



UNIVERSIDADE CATÓLICA PORTUGUESA

Judging Asylum Through a Gendered Lens

The Role of the CJEU in Shaping Gender-Sensitive Asylum Norms

Mariana dos Santos Cruz

Master's in Law

Faculdade de Direito | Escola do Porto

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Abstract

English

The following dissertation analyzes the role of the Court of Justice of the European Union in shaping gender-sensitive asylum norms and policies, within the European Union. The study will dissect recent case law to explain how a gendered perspective can be applied when looking at asylum law, as well as recent legislation to evaluate its application across Member States and the interplay with international legal documents such as the CEDAW and the Istanbul Convention, adopting a qualitative approach. The findings conclude that, despite the crucial role played by the CJEU in advancing the protection of women asylum seekers, the implementation of gender-sensitive norms and interpretations remains inconsistent across Member States, and EU asylum law still lacks on establishing clear gender-sensitive norms. Nonetheless, the CJEU remains as one of the main tools in the work towards a gender-conscious asylum system, through its progressive jurisprudence and analysis of EU regulations through a gendered lens.

Keywords: CJEU, asylum, gender, international protection, European Union, women refugees.

Português:

Esta dissertação analisa o papel do Tribunal de Justiça da União Europeia na definição de normas e políticas de asilo sensíveis ao género, na União Europeia. O estudo irá dissecar jurisprudência recente para explicar como uma perspectiva de género pode ser aplicada ao olhar para o direito de asilo, bem como a legislação recente para avaliar a sua aplicação nos Estados-Membros e a interação com documentos jurídicos internacionais, tais como a CEDAW e a Convenção de Istambul, adotando uma abordagem qualitativa. Os resultados concluem que, apesar do papel crucial do TJUE na proteção das mulheres requerentes de asilo, a implementação de normas e interpretações sensíveis ao género continua inconsistente entre Estados-Membros, e o direito de asilo da UE ainda carece de normas claras sensíveis ao género. No entanto, o TJUE continua a ser um dos principais instrumentos na construção de um sistema de asilo sensível ao género, através da sua jurisprudência progressiva e da análise dos regulamentos da UE através de uma perspectiva de género.

Palavras-chave: TJUE, asilo, género, proteção internacional, União Europeia, mulheres refugiadas.

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List of Acronyms and Abbreviations

AG – Advocate General

APR – Asylum Procedures Regulation

CEAS – Common European Asylum System

CEDAW – Convention on the Elimination of All Forms of Discrimination Against Women

CJEU – Court of Justice of the European Union

ECHR – European Charter of Human Rights

ECtHR – European Court of Human Rights

ECJ – European Court of Justice

EU – European Union

EUAA – European Union Agency for Asylum

FGM – female genital mutilation

GBV – gender-based violence

IOM – International Organization for Migration

NGO – Non-Governmental Organization

NPMA – New Pact for Migration and Asylum

PSG – particular social group

PTSD – post-traumatic stress disorder

SGBV – sexual and gender-based violence

TFEU – Treaty on the Functioning of the European Union

TPD – Temporary Protection Directive

UN – United Nations

Introduction

“We are all migrants” – this was the premise Walter Kasempa, Ambassador for the International Organization for Migration (IOM), brought to IOM’s 115th General Council. Truthfully, the history of migration aligns with the history of humanity, but this notion seems to be more and more forgotten in a world where, while the number of migrants is growing¹, the entry and asylum policies of States are becoming stricter. Among the migrants seeking protection, women asylum seekers represent a particularly vulnerable group exposed to specific dangers en route and in host countries, requiring, therefore, a gender-sensitive application of asylum norms. The European Union (EU), often known for being a pioneer in advancing measures to fight inequality and discrimination, has been facing complex challenges in balancing its commitment to human rights with the increasingly restrictive asylum policies of Member States. This thesis aims, therefore, to analyze the extent to which the jurisprudence of the Court of Justice of the European Union (CJEU) and European legal initiatives contribute to the development of gender-sensitive asylum norms and practices amongst Member States, examining how key principles are applied in the protection of women asylum seekers. Through the analysis of EU case law, its national application and evolution, the aim is to evaluate the CJEU’s role in the protection of women who cross borders in search for a dignified and safe life, amidst harsh legislations of Member States, emphasizing the need for legal and safe migration pathways.

1. The Specific Vulnerabilities of Women and Girls as Asylum Seekers

Gender norms and biases affect many aspects of daily life, but they are specifically challenging for migrants, impacting opportunities, risks and obstacles they might face during their journey, along with other overlapping factors such as race, age, ethnicity, nationality, etc. Migration tends to be depicted as male-dominated, with women and girls

¹ IOM (2024).

seen as “tied movers”², not accounting for female needs and specifications. Even if recent data shows an increase in the presence of women migrating independently since the 1980s, the collection of gender-disaggregated data remains uncommon. By the end of June 2024, over 122.6 million people worldwide remained forcibly displaced³, and among these, 49% are women and girls⁴.

Forced displacement clearly exacerbates pre-existing vulnerabilities, exposing women and girls to unique challenges such as sexual and gender-based violence, smuggling and limited access to essential services and cares. This demands a comprehensive analysis, highlighting the structural and societal factors that contribute to them. Within this chapter, these specific vulnerabilities will be explored in the context of forced migrations, focusing on the risks women and girls face especially along irregular migration pathways.

1.1. The Specific Risks Faced by Women on the Move

The experience of asylum-seeking women and girls differs significantly from the one depicted by male counterparts, due to specific gendered barriers and risks, starting at their home countries, where gendered social roles and norms can play a big part – it might be problematic for a women to live alone or without the protection of a husband or male relative, to work outside the house or even to travel by herself. In these circumstances, leaving to claim asylum elsewhere may seem almost unattainable⁵. Women may also find themselves economically dependent, making it very difficult to pay for a safe journey and recur to smugglers or try to raise money by swapping services, namely sexual relations, as affirmed by Freedman. Additionally, as women often assume the role of primary caretakers of children, travelling with them under forced migration circumstances also weighs on their decision to flee, since young children will also be exposed to the dangers of the journey. When travelling through irregular migration pathways, women alone also expose themselves to violence and/or sexual abuse. Exacerbated by restrictive policies

² IOM (2024), Ch. VI.

³ UNHCR (2024).

⁴ UNHCR (2023)

⁵ FREEDMAN (2015), p. 25.

aimed at preventing asylum seekers from reaching host countries, this danger is even more likely when using the services of smugglers, making women more vulnerable to sexual exploitation, extortion or forced prostitution⁶.

SGBV is defined by IASC and UNHCR as “an umbrella term for any harmful act that is perpetrated against a person’s will and that is based on socially ascribed (i.e. gender) differences between males and females. It includes acts that inflict physical, sexual or mental harm or suffering, threats of such acts, coercion, and other deprivations of liberty”⁷. It encompasses harmful acts such as physical, verbal, emotional and sexual abuse, rape, sexual coercion, female genital mutilation (FGM), human trafficking, etc. Among refugees, a survey of Afghan women refugees in Iraq from 2019 reported that 80% experienced SGBV in the past year, and the same results were observed in a refugee camp in Canada in 2020, in Uganda in 2021 and Ethiopia in 2023⁸. Women and girls are clearly at a heightened risk of facing this kind of violence during the migration or displacement processes, experiencing it at any point of their journeys. Women traveling alone are also easily targeted by gangs, thieves and other migrants. All these factors cause not only physical injuries but also trauma and psychological consequences, forcing them to be in a constant state of vigilance and anxiety⁹.

When it comes to health care and services, people living in situations of forced migration are generally unable to receive the help they need and to which they have a right¹⁰. It matters to analyze the barriers imposed to women’s access to reproductive and sexual health, as well as trauma and PTSD care. Data shows that these women and girls have increased risk of contracting sexually transmitted infections and of having unwanted pregnancies and abortions¹¹. However, the healthcare centers in places of entrance and along the routes are not always ready to receive and take care of these concerns, resulting in limited access to appropriate sexual and reproductive healthcare.

⁶ *Ibid*, p. 26.

⁷ UNHCR.

⁸ FRASER (2024), p. 98.

⁹ *Ibid*, p. 101.

¹⁰ MCGINN (2009), p. 129

¹¹ SAWADOGO, et al. (2023).

1.2. The Impact of Irregular Migration for Women and Girls

Irregular migration poses many challenges, both for States and migrants, exposing them to different forms of exploitation, forced labor and trafficking in persons, also raising security concerns for the State of arrival¹². In situations of conflict or persecution, the use of risky migration pathways increases significantly when alternative, safe and regular pathways do not exist or are inaccessible, due to tight border controls. Once again, we see key issues related specifically to migrant women, whose increased reliance on irregular routes exposes them to heightened vulnerabilities¹³.

Women tend to rely on smugglers more often than men do when to assist them during their irregular journey, also finding it harder to pay their debts afterwards¹⁴. Human trafficking for forced labor and sexual is one of the most common dangers that affect mostly women and girls en route. This predatory behavior has reached “epidemic proportions”¹⁵, because displacement strips women of economic and educational opportunities and induces isolation and poverty, without adequate access to shelter and basic healthcare.

Even after overcoming the clear danger of criminals and potential traffickers along irregular pathways, many women asylum seekers are met with difficulties beyond the journey, since they skip registration processes in destination countries that would allow them to access rights and services, leaving women and children unknown and vulnerable and breaking their connection with the State. Without this possible protection, women tend to rely on unregulated domestic work, where they are unaware of their rights and unable to redress discrimination or unfair treatment.

Finally, it is relevant to mention that irregular migrant women are highly vulnerable to death during the journey, either at the physical border, en route, during detention, deportation or on forced returns to their homelands, and even as a result of hate

¹² UNHCR.

¹³ PICKERING (2020), p. 7.

¹⁴ *Ibid*, p. 10

¹⁵ MARTIN; CALLAWAY (2009).

crimes, exploitation, etc.¹⁶. However, female deaths along irregular migration routes remain largely invisible, with little reliable data documenting border-related deaths, according to Pickering and Powell, since often the sex of those who died is not recorded and disaggregated data on the deaths of men and women is not provided.

1.3. The Fragilities Within Legal Frameworks

According to Valji, the 1951 Convention relating to the Status of Refugees is thoroughly “gender-blind” and has long excluded women from the international right to protection from persecution¹⁷. Even if this protection is supposed to be gender-neutral, many critics noted the fact that it was drafted through the lens of male refugees, failing to offer immediate protection to women because their persecution is not recognized as such by the criteria at cause¹⁸.

The principle of non-refoulement enshrined in the Convention should ensure that a person fleeing truly dangerous situations is given a fair opportunity to be granted asylum. Through the years, however, changes and developments in asylum law in destination countries, mainly EU Members, have often increased insecurity and vulnerability for asylum seekers when it comes to the approval of their requests for refugee status¹⁹.

When exposing their cases to apply for asylum, the burden of proof arises as a barrier to these asylum seekers, who face suspicion and disbelief from immigration officials and judges and are required to present a higher level of proof to avoid rejection. Often, this proof demands physical evidence of violence or torture, and for women victims of sexual violence or abuse, this can be harder to provide, since medical examinations often heighten the feeling of humiliation or shame, and some are not able to even accede to a medical center²⁰. Because of this, lack of proof is a common

¹⁶ PICKERING; POWELL (2020), p. 10.

¹⁷ VALJI (2001), p. 25.

¹⁸ FREEDMAN (2015), p. 69.

¹⁹ *Ibid*, p. 137.

²⁰ *Ibid*, p. 89.

denominator for women's asylum claims to be rejected. Additionally, the rising number of women claiming asylum based on rape or sexual violence led to a problem of credibility, as stated by Freedman, where they were accused of retelling the same stories or omitting details when they first make their claims. A woman must also prove not only a well-founded fear of persecution, but also that she cannot expect any protection from State authorities – clearly, this leaves space for a refusal of claims based on the fact that, for example, a certain type of violent action is established as a crime by law, but, despite that, authorities do not persecute or arrest those who commit the crime.

1.4. Conclusion

When observing the data, one can conclude that women indeed face risks that differ from those experienced by male refugees before leaving, during their journey and when arriving at the destinations, but asylum is still inherently thought by men for men. This chapter has explored how the vulnerabilities women are subjected to manifest themselves throughout the migration process, and how such experiences are both shaped by and reflective of fragilities in existing legal and humanitarian frameworks.

Women and girls are disproportionately affected by gender-specific risks, including SGBV, human trafficking, exploitation and a limited access to health services. These risks are exacerbated during irregular migration, where the lack of legal protection makes them vulnerable to abuse by traffickers, smugglers and even state authorities. The intersection of gender and migration thus requires nuanced approaches that go beyond a “one-size-fits-all” framework to address the specific needs and experiences of women and girls. The lack of accessible pathways forces women into irregular channels, where they are exposed to dangerous conditions and often left without access to justice or basic human rights protections.

Finally, the report examines how the European asylum system interacts with the aforementioned vulnerabilities. Despite the EU's commitment to gender-sensitive policies on asylum, their implementation varies widely across Member States, which leads to disparities in the treatment of women asylum seekers and refugees. This inconsistency clearly undermines the principle of non-refoulement and the broader goals of the Common European Asylum System (CEAS), as will be discussed posteriorly. The tensions between protective legal frameworks and increasingly restrictive migration

policies further exacerbate the precariousness of women refugees, leading them into a cycle of vulnerability and exclusion.

Despite being presented as highly vulnerable, women are not and cannot be seen as passive victims, in dire need of external protection, since this view of victimhood and passivity will only exacerbate current differences. Both individually and collectively, women and girls take actions to cope with, overcome, or even avoid vulnerabilities as part of their daily lives²¹. They raise awareness about GBV in their refugee communities, survivors get together in informal groups to speak about their experiences and support each other, and these actions are often the biggest support they have, sometimes even result in the formalization of youth groups and NGO's. This illustrates how women take action against the vulnerabilities and navigate through their lives in refugee camps, building a support net for each other – as stated by Krause, “being vulnerable (...) does not mean being inactive”.

A comprehensive strategy that incorporates gender sensitivity at every level of the asylum process is necessary to address the unique vulnerabilities faced by refugee women and girls. This entails guaranteeing access to safe and lawful migratory routes, enhancing safeguards against SGBV, and standardizing the application of gender-sensitive laws among EU Member States. The upcoming chapters will analyze the jurisprudence of the CJEU and how its rulings have influenced the establishment of gender-sensitive asylum policy requirements, in order to determine how the EU may change and adapt to current times, abandoning the perspective of male refugees and advancing regular, safe, and lawful migratory routes, ultimately leading to a more just and equitable asylum system.

2. Gender Sensitive Approach in the Jurisprudence of the CJEU

In international law, legal instruments such as the 1951 Refugee Convention, the Istanbul Convention and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) provide a framework for protecting the rights of those women who seek refuge outside their own countries. Alongside them, the EU, assuming its classical role of legislator and protector of human rights, has developed a

²¹ **KRAUSE** (2025).

Common European Asylum System that has gradually incorporated gender-sensitive elements in its legal texts²². In this context, the Court of Justice of the European Union has been playing a crucial role in shaping and advancing EU legislation, adapting and interpreting it in the light of a gender-sensitive point of view, acknowledging the specific experiences and circumstances of women and girls seeking protection in the EU. Nevertheless, continuous progress is needed to address the challenges and violations of human rights faced by this specific group of migrants.

In the following chapter, the role of the CJEU will be analyzed when it comes to the development of a gender-sensitive asylum framework, through case law and its implications. On the one hand, the CJEU has made clear progress in recent years: it recognized GBV as a form of persecution and ground for asylum or subsidiary protection, acknowledged the importance of making case-by-case analysis on the situation of asylum seekers and recognized that non-state actors can also be prosecutors; however, the road towards a secure migration process for women and girls is still long, and this chapter aims to critically analyze the national impact of the Court's decisions in combating the existing gaps in the effective protection of female asylum seekers.

2.1. The Role of the CJEU in the Development of the European Asylum Law

The Court of Justice of the European Union has the ultimate goal of interpreting EU law and contributing to an “ever closer union between the peoples of Europe”²³, now playing a role of high importance in the development and application of European asylum law. Given that EU policy must be in accordance with international law and treaties, the Court plays a pivotal role in interpreting the law, so it is in accordance with them. It constitutes the judicial authority of the European Union and assures the uniform application and interpretation of all EU law, in cooperation with national courts and tribunals in Member States. By adjudicating disputes between Member States, EU institutions, and individuals, the CJEU set precedents and has influenced both legislative and policy developments in areas such as the principle of non-refoulement, the

²² ORAV (2025).

²³ GRANGER (2013).

recognition of gender-based persecution, and the obligations of Member States under the CEAS.

Many authors affirm that the CJEU has often passed on the opportunity to legislate on sensitive topics, with Tsourdi and Costello describing the evolution of the EU asylum law and policy as often static and lacking “fundamental policy shiftings in spite of policy failures”²⁴. This Court has silently followed the judgments of the European Court of Human Rights (ECtHR), adopting a passive stance on key issues relating to asylum, claiming that, in many cases, this was outside the scope of EU law, belonging entirely to the States. Notwithstanding the fact that the Court of Justice has made notable decisions when it comes to the protection of individual rights in relation to national authorities, related to the concept of a safe third country (such as *Joined Cases N.S v United Kingdom and M.E. v Ireland*²⁵), the Return Directive and the concept of detention (for example, in *Commission v Hungary*²⁶), the Court appears to lack dynamism when it comes to making decisions on the European Asylum Policy, treading carefully around this matter and often giving a large margin of decision to Member States²⁷, as is visible on the *Jafari* case²⁸ over the Dublin System or *X and X*²⁹ on humanitarian visas.

Nonetheless, it is undeniable that the Court of Justice has been fulfilling its goal of fostering a greater uniformity in the implementation of EU asylum law, through landmark decisions that set the standards for the interpretation and application of European and international law. One of these relevant judgments that is worthy of a mention is *Elgafaji v. Staatssecretaris van Justitie*³⁰, of 2009, where two Iraqi nationals sought asylum in the Netherlands, following a terrorist attack and death threats directed to the couple. In this ruling, the Court established an autonomous EU meaning to the subsidiary protection given by article 15(c) of the Qualification Directive, which covered

²⁴ **TSOURDI; COSTELLO** (2021).

²⁵ *Joined Cases C-411/10 and C-493/10*.

²⁶ *Case C-808/18*.

²⁷ **WESTLAND** (2023), p. 37.

²⁸ *Case C-646/16, Khadija Jafari and Zainab Jafari vs Bundesamt für Fremdenwesen und Asyl*.

²⁹ *Case C-638/16 PPU, X and X v État belge*.

³⁰ *Case C-465/07*.

a more general risk of harm that may “extend to people irrespective of their personal circumstances”³¹, covering civilians that are at risk of indiscriminate violence of such a high level during the armed conflict taking place that the mere return of that person to the country exposes them to a real risk of being subjected to the threat described in article 15(c)³². The Court established that the provision of article 15(c) went further than the one on article 3 of the European Charter of Human Rights (hereinafter Charter), and this preferred interpretation was perfectly aligned with the Charter and the jurisprudence of the ECtHR³³.

Fifteen years later, in October of 2024, the concept of a “sliding scale” established in *Elgafaji* was used to grant subsidiary protection by the International Protection Administrative Court of Cyprus to a member of a minority clan from Somalia – Mr. Advocate General Poiares Maduro and the Luxembourg Court set up, in 2009, an evidential presumption where “the more the person is individually affected (...), the less it will be necessary to show that he faces indiscriminate violence in his country (...) which is so serious that there is a serious risk that he will be a victim of it himself”³⁴. Even if the applicant on the Cypriot case did not qualify for refugee status, the national court deemed him eligible for subsidiary protection, quoting the CJEU’s judgment and establishing that the level of violence in the return country was extreme and national authorities were unable to offer protection to the individual or to his clan in Somalia³⁵.

When looking at these two cases, it is possible to conclude that EU Law and the Member States clearly benefit from the decisions of the CJEU, allowing them to uniformly apply the norms of the CEAS while keeping in mind the protection of the fundamental rights of those who seek protection. The role of the Court has been pivotal, even if complex at times – key principles of asylum law, such as the concepts of non-refoulement and subsidiary protection, have been developed and their interpretation aligns with fundamental rights obligations and international law. However, even if a

³¹ Case C-465/07, *Elgafaji v. Staatssecretaris van Justitie*. Para. 34.

³² *ibid*, para. 35.

³³ *ibid*, para. 44.

³⁴ Opinion of Advocate General Miguel Poiares Maduro in *Case C-465/07*, delivered on 9 September 2008, para. 37.

³⁵ EUAA (2024), p. 33.

progressive development of the refugee protection can be seen, this growth has often been cautious, with the CJEU lagging behind the initiative of the ECtHR, that in many cases set higher standards for the treatment of asylum seekers. Nevertheless, the jurisprudence of the CJEU remains an essential tool to consolidate and apply EU asylum standards across Member States, with a clear trajectory of progressivity that contributes to a more coherent and rights-sensitive asylum system.

2.2. Gender-Sensitive Cases and the Principle of Non-Refoulement

The principle of non-refoulement is a core principle of international and EU law, present in the 1951 Refugee Convention, in its article 33, in the Charter, in its article 19, and in article 61 of the Council of Europe’s Convention on Preventing and Combating Violence Against Women and Domestic Violence, or Istanbul Convention. It prohibits the return of a refugee to a State where there is a serious risk that they would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment, and it constitutes a core principle of international law and a crucial safeguard throughout the asylum procedure³⁶.

When looking at the CEDAW, the UN Committee on the Elimination of Discrimination Against Women read an implied non-refoulement obligation into the Convention, affirming that Article 2(d) required State parties to “protect women from being exposed to a real, personal and foreseeable risk of serious form of gender-based violence, irrespective of whether such consequences would take place outside the territorial boundaries of the sending State party”³⁷, affirming that serious forms of gender-based discrimination are an affront to human dignity, warranting the same protective measures as other serious human rights violations³⁸. From 2013 on, the Committee reaffirmed GBV as a form of discrimination against women that impairs the enjoyment of all other rights, thus prohibiting the return to serious violations of human rights or

³⁶ EUAA, (2024).

³⁷ M.N.N. v. Denmark, para. 8.10.

³⁸ GLEESON (2023).

persecution, which included forms of persecution directed against a woman merely because she is a woman, or that affect women disproportionately³⁹.

The goal of this interpretation is, ultimately, to allow for a broader protection to women refugees and asylum seekers than the one given by the 1951 Refugee Convention, allowing that some, who would not meet the criterion to engage the full range of protections set out in the Refugee Convention, may nevertheless be protected against refoulement under the CEDAW. In this case, “a woman fleeing domestic violence need only prove that the risk she fears is serious, real, personal, and foreseeable, and that the state of origin is unable or unwilling to provide effective protection”⁴⁰, as opposed to the Refugee Convention, where, even when the harm reaches such a level to constitute persecution, it is insufficient to ground a refugee claim, needing the establishment of a causal link between the relevant harm and one of the five grounds set out in article 1(A) of the Convention.

It also matters to analyze the importance of the Istanbul Convention, especially through articles 60 (gender-based asylum claims) and 61 (non-refoulement). This convention emerged from the Council of Europe’s work to identify gaps in legislation, addressing asylum and migration and requiring GBV to be recognized as a form of persecution when establishing refugee status⁴¹.

Article 60 recognizes GBV against women as a form of persecution that leads to complementary/subsidiary protection, within the meaning of article 1(A)(2) of the 1951 Convention, and demands a gender-sensitive interpretation of its, assuring that States recognize that a woman may be persecuted because of her identity and status as a woman. In turn, article 61 not only assures the respect for the principle of non-refoulement but reinforces the prohibition of returning women victims of violence to any country where their life would be at risk or they might face ill-treatment. Applying both these provisions strengthens the existing international protection frameworks available to asylum-seeking and migrant women, enabling them to have access to a fair asylum procedure and to all

³⁹ M.N.N. v. Denmark, para. 8.7 and 8.8 (2013).

⁴⁰ *Ibid* 44, p. 54.

⁴¹ JURVISTE; SHREEVES (2018).

available protection⁴² – by requiring State parties to ensure that GBV is recognized as a form of persecution and that the grounds for asylum listed in the 1951 Convention are interpreted under a gendered light, these forms of harm and the fear that derives from them are more likely to be identified and recognized as ground for protection.

When it comes the concept of women as part of a “particular social group” (PSG) and the possible refugee protection due to GBV, in respect of the non-refoulement principle, it is important to mention Case C-621/21, from January 2024, *Women who are Victims of Domestic Violence*. This case sets the tone and expectations for the future, demanding that EU law is read in accordance with the international duty to combat GBV and discrimination against women⁴³. In its judgment, the CJEU uses mainly international law and women’s rights instruments, such as the CEDAW and the Istanbul Convention, to interpret Directive 2011/95/EU, also known as the Qualification Directive.

This request for a preliminary ruling by the Sofia Administrative Court concerns WS, a Turkish woman of Muslim and Kurdish ethnicity, who arrived legally in Bulgaria in 2018 and then joined family in Germany, where she applied for international protection. WS was then taken back to Bulgaria, by request from the German authorities, to examine her application. She had been forcibly married at 16 and suffered severe domestic violence by her husband, which led her to flee, and she feared that, in case of return, her family would force her to remarry or kill her, as an “honor killing”, since she had brought dishonor upon them⁴⁴. After Bulgaria rejected her application, affirming that acts of domestic violence and death threats were not enough to grant refugee protection, WS presented new evidence, claiming a well-founded fear of prosecution by non-State actors due to her membership of a particular social group, women who are victims of domestic violence and potential victims of honor killings. Yet, Bulgaria refused again, arguing that the Turkish authorities would be willing and able to protect her⁴⁵.

When asked about the interpretative weight that should be given to the CEDAW and the Istanbul Convention in the interpretation of the Qualification Directive in the

⁴² HOOPER (2019).

⁴³ KÜBEK; BORNEMANN (2024).

⁴⁴ Case C-621/21, *WS v Intervyuirasht organ na Darzhavna agentsia za bezhantsite pri Ministerskia savet*. Paras. 19 and 20.

⁴⁵ *Ibid*, paras. 25, 27 and 28.

context of GBV against women, as they contain express provisions on gender being relevant to define a person's belonging to a particular social group, the Court affirmed that both are relevant treaties and of the utmost importance for a gender-sensitive interpretation of EU refugee law (in direct opposition with the opinion of the Advocate General, who had favored an autonomous EU standard)⁴⁶. Through this, the Court confirmed the binding reach of an international agreement concluded by all Member States, but not by the EU (CEDAW), and of an international agreement concluded by the EU but not by all Member States (Istanbul Convention), allowing for a gender-sensitive reading of the Qualification Directive through which women who are victims of domestic violence may qualify for refugee status.

Article 60 of the Istanbul Convention is used in this case as a steppingstone towards the interpretation that women, in some cases, may be part of a particular social group, by providing that GBV against women is to be recognized as persecution and demanding a gender-sensitive interpretation of the reasons for persecution⁴⁷. When analyzing the cumulative conditions presented in subparagraph 1 of article 10(1)(d) of the Directive, taking into consideration the HCR Guidelines on International Protection No. 1, the Court concluded that women may share an innate characteristic that is viewed by the surrounding society as distinct⁴⁸ – “women, as a whole, may be regarded as belonging to a ‘particular social group’ (...) where it is established that, in their country of origin, they are, on account of their gender, exposed to physical or mental violence, including sexual violence and domestic violence”⁴⁹. However, this alone does not grant refugee status, there must be an individual assessment of whether the applicant's fear of being persecuted is well-founded, based on the facts and circumstances of each case.

On the protection from non-state actors, the CJEU caught up with the ECtHR on the issue of the State authorities' inaction regarding domestic violence and non-refoulement⁵⁰, underlining that there is no need to establish a link between the acts of

⁴⁶ *Ibid* 49.

⁴⁷ Case C-621/21, para. 48.

⁴⁸ *ibid*, paras. 49 to 52.

⁴⁹ *ibid*, para. 57.

⁵⁰ **STEININGER** (2024).

persecution and reasons for persecution mentioned in Article 10(1), as long as it can be established “between one of those reasons for persecution and the absence of protection against those acts by the actors of protection”⁵¹.

This case clearly illustrates how the EU’s external actions, even if conducted against the will of certain Member States, can have a profound impact on how EU law is read and applied in practice – the interpretation of the Qualification Directive through the Istanbul Convention, even if countries such as Bulgaria have not concluded it, reveals that as long as it falls within the EU’s exclusive competence, it is a relevant treaty within the meaning of Article 78(1) TFEU, and legally binds all Member States, meaning that they must apply and interpret EU refugee law in conformity with relevant international law instruments. While the case breaks new ground for the protection of women fleeing GBV and the respect of the principle of non-refoulement, applied with a gender-sensitive lens, there are still hardships to be faced, women fleeing GBV continue to face insuperable hurdles in the process to acquire any protection.⁵² Nonetheless, it establishes key benchmarks for posterior cases, as will be analyzed further in the next chapter.

2.3. Analysis of Relevant CJEU Case Law

After observing the role of the CJEU and its influence on the asylum policy of the EU and its Member States, it matters to shed light on very recent rulings, of high importance. They demonstrate a growing concern with GBV and its implications on women asylum seekers, interpreting the legal texts to include a gendered perspective of refugee protection. The cases reflect the Court’s efforts to provide legal clarity on the intersection of GBV and non-refoulement, building their analysis on previous jurisprudence and on the specificities that being a woman in seek of refuge entails, expanding the concept of PSG to include women in certain situations or from certain countries, on the basis of a case-by-case analysis.

⁵¹ Case C-621/21, paras. 67 and 70.

⁵² *Ibid* 58.

2.3.1. Case C-646/21 – ‘Westernized’ Women

In June 2024, the Court delivered its judgment in the case of *K, L v Staatssecretaris van Justitie en Veiligheid*, concerning two young women who, when faced with the possibility of refoulement, affirmed to have embraced the European standards on human rights and values to such a degree that those inalienable beliefs would endanger them in their country of origin. Can “westernized women” be recognized as members of a particular social group within the meaning of Article 10(1)(d) of the Qualification Directive?

K.L. involves two sisters, of Iraqi nationality, who arrived in the Netherlands with their family in 2015 and where they remained throughout the process. After the application for asylum lodged by their parents on their behalf had been rejected in 2015 and 2017, K and L lodged subsequent applications in 2019, already of legal age. The young women argued that, due to their long stay in the Netherlands, they had become “westernized”, adopting the “norms, values and conduct of young people”⁵³ and, because of that, they feared persecution if they were to return to Iraq, where this new identity would not be acceptable in society. They affirmed to be members of a ‘particular social group’ within the meaning of Article 10(1)(d) of Directive 2011/95. Faced with these circumstances, the referring court sought to ascertain how the concept of “membership of a particular social group” is to be interpreted, and if it means that western norms, values and actual conduct adopted by a third-country national while staying in the Member State and participating fully in society during the period of their lives during which they form their identity must be seen as a common background that cannot be changed or as characteristics that are so fundamental to identity that someone should not be forced to renounce them. It also posed the question of, if the first answer is positive, whether those third-country nationals are to be regarded as members of a particular social group, with a distinct identity in the relevant country, and if that relevance is to be assessed from the perspective of the Member State or demonstrated by the person at cause. Thirdly, the national court wanted to know if that westernization could lead to refugee status only if it originated from religious or political motives⁵⁴.

⁵³ Case C-646/21, para. 24.

⁵⁴ *ibid*, para. 32(1) and (2).

Several Member States and the European Commission submitted observations, and, while on the one hand, Czech Republic, Greece, Hungary and the Netherlands affirmed that the women's argument was based on a "preference for a certain lifestyle" that did not characterize an inalienable belief and that the category at stake is "too broad, heterogeneous and abstract to constitute a clearly delineated social group"⁵⁵, on the other hand, Spain, France and the European Commission did consider them part of a PSG, with innate characteristics, noting that their belief in gender equality could be interpreted as a shared and fundamental belief that could endanger them in their host country⁵⁶. The AG, in its opinion, argued that women and girls who adopt values, norms and conduct that reflect a belief in gender equality cannot be expected to renounce to it nor to adapt their behaviors in order to stay safe⁵⁷. He also found that, given recent country guidance on Iraq, these girls would be perceived as transgressing social norms and, therefore, had a well-founded fear of persecution⁵⁸.

Based on the AG's opinion and previous case law, namely the case of WS, the Court associates the western norms, values and actual conduct adopted by the third-country nationals with the fundamental value of equality between men and women, and goes to confirm the possibility of these women being recognized as a PSG, basing the interpretation of the Qualification Directive on the Istanbul Convention and the CEDAW⁵⁹.

Members of a PSG must, according to Article 10(1)(d), fulfill two cumulative conditions: an internal criterion, that requires that individuals share an innate characteristic or common background that cannot be changed, or is so fundamental that they should not be forced to renounce it, and an external criterion, requiring that that group is perceived differently in the relevant country by society because of that distinct identity. Regarding the internal criterion, the Court again references WS, where it was established that being a woman "constitutes an innate characteristic and therefore suffices

⁵⁵ Opinion of Advocate General Collins in *Case C-646/2*, para. 13.

⁵⁶ *ibid*, paras. 14 to 17.

⁵⁷ *ibid*, para. 39.

⁵⁸ *ibid*, paras. 47 to 50.

⁵⁹ *Case C-646/21*, para. 36.

to satisfy that condition”⁶⁰, and added that sharing a common background, such as a particular family situation, or a common belief that is so fundamental to them also satisfies this condition. In this light, the CJEU stipulates that a woman who genuinely identifies with the fundamental value of equality between genders and desires to benefit from it should not be forced to renounce that belief especially when this is learned during a phase when a person’s identity is formed, and, therefore, can be considered as belonging to a PSG.

When it comes to the external criterion, it is clear that women can be perceived as different by society, due to moral, social and legal norms in their country⁶¹, and this is only accentuated by their belief in gender equality and all the behaviors that it entails. In this context, the AG highlights the need for the national court to assess the conditions of the third-country, to evaluate if the person has a well-founded fear of suffering persecution in their home – when looking at recent country guidance on Iraq by official sources, one can conclude that “girls and women who believe in gender equality may be perceived as transgressing social mores in Iraq due to manifestations of that belief”⁶². This analysis must always be made on a case-by-case basis, through a specific evaluation of facts and circumstances to determine the existence of a threat. Finally, the Court also states that there is no requirement that this identification with gender equality is of a political or religious nature in order to be a reason for persecution.

This ruling marks a milestone in application of EU asylum law in cases of gender-related persecution, where the Court gave an “axiological dimension” to gender equality. It recognizes it as a fundamental value that underpins the interpretation and application of EU asylum law, enshrining it as one of EU’s core values and fundamental objectives that creates obligations to the Union. EU primary law has several provisions that establish an obligation to mainstream equality and non-discrimination, and this shows an attempt to frame equality as a central concern, expanding the interpretation of refugee law concepts⁶³. With this decision, The Court opens way for the cases that would follow, C-

⁶⁰ *ibid*, para. 43.

⁶¹ *ibid*, para. 48.

⁶² Opinion of AG Collins, para. 48.

⁶³ **LAGRAND; NICOLOSI** (2024).

608/22 and C-609/22, where K.L. plays a crucial role with its axiological dimension of gender equality.

2.3.2. Cases C-608/22 and C-609/22 – Women Fleeing Taliban

The following case in point is even more relevant, considering the current situation in Afghanistan under the Taliban regime, and the CJEU delivered its judgment in the joined cases of A.H. and F.N. in October 2024. This ruling converges the provisions reached before in W.S. and K.L. and establishes that women from a certain country, under specific conditions, can be granted refugee status on the sole basis of being Afghan women, without the need for an individual assessment of their personal circumstances.

AH and FN, two Afghan women, applied for international protection in Austria and, after the first requests were denied, they brought action against those decisions, stating that they had adopted a Western lifestyle and that, after the Taliban seized power in 2021, the situation in their home country had dramatically changed, meaning that women now faced widespread persecution. When this action was again dismissed, the case was brought before the Supreme Administrative Court of Austria, which recognized that women from Afghanistan belong to a particular social group and that there is a link between the reason for persecution and the acts of persecution to which they may be exposed. However, the court paused the proceedings and referred two questions to the CJEU, seeking to know if the measures taken by the Taliban in respect to women are serious enough to be considered acts of persecution when analyzed as a whole, for the purpose of Article 9(1)(b) of the Qualification Directive, and if there is a possibility to attribute these women refugee status without an individual assessment of their situation, within the meaning of Article 2(e)⁶⁴.

Article 9 of the Directive establishes the conditions an act must fulfill to be considered an act of persecution. Point (a) states that it must be sufficiently serious by its nature or repetition, constituting a severe breach of basic human rights that could not be derogated, illustrating the level of seriousness this article requires. Point (b), in turn, adds that it may also be an accumulation of various measures that are sufficiently severe to

⁶⁴ CJEU. Joined Cases C-608/22 and C-609/22, *AH and FN v Bundesamt für Fremdenwesen und Asyl*. 2024. Paras. 28 and 29.

affect a person in a similar manner to that referred to in point (a). AG de la Tour affirmed that, in this case, there is no doubt that the repression faced by Afghan women through discriminatory acts and measures amount to “a level of severity equivalent to that implied by the violation of the unconditional rights referred to in Article 15(2) ECHR, both in their intensity and cumulative effect and in the consequences they have for the person affected”⁶⁵.

The Court agreed, adding that some measures at cause must be classified themselves as acts of persecution – forced marriage, for instance, is compared to slavery, and the lack of protection against GBV and domestic violence constitutes a form of inhuman and degrading treatment. When taken as a whole, discriminatory measures like restrictions to the participation of women in the political life, access to healthcare or education and to their freedom of movement, reach such a level of severity that they constitute acts of persecution for the purpose of Article 9(1)(b), blatantly denying Afghan women their fundamental rights related to human dignity simply because of their gender⁶⁶. Therefore, to answer the first question, the CJEU concluded that an accumulation of discriminatory measures against women adopted or tolerated by an actor of persecution falls within the concept of 'act of persecution', according to Article 9(1)(b), since they undermine human dignity through their cumulative effect⁶⁷.

In the second question, the referring court asked if, in the case of Afghan women who seek asylum from the Taliban, there was a need for the national authority to exercise an individual assessment of the application, observing the specific circumstances to the case other than the gender or nationality, or if the fact that they were women from Afghanistan was enough, in the interpretation of Article 4(3) of the Directive. This provision lists what elements national authorities must consider when assessing an application and, even though it is applicable to all evaluations, it to the national authorities to adapt the methods of assessing data to the case under analysis according to the specific circumstances of each application⁶⁸.

⁶⁵ Opinion of AG Collins in *Joined Cases C-608/22 and C-609/22*, 9 November 2023, para. 54.

⁶⁶ *Joined Cases C-608/22 and C-609/22*, paras. 43 and 44.

⁶⁷ *ibid*, para. 46.

⁶⁸ *ibid*, para. 54.

The Court then evokes the EUAA's considerations on Afghanistan, which confirm that, since January 2023, women have a well-founded fear of being subject to acts of persecution solely due to gender. In these circumstances, it is clear that the national authorities are to consider that, in applications lodged by Afghan women, it is unnecessary to establish in the individual assessment that there is a risk of persecution in her home country when factors like her gender and nationality are already established⁶⁹. With this, the Court concludes that it is enough to be a woman Afghan national to be deserving of refugee protection offered by Member States in the European Union. This reasoning surges in the CJEU as especially progressive, by "allowing a gender-sensitive interpretation of Article 3 of the Qualification Directive"⁷⁰, according to which Member States can adopt standards that are more favorable to the asylum seeker.

The judgment of the Court plays a crucial role, allowing a harmonization of asylum law amongst Member States, reducing the insecurity felt by these asylum seekers. The Luxembourg Court took the opportunity it had and consolidated the protection of groups of persons with similar characteristics and fleeing widespread violence, who do not need to show that they have been individually targeted, since the membership of that particular group is sufficient to warrant protection⁷¹. In sum, the Court broadens the protection standards of EU law by confirming that women in a country can constitute a particular social group, when systematic persecution rises from the cumulative impact of State-imposed measures that violate women's fundamental rights. In those cases, no individual assessment of the applicant's circumstances is required, allowing a shift in the direction of a more flexible and context-sensitive approach⁷². The fact that fundamental rights, and particularly the principle of gender equality, are seen and interpreted as having an axiological dimension ensures that a higher level of protection is given to women who are subjected to systematic oppression in their home countries, and this must be applied consistently across all asylum cases.

⁶⁹ *ibid*, para. 56.

⁷⁰ LAGRAND; NICOLSI (2024).

⁷¹ QUERTON (2024).

⁷² *Ibid* 78.

2.5. Conclusions

It is clear, through an observation of the path travelled by the CJEU, that it has been evolving on the matter of the adoption of a gender-sensitive perspective in cases that require such interpretation, aligning itself with international standards and the ECtHR. By starting with a recognition of the CEDAW and, especially, of the Istanbul Convention as applicable interpretative standards and ‘relevant treaties’ within the meaning of Article 78(1) of the TFEU, that complement the legal protection regime applicable to women and girls who seek asylum, the Court opened its doors to a further recognition of women as a PSG, when in concrete cases of GBV in their countries of origin.

Because of this interpretation in *WS*, the following judgments were able to establish key benchmarks on the combat of GBV and the protection of structural situations of discrimination based on gender. Later, in *KL*, the Court reinforces the importance of a gender-sensitive interpretation of the CEAS, by “finetuning the articulation of women’s protection needs”⁷³ and, by giving gender equality an axiological dimension, the CJEU elevated this fundamental value beyond a legal provision, allowing it to become a guiding principle that influences the understanding of asylum cases and their decisions. Finally, in *AH* and *FN*, the Court concludes that women in a country can belong to a particular social group, when systematic persecution arises from discriminating measures that clearly impact women’s fundamental rights, broadening the protection standards of EU law and harmonizing asylum parameters amongst Member States. With this judgment, the Court aligned the EU’s stance with that of the UNHCR and the Human Rights Council, thereby “substantially contributing to the advancement of international refugee law”⁷⁴.

However, these judgments can and should still be criticized, even if they represent milestones within the EU’s asylum law. Despite considering gender enough for one to be a member of a PSG under EU law, the Istanbul Convention requires that a gender-sensitive interpretation is applied to each of the five Refugee Convention grounds for asylum (and not merely to a membership of a particular social group), in its Article 60(2),

⁷³ RAIMONDO (2024).

⁷⁴ LAGRAND; NICOLSI (2023).

to which the EU recently acceded⁷⁵ – by contrast, however, Article 10 of the Qualification Directive restricts gender considerations solely to this last category. Even if the provisions embedded in the Directive do not clearly exclude the possibility of integrating gender in their interpretation, it is not expressly aligned with the Istanbul Convention and its Article 60, an issue that remains unresolved in the new 2024 Qualification Regulation⁷⁶.

Raimondo points out that there is a frequent but inadvertent depoliticization of the belief in gender equality, which could be easily argued as a political opinion that can cause persecution. UNHCR has argued, in its Guidelines on International Protection, that the emphasis given to the social group ground “has meant that other applicable grounds, such as religion or political opinion, have been over-looked”⁷⁷, and shouldn’t make the other four Convention grounds obsolete. The image that one creates of a political refugee seeking asylum as someone with direct involvement in political activity does not always correspond to the reality faced by women, who may, instead, hold a different political view than the one enshrined in society, but manifest it only through beliefs or by not fulfilling certain roles that would be traditionally attributed to her. This does not take away her political stand, even if it is manifested quietly.

In conclusion, a gendered point of view to the European asylum system is a mountain that needs to be climbed and, even if the CJEU and the Member States have not yet reached its peak, the climb has begun. The Court has been working towards a more inclusive asylum system, that protects women from GBV and recognizes that discriminatory national laws can clearly violate their fundamental rights, showing that the ECJ “has moved beyond the traditional, state-centric approach to refugee protection”, where the responsibility from granting humanitarian visas was left to the Member States⁷⁸. However, this evolution is highly dependent on its adoption by the States, that remain hesitant when it comes to apply gender-sensitive interpretations and measures to asylum, fearing that it would weaken their system and allow for an open-door policy. It remains one of the biggest hurdles the CJEU must overcome to successfully apply their

⁷⁵ **WARIN** (2024).

⁷⁶ *Ibid* 81.

⁷⁷ **UNHCR** (2002).

⁷⁸ **GUPTA** (2024).

gendered interpretation of asylum clauses and effectively protect women and girls seeking refuge.

3. Tensions with the Restrictive Asylum Policies of Member States Against Female Refugees

After analyzing landmark judgments by the CJEU that alter the interpretation of EU asylum law, it is relevant to understand how those conclusions are reflected in Member States. Following through with its goal of harmonizing asylum law, EU law takes primacy over national laws, and Governments and institutions must follow the interpretations given by European Courts to ensure a coherent standard of protection for individuals seeking refuge.

However, the implementation of these norms and interpretations sometimes falls short of the expected, due to conflicting national regulations and policies, especially with restrictive measures set in place by Member States. The following chapter will delve into the tensions between the CJEU's harmonization efforts and the constraining entry policies of States, which often fail to adopt a gendered lens to asylum processes and specifically impact women and girls who flee their homes in specific situations. It is, consequently, relevant to analyze the development of the CEAS and then put it side by side with national policies and the impact of these practices on women. Questions remain over the achievement of a truly harmonized and gender-sensitive asylum framework across the EU. There is still no explicit references to international instruments such as the CEDAW and the Istanbul Convention as legal basis to interpret the European legislation, and the failure to address how these documents add or change the obligations of States seeking to affect these transfers "leaves critical questions unresolved" and will still have clear repercussions on future cases⁷⁹, placing an obstacle on the road towards harmonization.

The CJEU has played a crucial role in shaping gender-sensitive asylum case law, but still, many national courts hesitate when it comes to fully applying these recent rulings. Despite successive reforms, significant discrepancies remain in the application of asylum rules at the national level, raising concerns about fragmentation and legal

⁷⁹ GLEESON (2023).

uncertainty. Currently, the CEAS does not fully meet the standards raised by other international legal documents such as the CEDAW and the Istanbul Convention yet. However, under their influence and through EU case law, national practices can and should become more gender-sensitive, allowing a more effective protection of female refugees and asylum seekers⁸⁰. The EU must make use of the momentum provided by the recent judgments of the CJEU and put those considerations to use, expanding that gender-sensitivity to other legal documents present in the most recent reform of the CEAS.

3.1. Restrictive National Policies and the Rights of Women Asylum Seekers

Even though the CJEU has recently ruled in favor of a gender-sensitive approach to asylum policies, the nature of the preliminary references that often reach the Court demonstrate a persistence of certain flawed assumptions, not only in cases of GBV, but also about the migration process faced by female asylum seekers. There is a clear gap between law and practice in certain Member States and, while the rights of all asylum seekers have been eroded by recent developments, there are particular vulnerabilities for female asylum seekers, when it comes to the asylum determination process and to the provisions for their reception⁸¹.

After the European migration crisis of 2015, asylum and immigration policies remained high on national political agendas throughout the EU, meant to control and affect the arrival of possible refugees. Despite the frequent tries of harmonization provided by the CEAS, States retain a level of discretion in asylum procedures – even if the recently reformed regulations demand minimum standards, national authorities still interpret and apply them in light of their own legislation, and national courts and asylum offices still evaluate credibility, risk of persecution and protection needs. This association between unwanted migration and refugee flows with crisis in the European context has allowed for the “exceptionalisation of rights and legal safeguards”⁸², where unauthorized

⁸⁰ WARIN (2024).

⁸¹ *Ibid* 5, p. 137.

⁸² MORENO-LAX (2024).

arrivals become the main concern. Because of this, what used to be exceptional measures used to manage asylum in times of need are now consolidated in the updated CEAS, normalizing the ever-increasing difficulty of accessing the status of refugee. The UN Special Rapporteur on the human rights of migrants called out this legitimization of pushback practices through legislation and governmental executive orders “as a means to whitewash unlawful practices and to pursue them as general policy, in some cases accompanied by public relations campaigns”⁸³.

Stricter asylum policies to discourage migrants from seeking refuge in certain Member States within Europe exacerbate the need to ensure that the procedures remain fair and dignified, never belittling the fundamental rights of migrants. In these conditions, these restrictive policies generate gender-specific barriers. Despite legal obligations, under EU law and legal documents such as the CEDAW and the Istanbul Convention, gender-sensitive asylum policies are often undermined by national measures, that fail to account for the specific vulnerabilities of women and create additional barriers in their search for protection. When considering that women on the move who are looking for international protection are often fleeing situations of danger or extreme violence, usually related to GBV or domestic violence, their asylum procedures can be seen almost as a second trauma they need to face in order to obtain a fair process.

Access to female interviewers and interpreters is vital, and often States lack this kind of consideration, either because there are none available or because the women are not aware of their right to request for female officials. This makes it harder for the asylum seeker to explain their situation of and increases the chance of misunderstandings or misinterpretations. Even when these procedural safeguards are guaranteed by the Member State, another issue arises: the burden of proof. Tighter asylum policies usually demand concrete evidence of persecution, which can be especially hard to provide when the cause any kind of GBV. The evidentiary burdens are higher for women in these situations, since often the proof is physical evidence of violence or torture, like medical reports, which are mentally and practically hard to obtain in certain situations, exacerbating the feeling of shame – lack of proof is a common reason for women’s asylum claims to be rejected⁸⁴. If recent CJEU jurisprudence aimed to widen the perspective of national officials about

⁸³ UN Special Rapporteur on the human rights of migrants Felipe González Morales (2022).

⁸⁴ *Ibid* 5, P. 89.

GBV as a reason for women to flee and be deserving of protection, it might cause Member States to pay closer attention and embark on a deeper analysis of each case brought to them at their borders, to avoid a generalization of the protection they believe would be put in place, forcing States to accept more refugees under this broadened concept.

It also matters to analyze the reception conditions women face when looking for asylum. Even if Directive (EU) 2024/1346 establishes the standards for the reception of applicants for international protection, the factual application of these conditions is highly dependent on the Member State and its economic and social conditions. In 2020, the European Institute for Gender Equality acknowledged that women and children face greater risk of GBV in reception centers or first and second-line refugee facilities and, therefore, are in greater need of protection⁸⁵, and in 2022 the Council of Europe noted that mass reception accommodations, while sometimes indispensable, are often “not appropriate for nor adapted to the needs of women and children refugees”, due to a lack of awareness and consideration for gender-based factors and specific rights⁸⁶. In this context, women asylum seekers still face mixed-gender facilities, where they are obliged to share spaces with men for long periods of time, leaving them with almost no intimacy and heightening the risk of sexual abuse and psychological trauma – Human Rights Watch called out the situation in Greece in 2018, sharing testimonies of women who were confined to sharing cells with unrelated men, undergoing extreme stress⁸⁷. When it comes to health, even if Member States should ensure that an ‘adequate standard of living’ entails the protection of physical and mental health, inadequate housing and sanitary facilities, stress and lack of adequate training of medical staff leads to heightened vulnerability for women in need.

Nowadays, and despite the reforms of the CEAS, Member States still adapt mandatory asylum norms to their national politics and customs, causing a gap in the uniform application of EU asylum law. As often happens in situations where policies become stricter, it is the most vulnerable who feel the consequences more drastically. The particular situation of women on the move already places them in a vulnerable spot amidst a refugee system build by men for men, and the lack of gender-sensitivity in destination

⁸⁵ **EIGE** (2020).

⁸⁶ **Council of Europe** (2022).

⁸⁷ **Human Rights Watch** (2018).

countries only contributes to the exacerbation of risks and violations of their human rights, in disrespect of EU law and international treaties.

3.2. Good and Bad Practices of Member States in a Gendered Asylum System

It is unavoidable to mention the impact of nationalism and anti-migration politics on gender-sensitive asylum proceedings. Even with the introduction by the EU of legal frameworks and interpretations intended to protect women asylum seekers, their implementation falls to national governments, which can be influenced by populist and restrictive views on entering conditions and clearly affect female refugees.

These movements often advocate for stricter border controls and procedural rules, with faster deportations and a harder access to asylum, with the goal to disincentivize possible refugees to try and enter the country. Shorter deadlines for applications entail clear hardships for women to present their claims, especially when they have been through trauma and fear discussing their experiences of violence, and knowledge and access to these procedures also takes its time. In addition, some governments (like Hungary) restricted the access and intervention of NGOs in asylum procedures to provide support and guidance, affecting those who rely on them for their knowledge of the legal and bureaucratic procedures, as well as emotional support. Despite the gender-sensitive approach taken by the CJEU, national courts of restrictive Member States tend to hesitate when applying these interpretations, arguing that they create a dangerous precedent by being excessive and prone to abuses. Courts or officials may disregard previous trauma when assessing credibility and demand proof of the abuse that is often impossible to obtain from their home countries. It was seen also in K.L. that, what the CJEU described as fundamental and inalienable values, was considered by national authorities as frivolous beliefs that could be concealed or practiced discreetly in their home countries.

The rise of nationalist and anti-migration politics in Member States poses a significant challenge to gender-sensitive asylum procedures, that have not yet established themselves firmly across the EU. However, it is relevant to analyze the practices of certain countries in this matter, in order to comprehend the differences in place. On the one hand, not every single measure is aimed at turning down people in need. Even before the

judgment of AH and FN, a few countries had taken in their hands the opportunity of extending their protection umbrella to women fleeing Afghanistan, the first one being Sweden. Known by its once “open-hearted” approach to refugees⁸⁸, Sweden recognized in December 2022 that “the degradation of Afghan women’s and girls’ rights qualifies as persecution on the basis of gender” and thus is a sufficient basis to obtain protection in Sweden⁸⁹. This decision still seems coherent with existing regulations on gender-based asylum, such as the Swedish Aliens Act containing an expanded refugee definition that includes well-founded fear of being persecuted on grounds of gender⁹⁰. Finland followed Sweden's footsteps, and after suspending return proceedings for Afghan asylum seekers whose applications had not been successful in 2021, 2022 and 2023 arrived with higher positive asylum decisions for women under these circumstances. Finland also had already enshrined in its national legislation the need to take into consideration gender-related aspects when analyzing asylum requests⁹¹. Finally, Denmark was the third EU country to move towards the protection of Afghan women, reopening rejected asylum claims filed between August 2021 and February 2023 from female Afghan applicants, followed by the rise of positive asylum decisions⁹². This is an especially remarkable decision because, as opposed to the two previous countries, the Danish Government had never previously recognized women and girls from an entire country as refugees based solely on their gender⁹³, and their legislation did not specifically mention gender in order to make such a change.

On the opposite side of the spectrum, Hungary is one of the Member States with the strictest entry policies within the EU and has been at the center of criticism. In 2018, Human Rights Watch reported that, following the Government’s anti-immigration campaign, Hungarian authorities stopped distributing food to asylum seekers in transit zones, violating its obligations under EU and international law, as a “cynical move to

⁸⁸ **MOODY** (2025).

⁸⁹ **GOLESORKHI** (2024).

⁹⁰ **Government of Sweden** (2006), Chapter 4, Section 1.

⁹¹ *Ibid* 100.

⁹² **European Parliament** (2023).

⁹³ **Danish Refugee Council** (2023).

force people to give up their asylum claims and leave Hungary”⁹⁴. In 2020, the CJEU ruled that Hungary failed to comply with EU law by restricting access to the international protection procedure, unlawfully detaining applicants for international protection in transit zones and failing to observe their right to remain in Hungarian territory pending a final decision on their appeal⁹⁵. After Hungary’s refusal to comply, the European Commission brought a new action to the Court, that ruled that there was a clear evasion of the application of EU common policy on international protection as a whole, as well as the rules relating to the removal of illegally staying third-country nationals. This conduct constitutes a “serious threat to the unity of EU law” and undermines the principle of solidarity and fair sharing of responsibilities between Member States⁹⁶, placing even more pressure on neighboring countries.

Hungary has repeatedly clashed with EU institutions over national and European asylum policies, lacking to provide asylum seekers with dignified conditions to apply for asylum and to survive during the process of admission. This behavior makes the asylum process even more difficult for women, who face the Hungarian skepticism over recognizing GBV or other gender-based claims as valid grounds for protection. For those who manage to enter Hungary, there is a severe lack of gender considerations in reception facilities, usually overcrowded and unsafe. The nation’s refusal to ratify the Istanbul Convention only adds insult to injury, disregarding the protection of women’s rights and leaving them exposed to harmful policies. Hungary represents a clear example of how restrictive national asylum policies can disproportionately harm women asylum seekers, underscoring the urgent need for stronger enforcement mechanisms within the EU to ensure that fundamental rights and gender-sensitive protections are being upheld across all Member States.

3.3. Conclusion

Despite the EU’s efforts towards a truly harmonized CEAS, many issues remain in the protection of women asylum seekers. The fact that national governments continue

⁹⁴ **Human Rights Watch.** (2018).

⁹⁵ **TIDEY,** (2020).

⁹⁶ **CJEU** (2024).

to exercise discretion on asylum policies leaves challenges unsolved in the European space, and since the migration crisis of 2015, countries tended to close their borders and restrict their entry policies to discourage migrants from applying for international protection.

The inconsistent implementation of gender-sensitive protections, nationalist political influences and weak enforcement of EU asylum directives create barriers for women fleeing violence and persecution and, as certain Members resist the adoption of gender-sensitive approaches, this burden falls on the CJEU and the ECtHR, as well as the civil society, to uphold the protections for women and girls in search of asylum. It seems that the goal of the CEAS of creating a harmonized, safe and dignified asylum procedure is still out of reach, but efforts are being made towards it – the CJEU’s recent rulings on gender and its pressure on Member States to uphold the decisions clearly show this development, in line with the most recent updates to European asylum law. As stated by Cable, there is no “silver bullet”⁹⁷ to solve the issues raised by migration in the EU, but future reforms must focus on stronger mechanisms that prevent the erosion of the protections for women asylum seekers. This involves not only more efficient mechanisms to process irregular migration, but also the clear adoption of international documents that focus on gender and the protection of women on the move, as well as gender guidelines adopted and applied uniformly throughout Europe, based on UNHCR gender-relevant orientations.

4. Facilitating Safe and Legal Migration Pathways for Refugee Women and European Legal Initiatives

After analyzing the conflicting ways that the CEAS is applied across Member States, despite significant legal developments, there are inconsistent protection standards across the EU when it comes to migrants, disproportionately affecting vulnerable groups, namely asylum-seeking women and girls, who continue to face legal and practical barriers in accessing safe and regular migration pathways. The need for an increase of these legal

⁹⁷ CABLE (2024).

pathways is a cornerstone of gender-sensitive asylum policies, allowing for a more uniform protection under international and EU law.

It is also of relevance to assess the EU's recent initiatives towards these regular migration routes, namely the New Pact for Migration and Asylum (NPMA) and the EU's Temporary protection Directive (TPD) for Ukrainian Refugees, looking at them through a gendered lens. It will also be of good use to understand if the EU is creating a two-tier system in relation to the treatment given to refugees, since, with the ongoing reform of the CEAS, questions remain regarding the effectiveness and fairness of these structured migration frameworks, assessing if they strike the balance that migrants currently need.

4.1. The Importance of Legal Pathways that are Safe and Regular

Within the EU context, legal pathways consist of every legal mechanism and policy that enables lawful migration from a third country to a Member State⁹⁸. Irregular migration poses challenges for both migrants and States, exposing migrants to different forms of exploitation, forced labor and trafficking, and also raising security concerns at national level. These conditions are exacerbated in the case of women migrants, who are exposed to their specific risks. Facilitating the access to safe and regular pathways for migrants and refugees is a key component of a comprehensive approach that considers the circumstances and protection needs of people in transit and supports international solidarity with third countries⁹⁹.

Irregular migration is the result of States' attempts to deter individuals from entering their territory, through border control mechanisms that force them to use more dangerous ways of entering¹⁰⁰ –visa restrictions led to an increase of irregular border crossings, which, in turn, led to stricter border regimes and a growth of smuggling¹⁰¹. Because of this, the implementation of safe legal pathways carries extreme importance, allowing the reduction of the exposure of women to gender-specific risks. They can save

⁹⁸ EMN Asylum and Migration Glossary.

⁹⁹ CORTINOVIS (2024).

¹⁰⁰ GRUNDLER, (2024), p. 35–53, 2024.

¹⁰¹ WAGNER, et. al. (2024).

migrants' lives, protect their rights, address vulnerabilities and reduce protection risks, while giving alternatives to situations of violence, vulnerability and exploitation. By offering comprehensive frameworks to enter and remain in countries, regular pathways boost migrants' access to services, health, education and inclusion¹⁰².

States can implement these frameworks through elements of governance that are already in place, namely the Global Compact for Safe, Orderly and Regular Migration, the Global Compact on Refugees and the updated Qualification Regulation and EU Resettlement Framework, to enhance the availability regular pathways respect human rights of migrants across their routes. The EU is obligated by international law to provide these secure and structured routes, and a gendered lens must also be applied, due to gender-specific barriers women face along their journey, limiting their access to safe migration channels.

Controlling and preventing irregular migration demands more systematic and comprehensive policies that recognize “the interplay between the movement of people and other policy spheres”¹⁰³, providing authorized channels of entry and stay and clear and accessible information about them. This requires a range of measures that include not only border control to reduce irregular entries, but also well-regulated and supervised support programs and integration initiatives, fostering of family reunification, and temporary protection. However, the access to legal and safe migration pathways continues limited, due to the lack of harmonization in policies of States. This only adds to the barriers already in place by gender, since many migration routes use sectors that are mainly male-dominated – work or student visas can be harder to obtain by women or girls fleeing a country where their work or studying opportunities are extremely limited. Likewise, if they do get approved, they often bear discrimination and pre-existing racist and sexist ideologies, that can hinder their ability to integrate into countries of destination¹⁰⁴.

Looking at the recent development of the CJEU regarding Afghan women, it does not yet constitute a legal pathway, as it applies to those who have already reached the EU

¹⁰² **ARIÑO, et. al.** (2024).

¹⁰³ **IOM** (2017).

¹⁰⁴ **UN Women** (2022).

and applied for asylum, while a legal pathway applies to those who have not yet reached their destination. Afghan female migrants still have to face perilous journeys to reach a safe landing zone in Europe, as there are no specific mechanisms across the Union that allow them to, while still abroad, apply for protection in the EU – this highlights a gap in the European approach, where, even if legal protection standards evolve, many are still pushed to irregular routes due to a lack of access to legal alternatives. Nonetheless, this judgment is still very recent, with Member States still transposing it to national legislations, and the future seems hopeful. States and the EU might turn this legal recognition into a legal pathway through, for example, the expansion of humanitarian visa schemes, allowing these women to apply for asylum at embassies or consulates along their routes, or by increasing resettlement programs, with coordinated EU-wide initiatives.

Ultimately, while frameworks for legal, safe and regular migration pathways exist, significant gaps still remain in their effectiveness and accessibility. The lack of harmonization and gender-specific barriers contribute to an uneven system, with shortcomings that need to be addressed. This requires not only the expansion of legal pathways, but also the guarantee that they are accessible to any person in need of refuge, regardless of their gender, to avoid dangerous routes and the arrival of irregular migrants to nations.

4.2. Legal Initiatives of the EU Under a Gendered Lens

The response of the EU to asylum and migration has evolved over time, going through different phases and frameworks that shape the access to protection by displaced people. Examples of this can be seen when looking at its responses to crisis, for instance with the EU-Turkey Statement from 2016 and, even more recently, with the activation of the Temporary Protection Directive (TPD) due to the large-scale displacement caused by Russia's invasion of Ukraine in 2022. This last example marks an unprecedented effort from the EU and its Member States to grant temporary protection to people (and mainly women) fleeing the war, activating a Directive that had never been put into action.

In 2024, the EU put in place a structural reform to its asylum framework, the New Pact on Migration and Asylum (NPMA), after four years of negotiations. It incorporates a comprehensive approach to external borders, asylum and the returns systems, aiming to

harmonize policies across Member States and accelerate decision-making. However, it wasn't exempt of critics, and it is of relevance to compare these two initiatives when it comes to the treatment of migrants and the difficulties and advances they bring to women and girls on the move.

4.2.1. The Temporary Protection Directive for Ukrainian Refugees

The Russian Federation's invasion of Ukraine in February 2022 caused a displacement of millions, who sought refuge mostly in the EU and neighboring countries and, as of February 2023, UN Women estimated that, of the 5.4 million refugees, 90% were women and children, making it "one of the most gendered displacement crises of our times"¹⁰⁵. Consequently, in March 2022, the European Commission proposed and approved the triggering of the Temporary Protection Directive for the first time, to offer quick and effective assistance to people fleeing the war¹⁰⁶.

This mechanism provides swift protection and rights to those arriving in large numbers, preventing the asylum systems of Member States from becoming overwhelmed, while at the same time granting asylum protection to asylum seekers based solely on the fact that they were fleeing Ukraine, waiving the need for individual applications. It protected Ukrainians and gave them legal rights like residency rights, access to housing, to the labor market, social welfare and medical assistance¹⁰⁷.

The Directive was activated almost immediately, after being unanimously approved, sending a clear message of a common EU goal to implement a coordinated response and alleviate pressure in national systems. Nonetheless, this readiness raises questions and challenges, not only in relation to the discretion Member States hold when applying the TPD, but also because of the striking contrast with the "political blockage" certain Member States had in place over proposals to reform the CEAS¹⁰⁸. How is this situation so different from other large-scale forced displacements in non-European

¹⁰⁵ UN Women (2023).

¹⁰⁶ EU Migration and Home Affairs.

¹⁰⁷ European Parliamentary Research Service (2024), p. 6.

¹⁰⁸ CARRERA, et. al. (2023).

countries such as Syria or Afghanistan, that it allows for such a quick activation of the TPD? There is still a persistence of systemic unequal solidarity within the EU's national asylum systems. Other aspects explaining why the TPD was triggered now rather than over previous crises include geographical proximity, time pressure, expected quantity, Ukrainian visa freedom and the uniqueness of the event causing the mass influx¹⁰⁹.

Displacement from Ukraine is mainly dominated by “women-headed households, single women, adolescent girls, and elderly women”¹¹⁰, due to the martial law declared by the President prohibiting men aged 18 to 60 from leaving the country. However, there is very little content within the provisions of the TPD that addresses how gender may influence experiences of refuge, clearly lacking a gender perspective¹¹¹. When this type of big influx is constituted mainly by women, support measures must be appropriately tailored to the needs of this specific group. Article 1 of the TPD establishes “minimum standards” that Member States must comply with, but they are often not enough. Access to safe and affordable housing is one of the “key requirements for gender-sensitive asylum and migration policies” and a basic standard, but also raises one of the biggest concerns¹¹². The limited access to housing increases the vulnerability of women and girls to domestic violence and sexual abuse, and collective reception centers do not allow for any privacy and expose them to GBV.

Gender also influences women's socio-economic inclusion in their host countries. Despite the TPD providing the right for Ukrainians to work and economically contribute to the State they are in, challenges are still in place regarding the varying degrees of employment and exploitation of women at work. Data from 2023 shows that an overall average of 51% of women were unemployed, in comparison to only 39% of men¹¹³, in part due to the responsibilities they take on as caregivers to children or older people, and to the lack of childcare options in Member States, since this is not demanded by the Directive. Similarly, when it comes to healthcare, Article 13(4) of the TPD states that

¹⁰⁹ SARACINO (2024).

¹¹⁰ UNHCR (2022).

¹¹¹ ANDERSON (2024).

¹¹² LASHCHUK (2023).

¹¹³ *Ibid* 122.

Member States “shall provide necessary medical or other assistance to persons enjoying temporary protection who have special needs, such as (...) persons who have undergone torture, rape or other serious forms of psychological, physical or sexual violence”, once again maintaining a minimum standard for host states. However, this does not guarantee that women have access to a full range of sexual and reproductive health services and rights due to varying degrees of accessibility to healthcare¹¹⁴.

Letting these gender dimensions rely on the national policies of Member States, to try and fill the gaps left by the TPD’s scope, leads to fragmented action and solutions that vary from country to country, and deteriorate the rights of women fleeing from the war. Therefore, while it is undeniable that the discussions over Ukrainian women refugees showcase the worry of the EU, there is still an acute need for gender sensitive temporary protection legislation, both at EU and national level, that takes into consideration the difference in gendered experiences of refuge, departing from a ‘genderless’ model of protection that assumed a male experience to a female-dominated situation.

4.2.2. The New Pact on Migration and Asylum

After years of debate and negotiations, the EU’s New Pact on Migration and Asylum was adopted in the European Parliament in April 2024, a set of new rules aiming to manage migration and establish a common asylum system at the EU level, that delivers results “while remaining grounded in our European values”¹¹⁵. The Pact offers a comprehensive approach to secure external borders, assure fast and efficient procedures and grant an effective system of solidarity and responsibility, while embedding migration in international partnerships – the reform intends to ease the burden on EU countries where most migrants arrive, to offer a fairer and more efficient framework for registering and processing asylum requests, and to help reduce secondary movements¹¹⁶. However, civil society organizations, academics and experts raised concerns about the negative impact of this on the rights of migrants to claim asylum and on the overall functioning of the CEAS, sounding the alarm on the risks of human rights violations and how these

¹¹⁴ European Observatory on Health Systems and Policies (2022).

¹¹⁵ EU Migration and Home Affairs (2024).

¹¹⁶ European Council.

measures create new obstacles to asylum requests. Specifically, it matters to analyze how the pact accounts for migrant women's rights and how it embraces the concept of vulnerability. It was never the intention of the pact to facilitate asylum, but rather to regulate and harmonize it, to avoid conflicts between Member States¹¹⁷. The NPMA provides for a stricter border regime and allows the national implementation of accelerated border procedures, criticized for their lower and substandard safeguards that can be used to reject applications without the proper assessment. The NPMA also seems to expand the concept of a "safe third country" excessively, using it as ground for inadmissibility of an application. It aims to reinforce international partnerships to ensure effective returns, combat migrant smuggling more effectively and develop legal migration channels¹¹⁸.

While this pact was deemed a great European success in Brussels, it is clear that it has its fragilities and shortcomings, namely when it comes to mainstreaming gender in asylum procedures. The fact that detention¹¹⁹, as mentioned along the Asylum Procedures Regulation and Reception Conditions Directive, can happen during border procedures exposes women and girls to even more risks, and the border procedures themselves may have detention-like conditions, where the possibility of sexual violence, trauma, and inadequate healthcare and hygiene is heightened. Omitting binding gender standards from the NPMA ultimately leads to uneven standards across Member States, who are only under the obligation to provide minimum conditions. This can limit secure female-only housing, gender-sensitive healthcare or even specialized counseling for the trauma endured during their journeys.

However, not everything about the Pact is useless to the protection of migrant women. Its frequent references to vulnerability can be used as an opportunity to apply the NPMA in a practical, human rights-protective way. Most regulations connect vulnerable persons with the need for special procedural guarantees due to, *inter alia*, their gender (as is stated in recital 17 of the APR), which can negatively affect the applicant's participation in the asylum process. This detection of vulnerability triggers several legal obligations,

¹¹⁷ ENRÍQUEZ (2024).

¹¹⁸ CONTE; YAVCAN (2024).

¹¹⁹ *Ibid* 115.

“translating into practical and operational consequences”¹²⁰. The provisions on gender show that this vulnerability is contextual, it is considered not in general, but in so far as it makes it more difficult to exercise one’s procedural rights and their right to asylum. Following recent CJEU case law, the Qualification Regulation recognizes GBV as a form of persecution and ensures that such claims are adequately addressed in the asylum framework.

From this, and despite the NPMA not being perfect, especially when it comes to gender-sensitive regulations, it does not have to be an empty promise. The identification of vulnerabilities and application of the Pact’s demands fall on national authorities, who have the power to, proactively, identify these vulnerable people on the various stages of the asylum procedure and act accordingly to their needs. In the future, the repeated mention of vulnerability can be used as a legal foothold for the CJEU’s jurisprudence to interpret it and strengthen the protection of migrant women’s rights. Europe has developed concepts to expand protection, and gender-sensitive asylum measures are no exception. It represents a significant legal tool to further integrate these gender-sensitive standards in EU law and national practices.

4.3. Conclusion

The development of migration pathways that are safe and legal is essential to the protection of refugees, especially women, since they face specific risks related to their gender. The EU has been working on establishing legal initiatives across Member States that harmonize the reception of migrants, a process that has evolved throughout time. Clear examples of this are the activation of the TPD for Ukrainian refugees and the NPMA, that illustrate the progress made, but are not exempt of criticism.

The TPD for Ukraine was an unprecedented step forward in European Asylum Policy, providing a quick and collective protection, but it raised the question of a double standard, since nothing of the sort was ever activated for refugees from Syria, Afghanistan or Sudan. Even if it depicted unseen cooperation between Members, it still held gender-related gaps in its protection of women, who represented the majority of those fleeing

¹²⁰ WARIN; ILAREVA (2024).

Ukraine. When looking at the case law of the CJEU about Afghan women, who must also be granted automatic asylum, they both reflect a shift towards group-based protection of those who face a generalized risk. However, it highlights how the EU seems to be weighing with different scales the treatment of refugees from different parts of the world – while the TPD was instantly activated, showing that the EU works effectively when there is political will, Afghan women did not receive similar compassion despite the Taliban taking over in 2021. Instead, their protection had to be litigated in a judicial ruling, reflecting a more fragmented approach and facing resistance to its implementation.

Similarly, the NPMA introduces binding regulations to harmonize asylum policies, strengthening gender-sensitive protections, but still presents shortcomings when compared to what was expected of it. Even if it recognizes gender-based persecution and enhances the protection for victims of SGBV, its restrictions in border procedures risk an inadequate protection of the most vulnerable. This reform relies heavily on national support and implementation, but some States may adopt minimalist approaches to maintain their restrictive migration policies – countries like Hungary or Poland often resist gender-sensitive asylum norms, and their implementation may fall short.

However, the constant references to the concept of ‘vulnerability’ paint a picture where the CJEU may strongly exercise its influence, presenting an opportunity for progressive legal interpretation. As seen through the recent rulings on women asylum seekers and refugees, the Court has increasingly recognized gender-related risks in asylum cases, and this future jurisprudence may play a determinant role in the interpretation and implementation of the NPMA, ensuring that vulnerability clauses are not merely symbolic, but that they can be actively used to protect women seeking refuge. Ultimately, ensuring that legal pathways for migration are accessible and protective of the rights of female migrants requires a consistent enforcement and judicial interpretation, since the success of these initiatives depends on the way they are practiced by Member States.

5. Conclusions

It has been already established that women and girls face risks during their asylum journeys that differ from those experienced by male refugees, and an asylum system that is “gender-neutral” will often solely reflect the experiences of male refugees, ignoring the

needs of women, who are disproportionately affected by gender-specific risks, especially during irregular migration. The intersection of gender and migration requires nuanced approaches that go beyond a “one-size-fits-all” framework to address their specific needs and experiences. The jurisprudence of the CJEU has been playing a crucial role in shaping a gender-sensitive interpretation of asylum norms in the EU. The Court has advanced an important recognition of the CEDAW and the Istanbul Convention as applicable interpretative standards, that must always be considered when interpreting the CEAS regulations, to strengthen the protection of women and girls on the move. The Court also recognized gender equality as an axiological principle of EU Law, further reinforcing the need for the integration of gender considerations in asylum proceedings.

However, and despite legal development, the inconsistent implementation of these gender-sensitive protections and weak enforcement of EU asylum directives by Member States remains a major hurdle to overcome. The fact that there is little uniform incorporation of gender guidelines in asylum procedures leads to a structural trend of gender inequality and to a fragmented protection of women migrants. This leads to the burden to uphold women’s protections falling majorly on the CJEU, rather than ensuring uniform and consistent application across the EU.

In this context, the NPMA presents both advances and risks when it comes to a more gender-sensitive CEAS. While it aims to improve the efficiency of asylum procedures, recognizing SGBV and other gender-related issues, its success in protecting women asylum-seekers will ultimately rely on its implementation by States. Nonetheless, if the CJEU keeps its current trend, the new regulations allow it to continue interpreting these norms under a gendered lens, serving as a foundation for a stronger gender-based protection in the future under the CEAS. It matters to highlight, once again, the absence of any direct mention to the parameters established in the CEDAW or in the Istanbul Convention – being considered as part of the EU legislative framework by the CJEU, they must be taken into consideration when interpreting any directive, to ensure a full protection of women. Their direct inclusion in asylum law would reinforce the legal obligation Member States are under to protect female asylum seekers along their journey.

Lastly, women and girls, despite their vulnerabilities, are not and cannot be seen as passive victims, who need to portray themselves as fragile and helpless to be granted refugee status, their drive to survive amidst adverse conditions cannot be used against them in asylum proceedings. Indisputably, a gender-sensitive lens must take input from

them, as they are agents of change that deserve to be listened to and who can advocate for themselves and for others. Women and girls are not mere individuals in need of assistance, they hold their own rights and deserve to have a holistic and rights-based approach in gender-sensitive asylum policies. In this process, the CJEU is a key actor in interpreting and expanding the gender dimensions of EU asylum law, showing that legal frameworks can and should evolve to reflect the realities lived by those who face the consequences of these policies.

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