care, removing expensive or unnecessary requirements, and proactively challenging the impact of cultural barriers will facilitate access of migrant women and girls to the health services they need, including sexual and reproductive health services.



VIII. Member States should ensure that the protection provided by legal treaties, notably the Istanbul Convention, the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, and the Council of Europe Convention on Action against Trafficking in Human Beings, is thoroughly understood by all those responsible for dealing with migrant women and that these treaties are efficiently implemented.

IX. Member States should fund awareness-raising campaigns on migrant and refugee women's rights, including as regards access to education and work; participation in social, economic, and cultural life; protection against all forms of violence against women; domestic violence, and access to justice.

X. Member States should establish mechanisms to ensure the systematic consultation of migrant and refugee women's organisations, and organisations that represent these women in the designing and implementation of policies that concern them.

XI. Member States should integrate the principle of equality between women and men into the training of professionals and public officials at all levels involved in the design and implementation of integration programmes. Furthermore, these trainings must address all forms of violence that affect migrant women and girls disproportionately, such as sexual exploitation- including prostitution and pornography, trafficking, child and forced marriage, sexual violence, domestic violence, FGM, traditional harmful practices, Non-State Torture and femicide.

XII. Member States should increase the collection, analysis and dissemination of sex- and age-disaggregated data and statistics on violence against migrant women and girls. Such analysis should also apply in the areas of asylum, migration and integration.





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