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THE PERSONAL IS NOT YET POLITICAL NOR JURIDICAL FOR WOMEN SEEKING ASYLUM IN THE EUROPEAN UNION. CRITICAL ISSUES ARISING FROM THE CJEU JUDGMENT OF 16 JANUARY 2024, C-621/21.

ABSTRACT. *This note critically examines a recent judgment by the European Court of Justice regarding the recognition of gender-based violence as a ground for asylum for women. The analysis begins with a discussion on the neglect of international legal feminism in refugee law and highlights the importance of considering the binding provisions of the CEDAW and the Istanbul Convention. The judgment acknowledges women facing gender-based violence as members of a particular social group eligible for refugee status, but it falls short in recognizing the political dimension of their persecution. Additionally, it addresses the issue of non-state actors as perpetrators of persecution and emphasizes the need for detailed assessments considering various factors.*

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1. Introduction

The judgment issued by the Grand Chamber of the Court of Justice of the European Union on 16 January 2024 in the case stemming from the request for a preliminary ruling under Article 267 TFEU by the *Administrativen sad Sofia-grad* (Sofia Administrative Court, Bulgaria) has been widely welcomed as a historical decision about women's requests for asylum in EU Member States in case of gender-based violence. It has been stated, *inter alia*, that this judgment would enable for the very first time the recognition of refugee status for women victims of gender-based violence; today judgment would thus be pivotal in the advancement of a gender perspective in human rights, similarly to the decision rendered by the European Court of Human Rights in the case *Opuz v. Turkey* in 2009, which recognized that the respondent State's failure to protect women from domestic violence amounted to a violation of articles 2, 3 and 14 ECHR, thereby representing an important step towards an EU-wide protection of refugee women who are victims of gender-based violence.[1] However, a closer examination of the EU Court of Justice judgment and its annexes reveals a significant critique. It not only demonstrates the legal systems' solid resistance to recognizing the *acquis* of well-established norms and principles of international and European law on gender-based violence against women but also seems to ignore the vast and solid *corpus* of feminist research and analysis that produced relevant advancements for women's rights in the context of international refugee law and international human rights law. This critique challenges the perceived jurisprudential advancement, which practitioners and scholars have so far often emphasized mentioning this judgment.

[1] For first comments, see Silvia Steininger, 'The CJEU's Feminist Turn? Gender-based Persecution as a Ground for Protect' (2024) <https://verfassungsblog.de/>, accessed 30 April 2024. The case files are available at <https://eur-lex.europa.eu/legal-content/EN/CASE/?uri=CELEX:62021CJ0621>.

2. The Judgment of the Court of Justice of the European Union (Grand Chamber) of 16 January 2024, C-621/21

2.1. The facts of the case

The request for a preliminary ruling was made in the context of proceedings between WS and the Bulgarian Interviewing Body of the State Agency for Refugees at the Council of Ministers (hereinafter the DAB).[2] In that context, the competent authority decided to refuse to open a procedure for granting international protection further to a subsequent application made by WS, a Kurdish woman from Turkey.

WS arrived legally in Bulgaria in June 2018. Thereafter, she joined a family member in Berlin (Germany), where she applied for international protection.

By a decision of the DAB of 28 February 2019, adopted following a request from the German authorities, WS was taken back by the Bulgarian authorities to examine her application for international protection.

During three interviews conducted by the DAB in October 2019, WS stated that she had been forcibly married at the age of sixteen and had three daughters. Her husband allegedly beat her during their married life, but her biological family, who was aware of the situation, gave her no assistance. WS fled the marital home in September 2016, entered a religious marriage in 2017, and had a son from that marriage in May 2018. After leaving Turkey, she officially divorced her first husband in September 2018, despite his objections. She stated that, for those reasons, she fears that his family would kill her if she were to return to Turkey.

Before the DAB, WS produced the decision, which had become final, of the Turkish civil court, which granted her divorce, together with the complaint that she had lodged against her husband, her biological family, and her former husband's family in January 2017 with the Public Prosecutor's Office in Torbali (Turkey), the minutes of which, drawn up on 9 January 2017, refer to the threatening telephone messages which her husband had sent her.

She also produced a decision from a Turkish court on 30 June 2017 placing her in a house for women who are victims of violence, in which she claimed not to feel safe.

[2] Intervyuirasht organ na Darzhavna agentsia za bezhantsite pri Ministerskia savet.

By a decision of 21 May 2020, the President of the DAB rejected WS's application for international protection, taking the view, first, that the reasons relied on by WS for leaving Turkey, in particular acts of domestic violence or death threats by her husband and by members of her biological family, were not relevant for the purpose of granting that status, since they could not be linked to any of the reasons for persecution set out in Article 8(1) of the ZUB. Furthermore, WS did not claim to be the victim of acts of persecution based on her gender.

Second, the President of the DAB refused to grant WS subsidiary protection status because she did not satisfy the conditions required for that purpose since 'neither the official authorities nor certain groups had taken action against the applicant that the State is not in a position to control' and she 'had been subject to criminal assaults of which she had not even informed the police and in respect of which she had not lodged a complaint and … had left Turkey legally'.

By judgment of 15 October 2020, upheld on 9 March 2021 by the Supreme Administrative Court of Bulgaria, and now finally, the Sofia Administrative Court, Bulgaria, dismissed the action brought by WS against the denial.

On 13 April 2021, WS made a subsequent application for international protection based on new evidence, claiming a well-founded fear of persecution by non-State actors on account of her membership of a 'particular social group,' namely women who are victims of domestic violence and women who are potential victims of 'honour killings'.

She asserted that the Turkish State was not able to defend her against those non-State actors. She argued that her return to Turkey would expose her to an 'honour killing' or a forced marriage and, therefore, to an infringement of Articles 2 and 3 ECHR.

In support of that application, WS adduced, as new evidence, a decision of a Turkish criminal court imposing on her former husband a five-month custodial sentence for committing the offense of threatening behavior against her in September 2016. That sentence was suspended, and he was placed on probation for five years, given the absence of previous convictions, his personal character, and his acceptance of that sentence.

WS annexed to that application articles from the Deutsche Welle newspaper from 2021, which referred to violent murders of women in Turkey. Furthermore, WS

relied on the withdrawing by the Republic of Turkey from the Council of Europe Convention on the Prevention of Violence against Women and Domestic Violence (hereinafter Istanbul Convention) in March 2021 as a new circumstance.

By a decision of 5 May 2021, the DAB refused to reopen the procedure for granting international protection following WS's subsequent application on the ground that WS had not referred to any significant new evidence relating to her personal situation or her country of origin. The DAB pointed out that the Turkish authorities had assisted her several times and indicated that they were prepared to help her by all lawful means.

2.2. The request for a preliminary ruling about substantive preconditions for granting international protection in case of gender-based violence

The referring Bulgarian Court states that, while WS's application for international protection was rejected as inadmissible, the Court of Justice of the European Union has never ruled on gender-based violence against women in the form of domestic violence and the threat of honor killings, as a ground for granting international protection. In that context, the referring court asks the Court of Justice whether to classify gender-based violence against women as a ground for granting international protection under the 1951 Geneva Convention on the Status of Refugees and Directive 2011/95. The Bulgarian Court also asks whether the CEDAW (UN Convention on the Elimination of All Forms of Discrimination against Women) and the Council of Europe Istanbul Convention Against Violence Against Women and Domestic Violence apply in accordance with recital 17 of Directive 2011/95 gender-based violence against women, as a ground for granting international protection under Directive 2011/95, has an autonomous meaning which differs from that in the abovementioned instruments of international law. Furthermore, the Bulgarian Court asks to determine the conditions in which a third-country national woman who faces the risk of being the victim of an honour crime or a forced marriage and of being exposed to acts of domestic violence if she returns to her country of origin, might be considered to have a well-founded fear of being persecuted by reason of her membership to a 'particular social group' and be granted refugee status (Article 10(1)(d) of Directive 2011/95).

The Court is required to clarify the conditions under which the competent national authority must ascertain, in a case where the violence is committed by a non-State actor, that there is a causal link between the reasons for the persecution, namely membership of a particular social group, and the absence of protection in the country of origin (Article 9(3) of that directive).

Finally, it has to clarify the extent to which subsidiary protection status might be granted to such a person. In that context, it has to determine the conditions in which the acts of violence described above might be classified as 'serious harm' within the meaning of Article 15 of that directive, either in so far as they constitute a severe threat against that person's life or in so far as they constitute inhuman or degrading treatment.

2.3. The opinion of the Advocate General

The Advocate General Richard De La Tour delivered his opinion on the Bulgarian Court's request for a preliminary ruling on 20 April 2023, introducing his arguments by acknowledging that

> The issue of acts of violence against women in the family context has become a major concern of our societies after the gravity and the consequences of such acts had long been underestimated by the authorities. Killings of women in the family circle, now called 'femicide' in everyday language, have been publicly denounced. The public authorities have become aware of the need to provide better protection for women victims of violence in their family setting and to take a stricter approach towards the authors of such violence. (§1)

The Advocate General also pointed out as introductory remark, that the referred questions reflect

> the concerns … of those who consider that refugee status cannot be granted to all women who are victims of domestic violence, since it is a problem common to all States, and those who, on the other hand, deplore the fact that subsidiary protection is only protection granted 'by default' to those women, thus leading to non-recognition of the reasons for gender-related persecution, including those based on sexual orientation and gender identity. (§3)

The Advocate General firstly examines the extent to which the terms laid down by the CEDAW and the Istanbul Convention must be taken into account for the purposes of the implementation of Directive 2011/95, recalling that under Article 78(1) TFEU, the Common European Asylum System, to which Directive 2011/95 belongs, must be in accordance with the Geneva Convention and the 1967 Protocol relating to the Status of Refugees, and with other relevant treaties.

Thus, the primary purpose of Directive 2011/95, as stated in Article 1 thereof and in the Court's case law, is to establish a system of rules, including concepts and criteria common to the Member States for the identification of persons in need of international protection which are therefore specific to the European Union, while ensuring that Article 1 of the Geneva Convention is complied with in total, but without any possibility to extend the scope of that directive beyond that covered by the Convention,[3] where there no reference to 'gender' in the definition of the concept of 'refugee,' nor provide that 'gender-based violence against women' may constitute in itself a reason for granting international protection.

In the context of Directive 2011/95, as the Advocate General notes, the applicant's gender is therefore taken into consideration in the assessment of the nature of the acts of persecution to which a person is or could be exposed in their country of origin (Article 9(2)(f) of that directive) and when the reasons for persecution are examined, in particular when determining the applicant's membership of a particular social group (second indent, *in fine*, of Article 10(1)(d) of that directive).

Furthermore, although Article 9(2)(f) of Directive 2011/95 does not specify the scope of acts of a gender-specific or child-specific nature, the Advocate General refers to Directive 2012/29/EU on victims' rights that at Recital 17 defines 'gender-based violence' as covering

> violence that is directed against a person because of that person's gender, gender identity or gender expression or that affects persons of a particular gender disproportionately … It may result in physical, sexual, emotional or psychological harm, or economic loss, to the victim. Gender-based violence is understood to be a form of discrimination and a violation of the fundamental freedoms of the victim

[3] CJEU, judgment 19 November 2020, Bundesamt für Migration und Flüchtlinge (Military service and asylum).

> and includes violence in close relationships, sexual violence (including rape, sexual assault, and harassment), trafficking in human beings, slavery, and different forms of harmful practices, such as forced marriages, female genital mutilation, and so-called "honour crimes". Women victims of gender-based violence and their children often require special support and protection because of the high risk of secondary and repeat victimisation, of intimidation and of retaliation connected with such violence.

The Advocate General, therefore, concludes stressing that

> it is common ground that the European Union has not ratified the CEDAW and that, while it signed the Istanbul Convention on 13 June 2017, it has not yet acceded to it. Nor has that convention been ratified by all Member States. Pending such accession or ratification, the Istanbul Convention constitutes above all a multidisciplinary convention to ensure, holistically and on the basis of an integrated approach involving all members of society, the prevention of violence against women, the protection and support of victims and the prosecution of the actors of violence" (§59), however that neither the Istanbul Convention nor the CEDAW is a 'relevant treaty', within the meaning of Article 78(1) TFEU, by reference to which Directive 2011/95 must be interpreted (§60).

He admits that, considering that Recital 17 states that 'with respect to the treatment of persons falling within the scope of [that] Directive, Member States are bound by obligations under instruments of international law to which they are a party, including, in particular, those that prohibit discrimination', it derives that the EU legislature laid down the requirement that Member States are to ensure equal treatment between the beneficiaries of international protection and their nationals about access to procedures for recognition of qualifications (Article 28(1)) and, also, access to healthcare (Article 30).

Consequently, and only in that context, under the opinion of the Advocate General, the Member States must comply with the obligations arising under the international instruments to which they are party, such as the CEDAW and the Istanbul Convention (§§61-62).

On the contrary, the conditions for granting refugee status to a person who fears being the victim of acts of gender-based violence in the event of being returned to their country of origin must be examined by reference to the provisions laid down for that purpose only by the directive 2011/95, interpreted in the light of the general scheme

and the purpose of that directive, in conformity with the Geneva Convention, in accordance with Article 78(1) TFEU, but not on the basis of the definitions set out in the CEDAW and the Istanbul Convention, which, according the Advocate General, 'are not "relevant treaties" for the purposes of that article' (§63).

Concerning the second and third referred questions, the Advocate General considers that Article 10(1)(d) of Directive 2011/95 must be interpreted as meaning that a third-country national may be deemed to belong to a 'particular social group' because of her gender provided that it is established, based on an assessment of the facts and circumstances, that, in addition to her gender alone, that is to say, her identity and her status as a woman, she has a distinct identity in her country of origin because she is perceived differently by the surrounding society because of the social, legal or religious norms or the rites or customs of her country or of the community to which she belongs.

In the context of that assessment, the nature of the acts to which that national fears being exposed if she is returned to her country of origin is a relevant element that the competent national authority must consider.

With regard to the fourth question, the Advocate General states that Article 9(3) of Directive 2011/95 must be interpreted as meaning that, in the event of acts of persecution committed by a non-State actor, the competent national authority is required to determine, following an assessment of the application for international protection carried out on an individual basis that takes into account all relevant facts as they relate to the country of origin, including laws and regulations of that country and how they are applied, whether there is a causal link between, on the one hand, the reasons on which those acts of violence are based, namely the third-country national's membership of a particular social group, and, on the other hand, the absence of protection on the part of the authorities of the country of origin, for the purposes of Article 7 of that directive.

Finally, with regard to the assessment of the conditions for granting subsidiary protection, Article 2(f) and Article 15 of Directive 2011/95 must be interpreted as meaning that in a situation in which the competent national authority establishes, following a global assessment of the specific circumstances of the particular case, that, if the woman is returned to her country of origin, she will face the risk not only of being executed in the name of the honour of her family or her community but also of being

the victim of acts of torture or of inhuman or degrading treatment or punishment resulting from acts of domestic violence or any other act of gender-based violence, that authority is required to classify those acts as constituting 'serious harm'. To determine whether that risk is well founded, the competent national authority must establish whether the State or parties or organizations controlling it offer protection against that serious harm that meets the requirements set out in Article 7 of that directive.

2.4. The decision

In the first place, the Court rejects the opinion of the Advocate General whereby the CEDAW would not be relevant to interpret EU law provisions on international protection.

In particular, the Judges of Luxembourg pointed out that all the Member States ratified the CEDAW, thus it is one of the relevant treaties referred to in Article 78(1) TFEU, in accordance with which the directive 2011/95, in particular, Article 10(1)(d) thereof, must be interpreted (§45).

In addition, as per recital 17 of the aforementioned directive, Member States must comply with international law and treaties, including those prohibiting discrimination against individuals falling within its purview, like CEDAW.

The Court of Justice recalls that the Committee on the Elimination of Discrimination against Women, which is responsible for monitoring the implementation of the CEDAW, stated that said convention reinforces and complements the international legal protection regime applicable to women and girls, including in the context of refugee law (§46).

Secondly, as regards the Istanbul Convention, which has been binding on the European Union since 1 October 2023, it must be pointed out that that convention lays down obligations coming within the scope of Article 78(2) TFEU, which empowers the EU legislature to adopt measures relating to a common European asylum system, such as Directive 2011/95.[4] Thus, that convention, in so far as it relates to asylum and non-refoulement, is also one of the relevant treaties referred to in Article 78(1) TFEU.

[4] See, to that effect, Opinion 1/19 (Istanbul Convention) of 6 October 2021, EU:C:2021:832, paragraphs 294, 302 and 303.

In those circumstances, the Court of Justice clarifies that the provisions of that directive, in particular, Article 10(1)(d) thereof, must be interpreted consistently with the Istanbul Convention, even though some Member States, including the Republic of Bulgaria, has not ratified that convention (§48).

In that regard, the Court of Justice firstly underlines that Article 60(1) of the Istanbul Convention provides that gender-based violence against women is to be recognized as a form of persecution within the meaning of Article 1A(2) of the Geneva Convention.

Secondly, Article 60(2) of that convention requires parties to ensure that a gender-sensitive interpretation is given to each of the reasons for persecution prescribed by the Geneva Convention and that where it is established that the persecution feared is for one or more of those reasons, applicants are to be granted refugee status.

The Court of Justice, therefore, discusses the conditions required for the identification of a 'particular social group' as defined in the first paragraph of Article 10(1)(d) of Directive 2011/95.

The provision requires sharing at least one of three identifying features: group members share an innate characteristic, have a common background that cannot be changed, or share a fundamental characteristic or belief that defines their identity or conscience and that they should not be forced to renounce. Additionally, the group must have a distinct identity in the relevant country, perceived as different by the surrounding society.

The Court of Justice has determined that being female is an innate characteristic and is sufficient to meet the criteria of belonging to a particular social group (§49). Additionally, women who have a shared common feature, such as another innate characteristic, a common background that cannot be altered, such as a unique family situation, or a characteristic or belief that is so fundamental to their identity or conscience that it should not be renounced may also be included in this group (§50).

In cases where women have been forced into marriage or have left their homes due to marriage-related issues, they may be viewed as having a fixed background that cannot be changed based on the circumstances of the case.

The second condition pertains to the group's unique identity in their country of origin. The Court believes that women can be seen as distinct by the surrounding society

and recognized as having their own identity in that society. This recognition is mainly due to social, moral, or legal norms in their country of origin. Additionally, that second condition will be satisfied if women share an additional common characteristic, where the social, moral, or legal norms in their country of origin result in those women being perceived as different by the surrounding society because of that common characteristic. The country in question must ascertain individually and carefully whether the person who is relying on their membership of a particular social group as a reason for persecution genuinely has a 'well-founded fear' of being persecuted in their country of origin, keeping in mind the specific facts and circumstances of the individual's situation.

To properly examine women's applications for refugee status, it is essential to collect country of origin information that is relevant to their situation. This information should include the status of women in the country before the law, their political rights, social and economic rights, and the cultural and social norms of the country. Additionally, it should detail the consequences for non-adherence to these norms, the prevalence of harmful traditional practices, and the incidence and forms of violence against women. It should also provide information on the protection available to women, any penalties imposed on those who perpetrate violence, and the risks that a woman might face if she returns to her country of origin after making a claim.

The Court states that, depending on the situation in the country of origin, women in that country, either as a group or as more specific subgroups, may be considered as belonging to a 'particular social group' and may be subjected to persecution that can justify their status as refugees.

The Court, therefore, answers the question whether, in case of fear of being persecuted by non-State actors, a link must be established, in all cases, between the acts of persecution and at least one of the reasons for persecution set out in Article 10(1) of that directive.

The Court of Justice clarifies that non-State actors can be classified as 'actors of persecution or serious harm' when the 'actors of protection', which include the State, are unable or unwilling to protect against those acts. Such actors must not only be able but also willing to defend the applicant concerned from the persecution or severe harm to which they are exposed (§64), by ensuring effective and a non-temporary protection measures and taking reasonable steps to prevent the persecution or suffering of serious

harm, *inter alia*, by operating an effective legal system to which the applicant for international protection has access, enabling such acts to be detected, prosecuted and punished (§65).

In the case of an act of persecution perpetrated by a non-State actor, the condition laid down in Article 9(3) of Directive 2011/95 is satisfied, according to the Court of Justice, where that act is based on one of the reasons for persecution mentioned in Article 10(1) of that directive, even if the absence of protection is not based on those reasons. That condition must also be regarded as being satisfied where the lack of protection is based on one of the reasons for persecution set out in the latter provision, even if the act of persecution perpetrated by a non-State actor is not based on those reasons.

By its fifth question, the referring court asks whether the concept of serious harm covers the real threat to the applicant of being killed or subjected to acts of violence inflicted by a member of her family or community due to the alleged transgression of cultural, religious or traditional norms, and that that concept is therefore capable of leading to the recognition of subsidiary protection status, within the meaning of Article 2(g) of that directive, when a person is not eligible for subsidiary protection but he/she, if returned to his or her country of origin, would face a real risk of suffering serious harm and is unable or, owing to such risk, unwilling to avail himself or herself of the protection of that country.

Article 15(a) and (b) of Directive 2011/95, read in the light of recital 34 of that directive, defines 'serious harm' as 'the death penalty or execution' and 'torture or inhuman or degrading treatment or punishment of an applicant in the country of origin': according to the judges of Luxembourg, where a woman runs a real risk of being killed by a member of her family or community because of the alleged transgression of cultural, religious, or traditional norms, severe such harm must be classified as 'execution' within the meaning of that provision. Furthermore, the acts of violence to which a woman risks being exposed because of the alleged transgression of cultural, religious, or traditional norms are not likely to result in her death; those acts must be classified as torture or inhuman or degrading treatment or punishment within the meaning of Article 15(b) of Directive 2011/95.

Article 15(a) and (b) of Directive 2011/95 must be interpreted as meaning that the concept of 'serious harm' covers the real threat to the applicant of being killed or

subjected to acts of violence inflicted by a member of their family or community due to the alleged transgression of cultural, religious or traditional norms and that that concept is, therefore, capable of leading to the recognition of subsidiary protection status, within the meaning of Article 2(g) of that directive.

3. Refugee women in international law

It is true that, as the Advocate General writes, the issue of gender-based violence against women is structural and concerns every country, but rather than fearing the prospect of a generalized recognition of the right to asylum for women, which would perhaps be in some way a desirable restorative measure in the face of a history of systemic abuse and persecution, the issue of gender-based violence would have deserved a more careful and general in-depth examination, in the light of the binding provisions of the CEDAW and the Istanbul Convention.

It is crucial to start the critical analysis of the arguments of the questions referred to the Court, of the opinion of the Advocate general, and of the decision of the Court of Justice from the issue of the relevance of the CEDAW and the Istanbul Convention to outline the criticisms related to the decision at hand, which involve both EU asylum law and feminist legal analysis of international refugee law and policies.

Next, I will discuss the issue of recognizing women seeking refugee status as members of a particular social group and the problematic notion of "actors of protection" emphasized by the European Court of Justice.

My reflections stem from observing a general neglect for the influence of international legal feminism in refugee law. This is apparent as early as the questions formulated by the referring court, then it is reinforced structurally in the opinion of the Advocate General and is only partially included by the decision of the Court of Justice. It is important to note that the latter certainly could not deviate from the legal issues submitted by the court of the Member State; however, it could have delved into international jurisprudence and recalled the CEDAW Committee's binding recommendations on refugee women, including relevant analysis and development of

the international refugee law from a feminist and gender-based perspective.[5]

3.1. Women's experience of persecution and the recognition of international protection

The feminist reinterpretation of the elements of the legal definition of a refugee was deemed necessary for the legal recognition of the persecutions suffered by women not only to be concretely framed within the definition of persecution provided by the 1951 Geneva Convention but also to overcome the main argumentative obstacle that is often found denials, namely that what women suffered, although constituting specific human rights violations, were committed in a context of personal relationships by private individuals and for this reason could not be attributed to State authorities and therefore to public persecuting agents.[6]

The asylum seeker must demonstrate a well-founded fear of persecution by State authorities or by persons whom the State is unwilling or unable to control: the examination of the application for international protection also concerns the ability and willingness of the State of origin to provide protection. Where concrete and effective protection from the reported persecution is found, the conditions for refugee status cannot be met.

The CEDAW Committee intervened on the issue of proof of protection and its effectiveness and effectiveness, pointing out that

> harm perpetrated against women and girls is often at the hands of non-State actors, including family members, neighbours or society more generally. In such cases, article 2 (e) of the Convention requires that States parties assume their due diligence obligation and ensure that women are effectively protected from harm that may be inflicted by non-State actors. It does not suffice to strive for vertical gender equality of the individual woman vis-à-vis public authorities; States must also work to secure non-discrimination at the horizontal level, even within the family.[7]

[5] Heaven Crawley, *Refugees and Gender: Law and Process* (Jordans, Bristol, 2001); Jane Freedman, 'Engendering security at the borders of Europe: Women migrants and the Mediterranean "crisis" in JRS, [2016] 29, 568–582; Heaven Crawley, 'Gender, persecution and the concept of politics in the *asylum* determination process', in FMR [2000] 9, 17–20. B.arbara Pinelli, *Migranti e rifugiate. Antropologia, genere e politica* (Raffaello Cortina Editore, Milano, 2019).

[6] Heaven Crawley, *Refugees and Gender: Law and Process* (Jordans, Bristol, 2001), 37; Jane Freedman, *Gendering the International Asylum and Refugee Debate,* (Palgrave Macmillan, Basingstoke, 2015), 45.

[7] CEDAW Committee, General recommendation No. 32 on the gender-related dimensions of refugee status, asylum,

Accordingly, the CEDAW Committee clarified that harm perpetrated by non-State actors must also be qualified as persecution relevant in the context of the Geneva Convention 'where the State is unable or unwilling to prevent such harm or protect the claimant because of discriminatory governmental policies or practice.'[8]

A significant impetus for the qualification in terms of persecutory acts of all forms of gender-based violence to which women are exposed as well as for the determination of the extent of State responsibility in case of violations suffered by women by non-State actors has been given by the European Court of Human Rights, which has provided relevant guidance to State authorities not only to adapt the domestic legal system to the conventional parameters of protection of women's fundamental rights and freedoms but also to provide adequate instruments to protect women claiming asylum for persecution suffered on account of their sex and gender.

In particular, the Strasbourg Court has clarified that States, pursuant to Articles 2, 3, 6, 8, and 14 ECHR, are responsible if they have failed to provide women, victims of gender-based violence, with adequate measures to punish, prevent, protect from the psychological and physical safety violation against women exposed to violence, including their children. Firstly, States' responsibility for violations of the rights and freedoms protected by the European Convention on Human Rights (ECHR) has been identified in cases of gender-based violence committed by private individuals where the domestic legal system has not adopted adequate legislative measures to punish acts of sexual violence and domestic violence in all its forms, including psychological violence.[9]

States are also required to ensure the conduct of effective investigations[10] and the holding of timely trials that guarantee the rights of all parties,[11] including victims of violence, who must be concretely protected from further violence.[12] This includes

nationality and statelessness of women, 2014, §27.

[8] CEDAW Committee, 2014, §27.

[9] *M.C. v Bulgaria* App no 39272/98 (ECtHR,4 December 2003), paras 148 ss.; *Opuz v Turchia* App no 33401/02 (ECtHR, 9 June 2009), paras §§132; *A.C. v Croatia* App no 55164/08 (ECtHR, 14 October 2010), para 60.

[10] B.*S. v Spain* App no 47159/08 (ECtHR, 24 July 2012), paras 40 ss.

[11] *Y. v Slovenia* App no 41107/10 (ECtHR, 28 May 2015), paras 23 ss.

[12] *Maiorano and others v Italy* App no 28634/06 (ECtHR, 15 December 2009); *Kontrova v Slovakia* App no 7510/04 (ECtHR, 13 June 2006*); Hajduova v Slovakia* App no 2660/03 (ECtHR, 30 November 2010); *Valiulené v Lithuania*

adopting temporary measures to protect women and their children exposed to violence.[13]

Throughout the criminal and civil proceedings, from the first contact with law enforcement, the victim's integrity must be respected to avoid further trauma from the process itself. This is meant to ensure the exercise of fundamental rights that comprise access to justice.[14]

The adoption of adequate and effective measures, meaning not merely formal but with concrete outcomes in terms of protection and prevention, constitutes a positive obligation deriving not only from Articles 2, 3, and 8 of the ECHR but also from the prohibition of discrimination established by Article 14 of the ECHR. As stated since the Opuz v. Turkey judgment (2009), the domestic violence suffered by the applicant 'can be considered gender-based violence, which is a form of discrimination against women' (§200), not based 'on the legislation per se, but rather the result of a general attitude of the local authorities, such as the treatment by law enforcement officers towards women when they report domestic violence and judicial inertia in ensuring effective protection for the victim' (§192).[15]

The principles developed by the European Court of Human Rights on gender-based violence have been codified by the Istanbul Convention, which, on the subject of the recognition of international protection, states in Article 60 that the State shall take the necessary legislative or other measures to ensure that gender-based violence against women can be recognized as a form of persecution within the meaning of Article

App no 33234/07 (ECtHR, 26 March 2013; *Eremia v Moldovia* App no 3564/11 (ECtHR, 28 May 2013).

[13] *O.C.I. and others v Romania* App no 49450/17 (ECtHR, 21 May 2019); *D.M.D. v Romania* App no 23022/13 (ECtHR, 3 October 2017).

[14] *Y. v Slovenia* App no 41107/10 (ECtHR, 28 May 2015).

[15] The approach of the Strasbourg Court in *Opuz v Turkey* has also guided subsequent jurisprudence. The Court has consistently emphasized the responsibility of States to adopt effective legislative and operational measures to protect victims of violence, ensuring timely investigations and fair trials. Additionally, the Court has reiterated the importance of addressing domestic violence as a form of gender-based discrimination, compelling States to prevent and adequately punish such acts in line with Articles 2, 3, 8, and 14 of the ECHR in the cases *Eremia and others v Moldova* App no 3564/11 (ECtHR, 28 May 2013); *Mudric v Moldova* App no 74839/10 (ECtHR, 16 July 2013); *B. v Moldova* App no 61382/09 (ECtHR 16 July 2013; *N.A. v Moldova* App no 61382/09 (ECtHR, 16 July 2013); *Talpis v Italy* App no 41237/14 (ECtHR 2 March 2017); *Volodina v Russia* App no 41261/17 (ECtHR, 1 June 2017).

1A(2) of the 1951 Convention relating to the Status of Refugees and as a form of serious harm giving rise to complementary/subsidiary protection, and shall ensure that a gender-sensitive interpretation is applied to each of the Convention grounds.

The situation where the referring Bulgarian Court and authorities of many Member States remain unaware or dismissive of the applicability of instruments like CEDAW and the Istanbul Convention highlights a significant issue in the marginalization of specific international instruments concerning women's rights. This marginalization occurs despite their historical and transformative significance and requires reflection on several key aspects. Firstly, there is a considerable gap between substantive and formal law. Substantive law embodies the rights and protections available, whereas formal law pertains to the codified legal texts and frameworks. In many cases, the rights guaranteed by international instruments are not effectively translated into national legal systems, leading to a disparity between what is theoretically promised and what is practically delivered.[16]

Secondly, the legal culture itself is a substantial barrier. This culture, even though it originates from prestigious law schools that train numerous legal experts in European Member States and European institutions, often remains gender blind. These institutions frequently fail to adequately transmit critical portions of domestic and international legislation that pertain to women's rights. Moreover, they overlook innovative analyses, studies, and research, relegating them to the periphery of legal education and training. Such materials are often dismissed as 'too feminist' and not given the necessary attention or importance.

Additionally, the reluctance to fully embrace and implement these international instruments is symptomatic of deeper societal and institutional resistance to changing patriarchal structures. The principle of State sovereignty has often been invoked to limit the impact of international treaties like CEDAW and the Istanbul Convention, and many states have made reservations to these treaties, modifying or excluding the legal effects of certain provisions to avoid substantial changes in their domestic legal systems,[17]

[16] Dubravka Šimonović, 'Global and Regional Standards on Violence Against Women: The Evolution and Synergy of the CEDAW and Istanbul Conventions', in HRQ [2014] 36, 3, 590-606.

[17] The principle of State sovereignty has limited the ability of the CEDAW and other specialistic treaties, including

while Turkey's withdrawal from the Istanbul Convention is a clear indication of this resistance.

International law scholars such as Hilary Charlesworth, Christine Chinkin, and Shelley Wright argue that while the international community formally acknowledges the problems of inequality women face, this acknowledgment is often superficial. It is acceptable only if it does not require states to alter deeply entrenched patriarchal practices that subordinate women. This stance results in a legal environment where the formal recognition of women's rights does not translate into substantive change.[18]

3.2. Persecution by non-State actors and the notion of non-State actors of protection

When persecution is perpetrated by non-State actors, destination States often still reject women's applications for protection based on the possibility of benefiting from internal flight routes as an alternative to leaving the country of origin:[19] a person is not considered to be at risk of persecution by non-State actors if he/she has the possibility to transfer to a safe place within the State of origin.

The CEDAW Committee recalled on this point that Article 2(d)(e) of the CEDAW Convention requires States parties to ensure that women are protected against discrimination generated by non-State actors and, concerning women as asylum seekers, emphasized that denials of international protection based on the availability of an alternative internal flight route to departure do not take into account that the alternative internal flight is an option generally precluded to women, who lack the resources and autonomy to move freely, which they are often specifically prohibited from doing, even criminally sanctioned, in their country of origin or to flee abroad, a rare opportunity

the Istanbul Convention (or the Belèm do Parà Convention, the Maputo Protocol, or UNSC Resolution 1325), to affect the situation of women concretely. Article 16 CEDAW, concerning women's equality in marriage and family life, is subject to over 20 reservations. See Amnesty International, "Reservations to the Convention on the Elimination of All Forms of Discrimination against Women: Weakening the protection of women from violence in the Middle East and North Africa region", November 2004, URL: <https://www.amnesty.org/en/wp-content/uploads/2021/09/ior510092004en.pdf>, accessed 30 April 2024.

[18] Hilary Charlesworth, Christine Chinkin and Shelley Wright, 'Feminist Approaches to International Law', TAJIL [1991] 85, 4, 633.

[19] CEDAW Committee, 2014, §28.

that women often have only by resorting to migration channels that expose them to the risk of further violence:

> Difficulties faced by women in relocating to other parts of their countries of origin can include legal, cultural and/or social restrictions or prohibitions on women travelling or living alone, practical realities such as problems of securing accommodation, childcare and economic survival without family or community support, and risk of harassment and exploitation, including sexual exploitation and violence[20] .

Consequently, State authorities must check on a case-by-case basis whether 'gender' risks can be relocated internally.[21]

The Court of Justice of the European Union's judgment in Case C-621/2021 made it clear that a lack of protection based on one of the grounds for persecution is relevant even if the act of persecution perpetrated by a non-State actor is not based on such grounds.

While the recognition of the persecutory nature of conduct perpetrated by non-State actors represented a breakthrough for the protection of refugee women at risk of being harmed by their family or community, the concept of non-State actors has expanded over time, whereby non-State actors can now be considered to be not only actors of persecution but also 'actors of protection',[22] starting with the provisions of Article 7 of Directive 2011/95/EU, which identifies the actors that can offer protection against persecution or serious harm, namely the State; parties or organizations, including international organizations, controlling the State or a substantial part of its territory, provided they are willing and able to offer protection.

In this way, the EU Qualification Directive ensured that all EU member States recognize non-state actors of persecution, and, at the same time, it also codified the concept of non-state actors of protection in Article 7.

[20] CEDAW Committee, 2014, §28.

[21] CEDAW Committee, 2014, §26.

[22] Deborah E. Anker, 'Refugee Status and Violence against Women in the Domestic Sphere: The Non-State Actor Question,' GILJ [2001] 15, 393. Maria O'Sullivan, 'Acting the Part: Can Non-State Entities Provide Protection Under International Refugee Law?' IJRL [2012]24, 87.

Recently, among non-State actors recognized as capable of protecting, Swedish courts have included tribes and clans, a position also shared by the European Commission during the revision of the Qualification Directive, noting that some Member States have identified protection agents in clans and tribes, or NGOs for women at risk of FGM and honour killings, 'although such organizations can only provide temporary safety or even only shelter to victims of persecution'.[23]

Despite the strict limits of the notion of actors of protection, also reaffirmed by the Court of Justice of the European Union,[24] there are fears of the spread of practices that unduly broaden the notion to include family members and male networks, in a way that is particularly detrimental to the protection of refugee women and already reverberates in the jurisprudence of the European Court of Human Rights. Indeed, against the advanced framework of States' obligations to prevent and protect women from gender-based and domestic violence, in cases concerning the denial of protection and deportation of women as asylum seekers, the European Court of Human Rights assumes that support from family members and male networks is sufficient to fulfill the responsibility of States to protect against serious harm, even when deportation occurs in countries where discrimination against women is institutionalized by law and delegated to the private agents of the family.

The grounds for these decisions mainly consist of a 'formalistic, summary, vague or simply non-existent assessment of the home state's ability to protect women'.[25] Moreover, the Court's assessment of violence against women in deportation cases is not only inconsistent with similar cases where ill-treatment occurs within the territory of the Member States, but also with its case law on deportation more generally. In its first jurisprudence on the recognition of ill-treatment at the hands of non-State actors, the Court established as a general principle in cases of expulsion under Article 3 ECHR that when there is a real risk of harm from non-State actors, it must be shown that 'the

[23] European Commission, Proposal for a Directive of the European Parliament and of the Council on minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted, COM(2009) 551 final, 6-7.

[24] CJEU, Secretary of State for the Home Department v. OA, Judgment, Case C-255/19, 20 Jan. 2021, para. 27.

[25] Lourdes Peroni, 'The protection of women asylum seekers under the European Convention on Human Rights: unearthing the gendered roots of harm', HRLR [2018] 18 (2), 347-370.

authorities of the receiving State are unable to obviate the risk by providing adequate protection'.[26]

A case that provides insight into the trap behind the notion of actors of protection is *AA and Others v Sweden*:[27] AA was a Yemeni citizen who had been married at the age of fourteen and had suffered severe domestic violence. While filing for divorce through courts, she was told to resolve her private problems with her husband. One of her daughters had also been married off at fourteen year old. When her husband wanted to marry off his youngest daughter, AA fled Yemen to Sweden. However, by six votes to one, the European Court for Human Rights held that AA and her daughters could turn to AA's brother and his adult children for protection. Similarly, the Court concluded that AA's daughters would be accompanied back by their two brothers and would have a male network that would allow them to live away from the husband of AA's eldest daughter and their father.

The principles developed by the Court regarding a State's positive obligations to protect the applicant from her husband, as set out above, have not been applied by the majority here.

The dissenting judge Power-Forde noted that the case raised not only Yemen's failure to protect the plaintiffs but also the complete absence of protection mechanisms against gender-based violence in a country where domestic violence, marital rape, forced early marriages, and restrictions on women's freedom of movement are not prohibited by law.[28]

In the case of *N v. Sweden*, which concerned N's deportation to Afghanistan, N was separated from her husband and attempted to divorce him. She argued that she would risk serious harm upon her return to Kabul as a separated/divorced woman whose family had repudiated her and consequently risked being accused of adultery. Although the European Court of Human Rights recognized the violation in the case of repatriation, the conclusion was based on the fact that N no longer had contact with her family and therefore no longer had 'an adequate social network or protection in Afghanistan'.

[26] ECtHR, H.L.R. v. France, Application No. 24573/94, 29 April 1997, § 40.

[27] ECtHR, A. and Others v. Sweden, Application No 14499/09, 28 June 2012.

[28] ECtHR, A. and Others v Sweden, §10.

In another case in which the applicant risked being forcibly remarried if she was deported back to Iraq, the Court stated that it first had to 'determine whether she would be alone without male protection on her return to Iraq',[29] thus confirming that the Court is guided by the notion of male family members and networks as actors of protection, now elevated to a general principle[30] and at risk of harming the prospects of full protection for refugee women, further contributing to the 'sliding scale' of international protection for women.[31]

3.3. The reasons for persecution: belonging to a particular social group

The refugee definition contained in Article 1(A) no. 2 para.1 Geneva Convention of 1951 identifies five grounds to which, alternatively or jointly, persecution must be causally related: race, religion, nationality, membership of a particular social group and political opinion.

At the institutional level, the indication to consider women as belonging to a particular social group, incorporated in the UNHCR guidelines[32] and taken up by the Qualification Directive 2011/95/EU in Article 10(1)(d), which mentions gender and gender identity among the relevant factors for determining membership of a particular social group or the identification of characteristics specific to that group, has been consolidated by the practice of Member States' authorities.

The CEDAW Committee, however, has criticized this orientation, following remarks already made by feminist scholars and activists. Overall, it has slowed down women's progress towards the full enjoyment of the right to international protection and reinforced the perception of refugee women as subjects determined in kind primarily by society and culture.

It has also proved problematic both given the frequent ineffectiveness of the same request for international protection thus made at the individual level and in legal

[29] ECtHR, W.H. v. Sweden, Application No. 49341/10, 27 March 2014, §63.

[30] ECtHR, N. v. Sweden, Application No. 23505/09, 20 October 2010, §10.

[31] Moira Dustin, Christel Querton, 'Women in Refugee Law, Policy and Practice: An Introduction to The Refugee Survey', RSQ [2022] 41, 347-354.

[32] UNHCR, Guidelines On International Protection: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, 2002.

policy. Concerning this last profile, the recognition of refugee *status* to women as 'belonging to a particular social group' is based, in fact, on assumptions that are incorrect both at the level of political strategy and at the strictly legal and, in general, theoretical level: on the one hand, as Heaven Crawley pointed out, there has been a replication and reinforcement of the marginalization of women as asylum seekers, who see their experiences as asylum seekers generalized, regardless of an in-depth individual examination of their individual biographies, determined and qualified exclusively in the light of sex and gender.

This has led to confusion over the meaning of *gender-related persecution* and has strengthened the legal application and interpretation of the Geneva Convention by the spread of homogeneous parameters for verifying behavior which, in turn, are attributed to women as a monolithic body, i.e. without an authentic understanding of the relationship between the form of harm suffered or feared by the individual asylum seeker and the grounds for protection enumerated in Article 1A no. 2, para. 1 Geneva Convention.

Thus we have witnessed, albeit within the framework of initiatives aimed at emancipating the experiences of women asylum seekers from the silence that has long concealed them in the context of international refugee law, a reaffirmation of the stark contrast between the experience of persecution lamented by male asylum seekers and that of women, once again imprisoned in a model that generalizes and emphasizes persecution that takes the form of sexual aggression, while limiting the image of the asylum seeker to that of a poor, powerless and vulnerable woman, not infrequently contrasted with the western model of a free, even sexually, educated and independent woman, emptying the narratives of asylum seekers of political content, estranged moreover from the overall political and social context of the country of origin.

Invoking Article 5 CEDAW, the Committee alerted States of the limitations of evaluating women's asylum applications by limiting the assessment to their membership to a particular social group, pointing out that this approach fuels prejudice and stereotypical notions of women

> that are based on the inferiority or superiority of either sex. Gender stereotypes affect women's right to a fair and just asylum procedure and asylum authorities must take precautions not to create standards based on preconceived notions of gender-based violence and persecution.[33]

It cannot be forgotten, moreover, from the perspective of the CEDAW Committee's interpretation of the Geneva Convention that

> women are active agents playing important roles as political *leaders*, members of governments or opposition groups, journalists, human rights defenders and activists, lawyers and judges, among others. [Women] are targeted because of their political views and/or activities, including the exercise of their rights as women. Accordingly, Article 7 of the [CEDAW] Convention requires State Parties to take action to realise the equality of women in political and public life. It may therefore be appropriate for women to apply for asylum on the grounds of gender-related persecution or on political, religious, racial and ethnic grounds, including in situations where they have been forced to flee their country of origin due to external aggression, occupation, foreign domination or serious civil conflict.[34]

With regard to the effectiveness of the formulation of an application for international protection claiming that women deserve international protection because they belong to a particular social group, it cannot be overlooked that recognizing on a case-by-case basis the concrete existence in the country of origin of individual asylum seekers of a particular social group to which each of them belongs is not a straightforward and obvious assessment: the expression 'social group' has been formulated openly and must be interpreted broadly, including members who share an innate characteristic or a common history that cannot be changed or share a characteristic or belief that is so fundamental to identity or consciousness that a person should not be forced to renounce it, i.e. the one who possesses a distinct identity in the country of origin because he or she is perceived there as different from the surrounding society.

It is, therefore, a question of objective characteristics, which cannot be changed or renounced without serious sacrifice of the group members themselves or of the way

[33] CEDAW Committee, 2014, § 31.

[34] CEDAW Committee, 2014, §§31-32.

the group itself is perceived by the outside society.

Women's claims based on persecution suffered as a member of the women's group in a particular region are often rejected because they are too general, but even narrower definitions of the group (e.g. 'women victims of domestic violence in Ecuador') have been not accepted as evidence of persecution, since the indicated group members are not considered to share immutable characteristics.[35]

Moreover, it is overlooked that the reference in cases of female asylum seekers belonging to a particular social group constitutes a problematic interpretative choice not only for women seeking protection but also, more generally, for the interpretative coherence of the social group category.

The orientation that tends to attribute the persecution of women to this motive also overlooks the fact that sex and gender is a fundamental and performative feature of social life that marks a deep division on which the social inequality of women is built, often manifested in violence and against which protection as members of the group 'women' is neither adequate nor consistent with the system of the Refugee *Status* Convention, as it would exclude the protection of women from persecution for reasons other than sex and gender.

The assessment of women's applications for international protection, therefore, needs a radical rethinking: women asylum seekers should not be included in the scope of the Geneva Convention as 'special cases' that deviate from the codified parameters, but rather as part of the varied panorama of subjects eligible for refugee *status* as defined by said treaty, in which there are already those useful references to ensure adequate protection for women as well.

The problematic issue, therefore, is in recognizing the political, religious, social,

[35] There is, however, the interpretation of the social group of belonging in an increasingly inclusive sense of women's experiences of gender persecution: specifically, a social group is defined with reference to "an immutable or fundamental characteristic that individual members of the group have no power to change or that is so fundamental to their identity or consciousness that they should not be required to be changed" (Acosta, *United* States *board of immigration Appeals*, El Salvador/USA, 1 March 1985); the members of the social group "intend their affiliation to the group as well as all other subjects within a given society" and the harm suffered is in itself an important social attribute (RA - United States board of immigration Appeals, Guatemala/USA, 19 January 2001); in the absence of other characteristics of the group, gender may be the central element in the definition of the social group (Kasinga - United States board of immigration Appeals, Togo/USA, 13 June 1993).

racist or nationalist nature of the persecution of women's choices:

> *Gender-specific* claims for refugee status are no different from any other asylum claim. There is no need for a new definition. There is no need to manipulate the current definition. Claims for gender-specific refugee status must be assessed under exactly the same conditions as any other claim for refugee *status* under the [Geneva] Convention.[36]

Taking up this warning, Heaven Crawley makes it clear that this is an issue that does not necessarily entail a literal alteration of the content of the normative text of reference, but one that invites a work of interpretation (*content versus interpretation*), since the legal basis for recognizing refugee *status* for women can be found precisely in the Geneva Convention, if all the terms of the definition in Article 1, from persecution to serious harm, from well-founded fear to no alternative internal escape route, were re-interpreted to cover women as well, starting from their individual and concrete experiences, overcoming the monolithic representations that have become entrenched in practice.[37]

4. Concluding remarks

In sum, according to the rendered judgment, Member States are bound by the CEDAW and the Istanbul Convention. As such, women who face gender-based violence due to their sex and gender and are exposed to discrimination in their country of origin are recognized as members of a particular social group. After an individual assessment, they are entitled to refugee status. Additionally, persecution by non-State actors is also a valid reason for refugee status, especially when there are no protective actors to ensure safety. This applies if the persecution or lack of protection is based on any reasons for persecution outlined in Article 10(1) of Directive 2011/95. Furthermore, gender-based violence is considered 'serious harm' and 'torture or inhuman or degrading treatment

[36] James C. Hathaway, *Law of Refugee Status*, (Butterworths Limited 1991).

[37] Heaven Crawley, 2001, 35; CEDAW Committee, 2014, §30.

or punishment'. This means that if the requirements for refugee status are not met, subsidiary protection can still be granted. All assessments shall be done taking into consideration detailed information including the status of women in the country before the law, their political rights, social and economic rights, and the cultural and social norms of the country, the consequences for non-adherence to these norms, the prevalence of harmful traditional practices, and the incidence and forms of violence against women. Assessments should also be based on information on the protection available to women, any penalties imposed on those who perpetrate violence, and the risks that a woman might face if she returns to her country of origin after making a claim.

The statements mentioned above are certainly crucial for ensuring that women seeking asylum in European Member States have access to international protection in case they face gender-based discrimination and persecution in their origin countries. However, these statements are not new and have resulted from over three decades of research and activism by women asylum seekers, feminist scholars, and international legal feminism authors.

These statements, furthermore, have crystallized the issue of granting refugee status to women who are victims of gender-based violence on the grounds of belonging to a particular social group. However, this concept is problematic as it fails to recognize the political dimension of women's rebellion against the gendered regimes that exist in their countries of origin and the political nature of the persecution that women are exposed to for opposing them and looking to escape.

This judgment, hence, represents a missed opportunity for further reflection on the specific issues faced by women who are moving from one country to another and are or have been exposed to sexual and gender-based discrimination and persecution in origin and transit countries, but also further discrimination and victimization in the destination country, where their request for protection and support is disregarded by the law and the policy.

At the end of this contribution, it is worth giving space to WS, the asylum-seeking woman whose story is summarized in the few introductory lines of the annotated judgment: this Kurdish woman, escaping from Turkey, asylum seeker for the domestic violence she suffered and at the risk of being killed for reasons of honour, from the lines of the decision is telling us another part of the serious violations that

usually women asylum seekers suffer, this time in destination countries.

Her asylum request should have been decided promptly in Germany, where the woman moved, but a formalistic and blind application of the Dublin Regulation[38] started a lengthy procedure that victimized the asylum seeker two times, removed to Bulgaria, as country of first arrival, and exposed her to a permanent condition of fear of being put in danger for her life, limiting any life planning despite her displayed strong agency.

The violation, therefore, begins in Germany and continues in Bulgaria where the authorities still denied her international protection, despite the consolidated body of legal principles developed by international and European acts and jurisprudence in the face of clear and unequivocal indicators: gender-based violence, in the forms of domestic violence, identified non-State agents of persecution towards which Turkey is known to have a deliberate discriminatory indifference, as pointed out since 2009 by the European Court of Human Rights.

The personal is not yet political nor juridical for women seeking asylum in the European Union and no country is safe for women escaping all forms of sexism and patriarchy, so the asylum seeker WS, through this judgment, calls to strengthen the efforts for tearing apart the still pervasive blindness on women's rights, including those involved in international mobility flows, regardless of the labels one may wish to attach to them (as economic migrants, forced migrants or asylum seekers, etc).[39]

[38] Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast).

[39] Heaven Crawley, Dimitris Skleparis, *Refugees, migrants, neither, both: Categorical fetishism and the politics of bounding in Europe's "migration crisis"*, JERS [2018] 44(1) 48-64.