



## Gender Violence in the European Union Member States: Evolving Protections for Migrant Victims

**In 2012, the United Nations issued a stinging** decision certain to attract the attention of the Bulgarian authorities. In the case of *Jallow v. Bulgaria*, brought before the United Nations Convention on the Elimination of Discrimination Against Women<sup>1</sup> (CEDAW) Committee,<sup>2</sup> a Gambian migrant alleged that she and her daughter had been subject to physical, emotional, and sexual domestic violence in Bulgaria in violation of their human rights.<sup>3</sup> She claimed that the state had failed to provide them support as required under CEDAW in breach of its international responsibilities.<sup>4</sup> Since Bulgaria is a party to not only CEDAW but its Optional Protocol, which provides an avenue for legal redress before the CEDAW Committee for alleged CEDAW violations in signatory countries, she argued that they were entitled to have their complaints considered.<sup>5</sup>

In its ruling, the CEDAW Committee concluded that the victims had been subject to domestic violence and that Jallow's spouse had exploited her migration status as a tool to inflict further abuse.<sup>6</sup> It further held that Bulgaria had, in fact, breached its international responsibilities under CEDAW, permitting discriminatory treatment of women and failing to both recognize and protect against domestic gender-based violence by providing inadequate protection and proper sanctioning of the perpetrator.<sup>7</sup> The CEDAW Committee pointed to a variety of state system deficiencies, including language barriers, as severely limiting Jallow's access to institutions charged with addressing gender-based violence and found that the victims had suffered damage given their vulnerable situation since the state had not met its CEDAW obligations.<sup>8</sup> It concluded that the state's programmatic protections for migrants were deficient.<sup>9</sup>

This ruling is noteworthy as it not only represents an affirmation by the United Nations that migrant domestic violence victims suffer disproportionately due to language and cultural barriers, lack of knowledge about domestic legal systems, and fear that they will be removed if they seek out help, but it identifies a signatory state's specific failure to act in accordance with its CEDAW obligations.<sup>10</sup> Furthermore, the ruling is significant in that the CEDAW Committee urges Bulgaria to compensate the victims for its CEDAW

violations.<sup>11</sup> Thus, this case makes clear that in signatory states where domestic violence appears to be tacitly condoned, governments may be subject to close programmatic scrutiny over their actions and their investigation into claimed violations. In addition, states risk financial liability since they are obligated to compensate victims for the harm that they suffer as a result of CEDAW violations.

The implications for other European Union member (EU-M) states is pronounced, as domestic violence is a worldwide phenomenon and, in Europe, statistics suggest that up to one quarter of women will experience domestic violence in their lifetime.<sup>12</sup> The *Jallow* case indicates that, through action or inaction, states that tacitly condone domestic violence, and that are also signatories to the CEDAW Optional Protocol, may increasingly find themselves subject to individual complaints that may involve financial liability.

Apart from their CEDAW obligations, EU-M states are subject to regional human rights responsibilities, as well. The past decade has witnessed a coordinated regional effort to strengthen EU-M state domestic systems to be more responsive to the needs of domestic violence victims, and thereby reduce incidents of domestic violence.<sup>13</sup> Thus, EU-M states are bound not only by their international CEDAW obligations, but by their regional treaty obligations that embrace this issue, as well.<sup>14</sup>

Yet, in spite of these international and regional obligations, United Nations and European Union leaders argue that success has been elusive and that migrant domestic violence victims are not afforded adequate protection.<sup>15</sup> They maintain that EU-M state domestic frameworks fall short in their service to domestic violence victims, especially as they relate to migrant victims.<sup>16</sup>

This article provides an introduction to the international and regional obligations that mandate EU-M state protections for migrant domestic violence victims, and speaks to the broader international dialogue about how to effectively meet the needs of this vulnerable migrant population. In light of *The Federal Lawyer's* forthcoming article "Domestic Violence and the Plight of the Unauthorized Migrant,"<sup>17</sup> which examines similar protections in

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the United States, this article will serve as a point of comparison. It identifies the specific international and regional sources of law that govern EU-M state obligations.<sup>18</sup> Acknowledging the uneven nature of success across EU-M states in serving this community adequately, this article provides a snapshot of four EU-M states to explore the chasm between *de jure* and *de facto* protections. This examination reveals EU-M states at different stages of compliance with their human rights obligations and considers what measures are in place to fulfill them and where they are found to be lacking.<sup>19</sup> Finally, it concludes that, as was revealed in the *Jallow* case, while an EU-M state may have instituted systems to meet the needs of this population, when the protections are not applied consistently, duties can be breached, resulting in harm to migrant victims and financial exposure to EU-M states.<sup>20</sup>

### International and Regional Sources of Law

CEDAW is the key United Nations human rights document addressing the global elimination of discrimination against women.<sup>21</sup> Pursuant to Articles 3 and 5, it enshrines the right of women to enjoy their human rights free of discrimination and enables the attainment of that right through the modification of social and cultural patterns.<sup>22</sup> Article 2 explicitly condemns discrimination against women in all its forms, and signatories to the treaty are required to undertake measures to end all forms of discrimination against women.<sup>23</sup> CEDAW mandates that the pace of policy change be pursued diligently, “by all appropriate means and without delay.”<sup>24</sup> This treaty envisions the development and/or modification of state constitutions and laws that further this goal and mandates the establishment of legal protections when necessary to ensure the rights of women.<sup>25</sup>

The CEDAW Committee has adopted the “Handbook for Domestic Violence Legislation,”<sup>26</sup> which provides guidance to states about the types of provisions that any domestic violence legal framework should include.<sup>27</sup> Its components range from proposing means of prevention and protection<sup>28</sup> to offering model structures for the investigation, prosecution, and sentencing of domestic violence offenders.<sup>29</sup> The handbook recommends a variety of important features, including the use of gender-sensitive language in domestic legislation to acknowledge the historical imbalance in power between men and women with respect to violence.<sup>30</sup> It recommends that domestic violence protections be applied and specialized support services be offered without regard to migration status.<sup>31</sup> It also recommends that migration relief, such as asylum<sup>32</sup> as embodied in the 1951 Refugee Convention,<sup>33</sup> and other forms of legal immigration status independent of the domestic violence perpetrator, be available.<sup>34</sup>

While all EU-M states are signatories to CEDAW and are encouraged to model their programs on the handbook, only 23 of the 28 are subject to the Optional Protocol, which offers a complaint review process.<sup>35</sup> Nevertheless, all EU-M states are responsible for their own acts, as well as for private acts if the state fails to act with due diligence to prevent violations of rights, and they are required to investigate and punish acts of violence and provide compensation for CEDAW violations.<sup>36</sup> Through acquiescence or indifference, inaction can imply *de facto* permission and, as we saw in the *Jallow* case, the CEDAW Committee has applied this principle to organs of a state that fail to provide protection from gender-based domestic violence.

Various regional obligations also influence EU-M state domestic violence legal frameworks. First, these commitments are inherent



in European Union membership, itself, as Article 2 of the Treaty on European Union mandates fundamental human rights protections and gender equality.<sup>37</sup> Principles of protection are embodied in the European Convention on Human Rights (ECHR),<sup>38</sup> which under Article 3 binds signatories to guarantee freedom from torture and inhuman treatment. In the case of *Opuz v. Turkey*,<sup>39</sup> the European Court of Human Rights<sup>40</sup> evaluated a claimed violation of the ECHR, although not in the migrant context, and in doing so discussed the interconnection between discrimination and violence against women holding that gender-based violence constitutes a form of discrimination because it affects women disproportionately.<sup>41</sup> It concluded that the conduct of the state violated three articles of the ECHR: Article 2, the right to life; Article 3, the prohibition of torture and inhuman treatment; and Article 14, the prohibition of discrimination.<sup>42</sup>

Second, a 2004 European Union directive<sup>43</sup> (Qualification Directive) mandates so-called subsidiary protection when there is reason to believe that the migrant victim would face a real risk

of suffering serious harm in her home country and who is unwilling to avail herself of protections in that country.<sup>44</sup> Article 15 of the Qualification Directive defines serious harm as death, torture, or inhuman or degrading treatment or punishment.<sup>45</sup> While it orders that the nature of the subsidiary protection be complementary and additional to the refugee protections, it left the exact nature of the protection to be defined by the individual states in accordance with international human rights obligations.<sup>46</sup>

Third, during the past decade, migrant domestic violence victim protections have been addressed directly by the Council of Europe (COE), and most recently in the formulation of a progressive regional agreement entitled the Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention).<sup>47</sup> The Istanbul Convention entered into force on Aug. 1, 2014, and portends a new set of specific obligations that provide har-

monized protections for migrant domestic violence victims, including immigration relief.<sup>48</sup> In 2002, the COE had ordered member states to grant immigrant women who have been or who are victims of domestic violence, an independent right to residence in the host country.<sup>49</sup> The language of this mandate requires that all COE states, which includes all EU-M states, must offer relief beyond asylum, including an independent right to residence.<sup>50</sup> The Istanbul Convention further advances the regional legal obligations directly related to domestic violence victims as it defines the minimum standards related to migration and asylum at Chapter VII.<sup>51</sup>

In sum, EU-M states are increasingly finding themselves in a legal environment that expects robust protections for migrant domestic violence victims, such as asylum and subsidiary protections, and when those protections are not afforded, states may find themselves in breach of their legal obligations.

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### Protections and Treaty Compliance—Four Case Studies

When evaluating migrant domestic violence protection systems in the EU-M states, it becomes apparent that they have a number of common features. They are all signatories to the Treaty of European Union,<sup>52</sup> the ECHR,<sup>53</sup> and the CEDAW.<sup>54</sup> Moreover, all EU-M states have adopted gender-neutral criminal and civil laws relating to domestic violence. Finally, they all have in place subsidiary relief for migrant victims that is both confidential and independent of the domestic violence perpetrator.<sup>56</sup>

However, as mentioned earlier, only 23 EU-M states are subject to the jurisdiction of the CEDAW Optional Protocol.<sup>57</sup> Moreover, while all of the EU-M states are members of the COE,<sup>58</sup> only five have ratified the Istanbul Convention.<sup>59</sup> While many report they have developed programs that offer a range of legal protections and safety structures—including asylum, subsidiary protections, humanitarian relief, family unity provisions, migration-related protections for victims that are not tied to an abusive spouse, shelters, hotlines, legal assistance, interpretation assistance, work permits, and injunctive relief in the

form of protection orders—some EU-M states report greater success at delivering these services.<sup>60</sup> Thus, while there may be *de jure* relief available to this population, *de facto* relief may be more limited. Here, we consider four EU-M states to explore the wide range of *de facto* support available to a migrant depending upon which state is offering the protections. We will examine the Netherlands, the United Kingdom, Romania, and Cyprus, each of which has a unique set of circumstances informing the development of their legal doctrine and which, when viewed as a whole, reflect the diversity of members in the European Union. This evaluation illustrates that although some EU-M states offer multifaceted protections and support for migrant domestic violence victims, *de facto* relief is not consistent across them in spite of state diligence in assessment, development, and refinement of domestic policies and procedures to better meet human rights obligations.<sup>61</sup>

#### The Netherlands

The Netherlands is a founding member of what is now the European Union.<sup>62</sup> It ratified the ECHR in August 1954<sup>63</sup> and the CEDAW in July 1991,<sup>64</sup> and has been a signatory to the Optional Protocol since 2002.<sup>65</sup> The state signed the Istanbul Convention in November 2012, but has not yet ratified it.<sup>66</sup> The Netherlands has been recognized as having a rich history of implementing country-wide policies that combat domestic violence.<sup>67</sup> It reports working closely with other UN organizations and nongovernmental organizations to make gender-related violence a criminal offense at the local and international level and supports active prosecution and victim aid, even though it does so in a gender-neutral context.<sup>68</sup> This support ranges from public education campaigns, shelters, and free legal assistance for victims of crime.<sup>69</sup>

Asylum is available for migrants who claim to be victims of domestic violence when they can prove that their own government is unable or unwilling to provide them with protection.<sup>70</sup> Moreover, the state specifically refers to domestic violence as a ground of asylum for immigrants from certain countries where there is a link between domestic violence and honor-related violence, discrimination against women, or the absence of protection by the local authorities in the home country.<sup>71</sup> Furthermore, migrant domestic violence victims that apply for a residence permit and reside in a shelter may also be eligible for financial support and health insurance.<sup>72</sup> The Netherlands affords essentially the same rights to beneficiaries of subsidiary protection as it does to beneficiaries of refugee status, including family reunification benefits.<sup>73</sup>

Yet, in spite of these achievements, the CEDAW Committee has expressed concern about how the Netherlands applies its asylum policies and whether some victims of domestic violence are, in fact, excluded from relief.<sup>74</sup> Specifically, the UN Committee Against Torture and the UN Special Rapporteur on Violence Against

Women, Rashida Manjoo, noted the need for “adopting gender-sensitive asylum procedures and recognized gender-related persecution as a ground for asylum.”<sup>75</sup> There was concern that a newly implemented accelerated 48-hour asylum procedure could lead to the return of women who could not relate traumatic incidents connected to sexual or domestic violence.<sup>76</sup> In response to this concern, the state indicated that it would replace the accelerated procedure with an eight-day procedure, providing more time for legal assistance.<sup>77</sup> The Netherlands has also assured the UN that the asylum process is gender-sensitive and that asylum status may be granted to victims of domestic violence if their country of origin is unable or unwilling to protect them.<sup>78</sup>

Despite the broad nature of these protections, some stakeholders have criticized the Netherlands for failing to provide statistics on the number of women actually granted refugee status on grounds of domestic violence.<sup>79</sup> They argue that while the state has repeatedly reported the provision of humanitarian-based resident status for victims of domestic violence, honor-related violence, and trafficking,<sup>80</sup> the CEDAW Committee has acknowledged that “the humanitarian grounds mechanism had rarely been used, as fewer than 10 residence permits had been granted in the year evaluated.”<sup>81</sup> Manjoo noted that the humanitarian residence permit only applies to victims who were granted temporary residence due to their cooperation with the police. The committee thus considered the recommendation that the government provide protection to trafficking victims regardless of their level of cooperation in legal proceedings partially implemented.<sup>82</sup>

Asylum-seekers in the Netherlands are provided free legal assistance and interpretation at all interviews.<sup>83</sup> While the Netherlands did not have in place a national women’s hotline as of 2012,<sup>84</sup> its vast shelter system served almost 100 percent of the reported need.<sup>85</sup>

#### *The United Kingdom of Great Britain and Northern Ireland*

The United Kingdom joined the European Union in 1973,<sup>86</sup> more than 20 years after the Netherlands, even though it had already ratified the ECHR in March 1951.<sup>87</sup> The state ratified CEDAW in April 1986<sup>88</sup> and is also bound by the Optional Protocol.<sup>89</sup> It signed the Istanbul Convention in June 2012, but has not yet ratified it.<sup>90</sup> While the United Kingdom currently offers a number of protections to migrant domestic violence victims, the system is more fully understood when viewed in light of its history. In 2001, the United Kingdom was found to have violated its obligations under the ECHR in the case of *Osman v. the United Kingdom*.<sup>91</sup> Osman claimed that she had been subject to threats by private individuals, and when she brought them to the attention of the UK police, the state failed to provide protection.<sup>92</sup> The European Court of Human Rights affirmed the obligation of the United Kingdom to take reasonably available measures to alter the outcome or mitigate the harm when they either had or ought to have had knowledge.<sup>93</sup>

Following more than a decade of reforms in the United Kingdom, today there are a host of protections available to domestic violence victims. When a domestic violence victim is the spouse or partner of a British citizen or person settled in the United Kingdom, he or she is eligible to apply for a permanent status entitled “indefinite leave to remain.”<sup>94</sup> Victims of non-British, or non-UK-settled offenders, may apply for asylum protection.<sup>95</sup> In addition, they may be consid-

ered for humanitarian protection as long as “there are substantial grounds ... for believing that the person concerned, if he returned to the country of return, would face a real risk of suffering serious harm and is unable, or, owing to such risk, unwilling to avail himself of the protection of that country.”<sup>96</sup>

Critics have argued that in practice, migrant domestic violence victims in the United Kingdom are far more likely to be granted subsidiary protection than asylum.<sup>97</sup> Yet, the state indicates that UK authorities rely on, and even cite to, UN gender-based asylum guidelines in adjudicating cases, and thus follow international standards in making these determinations.<sup>98</sup> The CEDAW Committee notes the absence of a national strategy on the prevention and elimination of violence against women, and a lack of consistency among the different regimes of the United Kingdom—England, Wales, Scotland, and Northern Ireland.<sup>99</sup> However, in an effort to ensure that CEDAW requirements are met, the United Kingdom is conducting a complete thematic review of asylum cases involving gender-related persecution to respond to the CEDAW Committee’s concerns.<sup>100</sup>

The United Kingdom has in place a national women’s hotline that is staffed 24 hours a day and offers free-long distance calling and translation services.<sup>101</sup> As of 2012, the United Kingdom had in place 1,105 shelters, addressing about 87 percent of the reported domestic violence victim need.<sup>102</sup>

#### *Romania*

As a point of comparison, Romania only joined the European Union in 2007, having been a former Communist State of Central and Eastern Europe.<sup>103</sup> While it ratified the ECHR in June 1994,<sup>104</sup> it had already ratified the CEDAW in January 1982.<sup>105</sup> In addition, it is bound by the CEDAW Optional Protocol.<sup>106</sup> It has neither signed nor ratified the Istanbul Convention.<sup>107</sup> However, the state underwent a difficult political and economic transition process that has, at times, relegated development on women’s issues to a less prominent position in the country’s overall goals.<sup>108</sup> While Romanian law provides for equal protection based on gender in the application of the state’s criminal code,<sup>109</sup> in the domestic violence context it does so in a gender-neutral format.<sup>110</sup> Despite a sophisticated legal construct within which it can punish domestic violence offenders, the state has been criticized for its relatively limited prosecution of domestic violence offenders.<sup>111</sup> Romania reports that it passed comprehensive asylum legislation in 2006 to comply with its human rights responsibilities.<sup>112</sup> The state offers subsidiary protection as well.<sup>113</sup> It asserts that relief under either asylum or subsidiary protection affords essentially the same rights to victims including family reunification benefits.<sup>114</sup>

These claims must be considered against the backdrop of a 2012 case before the European Court of Human Rights involving a claim of domestic violence and the failure of the state to provide adequate protection to the victims in violation of Article 3 of the ECHR.<sup>115</sup> The court found that the state had failed to provide requested assistance and protection from the offender’s aggressive conduct despite the fact that Romania had in place a statutory framework that would have provided for cooperation between the various authorities.<sup>116</sup>

As of 2012, Romania did not have a national women’s hotline.<sup>117</sup> Moreover, as of that year, the state had in place 35 shelters, addressing only about 37 percent of the reported need.<sup>118</sup>

## Cyprus

Cyprus joined the European Union in 2004,<sup>119</sup> after more than 80 years of British colonial rule.<sup>120</sup> It ratified the ECHR in October 1962<sup>121</sup> and the CEDAW in 1985.<sup>122</sup> It has not signed the Istanbul Convention,<sup>123</sup> however, it is bound by the CEDAW Optional Protocol.<sup>124</sup> According to the U.S. Department of State Human Rights Report for 2013, recent studies reflect that “at least 28 percent of women over the age of 18 have suffered some form of violence at home, including physical and sexual violence as well as economic violence, social violence, and emotional/psychological violence.”<sup>125</sup> Cypriot law provides for equal protection based on gender.<sup>126</sup> The state reports that migrants are eligible for gender-specific asylum provisions and that women may be granted asylum in their own right.<sup>127</sup> Moreover, it expressly prohibits the discrimination of women.<sup>128</sup>

Nevertheless, nongovernmental organizations charge that Cypriot police regularly dismiss claims of domestic abuse by foreign women and children.<sup>129</sup> In 2011, a group of organizations challenged the contentions of the state before the CEDAW Committee, arguing that the state failed to provide evidence on the prevalence of gender-based violence within migrant communities.<sup>130</sup>

The state reports that asylum is available to women who have been subject to degrading treatment or punishment.<sup>131</sup> However, Amnesty International has specifically condemned the state’s practice of detaining all illegal migrants seeking asylum.<sup>132</sup> Cyprus states that it provides subsidiary protection when an applicant does not qualify as a refugee, as long as the prospect of suffering serious harm in the home country is substantial.<sup>133</sup>

While Cyprus contends that it provides priority access to shelters for asylum applicants,<sup>134</sup> in 2012, it reported having only one shelter in the country, which was only able to meet approximately 15 percent of the demand.<sup>135</sup> The state reported that it has in place a national women’s helpline, but that it does not provide 24-hour assistance.<sup>136</sup>

## Conclusion

Migrant domestic violence victims that lack legal immigration status are extremely vulnerable. That this need should be addressed has been recognized through international and regional agreements that apply to all EU-M states. While the EU-M states have been obliged to put in place systems that offer this protection, in practice, significant incongruities exist. Manjoo recently remarked that the high levels of domestic violence have not “led to the adoption of necessary solutions that are coherent and sustainable, and which would lead to the elimination of all forms of violence against all women.”<sup>137</sup> She notes that “impunity for both perpetrators and State officials who fail to protect and prevent violence against women continues to be the norm.”<sup>138</sup> She has concluded that all EU-M states are deficient in meeting their obligations under CEDAW.<sup>139</sup>

Thus, while the protections that most EU-M states have in place comply in some respects, since they offer criminal law prosecution of domestic violence perpetrators, special protections for victims, as well as immigration-related protections, they are still adjudged to be ineffective.

The development of the Istanbul Convention seems a positive corollary step toward harmonizing somewhat discordant systems, specifically as relates to gender-based asylum claims. While the pace of reform appears uneven across EU-M states, there is a clear

trend toward development of migrant-sensitive domestic violence legal systems. As these states continue to acknowledge and address their particular deficiencies, migrant victims of domestic violence will enjoy more protection and dignity throughout the European Union. The threat of financial liability may also serve as an effective “stick” to engender compliance. ☉

## Endnotes

<sup>1</sup>Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13 (CEDAW).

<sup>2</sup>*Id.* arts. 17, 21.

<sup>3</sup>Comm. on the Elimination of Discrimination Against Women, *Isatou Jallow v. Bulgaria*, Comm. No. 32/2011, ¶ 1, U.N. Doc. CEDAW/C/52/D/32/2011 (2011) (*Jallow*).

<sup>4</sup>*Id.* at ¶ 1.

<sup>5</sup>*Id.* at ¶ 3.1

<sup>6</sup>*Id.* at ¶ 8.2.

<sup>7</sup>*Id.* at ¶ 8.8.

<sup>8</sup>*Id.*

<sup>9</sup>*Id.*

<sup>10</sup>*Id.* at ¶ 87.

<sup>11</sup>*Id.*

<sup>12</sup>European Commission, *Domestic Violence Against Women Report 5* (Special Eurobarometer No. 344, 2010).

<sup>13</sup>Council of Europe, *Convention on Preventing and Combating Violence Against Women and Domestic Violence April 12, 2011*, ¶ 2, CETS No. 210 (Istanbul Convention).

<sup>14</sup>*Id.* at art. 61. See also Council of Eur., Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence: Explanatory Report ¶¶ 319-22.

<sup>15</sup>Council of Eur., *Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence: Explanatory Report* ¶¶ 319-22; See also Special Rapporteur on Violence Against Women, *Rep. of the Special Rapporteur on Violence Against Women, Its Causes and Consequences*, Human Rights Council, ¶ 24, U.N. Doc. A/HRC/23/49 (May 14, 2013).

<sup>16</sup>*Id.*

<sup>17</sup>This article will be included in the forthcoming Oct/Nov 2014 issue of *The Federal Lawyer* (Vol. 61 Issue 8).

<sup>18</sup>See, *infra*, International and Regional Sources of Law.

<sup>19</sup>See, *infra*, Protections and Treaty Compliance—Four Cases Studies.

<sup>20</sup>See, *infra*, Conclusions.

<sup>21</sup>UN High Commissioner for Human Rights (UNHCHR), Project on a Mechanism to Address Laws that Discriminate Against Women. Office of the High Commissioner for Human Rights—Women’s Rights and Gender Unit, Dr. Fareda Banda 2008.

<sup>22</sup>CEDAW, *supra* note 1, at arts. 3, 5.

<sup>23</sup>*Id.* at art. 2, and Preamble.

<sup>24</sup>*Id.* at art. 2.

<sup>25</sup>*Id.* at arts. 2-3.

<sup>26</sup>U.N. Dep’t of Econ. & Soc. Affairs, *Handbook for Legislation on Violence Against Women*, at iv, U.N. Doc. ST/ESA/329 (2009) (Handbook).

<sup>27</sup>*Id.* at 2.3, at 10.

<sup>28</sup>*Id.* at 2.3, at 11.

<sup>29</sup>*Id.* at 3.8, at 35.

<sup>30</sup>*Id.* at 3.1.4, at 15.

<sup>31</sup>*Id.* at 3.1.3, at 14.

<sup>32</sup>*Id.* at 3.1.4, at 15.

<sup>33</sup>Convention Relating to the Status of Refugees, art. 1, July 28, 1951, 189 U.N.T.S. 137.

<sup>34</sup>Handbook, *supra* note 26, at ¶ 3.7.1, at p. 34.

<sup>35</sup>United Nations, Multilateral Treaties Deposited with the Secretary-General, *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women* (Oct. 6, 1999). A review of the information derived at this webpage reflects that of the 28 EU-M states, Estonia, Latvia, and Malta have neither signed nor ratified the CEDAW Optional Protocol. Special Rapporteur on Violence Against Women, *15 Years of the U.N. Special Rapporteur on Violence against Women, its Causes and Consequences (1994-2009)—A Critical Review*, HUMAN RIGHTS COUNCIL, ¶¶ 12, 21, U.N. Doc. A/HRC/11/6/Add.5 (May 27, 2009) (by Yakin Ertürk) (2009) Special Rapporteur on Violence Against Women Report.

<sup>36</sup>G.A. Res. 65/187, ¶ 25, U.N. Doc. A/RES/65/187 (Dec. 21, 2010); Human Rights Council Res. 16/7, Rep. of the Human Rights Council, 16th Sess., Jan. 25-Mar. 25, 2011, ¶ 5, U.N. Doc. A/HRC/16/2 (Mar. 24, 2011).

<sup>37</sup>Treaty on European Union, Feb. 7, 1992, 1992 O.J. (C191) 1; 31 I.L.M. 253 (1992) (Treaty on European Union).

<sup>38</sup>Council of Europe, Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, ETS No. 5, 213 U.N.T.S. 221 (ECHR).

<sup>39</sup>*Opuz v. Turkey*, App. No. 33401/02 (Eur. Ct. H.R. June 9, 2009).

<sup>40</sup>Established in 1959 pursuant to Article 19 of the ECHR, the European Court of Human Rights has jurisdiction over the enforcement and implementation of the ECHR in the member states of the Council of Europe.

<sup>41</sup>*Opuz v. Turkey*, *supra* note 39, at ¶¶ 7-8.

<sup>42</sup>*Id.*

<sup>43</sup>European Union Council Directive 2004/83/EC of 29 April 2004 on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection and the Content of the Protection Granted OJ L304/12 (2004) (Qualification Directive).

<sup>44</sup>*Id.* at art. 2(e).

<sup>45</sup>*Id.*

<sup>46</sup>*Id.* at preamble ¶ 24.

<sup>47</sup>Istanbul Convention, *supra* note 13, at art 61.

<sup>48</sup>*Id.*

<sup>49</sup>*Id.* at ¶ 59.

<sup>50</sup>*Id.* at ¶ 2.

<sup>51</sup>*Id.* at art. 59(1).

<sup>52</sup>Treaty on European Union, *supra* note 37.

<sup>53</sup>ECHR, *supra* note 38.

<sup>54</sup>CEDAW, *supra* note 1.

<sup>55</sup>See M. Tsankov and N. Helm, *United Against Gender Violence: Europeans Struggle to Provide Protection for Migrants*, 42 DENV. J. INT'L L. & POL'Y 101, Section V (2014) (United Against Gender Violence). See, generally, Thomas Hammarberg, Comm'r for Human Rights of the Council of Eur., Progress in Meeting Human Rights Obligations Is Too Slow, Speech at the Eur. Movement UK Conference "Are Member States and the EU Meeting Their Human Rights Obligations?" (Dec. 12, 2011).

<sup>56</sup>United Against Gender Violence, *supra* note 55, at 181. See

generally, Special Rapporteur on Violence Against Women, Rep. of the Special Rapporteur on Violence Against Women, Its Causes and Consequences, Human Rights Council, ¶ 24, U.N. Doc. A/HRC/23/49 (May 14, 2013) (by Rashida Manjoo) (2013 Special Rapporteur on Violence Against Women Report).

<sup>57</sup>United Against Gender Violence, *supra* note 55, at 181.

<sup>58</sup>*Id.*

<sup>59</sup>*Id.*

<sup>60</sup>*Id.*

<sup>61</sup>See, *infra*, Conclusions.

<sup>62</sup>European Economic Community Treaty, Mar. 25, 1957, 298 U.N.T.S. 3, 4 Eur. Y.B. 412.

<sup>63</sup>Ratification, Accessions, and Successions Status of ECHR, Council of Europe Treaty Office (ECHR Ratifications).

<sup>64</sup>Ratification, Accessions, and Successions Status of CEDAW, United Nations Treaty Collection (CEDAW Ratifications).

<sup>65</sup>Ratification, Accessions, and Successions Status of CEDAW Optional Protocol, United Nations Treaty Collection (CEDAW Optional Protocol Ratifications).

<sup>66</sup>Ratification, Accessions, and Successions Status of the Istanbul Convention, Council of Europe Treaty Office (Istanbul Convention Ratifications).

<sup>67</sup>Concluding Observations of the CEDAW Committee, U.N. Doc. CEDAW/C/NLD/CO/5, p. 4, ¶ 11 (Feb. 5, 2010) (Concluding Observations).

<sup>68</sup>The Fifth Report of the Netherlands about the Implementation of the UN Women's Convention 2005 – 2008, U.N. Doc. CEDAW/C/NLD/5 (June 2008), p. 30 (State Party's Report).

<sup>69</sup>*Id.*

<sup>70</sup>Responses to the List of Issues and Questions with Regard to the Consideration of the Fifth Periodic Report: The Netherlands, Comm. on the Elimination of Discrimination Against Women, 45th Sess., Jan. 18-Feb. 5, 2010 U.N. Doc. CEDAW/C/NLD/Q/5/Add.1. (Oct. 19, 2009), at p. 15 (Responses to List of Issues).

<sup>71</sup>*Id.*

<sup>72</sup>Concluding Observations of the CEDAW Committee, *supra* note 67, at ¶ 4.

<sup>73</sup>European Council on Refugees and Exiles, *The Impact of the European Qualification Directive on International Protection*, 33.

<sup>74</sup>CEDAW Summary Record, U.N. Doc. CEDAW/SR.916, p. 9, ¶ 53 (Jan. 27, 2010).

<sup>75</sup>Concluding Observations, *supra* note 67 at p. 5, ¶ 22.

<sup>76</sup>*Id.*

<sup>77</sup>Responses to List of Issues, *supra* note 70 at p. 25.

<sup>78</sup>*Id.*

<sup>79</sup>L. Bijleveld & L. Mans, Netwerk VN-Vrouwenverdrag (Dutch CEDAW Network), *Women's Rights: Some Progress, Many Gaps: Shadow Report by Dutch NGOs: An Examination of the Fifth Report by the Government of the Netherlands on the Implementation of the CEDAW, 2005-2008*, at 19 p. 59 (2009).

<sup>80</sup>Responses to List of Issues, *supra* note 70 at p. 15.

<sup>81</sup>CEDAW Summary Record, *supra* note 74 at p. 10-11, ¶ 60.

<sup>82</sup>Letter from Barbara Bailey, Rapporteur on Follow-up to the Netherlands, CEDAW 3-4 (Nov. 26, 2012).

<sup>83</sup>*Id.*

<sup>84</sup>B. Stelmaszek and H. Fisher, Women Against Violence Eur., *Country Report 2012: Reality Check on Data Collection and*

*European Services for Women and Children Survivors of Violence, A Right for Protection and Support?* p. 13 (2013) (WAVE Report).

<sup>85</sup>*Id.* at 14. Throughout this article, the demand for shelter space is derived as a calculation of the percentage of the number of shelter spaces available over the number of shelter spaces needed.

<sup>86</sup>Treaty on European Union, *supra* note 37.

<sup>87</sup>ECHR Ratifications, *supra* note 63.

<sup>88</sup>CEDAW Ratifications, *supra* note 64.

<sup>89</sup>CEDAW Optional Protocol Ratifications, *supra* note 65.

<sup>90</sup>Istanbul Convention Ratifications, *supra* note 66.

<sup>91</sup>*Osman v. the United Kingdom*, No. 23452/94, Eur. Ct. of Hum. Rts. (28 October 1998).

<sup>92</sup>*Id.*

<sup>93</sup>*Id.*

<sup>94</sup>Immigration Rules, 2014, 289A.

<sup>95</sup>Immigration Rules, 2014, S.I., pt. 11.

<sup>96</sup>*Id.* at pt. 11, ¶ 334(v).

<sup>97</sup>S. Mullally, *Gender Asylum Law: Providing Transformative Remedies*, Contemporary Issues in Refugee Law 202-04 (Satvinder Singh Juss and Colin Harvey eds., 2013).

<sup>98</sup>H. Cheikh Ali et al., *Gender-Related Asylum Claims in Europe: A Comparative Analysis of Law, Policies and Practice Focusing on Women in Nine EU Member States* 33-34 (2012).

<sup>99</sup>Special Rapporteur on Violence Against Women, *Integration of the Human Rights of Women and the Gender Perspective*, Comm'n on Human Rights, Comm'n on Human Rights, ¶ 1514, U.N. Doc. E/CN.4/2003/75/Add.1 (Feb. 27, 2003) (by Radhika Coomaraswamy) (2003 Special Rapporteur On Violence Against Women Report).

<sup>100</sup>Consideration of Reports Submitted by State Parties Under Article 18 of the CEDAW, Seventh Periodic Reports of States Parties: United Kingdom of Great Britain and Northern Ireland, Comm. on the Elimination of Discrimination Against Women, 55th Sess., July 8-26, 2013, at 1, U.N. Doc. CEDAW/C/GBR/7, ¶ 128 (Aug. 11, 2011).

<sup>101</sup>WAVE Report, *supra* note 84, at 13.

<sup>102</sup>*Id.* at 14-15.

<sup>103</sup>Treaty on European Union, *supra* note 37.

<sup>104</sup>ECHR Ratifications, *supra* note 63.

<sup>105</sup>CEDAW Ratifications, *supra* note 64.

<sup>106</sup>CEDAW Optional Protocol Ratifications, *supra* note 65.

<sup>107</sup>Istanbul Convention Ratifications, *supra* note 66.

<sup>108</sup>Women's Nongovernmental Organizations of Romania, *Women's Status in Romania. A Shadow Report to the CEDAW 23rd Session*, 5 (April 2000).

<sup>109</sup>Consideration of Reports Submitted by State Parties Under Article 18 of the Convention on the Elimination of All Forms of Discrimination Against Women, Sixth Periodic Report of States Parties: Romania, Comm. on the Elimination of Discrimination Against Women, 35th Sess., May 15 – June 2, 2006, at 8, U.N. Doc. CEDAW/C/ROM/6 (Dec. 15, 2003) (the second and third report were submitted in 1992 (U.N. Doc. CEDAW/C/ROM/2-3) and the fourth and fifth in 1998 (U.N. Doc. CEDAW/C/ROM/4-5)).

<sup>110</sup>*Id.*

<sup>111</sup>U.S. Department of State Country Reports on Human Rights Practices for 2013 – Romania, Sect. 6.

<sup>112</sup>Law no. 122/2006 on Asylum in Romania, Law no. 122/2006, Aug. 26, 2006.

<sup>113</sup>*Id.*

<sup>114</sup>*Id.*

<sup>115</sup>*E.M. v. Romania*, European Court of Human Rights Case No. 43994/05 (Oct. 30, 2012).

<sup>116</sup>*Id.*

<sup>117</sup>WAVE Report, *supra* note 84, at 13.

<sup>118</sup>*Id.* at 14-15.

<sup>119</sup>Treaty on European Union, *supra* note 37.

<sup>120</sup>High Commission of the Republic of Cyprus in Canberra, History of Cyprus, *available at* [www.mfa.gov.cy/mfa/highcom/highcomcanberra.nsf/cyprus02\\_en/cyprus02\\_en?OpenDocument#](http://www.mfa.gov.cy/mfa/highcom/highcomcanberra.nsf/cyprus02_en/cyprus02_en?OpenDocument#) (last visited June 3, 2014).

<sup>121</sup>ECHR Ratifications, *supra* note 63.

<sup>122</sup>CEDAW Ratifications, *supra* note 64.

<sup>123</sup>Istanbul Convention Ratifications, *supra* note 66.

<sup>124</sup>CEDAW Optional Protocol Ratifications, *supra* note 65.

<sup>125</sup>U.S. Dep't of State, Bureau of H. Rights and Labor, Country Reports on Human Rights Practices for 2013—Cyprus, Sect. 6 (U.S. State Department Report Cyprus).

<sup>126</sup>Consideration of Reports Submitted by State Parties Under Article 18 of the Convention on the Elimination of All Forms of Discrimination Against Women, Combined Sixth and Seventh Periodic Reports of State Parties: Cyprus, Comm. on the Elimination of Discrimination Against Women, 54th Sess., Feb. 11–March 1, 2013, at 1, U.N. Doc. CEDAW/C/CYP/6-7 (Sept. 21, 2011) (Cyprus' Sixth and Seventh Report).

<sup>127</sup>*Id.* at ¶ 142.

<sup>128</sup>Refugee Law, 2007 [L.112 (I)/2007]; The Refugee Law, 2009 [L.122 (I)/2009]. Cyprus' Sixth and Seventh Report. State Party Report, CEDAW/C/CYP/6-7, September 2011.

<sup>129</sup>U.S. State Department Report Cyprus, *supra* note 125, at Section 6.

<sup>130</sup>CEDAW Shadow Report, Nicosia, Jan. 15, 2013, *available at* [tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fCYP%2f6-7&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fCYP%2f6-7&Lang=en) (last visited June 3, 2014).

<sup>131</sup>Cyprus' Sixth and Seventh Report, *supra* note 126, at ¶¶ 118, 146.

<sup>132</sup>Amnesty International, *Punishment without a Crime: Detention of Migrants and Asylum-Seekers in Cyprus*, June 2012.

<sup>133</sup>*Id.*

<sup>134</sup>Cyprus' Sixth and Seventh Report, *supra* note 126, at ¶¶ 118, 146.

<sup>135</sup>WAVE Report, *supra* note 84, at p. 14-15.

<sup>136</sup>*Id.* at 13.

<sup>137</sup>2013 Special Rapporteur on Violence Against Women Report, *supra* note 56, at ¶ 43.

<sup>138</sup>*Id.*

<sup>139</sup>*Id.* at ¶ 45.