Vulnerability and the Protection of Vulnerable Groups in International and European Human Rights Law

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ABSTRACT

The concept of vulnerability has become pivotal in understanding inequality and exclusion in contemporary human rights law. It is not inherent but shaped by intersecting social, economic, biological, and political conditions. International frameworks – such as those developed by the UN, the European Court of Human Rights (ECtHR), and the European Union – have incorporated this concept to offer enhanced protections for groups at higher risk of discrimination, such as women, children, persons with disabilities, ethnic minorities, and refugees. These frameworks adopt both hard and soft law instruments to ensure substantive equality, moving beyond formal declarations of equal treatment. From international conventions such as Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and onvention on the Rights of Persons with Disabilities (CRPD) to European Union (EU) directives and ECtHR jurisprudence, a common thread emerges: vulnerability requires differentiated legal responses tailored to context. The recognition of intersectional discrimination and the evolution of positive state obligations demonstrate a shift toward a more responsive, empowerment-oriented understanding of human rights.

KEYWORDS

vulnerability, human rights, discrimination, intersectionality, European Court of Human Rights, United Nations, European Union, substantive equality, marginalised groups, legal protection, empowerment, positive obligations

The concept of vulnerability has come to play a crucial role in the study of inequality, exclusion, and disadvantage in the context of contemporary human rights law. Vulnerable groups are those whose susceptibility to discrimination, exclusion, and danger is increased by social, economic, biological, or political factors. This includes women, children, people with disabilities, older people, ethnic and religious minorities, migrants, migrant workers, and refugees, to mention a few. The vulnerabilities of these groups are not inherent but are often a consequence of historical inequalities.

In response to these elevated risks, a range of international and regional legal instruments have been developed to address the special needs of vulnerable individuals and groups. At the international level, the United Nations (UN) system has developed specific instruments – namely the Convention on the Elimination of All

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Forms of Discrimination against Women and the Convention on the Rights of Persons with Disabilities – to address not only the prohibition against discrimination but also the adoption of affirmative action strategies to promote substantive equality and empowerment. These instruments represent a transition from the concept of equality to a more responsive approach to human rights.

Similarly, the European Court of Human Rights (ECtHR) has also incorporated the notion of vulnerability in its practice, especially in cases related to the right to life and non-discrimination within the framework of the European Convention on Human Rights (ECHR). Although the ECHR does not have a separate concept of vulnerability defined in the Convention itself, the Court has repeatedly emphasised the need for special protection for vulnerable applicants in cases where lack of action by the state or institutional bias aggravates the vulnerability of applicants to harm. Indeed, in the most prominent cases involving victims of domestic violence, asylum seekers, persons with disabilities, and members of the Roma community before the ECtHR, the Court has developed a nuanced concept of vulnerability to inform the dynamic application of the positive obligations of states under the Convention. The Court has also recognised the need for differential treatment in promoting substantive equality in these cases.

At the EU level, vulnerability has been addressed in primary law, such as in the Charter of Fundamental Rights of the European Union, as well as in secondary legislation in the form of a series of directives focusing on discrimination, violence, and inequality. The EU has adopted an integrated approach to vulnerability, using hard law tools such as anti-discrimination directives, the Violence Against Women Directive, or the Work-Life Balance Directive, in combination with soft law strategies focusing on gender mainstreaming, intersectional analysis, or social inclusion. The EU has also adopted the concept of multiple or intersectional discrimination, which has special relevance to persons who experience disadvantage on two or more grounds, for example, based on race and gender, or disability and socioeconomic status. The Pay Transparency Directive 2023/970/EU has specifically recognised intersectional discrimination as a cumulative form of inequality.

Cumulatively, the frameworks of the UN, the ECtHR, and the EU are all committed to the same approach that vulnerability is not just a position of weakness but one that demands heightened legal consideration and appropriate remediation based on context. Through the incorporation of vulnerability into their legal discourse, all these frameworks have gone beyond the declaration of the ideal of equality and have instead subscribed to a substantive approach that is better equipped to address the practical disadvantages that the most marginalised groups face.

The book has seven chapters, each of which deals with the protection of a vulnerable group in the context of the UN, the ECtHR, and the EU. The chapters focus specifically on a given vulnerable group and were prepared by a working group of specialists. Within each working group, a lead author was appointed to oversee the process of writing each chapter in order to ensure its internal consistency. The pattern of each chapter is similar in that each chapter is divided into three parts, comparing

the legal protection and standards of a given group in all three regimes mentioned above. The role of each lead author has been instrumental in ensuring thematic and terminological consistency in each of the three sub-chapters.

1. Children

1.1. The UN's Role in the Protection of Children

Children are among the most vulnerable members of society, but their vulnerability is not uniform. It varies by age, maturity, health conditions, cognitive abilities, and social circumstances. While all children require protection, certain groups face increased risks, such as children with disabilities, those in state care or detention, those from minority or indigenous backgrounds, those affected by poverty, conflict, displacement, or exploitation, and those living on the streets. Recognising and addressing these layered vulnerabilities is central to the international child protection framework.

The modern history of children's rights in international law began with the *1924 Geneva Declaration on the Rights of the Child*, adopted by the League of Nations. Drafted by Eglantyne Jebb of Save the Children, this declaration laid out five fundamental principles: ensuring children's development, providing help to the sick, hungry, or orphaned, prioritising children in emergencies, protecting them from exploitation, and educating them to serve humanity. These principles laid the moral and ideological groundwork for later legal instruments.[1]

In 1959, the United Nations (UN) adopted the *Declaration of the Rights of the Child*, which expanded the Geneva Declaration into ten principles. These included the child's right to equality, protection, identity, development, special care in case of disabilities, family support, free education, protection from abuse, and upbringing in an atmosphere of peace and tolerance. Though not legally binding, this declaration was a major step toward formalising children's rights and setting global standards for child welfare.[2]

The most comprehensive and legally binding instrument to date is the *1989 United Nations Convention on the Rights of the Child (UNCRC)*. Ratified by nearly all countries, it enshrines civil, political, economic, social, and cultural rights for children. It is based on four core principles: non-discrimination, the best interests of the child, the right to life, survival, and development, as well as respect for the views of the child.[3]

The principle of non-discrimination (Article 2) guarantees that all rights apply equally to every child, regardless of race, gender, language, religion, or any other status. States must protect children not only from direct discrimination but also from harm caused by the status or beliefs of their parents or guardians.

1 Hrabar, 2024, pp. 28, 32–34.
2 Declaration of the Rights of the Child.
3 United Nations Convention on the Rights of the Child.

The best interests of the child (Article 3) must be a primary consideration in all actions concerning children. It functions on three levels: as a substantive right that prevails in conflicts of interest, as an interpretative tool that guides the understanding of legal provisions in favour of children, and as a procedural rule ensuring that all child-related processes prioritise children's well-being.

The right to life, survival, and development (Article 6) recognises life as an inherent right of every child. States must ensure not only a child's survival but also their full physical, mental, moral, and social development, especially for children in vulnerable situations such as those with disabilities or living in conflict zones.

Participation rights are reflected in Article 12, which ensures children have the right to freely express their views in all matters affecting them and have those views given due weight according to their age and maturity. This includes the right to be heard in judicial and administrative proceedings either directly or through a representative.

These rights are often categorised under the "3 Ps": Provision, Protection, and Participation. Provision rights include access to essential services like healthcare, education, and social welfare. Protection rights focus on shielding children from all forms of abuse, neglect, exploitation, and violence. Participation rights ensure children can engage in decisions that affect their lives and be active members of society.[4]

To reinforce specific areas of child protection, the UNCRC includes three *Optional Protocols*. The Optional Protocol on the Involvement of Children in Armed Conflict (2000) raises the minimum age for direct participation in hostilities to 18 and imposes strict conditions on the voluntary recruitment of minors aged 16–17. It aims to eliminate the use of child soldiers, though challenges remain due to difficulties in verifying age and socioeconomic pressures in conflict zones. The Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography addresses growing concerns about child trafficking and sexual exploitation, especially in the context of the internet and global sex tourism. It calls for comprehensive, integrated responses to these issues, including legal reforms, prevention strategies, and increased public awareness. The third, Optional Protocol on a Communications Procedure, enables children or their representatives to file complaints directly with the UN Committee on the Rights of the Child when domestic remedies have been exhausted. This strengthens accountability and gives children a voice in international human rights proceedings.[5]

The *Committee on the Rights of the Child*, established under Article 43 of the Convention, is the treaty-monitoring body responsible for overseeing the implementation of the UNCRC. Comprising 18 independent experts, the Committee reviews periodic

4 See Márta Benyusz and Josipa Kokic's chapter.

5 The Optional Protocol on the Involvement of Children in Armed Conflict; The Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography; Optional Protocol on a Communications Procedure.

reports from states, issues concluding observations, and provides general comments to clarify the interpretation of child rights norms.[6]

The role of UNICEF is also central in the global child protection framework. Established in 1946 as an emergency fund for children affected by World War II, UNICEF has evolved into a permanent agency supporting child welfare in over 190 countries. It focuses on health, education, nutrition, emergency relief, and policy advocacy, and plays a vital role in promoting the Convention's principles.[7]

Non-Governmental Organisations (NGOs) and National Human Rights Institutions (NHRIs) have also played a pivotal role in both the drafting and ongoing implementation of the Convention. NGOs were instrumental in early advocacy and drafting efforts, and they continue to support monitoring, reporting, and holding governments accountable.

In conclusion, the international framework for children's rights has evolved significantly over the past century – from moral appeals to legally binding obligations. At its core is the recognition that children are not merely passive recipients of adult care but are rights-holders. This shift toward recognising children as active participants in society demands that all actors – governments, institutions, communities, and individuals – ensure that children's rights are respected, protected, and fulfilled.

1.2. The Role of the European Court of Human Rights in Safeguarding Children's Rights

The European Court of Human Rights (ECtHR) serves as the principal judicial body in Europe for upholding children's rights, primarily through the interpretation of the European Convention on Human Rights (ECHR), the Universal Declaration of Human Rights, and the UN Convention on the Rights of the Child (UNCRC). The protection of children's rights operates within a hierarchical structure, where international standards guide regional instruments, which in turn inform national laws. At the top of this hierarchy stands the UNCRC, the most comprehensive global instrument dedicated to the rights of the child.

Although the ECHR does not focus solely on children, it has significantly influenced child rights jurisprudence. The ECtHR applies the ECHR to children by interpreting provisions such as the right to private and family life, protection from inhumane treatment, and the right to education. The ECHR contains two subsystems of rights: inherent rights applicable to all individuals, such as life and liberty, and rights acquired with maturity, such as the right to a fair trial or marriage. It also includes enforceable bans against discrimination, torture, and forced labour, which apply to all, including children. Despite limited child-specific provisions in the ECHR, the ECtHR has repeatedly emphasised its applicability to children and drawn upon broader frameworks like the UNCRC to interpret rights in child-centred cases. Article 1 of the ECHR obliges member states to guarantee the rights enshrined in the

6 Ibid.
7 See more *UNICEF*, no date.

Convention to all persons within their jurisdiction, including children. While children can, in theory, file applications to the ECtHR independently, practical barriers such as lack of legal knowledge, financial means, or procedural support often prevent direct access. Consequently, most applications involving children are submitted by parents or guardians, often citing violations of their own rights that indirectly affect the child. Despite these limitations, the ECtHR has consistently demonstrated its role as the protector of children's rights in Europe, frequently referencing the UNCRC and invoking the "best interests of the child" principle in its judgments.[8]

The evolution of the ECtHR's engagement with children's rights can be divided into three key phases: Foundation and Early Interpretation (Pre-UNCRC Era): Even before the UNCRC's adoption, the ECtHR interpreted the ECHR in a way that implicitly protected children. In *Tyrer v. the United Kingdom* (1978), the Court found that corporal punishment violated Article 3, establishing a dynamic "living instrument" approach, adapting the Convention to contemporary human rights standards. This early phase laid the groundwork for future child-specific jurisprudence.[9]

Consolidation and Integration of UNCRC Standards (Post-1989): Following the widespread ratification of the UNCRC, the ECtHR began explicitly referencing its provisions. The Court's reliance on the "best interests" principle became more prominent, and its judgments reflected a growing alignment with international child rights norms. However, children continued to face practical challenges in accessing the Court directly, with most cases still initiated by adults on their behalf.[10]

Expansion and Specialisation (21st Century–Present): In recent years, the ECtHR has refined its focus on children, particularly in terms of non-discrimination. Landmark rulings such as *D.H. and Others v. the Czech Republic* (2010) condemned the segregation of Roma children in education, identifying this as a violation of Article 14 (discrimination) in conjunction with the right to education. In *Fabrice v. France* (2013), the Court challenged discriminatory inheritance laws affecting children born out of wedlock, reinforcing that all children deserve equal treatment, regardless of their parents' marital status. These cases demonstrate the Court's growing sensitivity to children's rights within family, education, and privacy contexts.[11]

Despite these advancements, structural challenges persist. The ECtHR cannot overrule national law in the way domestic courts can, but it can identify legal gaps and promote remedies consistent with ECHR standards. Based on current practice, several improvements have been proposed to better serve children's rights:

Direct Participation Mechanisms: The ECtHR and national systems should implement child-friendly procedures allowing children to participate meaningfully in

8 See the chapter written by S. Buletsa.

9 Case of *Tyrer v. The United Kingdom*, (Application No. 5856/72), Judgment, Strasbourg, 25 April 1978.

10 Daly, Ruxton and Schuurman, 2015, p. 39.

11 Case of *D.H. And Others v. The Czech Republic*, (Application No. 57325/00), Judgment, Strasbourg, 7 February 2006; Case of *Fabris v. France*, (Application No. 16574/08), Judgment (just satisfaction and striking out), Strasbourg, 28 June 2013.

court cases, considering their age and maturity. For instance, in *Saviny v. Ukraine*, the Court criticised the lack of child involvement in decisions to remove them from parental care.[12]

Procedural Safeguards and Best Interests Assessments: National authorities, under ECtHR oversight, must ensure that decisions affecting children are based on individual best-interest assessments, as emphasised in cases like *Mahamed Jama v. Malta*, particularly when errors in age determination can lead to rights violations.[13]

Addressing Discrimination and Systemic Threats: Member states must actively combat discrimination, support inclusive education, provide accessible services for children with disabilities, and regulate exploitative practices such as unethical surrogacy arrangements, especially across borders.

Balancing Anonymity and Identity in Assisted Reproduction: In cases such as *Mennesson v. France* and *K.K. and Others v. Denmark*,[14] the ECtHR underscored children's right to know their origins while ensuring data privacy. Legal frameworks must balance these interests, preventing statelessness and clarifying identity in surrogacy.

Media Responsibility: The portrayal of children in the media, especially those from vulnerable groups (e.g., migrants, minorities), must emphasise their agency and potential, rather than framing them solely as victims.[15]

Systemic Reform: Finally, effective protection of children's rights requires eliminating systemic barriers such as legal ambiguity, corruption, lack of resources, and outdated legislation. States must invest in judicial training and cross-sectoral collaboration among judges, social workers, police, and mediators, all guided by the best-interests principle.

In conclusion, while the ECtHR has made significant strides in protecting children's rights, continued development and reform are necessary to ensure that all children can access justice, enjoy equal protection, and grow up in environments that support their dignity, security, and potential.

1.3. EU's Framework for the Protection and Promotion of Children's Rights

The European Union (EU) has progressively solidified its role in safeguarding children's rights through a robust combination of strategies, binding legislation, non-binding recommendations, and institutional coordination. This commitment began to significantly strengthen in 2006 with the introduction of the document "*Towards*

12 Case of *Saviny v. Ukraine,* (Application No. 39948/06), Judgment, Strasbourg, 18 December 2008.

13 Case of *Mahamed Jama v. Malta*, (Application No. 10290/13), Judgment, Strasbourg, 26 November 2015.

14 Case of *Mennesson v. France*, (Application No. 65192/11), Judgment, Strasbourg, 26 June 2014; Case of *K.K. and Others v. Denmark*, (Application No. 25212/21), Judgment, Strasbourg, 6 December 2022.

15 Case of *N.Š. v. Croatia*, (Application No. 36908/13), Judgment, Strasbourg, 10 December 2020.

a Strategy on the Rights of the Child" (Strategy 2006),[16] which emphasised the need for an EU-wide framework to ensure that children's rights are consistently respected, protected, and promoted. It recognised children's rights as a distinct category within human rights, calling for specific policies addressing children's unique needs.

In 2011, the *EU Agenda for the Rights of the Child* (Agenda 2011) was adopted as a formal policy framework for 2011–2014. It reaffirmed the EU's and Member States' obligations under the UNCRC and reinforced the goal of making children's rights a central part of all EU policies.[17]

Central to the EU's legal framework is the *Charter of Fundamental Rights of the European Union (CFREU)*, particularly Article 24, which outlines three key child-specific rights: the right to protection and care, the right to express views freely and have them taken seriously, and the right to maintain regular contact with both parents. Importantly, the Charter reiterates the principle of the *best interests of the child* as a guiding principle in all child-related decisions. This principle applies vertically (in state actions) and horizontally (in family and societal relationships).

The EU supports this legal foundation with several regulations: Regulation 2019/1111 governs cross-border disputes in family law, including child custody, guardianship, and placement. It ensures swift and child-centred judicial proceedings.

Regulation 606/2013 facilitates mutual recognition of civil protection measures across Member States, including those safeguarding children from abuse.

Dublin Regulation III (Regulation 604/2013) addresses asylum applications and includes provisions on unaccompanied minors, emphasising their best interests.

GDPR (Regulation 2016/679) includes specific safeguards for children's data, acknowledging their limited capacity to fully understand digital risks.

Regulation 4/2009 (Maintenance Regulation) and Regulation 650/2012 (Succession Regulation) both provide enforceable rights for children in maintenance and inheritance matters.

In addition to regulations, directives strengthen children's legal protections:

- Directive 2013/33/EU requires the appointment of legal representatives for unaccompanied minors.
- Directive 2011/93/EU combats child sexual abuse and pornography with clear definitions, penalties, and victim protection measures.
- Directive 2011/36/EU targets human trafficking, offering specific protections for child victims.
- Directive 2016/800/EU ensures procedural safeguards for children in criminal proceedings, including access to legal counsel and parental presence.
- Directive 2003/86/EC regulates family reunification with provisions for unaccompanied minors, highlighting the importance of rapid and child-focused processes.

16 European Commission, 2006.
17 European Commission, 2021a.

- Directive 94/33/EC protects young people at work, prohibiting child labour except under strict conditions.
- Directive 2009/48/EC sets safety standards for toys, ensuring products marketed to children do not harm their health.
- Directive 2012/29/EU establishes rights and support services for child victims of crime, such as shelter, psychological support, and legal assistance.

Additional milestones include the EU's accession to the Hague Convention of 1993 on intercountry adoption, and its endorsement of the UN Convention on the Rights of Persons with Disabilities (UNCRPD) in 2009, which includes Article 7 – guaranteeing full rights for children with disabilities.

In 2021, the EU launched a new, non-binding political framework: the EU Strategy on the Rights of the Child (Strategy 2021)[18] and the European Child Guarantee (Guarantee 2021).[19] While not legislation, these documents set strategic goals to combat child poverty, prevent discrimination, and ensure access to essential services such as education, nutrition, and healthcare. Guarantee 2021 specifically urges Member States to ensure effective and free access to education, at least one healthy meal per school day, medical care, adequate housing, and nutritious food for children in need.

Support structures are also institutionalised. The EU Coordinator for the Rights of the Child[20] plays a key role in overseeing implementation, acting as a central contact point for child-related policies, cross-border mediation, and support in parental child abduction cases.

Recommendations play a crucial complementary role:
The 2013 Recommendation "Investing in Children" (2013/112/EU) introduced a holistic framework to break the cycle of disadvantage through access to resources, quality services, and child participation.

The 2021 Council Recommendation (2021/1004) established the European Child Guarantee, focusing on fighting child poverty and ensuring that every child has equal access to essential services.

Taken together, the EU's multifaceted approach – through treaties, binding laws, strategic policy instruments, and institutional roles – demonstrates an increasingly integrated effort to place children at the heart of human rights, welfare, and justice systems. The emphasis on the child's best interests, participation, and protection from exploitation is embedded across legal, social, and procedural frameworks. However, continued political will, cross-border coordination, and monitoring are essential to ensure that these commitments result in tangible improvements in children's lives across the EU.

18 Ibid.
19 Council Recommendation (EU) 2021/1004 of 14 June 2021 establishing a European Child Guarantee.
20 European Parliament, no date.

2. Disabled people

2.1. Historical, Legal, and Policy Perspectives on Disability Rights and Inclusion

The perception and treatment of people with disabilities have evolved significantly from ancient civilizations to modern international legal frameworks. Scholars such as Kálmán and Könczei argue that prejudice toward people with disabilities stems less from great civilizations and more from ancient fears, religious superstitions, and societal norms. While cultures like ancient Greece and Rome valued physical strength and health, they also showed rudimentary recognition of disability. In Sparta, physical imperfection was rejected, yet those disabled by war or labour were not deemed worthless. In Rome, people with mental or communication disabilities were assigned guardians, though often marginalised. Dwarfism and intellectual disability were commodified as entertainment for elites.[21]

The Middle Ages were characterised by fear, superstition, and religious interpretations of disability. Disability was often seen as divine punishment or demonic possession. Treatment was rare, and isolation was the norm. Disability was viewed as less than human, evident in practices such as the abandonment of disabled children.[22]

The 20th century marked a pivotal shift. After two world wars, institutional care expanded, and the first rehabilitation laws were passed, notably in the United States. The Nazi regime's eugenics programs, including forced sterilisation and murder under the "life unworthy of life" ideology, represent the darkest period of modern disability history. In response, the disability rights movement emerged, demanding autonomy, integration, and self-determination. The Independent Living Movement, led by activists like Ed Roberts, helped redefine disability as a civil rights issue. This momentum culminated in landmark legislation, including the Americans with Disabilities Act.[23]

Internationally, the United Nations (UN) has adopted a rights-based approach to disability. The 2018 UN Disability Inclusion Strategy called for mainstreaming disability rights across all activities, aligning with the Sustainable Development Goals (SDGs), particularly Goals 4 (education), 10 (reduced inequalities), and 11 (inclusive cities). Initiatives such as the International Day of Persons with Disabilities and the Global Disability Summit promote awareness and global cooperation. The 1982 World Programme of Action concerning Disabled Persons provided a strategic framework for equal opportunity, rehabilitation, and prevention. This was further reinforced by the World Health Organization (WHO)'s work on disability, the United Nations Development Programme (UNDP)'s mainstreaming efforts, and the UN's Standard Rules on the Equalisation of Opportunities.[24]

21 Kálmán and Könczei, 2002, pp. 31–32. Braddock and Parish, 2001, p. 15.
22 Ibid., p. 21.
23 Kálmán and Könczei, 2002, pp. 58–62.
24 United Nations, no date.

The Convention on the Rights of Persons with Disabilities (CRPD),[25] adopted in 2006, represents the most comprehensive legal framework for disability rights. Hungary signed and ratified the Convention in 2007, committing to respect, protect, and fulfil the rights of persons with disabilities. The Convention shifts the paradigm from a medical to a human rights model. It affirms that disability results from interaction between impairments and societal barriers. Thus, inclusion, accessibility, and autonomy are central.[26]

The Convention recognises the evolving and diverse nature of disability, emphasising empowerment and the principle of diversity. Disability is not a personal tragedy but a part of human diversity. This is reflected in Articles 1–5, which cover general obligations, equality, and non-discrimination. Article 3 outlines core principles, including dignity, autonomy, inclusion, and accessibility.

Special attention is given to:

- Women with disabilities (Article 6), who face multiple forms of discrimination, with cross-references in Articles 3, 8, 16, 23, 25, and 28.
- Children with disabilities (Article 7), with supporting provisions across the Convention that emphasise inclusive education (Article 24), family rights (Article 23), and protection from violence (Article 16).
- Self-determination, particularly through legal capacity (Article 12), independent living (Article 19), and private/family life (Articles 22–23).
- Participation and accessibility (Articles 9, 13, 18, 20, 29, 30), ensuring full civic, political, and cultural engagement.
- Solidarity rights, including health (Article 25), work (Article 27), and adequate living standards (Article 28).

The Convention includes a unique provision on international cooperation (Article 32), underlining the need for global support in implementing disability rights. It also defines disability (Article 1) and disability-based discrimination (Article 2), encompassing both direct and indirect forms and requiring reasonable accommodation.

Oversight is provided by the Committee on the Rights of Persons with Disabilities, composed of 18 independent experts. State parties must submit regular implementation reports. The Committee can issue recommendations and, under the Optional Protocol, consider individual complaints and conduct inquiries into systemic violations.

The European Union's role is also pivotal. As a party to the CRPD, European Union (EU) law must align with the Convention. This mixed agreement divides competence between the EU and its Member States. The Court of Justice of the European Union (CJEU) ensures interpretation in accordance with international obligations. Although

25 Convention on the Rights of Persons with Disabilities, UN Doc. A/RES/61/106, 24 January 2007; Optional Protocol to the Convention on the Rights of Persons with Disabilities, UN Doc. A/Res/61/106, 24 January 2007. On the genesis of the Convention, see also Rothfritz, 2010, pp. 103–120.

26 Dhanda, 2008, p. 44; Degener, 2006, p. 104; Degener, 2009, p. 34; Lachwitz, 2008, p. 143.

questions remain about whether the Convention forms part of EU constitutional law, the CFREU – especially Articles 21 (non-discrimination) and 26 (integration of persons with disabilities) – is interpreted in light of the CRPD, extending its influence across the legal system.[27]

The Convention integrates civil, political, economic, social, and cultural rights in one legal instrument. It treats persons with disabilities as full rights-holders and promotes inclusive policies across all life domains. Its rights are enforceable through a blend of national and international mechanisms, reflecting the continued evolution of disability from marginalisation to empowerment, from exclusion to full societal participation.

2.2. The ECHR and the CRPD – Disability Rights Jurisprudence and Evolving Standards

The European Court of Human Rights (ECtHR) has increasingly relied on the UN Convention on the Rights of Persons with Disabilities (CRPD) to guide its case law involving persons with disabilities. In addition to the CRPD, the ECtHR references other international instruments such as the Convention on Human Rights and Biomedicine, the Convention Against Torture (CAT), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and Council of Europe recommendations. These instruments, when read together, have expanded the Court's interpretive approach, enriching its understanding of disability-related human rights.

A striking example is the case of *N. v. Romania (No. 2)*, where Romanian legislation only recognised full legal incapacity without consideration for individualised, proportionate alternatives. While Article 8 of the ECHR does not explicitly cover legal capacity, the ECtHR filled this normative gap by invoking Article 12(4) of the CRPD. The Court ruled that Romanian law violated Article 8 of the ECHR, showing how the CRPD's influence can enhance Convention protections.[28]

Another notable case, *Béláné Nagy v. Hungary* concerned eligibility for disability pensions. Here, the ECtHR referred to ILO Conventions and the European Code of Social Security to define the state's obligations under Article 1 of Protocol No. 1, despite the respondent state's objections. This underscores the Court's authority to interpret the ECHR with reference to international social security and disability standards.[29]

Further, the ECtHR frequently incorporates interpretive guidance from treaty-monitoring bodies. In *Blokhin v. Russia*, concerning the detention of a mentally disabled child, the Court cited the Council of Europe's child-friendly justice guidelines, Article 23 of the CRC, and General Comment No. 9 of the CRC Committee. Likewise,

27 On the role of mixed agreements see Karayigit, 2006, pp. 445–469; Heliskoski, 2001; Leal-Arcas, 2001, pp. 483–513.

28 Case of *N. v. Romania (No. 2)*, (Application No. 38048/18), Judgment, Strasbourg, 16 November 2021.

29 Case of *Béláné Nagy v. Hungary*, (Application No. 53080/13), Judgment, Strasbourg, 13 December 2016.

in *Guberina v. Croatia*, the CRPD provided a basis to examine indirect discrimination under Croatian tax law concerning a parent of a disabled child.[30]

However, not all interactions between the CRPD and ECHR are harmonious. For example, Article 5(1)(e) of the ECHR permits the deprivation of liberty for "persons of unsound mind", in contrast with Article 14(1)(b) of the CRPD, which prohibits deprivation based on disability. Additionally, voting rights under Article 29 of the CRPD have not been fully reflected in ECtHR judgments, despite strong support from CRPD institutions and human rights bodies.

Although the ECtHR is not formally bound by precedent, it values legal certainty and grounds for reinterpretation. This is evident in the Court's self-understanding of the ECHR as a "living instrument" that must adapt over time.

A major turning point was the *Centre for Legal Resources (CLR) v. Romania* case, where an NGO was permitted to represent Valentin Câmpeanu – a young man with severe intellectual disability and HIV who died under grossly negligent state care. Despite the lack of legal representation or family, the ECtHR recognised CLR's standing, breaking new ground under Article 34 of the Convention. This set an exceptional precedent for third-party representation in cases involving especially vulnerable individuals.[31]

This line of reasoning was further extended in *L.R. v. North Macedonia*, in which the Helsinki Committee for Human Rights was allowed to file on behalf of an 8-year-old child with disabilities in state care. Even though the child had formal parental and guardian representation, their ineffectiveness prompted the Court to accept third-party representation, reinforcing the ECtHR's adaptive approach to access to justice.[32]

In contrast, *Lambert v. France* demonstrates the limitations of this approach. Here, the Court refused to infer the presumed will of a man in a vegetative state regarding litigation, due to a lack of evidence. This case reveals the Court's nuanced and context-dependent interpretation of procedural capacity and representation in disability-related cases.[33]

As for defining disability, the CRPD provides a broad, flexible concept, covering long-term impairments that interact with societal barriers. The ECtHR, however, allows states a wide margin of appreciation in determining disability status and mental capacity. Nonetheless, the Court retains supervisory authority to prevent discriminatory or arbitrary decisions. For example, in *D.H. and Others v. Czech Republic*, the Court condemned discriminatory educational testing practices against Roma

30 Case of *Blokhin v. Russia*, (Application No. 47152/06), Judgment, Strasbourg, 23 March 2016. Case of *Guberina v. Croatia*, (Application No. 23682/13), Judgment, Strasbourg, 22 March 2016.
31 Case of *Centre For Legal Resources On Behalf Of Valentin Câmpeanu v. Romania*, (Application No. 47848/08), Judgment, Strasbourg, 17 July 2014.
32 Case of *L.R. v. North Macedonia*, (Application No. 38067/15), Judgment, Strasbourg, 23 May 2020.
33 Case of *Lambert and Others v. France*, (Application No. 46043/14), Judgment, Strasbourg, 5 June 2015.

children, highlighting its willingness to intervene in national determinations when necessary.[34]

The doctrine of the margin of appreciation remains central. While the ECtHR generally allows states leeway in implementing the ECHR, this discretion narrows in cases involving vulnerable groups, including persons with disabilities. In voting rights cases under Protocol No. 1, Article 3, the Court emphasised that historical exclusion warrants heightened scrutiny and narrower state discretion. This was also underlined in judgments where any restriction affecting historically marginalised populations demanded a stronger justification.

In contrast, in socio-economic domains – such as healthcare, welfare, and social security – the Court tends to afford states a broader margin. The *Sentges* case exemplifies this, where the applicant sought state-funded robotic arm support for muscular dystrophy. The Court sided with the state's resource-based justification, while dissenting judges warned that rights under Articles 2 and 8 should play a more prominent role in such assessments. Even so, the Court maintains that budgetary concerns cannot be used to justify failure to uphold core Convention rights.[35]

The ECtHR has held that social protection reforms must meet minimum standards of fairness and legal certainty. Modifications in benefit schemes cannot lead to retrogressive outcomes or violate the essence of the rights protected by the Convention.

In summary, the ECtHR has gradually shifted toward a rights-based understanding of disability in alignment with the CRPD. The Court increasingly considers disability not just as a medical condition but as a social and legal construct influenced by systemic barriers. Through key cases, evolving procedural flexibility, and dynamic interpretation, it fosters a more inclusive and accessible human rights framework for persons with disabilities in Europe.

2.3. EU Disability Law and Policy

The European Union (EU) is committed to eliminating all forms of discrimination, including discrimination based on disability. This principle is embedded in various legal instruments and policies that collectively aim to ensure the full inclusion, participation, and equal treatment of persons with disabilities across the EU.

At the foundational level, Article 10 of the Treaty on the Functioning of the European Union (TFEU) expresses the EU's resolve to combat discrimination on any ground, including disability. Complementing this, Article 19 of the TFEU authorises the Council, with the European Parliament's consent, to adopt measures combating discrimination based on disability, among other grounds.

The Charter of Fundamental Rights of the EU further enshrines these principles. Article 1 of the Charter asserts that human dignity is inviolable, and Article 21

34 Case of *D.H. and Others v. Czech Republic*, (Application No. 57325/00), Judgment, Strasbourg, 13 November 2007.

35 Decision as to the Admissibility of Application No. 27677/02 by Nikky Sentges against the Netherlands, 3 July 2003.

prohibits any discrimination, including on the grounds of disability. Additionally, Article 26 emphasises the rights of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration, and participation in the life of the community.

Directive 2000/78/EC: Equal Treatment in Employment and Occupation isa key legislative tool in the EU's disability rights regime, which establishes a general framework for equal treatment in employment. Article 5 of the Directive introduces the concept of reasonable accommodation, requiring employers to make necessary and appropriate modifications to enable persons with disabilities to work, unless such measures impose a disproportionate burden. While the Directive aligns closely with the UN Convention on the Rights of Persons with Disabilities (CRPD), it notably does not define the failure to provide reasonable accommodation as a form of discrimination per se, unlike the CRPD.

2.3.1. Accessibility Legislation

Several directives complement this framework by enhancing accessibility across various sectors:

European Accessibility Act (Directive (EU) 2019/882) mandates that key products and services – such as smartphones, ATMs, banking services, and e-commerce – be accessible.

Web Accessibility Directive (Directive (EU) 2016/2102) requires public sector websites and mobile applications to be accessible to people with disabilities.

European Disability Card and Parking Card: The European Disability Card initiative is designed to ensure mutual recognition of disability status across EU Member States. It facilitates access to benefits and preferential treatment in travel, culture, and public services. The European Parking Card similarly allows people with disabilities to access parking benefits EU-wide. The relevant 2023 directive mandates both hard and digital versions of the cards, ensuring seamless mobility and equal access to services.

Recent Directives on Equality Bodies (2024/1499 & 2024/1500): These directives aim to strengthen national equality bodies and extend their remit across more grounds of discrimination, including disability, gender, religion, age, and sexual orientation. Member States must incorporate these into national law by 19 June 2026. The updated directives ensure independence, accessibility, and efficiency of these bodies, particularly in enforcing anti-discrimination protections in both employment and broader societal contexts.

The Anti-Discrimination Directive (Proposed): Still under discussion, this proposed directive aims to prohibit discrimination on all grounds – including disability – beyond employment, extending protections to healthcare, education, housing, and access to goods and services. Its adoption would significantly broaden the scope of anti-discrimination law across the EU.

Core CJEU Case Law on Disability Rights

Several landmark rulings by the Court of Justice of the European Union (CJEU) have shaped the interpretation of disability rights:

- Chacón Navas (Case C-13/05) clarified that disability involves long-term physical, mental, or psychological impairments that hinder participation in professional life. Illness alone does not equate to disability under Directive 2000/78.
- Coleman (Case C-303/06) extended protection to individuals discriminated against due to their association with a disabled person (her child), confirming that indirect discrimination and harassment also apply under the Directive.
- HK Danmark (Ring and Werge) (Case C-335-11) confirmed that chronic conditions causing long-term impairments can qualify as disabilities and that reduced working hours may constitute a reasonable accommodation.
- Kaltoft (Case C 354/13) and Ruiz Conejero (Case C-270/16)dealt with obesity-related claims. While obesity is not a protected ground itself, it can be considered a disability if it causes long-term limitations in participation. Termination based on such conditions may constitute indirect disability discrimination.
- Tartu Vangla (Case C-795/19) addressed discriminatory job qualification standards in Estonia. The CJEU found that barring a candidate with hearing loss from employment – without allowing hearing aids – was contrary to the Directive's requirement to provide reasonable accommodation.

Non-Binding Frameworks and Policy Documents

In addition to binding legislation, the EU promotes inclusion through soft law instruments:

The European Pillar of Social Rights (2017) includes Principle 17, affirming the right of persons with disabilities to support that enables full participation in society and access to employment.

The Action Plan for the Pillar outlines implementation measures to be achieved by 2030, targeting access to education, employment, healthcare, housing, and social services for persons with disabilities.

The European Disability Strategy 2010–2020 laid the foundation for policy on accessibility, participation, education, employment, and combating poverty.

The updated Strategy for the Rights of Persons with Disabilities 2021–2030 builds on the previous plan. It expands focus to independent living, access to justice, political participation, and the EU's global leadership in advancing disability rights.

The 2021–2030 Strategy also supports full enforcement of the CRPD, to which the EU is a signatory. It focuses on empowering persons with disabilities, removing barriers, and promoting their rights within and beyond the EU.

The EU's approach to disability rights is holistic, combining binding legislation (like Directive 2000/78/EC, the European Accessibility Act, and new equality directives) with non-binding strategies to promote inclusion, autonomy, and full societal participation for persons with disabilities. EU case law, particularly from the CJEU, plays a critical role in interpreting and expanding the legal definitions and obligations

related to disability. Through the integration of international standards like the CRPD, the EU continues to evolve toward a more inclusive and accessible society for all.

3. Elderly

3.1. Role of the United Nations in Safeguarding the Rights of Elderly

Defining the relationship between society and the elderly requires first establishing a meaningful definition of old age – a task that proves challenging due to the fluid and transitional nature of aging. Just as "growing up" represents a series of developmental milestones – from legal adulthood to full societal participation – so too does "growing old" involve gradual changes rather than a definitive status. Unlike youth, which is defined by gaining rights, old age is often marked by a loss of economic activity, typically retirement. However, with increased life expectancy and healthier lifestyles, many older individuals continue to remain active beyond traditional retirement age, contributing significantly to society in various roles.

Scholars such as Peng & Chan note that the term "older workers" varies in definition depending on the context – ranging from age 40 to 65 and above. In the United States, the Age Discrimination in Employment Act (ADEA) identifies 45 and above as a threshold age due to perceptions of outdated skills and knowledge. In practice, many studies categorise older workers as those aged 50 and above. These individuals often face significant challenges in the labour market, including age-based discrimination, despite still having much to offer in terms of experience and expertise.[36]

Labor market statistics confirm the growing participation of older workers. In 2022, labour force participation among those aged 55–64 in Europe and Central Asia reached 61.4%, with men at 69.9% and women at 53.8%. Even those aged 65 and above showed participation, albeit lower, at 7.6%. These trends suggest an ongoing shift in workforce demographics, with older adults playing an increasingly important role. By 2070, projections suggest that participation rates among 55–64-year-olds will rise to over 75%, underlining the continuing economic importance of this group.[37]

The legal and human rights foundation for elderly protection is rooted in the Universal Declaration of Human Rights (UDHR). Article 1 asserts the inherent dignity and equal rights of all people, while Article 2 ensures that these rights apply without discrimination. The UDHR divides human rights into four broad categories: personal rights, civil and political rights, economic and social rights, and cultural rights. While aging is not mentioned explicitly in the document, the rights outlined are universal and extend to older persons by implication.

The International Covenant on Civil and Political Rights (ICCPR), adopted in 1966, provides specific protections that are directly relevant to elderly individuals. Article 6

36 Peng and Chan, 2019, p. 163.
37 World Health Organization, 2025; OECD, 2019. See also European Commission, 2021b, p. 2; United Nations, 2024.

protects the right to life, obligating states to shield older persons from life-threatening conditions such as inadequate healthcare. Article 7 prohibits torture and cruel treatment, with particular relevance for elders in care facilities. Article 9 safeguards against arbitrary detention and abuse, reinforcing protections in both domestic and institutional settings. Article 26 emphasises equality before the law, underscoring that seniors must have equal access to all rights and services.

The companion treaty – the International Covenant on Economic, Social and Cultural Rights (ICESCR) – addresses economic security, healthcare, and participation in cultural life. Article 9 enshrines the right to social security, which forms the bedrock of elderly welfare through pensions, disability payments, and other assistance. Article 11 guarantees adequate living standards, including housing, food, and clothing – critical for elderly individuals often living on fixed incomes. Article 12 affirms the right to health care, which is especially important for seniors who may face chronic illness or disability. Articles 13 and 15 assert the right to education and cultural participation, supporting lifelong learning and social inclusion.

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) further enhances protections for elderly women. Adopted in 1979, CEDAW calls on governments to ensure equal access to healthcare, employment, education, and public life for women of all ages. Articles 11 and 12 are especially pertinent: the former addresses employment rights including retirement and pensions, while the latter ensures access to medical services, vital for aging women. Articles 7 and 8 demand equal political participation, supporting older women's involvement in governance and decision-making.

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which came into force in 1984, also provides vital protections for seniors – particularly those in vulnerable institutional settings. States must ensure independent monitoring and provide victims of mistreatment with access to justice and compensation, as outlined in Articles 13 and 14.

Equally important is the Convention on the Rights of Persons with Disabilities (CRPD), adopted in 2006. While focused on persons with disabilities, the CRPD holds enormous relevance for the elderly, many of whom live with age-related impairments. Article 3 affirms autonomy and individual control over decisions. Article 5 prohibits discrimination and obliges states to promote equality across all spheres, including employment, education, and social participation. Article 9 mandates accessibility of public spaces, transportation, and communication. Article 16 demands protection from exploitation and abuse. Article 19 affirms the right to live independently and be included in the community – goals aligned with modern approaches to aging in place and inclusive care.

Beyond legal conventions, the international community has developed numerous policy frameworks to promote dignity and inclusion for older people. The Vienna International Plan of Action on Ageing (1982) was the first global agreement focusing on elderly issues. This was followed in 1991 by the UN Principles for Older Persons, which introduced five key domains: independence (ensuring access to income,

employment, and services); participation (in civic, cultural, and decision-making activities); care (access to healthcare and supportive services); self-fulfilment (lifelong learning and cultural engagement); and dignity (freedom from abuse and recognition of intrinsic worth).

The Madrid International Plan of Action on Ageing (2002)[38] represents a more comprehensive framework. It focuses on three priorities: 1) integrating aging into development; 2) promoting health and well-being in old age; and 3) creating enabling environments. These recommendations call on governments, NGOs, and international bodies to align policies with the changing demographic landscape and promote a rights-based approach to aging.

To ensure compliance and continued progress, the UN Human Rights Council[39] established the position of Independent Expert on the enjoyment of all human rights by older persons in 2013. This role involves reviewing implementation efforts by states, offering guidance, and reporting on violations or gaps. The mandate was renewed in 2022, signalling the ongoing global commitment to addressing the rights of older people.

In sum, as the global population ages, the legal and policy infrastructure supporting older adults is expanding and evolving. From labour force participation and anti-discrimination protections to social security and healthcare rights, the elderly are increasingly recognised as integral contributors to society – deserving of respect, autonomy, and full access to the rights guaranteed to all. International treaties, regional initiatives, and national strategies must now work together to transform these principles into tangible realities for older generations. Only through such comprehensive action can we ensure that aging is met not with exclusion or vulnerability, but with dignity and opportunity.

3.2. Elderly Rights in ECtHR Jurisprudence

As Europe's population ages, the protection of the rights of elderly individuals – particularly in healthcare and institutional settings – has gained significant legal attention, especially through the case law of the European Court of Human Rights (ECtHR). The Court emphasises that elderly people must have access to healthcare and support that respects their dignity, independence, and legal rights. A key element in this protection is the state's positive obligation under Article 2 of the European Convention on Human Rights, which guarantees the right to life. This obligation requires both public and private healthcare and residential care facilities to meet essential standards. States must also ensure that independent mechanisms exist to investigate deaths or mistreatment in such institutions.

In addition to residential care, many elderly people prefer to remain in their own homes. To support this, appropriate in-home care must be made available. Denial of such care may constitute a breach of human rights. The *McDonald v. United Kingdom*

38 United Nations, 2002.
39 *United Nations Human Rights Council*, no date.

case illustrates this point. Glenda McDonald, born in 1943, relied on seventy hours of care per week due to mobility issues, especially at night. Her care allowance was cut drastically, and the local authority argued that she could use incontinence pads at night, even though she was not incontinent. McDonald felt humiliated and claimed a violation of Article 8, which protects the right to private life. The Court agreed, holding that this interference was disproportionate and not respectful of her dignity or autonomy.[40]

A more complex and far-reaching case was *Stanev v. Bulgaria*, which addressed forced institutionalisation and poor living conditions in state care. Georgi Stanev, declared legally incapacitated, was placed in a social care home for adults with mental disorders. He had no say in the decision and was moved without consent or proper legal safeguards. Once institutionalised, he lost access to his identity documents and had limited freedom of movement, requiring permission to leave. Conditions in the institution were substandard: poor food, unsanitary toilets, cold communal spaces, and virtually no social or cultural activities. These factors deeply impacted his well-being and autonomy.[41] Stanev's case revealed multiple legal failures. The Bulgarian system did not allow him to challenge the decision to institutionalise him or to restore his legal capacity. Even after an independent psychiatrist found no signs of schizophrenia and warned against the psychological effects of long-term institutionalisation, authorities refused to reconsider his case. The ECtHR found violations of several articles of the Convention: Article 5 (unlawful deprivation of liberty), Article 3 (inhuman and degrading treatment), Article 6 (denial of a fair trial), Article 13 (lack of effective remedies), and Article 8 (violation of private life).

These two cases underscore critical principles. First, elderly people cannot be treated merely as passive recipients of care – they are rights-holders entitled to dignity and legal protection. Institutionalisation must not be forced and must always follow due legal process with opportunities for review. Second, living conditions in care institutions must meet basic standards of human dignity. Denying proper food, hygiene, privacy, and autonomy violates core human rights. Finally, decisions regarding care – whether institutional or in-home – must be made with the individual's preferences, needs, and dignity in mind.

The ECtHR's rulings have thus advanced a broader understanding of the rights of the elderly. They highlight the importance of balancing care with autonomy and ensuring that legal systems do not strip individuals of their ability to make decisions or challenge violations. As demographic changes increase the proportion of elderly people in society, the Court's case law provides a strong legal foundation to ensure that aging with dignity is not just a social goal, but a legal guarantee.

40 Case of *McDonald v. United Kingdom*, (Application No. 4241/12), Judgment, Strasbourg, 20 May 2014.

41 Case of *Stanev v. Bulgaria*, (Application No. 36760/06), Judgment, Strasbourg, 17 January 2012.

3.3. Elderly Rights in the EU

The European Union (EU) legal framework places significant emphasis on the principle of equal treatment, anchored primarily in the Treaty on the Functioning of the European Union (TFEU) through Articles 8, 10, 19, 153, and 157. These provisions collectively reflect the Union's commitment to eliminate discrimination and promote equality, especially within the labour market and broader social context. Additionally, this commitment is reinforced by foundational documents such as the Community Charter of the Fundamental Social Rights of Workers, the EU Charter of Fundamental Rights, and the European Pillar of Social Rights.

Articles 8 and 10 TFEU underscore the EU's value orientation, requiring the Union to eliminate gender-based inequalities and combat discrimination on various grounds, including age, disability, religion, and sexual orientation. Article 153 supports member state actions in ensuring gender equality in the labour market and fighting social exclusion. Importantly, Article 157 distinguishes between equal opportunities and equal treatment: equal opportunities relate to access and career development, while equal treatment encompasses conduct throughout the employment relationship and possibly beyond.

Directive 2000/78/EC establishes a framework for equal treatment in employment and occupation, explicitly prohibiting discrimination based on religion, belief, disability, age, and sexual orientation. While exceptions for age-based differential treatment are permitted under specific circumstances – such as promoting youth employment or establishing service-based conditions for retirement – such differences must be objectively justified by legitimate labour policies and must meet the principle of proportionality.

The directive defines key concepts such as direct and indirect discrimination and harassment. Though its scope is limited to employment, occupation, and vocational training, a draft directive sought to broaden the application of equal treatment to areas such as healthcare, education, and social protection. However, due to lack of consensus in the EU Council, this broader directive remains unadopted.

The EU Court of Justice has played a pivotal role in clarifying and reinforcing the principle of non-discrimination, particularly regarding age. The landmark case *Mangold* (Case *C-144/04)* recognised age discrimination as a general principle of EU law. In this case, even before the full implementation of Directive 2000/78/EC in Germany, the Court ruled that national legislation could not allow unjustified age discrimination. Although groundbreaking, the ruling attracted criticism for implying horizontal effect and infringing upon national autonomy.

Further jurisprudence has refined the Court's position. For example, in the *Age Concern England* case (Case C-388/07), the Court emphasised that differential treatment based on age is permissible only if it pursues a legitimate aim and is proportionate. This concept of objective justification has become a central test in age discrimination cases.

The *Félix Palacios de Villa* (Case *C-411/05)* case further tested this principle. Mr. Palacios's employment was terminated upon reaching Spain's statutory retirement

age of 65, as permitted by a collective agreement. He challenged this on the grounds of age discrimination under Directive 2000/78/EC. The Court concluded that while the law did create differential treatment based on age, it did not constitute discrimination if the treatment was objectively and reasonably justified by legitimate aims, such as labour market regulation or reducing unemployment. Additionally, the fact that the affected individuals were entitled to a pension further justified the measure. Therefore, the Court upheld the retirement rule as lawful under EU law.

Another notable case, *Prigge (Case C-477/09)*, concerned mandatory retirement for airline pilots. The Court ruled that while setting age limits may be permissible, employers must show that such policies are justified by legitimate aims, like safety, and that they are proportionate. Blanket age limits, without such justification, would violate the principle of equal treatment.

Overall, the EU legal framework – through both primary and secondary law – creates a robust system to prohibit unjustified discrimination, especially in employment. The Court of Justice has consistently reinforced that while differences in treatment may sometimes be allowed, they must always be carefully examined for objective justification and proportionality. This nuanced approach ensures that equality and non-discrimination remain central to the EU's social and legal order, while still allowing for flexibility in labour market policies where justified.

4. Migrants

4.1. Role of the UN in the Protection of Migrants

The 2024 World Migration Report, published by the International Organization for Migration (IOM), emphasises the positive economic and social contributions that migration can bring to host countries. In particular, migration acts as a vital source of human capital, especially for countries facing declining population sizes. It not only boosts domestic income and living standards but also helps fill labour shortages in various sectors, both high-skilled and low-skilled, easing mismatches in the domestic labour market and enhancing overall productivity.

However, migration and employment are also complex phenomena tied to human rights and labour standards, which led to the development of a comprehensive international legal framework for protecting migrant workers. This framework began with the founding of the International Labour Organization (ILO) in 1919, the first global attempt to protect workers' rights.

In 1948, the Universal Declaration of Human Rights (UDHR) laid a critical foundation by affirming the right to work, social security, and freedom from discrimination. These rights guided later international instruments. A year later, the ILO adopted Convention No. 97, which regulates labour migration and influenced national legislation to improve migrant treatment.

The 1950s and 1960s saw further progress, notably with the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, as well as the 1954 Convention on

Stateless Persons and the 1961 Convention on the Reduction of Statelessness. These addressed the rights of refugees and stateless persons, including access to employment and education.

In 1965, the United Nations (UN) adopted the International Convention on the Elimination of All Forms of Racial Discrimination, promoting legal equality for all and improving migrant access to employment and public services. These protections were extended further with the 1966 International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights, which compel states to uphold rights to health, education, fair working conditions, and judicial access regardless of nationality.

Throughout the 1970s and 1980s, the international community expanded protections further. The 1974 SOLAS Convention improved maritime safety, and the 1975 ILO Convention No. 143 emphasised fair labour conditions and the fight against irregular migration. The 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) ensured women's access to employment, healthcare, and education irrespective of their status.

Later developments included the 1982 Law of the Sea, which improved maritime protections, and the 1984 Convention Against Torture, reinforcing the global commitment to protect all individuals, including migrants, from violence and mistreatment. By the late 1980s, children and migrant families gained additional attention, with the 1989 Convention on the Rights of the Child ensuring child welfare across borders.

A major milestone was the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW). This landmark treaty provides a comprehensive set of protections for migrants and their families, including access to education, healthcare, and safeguards from exploitation.

The early 2000s saw a focus on combatting trafficking and smuggling, particularly of women and children, with the 2000 Protocols on human trafficking and migrant smuggling. In 2006, two significant conventions were adopted: the Convention on the Rights of Persons with Disabilities, which guarantees equal access to employment and services for all, including migrant workers with disabilities; and the Convention on the Protection of All Persons from Enforced Disappearance, which ensures protection against state-led disappearances.

The 2011 Domestic Workers Convention further enhanced rights for a vulnerable group – often made up of migrants – by affirming fair wages, decent working conditions, and protection from abuse.

Today, the ICMW, in force since 2003, remains central to the UN's approach to migrant rights. Oversight is provided by the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW). The Committee, comprised of independent experts, reviews state reports, raises inquiries, and makes recommendations for improved compliance. It can consider individual or inter-state complaints, provided that the states involved have accepted its jurisdiction under Article 76 of the Convention.

However, the Committee's power is limited to those states that have explicitly accepted its authority. It cannot hear complaints against states that have not submitted a notification of acceptance.

In conclusion, international migration has far-reaching economic and social benefits, particularly for aging or shrinking labour markets. But it also necessitates strong legal protections for migrants. Over the past century, the international community has developed a robust framework to protect the rights, dignity, and welfare of migrant workers, ensuring they are treated fairly, irrespective of their origin or status. The work of institutions such as the ILO, UN, and CMW continues to play a pivotal role in ensuring equity and justice for migrants worldwide.

4.2. Migrant Rights Under ECtHR Jurisprudence

The Council of Europe (CoE) plays a critical role in protecting the rights of migrants and migrant workers throughout Europe. Migrants – individuals who move from their habitual place of residence for reasons such as work, education, natural disasters, conflict, or persecution – are entitled to fundamental human rights regardless of legal status. Nonetheless, irregular migrants frequently face discrimination, exclusion, and deportation, revealing a gap between international legal frameworks and their implementation.

The European Convention on Human Rights (ECHR), while not explicitly addressing migration, applies universally to all individuals within the jurisdiction of CoE member states. Key provisions of the ECHR have been instrumental in migrant-related rulings by the European Court of Human Rights (ECtHR). Articles such as Article 3 (prohibition of torture), Article 5 (liberty and security), Article 8 (respect for private and family life), Article 13 (right to an effective remedy), and Article 14 (prohibition of discrimination) are particularly relevant to migrant rights. The ECtHR has interpreted these provisions to address issues like deportation, residence, detention, and access to family life.

The ECtHR has built an extensive body of case law involving migrants. In *Berrehab v. Netherlands*, the Court protected family life against deportation. In *Chowdury and Others v. Greece*, it ruled that undocumented Bangladeshi workers subjected to forced labour on a Greek strawberry farm were victims of human trafficking, violating Article 4 of the ECHR. The Court emphasised the workers' vulnerability, exacerbated by their legal status and fear of deportation, as a factor increasing their susceptibility to exploitation. This case clarified state obligations to prevent and respond to forced labour and trafficking. Cases such as *Gaygusuz v. Austria* and *Andrejeva v. Latvia* addressed discrimination in access to social security and pensions for non-citizens. In *Gaygusuz*, the ECtHR ruled that denying emergency social assistance to a legally resident non-citizen based solely on nationality was unjustified. In *Andrejeva*, Latvia was found to have discriminated against a non-citizen by not recognising her Soviet-era employment for pension purposes. However, in *Savickis v. Latvia*, the Court accepted Latvia's right to treat citizens and non-citizens differently due to historical

and constitutional reasons, showing that state sovereignty still heavily influences outcomes.[42]

The European Social Charter (ESC) and the European Convention on the Legal Status of Migrant Workers complement the ECHR by providing targeted protections. The ESC guarantees rights to work, fair remuneration, collective bargaining, and family support, particularly under Articles 1, 4, 6, and 19. However, these protections are mostly limited to legally employed nationals of contracting states, leaving irregular migrants outside their scope. The Convention on the Legal Status of Migrant Workers defines migrant workers as legally authorised individuals who move for paid employment – excluding groups such as seasonal workers, students, and undocumented labourers.

The ECtHR recognises migrant workers as a potentially vulnerable group, especially in contexts of exploitation or inadequate legal protection. Its use of the vulnerability concept, as in *Chowdury,* adds a nuanced understanding of how legal status, economic need, and lack of safeguards can increase migrants' exposure to rights violations. However, critics argue the Court has either overstepped in some cases or failed to fully challenge discriminatory migration laws in others. Its focus tends to be legalistic and narrowly framed, often lacking in broader analysis of systemic issues.

In summary, while the CoE does not offer fully comprehensive protections for all migrant groups – especially undocumented migrants – its legal instruments and the evolving case law of the ECtHR have made important strides in safeguarding rights. Migrants' access to justice through the ECtHR has led to landmark decisions that challenge state practices and affirm key principles such as non-discrimination, family unity, and protection from exploitation. However, ongoing challenges, particularly concerning irregular migrants, signal the need for further legal development and more inclusive standards across Europe.

4.3. Migrant Rights in the EU

The European Union (EU) faces a dual challenge in its migration policy: ensuring adequate protection for vulnerable individuals while managing migration to contribute positively to growth, innovation, and social development. However, the EU's vulnerability-based approach remains fragmented, particularly within the Common European Asylum System (CEAS). Though EU law is grounded in the principle of equality before the law (enshrined in Article 2 TEU and Article 20 of the Charter of Fundamental Rights), this principle is not consistently implemented across legislation concerning migration and asylum.

Migration in the EU is divided into internal and external categories. Internal migration involves free movement within the EU/EFTA framework, while external

42 Case of *Berrehab v. Netherlands*, (Application No. 10730/84), Judgment, Strasbourg, 21 June 1988; Case of *Chowdury and Others v. Greece*, (Application No. 21884/15), Judgment, Strasbourg, 30 March 2017; Case of *Gaygusuz v. Austria*, (Application No. 17371/90), Judgment, Strasbourg, 16 September 1996; Case of *Andrejeva*, (Application No. 55707/00), Judgment, Strasbourg, 18 February 2009; Case of *Savickis v. Latvia*, (Application No. 49270/11), Judgment, Strasbourg, 9 June 2022.

migration refers to movement across state borders for over 12 months, whether voluntary or not. Migrant workers are a specific subgroup, regulated by international and EU legal frameworks. Although there is no universally agreed definition of labour migration, the International Labour Organization broadly defines migrant workers as individuals engaged in paid work in a country where they are not nationals. These workers vary widely in skills – from high-skilled professionals (e.g., IT experts, healthcare workers) to low-skilled workers (e.g., agricultural or domestic workers).[43]

Originally, labour mobility in the EU was an economic mechanism under the principle of free movement of workers, which gradually evolved into a core citizenship right through successive treaties, including the Maastricht Treaty. While this evolution supports economic goals, it has also contributed to challenges such as brain drain. In response to aging populations and labour shortages, the EU has increasingly promoted legal labour migration, focusing on both economic benefits and the integration of third-country nationals.[44]

Gyenei's analysis suggests that to enhance integration and labour market flexibility, the EU has gradually extended rights to third-country nationals (TCNs). This trend reflects the EU's commitment to social inclusion and international competitiveness. Measures have included bilateral treaties and legislative initiatives under Title V TFEU, covering TCNs' entry, residence, and employment rights. Still, member states often resist harmonising labour migration policies due to sovereignty concerns, making this area one of the most difficult for consensus.[45]

Legislative initiatives like the Blue Card Directive (2009, recast recently)[46] regulate the entry and residence of highly qualified TCNs. The Blue Card offers professional opportunities and family rights but excludes certain categories (e.g., asylum seekers, long-term residents, and researchers). The Single Permit Directive (2011)[47] streamlined application procedures but allowed member states significant discretion. It excludes various groups, including posted workers and au pairs, reflecting ongoing policy fragmentation.

The Seasonal Workers Directive (2014)[48] targeted low-skilled TCNs for temporary employment. It defined rights and limits (e.g., maximum stays of five to nine months) and ensured basic protections, such as non-discrimination in work conditions and

43 European Commission, no date.
44 See Magdolna Vallasek's chapter.
45 See Magdolna Vallasek's chapter.
46 Directive (EU) 2021/1883 – conditions of entry to and residence in the European Union of non-EU nationals for the purpose of highly qualified employment.
47 Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State.
48 Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers.

limited access to social rights. However, certain benefits, such as unemployment aid or education grants, may be restricted.

Similarly, the Intra-Corporate Transferee Directive[49] targets high-skilled temporary transfers of personnel within companies, imposing limits on stay duration but allowing mobility between member states. Unlike the Blue Card's economic framing, the 2020 New Pact on Migration and Asylum marked a shift toward a human rights-based narrative. Introduced after the Moria refugee camp fire, the Pact emphasised solidarity and humanitarian responses to migration crises, recognising the EU's previous policy failures.

Despite its non-programmatic nature, the New Pact – alongside Regulation (EU) 2024/1351 – aims for a more unified migration and asylum system, balancing internal and external dimensions. However, significant challenges remain in practice. Research by the International Labour Organization (ILO) and the IndustriAll European Trade Union highlights a persistent gap in collective labour rights for migrant workers. These include barriers to unionisation, poor working conditions, unpaid wages, and health and safety violations, particularly in sectors like construction, hospitality, and transport.

Although the EU has made legislative strides, enforcement lags. Over 100 inspections by the European Labour Authority since 2019 have uncovered widespread exploitation affecting both EU and third-country migrant workers. These findings stress the urgency of improving labour protections, harmonising rights across member states, and ensuring fair treatment for all workers – irrespective of origin.

In conclusion, while the EU recognises the economic and social contributions of migrant labour, especially in light of demographic shifts, its labour migration policy remains fragmented. The tension between national sovereignty and collective EU interests continues to hamper unified legislation. Although recent developments suggest a growing emphasis on rights-based frameworks, significant work remains to ensure consistent protections and humane treatment for all migrant workers in the EU.

5. Minorities

5.1. Safeguarding Cultural Identity: The Evolving Protection of National Minorities in International Law

The protection of national minorities is a fundamental human rights issue rooted in the need to shield vulnerable populations from discrimination and preserve their cultural identities. Persons belonging to national minorities often face systemic challenges in areas such as employment, education, and political participation.

49 Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer.

This discrimination not only impedes their full integration into society but also threatens their language, religion, and traditions – key components of cultural identity. Therefore, robust legal protection is essential to ensure that national minorities can exercise their rights while preserving their heritage.

Though there is no universally accepted definition of a "national minority" in international law, several criteria are commonly used. According to Capotorti's influential definition, national minorities are non-dominant groups numerically smaller than the majority population, characterised by distinct ethnic, religious, or linguistic features. Importantly, they possess a shared sense of solidarity and the desire to maintain their cultural traditions. This definition, which aligns with the jurisprudence of the Permanent Court of International Justice, reflects both objective (demographic, linguistic, and religious differences) and subjective (self-identification and cultural attachment) elements.[50]

A contentious issue in international law is whether minority protection applies solely to citizens or also to non-citizens such as migrant workers. While traditional legal literature emphasises historical ties to a region, the United Nations Human Rights Committee (UNHRC) has adopted a broader interpretation, asserting that cultural rights should extend to all residents, regardless of citizenship or permanent status. This position challenges the restrictive definition of minority status, especially with the rise of so-called "new" minorities in multicultural societies.[51]

The rights of indigenous peoples are often discussed alongside national minorities. Over the past 40 years, indigenous groups have made significant strides in securing international legal recognition, often surpassing the progress made by national minorities over the past six decades. Both groups share the central goal of preserving cultural identity, which lies at the heart of minority rights protection. Cultural rights – such as language use, freedom of religion, and access to education in one's native language – are essential to maintaining group identity and are recognised as second-generation human rights under the Universal Declaration of Human Rights (1948).[52]

A major debate in minority rights discourse is whether such rights are collective or individual in nature. While the interwar League of Nations system focused on collective protection, the post-WWII human rights framework emphasises individual rights. Minority rights today are primarily understood as individual rights exercised within a collective context. Thus, safeguarding the rights of individuals belonging to minorities indirectly contributes to the preservation of the group's cultural identity.[53]

After WWII, the protection of minority rights shifted under the broader umbrella of universal human rights, emphasising equality and non-discrimination. This new ideology differed markedly from the earlier League of Nations framework and was

50 Capotorti, 1979, para. 568.
51 *United Nations Human Rights Council*, no date, para. 5.2.
52 United Nations. Economic and Social Council, 2005, para. 17.
53 Sándor-Szalay, 2022, p. 164.

not initially included in the UN Charter or the 1948 Universal Declaration. However, in 1960, United Nations Educational, Scientific and Cultural Organization (UNESCO) adopted the first international convention protecting minority rights – focusing on educational non-discrimination. The 1966 International Covenant on Civil and Political Rights (ICCPR) established Article 27, which explicitly protects the rights of minorities to enjoy their culture, religion, and language.

The 1992 UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities reinvigorated the focus on minority rights. Additional UN bodies and mechanisms, such as the Human Rights Council (HRC), the UN Forum on Minority Issues, and the Office of the Special Rapporteur on Minority Issues, have developed further tools for oversight, reporting, and engagement with governments. The HRC, through the first Optional Protocol to the ICCPR, can receive individual complaints, contributing to a growing body of quasi-jurisprudence around Article 27.

Notable cases, such as *Lubicon Lake Band v. Canada*, have expanded the understanding of cultural rights to include land use and natural resources when essential to a group's culture. Similarly, in *Ivan Kitok v. Sweden*, the HRC acknowledged the centrality of reindeer herding to Sami culture and applied Article 27 accordingly. These cases underscore the importance of considering cultural and economic practices as integral to cultural identity.[54]

In Central and Eastern Europe, HRC activity has been more limited but not absent. Cases have focused on issues such as minority language use and official name recognition. For example, in *Raihman v. Latvia*, the alteration of a minority individual's name by the state raised serious concerns regarding privacy, non-discrimination, and cultural identity under Articles 17, 26, and 27 of the ICCPR. Although the changes may appear bureaucratic, such acts can alienate individuals from their cultural identity, further emphasising the need for sensitive and respectful minority policies.[55]

In conclusion, the international protection of national minorities continues to evolve within the broader human rights paradigm. While the modern framework primarily emphasises individual rights, it simultaneously recognises the importance of collective cultural identity. Minority protection today is a balancing act between universal legal standards and the unique historical and cultural realities of minority groups. As global migration and multicultural societies grow, so too does the urgency of ensuring legal frameworks that protect both the individual and the collective essence of national minorities.

54 HRC, *Chief Bernard Ominayak and Lubicon Lake Band v. Canada*, decision of 26 March 1990, communication No. 167/1984; HRC *Ivan Kitok v. Sweden*, decision of 27 July 1988, communication No. 197/1985.

55 HRC, *Raihman v. Latvia*, decision of 30 November 2010, communication No. 1621/2007.

5.2. Minority Rights under the European Convention on Human Rights: Between Individual Protections and Collective Realities

The European Convention on Human Rights (ECHR) provides a foundational legal framework for the protection of human rights in Europe. However, it offers limited explicit protections for national, ethnic, or religious minorities. The Convention does not include detailed obligations for State Parties concerning the legal status or specific rights of minorities. Instead, minority rights are only indirectly addressed, notably through Article 14 and Protocol 12, which prohibit discrimination in the enjoyment of other substantive rights enshrined in the Convention.

The ECHR primarily protects individual rights, rather than collective or group-specific rights. As such, minority groups cannot claim group-based protections unless the rights in question can be construed as individual rights. This poses a challenge for the comprehensive protection of minority identities, which are often inherently communal and cultural.[56]

Article 14 and the Limits of Non-Discrimination

Article 14, frequently labelled the "Cinderella" of the Convention, has been criticised for its secondary and dependent nature. It is not a standalone right but rather applies only in conjunction with another substantive right under the Convention. The European Court of Human Rights (ECtHR) has confirmed that discrimination claims under Article 14 must be linked to the enjoyment of a right protected by another provision of the ECHR. Importantly, a violation of the substantive right is not necessary for Article 14 to be invoked; it suffices that the situation falls within its scope. This has significant implications for minorities. Even when states provide additional or voluntary benefits – such as religious instruction in schools or agreements with religious communities – those benefits must be applied in a non-discriminatory way. If not, the unequal treatment can be challenged under Article 14, even if the underlying right is not directly breached. This flexible interpretation is crucial for national, ethnic, and religious minorities, as it safeguards them from arbitrary state action, especially in areas where states offer benefits beyond what the Convention strictly requires.[57]

Religious Minorities and Article 9: Freedom of Religion

Religious minorities are not explicitly mentioned in the ECHR. Article 9 protects the freedom of thought, conscience, and religion, but its application to minority religions is often complex. Many ECtHR cases involve individuals or subgroups practicing non-dominant or minority forms of religion. However, the Court often avoids addressing the broader minority context, focusing narrowly on individual claimants and specific religious practices. The margin of appreciation doctrine – where states are granted flexibility in balancing rights within their own legal and cultural contexts – has led to ambiguities in how the Court treats religion as a suspect ground. Although a wide

56 See the Chapter of Dalibor Đukić.
57 O'Connell, 2009, p. 211.

margin is given in Article 9 cases, this contradicts the stricter scrutiny that would normally apply if religion were treated as a suspect classification under Article 14.[58]

Despite this tension, two key areas of Article 9 jurisprudence are particularly important for religious minorities:

- The Right to Manifest Religion: The Court has clarified that manifestation of religion is not confined to practices that are strictly required by religious doctrine. Religious expression includes personal practices and beliefs, even when not formally mandated. This interpretation respects the diversity within religious traditions and prevents state authorities from acting as arbiters of theological doctrine.[59]
- Legal Personality of Religious Associations: The ECtHR has affirmed that the legal recognition of religious groups is central to religious freedom. Registration as legal entities allows religious communities to function, own property, and organise religious life. Denying such status – particularly to minority or dissenting factions – can constitute a violation of Article 9. The Court has also rejected the idea that mere tolerance or informal recognition by the state is an acceptable substitute for legal personality.[60]

Ethnic Minorities and the Roma: The Challenge of Vulnerability

Ethnic minorities, especially the Roma, have appeared frequently before the ECtHR. In these cases, the Court has found violations of a wide array of rights, including the right to life, freedom from inhuman treatment, non-discriminatory access to education, and protection from forced sterilisation and arbitrary expulsion. Yet, despite this jurisprudence, the Court has sometimes fallen short in emphasising the structural vulnerability of such groups. While acknowledging discriminatory treatment, the Court has avoided labelling ethnicity as a suspect classification in Article 14 terms, thereby not always triggering the strict scrutiny required in such cases. In Central and Eastern Europe, where ethnic and religious identities often overlap, the protection of minorities is especially delicate. The Court has approached these cases cautiously, focusing on the rights of individuals rather than minority groups as such. For example, refusals to register religious organisations linked to specific ethnicities have been treated as violations of individual rights, rather than framed as broader issues of minority protection.[61]

58 Harris et al., 2023, p. 810.
59 Case of *Kokkinakis v. Greece*, (Application No. 14307/88), Judgment, Strasbourg, 25 May 1993, para. 31.
60 Case of *Gorzelik and Others v. Poland*, (Application No. 44158/98), Judgment, Strasbourg, 17 February 2004.
61 Case of *Sejdić and Finci v. Bosnia and Herzegovina*, (Applications Nos. 27996/06 and 34836/06), Judgment of 22 December 2009, para. 48. Council of Europe. Human Rights Commissioner, 2012, p. 11.

A Call for a More Holistic Approach

The current ECtHR jurisprudence, while offering important protections, often sidesteps the communal dimension of minority identities. The lack of explicit group rights, combined with the Court's cautious approach to politically sensitive issues, has led to fragmented protection for minorities. A more holistic approach is necessary – one that recognises the interconnectedness of individual and group identity, particularly in the context of religious and ethnic minorities. Discrimination, marginalisation, and lack of legal recognition impact not only individuals but entire communities.[62]

While the ECHR does not explicitly provide for the rights of national, ethnic, or religious minorities, its non-discrimination and religious freedom provisions, particularly Articles 14 and 9, form the core of minority protection under the Convention. However, these protections remain limited by a focus on individual rights, the dependent nature of Article 14, and the Court's cautious interpretation of religion and ethnicity as suspect grounds. As Europe becomes increasingly diverse, the ECtHR faces the challenge of ensuring that minority rights are not only acknowledged but meaningfully protected through a more integrated and community-sensitive approach.

5.3. Minority Rights in the European Union: Between Commitments and Competences

The EU's engagement with the protection of minority rights has developed gradually over the past few decades, shaped by political transitions, treaty reforms, and evolving societal awareness of discrimination and inequality. Despite growing recognition of the importance of these rights, their protection within the EU remains fragmented, limited, and often subordinated to other priorities in the broader legal and political framework.

Throughout the 1980s and 1990s, the European Parliament adopted numerous resolutions drawing attention to minority issues, but these initiatives lacked concrete enforcement mechanisms. The Maastricht Treaty of 1993 included only vague references to fundamental rights and the respect for national identities – with no specific focus on minorities. It was during the EU's enlargement process in the 1990sparticularly in response to the instability and ethnic tensions in Central and Eastern Europe following the collapse of Communism – that minority rights gained greater prominence. The 1993 Copenhagen Criteria required candidate countries to demonstrate respect for and protection of minorities as a condition for EU membership. However, this commitment to minority rights remained confined to external relations, and no parallel standards were developed for existing Member States, giving rise to accusations of double standards.

This inconsistency became more apparent with the Treaty of Amsterdam in 1999, which failed to extend minority protection obligations internally. While the Treaty incorporated the Copenhagen Criteria into Article 6(1) TEU, it notably excluded the

62 Case of *Sidiropoulos and Others v. Greece*, (Application No. 26695/95), Judgment, Strasbourg, 10 July 1998, para. 40.

minority protection clause. Nevertheless, the Amsterdam Treaty introduced Article 13 TEC (now Article 19 TFEU), which granted the EU the authority to combat discrimination based on ethnic origin, religion, and other grounds – marking the birth of the EU's anti-discrimination law. This new legal competence led to the adoption of the Racial Equality Directive (RED)[63] and the Employment Equality Directive (EED)[64] in 2000, representing a shift toward fundamental rights protection beyond market integration. However, these measures focused on individual rights and did not encompass collective minority protections such as language rights or cultural autonomy.

The Treaty of Lisbon later expanded the EU's commitment to equality. Article 2 TEU explicitly named "the rights of persons belonging to minorities" as part of the EU's foundational values. However, the EU's ability to legislate in this field is restricted by the principle of conferral under Article 5(2) TEU, which limits EU action to areas explicitly granted by the Treaties. As a result, minority protection remains primarily under national jurisdiction, with the EU only able to act indirectly – through related policy areas such as education, culture, or non-discrimination.

This limitation is reflected in treaty provisions. Articles 165 and 167 TFEU, for instance, provide the EU with supporting roles in education and culture, encouraging cooperation while fully respecting Member States' responsibilities and cultural diversity. Religion and language, though not specifically named, are included under cultural heritage protection, and Article 17 TFEU ensures that the EU respects the national status of religious associations.

The European Parliament has consistently pushed for stronger minority protections. In resolutions adopted in 2006, 2018, and 2023, the Parliament emphasised the need for consistent policies both for candidates and existing Member States. It criticised the EU's lack of internal standards, called for special attention to marginalised groups such as the Roma, and urged better integration of minority issues into rule-of-law monitoring. The 2022 resolution on religious persecution underscored the global dimension of minority protection, while the 2023 resolution on relations with the Council of Europe proposed deeper cooperation to enhance protection across Europe.[65]

63 Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

64 Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

65 1. European Parliament resolution of 8 June 2005 on the protection of minorities and anti-discrimination policies in an enlarged Europe (2005/2008(INI)); 2. European Parliament resolution of 11 September 2013 on endangered European languages and linguistic diversity in the European Union (2013/2007(INI)); 3. European Parliament resolution of 7 February 2018 on protection and non-discrimination with regard to minorities in the EU Member States (2017/2937(RSP)); 4. European Parliament resolution of 13 November 2018 on minimum standards for minorities in the EU (2018/2036(INI)); 5. European Parliament resolution of 17 December 2020 on the European Citizens' Initiative Minority SafePack – one million signatures for diversity in Europe (2020/2846(RSP)); 6. Parliament resolution of 18 April 2023 on the institutional relations between the EU and the Council of Europe (2022/2137(INI)). For further resolutions, see FUEN, no date.

Among minority communities in the EU, the Roma have received particular attention. The EU Roma Framework of 2011 aimed to promote the social and economic inclusion of Roma communities but was criticised for insufficient focus on antigypsyism, weak Roma participation, and lack of measurable outcomes. To address these shortcomings, the Commission introduced the EU Roma Framework 2020–2030, which set out seven objectives covering equality, inclusion, participation, education, employment, housing, and health. The new framework takes an intersectional approach and includes headline targets to monitor progress. Alongside this, the EU Anti-Racism Action Plan 2020–2025 marked the first time the EU officially acknowledged the existence of structural racism and called for proactive, institutionally driven policies to combat it.[66]

Despite these efforts, the EU's competence in the area of minority rights remains indirect. Legal instruments such as Article 18 TFEU prohibit discrimination based on nationality within the scope of EU law, and Article 19 TFEU enables legislative action against discrimination on grounds like race or religion – but these provisions are not specifically designed for the comprehensive protection of minority groups. Education and culture policy continue to fall primarily under national control, and the EU must rely on soft measures, coordination, and financial support to influence Member States' practices.

Finally, EU policies concerning indigenous peoples, such as the Sámi, are largely externally driven and remain limited in their application. While the EU supports inclusion and indigenous rights in external frameworks like the Arctic Policy, recent developments such as the Critical Raw Materials Act of 2024 have been criticised for overlooking indigenous consent mechanisms, highlighting ongoing tensions between economic policy and minority rights.[67]

In conclusion, while the EU has made progress in recognising minority issues and integrating anti-discrimination principles into its legal framework, the absence of a direct competence to legislate comprehensively in this area continues to hinder effective minority protection. The current framework reflects a mixture of normative commitments, indirect policy tools, and political aspirations, but without robust legal authority or consistent enforcement mechanisms, minority rights in the EU remain an unfinished project. Future progress will depend on sustained political will, deeper integration of minority concerns into EU law, and stronger cooperation between EU institutions and Member States.

66 See more in European Commission, 2020.
67 See Ana Radina's chapter.

6. Refugees

6.1. Refugee Protection in International Law: Foundations, Frameworks, and Evolving Commitments

The development of refugee rights is deeply intertwined with the emergence of international human rights law. Although the modern framework was formally codified under the United Nations after the adoption of the Universal Declaration of Human Rights in 1948, its conceptual foundations can be traced back to earlier legal traditions, including the law of state responsibility for injury to aliens and the protection of minorities. These early doctrines rejected absolute state sovereignty over foreign nationals and laid down fundamental principles recognising the vulnerabilities of individuals who live beyond the protection of their state of origin.[68]

The 1951 Convention relating to the Status of Refugees, and its 1967 Protocol, serve as the cornerstone of the international refugee protection regime. The Convention defines a refugee as someone who, due to a well-founded fear of persecution based on race, religion, nationality, membership in a particular social group, or political opinion, is outside their country of origin and unable or unwilling to avail themselves of that country's protection. This legal definition places emphasis on the absence or loss of state protection, either through statelessness or a refusal to return due to legitimate fears.

In support of this framework, the United Nations General Assembly adopted the Declaration on Territorial Asylum in 1967. This non-binding instrument encourages states to uphold key principles: granting asylum to persons covered by Article 14 of the Universal Declaration, facilitating international cooperation in challenging cases, prohibiting the return or expulsion of persons to countries where they may face persecution, and restricting the use of asylum for purposes incompatible with United Nations (UN) principles. A subsequent UN conference in 1977 attempted to formalise these principles further, but its work was left incomplete, with only a few draft articles considered.

More recently, global attention to refugee and migrant issues has intensified. In 2016, the New York Declaration for Refugees and Migrants was adopted by UN Member States. The Declaration proposed a Comprehensive Refugee Response Framework (CRRF), built on principles of burden-sharing, protection, and long-term solutions. Its core objectives include streamlining refugee admission procedures, supporting host countries and communities, and promoting durable solutions such as local integration, resettlement, or voluntary repatriation. In 2019, the role of the International Organization for Migration (IOM) was strengthened through its formal integration into the UN system, enhancing coordination in addressing global migration challenges.[69]

68 See Lucia Bakosova's chapter.
69 See more in UNHCR, no date.

The 1951 Refugee Convention not only provides a definition of refugees but also outlines a series of rights and obligations. According to Erika Feller's analysis, the Convention establishes several critical rules: the principle of non-refoulement (prohibiting return to a country where persecution is likely); the prohibition of discrimination; the humanitarian nature of refugee issues, which should not incite international tensions; the expectation of inter-state cooperation; the exemption of refugees from penalties for illegal entry; and a framework for limited expulsion in cases of national security. Importantly, refugees must also respect the laws and public order of their host country, as articulated in Article 2.[70]

The Convention specifies different standards for the allocation of refugee rights. Three levels of treatment are recognised: national treatment (equal to nationals of the host state), most-favoured-nation treatment (equal to nationals of the most favourably treated foreign state), and treatment not less favourable than that accorded to other aliens in similar circumstances. Under these provisions, refugees enjoy rights to freedom of religion, property, legal access to courts, basic education, social security, and certain employment benefits. Other rights – such as freedom of association, the right to work, and access to higher education and housing – are similarly guaranteed, often contingent on residence status and integration level. Importantly, the Convention prohibits reservations to key protections, such as non-refoulement, anti-discrimination, and access to courts, thereby ensuring a universal baseline of rights.[71]

The institutional framework underpinning refugee protection is spearheaded by the UN High Commissioner for Refugees (UNHCR). Under Article 8 of its Statute, the UNHCR is mandated to promote the adoption and effective implementation of refugee conventions, negotiate special agreements to enhance refugee welfare, assist in voluntary repatriation or integration, and liaise with both state and non-state actors to ensure cohesive, coordinated action. This includes facilitating refugee admission, securing necessary goods for resettlement, collecting and analysing data from governments, and harmonising the efforts of public and private organisations in the refugee field.

The international refugee protection system continues to evolve, adapting to new challenges posed by conflict, displacement, and changing migration patterns. However, its foundational principles – human dignity, non-discrimination, solidarity, and protection from persecution – remain as critical as ever. While contemporary political realities sometimes strain the system's capacity, the legal and normative frameworks that have been built since the mid-20th century provide a solid base upon which further efforts toward fairness, safety, and shared responsibility can be pursued.

70 Feller, 2001, pp. 131–132.
71 Weis, 1982, p. 29.

6.2. The Protection of Refugees and Asylum Seekers under the European Convention on Human Rights

The European Convention on Human Rights (ECHR) does not contain specific provisions dedicated solely to refugees or asylum seekers. Nevertheless, through its substantive articles, general principles, and case law of the European Court of Human Rights (ECtHR), it provides a robust framework for the protection of individuals seeking international protection. These protections arise primarily through the interpretation and application of key rights, including the right to life (Article 2), prohibition of torture and inhuman or degrading treatment (Article 3), the right to respect for private and family life (Article 8), the right to a fair trial (Article 6), and the right to an effective remedy (Article 13). Moreover, the anti-discrimination provision under Article 14 plays a crucial role in reinforcing these protections.

A central pillar of the ECHR's protection for refugees is Article 3, which prohibits torture and inhuman or degrading treatment or punishment. This article has become especially significant in cases concerning expulsion, deportation, or extradition. The ECtHR has developed the doctrine of non-refoulement under Article 3, establishing that a state cannot remove an individual to a country where they would face a real risk of torture or inhuman treatment. This form of protection – sometimes called "ricochet protection" – extends the Convention's scope to situations outside the territory of the state concerned, based on the consequences of an expulsion.[72]

The vulnerability of asylum seekers and refugees has become a decisive factor in the ECtHR's jurisprudence. The Court has consistently held that such individuals form a vulnerable group due to displacement, lack of state protection, and exposure to trauma. This concept was clearly articulated in *M.S.S. v. Belgium and Greece*, where the applicant, an Afghan asylum seeker, suffered degrading conditions in Greece after being returned there under the Dublin Regulation. The Court recognised that his vulnerability stemmed both from his personal history and from the systemic deficiencies in the Greek asylum system, holding both states responsible for violating Article 3.[73]

The ECtHR has also addressed the living conditions and procedural guarantees required for asylum seekers, emphasising that poor detention conditions, lack of medical care, or indefinite delays in asylum proceedings may breach Article 3. This line of case law includes cases such as *Tarakhel v. Switzerland*, where the Court found that returning a family with children to Italy without individual guarantees of appropriate care would violate Article 3. Here, the Court explicitly recognised the special vulnerability of children, stressing the need for heightened protection and individualised assessments, especially in family reunification and relocation cases.[74]

Article 8 of the ECHR, which guarantees the right to respect for private and family life, has been progressively interpreted to reinforce the rights of migrants

72 See Aleksandra Syrt's chapter.

73 Case of *M.S.S. v. Belgium and Greece*, (Application No. 30696/09), Judgment, Strasbourg, 21 January 2011.

74 Case of *Tarakhel v. Switzerland*, (Application No. 29217/12), Judgment, Strasbourg, 4 November 2014.

and refugees, particularly in the context of family reunification. Initially, the ECtHR applied a restrictive "elsewhere test", asking whether family life could be maintained outside the host country. However, modern jurisprudence has shifted toward prioritising the best interests of the child and recognising the deep integration of applicants in the host society.[75]

In landmark cases such as *Jeunesse v. the Netherlands* and *M.A. v. Denmark*, the Court found violations of Article 8 where host states failed to adequately balance immigration control with the applicants' family life. In both cases, the Court criticised the lack of individualised assessments and disproportionate interference with the applicants' family life. The *M.A.* ruling, in particular, challenged Denmark's mandatory three-year waiting period for family reunification, holding that the rule disproportionately impacted the applicant's right to family life without sufficient justification.[76]

Article 2, which protects the right to life, imposes both negative and positive obligations on states. It requires that any use of force be necessary, proportionate, and lawful. In the refugee context, this provision comes into play particularly when state actions – or failures – result in endangering life, such as excessive use of force during detention or border control, or the failure to rescue individuals in peril.[77]

The ECHR also enshrines procedural guarantees that are vital for refugees and asylum seekers. Article 6 guarantees a fair trial, while Article 13 ensures access to an effective remedy. These provisions mandate that asylum seekers have access to fair procedures to challenge deportation or detention, and that these remedies are available in practice, not just in law. They reinforce the idea that rights must be enforceable, particularly in high-stakes situations such as expulsion or extradition.

Article 14, the non-discrimination clause, further strengthens the ECHR framework. It ensures that all rights under the Convention are enjoyed without discrimination based on race, religion, nationality, or other status. Although the ECHR does not explicitly mention refugees, Article 14 allows the Court to examine whether refugees or asylum seekers are being unfairly treated in comparison with others, particularly with regard to access to asylum procedures, education, healthcare, or housing.

In cases such as *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, the ECtHR found Belgium in violation of Article 3 for detaining a five-year-old Congolese child alone in an adult detention centre while attempting to reunite with her mother. This and other cases underscore the importance of tailored protection for unaccompanied minors, highlighting the need for legislative safeguards and state vigilance.[78]

75 Case of *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, (Application No. 9214/80; 9473/81; 9474/81), Judgment, Strasbourg, 28 May 1985.
76 Case of *Jeunesse v. the Netherlands*, (Application No. 12738/10), Judgment, Strasbourg, 3 October 2014. Case of *M.A. v. Denmark*, (Application No. 6697/18), Judgment, Strasbourg, 9 July 2021.
77 Case of *Mocanu v. Romania*, (Applications Nos. 10865/09, 45886/07 and 32431/08), Judgment, Strasbourg, 17 September 2014.
78 Case of *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, (Application No. 13178/03), Judgment, Strasbourg, 12 October 2006.

Through these evolving interpretations, the ECtHR has significantly influenced the development of refugee law within Europe. Its rulings have had tangible effects, such as contributing to reforms of the Dublin Regulation – from Dublin II to Dublin III – which now places greater emphasis on the "sovereignty clause" allowing Member States to retain responsibility for asylum claims in exceptional circumstances, particularly where systemic deficiencies exist in the asylum systems of other states.[79]

In conclusion, while the ECHR does not contain a dedicated refugee rights regime, its provisions, interpreted dynamically by the ECtHR, have developed into a comprehensive protection mechanism for refugees, asylum seekers, and other vulnerable migrants. The Court's recognition of vulnerability, insistence on procedural fairness, and promotion of individualised assessments in expulsion and reunification cases all contribute to a broader, more humane asylum framework in Europe. Through this jurisprudence, the ECHR has established itself as a powerful legal instrument in safeguarding the dignity and rights of those seeking refuge.

6.3. Toward a Unified System: The Evolution and Challenges of the Common European Asylum System

For decades, the European Union (EU) and its Member States have positioned themselves as a sanctuary for individuals fleeing persecution and conflict. This commitment to human rights and dignity led, in 1999, to the formal establishment of the Common European Asylum System (CEAS). This system aims to harmonise the rules governing asylum procedures across the EU, ensuring equal treatment of asylum seekers and a uniform level of rights protection throughout all Member States. However, this harmonisation is not without challenges, as it lies at the sensitive intersection of individual freedoms, national sovereignty, and the collective interests of the EU.[80]

At the heart of the CEAS lies the 1951 Geneva Convention Relating to the Status of Refugees, which forms the foundation for international protection. While the CEAS lacks a singular legal definition, it is articulated through a combination of EU directives, regulations, and political instruments. These texts provide minimum standards for fair and efficient asylum procedures, define the criteria for granting refugee and subsidiary protection statuses, and establish procedures for identifying the Member State responsible for examining an asylum application. With the 2024 Pact on Migration and Asylum, the CEAS has entered a new phase, introducing a comprehensive legislative framework that will take full effect by June 2026.[81]

Historically, asylum and migration policies were tightly controlled by individual Member States. During the 1980s, increased movement across European borders and rising numbers of asylum seekers led to concerns over so-called "asylum shopping"

79 Case of *Tarakhel v. Switzerland*, (Application No. 29217/12), Judgment, Strasbourg, 4 November 2014.

80 European Commission, 2025.

81 See Kateřina Frumarová's chapter.

and "refugees in orbit." These phenomena strained national systems and prompted Member States to adopt more restrictive policies, creating competition over who could be the most stringent. This dynamic highlighted the urgent need for a collective European response, ultimately giving rise to early coordination efforts such as the Dublin Convention (1990), which established that the first Member State an asylum seeker enters is typically responsible for processing their application.[82]

Further integration came with the Maastricht Treaty in 1992, which included justice and home affairs under the EU's third pillar, promoting intergovernmental cooperation. However, this pillar offered limited progress, as decisions remained largely non-binding. The Tampere European Council in 1999 marked a turning point, establishing the CEAS based on full respect for the Geneva Convention and the 1967 New York Protocol. Over the years, this system evolved, underpinned by key texts such as the Dublin III Regulation, the Qualification Directive, the Procedural Directive, the Reception Directive, and the Eurodac Regulation, which enables fingerprint data comparison.[83]

Despite this legal architecture, the CEAS has faced persistent criticism and operational challenges. Chief among them is the pressure placed on border countries such as Greece and Italy due to the "first-entry rule", which requires these states to process the majority of asylum claims. Facilities are often inadequate, information provision is inconsistent, and standards for detention and family reunification vary widely. Judicial remedies exist, but legal definitions and deadlines differ across states, complicating enforcement. The EU's attempt to update the Dublin system through a Dublin IV proposal failed, illustrating the political difficulty of reaching consensus on asylum reform.[84]

In response to these shortcomings, the 2020 Pact on Migration and Asylum was proposed, setting out a series of legislative and policy tools designed to manage migration more effectively, ensure solidarity among Member States, and enhance the resilience of the asylum system. This pact includes instruments such as the Asylum and Migration Management Regulation, Return Border Procedure Regulation, Screening Regulation, and the Union Resettlement and Humanitarian Admission Framework, among others. It introduces fast-track procedures and strengthens support mechanisms for border countries while seeking to balance efficiency with rights protection.

A central legal foundation for asylum policy in the EU is Article 78 TFEU, which mandates the development of a common asylum policy based on the Geneva Convention and the principle of non-refoulement – the prohibition against returning individuals to countries where they may face persecution, torture, or death. This is echoed in Article 18 of the EU Charter of Fundamental Rights, which guarantees the right to asylum, and Article 19(2), which bars expulsion to countries where inhuman

82 Marinho and Heinonen, 1998, p. 1.
83 European Parliament, 1999.
84 European Commission, 2017.

treatment is a risk. These provisions, alongside Articles 2 and 3 of the ECHR, form a robust legal shield for asylum seekers and refugees.

The CEAS also recognises subsidiary protection, which extends to individuals who do not meet the strict criteria of refugee status but would face serious harm – such as torture, execution, or indiscriminate violence – if returned to their home country. The legal criteria for both refugee and subsidiary protection are enshrined in the Qualification Regulation, which builds upon earlier directives by further defining the grounds for persecution and serious harm.

Case law from the ECtHR and the Court of Justice of the European Union (CJEU) has played a pivotal role in shaping the application of the CEAS. Through landmark decisions such as *Chahal v. UK*, the ECtHR has firmly established the European doctrine of non-refoulement, which forbids returning individuals to states where they may suffer inhuman treatment, regardless of whether they pose a threat to the host state. This doctrine, though narrower in scope than the Geneva Convention, is considered absolute within European human rights jurisprudence.[85]

Closely related to this is the concept of the "safe country", which allows EU states to return asylum seekers to countries deemed capable of offering effective protection. This applies both to safe countries of origin and safe third countries. However, the use of this concept must respect the principle of non-refoulement and cannot leave applicants in legal limbo or bouncing between states without proper evaluation. EU law ensures that at least one Member State is responsible for examining every international protection application, preventing the phenomenon of "refugees in orbit."[86]

In conclusion, the Common European Asylum System represents an ambitious and evolving project to balance human rights obligations with the realities of migration management. Despite its complexities and occasional failures, the CEAS remains a crucial mechanism for protecting those in need while fostering greater cooperation and solidarity among EU Member States. With the 2024 Pact on Migration and Asylum and its implementation set for 2026, the EU stands at a critical juncture, poised to redefine how it delivers protection in an increasingly interconnected and challenging world.

7. Women

7.1. Advancing Gender Equity Through International Law and Institutions

Gender equity, at its core, implies the equal visibility, empowerment, and responsibility of women and men in all facets of life – public and private. It ensures that both genders have equal access to resources and decision-making and that these are distributed fairly. The pursuit of gender equity is not only a fundamental human right but also essential for sustainable development and social progress. In modern societies,

85 Case of *Chahal v. UK*, (Application No. 22414/93), Judgement, Strasbourg, 15 November 2016.
86 See Lambert, 2017.

gender equity has become central to the protection of human rights, driven by the growing recognition that inclusive development cannot be achieved without it.

Over the decades, the United Nations has played a crucial role in advancing gender equity globally. Key milestones include the Beijing Declaration and Platform for Action and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). These instruments reflect a collective commitment to eradicate gender-based discrimination and promote equality in law and practice. The United Nations (UN) Charter, signed in 1945, already acknowledged the equal rights of men and women, setting a foundational precedent for international gender justice. Similarly, the Universal Declaration of Human Rights (UDHR), adopted in 1948, guarantees rights and freedoms to all without discrimination based on sex, race, nationality, or other status.[87]

The evolution of gender equity within international law continued with the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), both adopted in 1966. These covenants enshrined the obligation of states to uphold rights without gender discrimination. Notably, the ICCPR emphasises the equal enjoyment of civil and political rights by men and women, protection from torture, and equality before the law. The ICESCR, on the other hand, enforces equal rights to work, fair wages, and favourable working conditions, specifically mentioning the need for equal pay for equal work without gender-based discrimination.

CEDAW, adopted in 1979, remains one of the most comprehensive international treaties dedicated solely to women's rights. It targets discrimination in "any other field" and requires states to ensure equality in education, employment, family relations, and more. However, the enforcement of CEDAW faces challenges, particularly in the private sphere, where states often make reservations to critical provisions such as Article 16, which concerns equality in marriage and family life. The Optional Protocol to CEDAW strengthens accountability by allowing individuals to bring complaints before the CEDAW Committee when their rights have been violated.

Efforts to eliminate violence against women have also been prioritised within the UN framework. The Convention Against Torture (1984), though not specific to women, prohibits acts of severe physical or mental suffering when motivated by discrimination of any kind. The Convention on the Rights of the Child (1989) obliges states to ensure proper care for mothers, reflecting concern for women in their reproductive roles. Further, the Declaration on the Elimination of Violence against Women (1993) affirms women's right to live free from violence, including within the home. Since 1993, UN resolutions have addressed gender-based violence in various forms, such as trafficking, female genital mutilation, domestic abuse, and wartime sexual violence.

In 2010, the establishment of UN Women significantly bolstered the institutional capacity of the UN to promote gender equality. This entity brought together four existing agencies – the Division for the Advancement of Women, INSTRAW, OSAGI, and

87 See Olga Dorul's chapter.

UNIFEM – into a single, more powerful body for advocacy and support. UN Women plays a leading role in supporting governments and civil society to implement gender-sensitive policies and has contributed to shaping global development frameworks.[88]

In 2015, gender equity was embedded into the 2030 Agenda for Sustainable Development, specifically through Sustainable Development Goal 5 (SDG 5): Achieve gender equality and empower all women and girls. SDG 5 addresses issues such as ending all forms of discrimination and violence, eliminating harmful practices, ensuring participation and leadership, and securing reproductive rights.

Despite this progress, legal challenges persist. While there are no cases solely about women's status brought before the International Court of Justice, gender-based violations have featured in state disputes. For example, in *Bosnia and Herzegovina v. Serbia and Montenegro*, the court examined allegations of genocide, including systemic sexual violence against women. Although Serbia was not found directly responsible for genocide, the court concluded that it failed in its duty to prevent such atrocities.[89]

Several specialised UN agencies also promote gender equity. The World Health Organization (WHO) applies a gender-focused approach to healthcare, addressing issues such as female genital mutilation, maternal mortality, and adolescent pregnancy. Its work reflects the broader understanding that health disparities are often rooted in gender discrimination. Similarly, the International Labour Organization (ILO) focuses on workplace equality. Its conventions, such as the Violence and Harassment Convention (No. 190) and the Maternity Protection Convention (No. 183), are aimed at promoting safe, fair, and inclusive working environments for women.

Monitoring and enforcement remain critical to the success of international gender equity frameworks. The CEDAW Committee, composed of 23 experts from diverse legal traditions, oversees the implementation of the Convention. It reviews periodic reports from states and can issue General Recommendations to clarify legal obligations. It also handles individual complaints. A notable case is that of Ms. A.S., a Hungarian Roma woman who was sterilised without informed consent. The Committee found Hungary in violation of CEDAW, citing the failure to provide appropriate reproductive information and the breach of her cultural and religious rights.[90] The Committee also evaluates social security policies, ensuring that any restrictions placed on women's rights are necessary, proportionate, and transparent. It recognises that states have a margin of appreciation but insists on adherence to international norms, especially regarding non-discrimination and equal access to benefits such as pensions and maternity protections.

In conclusion, the pursuit of gender equity through international law has been both comprehensive and evolving. Grounded in foundational documents like the UN Charter and UDHR, reinforced by legally binding treaties such as CEDAW, ICCPR, and

88 *UNWOMEN*, no date.
89 ICJ, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment of 11 July 1996.
90 United Nations, 2004.

ICESCR, and supported by institutions like UN Women, the WHO, and the ILO, the global movement toward gender equality continues to expand. Although challenges remain in enforcement and cultural resistance, the legal and institutional framework established by the UN and its partners has laid a firm foundation for advancing the rights and dignity of women and girls worldwide.

7.2. The Evolution of Anti-Discrimination Protections under the European Convention on Human Rights and Its Protocols

Within the framework developed by the Council of Europe, several key conventions have been adopted to serve specific objectives, among which the protection of human rights occupies a central place. One of the most significant legal instruments in this context is the European Convention on Human Rights and Fundamental Freedoms (ECHR), along with its additional protocols. These instruments form the cornerstone of the Council's commitment to uphold fundamental rights and liberties across its member states, particularly in the area of non-discrimination. The principle of equality is foundational to the realisation and enjoyment of human rights. As such, the ECHR, the Council of Europe's primary human rights treaty, includes explicit provisions aimed at prohibiting discrimination. Article 14 of the Convention stipulates that the enjoyment of the rights and freedoms set forth in the Convention must be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. This clause ensures that individuals placed in analogous situations are treated equally with respect to their Convention rights.[91]

Although Article 14 does not exist independently – it must be invoked in conjunction with another substantive right under the Convention – the European Court of Human Rights (ECtHR) has clarified that it can still play an autonomous role in strengthening the protection of individuals against discriminatory treatment. In the landmark case of *Marckx v. Belgium*, the Court acknowledged that while Article 14 may not provide a stand-alone guarantee, it has considerable utility in supplementing the Convention's core provisions, thereby reinforcing the equality principle. The Court emphasised that it is not necessary for a violation of a substantive right to occur in order to establish a violation of Article 14. In paragraph 32 of the judgment, the Court noted that the inclusion of the term "or other status" within Article 14 implies a non-exhaustive list of protected characteristics, thus allowing for the evolution of anti-discrimination jurisprudence to encompass emerging grounds of inequality.[92]

The scope of anti-discrimination protection was further broadened by the adoption of Protocol No. 12 to the Convention. The preamble of this protocol underlines the paramount importance of the principle of equality and the necessity of taking all appropriate steps to ensure its realisation in all aspects of public and private life. Article 1 of Protocol No. 12 significantly extends the reach of the non-discrimination

91 See Dženeta Omerdić's chapter.
92 Case of *Marckx v. Belgium*, (Application No. 6833/74), Judgment, Strasbourg, 13 June 1979.

guarantee. Paragraph 1 provides that the enjoyment of any right set forth by law shall be secured without discrimination, while paragraph 2 prohibits discrimination by public authorities in all their actions, regardless of the existence of a specific Convention right.

The Explanatory Report to Protocol No. 12 elaborates on the intended breadth of its application. It identifies various contexts in which discriminatory treatment may arise: in the enjoyment of rights conferred by national law; where a public authority is under a clear legal obligation; where discretionary powers are exercised (such as in granting subsidies); and through any act or omission by a public authority – for instance, police conduct during public disturbances. This broad interpretation ensures comprehensive protection against both direct and indirect forms of discrimination.

The first case in which the ECtHR found a violation of Article 1 of Protocol No. 12 was *Sejdić and Finci v. Bosnia and Herzegovina*. The applicants, members of the Roma and Jewish communities respectively, were barred from standing for election to the Presidency and the House of Peoples on account of their ethnic origins. The Court held that this amounted to unjustified discrimination. In a subsequent case, *Zornić v. Bosnia and Herzegovina*, the Court found that the state's failure to implement the *Sejdić and Finci* judgment constituted a continuing violation, highlighting the obligation of member states to not only respect but also give effect to the Court's judgments.[93]

An important feature of the ECHR is that, unlike some international human rights instruments such as the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), it provides symmetrical protection. This means that the protection against discrimination applies equally to all persons, irrespective of sex or gender. As a result, men have also invoked the ECHR in cases of alleged gender discrimination. A notable example is the case of *Van Raalte v. the Netherlands*, where the Court examined a Dutch tax rule that imposed a levy on childless men over the age of 45, while exempting women in the same situation. The Dutch government argued that biological differences and prevailing social attitudes justified this distinction. However, the Court rejected these arguments, noting that the biological reasoning was not universally applicable and that the purported emotional burden could equally apply to childless men, women, or couples. The decision emphasised the need for objective and reasonable justifications in any differential treatment.[94]

The case of *Kontrová v. Slovakia* further illustrates the practical implications of the Convention's non-discrimination and right-to-life guarantees. In this tragic case, the applicant reported repeated abuse by her husband and filed a criminal complaint supported by medical evidence. Despite these warnings and multiple emergency calls, the police failed to act decisively. Just days after these reports, her husband shot and

93 Case of *Sejdić and Finci v. Bosnia and Herzegovina*, (Applications Nos. 27996/06 and 34836/06), Judgment Strasbourg, 22 December 2009. Case of *Zornić v. Bosnia and Herzegovina*, (Application No. 3681/06), Judgment, Strasbourg, 15 July 2014.

94 Case of *Van Raalte v. the Netherlands*, (Application No. 20060/92), Judgment, Strasbourg, 21 February 1997.

killed their two children before taking his own life. The ECtHR found that the police had failed to fulfil their statutory duty to protect life and health, as enshrined in both the Police Corps Act of 1993 and relevant provisions of the Criminal Procedure Code. The Court held that the authorities' inaction, particularly in the face of a known and escalating threat, constituted a violation of Article 2 of the ECHR, which guarantees the right to life. The case also demonstrated institutional failures, as one police officer actively assisted the applicant and her husband in downgrading the original complaint, thereby preventing further legal intervention.[95]

These cases collectively underscore the dynamic and evolving nature of the ECHR system in responding to complex issues of discrimination and state responsibility. They reveal the critical role of the ECtHR in interpreting the Convention in a way that reflects contemporary understandings of equality, dignity, and justice. The development of Article 14 jurisprudence, complemented by Protocol No. 12, has significantly expanded the scope of protection afforded to individuals, moving from a narrowly defined list of protected characteristics toward a more inclusive and flexible model of anti-discrimination law.

In conclusion, the Council of Europe, through the ECHR and its protocols, has laid a robust legal foundation for combating discrimination and upholding the principle of equality. The jurisprudence of the ECtHR plays a vital role in ensuring that these principles are effectively implemented, holding states accountable for both their actions and omissions. Through its evolving case law, the Court continues to refine the contours of equality law in Europe, contributing to the progressive realisation of human rights across the continent.

7.3. Gender Equality and the European Union: Legal Foundations, Policy Developments, and Remaining Challenges

Gender equality is a cornerstone of the European Union's broader fight against discrimination. While anti-discrimination provisions target unequal treatment on multiple grounds, the principle of gender equality places a specific emphasis on addressing disparities between women and men. These two concepts are deeply interconnected and mutually reinforcing. As set out in Article 3 of the Treaty on European Union (TEU), the EU is not only tasked with preventing discrimination but is also under a positive obligation to promote equality between women and men across all of its activities.[96]

This commitment is reinforced by the Treaty on the Functioning of the European Union (TFEU), notably through Article 10, which mandates the mainstreaming of anti-discrimination objectives across EU policies, and Article 8, which explicitly requires gender equality to be integrated into all EU actions. Together, these provisions

95 Fourth Section Decision as to the Admissibility of Application No. 7510/04 By Dana Kontrová Against Slovakia.

96 See Petra Weingerl and Lina Atelj's chapter.

establish a strong legal basis for both the elimination of discrimination and the proactive promotion of gender equality.

Gender Mainstreaming and Positive Action

The principle of gender mainstreaming – enshrined in Article 8 TFEU – requires the incorporation of a gender perspective into every stage of policy and law-making. It is both a legal principle and a policy strategy aimed at addressing the structural and institutional causes of inequality. As a soft-law tool, gender mainstreaming is not subject to judicial review by the European Court of Justice (ECJ), but its flexibility allows it to target deeply rooted biases that often go unchecked within formal institutions. In parallel, the EU promotes positive action measures, particularly in the field of employment, to rectify historical disadvantages faced by women. Grounded in Article 157(4) TFEU, positive action allows for targeted interventions to ensure effective equality. Beginning in the 1980s, the European Commission launched a series of gender equality policy programs to advance this agenda, often in the absence of strong political support from the Council. These soft-law instruments, though lacking judicial enforceability and democratic scrutiny, have played an important role in shaping future hard-law initiatives. Both gender mainstreaming and positive action form the foundation of the EU's "gender equality acquis" – a body of hard and soft law that collectively aims to ensure the practical implementation of the Union's equality objectives.[97]

From Equal Pay to Equal Treatment: Laying the Groundwork

A pivotal moment in the development of EU gender equality law came with the ECJ's decision in *Defrenne v. Sabena* (Case C-43/75), which confirmed the direct effect of the treaty provision on equal pay (Article 119 EEC, now Article 157 TFEU). The judgment established that individuals could invoke the principle of equal pay before national courts, even in the absence of implementing legislation, thereby reinforcing the principle's practical enforceability.

Following this case, the EU adopted several directives aimed at clarifying and expanding the legal framework for gender equality. These included:

- Directive 75/117/EEC on equal pay,
- Directive 76/207/EEC on equal treatment in employment,
- Directive 79/7/EEC on equal treatment in social security,
- Directive 86/378/EEC on occupational pension schemes, and
- Directive 86/613/EEC on the self-employed.

In *Hofmann,* the ECJ ruled that certain biological distinctions – particularly in relation to pregnancy and childbirth – could justify protective measures for women. This ruling acknowledged the specific disadvantages women may face in maintaining

97 Stratigaki, 2005, pp. 165–186.

employment due to maternity, without undermining the broader principle of equal treatment.[98]

Directive 92/85/EEC (the Pregnant Workers Directive), adopted within the broader framework of workplace health and safety, extended protection to pregnant workers, new mothers, and breastfeeding women. The directive prohibits dismissal during maternity leave, guarantees a minimum of 14 weeks' leave, and ensures financial support during this period. While important, its focus remains on a singular social risk, highlighting the need for a more holistic approach that addresses broader gender inequalities in the workplace.

Efforts to promote a better work-life balance culminated in the adoption of the Parental Leave Directive (96/34/EC), later replaced by Directive 2010/18/EU. These measures aimed to support the equal sharing of childcare responsibilities, granting each parent an individual, non-transferable right to parental leave.

Procedural Justice: Burden of Proof and Effective Remedies

Over time, the ECJ has developed important procedural safeguards to ensure the effectiveness of gender equality law. In the landmark *Danfoss* case, the Court held that where a company's pay structure appeared discriminatory, the burden of proof rested with the employer to demonstrate that any differences were based on objective, non-gender-related factors. This reversal of the burden of proof became a cornerstone of enforcement and was subsequently codified in the Burden of Proof Directive (97/80/EC). While these procedural guarantees are essential, they are not sufficient to ensure substantive equality. Legal rules alone cannot eliminate structural inequality; rather, proactive and values-based measures are needed to address the social, cultural, and economic dynamics that perpetuate gender disparities.[99]

From Gender to General Non-Discrimination: Broadening the Framework

Concepts originally developed in the field of gender equality, such as indirect discrimination, were later extended to form the basis of a broader EU non-discrimination framework. The adoption of directives such as:

- Directive 2002/73/EC (amending the Equal Treatment Directive),
- Framework Directive 2000/78/EC on employment equality, and
- Directive 2000/43/EC on racial equality,

illustrate a shift towards a more inclusive and general approach. These instruments reflect the increasing constitutionalisation of equality within the EU legal order, linking anti-discrimination efforts with broader human rights principles.

98 Case 184/83 – *Ulrich Hofmann v Barmer Ersatzkasse*. Judgment of the Court of 12 July 1984.
99 Case C-94/10 – *Danfoss A/S, Sauer-Danfoss ApS v Skatteministeriet*. Judgment of the Court (First Chamber) of 20 October 2011.

Tackling the Gender Pay Gap: Transparency and Intersectionality

The persistent gender pay gap remains one of the most visible forms of gender inequality in the EU. To address this, the Pay Transparency Directive (2023/970/EU) introduces a range of obligations aimed at increasing wage transparency and employer accountability. Among its key provisions are:

- Mandatory reporting on the gender pay gap,
- Employee rights to information on pay levels and pay structures,
- Joint pay assessments in cases of significant gender disparities.

For the first time, this directive also introduces a legal definition of intersectional discrimination. Article 3(2)(e) describes it as discrimination based on a combination of sex and other protected characteristics (as defined in Directives 2000/78/EC and 2000/43/EC). Unlike multiple discrimination, which views different forms of discrimination as cumulative, intersectionality recognises the synergistic effects of overlapping identities, particularly for women belonging to marginalised groups.

The directive also reaffirms that equal pay applies to all forms of remuneration – whether fixed or variable, in cash or in kind – based on a gender-neutral assessment of work of equal value.

The Gender Care Gap: Valuing Unpaid Labor

Closely tied to the gender pay gap is the gender care gap, which stems from the disproportionate share of unpaid care work undertaken by women. This disparity limits women's full participation in the labour market and reinforces occupational segregation.

Feminist economists have long challenged the neoclassical division between "productive" and "unproductive" labour, noting that care work – whether for children, the elderly, or within the household – is a vital form of social reproduction. Nevertheless, existing legal frameworks have often reinforced traditional roles, as seen in maternity protection schemes that fail to incentivise shared caregiving responsibilities.

The Work-Life Balance Directive (2019/1158/EU) aims to shift this paradigm. By introducing non-transferable paternity leave and flexible working rights for both parents, it encourages greater male participation in caregiving and challenges entrenched gender roles. Key provisions include:

At least ten days of paid paternity leave,
Individual, non-transferable parental leave rights,
Five days of unpaid carer's leave annually,
Rights to flexible work arrangements for parents and carers.

This directive marks a significant step toward shared responsibility in caregiving and enhances women's labour market participation by addressing structural barriers to equality.

Bridging the Gender Participation Gap: Women in Decision-Making

Despite progress, women remain underrepresented in leadership positions across both public and private sectors. The Women on Boards Directive (2022/2381/EU) seeks to address this imbalance by increasing transparency in recruitment processes and encouraging gender-balanced representation on company boards.

The persistent glass ceiling – a metaphor for the invisible barriers that prevent women from reaching top positions – is rooted in stereotypes, sectoral segregation, patriarchal work cultures, and limited access to professional networks. This directive aims to create systemic change by addressing these structural obstacles and promoting merit-based gender diversity in decision-making roles.

Gender-Based Violence and the Limits of EU Criminal Law

The EU's competence in criminal law is limited, yet the urgency of addressing gender-based violence has driven legislative innovation. With the EU's accession to the Istanbul Convention in 2023, a significant step was taken in aligning EU law with international standards.

The Violence Against Women Directive (2024/1385/EU) addresses specific crimes such as rape, female genital mutilation, cyberstalking, and the non-consensual distribution of intimate images. It also includes provisions for victim support, protection measures, and improved access to justice. These advances build upon the Victims' Rights Directive (2012/29/EU) but go further in addressing the needs of survivors through individualised protection assessments and capacity-building for first responders.

Nevertheless, political resistance from some Member States, particularly regarding the definition of gender, continues to limit the scope of EU action in this area.

The Gender Health Gap and the Right to Bodily Autonomy

The gender health gap reflects both physiological differences and structural inequalities in access to healthcare. While the EU has only supporting competence in the area of public health (Article 168 TFEU), both the Charter of Fundamental Rights and the European Pillar of Social Rights affirm the right to high-quality, affordable healthcare.

Barriers to sexual and reproductive health care disproportionately affect women, particularly those from marginalised communities. The recognition of bodily autonomy as central to human dignity underscores the importance of ensuring women's ability to make informed decisions about their health and reproductive lives. This right is foundational not only to gender equality but to the broader project of human rights within the EU.

Over the past decades, the European Union has built a sophisticated legal and policy framework to promote gender equality. From the enforcement of equal pay and protection against discrimination to measures supporting work-life balance and gender-based violence prevention, the EU's efforts reflect a multidimensional

commitment to equality. Nevertheless, structural barriers remain, and formal legal guarantees must be accompanied by substantive change.

As the EU continues to address the gender pay gap, care responsibilities, underrepresentation in decision-making, and violence against women, a more inclusive, intersectional, and rights-based approach is necessary. The road to full gender equality requires not only legal innovation but also sustained political will, cultural transformation, and the active engagement of all actors in society.

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