



# Violence against women in the context of international protection

**Wednesday 10 April 2024 (10:00 – 12:00 CET)**

online via WebEx Meetings

## Background note

### 1. Background information

In accordance with its mandate to support judicial training in the field of international protection<sup>1</sup> and with the support of the EUAA Courts and Tribunals Network, the EUAA is increasing the roll-out effect of their judicial activities through the EUAA expert panels. This activity was introduced in 2021 with the distinctive objective to address specialised topics in the field of international protection. It involves a panel of three judicial professionals and experts that engage in a discussion on a specific area of the CEAS, allowing attendees to deepen their knowledge in the respective field.

The next panel of the EUAA expert panel series is scheduled on Wednesday, **April 10, 2024**, from **10:00 to 12:00 CET (TBC)**, online via the **WebEx Meetings platform** and will focus on “***Violence against women in the context of international protection***”.

To exchange on the topic, the EUAA will be honoured to welcome a panel of experts which will consist of:

- **Liesbeth Steendijk**, Judge, Member of the Judicial Department of the Council of State, Netherlands
- **Sampo Lof-Rezessy**, Judge, Turku Administrative Court, Finland
- **Agata Bialczyk**, Senior Information Officer, COI Sector, EUAA

The experts will engage in a discussion on the topic as framed in this note, considering the questions asked by participants through the registration form.

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<sup>1</sup> See Article 8 of the [EUAA Regulation](#): “The Agency shall establish, develop and review training for members of its own staff and members of the staff of relevant national administrations, **courts and tribunals**, and of national authorities responsible for asylum and reception” and Article 13: “The Agency shall organise and coordinate activities promoting a correct and effective implementation of Union law on asylum, including through the development of operational standards, indicators, guidelines or best practices on asylum-related matters, and the exchange of best practices in asylum-related matters among Member States.”



## 2. Framing the topic

This Expert Panel will delve into violence against women in the context of international protection and will have as a basis for discussion the CJEU ruling of 16 January 2024 in the case [Intervyuirasht organ na DAB pri MS \(Women who are victims of domestic violence\), C-621/21<sup>2</sup>](#).

➤ ***Defining and identifying violence against women in the context of international protection***

Violence against women is a human rights violation that concerns many societies, may these be in European countries or in other continents, and has determined the need to fight such a phenomenon worldwide. At global level, the [Convention on the Elimination of All Forms of Discrimination against Women \(CEDAW\)](#) adopted in 1979 by the United Nations General Assembly, is the most significant international legal instrument aimed at tackling, even if not directly, violence against women.

### **CEDAW - Article 2**

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;

[...]

At the European level, violence against women, including domestic violence, is explicitly tackled in a more recent legal instrument, the [Council of Europe Convention on preventing and combating violence against women and domestic violence \(Istanbul Convention\)](#) signed by the member states of the Council of Europe in 2011.

### **Istanbul Convention – Article 3**

#### **Definitions**

For the purpose of this Convention:

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<sup>2</sup> CJEU, [Intervyuirasht organ na DAB pri MS \(Women who are victims of domestic violence\)](#), C-621/21, 16 January 2024



- a. “violence against women” is understood as a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life;
- b. “domestic violence” shall mean all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim;
- c. “gender” shall mean the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men;
- d. “gender-based violence against women” shall mean violence that is directed against a woman because she is a woman or that affects women disproportionately;
- e. “victim” shall mean any natural person who is subject to the conduct specified in points a and b;
- f. “women” includes girls under the age of 18.

Such violence against women is widely spread in societies around the world and is often exacerbated in situations pertinent to international protection (vulnerabilities, armed conflict, etc.). As such, several terms are often used to refer to acts of ill-treatment against women: violence against women, domestic violence, gender-based violence.

However, neither the [Geneva Convention](#) nor the [Qualification Directive](#) (QD) define any of these terms and the recent CJEU judgment in the case [C-621/21 Intervyuirasht organ na DAB pri MS \(Women who are victims of domestic violence\)](#)<sup>3</sup> sheds light on how these terms should be defined in the context of international protection.

According to the CJEU, the QD must be “interpreted not only in the light of its general scheme and purpose, but also in a manner consistent with the Geneva Convention *and the other relevant treaties referred to in Article 78(1) TFEU*. [...] Those treaties include, as is apparent from recital 17 of that directive, those which prohibit discrimination with respect to the treatment of persons falling within the scope of that directive [...]”<sup>4</sup>. The CJEU further clarifies the need to interpret QD in conformity with the CEDAW and the Istanbul Convention, despite the intricate and complex position of the EU and MS in relation to these conventions<sup>5</sup>. It is also relevant to note that the CJEU makes extensive reference to the UNHCR guidelines regarding the issues at hand in this judgment.

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<sup>3</sup> CJEU, [Intervyuirasht organ na DAB pri MS \(Women who are victims of domestic violence\)](#), C-621/21, 16 January 2024

<sup>4</sup> CJEU, [Intervyuirasht organ na DAB pri MS \(Women who are victims of domestic violence\)](#), C-621/21, 16 January 2024, para. 37.

<sup>5</sup> Ibidem, (paras. 44-47). See also for a detailed analysis [International Law as a Trailblazer for a Gender-Sensitive Refugee System in the EU. The Court of Justice’s ruling in Case C-621/21, Women who are Victims of Domestic Violence – European Law Blog](#)



Beyond the legal definitions, exploring acts of violence against women requires full awareness of the complexity of the issues at stake, such as obtaining evidence on a topic largely confined to the privacy and intimacy of the family sphere. As such, judges may encounter difficulties in how such violences can be properly understood and tackled during the interview and court hearing, considering issues of coercion, psychological control, the effect of trauma on the memory of victim, etc. These are all significant aspects to consider that deserve to be explored into detail and from a multidisciplinary perspective. The format of the Expert panel being limited in time and in terms of interactivity, such aspects shall be considered for a future ad-hoc training activity.

➤ ***Are women victims of violence all refugees? Issues of qualification***

In line with the need to interpret the QD in conformity with the CEDAW and the Istanbul Convention (article 60 in particular), it becomes obvious to the Luxembourg judges in the ruling *Women who are Victims of Domestic Violence* that violence against women is to be recognised as a form of persecution within the meaning of Article 1A(2) of the Geneva Convention (para. 48).

Once the acts of violence have been established, the decision-maker needs to identify the type of protection which may be granted, under EU law, that is, refugee status or subsidiary protection. The issue is then to what extent the gender of a person (i.e being a woman) impacts the qualification for international protection.

For refugee protection, the persecution must be based on one of the Convention grounds (race, religion, nationality, political opinion or membership of a particular social group). What if a woman is victim of acts of violence triggered by the mere fact that she is a woman?

While referring to a few examples ('genital mutilation, forced sterilisation or forced abortion') it is emphasized in recital 30 QD that gender-specific acts of persecution, which concern mostly but not exclusively women or girls and 'may be related to certain legal traditions and customs', should be given due consideration for defining a particular social group. The QD further refers to gender-specific acts of persecution (Article 9(2)(f)) and calls for the need for a gender-sensitive individual assessment of asylum claims (Article 4(3)(c)).

According to Article 10(1)(d) QD (recast) a particular social group is defined by two conditions:

- 1) An innate shared characteristic or common background that cannot be changed, or a shared characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it and
- 2) A distinct identity based on a perception of being different by the surrounding society.



The CJEU has now stated more than once that these are two ‘cumulative’ conditions, both of which must be met to qualify as a particular social group<sup>6</sup>.

Until now, however, women as “a particular social group” have only been recognised very occasionally, by a few national courts: for instance, in 2006 by the UK House of Lords in the case *Fornah*<sup>7</sup> and in 2016 by the High Court of Ireland in the case *SM*<sup>8</sup>.



**Table 17:** Examples of women recognised by European courts and tribunals as refugees on the basis of their membership of a particular social group

<b>Women</b>	Women subjected to gender-based violence <sup>454</sup>
	Women threatened with forced marriage or who have escaped such marriage <sup>455</sup>
	Widows at risk of, or who have escaped, forced marriage (widow inheritance / levirate marriage) <sup>456</sup>
	Women subject to domestic violence <sup>457</sup>
	Women at risk of being subject to honour crimes <sup>458</sup>
	Divorced women <sup>459</sup>
	Mothers of illegitimate children <sup>460</sup>
	Women accused of transgressing social mores in other ways, in particular by committing adultery and being disobedient to their husbands, and/or who are unprotected by their husbands or other male relatives <sup>461</sup>

Table 17 has been extracted from EUAA (2023) [Judicial Analysis on Qualification for international Protection - second edition](#), p. 101.

Recently, the question whether women, generally, constitute a particular social group was answered by the CJEU in its recent ruling *Women who are Victims of Domestic Violence*.

Substantially, in this ruling the CJEU concluded that women who are exposed to physical and mental violence on account of their gender qualify for *refugee status* if the conditions set out in the Qualification Directive are fulfilled. This conclusion was reached through an interpretation of EU refugee law in the light of standards of international law (see above ***Defining and identifying violence against women in the context of international protection***), which facilitated qualifying women, as a whole, as belonging to ‘a particular social group’ within the meaning of the QD.

As to the **first condition**, the CJEU found that the fact of being female constitutes an innate characteristic and therefore suffices to satisfy that condition (para. 49).

As regards the **second condition**, relating to the ‘distinct identity’ of the group in the country of origin, for the Luxembourg judges “*it is clear that women may be*

<sup>6</sup> CJEU, [X, Y and Z](#), C-199/12 - C-201/12, 07 November 2013, para. 45; CJEU, [Ahmedbekova](#), C-652/16, 04 October 2018, para. 89.

<sup>7</sup> House of Lords (United Kingdom), [Secretary of State for the Home Department v K; Fornah v Secretary of State for the Home Department](#), UKHL 46, 18 October 2006.

<sup>8</sup> High Court (Ireland), [SM v. The Refugee Appeals Tribunal](#), IEHC 638, 09 November 2016, para. 54.



*perceived as being different by the surrounding society and recognised as having their own identity in that society, in particular because of social, moral or legal norms in their country of origin.*<sup>9</sup>

The CJEU also confirmed in its ruling *Women who are Victims of Domestic Violence*, that membership of a particular social group is to be established independently of the acts of persecution, within the meaning of Article 9 of that directive, of which the members of that group may be victims in the country of origin (para. 55).

At the same time, the CJEU acknowledged that the fact remains that discrimination or persecution suffered by persons sharing a common characteristic may constitute a relevant factor, to ascertain whether the second condition for identifying a social group is satisfied. As such, the practical implications of establishing the acts of violence separately may however depend on whether the definition of the social group is an extensive one (for example, women as a whole) or a restrictive one, containing already acts of persecution (for example, women who are victims of rape).

In practice, how then to define within any given country of origin the existence of a social group? At what level? Involving what expertise?

➤ ***Women as a particular social group – looking at Country-of-Origin Information and ECtHR case law***

• **The role of COI**

In its ruling *Women who are Victims of Domestic Violence*, the Luxembourg Court leaves the “burden” of determining which surrounding society is relevant when assessing whether such a social group exists, to the Member States. The CJEU does provide a short guidance in this sense, not excluding that that society may coincide with the entirety of the third country of origin of the applicant for international protection or be more restricted, for example to part of the territory or population of that third country (para. 54).

It can be expected that this aspect may pose practical challenges to national determining authorities and judicial bodies when determining the relevant surrounding society. Without any doubt, the country of origin information collected for each application will be of extreme relevance and should include, as the CJEU advises: information on the position of women before the law, their political rights, their social and economic rights, the cultural and social mores of the country and consequences for non-adherence, the prevalence of such harmful traditional practices, the incidents, prevalence and forms of reported violence against women, the protection available to them, any penalties imposed on those who perpetrate the violence, and the risks that a woman might face on her return to her country of origin after making such a claim (para. 61).

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<sup>9</sup> CJEU, [Intervjuirasht organ na DAB pri MS \(Women who are victims of domestic violence\)](#), C-621/21, 16 January 2024, para. 52.



Which criteria should national determining authorities and judicial bodies refer to when determining the relevant “surrounding society”? The entire society of any country has the potential of being relevant for the purposes of verifying the fulfilment of the second condition for considering women as belonging to a particular social group, included those of EU member states that confront with the phenomenon of widespread violence against women<sup>10</sup>. Awareness of COI tools covering specifically violence against women, completed by guidance, are key in this respect.

- **ECtHR case law**

By essence based on individual claims, ECtHR case law is particularly useful when determining the perception of women by the concerned society. For instance, in [Opuz v. Turkey](#), the ECtHR ruled that the general and discriminatory attitude of local authorities (police) as well as the judicial passivity in Turkey, created a climate that was conducive to domestic violence<sup>11</sup>.

➤ ***Unable or unwilling to protect?***

When evaluating the needs of international protection, it is required to consider whether the applicant would not be able to be protected in its country of origin, which implies specific practical challenges for the decision maker in the context of violence against women.

As reminded in the *Women who are Victims of Domestic Violence* CJEU ruling, “under Article 6(c) of Directive 2011/95, for non-State actors to be classified as ‘actors of persecution or serious harm’, it must be shown that the actors of protection referred to in Article 7 of that directive, which include the State, are unable or unwilling to provide protection against those acts” (para. 64).

In other words, in cases of violence against women, where these are more often perpetrated - but not only - in the private sphere, by non-state actors, the decision-maker needs to objectively consider whether a form of protection exists<sup>12</sup>, which must

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<sup>10</sup> See for instance ECtHR, [KURT v. AUSTRIA](#), Application no. 62903/15, 15 June 2021, paras. 167-168; ECtHR, [VUCKOVIC v. CROATIA](#), Application no. 15798/20, 12 December 2023, para. 57; ECtHR, [A.E. v. BULGARIA](#), Application no. 53891/20, 23 May 2023, paras. 117-123.

<sup>11</sup> ECtHR, [OPUZ v. TURKEY](#), Application no. 33401/02, 09 June 2009, paras. 192-198. For a similar finding concerning a CoE member, non-EU MS, see ECtHR, [LUCA v. THE REPUBLIC OF MOLDOVA](#), Application no. 55351/17, 17 October 2023, paras. 101-107.

<sup>12</sup> “ (...) 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 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 absence 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.” CJEU, [Intervyuirasht organ na DAB pri MS \(Women who are victims of domestic violence\)](#), C-621/21, 16 January 2024, para. 67.



be, in accordance with Article 7(2) QD, effective, non-temporary and accessible to the applicant.

Here again, the decision maker may face practical issues in evaluating the effectivity of such protection, especially in cases of violence against women when determining, as in Article 7(2) QD whether the actors of protection take 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.

Relevant country of origin information is to be collected as to the availability of state protection of victims of GBV, in particular as CJEU stated in para. 61 of the same ruling: the incidence and forms of reported violence against women, the protection available to them, any penalties imposed on those who perpetrate the violence, and the risks that a woman might face on her return to her country of origin after making such a claim.

Retrieving such information for some areas and countries of origin is not always straightforward. With regards to some European countries, members of the Council of Europe, this task is facilitated by the reports of Council of Europe's Group of Experts on Action against Violence against Women and Domestic Violence ([GREVIO](#)) and by the caselaw of the Strasbourg Court<sup>13</sup>.

### ➤ **Concluding points**

By clarifying some of the key aspects pertaining to qualification of international protection needs, the CJEU is contributing to foster convergence within EU+ courts and tribunals in deciding on cases of women applicants, victims of domestic violence.

No doubt the *Women who are Victims of Domestic Violence* ruling will largely contribute to the reasoning of pending cases covering closely linked aspects related to GBV claims (for instance, the Austrian case Bundesamt für Fremdenwesen und Asyl (*Women fleeing Afghanistan*) [C-608/22](#) and [C-609/22](#)<sup>14</sup> and the Dutch case K, L v

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<sup>13</sup> See for Turkey ECtHR, [OPUZ v. TURKEY](#), Application no. 33401/02, 09 June 2009, paras. 192-198 and for Moldova, ECtHR, [LUCA v. THE REPUBLIC OF MOLDOVA](#), Application no. 55351/17, 17 October 2023, paras. 101-107.

<sup>14</sup> CJEU, [Bundesamt für Fremdenwesen und Asyl and Others](#), (*Women fleeing Afghanistan*), C-608/22 and C-609/22, pending. The Austrian court posed a question whether the accumulation of measures taken, supported or tolerated by a State against women (absence of legal means of protection from gender-based and domestic violence, risk of forced marriages etc.) should be regarded as sufficiently severe as to affect a woman in manner described in Article 9(1)(a) QD. Also, the Austrian court questioned if it is sufficient, for granting of asylum status, that a woman is affected by those measures merely on the basis of gender or if it is necessary to assess a woman's individual situation.





Staatssecretaris van Justitie en Veiligheid (*Persons identifying with the values of the Union, C-646/21*)<sup>15</sup>.

What is less clear, perhaps, in the CJEU’s reply to the fifth question<sup>16</sup> on the issue of qualification for subsidiary protection, is the reference to the “*due to the alleged transgression of cultural, religious or traditional norms*” criterion. It is to be noted that this criterion was not explicitly included in the original question as it was submitted by the referring national court<sup>17</sup>. What are the practical implications of this and possible further challenges in applying it? Wouldn’t there be some overlapping with another Convention ground, i.e. religion?

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**Disclaimer:** This background note was drafted on the basis of the EUAA judicial publications and recent doctrinal and case-law research, as a preparatory document for both the experts and participants of the online EUAA Expert Panels. It should not be considered as an EUAA publication and does not necessarily reflect the position of the EUAA.

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<sup>15</sup> CJEU, [Staatssecretaris van Justitie en Veiligheid \(Personnes s’identifiant aux valeurs de l’Union\)](#), C-646/21, pending. Here the Dutch court of ‘s-Hertogenbosch asks whether teenage Iraqi girls who lived in the Netherlands for five years and have adopted ‘Western’ norms, values, and actual conduct, also form a ‘particular social group’ within the meaning of Directive 2011/95.

<sup>16</sup> “By its fifth question, the referring court asks, in essence, whether 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 his or 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.”, CJEU, [Intervyuirasht organ na DAB pri MS \(Women who are victims of domestic violence\)](#), C-621/21, 16 January 2024, para. 71.

<sup>17</sup> The original question posed by the referring national court reads as follows: “Can the real threat of an honour killing in the event that the person concerned is returned to the country of origin justify – if the other conditions for this are met – the granting of subsidiary protection under Article 15(a) of Directive 2011/95, read in conjunction with Article 2 ECHR ..., or is that threat to be classified as harm under Article 15(b) of Directive 2011/95, read in conjunction with Article 3 ECHR, as interpreted in the case-law of the European Court of Human Rights, in an overall assessment of the risk of further acts of gender-based violence; is it sufficient for the granting of such protection that the applicant has stated that he or she is subjectively unwilling to avail himself or herself of the protection of the country of origin?”(para. 34.)



## ANNEX I

### Legal Framework

<b>Convention on the Elimination of All Forms of Discrimination against Women</b>	
<b>Article 1</b>	For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.
<b>Article 2</b>	<p>States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:</p> <p>(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;</p> <p>(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;</p> <p>(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;</p> <p>(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;</p> <p>(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;</p> <p>(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;</p> <p>(g) To repeal all national penal provisions which constitute discrimination against women.</p>

<b>Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention)</b>	
<b>Article 3</b>	<p><b>Definitions</b></p> <p>For the purpose of this Convention:</p> <p>a. "violence against women" is understood as a violation of human rights and a form of discrimination against women and shall mean all acts of</p>



	<p>gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life;</p> <p>b. “domestic violence” shall mean all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim;</p> <p>c. “gender” shall mean the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men;</p> <p>d. “gender-based violence against women” shall mean violence that is directed against a woman because she is a woman or that affects women disproportionately;</p> <p>e. “victim” shall mean any natural person who is subject to the conduct specified in points a and b;</p> <p>f. “women” includes girls under the age of 18.</p>
<b>Article 33</b>	<p><b>Psychological violence</b></p> <p>Parties shall take the necessary legislative or other measures to ensure that the intentional conduct of seriously impairing a person’s psychological integrity through coercion or threats is criminalised.</p>
<b>Article 34</b>	<p><b>Stalking</b></p> <p>Parties shall take the necessary legislative or other measures to ensure that the intentional conduct of repeatedly engaging in threatening conduct directed at another person, causing her or him to fear for her or his safety, is criminalised.</p>
<b>Article 35</b>	<p><b>Physical violence</b></p> <p>Parties shall take the necessary legislative or other measures to ensure that the intentional conduct of committing acts of physical violence against another person is criminalised.</p>
<b>Article 36</b>	<p><b>Sexual violence, including rape</b></p> <p>Parties shall take the necessary legislative or other measures to ensure that the following intentional conducts are criminalised:</p> <ul style="list-style-type: none"> <li>a. engaging in non-consensual vaginal, anal or oral penetration of a sexual nature of the body of another person with any bodily part or object;</li> <li>b. engaging in other non-consensual acts of a sexual nature with a person;</li> <li>c. causing another person to engage in non-consensual acts of a sexual nature with a third person.</li> </ul>



	<p>Consent must be given voluntarily as the result of the person's free will assessed in the context of the surrounding circumstances.</p> <p>Parties shall take the necessary legislative or other measures to ensure that the provisions of paragraph 1 also apply to acts committed against former or current spouses or partners as recognised by internal law.</p>
<b>Article 37</b>	<p><b>Forced marriage</b></p> <p>Parties shall take the necessary legislative or other measures to ensure that the intentional conduct of forcing an adult or a child to enter into a marriage is criminalised.</p> <p>Parties shall take the necessary legislative or other measures to ensure that the intentional conduct of luring an adult or a child to the territory of a Party or State other than the one she or he resides in with the purpose of forcing this adult or child to enter into a marriage is criminalised.</p>
<b>Article 38</b>	<p><b>Female genital mutilation</b></p> <p>Parties shall take the necessary legislative or other measures to ensure that the following intentional conducts are criminalised:</p> <ul style="list-style-type: none"> <li>a. excising, infibulating or performing any other mutilation to the whole or any part of a woman's labia majora, labia minora or clitoris;</li> <li>b. coercing or procuring a woman to undergo any of the acts listed in point a;</li> <li>c. inciting, coercing or procuring a girl to undergo any of the acts listed in point a.</li> </ul>
<b>Article 39</b>	<p><b>Forced abortion and forced sterilisation</b></p> <p>Parties shall take the necessary legislative or other measures to ensure that the following intentional conducts are criminalised:</p> <ul style="list-style-type: none"> <li>a. performing an abortion on a woman without her prior and informed consent;</li> <li>b. performing surgery which has the purpose or effect of terminating a woman's capacity to naturally reproduce without her prior and informed consent or understanding of the procedure.</li> </ul>
<b>Article 40</b>	<p><b>Sexual harassment</b></p> <p>Parties shall take the necessary legislative or other measures to ensure that any form of unwanted verbal, non-verbal or physical conduct of a sexual nature with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment, is subject to criminal or other legal sanction.</p>
<b>Article 60</b>	<p><b>Gender-based asylum claims</b></p> <p>Parties shall take the necessary legislative or other measures to ensure that gender-based violence against women may be recognised as a form of persecution within the meaning of Article 1, A (2), of the 1951</p>



	<p>Convention relating to the Status of Refugees and as a form of serious harm giving rise to complementary/subsidiary protection.</p> <p>Parties shall ensure that a gender-sensitive interpretation is given to each of the Convention grounds and that where it is established that the persecution feared is for one or more of these grounds, applicants shall be granted refugee status according to the applicable relevant instruments.</p> <p>Parties shall take the necessary legislative or other measures to develop gender-sensitive reception procedures and support services for asylum-seekers as well as gender guidelines and gender-sensitive asylum procedures, including refugee status determination and application for international protection.</p>
<p><b>Article 61</b></p>	<p><b>Non-refoulement</b></p> <p>Parties shall take the necessary legislative or other measures to respect the principle of non-refoulement in accordance with existing obligations under international law.</p> <p>Parties shall take the necessary legislative or other measures to ensure that victims of violence against women who are in need of protection, regardless of their status or residence, shall not be returned under any circumstances to any country where their life would be at risk or where they might be subjected to torture or inhuman or degrading treatment or punishment.</p>



## ANNEX II

### Useful resources

#### ➤ **EUAA PUBLICATIONS**

#### **JUDICIAL ANALYSIS**

- EUAA (2023) [Judicial Analysis on Qualification for international Protection - second edition | European Union Agency for Asylum \(europa.eu\)](#), JA QIP 2<sup>nd</sup> edition (p. 71-73 and 96 - 103)
- EUAA (2020), [Judicial analysis on Vulnerability | European Union Agency for Asylum \(europa.eu\)](#), JA Vulnerability 2020 (p. 157-159)

#### **COI AND COUNTRY GUIDANCE**

- EUAA (2024), COI Query - Democratic Republic of the Congo: [Sexual and gender-based violence \(SGBV\) against women](#)
- EUAA (2024), COI Query - Democratic Republic of the Congo: [Forced marriage, including the \*Kintwidi\* practice; prevalence; legislation; possibility to refuse such a marriage; state protection; and support services;](#)
- EUAA (2024), COI Query - Democratic Republic of the Congo: [Sexual and gender-based violence against women \(January 2022 - 6 February 2024\)](#)
- EUAA (2024), COI Query – Cameroon: [Women victims of rape: legal framework and treatment by society](#)
- EUAA (2023), COI Query – Cameroon: [Sexual and gender-based violence \(SGBV\) against women, including prevalence, legislation, availability of state protection, access to support services, in particular in Yaoundé](#)
- EUAA (2023), [Country of Origin Information Report, Afghanistan – Country Focus](#)
- EUAA (2023), [Country of Origin Information Report, Peru – Country Focus](#)
- EUAA (2022), [Country of Origin Information Report, Syria: Targeting of Individuals](#)
- EUAA (2022), [Country of Origin Information Report, Female Genital Mutilation/Cutting in Mali](#)
- EUAA (2023), [Country Guidance: Afghanistan \(January 2023\)](#) (p. 90 - 91)



- EUAA (2023) [Country Guidance: Syria \(February 2023\)](#) (p. 106 – 113)
- EUAA (2022) [Country Guidance: Iraq \(June 2022\)](#) (p. 133 - 143)
- EUAA (2021) [Country Guidance: Nigeria \(October 2021\)](#) (p. 79 - 87)

## PRACTICAL GUIDES

- EUAA (2020) [Guidance on membership of a particular social group | European Union Agency for Asylum \(europa.eu\)](#) (p. 21-23)

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- [Experts of the Committee on the Elimination of Discrimination against Women Commend Ukraine for Achievements in Gender Equality, Raise Questions on Conflict-Based Sexual Violence](#), OHCHR, October 2022
- [1 month of war: 5 ways women and girls are being impacted by the Ukraine conflict](#), Care-International, March 2022



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- [Guidelines on International Protection No. 2: "Membership of a Particular Social group" within the context of Article 1A\(2\) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees](#), UNHCR, HCR/GIP/02/02, May 2002
- [Women in Afghanistan: The Back Story](#), Amnesty International UK





## ANNEX III

### Non-exhaustive list of relevant case-law

#### Court of Justice of the European Union [CJEU]

- CJEU, [Staatssecretaris van Justitie en Veiligheid \(Personnes s'identifiant aux valeurs de l'Union\)](#), Case C-646/21, pending
- CJEU, [Bundesamt für Fremdenwesen und Asyl and Others \(Women fleeing Taliban\)](#), Cases C-608/22 and C-609/22, pending
- CJEU, [Intervyuirasht organ na DAB pri MS \(Women who are victims of domestic violence\)](#), Case C-621/21, ECLI:EU:C:2024:47, 16 January 2024; the [opinion of Advocate General Richard De La Tour](#), ECLI:EU:C:2023:856, 9 November 2023

#### European Court of Human Rights [ECtHR]

- ECtHR, [VUCKOVIC v. CROATIA](#), Application no. 15798/20, ECLI:CE:ECHR:2023:1212JUD001579820, 12 December 2023
- ECtHR, [LUCA v. THE REPUBLIC OF MOLDOVA](#), Application no. 55351/17, ECLI:CE:ECHR:2023:1017JUD005535117, 17 October 2023
- ECtHR, [A.A. AND OTHERS v. SWEDEN](#), Application no. 12470/21, ECLI:CE:ECHR:2023:0704DEC001247021 04 July 2023
- ECtHR, [A.E. v. BULGARIA](#), Application no. 53891/20, ECLI:CE:ECHR:2023:0523JUD005389120, 23 May 2023
- ECtHR, [S.S. v. SWEDEN](#), Application no. 43654/18, ECLI:CE:ECHR:2021:1209DEC004365418, 09 December 2021
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- ECtHR, [SOW c. BELGIQUE](#), Application no. 27081/13, ECLI:CE:ECHR:2016:0119JUD002708113, 19 January 2016
- ECtHR, [R.H. v. SWEDEN](#), Application no. 4601/14, 16 ECLI:CE:ECHR:2015:0910JUD000460114, 10 September 2015
- ECtHR, [W.H. v. SWEDEN](#), Application no. 49341/10 (GC), ECLI:CE:ECHR:2015:0408JUD004934110, 08 April 2015
- ECtHR, [A.A. AND OTHERS v. SWEDEN](#), Application no.14499/09, ECLI:CE:ECHR:2012:0628JUD001449909, 28 July 2012



- ECtHR, [N. v. SWEDEN](#), Application no. 23505/09  
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- ECtHR, [OPUZ v. TURKEY](#), Application no. 33401/02,  
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- ECtHR, [E. COLLINS AND A. AKAZIEBIE V. SWEDEN](#), Application no.  
23944/05, 08 March 2007

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#### **BE**

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#### **DE**

- Germany, Administrative Court Gelsenkirchen [Verwaltungsgericht Gelsenkirchen], [No 5a K 4418/11.A](#), ([English summary](#)), 18 July 2013

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- United Kingdom, House of Lords, [Secretary of State for the Home Department v K; Fornah v Secretary of State for the Home Department](#) [2006] UKHL 46, 18 October 2006
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