

The 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

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ABSTRACT

CEDAW is the most important universal source of protection of women's rights, which has influenced the emergence of a number of regional legal sources in the last four and a half decades. This chapter is dedicated to the importance and significance of CEDAW both in the global context of protection of women's rights, and in relation to relevant regional legal sources, primarily of the Council of Europe. The nomotechnical architecture of CEDAW is a kind of novum that has shifted processes and normative momentum from a symmetrical approach to the protection of women's rights to an asymmetrical and gender-focused track, and has post festum influenced the nomotechnical architecture and approaches of a number of relevant international, regional and national legal sources. The chapter also focuses on relevant decisions of the CEDAW Committee from a regional perspective.

KEYWORDS

CEDAW, women, discrimination, gender equality, regional legal sources, Istanbul Convention

1. Introduction

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)¹ was adopted by the United Nations General Assembly on 18 December 1979 and entered into force, in accordance with its Article 27(1), on 3 September 1981. It represents not only one of the most ratified universal sources of human rights protection created under the auspices of the United Nations, but certainly also the most important international instrument for the protection of the human rights of women and girls at the global level. Despite the criticism that the Convention has suffered, both from certain feminist backgrounds and from circles that consider it partly outdated, it undoubtedly leaves the deepest mark in the protection of women's rights and

1 Convention on the Elimination of All Forms of Discrimination against Women, United Nations, Treaty Series, vol. 1249, p. 13.

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significantly pushes the boundaries of perception, understanding and interpretation of human rights in recent decades. As the only universal legal source, it was the first to focus, *inter alia*, on women's reproductive rights. In its preamble, it emphasised the belief in fundamental human rights, the dignity and worth of the human person and in the equal rights of men and women.²

The Convention specifically emphasised the fact that discrimination against women violates not only the principle of equal rights, but also constitutes an obstacle to the participation of women, on an equal basis with men, in the political, social, economic and cultural life of their countries, hindering the progress of society and the family,³ and hindering the development of women and their ability to participate in the service of their countries and all of humanity.⁴ Thanks to the Convention, an international legal framework for the protection of women's human rights has been developed, which is accepted as part of international human rights law. To date, 189 states have ratified the Convention, but numerous reservations that states have made in the process of national ratification⁵ confirm the fact that many segments of women's human rights in certain parts of the world are still threatened, unrealised or in serious danger as a result of social relations, cultural differences, political instability, specific interpretations of certain religious dogmas or (quasi)theocratic entities. In other words, although unquestionably globally significant, a large number of reservations with its ratification reflect the non-acceptance of the principles of equality and non-discrimination of women in numerous areas of private and public life.⁶

Below, we shall focus on the historical context and importance of the adoption of CEDAW, its relationship with relevant regional sources at the European level, its content structure, the role of the Committee on the Elimination of Discrimination against Women, as well as its decisions relevant to our discussion.

2. Historical Context and Significance of the Adoption of CEDAW

In the process of drafting the CEDAW text, its creators started from the premise that the "gender-neutral and symmetrical" approach to gender-based discrimination in previous international sources did not adequately address the problem of pervasive and deep-rooted discrimination against women, so an "asymmetrical and gender-specific" approach was necessary *pro futuro*.⁷ The result of such an approach is a "gender-specific" legal source, which accepts the deficits of the previous human rights

2 Ibid., point 1 of the Preamble.

3 Ibid., point 7 of the Preamble.

4 Ibid.

5 See: Status of ratifications on January 1 2025 [Online]. Available at: https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-8&chapter=4&clang=_en (Accessed: 20 January 2025).

6 Šimonović, 2014a, p. 86.

7 Hellum and Sinding Aasen, 2013, p. 2.

protection systems on a universal level, adopts approaches to the indivisibility of all human rights and their applicability in the private and public sphere, and has the potential to ensure ‘substantive gender equality for women’,⁸ as assessed by ‘optimist and constructive feminist legal scholars’.⁹

The text of the Convention, finalised in 1979, clearly points to the specifics of the geopolitical relations and social patterns of the time, as the preamble focuses both on the belief in the establishment of a new international order based on fairness and justice that will contribute to the promotion of equality between men and women,¹⁰ and on the fact that women in conditions of poverty have the least access to education and employment, food and health.¹¹ Moreover, the text of the Convention was drafted taking into account all the negative consequences of apartheid, racism, racial discrimination, colonialism, neo-colonialism, aggression, foreign occupation and domination, and interference in the internal affairs of states, the eradication of which is necessary for the full enjoyment of the rights of women and men,¹² which clearly portrays social relations, global political problems, but also processes what the international community was actively facing at the time.

The historical steps in the creation of CEDAW are inseparable from the history of the Commission on the Status of Women, which began working within the United Nations in 1946, after Eleanor Roosevelt previously addressed “the women of the world” in an open letter at the inaugural meeting of the United Nations General Assembly in London, calling on national governments to empower women to take a more active role in national and international relations, but also to become more actively involved in peace building and post-war reconstruction.¹³ For more than a decade, the respective Commission has been gradually working on ensuring the basis of gender equality within the United Nations system, strengthening relations with NGO’s, and cooperation with other commissions within the system (Commission on Human Rights, Sub-Commission on the Prevention of Discrimination and Protection of Minorities, Social Commission/Commission for Social Development), as well as other international organisations associated with the United Nations (UNESCO and ILO). It declared its fundamental postulate: ‘to raise the status of women, regardless of nationality, race, language or religion, to equality with men in all fields of human enterprise, and to eliminate all discrimination against women in the provisions of statutory law, in legal maxims or rules, or in interpretation of customary law’.¹⁴ In addition to facing numerous challenging tasks, the Commission advocates for the elimination of discrimination against women in marriage, which arises from the existing unequal treatment of women and men in national legislation concerning

8 Ibid.

9 Ibid.

10 CEDAW, point 9 of the Preamble.

11 Ibid., point 8 of the Preamble.

12 Ibid., point 10 of the Preamble.

13 Hannan, Iiyambo and Brautigam, 2019, p. 4.

14 Ibid., p. 5.

residence, marriage and divorce; it also works to ensure women's universal access to political rights. Furthermore, the Commission played a significant role in the drafting process, and later in the transition from the Declaration on the Elimination of Discrimination against Women (1965/1967) to CEDAW.¹⁵ Focusing on the problems of women in developing countries in the sixties of the last century, the Commission on the Status of Women devoted itself *inter alia* to the position of women in the community and rural development, family planning, work in agriculture and participation in scientific and technological progress.¹⁶ In 1963, the General Assembly requested the Commission to start preparing the Declaration on the Elimination of Discrimination against Women, which was accepted in 1967. As a consequence of the Declaration, which introduced only voluntary reporting procedures, and consequently its legal nature, which resulted in limited implementation, it soon became clear that *pro futuro* would be a necessary legally binding source of protection of women's rights.¹⁷ After 1975 was declared as International Women's Year, within the framework of which the World Conference of the International Women's Year was held in Mexico City, the period from 1976 to 1985 was declared by the United Nations, thanks to the follow-up of the world conference, as the United Nations Decade for Women. During this period, the most important task of the Commission on the Status of Women was the drafting of CEDAW, which the Commission entrusts to a working group within itself. The first text was completed in 1976, but intensive work on the final text took until 1979 along with the acceptance of the final text of CEDAW by the 130 Member States in the General Assembly.¹⁸ As referred to in the Introduction, the Convention entered into force on September 3, 1981, after it was previously signed and ratified by 20 countries. In terms of content, it is clear that the Convention focused on three key areas – civil rights, reproductive rights and gender relations.¹⁹

The text of the Convention defined discrimination against women on a global level for the first time, with a provision that can be partially identified with the basic premise that guided the Commission on the Status of Women from its inception, namely:

‘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’.²⁰

15 Ibid., pp. 5–7.

16 Ibid., p. 7.

17 Ibid.

18 Ibid., p. 9.

19 Moinet, 2023, p. 759.

20 CEDAW, Art. 1.

The definition summed up this way clearly points to the conclusion that CEDAW did not initially operationalise the term “gender equality”, because it will only be introduced and affirmed later in many universal and regional legal sources dedicated to (women’s) human rights. In addition, the nomotechnical structure suggests three fundamental principles of the Convention: non-discrimination, substantive equality and state obligation.

It is assessed that CEDAW provided women with a “powerful advocacy tool”, consequently influenced the drafting of national legislation, constitutional provisions, court decisions and relevant national policies in many countries, and its implementation strengthened the rights-based approach to women’s empowerment and development.²¹ The global acceptance of the Convention is confirmed by the fact that it has been ratified by almost all countries of the world to date, with the exception of the United States and Palau, which signed it but did not ratify it, and Iran, Niue, Somalia, the Holy See, Sudan and Tonga, which are not signatories. In relation to the deficient and voluntary monitoring mechanisms that were previously introduced with the Declaration on the Elimination of Discrimination against Women, CEDAW introduces a special body of independent experts “of high moral standing and competence in the field covered by the Convention”²² – The Committee on the Elimination of Discrimination against Women (CEDAW Committee), which as an operational body has been monitoring the implementation of the Convention on the territory of the States Parties since 1982, which will be discussed *infra*.

CEDAW is also designated as a universal source with almost the largest number of reservations made upon its ratification. Reservations are possible in accordance with Article 28 of the Convention if they are compatible with its object or purpose, and can be withdrawn at any time by notification to the Secretary-General of the United Nations.²³ Among human rights defenders, such reservations are often assessed today as a sign that a particular state is unwilling to comply with international sources, choosing an approach that does not have to comply with certain international obligations in the long term, but rather maintain the *status quo*. Especially when one considers the reservations relating to the core provisions of Articles 2 and 16 of CEDAW in the context of the right to marriage and divorce, as well as in relation to the right to work, family planning, children, property and inheritance, which individual states primarily highlighted due to the influence of Sharia law,²⁴ undemocratic standards or the fact that they consciously ratified the Convention knowing that they would *de facto* not change anything in national legislation and social practices.²⁵

The last four and a half decades of CEDAW’s existence have been marked by the adoption of complementary universal and regional legal sources that have in a way supplemented it and at the same time provided a new dimension in its interpretation

21 Bayefsky, 2000, p. 198.

22 CEDAW, Art. 17(1).

23 CEDAW, Art. 28(1)–(3).

24 Ahlgren, 2021.

25 *Ibid.*, Keller, 2014, p. 313.

and implementation. Not least, this process has been assisted by the significant role of the CEDAW Committee itself, which has published 40 of its own general recommendations by December 2024. Among the sources that elaborated and supplemented the CEDAW framework at the universal level, the following are notable: United Nations 1993 Declaration on the Elimination of Violence against Women, Beijing Declaration and Platform for Action from 1995, United Nations Security Council Resolution 1325 on Women, Peace and Security from 2000 (which calls for the participation of women in decision-making at all levels; protection of girls and women from gender-based violence, including in emergency and humanitarian situations such as in refugee camps; prevention of violence against women including strengthening women's rights under national law; relief and recovery measures to address international crises through a gendered lens), and 2030 Agenda for Social Development (with goal 5 – achieve gender equality and empower all women and girls). The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women on the right to petition for women victims of discrimination which came into force on December 22, 2000 is also of great importance on a practical level.²⁶ At the regional level, this series of legal sources is supplemented by: Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol),²⁷ which entered into force in 2005, the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará),²⁸ which entered into force in 1995, and the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention),²⁹ which entered into force in 2014. The regional sources that strengthened and partially improved the original CEDAW geographically cover the area of the American, African and European continents, i.e. the Member States of the Organization of American States (OAS), members of the African Union (AU) and members of the Council of Europe (COE), with the possibility of certain mentioned regional sources being accessed by countries that are not members of the relevant regional international organisations. In relation to the global focus and wording of CEDAW, the aforementioned regional sources view discrimination against women through the discourse of specific regional disparities, normative deficits, problems and social constructs, while simultaneously addressing pressing issues of women's protection in local and regional conditions.

A retrospective review of the language of other relevant universal and regional legal sources predating CEDAW clearly suggests that they are all written in gender-neutral language and have a symmetrical approach to human rights regimes. This particularly applies to the International Covenant on Civil and Political Rights

26 Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, adopted by General Assembly Resolution A/54/4 on 6 October 1999 and opened for signature on 10 December 1999.

27 African Union, 2003.

28 Organization of American States, n.d.

29 Council of Europe, 2011a.

and International Covenant on Economic, Social and Cultural Rights of the United Nations, but also to the European Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe, as well as to part of the relevant anti-discrimination directives of the European Union adopted subsequently.³⁰ For our discussion and focus at the moment, the most significant complementary sources of European provenance are primarily the Istanbul Convention and other sources of the Council of Europe, which are dominated by a symmetrical approach to discrimination based on gender.

3. CEDAW and Regional Legal Sources of the Council of Europe and European Union

At the time of the adoption of the Istanbul Convention, secondary sources indicated that almost 15% of women over the age of 16 had experienced some form of violence in their relationships, including physical and sexual violence from their partners, even after the relationship ended.³¹ Recent European Union statistics indicate that one in three women in the EU-27 had experienced physical and sexual violence or threats in their adult age.³² One in five women had experienced sexual or physical violence from a partner, relative or household member,³³ one in three women had experienced sexual harassment at work, while among younger women, aged 18 to 29, the rate of sexual harassment at work was more than 41%.³⁴ Statistical indicators, the frequency of various forms of violence against women (including *inter alia* economic violence, blackmails, humiliating treatments, threats, rapes etc.), as well as numerous *prima facie* unforeseeable consequences for the psychophysical health of victims, are indisputable evidence of the necessity of adopting and implementing this complementary source to CEDAW. The CEDAW Committee identified violence against women as a phenomenon of global proportions in its General Recommendation on violence against women No. 19 back in 1992, simultaneously designating gender-based violence against women as a form of discrimination against women.³⁵

The prevailing attitude in Europe regarding violence against women, including domestic violence against children, the elderly and men, imposed the need to adopt an adequate regional source that crowned the numerous activities of the Council of Europe in this area. After a series of resolutions passed by the Parliamentary Assembly of the Council of Europe on female genital mutilation (Resolution 1247(2001)), on domestic violence (Resolution 1582 (2002)), on “honour crimes” (Resolution 1327 (2003)), on femicide (Resolution 1654 (2009)), on rape of women, including marital

30 Hellum and Sinding Aasen, 2013, p. 5.

31 Council of Europe, 2011b, p. 1 para. 3.

32 FRA, EIGE and Eurostat, 2024, p. 14.

33 *Ibid.*, p. 20.

34 *Ibid.*, p. 36.

35 Council of Europe, 2011b, paras. 3 and 5.

rape (Resolution 1691 (2009)), as well as recommendations on forced and child marriages (Recommendation 1723 (2005)) and on sexual assaults linked to “date-rape drugs” (Recommendation 1777 (2007)),³⁶ the Istanbul Convention became the first effective regional source of protection that codified and further developed CEDAW standards.³⁷

The Istanbul Convention does not address fundamental or constitutional principles as CEDAW does, but under our impression, rather serves as a source subordinated to the broader principles of CEDAW.³⁸ However, the content structure suggests that it rests on four fundamental pillars, as it follows from its Article 1(1) – prevention, protection, prosecution and coordinated policies.³⁹ The Istanbul Convention *expressis verbis* in Article 3(d) defines gender-based violence against women as ‘violence that is directed against a woman because she is a woman or that affects women disproportionately’, which undoubtedly means that it rests on a ‘gendered understanding of violence against women and domestic violence’.⁴⁰ The Istanbul Convention is a legally binding regional instrument aimed at the prevention of violence against women and domestic violence, while CEDAW is a legally binding universal source that provides standards for the prevention and suppression of discrimination, as, we dare say, a higher concept, which sums up numerous emerging forms and practical threats. The CEDAW scope is aimed at all forms of discrimination against women in the political, economic, social, cultural, civil or any other area of life,⁴¹ while the Istanbul Convention applies to all forms of violence against women and girls, including domestic violence, but leaves the States Parties free to decide to what extent its provisions will apply to men, the elderly and children victims of domestic violence.⁴² CEDAW does not define “gender”, “gender-based violence” or “violence against women”. In contrast, the Istanbul Convention defines “gender”, “domestic violence”, “gender-based violence against women” and “violence against women”.⁴³ At the same time, “violence against women” is *expressis verbis* specified as: psychological violence,⁴⁴ stalking,⁴⁵ physical violence,⁴⁶ sexual violence, including rape,⁴⁷ forced marriage,⁴⁸ female genital mutilation,⁴⁹ forced abortion and forced sterilisation⁵⁰ and sexual harassment.⁵¹

36 Ibid., paras. 1, 5.

37 Šimonović, 2014b, p. 606.

38 Orme, 2021, p. 19.

39 Ibid.

40 Šimonović, 2014b, p. 602.

41 CEDAW, Art. 1.

42 Istanbul Convention, Arts. 2(1) and 2(2).

43 Ibid., Art. 3.

44 Ibid., Art. 33.

45 Ibid., Art. 34.

46 Ibid., Art. 35.

47 Ibid., Art. 36.

48 Ibid., Art. 37.

49 Ibid., Art. 38.

50 Ibid., Art. 39.

51 Ibid., Art. 40.

Although the historical text of CEDAW did not operationalise the term “gender equality” at the time, it is undeniable that both of the aforementioned sources are dedicated to gender equality and non-discrimination. CEDAW aims to eliminate discrimination against women in order to achieve *de facto* equality and to condemn all forms of discrimination against women. Similarly, the Istanbul Convention focuses on eliminating violence against women, which is essential for achieving equality between women and men. Both conventions undoubtedly have different scopes, but they are not ‘parallel legal instruments of a global and regional nature, but compatible overlapping instruments that complement and reinforce each other.’⁵² This is supported by the fact that the European Court of Human Rights in its decisions used to refer to both cited sources, as an expression of the ‘richness of the dialogic nature of international human rights law’.⁵³ On top of that, just like the CEDAW Committee, the Istanbul Convention also has an expert body that oversees its implementation, the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO). To date, it has been ratified by 22 EU Member States, and the Council of the European Union approved the EU’s accession to the Istanbul Convention in early June 2023, which was followed by ratification on June 28, 2023. The Convention is in force in 38 of the 47 Member States of the Council of Europe,⁵⁴ but in recent years it has been at the centre of controversies and political debates in some European states due to criticism that it promotes “gender ideology” and represents a threat to the traditional perception of the role of women and men in society.⁵⁵ This is primarily due to the provision of Article 3(c) of the Istanbul Convention, which legally defines “gender” as ‘the socially constructed roles, behaviour, activities, and attributes that a given society considers appropriate for women and men’.⁵⁶

Turkey has become the first Member State of the Council of Europe to withdraw from an international human rights convention – the Istanbul Convention, following a Presidential Decree published on 20 March 2021, explaining that it *inter alia* protects the family and Turkish culture. Bayar points out that the real *raison d’être* of Turkey’s withdrawal lies primarily in ‘authoritarian survival strategies of centralisation, legitimisation, and repression’,⁵⁷ and only secondarily in some issues that the Convention may address. It is undeniable that withdrawing from such an important international instrument for the protection of women and girls from violence and domestic violence results in a regression in the level and quality of protection of women’s human rights, as well as in the weakening of appropriate mechanisms for international and consequently national legal protection. In addition, violence and discrimination against women and girls, the causes of which most often lie in entrenched social stereotypes, social norms, conservative and patriarchal social

52 Šimonović, 2014a, p. 96.

53 Hennette Vauchez, 2023, p. 202.

54 See: Council of Europe, 2018.

55 Berthet, 2022, p. 676.

56 Berthet, 2022, p. 676; Istanbul Convention, Art. 3(c).

57 Bayar, 2023, pp. 22–42.

relations, are potentially significantly strengthened in the conditions of a deficit in international legal protection. Harsh criticism of the Istanbul Convention was once directed from Hungary and Poland, while the Constitutional Court of Bulgaria decided in 2018 that the Convention is unconstitutional because the use of the phrase “gender” as a social construct is contrary to the Bulgarian Constitution, which differentiates gender in the binary understanding of male and female gender determined by birth.⁵⁸ In 2020, the Hungarian Parliament refused to ratify the Istanbul Convention because it promotes “destructive gender ideologies” and “illegal immigration”, with claims that the ideological approach in the text of the Convention is contrary to the Hungarian legal order.⁵⁹ In Poland, on the other hand, the political elites in power at the time pointed out that the Convention violates the rights of parents by requiring children to be taught “gender ideology” in schools, which is against the traditions of Polish families.⁶⁰ In contrast, when ratifying the Convention in April 2018, facing criticism in the public and media, Croatian Government added a limiting declaration, specifying that: ‘the provisions of the Convention do not include an obligation to introduce gender ideology into the Croatian legal and educational system, nor the obligation to modify the constitutional definition of marriage’.⁶¹ Krizsán, Roggeband and Zeller point out that the Croatian Government wanted to appease the harsh opponents of the Convention, but also that in Croatia there is successful feminist mobilisation and fruitful cooperation of non-governmental organisations with state bodies in the field of combating violence against women.⁶² It is not out of place to mention that gender equality in Croatia is a constitutional category, because Article 3 of the Constitution defines it as one of the fundamental values of the constitutional order.⁶³

In Central and Eastern Europe, Gwiazda and Minkova point out, the Istanbul Convention served as an ideological battlefield between opponents of gender and gender ideology, on the one hand, and advocates of liberal and feminist norms, on the other.⁶⁴ However, the phrase “cultural war”, which is also used in that conflict, significantly exceeds the influence and debate on the Istanbul Convention, because it depicts not only the conflict between the two opposite visions of “nation” and “future”, but also between the perceived threats to what in that context is designated as the “right way of life”.⁶⁵ Attempting from a certain distance to analyse the respective conflicts in the interpretation and perception of the cited, at times disputed meanings, of the phrase “gender” in the Istanbul Convention, as well as the ideological conflicts between feminist and liberal circles, on the one hand, and conservative circles, strengthened by the influence and discourse of dominant religious dogmas and churches in Europe, on

58 Margolis, 2018.

59 See: Guardian, 2020.

60 Schaart, 2020.

61 See: Council of Europe, 2018.

62 Krizsán, Roggeband and Zeller, 2024, p. 29.

63 Vasiljević and Vinković, 2019, p. 41.

64 Gwiazda and Minkova, 2024, p. 47.

65 Ibid.

the other hand, we cannot escape the impression of a deliberate and constant potentiation of the high intensity of this conflict. Understanding the equality of women and men, as well as the gender equality, implies the distinction between “sex” as a biological assignment and “gender” as its social construction and manifestation. However, it is also undoubted that certain feminist circles in the rhetoric criticising “gender ideology” simultaneously see a threat and opposition to “gender equality”, ignoring at the same time that “gender identity”, as an integral part of these debates, has gone much further with extremely extensive interpretations than attempts at the legal protection of transsexual, intersex and transgender persons.⁶⁶ In Central and Eastern Europe, liberal feminists support pro-gender debates because of their solidarity with the LGBTQ+ community and because of their common resistance to opponents of “gender equality”, compared to other cases where some liberal feminists could be qualified as “anti-gender” because of their position in relation to the recognition of trans women.⁶⁷

The relationship between CEDAW and the European Convention on Human Rights (ECHR), which has been in effect since May 3, 1953, is primarily highlighted by the aforementioned references made by the European Court of Human Rights (ECtHR) to CEDAW’s provisions. CEDAW serves as a specialised international instrument aimed at protecting women from violence. The European Convention on Human Rights is a symmetrical instrument for the protection of human rights, so the ECtHR relied quite widely on the CEDAW text regarding “gender-based violence” and the CEDAW definition of “discrimination against women” when in the case of *Opuz v. Turkey*⁶⁸ stated that the treatment of domestic violence as a private matter is not possible for the States Parties to the ECHR,⁶⁹ thus providing, in the sense of Article 14 of the Convention, women in South-eastern Turkey protection as a vulnerable group.⁷⁰ In the same case, the ECtHR also referred to two cases that were previously before the CEDAW Committee, which will be discussed in more detail below.⁷¹ The strong interaction between the text of the ECHR and CEDAW in the case law of the ECtHR clearly demonstrates an interpretative potential⁷² that intrinsically, in a broader sense, connects CEDAW, the ECHR, and the Istanbul Convention. This connection plays a significant role in the reasoning and implementation of the protection of women’s human rights. We are talking about mutually complementary and undoubtedly intertwined international and European, universal and specialised legal sources. In addition, the practice of

66 Today, some operationalise with seven different gender identities including agender, cis-gender, genderfluid, genderqueer, intersex, gender nonconforming, and transgender. Others point out that there are 72 gender identities, and according to some, this list is completely open because it leaves room for each person in that spectrum to identify with the one they consider most appropriate for themselves. See e.g.: Cordoba, 2022; Green et al., 2020; Cover, 2019.

67 Gwiazda and Minkova, 2024, p. 36.

68 ECtHR, Application No. 33401/02 *Opuz v. Turkey*, 2009.

69 Demir, 2021, p. 83.

70 Ibid.

71 CEDAW Committee *A. T. v. Hungary*, 2005; CEDAW Committee *Fatma Yildirim v. Austria*, 2007.

72 Blaker Strand, 2020, pp. 979–992.

the CEDAW Committee has the potential to point to possible inconsistencies in the compliance of the ECHR with other human rights law sources, especially considering the time difference in their adoption, as well as the possibility that the ECtHR may evolve in its interpretation of certain issues.⁷³

Within the framework of the Council of Europe, CEDAW operates alongside the European Committee of Social Rights, which acts as a quasi-judicial body. The (ECtSR) supervises the implementation of the counterparts to the ECHR in the realm of economic and social rights, which are outlined in the European Social Charter⁷⁴ and the Revised European Social Charter.⁷⁵ This supervision applies to the State Parties involved. Both versions of the Charter are gender-symmetrical instruments for the protection of human rights, but the Revised European Social Charter contains far more provisions primarily aimed at the protection of women's rights – the right of men and women to equal pay for work of equal value (Article 4(3), the right of employed women to protection of maternity (Article 8), the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the ground of sex (Article 20), the right to dignity at work, covering both moral and sexual harassment (Article 26), and the right of workers with family responsibilities to equal opportunities and equal treatment (Article 27). The Revised European Social Charter also contains a new Article E which advanced the prohibition of discrimination from the Preamble of the 1961 European Social Charter, also covering *expressis verbis* the prohibition of discrimination on the grounds of sex. Namely, the 1961 European Social Charter was adopted long before CEDAW, but also before the period of intensive development of civil rights and of mobilising feminist movements, so in this sense the fact that it did not specifically address the prohibition of discrimination based on gender should be observed.⁷⁶ Despite the fact that the ECtSR did not have many collective complaints with an exclusive focus on gender equality, in its case law (including assessments related to reporting procedures) one can see due attention paid to the issue of discriminatory access to abortion and the adequacy of the measures by which the State Parties ensured the right to equal pay for women and men.⁷⁷ In addition, both texts of the charter were interpreted in practice by the ECtSR with a special focus on the principle of gender equality and the socioeconomically disadvantaged position of women in contemporary European societies, which indisputably imposes the need to observe women as a distinct group.⁷⁸ In relation to the quasi-judicial proceedings of the ECtSR and reasoning in the collective complaints procedure, the reference to CEDAW is especially noticeable, *inter alia*, in the cases of collective complaints filed by the NGO University Women of Europe (UWE) in 2016 against all the States Parties to the Supplementary Protocol on the Collective Complaints Procedure

73 Ibid., pp. 990–991.

74 Council of Europe, 1961.

75 Council of Europe, 1996.

76 Lukas and Ó Cinnéide, 2023, p. 226.

77 Ibid., p. 220.

78 Ibid., p. 225.

due to claims that the respective states have not effectively reduced or overcome the gender pay gap.^{79,80} In addition, in the same procedure, the ECtSR referred to CEDAW and the interpretations of the CEDAW Committee in decisions on the merits regarding collective complaints: *European Roma Rights Center (ERRC) v. Bulgaria*,⁸¹ *Association for the protection of All Children (APPROACH) Ltd v. Slovenia*,⁸² *International Parenthood Federation – European Network (IPPF EN) v. Italy*⁸³ and *International Center for the Legal Protection of Human Rights (INTERIGHTS) v. Croatia*.⁸⁴

The European Union is not a signatory to CEDAW, so *stricto sensu* it is not bound by the Convention, but since all its Member States have ratified it, the Convention undoubtedly had an impact not only on the drafting of national legislation, but also on secondary EU sources.⁸⁵ Even before the European Union ratified the Istanbul Convention, the fight against violence against women outside its borders was implicitly addressed in European documents, especially in the context of sexual violence in conflicts since the European Security Strategy.⁸⁶ Equality between women and men, respect for human rights and non-discrimination are *inter alia* common values to the Member States.⁸⁷ The Union, in all its activities, aims to eliminate inequalities and to promote equality between men and women.⁸⁸ Equal pay for women and men for equal work and work of equal value⁸⁹ has been part of the EU legal order since the Roma Treaty, but it must be openly admitted that the integration of that article into the text of the Treaty of Rome, at that time, unfortunately, had no primary connection with

79 Ibid., p. 230.

80 See ECtSR decisions on the merits: *University Women of Europe (UWE) v. Belgium*, Collective Complaint No. 124/2016; *University Women of Europe (UWE) v. Croatia*, Collective Complaint No. 126/2016; *University Women of Europe (UWE) v. Bulgaria*, Collective Complaint No. 125/2026; *University Women of Europe (UWE) v. Cyprus*, Collective Complaint No.127/2026; *University Women of Europe (UWE) v. Czech Republic*, Collective Complaint No. 128/2016; *University Women of Europe (UWE) v. Finland*, Collective Complaint No. 129/2016; *University Women of Europe (UWE) v. France*, Collective Complaint No. 130/206; *University Women of Europe (UWE) v. Greece*, Collective Complaint No. 131/2016; *University Women of Europe (UWE) v. Ireland*, Collective Complaint No. 132/2016; *University Women of Europe (UWE) v. Italy*, Collective Complaint No. 133/2016; *University Women of Europe (UWE) v. the Netherlands*, Collective Complaint No. 134/2026; *University Women of Europe (UWE) v. Norway*, Collective Complaint No. 135/2016; *University Women of Europe (UWE) v. Portugal*, Collective Complaint No. 136/2016; *University Women of Europe (UWE) v. Slovenia*, Collective Complaint No. 137/2016; *University Women of Europe (UWE) v. Sweden*, Collective Complaint No. 138/2016.

81 ECtSR decision on the merits, Complaint 151/2017.

82 ECtSR decision on the merits, Complaint 95/2013.

83 ECtSR decision on the merits, Complaint 87/2012.

84 ECtSR decision on the merits, Complaint 45/2007.

85 Holtmaat and Tobler, 2005, pp. 399–425.

86 Badell and Barbé, 2025, p. 99.

87 See: Art. 2, Consolidated version of the Treaty on European Union, Official Journal of the European Union, C 326/13, 26 October 2012.

88 See: Art 8. Consolidated version of the Treaty on the Functioning of the European Union, Official Journal of the European Union, C-326/47, 26 October 2012.

89 Ibid., Art 157.

the fight for the equality of women and men, but with an attempt to prevent social dumping on the common market.⁹⁰

At the level of secondary EU legislation, the equal treatment directives, which in their preambles refer to CEDAW and other universal sources of the United Nations, stand out – Directive 2000/78/EC⁹¹ and Directive 2000/43/EC,⁹² while Directive 2006/54/EC⁹³ defines harassment and sexual harassment as discrimination on the grounds of sex with respect to employment. In relation to the protection of women from violence at the EU level, in addition to ratifying the Istanbul Convention, the EU also adopted the recent Directive 2024/1385⁹⁴ on combating violence against women and domestic violence, important both for the suppression and prevention of violence against women, and for the criminalisation of certain forms of violence, including *inter alia*: female genital mutilation, forced marriage, non-consensual sharing of intimate or manipulated material, cyberstalking, cyber harassment and cyber incitement to violence or hatred by reference to gender.

A summary of the legal sources from the Council of Europe and the EU reveals their mutual, direct, and indirect connections with the CEDAW in promoting gender equality and combating discrimination against women. These legal frameworks work together to address civil, economic, and social rights, as well as to protect women from violence and domestic abuse. This demonstrates both the global significance of CEDAW and the complementary role of regional legal sources in advancing these goals. Thanks to CEDAW, the interpretative potential of regional bodies associated with the supervision and implementation of the aforementioned European legal sources has undoubtedly been improved and also developed further outside the contextual framework that CEDAW once outlined.

In addition to the previously analysed and differentiated provisions of CEDAW, in the next chapter we will attempt to briefly approximate its content structure.

90 Vinković, 2018, p. 11.

91 See: para. (4) of the Preamble of the Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, Official Journal of the European Communities, L303/16, 2 December 2000.

92 See: para. (3) of the Preamble of the Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, Official Journal of the European Communities, L 180/22, 19 July 2000.

93 Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), Official Journal of the European Communities, L 2004/23, 27 July 2006.

94 Directive (EU) 2024/1385 of the European Parliament and of the Council of 14 May 2024 on combating violence against women and domestic violence, Official Journal of the European Union L 1/36, 24 May 2024.

4. Content Structure of the CEDAW – Analysis, Potential and Critics

The content and nomotechnical structure of CEDAW is divided into six parts. The first part of CEDAW, in addition to the definition of discrimination against women that we analysed *supra*, obliges the States Parties to include the principle of equality between men and women in their national constitutions and other relevant laws and to ensure the practical application of this principle; adopting appropriate legal and other measures, including sanctions, which prohibit discrimination against women; ensure the successful protection of women from any discrimination procedure through national courts and other public institutions; refrain from any procedure or practice of discriminating against women by ensuring the conditions for public authorities and institutions to act in accordance with the assumed international obligation; take all appropriate measures to change or abolish regulations, customs and practices that enable discrimination against women, and repeal all domestic criminal provisions that discriminate against women.⁹⁵ The adoption of temporary positive measures created with the aim of accelerating the achievement of *de facto* equality between women and men, as well as the protection of motherhood, in accordance with the provisions of Article 4, will not be considered as discrimination. In order to change social and cultural patterns of behaviour between men and women, and with a view to eliminating prejudices, customs and any other practices which are based on the idea of the inferiority or superiority of one sex over the other, or on stereotyped roles for women and men, States Parties shall take all appropriate measures, including an appropriate understanding of motherhood and the shared responsibility of men and women in the upbringing and education of their children.⁹⁶ In relation to extreme forms of exploitation of women, States Parties shall take all legislative and other measures with a view to suppressing all forms of trafficking in women and exploitation of prostitution of women.⁹⁷

The second part of the Convention is devoted to the civil and political rights of women, namely the elimination of discrimination against women in political and public life by ensuring, on equal terms with men, the right: to vote in all elections and public referenda; to participate in the formulation and implementation of government policies and to hold public office and positions at all levels of government; participate in the work of non-governmental organisations concerned with the public and political life of their country.⁹⁸ On an equal basis with men, women should be able, without discrimination, to represent their governments at the international level and to participate in the work of international organisations.⁹⁹ With regard to the citizenship status of women, States Parties should enable women on an equal basis to

95 CEDAW, Art. 2.

96 *Ibid.*, Art. 5.

97 *Ibid.*, Art. 6.

98 *Ibid.*, Art. 7.

99 *Ibid.*, Art. 8.

acquire, change or lose their nationality, and should ensure that marriage to a foreign national or a change in the nationality of their husband during the marriage does not automatically change a woman's nationality, force her to assume the nationality of her husband or leave her stateless.¹⁰⁰ States parties should recognise equal rights for women and men with regard to the nationality of their children.¹⁰¹

Preventing discrimination against women and taking appropriate measures for equality between women and men in the fields of education, work, healthcare, and other areas of economic and social life is the substantive focus of Part III of CEDAW. States Parties should therefore take all appropriate measures to eliminate discrimination and ensure conditions for career development, professional guidance, access to studies, equal curricula, equal examinations, qualified teaching staff, and the same level and quality of school premises and equipment.¹⁰² Eliminating stereotypical understandings of the roles of women and men at all levels and forms of education, through the promotion of co-education, revision of textbooks and school curricula, and the adaptation of teaching methods, is an obligation emphasised by the Convention.¹⁰³ States Parties should, *inter alia*, take appropriate measures to reduce the percentage of female students who leave school prematurely; ensure that they have the same opportunities to engage in sports and physical education, as well as access to information related to health insurance, well-being, and family planning.¹⁰⁴ Ensuring equal rights for women and men in the field of work and employment applies to the right to work as an inalienable right; the same employment opportunities, including the application of the same selection criteria during employment; the right to freely choose a title and occupation, professional training, retraining, internship; the right to equal remuneration and equal treatment for work of equal value; the right to social security in case of retirement, unemployment, illness, disability and old age; the right to health care and safety at work, which includes the preservation of reproductive functions.¹⁰⁵

In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure the realisation of the right to work, States Parties should take appropriate measures to prohibit dismissal on the grounds of pregnancy (under threat of appropriate sanctions), introduce paid maternity leave or similar social benefits (without loss of previous employment, position or social benefits), encourage the establishment of necessary social services to enable parents to reconcile family and work responsibilities and participate in public life (in particular through the encouragement, establishment and development of a network of childcare facilities) and provide special protection to women during pregnancy in those workplaces that

100 *Ibid.*, Art. 9 para. 1.

101 *Ibid.*, Art. 9 para. 2.

102 *Ibid.*, Art. 10 subparas. a)–b).

103 *Ibid.*, subpara. c).

104 *Ibid.*, subparas. f)–h).

105 *Ibid.*, Art. 11 para. 1.

have been proven to be harmful to the health of pregnant women.¹⁰⁶ Protective legislation created in the context of the aforementioned rights will be subject to periodic reviews in the light of scientific and technological knowledge and, if necessary, may be revised, repealed or extended.¹⁰⁷ States parties should also take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure the availability of health services, including those related to family planning.¹⁰⁸

Notwithstanding this, States Parties should also ensure appropriate health services for women in connection with pregnancy *ante* and *post natum*, free of charge where necessary, as well as adequate nutrition during pregnancy and lactation.¹⁰⁹ In addition, States Parties should take all appropriate measures to eliminate discrimination against women and to ensure the same rights, on the basis of equality of men and women, with regard to the right to family benefits, bank loans, mortgages and other types of credit, as well as the right to participate in recreational activities, sporting and cultural life.¹¹⁰ Special attention should be paid to the problems of women in rural areas, the role that women play in the economic survival of their families, including their work in unpaid areas of the economy, in order to ensure adequate protection for women living in rural areas in the implementation of the provisions of the Convention.¹¹¹

Part IV of the Convention focuses predominantly on the equal rights of women and men in civil matters, both in the context of the right to contract and the administration of property,¹¹² while all other contracts and private instruments of any kind that would restrict women's legal capacity are considered null and void.¹¹³ States Parties have an obligation to recognise equal rights for women and men with regard to regulations related to the freedom of movement of persons, choice of residence and domicile.¹¹⁴ With regard to marriage and family relations, states should take all appropriate measures to ensure, inter alia, that women and men have equal rights to marry; free choice of spouse and to enter into marriage with free will and full consent; equal rights throughout marriage and at its dissolution; equal rights and obligations of parents, in which case the interests of the children must be a primary consideration; equal rights in respect of custody, guardianship, administration of property, adoption of children and similar institutions.¹¹⁵ The engagement and marriage of a child shall have no legal effect, and States Parties shall take legislative and other measures

106 Ibid., Art. 11 para. 2.

107 Ibid., Art. 11 para. 3.

108 Ibid., Art. 12 para. 1.

109 Ibid., para. 2

110 Ibid., Art. 13.

111 Ibid., Art. 14.

112 Ibid., Art. 15 paras. 1–2.

113 Ibid., para. 3.

114 Ibid., Art. 15 para. 4.

115 Ibid., Art. 15 para. 1 subparas. a) to f).

to establish a minimum age for marriage and to introduce the obligation to register marriages in official registers.¹¹⁶

The role of the CEDAW Committee, as well as the obligations of States Parties to it, is the subject of an entire Part V of the Convention. The Committee consists of 23 experts of high moral standing and competence in the field of the Convention, elected by States Parties from among their nationals for a term of four years, provided that their election shall be carried out with due regard to equitable geographical distribution and the representation of the principal legal systems. After the election, the members of the Committee act in a personal capacity.¹¹⁷ In this context, the States Parties undertake to submit reports to the Secretary General of the United Nations on the legislative, administrative or other measures they have adopted for the implementation of the Convention, as well as on the progress achieved, first within one year of their entry into force, and thereafter at least every four years, or when the Committee considering them requests it.¹¹⁸ However, the delay of the States Parties regarding the obligation of periodic reporting is common in practice and they clearly indicate that reporting in this regard is definitely not a state priority.¹¹⁹ The Committee elects its officials for a two-year term, adopts the Rules of Procedure and generally meets for a period of no more than two weeks a year to consider the submitted Reports.¹²⁰ To date, the CEDAW Committee has developed a rather detailed instrument for monitoring the application of the Convention and interpretation of the Convention, clearly defining the rules on regular and special sessions, the place of the sessions, the agenda, the filling of vacancies, the solemn declaration by which the members must swear, the election of officials, the secretariat of the Committee, the working languages and languages of the documents it adopts, along with the powers of the Chairman of the Committee, the voting system, the Annual Report of the Committee and the distribution of reports and other documents.¹²¹ When considering the application of those provisions of the Convention that fall within their scope of work, the specialised agencies of the United Nations are authorised to be represented at the meeting of the Committee, which may also invite them to submit reports on the application of the provisions of the Convention in the areas that are within their scope of work.¹²² The Committee makes General recommendations for all countries, concluding observations for individual countries, and decisions in individual cases, i.e. Decisions in infringement investigations Convention.¹²³ After considering the national reports of the States Parties, the CEDAW Committee adopts by consensus individualised concluding observations for a specific country, in which the observed problems are

116 *Ibid.*, para. 2.

117 *Ibid.*, Art. 17.

118 *Ibid.*, Art. 18.

119 Ahlgren, 2021.

120 CEDAW, Arts. 19–20.

121 See: United Nations, 2008.

122 CEDAW, Art. 22.

123 Šimonović, 2014a, p. 88.

highlighted and recommendations are made for their elimination.¹²⁴ However, at the very beginning of its work, the Committee first started with the adoption of general recommendations *erga omnes*, based on Article 21 of CEDAW, and since 1992 it has introduced the practice of concluding observations for each country.¹²⁵ General recommendations initially had a technical nature, related to reporting on the application of the Convention, and since the nineties of the last century they have begun to change in terms of content and character, because they begin to interpret the provisions of the convention or certain topics.¹²⁶ This role is further enhanced by the Committee's quasi-judicial function in specific cases of violation of the Convention by the States Parties. In these instances, the Committee's ability to interpret both the obligations of the States Parties and the provisions of the Convention itself, becomes particularly visible.¹²⁷ However, individual complaints can only be considered if the respective States Party has acceded to the Optional Protocol.¹²⁸

Part VI relates to the process of signature and ratification,¹²⁹ entry into force,¹³⁰ reservations that are permitted,¹³¹ and requests for amendments to the Convention that can be submitted by any state, nonetheless it is the General Assembly that will decide on any steps in this regard.¹³²

5. Monitoring – The Committee for Elimination of All Forms of Discrimination against Women

Through its more than four-decade activity, the CEDAW Committee adopted a significant number of General Recommendations, which we previously mentioned to some extent in the context of the interpretation of the Convention or its individual provisions. Some of the recommendations and concluding observations are marked, Purvis points out, as very controversial, such as those regarding “Mother’s Day” in the USA or “Mother Award” in Belarus, about which the Committee expressed concern, because they strengthen the traditional roles of women. The then USA Assistant Attorney General Bryant reacted to this by pointing out *mutatis mutandis* that the CEDAW Committee exploits the text of the Convention with the aim of promoting positions contrary to American laws and sensibilities.¹³³ It is similar to the concluding obser-

124 Ibid., p. 89.

125 Ibid.

126 Ibid.

127 Ibid.

128 Purvis, 2011, p. 3.

129 CEDAW, Art. 25.

130 Ibid., Art. 27.

131 Ibid., Art. 28.

132 Ibid., Art. 26.

133 Purvis, 2011, p. 5.

vations which in 1998 urged Croatia to protect the legal right to abortion,¹³⁴ which was *nota bene* guaranteed by domestic legislation, more liberal than in many other countries, but the financial pressure on hospitals could have an impact on women's right to legally perform an abortion (The CEDAW Committee had never addressed that question in the case of Croatia later on).¹³⁵

The Convention is marked as the first universal international source, as we have referred to earlier, of an asymmetrical approach and focus directed at the protection of women's rights, but some circles today criticise it for the fact that, with its binary approach to sex, it is, in their opinion, insufficiently inclusive for all female identities.¹³⁶ Such opinions impose the need to consider the criticisms in question from the perspective of legal philosophy and various concepts that need to be scientifically explained. Especially in the context of our cultural determinants, the determination of sex, as a biological fact and its social construct – gender. Namely, if the term “woman” is insufficiently inclusive, in other words, this could mean that certain persons, *inter alia*, cannot identify with women's identity as a “higher concept/identity” (at least in a broader sense), the logical conclusion is that CEDAW is not a relevant legal source for them (at all). On the other hand, there are no known criticisms and positions that the term “man” is not sufficiently inclusive for all identities that (all) men could possibly be identified with in other (relevant) legal sources, as CEDAW is undoubtedly an asymmetrical legal source based on a binary approach to gender and dedicated exclusively to the protection of women and girls. CEDAW Committee General Recommendations 28¹³⁷ emphasises that discrimination against women based on gender and sex is inextricably linked with other factors, including sexual orientation and gender identity,¹³⁸ thus, as Moinet points out, CEDAW welcomes intersectionality.¹³⁹ CEDAW General Recommendation 28, according to Del Gobbo, ensures that States Parties legally recognise and prohibit forms of intersectional discrimination and its effects on lesbian, trans and bisexual women, because they are covered by the CEDAW protection of gender equality.¹⁴⁰ In addition, Del Gobbo refers to Hodson's conclusions that equality rights for all LGBTQ+ people are not formally recognised in international sources such as CEDAW, because the Convention has a binary focus on biological sex, excludes gay and bisexual men from its scope and does not address trans, intersex and other “gender-nonconforming people”.¹⁴¹

134 Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Croatia, 117, UN doc. A/53/38/Rev.1 (1998).

135 Purvis, 2011, p. 8.

136 Alvarez and Bauder, 2024, pp. 163–186.

137 Committee on the Elimination of Discrimination Against Women, General recommendation No. 28 on the core obligations of date parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, CEDAW/C/GC/28.

138 Moinet, 2023, p. 761.

139 Ibid., p. 760.

140 Del Gobbo, 2023, p. 83.

141 Ibid., p. 69; Hodson, 2023, pp. 175–196.

The CEDAW Committee also adopted a number of other important General Recommendations that address many (recent) problems of discrimination against women to which States Parties should pay extra attention: General Recommendation 18 on disabled women;¹⁴² General Recommendation 26 on women migrant workers;¹⁴³ General Recommendation 24 on right to health,¹⁴⁴ which focuses particularly on the needs of girls, pregnant women, elderly women and refugee women; General Recommendation 29 on the economic consequences of marriage, family relations and their dissolution;¹⁴⁵ General Recommendation 30 on women in conflict prevention, conflicts and post-conflict situations;¹⁴⁶ General Recommendation 32 on the gender-related dimension of refugee status, asylum, nationality and statelessness of women,¹⁴⁷ in which the importance of the principle of non-refoulement and the obligation of the State Parties not to deport, extradite, exclude or otherwise remove persons if there are substantial grounds to believe that they will be exposed to the risk of irreparable harm;¹⁴⁸ General Recommendation 37 on climate change,¹⁴⁹ which is dedicated to crises that exacerbate pre-existing gender inequalities for women living in poverty, indigenous women, rural women, internally displaced women belonging to different minorities etc.; General Recommendation 38 on trafficking in women and girls in the context of global migration,¹⁵⁰ which identifies the structural nature of discrimination that implies the special vulnerability, exposure and experiences of women and girls victims of human trafficking,¹⁵¹ and also the last General Recommendation 40, from October 2024,¹⁵² which pleads for the equal and inclusive representation of women in all decision-making systems, through all sectors, with the aim of achieving systemic

142 Committee on the Elimination of Discrimination Against Women, General recommendation No. 18: Disabled women.

143 Committee on the Elimination of Discrimination Against Women, General recommendation No. 26 on women migrant workers, CEDAW/C/2009/WP.1/R.

144 Committee on the Elimination of Discrimination Against Women, General recommendation No. 24: Art. 12 of the Convention (women and health).

145 Committee on the Elimination of Discrimination Against Women, General recommendation on Art. 16 of the Convention on the Elimination of All Forms of Discrimination against women (Economic consequences of marriage, family relations and their dissolution), CEDAW/C/GC/29.

146 Committee on the Elimination of Discrimination Against Women, General recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations, CEDAW/C/GC/30.

147 Committee on the Elimination of Discrimination Against Women, General recommendation No. 32 on the gender-related dimension of refugee status, asylum, nationality and statelessness of women, CEDAW/C/GC/32.

148 Hodson, 2023, p. 191.

149 Committee on the Elimination of Discrimination Against Women, General recommendation No. 37 on Gender-related dimension of disaster risk reduction in a changing climate, CEDAW/C/GC/37.

150 Committee on the Elimination of Discrimination Against Women, General recommendation No. 38 on trafficking in women and girls in the context of global migration, CEDAW/C/GC/38.

151 Hodson, 2023, p. 182.

152 Committee on the Elimination of Discrimination Against Women, General recommendation No. 40 on equal and inclusive representation of women in decision-making systems, CEDAW/C/GC/40.

change (in relation to peace and political stability; sustainable, inclusive and human-rights based economy; climate change and environmental risks; technological progress and the use of artificial intelligence and the transformation and sustainability of management systems). Thanks to the cited and many other sources of the CEDAW Committee, clear legal indicators have been developed which the Committee uses to identify guarantees of equality and non-discrimination in the national systems of the States Parties, prohibition of discrimination, legal protection of women, institutional mechanisms of implementation and monitoring, regulation of domestic violence, rape and other forms of sexual assault, conflict-related sexual and gender-based violence, human trafficking, exploitation of prostitution, but also with regard to many other political, civil, economic and social rights of women and girls.

In reviewing the individual complaints, we will focus primarily on those related to the area of Central and Eastern Europe. One is under the impression that cases related to family and gender-based violence are the most frequent or among the most numerous overall. Therefore, it is worth mentioning the decision on the merits of the CEDAW Committee in the case of *A. T. v Hungary*¹⁵³ of 2005. The Committee concluded that Hungary did not do everything necessary to protect women from domestic violence, because it is clear that the legal and institutional mechanisms in Hungary were not at the level to ensure internationally expected, coordinated, comprehensive and effective protection and support for the victims of domestic violence (paragraph 9.3).¹⁵⁴ Namely, it was clear from the case that Hungary did not provide shelter protection to the victim of domestic violence and her disabled child, as well as that at that time there were no protection or restraining orders under Hungarian Law (paragraph 2.1). The Committee requested Hungary to provide maximum legislative protection for women facing domestic violence, acting on the basis of appropriate assessments in order to prevent, but also to respond appropriately to violence against women (paragraph 9.6.b).¹⁵⁵

In the case of the *Vienna Intervention Centre against Domestic Violence and the Association for Women's Access to Justice on behalf of Banu Akbak, Gülen Khan, and Melissa Özdemir v. Austria*,¹⁵⁶ the CEDAW Committee concluded in 2007 that the Austrian authorities knew or must have known that the situation of Fatma Yildirim was extremely dangerous (paragraph 12.1.4) and that Austria failed to detain her husband in order to protect Fatma from death and severe forms of harassment (paragraph 12.1.5). Due to the response of the Austrian authorities, who pointed out that an arrest warrant for the husband would represent a disproportionate violation of his rights, because he had no criminal record and was socially integrated (paragraphs 8.14 and 9.3), and such a procedure would represent interference in his private and family life and the presumption of innocence (paragraph 8.14), the Committee asserted that the

153 Views of the Committee on the Elimination of Discrimination against Women, 2005.

154 Ibid.

155 Ibid.

156 Views of the Committee on the Elimination of Discrimination against Women, 2007.

rights of the perpetrator cannot prevail the woman's human right to life and physical and mental integrity (paragraph 12.1.5). Fatma Yildirim was a victim of long-term abuse in her marriage, and threats that her husband would kill her because she requested a divorce. Her husband repeatedly physically attacked her and threatened her. She did everything in her power to try to obtain protection by reporting to the authorities, but also by moving in with one of her daughters to protect herself. Unfortunately, she was killed, and her husband is serving a life sentence in Austria. The case was brought before the court on behalf of her descendants by the above-mentioned Austrian organisations.¹⁵⁷

In the case of *S.B. and M.B. v. North Macedonia*¹⁵⁸ of 2020, the Committee established the existence of discrimination against women of Roma ethnicity in the context of the inability to access gynaecological services, the refusal of private health institutions to register them as patients due to their ethnicity and the deficiency of the gynaecological protection network in the area where they lived. This is especially because the national authorities, inter alia, failed to take appropriate positive measures to eliminate discriminatory practices and provide legal remedies, and without taking into account the financial, cultural and physical barriers that Roma and rural women face when trying to obtain gynaecological services (paragraph 7.4).¹⁵⁹

In the case of discrimination in the field of labour relations *D. S. v. Slovakia*¹⁶⁰ of 2016 the CEDAW Committee concluded that the national court interpreted the Slovakian Antidiscrimination Act very narrowly when it did not shift the burden of proof to the employer, thereby violating the right to an effective legal remedy (paragraph 7.5). It was concluded that D.S. presented a prima facie case (paragraphs. 7.2 and 7.5) and that the principle of equal treatment was violated (paragraph. 7.3). The Committee recommended that the States Party provide the applicant compensation for lost earnings, moral damages, legal costs and expenses and fully implement the national anti-discrimination legislation. It was a case in which, after returning from maternity and parental leave, the woman's employment contract was terminated due to an alleged surplus of employees (paragraphs. 2.2 and 2.3) and the employer's alleged intention to rationalise costs. In addition, the employer alleged that she would not be able to fulfil the work tasks due to her two small children (paragraph 2.4). However, after her dismissal, two other people were hired for the same position. She claimed that her employment contract was terminated on prohibited discriminatory grounds and that she was a victim of discrimination based on gender and family status.¹⁶¹

The case of domestic violence and failure to provide adequate diplomatic and consular protection to a female citizen in a foreign country where she married, whose language she did not speak sufficiently, and where Sharia law was applied,

157 Ibid.

158 Views of the Committee on the Elimination of Discrimination against Women, 2019.

159 Ibid.

160 Views of the Committee on the Elimination of Discrimination against Women, 2016.

161 Ibid.

summarises the case of *O. M. v. Ukraine*¹⁶² The case involved a Ukrainian woman who married a Jordanian citizen who studied medicine in Ukraine, and with whom she then moved to Jordan. She gave birth to two children who acquired Ukrainian citizenship, too. In her marriage, she was exposed to serious physical and psychological violence, economic violence, denial of healthcare at the time of childbirth (paragraph 2.3), because her husband did not want to pay for health services, so she gave birth at home with his assistance (although he did not have a specialisation in gynaecology) and put potential risk to her life and the life of the baby. After the second birth, he kept her locked and subjected her to almost daily violence (paragraph 2.4). Her husband insulted her and accused her of not being able to raise Jordanian children properly, being an Orthodox Christian (paragraph 2.4). Although she managed to contact the Ukrainian Embassy by phone and ask for help in leaving Jordan and going to Ukraine with one of her daughters, she was not provided with any help, or rather, they claimed that they could not interfere in family conflicts (paragraph 2.5). Only after her parents managed to contact the Ukrainian authorities did the Embassy in Amman, under the influence of Kiev, help her with the procedure for reporting domestic violence under Sharia law, but no one from the Embassy monitored the procedure, nor did they help her or provide her with an interpreter or lawyer (paragraph 2.6). The Committee emphasised that the national authorities of Ukraine cannot be held responsible for discrimination that was not committed under their jurisdiction (9.2), but also emphasised that consular assistance has an extremely important role in gender-based or domestic violence cases and child custody cases (paragraph 9.4). Especially, when it comes to our own citizens who suffer or are at risk of suffering, and having their rights violated while staying abroad (paragraph 9.4). The Committee's conclusions in this case also had a broader general function, as they addressed the obligation to provide consular protection to Ukrainian women victims of violence, ensure their access to justice and all guarantees of legal protection, including cases of gender-based discrimination and child custody disputes (paragraph 11.)

Numerous individual cases from around the world also address issues of discrimination against women in the context of migration and immigration, pension and health insurance, marriage and guardianship, custody, property rights, citizenship, and autonomy in the context of forced sterilisation and other unwanted medical procedures. Some cases also address issues of discrimination against women with drug addiction and HIV status. However, the Committee has declared a number of contently interesting cases inadmissible, most often because the requirement of exhaustion of national protection procedures has not been met (although the Committee has exceptions to the general rule in specific situations).

6. Instead of a Conclusion

CEDAW is undoubtedly the most important universal, international source of protection for the rights of women and girls. Over a 45-year period, the Convention had an immeasurable impact on national, local and international protection mechanisms, social processes and legal sources. In addition, it has been frequently cited not only in the reasoning of international and European courts, but also of national legal systems and quasi-judicial bodies (some of which are mentioned in this text).

The social momentum in which it was adopted at the time, the long-term historical process of struggle and efforts to have women recognised as equal members of the family, society and community, which preceded it, as well as the desire to ensure their international legal protection in such conditions, are facts that should not be underestimated in assessments of the Convention. The Convention, on the one hand, reflects the global social issues that led to its adoption, highlighting the dire state of women's rights at that time, and, on the other hand, it represents the aspirations that various movements and thinkers have sought to address through the Convention over the past 45 years. Criticisms regarding the Convention's lack of inclusiveness, its perceived obsolescence, and its role stem from a conflict between how it is perceived and true understanding of its global significance. There is often an underestimation of CEDAW Committee's role, as well as a broader agenda that often tends to overlook the critical question: Do all the possible identities that the Convention aims to represent fit under the essential "identity of women", or are some identities fundamentally incompatible with that definition? In summary, this response aims to address the neglect of facts regarding the international environment in which the Convention was adopted, as well as its role what we confidently refer to as a "living instrument". Additionally, it considers the recent "wish list" put forth by (some) critics.

Like any other international instrument that has existed for such a long time, it is definitely not a perfect legal mechanism, impervious to criticism, but it is certainly not one that does not have a global historical role in the transformation, deconstruction and alleviation of many social stereotypes, prejudices and inequalities that women continuously encounter in all aspects of family and social life.

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