

Jurisprudence related to Gender-Based Violence against Women



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Analysis of Case Law from 2020-2024

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Note

The cases presented in this report are based on the [EUAA Case Law Database](#), which contains summaries of decisions and judgments related to international protection pronounced by national courts of EU+ countries (EU Member States, Iceland, Norway and Switzerland), the Court of Justice of the EU (CJEU) and the European Court of Human Rights (ECtHR).

The public database serves as a centralised platform on jurisprudential developments related to asylum, and cases are available in the [Latest updates \(last ten cases by date of registration\)](#), [Digest of cases](#) (all registered cases presented chronologically by the date of pronouncement) and the [Search page](#). The database also includes an overview of [Asylum Appeals Systems](#) in all EU+ countries and a [Publications](#) page for thematic reports, analyses and overviews of jurisprudence related to different topics of asylum.

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Introduction

Gender-based violence against women remains a pressing issue, causing women to flee their countries and seek international protection. At the same time EU+ countries continue to improve safeguards for women and girls within the asylum procedure through policy, legislative, institutional and jurisprudential developments. These key developments are available in the [Asylum Report 2024](#). A more sensitive gender-based approach to asylum has also been advanced by the CJEU in 2024 in three landmark judgments.




Jurisprudence at national and European-level demonstrates a clear shift toward the recognition of gender as a ground for persecution, allowing women who have been victims or are at risk of gender-based violence to be granted refugee status, most often on the 1951 Geneva Convention ground of membership of a particular social group. While recognising that gender-based violence can amount to serious harm, other national courts grant subsidiary protection.

This report introduces the legal framework to better understand the jurisprudence on gender-based violence against women. Jurisprudence is then presented on the assessment of gender as a characteristic to identify a particular social group, specifically on violence on account of gender, women who identify with the value of equality between women and men after living in an EU Member State, state-imposed discriminatory measures, women fleeing forced marriage, divorced women, women accused of witchcraft, victims of sexual violence, women who have had an illegal abortion and women and girls fleeing FGM/C. It includes jurisprudence on the assessment of facts and circumstances by asylum authorities and the critical need to implement special procedural guarantees for vulnerable women so that they may participate effectively in the procedure.

The case law included in this report covers the period of 1 January 2020–4 October 2024 and is by no means exhaustive. Case law related to women who are victims of human trafficking is not addressed as the topic is covered extensively in the EUAA Situational Update No 21 on [Victims of Human Trafficking in Asylum and Reception](#) (August 2024). Also, for more information on operational standards and indicators addressing issues related to applicants in a situation of vulnerability in asylum and reception, including on women victims of gender-based violence, see EUAA's [Guidance on Vulnerability in Asylum and Reception - Operational Standards and Indicators](#) (May 2024). The EUAA has also developed useful tools for the identification of vulnerable applicants, including the [Identification of Persons with Special Needs \(IPSN\) tool](#) and the [Special Needs and Vulnerability Assessment \(SNVA\) tool](#).



Main highlights

- ▶ The Court of Justice of the European Union (CJEU) advanced a more gender-sensitive approach to asylum in 2024. It firmly established in [WS v State Agency for Refugees under the Council of Ministers \(SAR\)](#) (C-621/21, 16 January 2024) that women who are at risk of being subjected to gender-based violence may be eligible for refugee status on the ground of membership of a particular social group. The CJEU clarified that gender is an innate characteristic fulfilling the first criteria for membership of a social group and women as a whole may qualify for international protection, as well as groups of women who share an additional common characteristic. 
- ▶ In the same case, the CJEU clarified that acts of violence, such as honour crimes, forced marriage and gender-based violence, can constitute serious harm under Article 15 of the recast Qualification Directive (QD), qualifying the individual for subsidiary protection. The ruling also highlighted that serious harm includes not only acts by state authorities but also by non-state actors, provided the state is unable or unwilling to offer protection.
- ▶ In [K and L v State Secretary for Justice and Security](#) (C-646/21 of 11 June 2024), the CJEU ruled that women, including minors, who identify with the fundamental value of equality between women and men during their stay in a Member State may belong to particular social group which can face persecution, depending on the circumstances in the country of origin. This would constitute grounds for recognition of refugee status.
- ▶ In [AH \(C-608/22\), FN \(C-609/22\) v Federal Office for Immigration and Asylum \(BFA\)](#) (4 October 2024) the CJEU established that an individual risk assessment is not necessary when an accumulation of discriminatory state measures applied deliberately and systematically amount to acts of persecution, and that refugee protection may be granted after establishing only gender and nationality. Already prior to this judgment, national authorities had adapted their policies following the EUAA's [Country Guidance: Afghanistan](#), issued in January 2023. [Jurisprudence](#) from several EU+ countries largely reached the same conclusion by delineating a particular social group of Afghan women and girls.
- ▶ Recent court rulings emphasise the duty of authorities to thoroughly investigate and assess asylum claims, particularly in cases involving gender-based violence. In [WS](#), the CJEU emphasised the importance of collecting country of origin information (COI) on the position of women before the law, their political, social and economic rights, the cultural and social mores of the country and consequences of non-adherence, the prevalence of specific practices, the incidence and forms of reported violence against women, the protection available to them, penalties imposed on perpetrators, and the risks they may face if returned to the country of origin. National courts also stressed using COI and a gender-sensitive approach in evaluating the possibility of internal relocation and using COI during the appeals procedure to assess the current situation of women in the country of origin.



- ▶ Courts in Cyprus, Italy, Ireland, the Netherlands and Slovenia [highlighted](#) that asylum authorities must provide an adequate investigation and reasoning, using reliable and up-to date COI to assess the situation in the applicants' country and area of origin with particular focus on gender-based violence and harms. These rulings emphasise the requirement for authorities to cooperate with applicants in substantiating their claims, rather than placing the entire burden of proof on the applicant.
- ▶ Several national courts, including in Finland, Greece, Ireland, the Netherlands and Portugal, have overturned decisions of asylum authorities for failure to assess the need for special procedural guarantees of vulnerable women who are victims of gender-based violence. The [cases](#) highlighted the need to transfer vulnerable women from the border or accelerated procedure to the regular asylum procedure, provide a female interpreter and female case officer, and provide access to a medical examination to document evidence of torture.



1. International legal framework

Main instruments

The international legal framework for assessing asylum claims related to gender-based violence is grounded in key treaties and conventions which aim to protect women's rights and ensure gender equality. Central to this framework is the Convention on the Elimination of All Forms of Discrimination against Women ([CEDAW](#)), which defines and prohibits discrimination against women across all spheres of life.¹



CEDAW is complemented at the European level by the [Treaty on the European Union](#) which provides that equality between women and men is a fundamental value of the EU (Article 2) and the [Charter of Fundamental Rights of the European Union](#), in which the principles of non-discrimination and equality between men and women are enshrined (Articles 21 and 23).

Moreover, the Council of Europe's Convention on preventing and combating violence against women and domestic violence (the [Istanbul Convention](#), 2011) emphasises a gender-sensitive approach for all the five grounds for refugee protection (Article 60(2)), highlighting that gender based violence against women may be recognised as a form of persecution, giving rise to refugee protection, and as a form of serious harm, giving rise to subsidiary protection (Articles 60 and 61).² It also defines violence against women (Article 3(a)) expanding on the definition in the CEDAW by including 'economic harm' and defining gender-based violence against women (Article 3(d)). This instrument is essential to assess gender-based persecution acts.

In 2011, the recast [Qualification Directive](#) (QD) included gender as a reason for persecution and the need to consider gender in the assessment of an asylum application. Article 4(3)(c) of the recast QD specifically mentions gender as a personal circumstance to be considered when assessing an application for international protection, while Article 9(2)(f) qualifies gender-specific acts as acts of persecution when other legal conditions are met. Article 10(d) expressly requires that gender must be taken into account when determining one of the grounds for international protection, namely membership of a particular social group or when identifying a characteristic of such a group.

¹ As defined in Article 1 of CEDAW, discrimination against women means "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".

² Article 60 (Gender-based asylum claims) of the Istanbul Convention states that:

1. 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 Convention relating to the Status of Refugees **and as a form of serious harm giving rise to complementary/subsidiary protection.**
2. 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.
3. 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.



The recast [Asylum Procedures Directive](#) (2013) cites gender as a reason to grant special procedural guarantees (Recital 29) and calls for a gender-sensitive approach to examination procedures (Recital 32).

Lastly, the [EU Directive on Combating Violence against Women and Domestic Violence](#) (2024/1385) of 14 May 2024 highlights that violence against women can be exacerbated when it is combined with discrimination based on sex, including for female applicants for international protection.³ The directive calls for additional measures to identify a victim's protection needs and support, in addition to specialised training for staff.

Together, these instruments guide the protection of women fleeing persecution and violence, ensuring their rights are recognised and protected.

Under the Pact on Migration and Asylum that entered into force on 11 June 2024 and will enter into application after 2 years, the provisions of the [Qualification Regulation](#) are similar to the ones of the recast QD. However, gender is more predominant in the Recitals of the regulation (see Recitals 37, 40, 41 and 42) than in those of the directive.

All 27 EU Member States have ratified or acceded to CEDAW,⁴ while not all have ratified the Istanbul Convention.⁵ In 2023, the EU acceded to the Istanbul Convention in the areas of judicial cooperation in criminal matters, asylum and *non-refoulement*, so that the recast QD must be interpreted in accordance with CEDAW and the Istanbul Convention (see CJEU, [WS](#) (C-621/21, 16 January 2024).

³ **Recital 6** of Directive 2024/1385 notes that “violence against women and domestic violence can be exacerbated where it intersects with discrimination based on a combination of sex and any other ground or grounds of discrimination (...) namely race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation (‘intersectional discrimination’). Member States should therefore pay due regard to victims affected by such intersectional discrimination by taking specific measures (...) especially regarding the individual assessment to identify victims’ protection needs, specialist support to victims and training and information for professionals likely to come into contact with victims.

Recital 71 qualifies “undocumented migrant women, women applicants for international protection, women fleeing armed conflict” as “victims experiencing intersectional discrimination (being) at a heightened risk of violence”.

⁴ See the list of states which are parties to CEDAW here: <https://www.un.org/womenwatch/daw/cedaw/cedaw20/list.htm>

⁵ See the list of ratifications here: <https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=210>



2. Assessing gender as a characteristic to identify a particular social group

While gender is not specified as one of the grounds of persecution laid out in the 1951 Refugee Convention and in the definition of a refugee under Article 2 of the recast QD, eligibility for international protection based on gender-related claims may be established when gender is assessed as a characteristic to determine whether the applicant belongs to a particular social group.

Definitions of membership of a particular social group

The UN High Commissioner for Refugees (UNHCR) defined a particular social group as “a group of persons who share a common characteristic other than their risk of being persecuted, or who are perceived as a group by society. The characteristic will often be one which is innate, unchangeable or which is otherwise fundamental to identity, conscience or the exercise of one’s human rights”.¹



A similar definition is provided in Article 10(1)(d) of the recast QD, which introduces two cumulative conditions for a group to be considered as forming a particular social group:

- “i) members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it; and
- ii) that group has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society”.

The same article emphasises that “gender-related aspects, including gender identity, shall be given due consideration for the purposes of determining membership of a particular social group or identifying a characteristic of such a group”. Likewise, Recital 30 of the recast QD states that, in defining a particular social group, due consideration should be given to “issues arising from an applicant’s gender, including gender identity and sexual orientation, which may be related to certain legal traditions and customs, resulting in for example genital mutilation, forced sterilisation or forced abortion” as they can contribute to an applicant’s well-founded fear of persecution.

Persecution grounds for refugee status are not mutually exclusive as they can overlap depending on the individual circumstances of the applicant. Thus, it is not uncommon that acts of persecution against a woman applicant are carried out on accounts of other convention grounds, such as the applicant’s religion or political opinion.



2.1. Standard-setting jurisprudence by the CJEU on assessing gender as a particular social group

The CJEU ruled in three landmark cases in 2024 concerning gender-based violence and persecution against women, clarifying and expanding the scope and procedure for granting protection to women and girls. The cases related to physical, mental and sexual violence, identification with the value of equality between women and men after a stay in the host country and finally, state-imposed discriminatory measures against women. Through these judgments, the court has unequivocally established that women at risk of gender-based violence may be granted refugee status on account of their gender.



Violence on account of gender (women victims of domestic violence)⁶

In [WS v State Agency for Refugees under the Council of Ministers \(SAR\)](#) (C-621/21) of 16 January 2024, the CJEU confirmed that women as a whole, or groups of women who share a common characteristic, may be regarded as belonging to a social group within the meaning of the recast QD and may qualify for refugee protection if they are exposed to physical or mental violence, including sexual violence and domestic violence, in their country of origin on account of their gender.²

The case was referred to the CJEU by the Bulgarian Administrative Court of the City of Sofia and concerned a Turkish Muslim woman with Kurdish ethnicity, who divorced her husband. She fled from Türkiye because her family forced her to marry, and she suffered domestic violence at the hands of her husband, causing her to fear for her life.

For the first time, the CJEU applied the provisions of Article 10(1)(d), which sets out two cumulative conditions to establish a particular social group in the context of gender-based violence against women. The CJEU addressed whether these provisions must be interpreted as meaning that women as a whole may be regarded as belonging to a particular social group depending on their country of origin or whether an additional common characteristic must be invoked to belong to such a group.

The court firstly considered that being a female constitutes an innate characteristic and therefore suffices to satisfy the first condition of assessing a particular social group. The court also noted that escaping from a forced marriage may be regarded as a “common background that cannot be changed” within the meaning of the first condition.

⁶ Domestic violence is defined in Article 3b of the Istanbul Convention as consisting of 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. While men can also be victims of domestic violence, the phenomenon is strongly feminised and affects women disproportionately. Domestic violence is often regarded as a form of violence against women, and due to its intimate nature, many national legislations, as well as the Istanbul Convention (see Article 46a) recognise the aggravating circumstance of violence committed within the family.



For the second condition, the court remarked that women may be viewed as having a distinct identity from their surrounding society, based on “social, moral or legal norms in their country of origin”. The court elaborated that this may also be the case for women who share an additional common characteristic. In the case of women who refuse a forced marriage and who transgress the social norm by ending the marriage, the court argued that they may be regarded as belonging to a social group with a distinct identity in their country of origin if, on account of that behaviour, they are stigmatised and exposed to the disapproval of their surrounding society resulting in their social exclusion or acts of violence.

Thus, the court ruled that women, as a whole, may be regarded as a ‘particular social group’, within the meaning of Article 10(1)(d) of the recast QD, if in their country of origin, they are, due to their gender, exposed to physical or mental violence, including sexual violence and domestic violence. Additionally, the court ruled that more restricted groups of women who share an additional common characteristic may be considered to belong to a particular social group, for which they are persecuted and may benefit from refugee protection.

At the national level, a representative case for this profile was [X v The Commissioner General for Refugees and Stateless Persons \(CGRS\)](#)³ of 29 April 2022, in which an applicant from El Salvador claimed to have been subjected to abuse and physical violence by her ex-husband during their marriage. CALL considered that married women in El Salvador who are unable to leave their relationship form a recognisable, specific social group that can be the basis for a need for international protection.

The Supreme Administrative Court in Finland granted protection to a Russian woman from Chechnya who was a victim of domestic violence in [Applicant v Finnish Immigration Service](#) of 25 May 2023.⁴ The court referenced the [EUAA Country of Origin Information Report: Chechnya, Women, Marriage, Divorce and Child Custody](#) of September 2014 and found that the situation of divorced women in Chechnya is particularly difficult due to pressure they face in order to return to their ex-spouse, in addition to the risk of becoming victims of honour crimes committed by family. While the woman received help from relatives to avoid violent behavior, the court considered that this was not sufficient for a reduction of the threat in view of the repeated violence against the woman and her child.

Women and girls identifying with the fundamental value of equality between women and men after their stay in a Member State

In [K and L v State Secretary for Justice and Security \(Staatssecretaris van Justitie en Veiligheid\)](#)⁵ (C-646/21) of 11 June 2024, the CJEU confirmed that identifying with the values of gender equality can be invoked as an additional element complementary to the characteristic of being a woman, that would fulfil the second criterion for membership of a particular social group.⁶

The applicants, Iraqi young women who moved to the Netherlands at an early age, claimed that, due to their long stay in the country, they had adopted the norms, values and conduct of young people of their age in the Dutch society. They perceived themselves as young women able to make their own choices about their lives and future, relationships with men, marriage, studies, work and the formation and expression of their political and religious views. The



applicants feared persecution and developmental harm if they were to be returned to Iraq as their identity was contrary to the norms and conduct within their country of origin.

The Dutch Court of The Hague seated in 's-Hertogenbosch asked the CJEU whether “western norms, values and actual conduct” adopted in a society which formed a person’s identity should be regarded as a common background or a fundamental characteristic that cannot be changed, and thus whether this group should be seen as members of a particular social group within the meaning of Article 10(1)(d) of the recast QD.

The CJEU referred to its previous judgment, [C-621/21](#), where it was stated that the fact of being female constitutes an innate characteristic and therefore suffices to satisfy the first condition for identifying a particular social group. In the same judgment, the court added that the existence of an additional innate characteristic, or a common unchangeable background that women share, for example a characteristic or belief fundamental to their identity, may also satisfy that first condition.

In this case ([C-646/21](#)), the CJEU noted that women, including minors, who share as a common characteristic the fact that they identify with the fundamental value of equality between women and men during their stay in a Member State may, depending on the circumstances in the country of origin, be regarded as belonging to a particular social group, constituting a reason for persecution capable of leading to the recognition of refugee status.

The court also ruled on the obligation of the determining authority to individually assess the best interests of the child prior to adopting a decision on the application for international protection, in view of Article 24(2) of the EU Charter.

In Belgium, in [X v Commissioner General for Refugees and Stateless Persons](#), the Council for Aliens Law Litigation (CALL) also took into account the CJEU judgment in [C-646/21](#). The female applicant arrived in Belgium at 22 years of age, where she had resided for about 3 years. CALL considered that there were clear indications that the applicant had, during her time in Belgium, come to identify with the fundamental value of equality between women and men and that she wished to enjoy the benefits of equality daily. CALL also took into account relevant country information, noting that women are discriminated against in Somalia’s patriarchal society, with gender inequality found in various aspects of life such as education, work, exclusion from politics and limited access to the justice system. Women’s rights and freedoms are restricted by Al Shabaab and by applying the customary law or Sharia law. Thus, CALL returned the case to the asylum authority to carry out further investigation on the applicant’s lifestyle in Belgium and her subsequent fear upon a return, in accordance with the ruling of the CJEU.

In Cyprus, the International Protection Administrative Court (IPAC), in case No [5649/22](#),⁷ provided refugee protection in July 2024 to a family of Iranian nationals based on a fear of persecution for one of the daughters, who resided in Cyprus from the age of 12 until 17, and grew up without wearing a hijab and following a lifestyle incompatible with her home country’s norms. The court reiterated the recent case law of the CJEU in [C-646/21](#) and concluded that the applicant had integrated into Cypriot society during her stay, which shaped her values and beliefs. This included the freedom of expression and the development of her personality,





which had become integral parts of her identity which she could not be forced to renounce. Moreover, based on country information, IPAC noted that women who deviate from the restrictions imposed by Islam, particularly concerning the mandatory use of the hijab, are targeted by the authorities, either through physical repression or through the enactment and enforcement of criminal proceedings against them. Thus, they are treated as a distinct group within the broader society of the country.

In Germany, in [Applicant v Federal Office for Migration and Refugees](#)⁸ of 23 July 2024, the Regional Administrative Court of Hamburg ruled in a case concerning an Iranian woman who was a victim of domestic violence at the hands of her ex-husband whom she divorced while residing in Germany. The court considered the personal circumstances of the applicant, who identified with the fundamental value of equality between women and men and who had resided in Germany for 6 years. It noted that, in accordance with the CJEU judgment in [C-646/21](#), the applicant cannot be expected to avoid the real risk of persecution upon a return to Iran by exercising restraint in expressing her personality and subjecting to the rules and customs which discriminate against women without expressing her objection, especially as she stated credibly during the oral hearing that she no longer wanted to be suppressed. The court granted her refugee status on the basis of a membership in a social group of Iranian women, noting that women are considered to have a distinct identity in Iranian society, and invoking the applicant's 'westernisation'.

Even before the CJEU judgment, the court drew the same conclusion in [Applicant v Federal Office for Migration and Refugees](#)⁹ of 19 April 2024. In this case, the court ruled that a 17-year-old Iranian minor who had been in Germany since the age of 15, which significantly shaped her identity as a woman, would be at risk upon her return to Iran.

Also, the Regional Administrative Court of Hannover decided, in [Applicant v Federal Office for Migration and Refugees \(BAMF\)](#)¹⁰ of 5 June 2023, that women and girls from the autonomous region of Kurdistan in Iraq, who identify with the value of equality between women and men after a stay in the host country, were at risk of persecution upon a return to their country of origin.¹¹ The court noted that the applicant was a member of a particular social group of Iraqi women and girls who oppose the existing legal, economic and social discrimination against women in Iraq. The national court added that because of the applicant's clear identification with the value of equality between women and men, the applicant was regarded as different by the Iraqi society and thus granted her refugee protection.





State-imposed discriminatory measures which constitute a severe violation of basic human rights and amount to persecution

In the third landmark ruling from the CJEU, [AH \(C-608/22\), FN \(C-609/22\) v Federal Office for Immigration and Asylum \(BFA\)](#)¹² of 4 October 2024, the court established that an individual risk assessment is not necessary when an accumulation of state-imposed discriminatory measures amount to acts of persecution, as is the case for Afghan women under the Taliban regime, and that establishing gender and nationality alone suffice to reach this conclusion.

The case concerned two Afghan women whose request for international protection was rejected in Austria and who appealed before the Supreme Administrative Court, citing the oppressive treatment of women under the Taliban regime, restricting women's rights, including education, employment, healthcare, legal protections, and freedom of movement, while enforcing discriminatory practices like forced marriage and political exclusion.

The Supreme Administrative Court referred two preliminary questions to the CJEU on whether the measures implemented by the Taliban amounted to acts of persecution and whether refugee protection could be granted to an Afghan woman without conducting an individual assessment of her personal circumstances.

The CJEU confirmed that the measures implemented by the Taliban towards women constitute a sufficiently serious breach of fundamental rights to be classified as acts of persecution. The court argued that the measures have a cumulative effect and are applied deliberately and systematically.

The court's reasoning in this case provides clarification on the interpretation of acts of discrimination in light of Article 9(1) of the recast QD in the context of cases concerning gender-based violence. The provisions of the article stipulate the conditions for an act of persecution – differentiating between acts of sufficiently serious nature and repetition which constitute a severe violation of basic human rights under Article 9(1)(a) and those which under Article 9(1)(b) constitute acts of persecution though their cumulative nature. For the former, the court identifies forced marriages and the lack of protection against gender-based violence and domestic violence as acts which stand alone as acts of persecution. For the latter, the court regards the measures by the Taliban which “restrict access to healthcare, political life and education and the exercise of a professional or sporting activity, restrict freedom of movement or infringe the freedom to choose one's clothing” as not satisfying Article 9(1)(a) individually, but when taken as a whole, cumulatively reach the threshold of severity to amount to acts of persecution in accordance with Article 9(1)(b).

The court also noted that once gender and nationality are established through an individual assessment for Afghan women and girls, it is not necessary for national authorities to consider other factors to determine the risk for an applicant of being subjected to acts of persecution.

The CJEU built this conclusion on several sources, including the EUAA's [Country Guidance: Afghanistan](#) issued in January 2023, which highlights that a well-founded fear of persecution (within the meaning of Article 9 of the recast QD) is in general substantiated for Afghan women and girls as a result of the measures adopted by the Taliban regime since 2021. The



court also noted UNHCR's [statement](#) of May 2023, which highlights that there is a presumption of recognition of refugee status for Afghan women and girls given the acts of persecution on cumulative grounds solely on account of their gender. The [opinion](#) of the Advocate General de la Tour also noted that "the reports prepared by the EUAA and the bodies of the Council of Europe, the UN reports and the reports issued by international NGOs conclude that the treatment of women and girls in Afghanistan is likely to create a general need for international protection for female applicants".

In the first two CJEU judgments pronounced in 2024, [WS](#) and [K and L](#), the court referred to Article 4 of the recast QD and the need for individual assessment of the risk of persecution, even after a female applicant is regarded as belonging to a particular social group on account of her gender. However, in the third case, [AH and FN](#), the CJEU departed from the need for an individual assessment when there is systematic discrimination of women amounting to persecution, referring to Article 3 of the recast QD which permits Member States to apply more favourable standards when assessing the conditions under which refugee status is granted, allowing a Member State to deviate from Article 4. The judgment was enforced by Austria, where the Supreme Administrative Court overturned the decisions of the BFA, aligning with the considerations of the CJEU.¹³

The same line of reasoning in [AH and FN](#) was already apparent in national jurisprudence from Denmark, France, Germany and Luxembourg, while other EU+ countries may not have recorded jurisprudence on this topic as they had already adapted their national policies on Afghan women after the EUAA issued [Country Guidance: Afghanistan](#) in January 2023. More information on the change in policy toward Afghan women and girls is available in [Section 4.2 – Protecting women and girls](#) of the Asylum Report 2024. In addition, in May 2024, the EUAA updated [Country Guidance: Afghanistan](#), confirming a well-founded fear of persecution would in general be substantiated for women and girls in Afghanistan. Nonetheless, a different approach emerges from jurisprudence of the Federal Administrative Court in Switzerland.

Prior to the judgment of the CJEU in [AH and FN](#), the Refugee Appeals Board in Denmark granted international protection to an Afghan woman and her daughter in the appeal case [Afghanistan/2023/10](#), decision published on 3 February 2023¹⁴, after a change of practices towards Afghan applicants for international protection. The Refugee Appeals Board noted the situation in Afghanistan since the Taliban took power in mid-August 2021, including in terms of conditions for women and girls. The Refugee Appeals Board referred to the Danish Refugee Council's report [Afghanistan Conference - The Human Rights Situation after August 2021](#), published on 30 December 2022, which noted that the human rights situation has significantly worsened since August 2021, and that women's rights have been significantly curtailed, including their access to public life. Further reference was made to the [Human Rights Watch Report 2023 – Afghanistan](#), published on 12 January 2023, which stated that the Taliban has imposed a growing list of rules and policies that comprehensively prevent women and girls from exercising their fundamental rights.

The Refugee Appeals Board stated that the situation for women and girls in Afghanistan is of such a nature that it amounts to persecution and quoted from the EUAA [Country Guidance: Afghanistan](#) (24 January 2023) that "the accumulation of various measures introduced by the



Taliban, which affect the rights and freedoms of women and girls in Afghanistan, amounts to persecution. (...) For women and girls in Afghanistan, a well-founded fear of persecution would in general be substantiated.”

Similarly in [O., O. v French Office for the Protection of Refugees and Stateless Person \(OFPRA\)](#) on 11 July 2024, which was pronounced before the CJEU judgment, the French National Court of Asylum (CNDA) ruled in a Grand Chamber formation that all Afghan women who refuse to be subjected to the measures taken against them by the Taliban are likely to be recognised as refugees because of their membership in the social group of Afghan women and girls.¹⁵ The CNDA referred to the CJEU judgment in *WS* ([C-621/21](#)), the EUAA Country of Origin Reports [Afghanistan Targeting of Individuals](#) (August 2022), [Afghanistan: Country Focus](#) (December 2023) and [Country Guidance: Afghanistan](#) (May 2024) and concluded that since the rise of the Taliban to power on 15 August 2021, the fundamental rights and freedoms of women and girls in Afghanistan are undermined.

In Germany, the Regional Administrative Court of Schleswig-Holstein decided in March 2023 in [Applicant v Federal Office for Migration and Refugees \(BAMF\)](#)¹⁶ that as a single Afghan woman the applicant would be excluded from public life in almost every aspect, she would have no means of supporting herself and she would have to expect physical abuse from state and non-state actors, without expectations of any protection by the state. At least cumulatively, these measures were so severe that they constituted a serious violation of fundamental human rights and thus amounted to persecution.

Also in Luxembourg, the Administrative Court pronounced three judgments in March and April 2023 (Nos [48022C](#)¹⁷, [48073C](#)¹⁸ and [48052C](#)¹⁹) in which it provided refugee protection to Afghan women and girls, noting that violations of their human rights had gradually worsened since the Taliban came to power in August 2021, with a regression of their civil, political, economic, social and cultural rights, illustrated by the abolition of the right of girls to access secondary education, their exclusion from most jobs in the civil service and many other sectors, the compulsory wearing of a hijab in public and the prohibition for women to travel without being accompanied by a man from their immediate family.

In contrast, in Switzerland, in [A,B,C,D,E v State Secretariat for Migration \(Staatssekretariat für Migration, SEM\)](#) decided on 23 April 2024, the Federal Administrative Court ruled that the change in policy by the Swiss determining authority recognising collective persecution of female Afghan applicants based solely on their gender – without requiring a further, individual motive for persecution – is not in accordance with the law or with the practice of the court, since collective persecution of women and girls cannot be assumed on the basis of gender alone but only on the basis of additional motives for persecution.²⁰ The court found that the applicant, a married woman with no risk of violence or forced marriage in Afghanistan, did not state as a reason for fleeing her home country that she had to abandon school or that she rebelled against wearing a burqa. The court thus found no further individual elements to substantiate the risk of persecution.

Nonetheless, following the EUAA's [Country Guidance: Afghanistan](#) in early January 2023, SEM adapted its national policy on Afghan women and girls, which has been in force since 17 July 2023. It provided that Afghan women and girls can be considered victims of both



discriminatory legislation and religious persecution, which does not exclude other grounds for persecution. According to SEM, refugee protection cannot be granted on the sole basis of gender, which must always be combined with at least one of the grounds for persecution, so that asylum applications lodged by Afghan women continue to be examined on a case-by-case basis.²¹ In its recent jurisprudence of February 2025, the Federal Administrative Court confirmed this approach.²²

2.2. National rulings on other risk profiles

Women fleeing forced marriage

Forced marriage wherein one or both parties do not consent to the marriage, is a traditional practice in some areas which amounts to persecution. Serious harms related to forced marriages can include dowry deaths,⁷ bride-burning, forcing widows to marry their husband's kin, honour killings or other honour-related crimes, and domestic abuse including forced domestic labour within the marriage.



Escaping from or the refusal to enter into a forced marriage may be considered as transgressing social and cultural mores, which can lead to other related acts of violence. Women with this profile may be considered as belonging to a particular social group on the basis of a common background which cannot be changed (refusal to marry) or a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it (the right to choose whom to marry) and the distinct identity of such women and girls in the country of origin.

In Italy, in [Applicant v Ministry of the Interior \(Ministero dell'Interno\)](#)²³ of 3 March 2023, a Georgian national applied for international protection claiming to be a victim of forced marriage and domestic abuse at the hands of her husband. The Tribunal of Naples noted that the Territorial Commission which initially rejected the application did not consider specific information on the condition of Georgian women belonging to a particular and vulnerable group exposed to gender-based violence and forced marriage as described by the applicant and presented in updated country of origin information from international organisations. The Tribunal of Naples considered that the applicant was a victim of multiple acts of persecution, including abduction, forced marriage and violence due to her gender, and as such, she was granted refugee status as a member of a particular social group.

In [D. v French Office for the Protection of Refugees and Stateless Persons \(OFPRA\)](#)²⁴ of 5 May 2021, the CNDA in France ruled that, in a population where forced marriage is commonly practised to the point of becoming a social norm, young girls and women who wish to avoid it constitute a social group. However, the applicants must substantiate membership of a social group regarding their family status, and geographical and sociological information related to their specific risk of persecution. According to this, the CNDA granted asylum to an applicant

⁷ According to the [UNESCWA's Statistical Terms Glossary](#), the term 'dowry death' is defined by UNWomen as the "murder of a woman whose family failed to pay sufficient dowry at the time of marriage, prevalent in some countries of Asia".



from Mali as it found credible her allegations about the pressure that she had been under to marry and that she attempted suicide in this situation. She also gave a credible account of the abuse she suffered for 10 years by her ex-husband and the threats she had been subjected to. Considering the context in Mali, the CNDA found that forced marriage is a common practice, especially in the region from where the applicant originates, despite being prohibited by law, and women who oppose it face ostracism and violence from the community.

In the case of [*Applicants v French Office for the Protection of Refugees and Stateless Persons \(OFPR\)*](#)²⁵ of 8 December 2021, the CNDA allowed the appeal of an Afghan woman who requested protection due to the fear of persecution by the Taliban and her family, as after the disappearance of her husband, she was harassed by his brother who intended to marry her. The CNDA noted that the applicant had a profile particularly targeted by the Taliban and provided her refugee protection as she belonged to the social group of widows who want to live alone and not submit to religious customs, such as the levirate marriage.

The CNDA also identified for the first time a social group in Burkina Faso formed of women from the Nanka ethnic group who refuse an imposed marriage or try to evade it in the case of [*K. v French Office for the Protection of Refugees and Stateless Persons \(OFPR\)*](#)²⁶ of 4 September 2020. According to country of origin reports consulted by the CNDA, forced marriage can still be observed in rural areas of Burkina Faso and it is commonly practised within the applicant's ethnic group. In the woman's case, her refusal to marry her deceased husband's brother could be considered a disgrace to the family.

In [*Applicant v French Office for the Protection of Refugees and Stateless Persons \(OFPR\)*](#)²⁷ of 14 September 2020, the CNDA granted refugee status to a Palestinian applicant from Gaza who refused a forced marriage. The CNDA assessed that although the applicant was not subject to death threats or physical violence, her family exposed her to continuous psychological pressure for refusing the forced marriage. It was assessed that the applicant found herself in a serious state of personal insecurity forcing her to leave the operational zone of UNRWA. In addition, the UN Human Rights Council reported in 2017 that there were honour crimes within the Palestinian society against young women who refused to marry.

In [*Applicant v Federal Office for Migration and Refugees \(BAMF\)*](#)²⁸ of 21 March 2023, the Regional Administrative Court of Schleswig-Holstein in Germany granted asylum to a Turkish national who refused a forced marriage and was persecuted by her family. The court recalled that the German Asylum Act (Sections 3a and 3b) has a special provision for persecution based on gender or gender identity, so that persecution linked solely to gender was sufficient for the existence of membership of a particular social group. According to this, it was held that even though it could not be assumed that the applicant's father would find her anywhere in Türkiye, given her personal situation (having only 3 years of education and lacking independence) it will not be possible for her to make a living in Türkiye without the support of her family, from whom the threat emanated.

In [*Applicant v Ministry of Immigration and Asylum*](#)²⁹ of 23 February 2023, the Administrative Court in Luxembourg granted refugee protection to a minor from Iran on the basis of membership of a social group of women who are exposed to forced marriages. The court noted that forced marriages were a common practice in Iran, with fathers allowed, with





impunity, to forcibly marry their daughters and punish them for disobeying. The court also noted that in such cases state protection was not available.

In Norway, in [Applicant v Immigration Appeals Board \(Utlendingsnemnda, UNE\)](#)³⁰ of 12 July 2024, the Oslo District Court ruled in a case that concerned the validity of the Immigration Appeals Board's (Utlendingsnemnda, UNE) decision to revoke a residence permit, refusal of further residence after abuse in a relationship, and refusal of residence on humanitarian grounds. The applicant had come to Norway as a minor through forced marriage and had been provided with new, false identity papers by her husband's family to apply for family reunification. The applicant had later separated from her husband. The court held that the UNE's decision to revoke a residence permit and refuse further residence was invalid. The court stated that the UNE failed to assess the possible significance that the applicant was married as a minor against her will, that she was provided with forged identity papers, and that the incorrect identity information was provided under duress. The court deemed that it was also unclear how these circumstances affected the UNE's assessment of the seriousness of the case.

Divorced women

In the Belgian case of [Applicant v Commissioner General for Refugees and Stateless Persons \(CGRS\)](#)³¹ of 30 April 2021, the applicant's claim was substantiated on grounds of fear of being killed by her ex-husband's family and her own family because of being a divorced woman in Türkiye. CALL granted refugee status to the applicant on account of her membership of the social group of women. The court assessed both the individual circumstances of her application, noting the applicant's vulnerable situation as a divorced woman, victim of marital violence and the general status of women in Türkiye as domestic violence, femicide and honour crimes were common.

In Italy, in [Applicant v Ministry of the Interior \(Territorial Commission of Rome\)](#)³² of 9 July 2024, the court considered the applicant's situation in light of her status as a divorced woman facing gender-based violence in Tunisia. Country of origin information indicated that women in her position often do not receive adequate state protection and face societal stigma, which substantiated her claim. The court determined that these factors met the criteria for membership in a particular social group under Article 1A(2) of the Geneva Convention and Articles 7 and 8 of Legislative Decree No 251/2007. Consequently, the court granted her refugee status.

In [Applicant v Ministry of Immigration and Asylum](#) of 5 October 2022, the Administrative Tribunal of Luxembourg recognised the refugee status of an Iranian applicant who suffered persecution at the hands of her ex-husband, on the basis of a membership of a social group of divorced Lor women in Iran. The court emphasised that in general Iranian women, including victims of domestic violence, are not considered to be a social group with a distinct identity. The court highlighted the applicant's prior persecution, her ex-husband's influential position as director of the Intelligence Service, and her inability to seek protection from Iranian authorities.³³





Victims of sexual violence

In the Belgian case of [X. v Commissioner General for Refugees and Stateless Persons \(CGRS\)](#)³⁴ of 19 March 2021, CALL ruled that sexual abuse outside of the country of origin should be considered when assessing asylum applications, especially in the context of existing stigmatising social norms to which a woman could be subjected upon a return to the Democratic Republic of the Congo. The case concerned a Congolese woman who was sexually abused by a priest in Spain, where she had been sent by her congregation as part of her religious training as a nun.

According to country of origin information, the court found that sexually abused religious women in Africa often “confine themselves in silence”, being marginalised and stigmatised by the surrounding society. Thus, the court noted that the acts of sexual abuse should have been assessed despite the applicant’s omission to mention a fear of a specific risk in connection to these acts during her personal interviews.

In Norway, in [A v Immigration Appeals Board \(Utlendingsnemnda, UNE\)](#)³⁵ of 23 April 2024, the Oslo District Court found it plausible that the applicant was threatened with honour killings by her brother because she was pressured into sexual intercourse by her husband, with whom she had a legal wedding ceremony in Georgia. Her husband wanted to divorce her before carrying out the religious ceremony in Norway. The court noted that the only legal marriage in Iran is a religious marriage, and thus found it credible that her family would consider it shameful that she had engaged in extra-marital affairs.

Women accused of witchcraft

In Belgium, in [X v Commissioner General for Refugees and Stateless Persons \(CGRS\)](#)³⁶ of 29 May 2024, CALL granted refugee status to a female applicant from Côte d'Ivoire who was accused of witchcraft as she was considered a source of misfortune due to multiple unfortunate events that the applicant faced throughout her life. CALL referred to COI which highlighted that over 95% of the Ivorian population believed in witchcraft, with women being particularly vulnerable to accusations, especially when they had physical abnormalities, were single or failed to conform to traditional, social roles. CALL also found that individuals accused of witchcraft in Côte d'Ivoire often faced severe mistreatment, including torture, stoning, beatings and other cruel or degrading treatment which can extend to their family members.

While CALL did not find that all individuals with visible physical deformities were systematically considered witches in Côte d'Ivoire, it recognised the possibility that a vulnerable woman – such as the applicant who was in the process of a divorce, was ill, had no support network, was perceived as ‘cursed’ and was presenting visible symptoms – could have faced such accusations and was at an elevated risk of persecution. CALL confirmed the applicant’s membership of a social group of people perceived in Côte d'Ivoire as being witches because of their visible deficiencies or their manifest vulnerability. Additionally, CALL determined that the applicant’s children shared her fear of persecution due to their family ties and should be included in the same analysis.



Women who have had an illegal abortion

In [X v Commissioner General for Refugees and Stateless Persons \(CGRS\)](#)³⁷ of 13 October 2021, CALL granted refugee status to a Senegalese national on account of her membership in a particular social group of Senegalese women and a fear of persecution following her abortion. The council found that abortion is criminalised by the Senegalese authorities as it constitutes a social taboo and an important family issue. In this case, the woman had had an abortion as she feared dishonouring her family after an extramarital relationship with a man.

Women and girls fleeing FGM/C

There is extensive case law identifying a particular social group of women and girls who share the common characteristic of not having undergone FGM/C⁸ in line with local traditional practices or continue to refuse to undergo it.³⁸ When determining whether a female applicant is at risk of undergoing FGM/C upon a return, one of the main considerations is the share of women and girls who are subjected to this practice in the country of origin. Nonetheless, as some national courts pointed out, the risk of FGM/C cannot be determined solely by considering variations in the prevalence rates of this practice within a country.

The Refugee Appeals Board in Denmark noted in the appeals case [Soma/2023/16](#), decision published on 8 August 2023, that according to country of origin information and the EUAA's [Country Guidance: Somalia](#) (June 2022), 98%-99% of girls in Somalia are circumcised.³⁹ In the appeals case [Soma/2022/28](#), decision published on 1 September 2022,⁴⁰ the board explained that the assessment of a young girl being at risk of genital mutilation must primarily be based on the extent to which girls and women are subjected to the practice in their area/region. Other factors should also be taken into account, for example whether the parents have the will and ability to withstand the pressure and whether the mother of the young girl is single as she may face extreme social and family pressure. The board concluded that, in the event of an expulsion to Somalia, the applicants in both cases were at risk of being forcibly subjected to FGM/C and thus it provided a residence permit under the Aliens Act.

The CNDA in France has also granted refugee status when there is a low prevalence rate of FGM/C in a specific ethnic group, by taking into account the overall prevalence rate in the country and the personal circumstances of the applicant. In [Applicants v French Office for the Protection of Refugees and Stateless Persons \(OFPRA\)](#)⁴¹ of 14 November 2019, the CNDA highlighted that the existence of a social group did not depend on the number of people in it, thus the risk of FGM/C cannot be determined solely by taking into account the variations in prevalence rates within a country. The court accepted the risk of mutilation alleged by Gambian girls from the Wolof ethnic group, in which female circumcision was low in comparison to the overall country rates. The court argued that the applicants were still at risk of excision, as their grandmothers, who were identified as their main persecutors in the event of their return to The Gambia, belong to the Mandinka ethnic group in which the prevalence rate of the practice is 95%. The court also argued that the applicants' parents would not be able to protect them, and their mothers had also been subjected to this practice. Thus, due to

⁸ Female genital mutilation is defined by the Istanbul Convention as “excising, infibulating or performing any other mutilation on the whole or any part of a woman’s labia majora, labia minora or clitoris” (Article 38a).



their direct family environment, the court concluded that the applicants had a well-founded fear of persecution because of their membership in the social group of children, adolescents and women exposed to FGM/C, without being able to effectively rely on the protection of the Gambian authorities.

Membership of a particular social group of women and girls who refuse to undergo FGM/C in Sierra Leone was also recognised by the CNDA in [Mme K. v French Office for the Protection of Refugees and Stateless Persons \(OFPPRA\)](#) on 31 October 2023.⁴² Following its previous case law, the court noted that determining the existence of the group did not depend on the number of people affected but rather on their perception by society and institutions, through which the link between membership of this group and persecution could be established.

Regarding the age at which FGM/C is usually performed, the German Regional Administrative Court granted asylum in the case of [Applicant v Federal Office for Migration and Refugees \(Bundesamt für Migration und Flüchtlinge, BAMF\)](#)⁴³ of 21 March 2024 to a girl from Sierra Leone, holding that the significant likelihood of FGM/C being performed does not cease to apply because of the age of the person. Her asylum request was first rejected by BAMF as it determined that she was unlikely to be circumcised in the next 10 years because in Sierra Leone most women are circumcised when they reach puberty. The Administrative Court noted that FGM/C carried out against the will of the person is gender-specific persecution within the meaning of Asylum Law and ruled, contrary to BAMF, that it is unreasonable to expect the applicant to return to Sierra Leone given that the persecution is expected to happen within the next few years.

For certain countries of origin, courts have arrived at different conclusions on the willingness and ability of national authorities to provide protection against FGM/C. This is particularly the case for countries where there is legislation prohibiting the practice.

In the case of an Ethiopian applicant of Oromo ethnicity, the Belgian CALL in [Applicants v Commissioner General for Refugees and Stateless Persons \(CGRS\)](#) of 15 February 2021 confirmed the CGRS' rejection of the asylum request as it noted that FGM/C rates among girls in Ethiopia were falling so that not all girls were at risk of being cut. In addition, it pointed out that there was a legal ban in the country on female circumcision, with a noticeable change in mentality as there were 82 NGOs working against it. Therefore, according to the council, mutilation could be avoided. On the basis of the applicant's statements during her personal interview, namely that her daughter would experience 'cultural and emotional problems' if she is not cut, the court noted that the reasons were of a cultural nature which could also occur in Europe and did not depend on her being in Ethiopia.⁴⁴

However, in France, the CNDA reached the opposite conclusion. In the case of [J. v French Office for the Protection of Refugees and Stateless Persons \(OFPPRA\)](#)⁴⁵ of 17 May 2022, the CNDA considered that early and forced marriages as well as FGM/C persist in Ethiopia, in particular in the Oromia region and within the applicant's ethnic group (Amhara). The court noted that the ability of women to oppose these traditional practices is very limited, while the federal and regional authorities struggle to stop them and cannot provide effective protection to the victims. Therefore, the CNDA granted international protection holding that the girl belonged to the particular social group of Ethiopian women and girls who escaped forced





marriage and the social group of children and Ethiopian women of Amhara ethnicity at risk of being exposed to FGM/C.

Similarly, different interpretations were applied by national courts concerning FGM/C in Nigeria. In the Netherlands, the Court of The Hague seated in Rotterdam rejected a request for asylum lodged by a Nigerian applicant that alleged a risk of FGM/C ([Applicant v State Secretary for Justice and Security \(Staatssecretaris van Justitie en Veiligheid\)](#)⁴⁶ of 14 April 2021). The court held that the applicant did not make credible statements, as it appeared from several reports that in Nigeria there is legislation that prohibits female cutting.

In contrast, the Supreme Court of Cassation in Italy granted refugee status to a Nigerian applicant who was subjected to FGM/C, holding that she was a member of a particular social group, based on Article 1 of the Geneva Convention and noting that the Nigerian government was unable to offer effective protection against the practice ([Applicant v Ministry of the Interior](#)⁴⁷ of 23 September 2021).

Another consideration taken into account when assessing asylum claims related to FGM/C is the risk of re-infibulation upon a woman's return to her home country. In [X v Commissioner General for Refugees and Stateless Persons](#)⁴⁸, CALL in Belgium granted refugee status to a Somali female who was a victim of FGM/C and faced a well-founded fear of being subjected to re-infibulation if she returned to Somalia. The court considered country information which described a high prevalence rate of 99% of women and girls having undergone FGM/C in Somalia. Furthermore, it noted that re-infibulation was common especially after childbirth, for medical reasons, after sexual violence or extramarital affairs, or due to the widespread belief that it is necessary to keep a woman's husband sexually satisfied. Additionally, CALL found that women often face significant difficulty resisting re-infibulation, especially if pressured by the family or the husband. CALL assessed the applicant's individual circumstances and noted that it was not disputed that the applicant underwent FGM Type III and found it plausible that, although the applicant wished to undergo de-infibulation, she had not done so yet because she feared stigmatisation and being re-infibulated upon her return. CALL also noted that the applicant was still at a suitable age to get married and have children, which in accordance with country information, bears a risk of de-infibulation which leads to the risk of being subjected to re-infibulation.





3. Subsidiary protection

3.1. Standard-setting jurisprudence by the CJEU on assessing gender-based violence as serious harm

In the CJEU judgment [WS v State Agency for Refugees under the Council of Ministers \(SAR\)](#)⁴⁹ (C-621/21) of 16 January 2024, the CJEU addressed the criteria to grant subsidiary protection under Article 2(f) of the recast QD, particularly when a third-country national does not qualify for refugee status but faces the risk of honour crimes, domestic violence, forced marriage and stigmatisation if returned to their country of origin. The CJEU ruled that “when a woman runs a real risk of being killed by a member of her family or community because of the alleged transgression of cultural, religious or traditional norms, such serious harm must be classified as ‘execution’ within the meaning of that provision”. Furthermore, the CJEU noted that where such acts of violence “are not likely to result in her death, those acts must be classified as torture or inhuman or degrading treatment or punishment within the meaning of Article 15(b) of Directive 2011/95”.



3.2. National rulings

In Italy, in the case [Applicant v Ministry of the Interior](#), of 16 December 2021, the Court of Cassation noted that domestic violence, as understood under Article 3 of the Istanbul Convention to be a limitation to the enjoyment of fundamental human rights, can fulfil the conditions for the recognition of subsidiary protection in terms of a real risk of serious harm due to inhuman or degrading treatment, if it appears that the state authorities do not provide protection.⁵⁰ In [Applicant v Ministry of the Interior \(Territorial Commission of Bologna\)](#)⁵¹ of 27 January 2022, The tribunal of Bologna granted subsidiary protection to a female applicant from Sierra Leone who refused to join the all-female, secret society called Sowe, which carries out FGM/C as a rite of passage from girlhood to womanhood. The tribunal noted that the applicant’s claims about the socio-cultural context in Sierra Leone were corroborated by an EASO [COI Meeting Report](#) of October 2016.⁵² The report confirmed the lack of national protection and legislation related to FGM/C, as secret societies are channels of communication between political elites and rural communities. Thus, the court concluded that, upon a return, the applicant would be faced with the difficult choice of completing the rite and becoming a member of society, or refusing, which would lead to a serious danger of suffering harm to her life and physical safety.



In the case [Applicants v Federal Office for Migration and Refugees](#)⁵³ of 9 October 2023, the Regional Administrative Court of Magdeburg in Germany granted subsidiary protection to a single woman and her two children from India. The court held that because the applicant had left her husband, there was a real risk that her ex-husband's family members would persecute her upon a return to India, because separation from their family members was seen as a violation of family honour. The court further held that as a single mother, the applicant could not expect protection due to deeply-rooted social traditions that were characterised by systematic disadvantage, discrimination, exploitation, oppression and a lack of sexual self-determination for (single) women. For the same reason, she would not be able to build even a modest existence for herself and her children. Based on the above, the court ruled that there was a real risk that the applicants would be exposed to degrading treatment upon a return to India and they were granted subsidiary protection.

In Belgium, in the case [X v Commissioner General for Refugees and Stateless Persons \(CGRS\)](#) of 30 April 2021, CALL granted subsidiary protection to a female applicant and her minor daughter from El Salvador. The applicant alleged that her minor daughter was raped by a member of the MS-13 gang. The council noted that, according to country information, people who oppose the authority of the gangs or violate gang rules may become victims of violence. In addition, the council held that by fleeing the country with her child, the applicant will herself be seen as having resisted the gang. The council took into consideration that the applicants had low-level skills and came from an area where the MS-13 gang was active, which increased the risk of reprisals by the gang according to the country information.⁵⁴

The council noted that by raping the applicant's daughter at a very young age, the gang appropriated the child, which meant that further sexual violence could not be ruled out. In view of the ubiquity of MS-13 and the ability of this gang to operate throughout the Salvadoran territory and given the small size of El Salvador, the council considered that a workable internal protection alternative was neither available nor reasonable. The council concluded that the applicant and her daughter had no effective government protection and thus granted them subsidiary protection.

The German High Administrative Court of Lüneburg, in the case of [Federal Office for Migration and Refugees \(BAMF\) v Applicant](#)⁵⁵ of 9 February 2022, clarified that Eritrean women who perform national military service and are victims of sexual assault do not constitute a particular social group for refugee recognition but they are eligible for subsidiary protection. The court relied on country of origin information provided by Human Rights Watch, Amnesty International and the EUAA (EASO, [Country of Origin Information Report: Eritrea National service, exit and return](#), September 2019).⁵⁶ to determine that, although the applicant could not be granted refugee status due to the absence of the particular social group requirement of having a clearly-defined identity that made them be regarded as different by the rest of Eritrean society, women who are called to the military part of the national service have a considerable probability of serious harm from sexual assault by superiors.



3.3. Gender increasing the risk of indiscriminate violence

In [*X, Y and their six children v Staatssecretaris van Justitie en Veiligheid*](#)⁵⁷

of 9 November 2023, the CJEU ruled that Article 15(c) of the recast QD must be interpreted as meaning that in order to assess whether there is a real risk of suffering a type of serious harm as defined in that provision, the competent national authority must be able to take account of factors relating to the individual position and personal circumstances of the



applicant other than the mere fact of coming from an area of a given country where the most extreme cases of general violence occur, within the meaning of the judgment of ECtHR of 17 July 2008, [*N.A. v United Kingdom*](#). As can be seen from the rulings below, national courts have taken into consideration elements related to gender when assessing the existence of individual characteristics that would enhance the risk of indiscriminate violence.

In France, in [*Mme M. v French Office for the Protection of Refugees and Stateless Persons \(OFPRA\)*](#)⁵⁸ of 20 September 2023, the CNDA considered the request for asylum lodged by a female applicant from Somalia. The CNDA followed the EUAA's [Country Guidance: Somalia](#) from August 2023 and noted that the security situation in Benadir and Middle Shabelle did not reach the level of indiscriminate violence prescribed by Article 15(c) of the QD to establish that a person faces a serious and individual threat to their life or person from their mere presence there. However, for subsidiary protection to be granted, a lower threshold of elements of individualisation is required. In this case, the CNDA concluded that the applicant's circumstances did justify the application of subsidiary protection, notably that she was a single mother of a young daughter born in France and was no longer in contact with her family, who moved to a different region.

Similarly, in [*E. v French Office for the Protection of Refugees and Stateless Persons \(OFPRA\)*](#) of 15 January 2021, the CNDA ruled that in the province of Central Kasai in the Democratic Republic of Congo the level of indiscriminate violence did not reach the threshold for exposing the applicant by her mere presence on the territory to a serious and individual threat to life or person within the meaning of Article 15(c) of the recast QD. However, the court considered the vulnerability of the applicant, notably that she was an unmarried, single mother, in a context where single women are high risk profiles for sexual violence by armed groups. In light of this, the court granted the applicant subsidiary protection.⁵⁹



4. Credibility and evidence assessment

Article 4 of the recast QD lays out the facts and circumstances to be considered in a credibility and evidence assessment.⁹ In asylum cases concerning gender-based violence, evidence and credibility assessments may present unique challenges since applicants may be hindered from providing comprehensive evidence due to the sensitive nature of the case. According to UNHCR guidance,⁶⁰ it is often unrealistic to expect asylum applicants to provide documentation of sexual violence due to cultural stigmas as they may have hesitated to seek medical help or report the incident to authorities in their home country. Their personal testimony is frequently the primary or only evidence, especially when the persecution comes from the family or the community.



National jurisprudence in recent years has provided clarity on how determining authorities should conduct credibility and evidence assessments in light of the specific challenges presented in these cases. They have also shaped how to interpret the burden of proof and the duty to cooperate in such cases. Country of origin information should be used to establish external credibility and conduct risk assessments, and an oral hearing can resolve credibility issues.

4.1. Burden of proof and duty to cooperate

Recent national rulings in Cyprus, Italy, the Netherlands and Slovenia have clarified the burden of proof and the duty to cooperate in asylum cases concerning gender-based violence. These judgments highlight the obligation for determining authorities to conduct thorough investigations into claims of persecution, such as sexual violence, by asking appropriate questions during the personal interview to assess the credibility of the claims. Additionally, national courts stress the importance of consulting reliable and updated country of origin information to evaluate the risk to applicants, especially in cases involving vulnerable profiles such as single women, women without support networks, and victims of gender-based violence.



The Court of The Hague in the Netherlands has emphasised the need for authorities to examine the applicability of the safe country concept, ensuring that national protection is available for victims of gender-based violence in the country of origin. Furthermore, courts in the Netherlands and Slovenia have highlighted that when a claim of past sexual abuse is substantiated, the burden of proof shifts to the authorities to show that the applicant could receive internal protection, particularly when protection has previously been denied or when the abuse was carried out by law enforcement. When the applicant has overall substantiated

⁹ For a definition and detailed description of a credibility and evidence assessment, please refer to the EUAA [Practical Guide on Evidence and Risk Assessment](#) (January 2024).



her claim and minor gaps in evidence exist, jurisprudence highlights that the authority must provide adequate reasons for not applying the benefit of the doubt.

On 29 March 2024, the International Protection Administrative Court (IPAC) in Cyprus ruled that the determining authority had insufficiently and inadequately investigated and assessed the reasons for protection of a Cameroonian applicant who had experienced gender-based violence ([Applicant v Republic of Cyprus through the Asylum Service \(Κυπριακή Δημοκρατία και/ή μέσω Υπηρεσίας Ασύλου\)](#)⁶¹). IPAC noted that the case officer failed to determine the place of habitual residence and conclude that the applicant and her family endured from the Ambazonians (members of a political entity proclaimed by Anglophone separatists who are seeking independence from Cameroon) were personally targeted with violence. This had an impact on the risk and legal assessment.

It was further noted that the allegations of sexual and gender-based violence of the applicant at the hands of her husband's supervisor were assessed, but their credibility as independent, individual and relevant material facts was not assessed. According to IPAC, this omission was sufficient for the annulment of the decision.

The court noted that the determining authority did not collect and examine all essential elements in the case, for example the applicant was not adequately asked about the sexual abuse she suffered at the hands of her husband's supervisor. In addition, the assessment of future risk that the applicant may face was not referenced to reliable and up-to-date information from external sources on the situation in her country of origin. Furthermore, the court noted that the case officer should have assessed the specific forward-risks by considering the profile of the applicant as the wife of a police officer, as well as her personal circumstances upon return to Cameroon. Specifically, the fact that she was a single woman, with a minor child, without a network support, and a victim of gender-based violence.

IPAC therefore granted refugee protection on the basis of membership of a social group of "women in Cameroon who have been raped and who lack a family environment and any support network". In reaching its conclusions, IPAC relied on the recent CJEU judgment in [WS \(C-621/21\)](#).

In [Applicant v Ministry of Interior \(Territorial Commission of Salerno\)](#)⁶² of 18 May 2022, the Italian Supreme Court of Cassation - Civil Section granted asylum to an Ivorian applicant who claimed to have been victim of domestic violence and threatened with forced marriage. The Territorial Commission had rejected the application due to a lack of credibility in the applicant's statements. The Court of Salerno recalled the ECtHR case [Singh v Belgium](#) and the UNHCR guidelines "Beyond Proof Credibility Assessment in EU Asylum System" and noted that the applicant furnished more details to substantiate her statements. In addition, according to country of origin information, victims of forced marriage, single mothers and widows in Côte d'Ivoire are discriminated. Thus, the court concluded that with the background of domestic violence and prostitution, the applicant belonged to a particular social group and faced gender-based persecution.



In the Netherlands, the Court of The Hague seated in s-Hertogenbosch, in [Applicant v State Secretary for Justice and Security \(Staatssecretaris van Justitie en Veiligheid\)](#)⁶³ of 9 November 2022 overturned a negative decision because the State Secretary insufficiently investigated whether Armenia was a safe country of origin for the applicant, who was a victim of rape and claimed that the authorities could not provide protection for her. The court noted that the applicant submitted evidence to substantiate the facts and statements, including photos and a medical report which confirmed the rape and the situation of the applicant to be credible. The State Secretary had accepted the statements as credible, except it found the applicant did not sufficiently substantiate that her sister received inquiries and threats from the police after she left. The Court of the Hague stated that the State Secretary used a too-high threshold for this statement, and it did not explain what the expectations from the applicant were on the ways she could reasonably substantiate this aspect. The court further stated that the State Secretary failed to provide reasons for not applying the benefit of the doubt and for not substantiating its obligation to cooperate.

In Slovenia, the Administrative Court provided refugee protection to a victim of rape perpetrated by police officers in the Democratic Republic of the Congo ([Applicant v Ministry of the Interior](#)⁶⁴ of 17 August 2022). The applicant had proved that she had been persecuted in the past through an act of rape by the police, so the court concluded that the ministry had not fulfilled its burden of proof and did not state reasonable grounds to believe that the applicant could receive protection through an effective legal system for detecting, prosecuting and punishing rape. This was very unlikely, given the fact that the rape perpetrators were police officers and that the police force was headed by a person appointed by the former president of the Democratic Republic of the Congo.

4.2. Use of country of origin information

Judgments by the CJEU and national courts underline the importance of using accurate, up-to-date, comprehensive country of origin information to ensure a fair assessment in cases related to gender-based violence, including consulting information on legislation prohibiting violence against women when assessing the availability of state protection, on the risk of gender based violence in the area of relocation or on taboos limiting victims from seeking protection from national authorities.



In [C-621/21](#) (see Section 2.1), the CJEU emphasised the important role that country of origin information plays in the assessment of cases concerning gender based violence. In particular, the court stated that:

“country of origin information should be collected that has relevance for the examination of women’s applications for refugee status, such as 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 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.”

In Ireland, the High Court continues to stress the need for a thorough consideration of country of origin information in asylum cases concerning gender-based violence. In other judgments, the court overturned decisions by lower tribunals for failing to properly assess this information.

In [*NNM v The International Protection Appeals Tribunal and The Minister for Justice and Equality*](#) of 18 November 2020,⁶⁵ the High Court ruled that the determining authority failed to take into account relevant country of origin information when determining whether a female applicant from South Africa fleeing forced marriage could relocate internally. The court noted that the authority did not reference in its decision that there was a high risk of the applicant being forced into prostitution.

Furthermore, in [*BA v The International Protection Appeals Tribunal and The Minister for Justice and Equality*](#)⁶⁶ of 20 November 2020, the court overturned a lower court’s decision for failing to properly assess country of origin information on gender-based violence in Nigeria and the availability of state protection. The applicant was a victim of various sexual offences in Nigeria and she feared future attacks by the perpetrators. Moreover, she feared to be killed by her ex-husband who wrongfully accused her of aborting their baby. The determining authority did not establish a well-founded fear of persecution because significant time had elapsed since the sexual assaults took place without further incidents. The authority also concluded that the applicant could seek state protection for her ex-husband’s threats. The court noted that there was a lack of relevant legislation to protect against gender-based violence, and incidents are underreported because there is a reluctance from authorities to investigate allegations of violence against women.

The determining authority argued that the country of origin information was only relevant for cases of domestic violence and the Nigerian authorities would take seriously a threat to kill by the applicant’s ex-partner. However, the court highlighted that domestic violence can range from minor assaults to fatal attacks, and therefore, the determining authority wrongly limited its assessment of state protection to the threat of being killed but should have assessed all serious physical attacks. Thus, the court concluded that the determining authority failed to measure country of origin information against the presumption of state protection.

In Belgium, CALL highlighted the importance of using up-to-date country of origin information, including at the appeal stage. In [*X v Commissioner General for Refugees and Stateless Persons \(CGRS\)*](#)⁶⁷ of 27 April 2023, CALL allowed the appeal of an Iranian woman who sought international protection due to the current situation for women and girls in Iran and the national protests against the regime following the death of Mahsa Amini. The applicant, who had requested international protection for the second time in Belgium, was rejected by the CGRS, as the applicant did not add any new facts or evidence in support of her subsequent application and the CGRS did not have evidence that would significantly increase the likelihood of her being eligible for refugee status. In the appeal, CALL sent the case back to the CGRS stating that the case required further investigation due to the changed political, social and security situation in Iran since the adoption of the contested decision and submission of the lodging of the appeal in July 2022.



The Supreme Administrative Court in Austria ruled in [Dr. WK in W v Independent Federal Asylum Office \[Decision of 19.05.1999\] and Federal Ministry of the Interior](#)⁶⁸ of April 2022 that the restrictions imposed by the Taliban on educated women according to country of origin information met the threshold of asylum-relevant intensity required to grant refugee status. The applicant, a female doctor and member of the Democratic People's Party of Afghanistan, fled Kabul as she was prohibited from pursuing her profession and from going out without being accompanied by a male. The application and the subsequent appeal were rejected as the authorities argued that her claims were mostly economic since only her freedom to pursue her profession was impacted and she would not be subject to persecution if she adapted her behaviour to the circumstances.

The Supreme Administrative Court allowed the appeal and annulled the decision. It noted that the authorities had failed to appreciate the asylum-relevant intensity of the restrictions imposed on women by the Taliban, especially on educated women who constituted a particularly vulnerable group. Based on updated country of origin information, the court added that the impact of the restrictions was not limited to economic aspects but amounted to persecution. It stated that the information used by the authorities on the treatment of former members of the communist party was not relevant to the case and concluded that the authorities would have reached a different conclusion had their assessment taken account of all the measures against women by the Taliban.

In Poland, the judgment in [M.M. v The Refugee Board](#)⁶⁹ of 30 January 2020 highlighted the importance of using high-quality and accurate COI. The Voivodeship (Regional) Administrative Court in Warsaw concluded that the Refugee Board did not adequately assess the risk of domestic violence in the case of a woman from Chechnya and her son. It was noted that the decision issued by the Refugee Board relied predominantly on reports which were not correctly referenced and therefore could not be cross-checked. In particular, sources were missing their dates of publication as well as the title and page numbers in certain cases. Moreover, recently published reports on the topic were not consulted. As a result, the Voivodeship Administrative Court quashed the decision issued by the Refugee Board and ordered the board to re-examine the applicant's case, taking into account country of origin information relating to domestic violence and taboos which may influence the victim's ability to seek protection.

4.3. Assessing the necessity for an oral hearing

In Ireland, in [T.B. v International Protection Appeals Tribunal & Anor](#)⁷⁰ of 13 May 2022, the High Court quashed a decision of the International Protection Appeals Tribunal (IPAT) for failing to adequately consider the need for an oral hearing of a female applicant from Georgia, who claimed to have a well-founded fear of persecution as a victim of domestic violence. IPAT confirmed a negative decision based on credibility issues by the determining authority, considering only the written evidence in the file and without providing an oral hearing to the applicant. In accordance with national law, an oral hearing is not mandatory for an appeal concerning a safe country of origin like Georgia in order for IPAT to take its decision.





The court noted that the tribunal must assess at its own discretion whether the holding of an oral hearing is necessary based on the interests of justice. The court elaborated that the tribunal must demonstrate whether credibility issues can be justly resolved in the absence of an oral hearing and must provide an explanation of its conclusion. In its assessment of the case, the court argued that while IPAT recognised the inherent subjective nature of the claims brought by the applicant, IPAT did not address whether its task could fairly be achieved without an oral hearing in the circumstances of this case considering that the applicant's credibility was a key aspect. The court thus concluded that IPAT did not correctly assess whether a hearing was necessary and referred the case back to the tribunal.

4.4. Assessment of credibility in the case of married couples

When an applicant's claim for international protection is based on gender, past experiences of sexual or domestic violence, sexual orientation or gender identity, it's important to recognise that shame and stigma may have prevented them from revealing these experiences, even to close family. Additionally, applicants may already have been marginalised or isolated by their family or community, making it unlikely that these individuals would be willing to support their claims. Thus, as the case law shows, determining authorities must be cautious to use as a negative credibility finding when an applicant's family member does not refer to the episode of gender-based violence in their own asylum claim.



In Ireland, in [K.B. v International Protection Appeals Tribunal & Anor](#)⁷¹ of 4 November 2022, a female applicant from Georgia claimed to be a victim of sexual abuse and to have not informed her husband of the sexual nature of the abuse, as in Georgian culture this would be considered dishonourable. While the usual protocol for married couples is for their applications to be heard concurrently and treated jointly, IPAT conducted an entirely separate hearing for the female applicant.

The tribunal found the applicant's claim not to be credible on the basis that her husband did not mention the attack alleged by his wife and because he was not called as a witness during her hearing. The applicant asserted that she was never given the opportunity to explain at the hearing why she had not called her husband as a witness, as she would have explained to the tribunal that she did not wish for her husband to find out that she was sexually abused. The High Court ruled that the tribunal failed to provide fair procedures to the applicant during the hearing by not affording her the opportunity to provide reasons for the absence of her husband.



5. Special procedural guarantees for female applicants

Gender and acts of gender-based violence are considered to be indicators of vulnerability which may give rise to a need for special procedural guarantees. This is evident in Recital 29 of the recast Asylum Procedures Directive (APD) which stipulates that: “Certain applicants may be in need of special procedural guarantees due, inter alia, to their age, gender, sexual orientation, gender identity, disability, serious illness, mental disorders or as a consequence of torture, rape or other serious forms of psychological, physical or sexual violence”.



In line with Recital 29, Article 24 of the recast APD obliges Member States to provide special procedural guarantees to ensure that certain vulnerable applicants receive adequate support during the asylum process to facilitate their effective participation in all stages of the procedure. The directive mandates that Member States must assess whether applicants are in need of special procedural guarantees as soon as possible and must offer the appropriate support. Whilst the recast APD does not provide an exhaustive list of special procedural guarantees which can be implemented by countries, Recital 29 encapsulates the essence of what such guarantees must aim to achieve, for example “to create the conditions necessary for their effective access to procedures and for presenting the elements needed to substantiate their application for international protection”.

National judgments have emphasised the importance of assessing the need for special procedural guarantees in cases concerning gender-based violence, not only at the initial stages of the asylum procedure but through its entire course. Jurisprudence from the Netherlands highlights that the determining authority should not only rely on medical advice but must remain vigilant to the need for procedural guarantees throughout the asylum process. Furthermore, case law from Greece, Portugal and the Netherlands exemplifies the need for a careful selection of the type of procedure to be applied for certain vulnerable women, whose applications may not be processed fairly under border or accelerated procedures.

Another procedural safeguard highlighted by the case law is the provision of a female interpreter and case officer. In Finland, the failure to provide a same-sex interpreter and case officer in a case concerning sexual violence led to the annulment of the asylum decision of the determining authority.

Moreover, the United Nations Committee against Torture emphasised the importance of providing applicants with access to a medical examination to prove the torture they have suffered, where such medical evidence can be conducive to establishing the credibility of a case.



5.1. Assessing the need for special procedural guarantees

In accordance with Article 24(1) of the recast APD, Member States must assess whether applicants are in need of special procedural guarantees within a reasonable period of time after the making of an asylum application. Article 24(4) stipulates that special procedural guarantees must be ensured even when the need arises at a later stage during the asylum procedure.



In two cases in the Netherlands, the District Court of the Hague overturned the decision of the determining authority for failing to assess the need for special procedural guarantees for female applicants with indicators of vulnerability.

In [*Applicant v State Secretary for Justice and Security \(Staatssecretaris van Justitie en Veiligheid\)*](#)⁷² of 18 June 2021, the applicant's request for asylum was rejected on the basis that she missed multiple scheduled interviews. The applicant argued this was due to her confused behaviour, asserting that she required special procedural safeguards due to her vulnerability. The district court examined the necessity of these safeguards, noting that the applicant displayed signs of confusion, tension, aggression and potential trauma during her registration interview as she indicated that she was a victim of sexual violence. The court noted that these indicators suggested a vulnerability, which should have prompted an assessment of whether procedural guarantees are necessary in accordance with the recast APD and related national laws.

The court disagreed with the State Secretary's argument that, without medical advice, it could not be determined that the applicant required special procedural safeguards. The court noted that assessing an applicant's vulnerability should not rely solely on medical advice, as the determining authority must remain vigilant to the need for procedural guarantees throughout the asylum process. The judgment concluded that the State Secretary must re-evaluate the need for these safeguards and potentially conduct new hearings before making a final decision on the applicant's asylum request.

In [*Applicant v the Minister for Asylum and Migration \(de Minister van Asiel en Migratie\)*](#)⁷³ of 05 July 2024, a Togolese woman applied for international protection, citing a fear of persecution in her home country due to her lesbian sexual orientation. She reported experiencing sexual abuse by her uncle, threats from her stepbrother and ostracism by her community. Her application was processed in the border procedure. The minister found a lack of credibility related to her LGBTIQ orientation, citing inconsistencies and superficiality in her accounts of her sexuality and relationships. In her appeal, the applicant argued that she was not provided with special procedural safeguards considering her mental health issues, including trauma from past sexual abuse and difficulties in understanding and responding to questions. She claimed these issues impacted her ability to fully articulate her feelings and experiences related to her LGBTIQ orientation.

The court agreed with the applicant, highlighting procedural shortcomings in the minister's handling of the case. The court emphasised the importance of recognising vulnerabilities, as mandated by Article 24 of the recast APD. The court argued that the applicant's history of



long-term sexual abuse was not disputed by the minister and the applicant's asylum claim, based on her fear of persecution due to her lesbian orientation, was deeply intertwined with her past abuse, making it critical to consider her psychological state during the asylum process.

A medical report issued by Medifirst advised that the applicant should only be asked simple questions due to her limited education, fluctuating and shortened concentration, and delayed understanding. However, the court found that the medical report was not sufficiently considered by the minister. The court noted that this oversight was evident in the decision-making process, where the minister expected detailed and coherent explanations from the applicant.

The court noted that the minister was obliged, also in the border procedure, to investigate whether special procedural guarantees were necessary, such as additional medical advice, extending the general asylum procedure or spreading the interview over several days. The court concluded that the minister's failure to implement these safeguards resulted in an unfair and inadequately reasoned decision.

5.2. Type of procedure

When sufficient support cannot be provided in the border procedure, Article 24(3) of the recast APD necessitates moving to a more standard asylum procedure, which allows for more time and resources to assess the application. According to Article 24(3), the obligation applies especially when the personal circumstances of the asylum seeker are related to rape, torture or other serious forms of psychological, physical or sexual violence. Thus, in the previous case ([Applicant v the Minister for Asylum and Migration \(de Minister van Asiel en Migratie](#)⁷⁴ of 5 July 2024), the court noted that the minister was obliged to investigate whether the applicant should be transferred to the general asylum procedure due to her vulnerabilities.



In Greece, in [Applicant v Minister for Migration and Asylum](#)⁷⁵ decided on 14 February 2023, the applicant claimed to be a victim of psychological abuse. The psychiatrist's testimony supported her claims, stating that she needed round-the-clock supervision and that she exhibited signs of depression, insomnia, eating disorders, outbursts of rage and suicidal thoughts. In addition to receiving the proper medical attention and psychological assistance, it was requested that the applicant be examined by a competent authority that would confirm her vulnerability. The Regional Asylum Office of Lesbos referred her application from the accelerated procedure to the regular procedure, due to the applicant's vulnerability. Her request for asylum was rejected by the determining authority. The applicant appealed the decision before the Second Appeals Committee. The committee recognised the applicant as vulnerable, however it ultimately rejected her application for international protection. The applicant submitted an application for an annulment of the committee's decision before the Administrative Court of Appeal of Piraeus which accepted the application. The court determined that the case was processed in the regular procedure due to the applicant's vulnerability, but she was never asked to reevaluate her claim based on the guarantees of this procedure. These guarantees included a longer timeframe, the opportunity to obtain legal aid



and an examination by an Asylum Service vulnerability officer. The court noted that the interview was carried out by an EUAA case officer who only had competencies to conduct interviews in the accelerated border procedure. Moreover, neither the contents of the contested decision nor the documents in the file indicated that the applicant was invited to appear before the relevant authorities to conduct a new interview in the context of the review of her request in accordance with the standard procedure to which she was referred.

In Portugal, the case of [Applicant v Asylum and Refugees Department of the Immigration and Borders Service \(SEF\)](#)⁷⁶ of 7 October 2021 concerned the applications of an Angolan woman and a minor child who suffered from medical problems. Their requests for international protection were assessed by the Asylum and Refugees Department of the Immigration and Borders Service (SEF) under the accelerated procedure. Based on a summary assessment, the requests were immediately considered unfounded, so that the SEF did not proceed to an analysis of all the relevant elements, namely the applicant's statements and all available information, including the medical issues of the minor applicant.

The court allowed the appeal and annulled the decision, ordering the SEF to provide international protection. The court held that, if the administrative procedure shows that the applicant is a person with a particular vulnerability, the public authority must give priority to the examination of that application without applying the border procedure. The court emphasised that administrative support and special guarantees should be provided to the applicant, including the extension of the deadline of the interview and presentation of proof, as well as the provision of support by experts.

5.3. Provision of a female interpreter and case officer

[UNHCR guidelines on Gender-Related Persecution](#) (May 2002) state: “claimants should be informed of the choice to have interviewers and interpreters of the same sex as themselves, and they should be provided automatically for women claimants”. Similarly, [Recommendations of the Committee of Ministers' of the Council of Europe of May 2022 on protecting the rights of migrants, refugee and asylum-seeking women and girls](#) advise that “women asylum officers and interpreters should be available to women asylum seekers, who should be informed when this possibility exists”.

The EUAA's [Guidance on Vulnerability in Asylum and Reception – Operational Standards and Indicators](#) (May 2024) highlights the importance of assigning a case officer and interpreter of the gender preferred by the applicant as a support measure, particularly when the applicant's claim involves gender-based violence or religious or cultural sensitivities related to gender.

This has been recognised as a special procedural guarantee for instance in Finland in the case [A. v Finnish Immigration Service](#),⁷⁷ in which a Somali woman applied for international protection citing repeated sexual violence which she had been subjected by Al-Shabaab. The interview was conducted by a male officer and a male interpreter from the Finnish Immigration Service. The Finnish Immigration Service rejected the application for asylum and decided to return her to Somalia.



The Supreme Administrative Court ruled that an official of the Finnish Immigration Service is obliged under Section 96a of the Aliens Act to take into account the individual status and circumstances of an asylum applicant by identifying a person in need of special procedural guarantees and providing them with support. The decisive factor in assessing the need for assistance is whether, without the assistance, the applicant would be able to exercise his/her rights and fulfil his/her obligations in the asylum procedure. Given the applicant's vulnerable position and the sensitivity of the ground for asylum, the court ruled that she could not have been expected to be able to report the experiences in the asylum procedure in the presence of a male interpreter and a male case officer so that she could be considered to have benefited from her rights and fulfilled her obligations. The court ruled that the Finnish Immigration Service should have given her the opportunity to have a same-sex case officer and interpreter and annulled the decision.

5.4. Access to a medical examination

In the decision-making process, in general, the provision of documentary evidence is not strictly necessary for the establishment of the credibility of a claim. However, in accordance with Article 18 of the recast APD, where a medical examination of specific vulnerabilities may be required in order to assess the application, Member States should ensure that access to the examination is provided and that the expense is covered by the government.



The United Nations Committee against Torture, in [Z.K. and A.K. v Switzerland](#),⁷⁸ ruled in a case concerning a Russian woman who claimed to be the victim of repeated sexual violence. Her claim was rejected by the Swiss authorities on the ground of a lack of credibility, noting a lack of medical evidence as diminishing her credibility. The committee noted that the applicant was unable to submit a full medical certificate proving her trauma from the rape because the authorities denied her access to such a medical assessment and treatment.

The committee recalled the necessity to ensure the application of special procedural guarantees, particularly an examination by a qualified medical doctor, including as requested by the complainant to prove the torture that he/she has suffered, should always be ensured, regardless of the authorities' assessment of the credibility of the allegation, so that the authorities deciding on a given case of deportation are able to complete the assessment of the risk of torture on the basis of the result of the medical and psychological examinations, without any reasonable doubt.

Furthermore in [H.U. v Finland](#),⁷⁹ the United Nations Committee against Torture (UN CAT) ruled that the Finnish authorities failed to provide adequate procedural safeguards for a female human rights activist from the Democratic Republic of the Congo who was a victim of severe torture and sexual violence due to her activism. Her application was rejected by the authorities due to a lack of credibility. The applicant had provided medical certificates attesting to the psychological and physical issues that she suffered resulting from her traumatic experience, which hindered her capacity to provide a detailed account of her claim. However, the committee ruled that the Finnish authorities failed to take the medical certificates into account, which negatively influenced the decision-making outcome.



Furthermore, the committee noted that victims of post-traumatic stress disorder may struggle to disclose consistent details, and countries should not rely solely on standard credibility assessments in such cases. The committee stressed that the authorities should have granted the applicant access to a medical examination, even though they questioned her credibility.



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