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The principle of equality and non-discrimination in EU sources of law, and the situation of women in Afghanistan

Introduction

Due to the Taliban's return to power in Afghanistan in August 2021, the international community has once again focused its attention on the issue of women's rights. The current regime is clearly seeking to make its strict vision of the role of women central to its policies. The successive restrictions imposed by the Taliban authorities have had an adverse impact on the fundamental rights and freedoms every human being is entitled to. The significance of this situation has been highlighted by the United Nations Security Council (UNSC) and the European Union (EU), who jointly stress that the Taliban's actions can be considered gender-based persecution and thus qualify as a crime against humanity under the provisions of the Rome Statute, to which Afghanistan has been a signatory since 2003.²

After two decades of active support from international donors, including the European Union, a fundamental question arises of how to effectively respond to constant violations of women's rights in Afghanistan.

Before discussing the current situation of women's rights in Afghanistan and the EU's response to this issue, this article adopts a processual perspective, which is necessary in order to understand how a country where women gained the right to vote as early as 1919 (earlier than in most Western countries) has entered a period of gender-based persecution. The purpose of this paper is to analyze the European Union's actions in the context of women's rights in Afghanistan. The study's focus is on the evolution of the EU's actions in support of women's rights in Afghanistan, and on the identification of the factors and reasons decisive for the current EU policy towards Afghanistan.

The article is divided into several sections, with the first one outlining the legal tenets of the European Union's promotion of equality and non-discrimination and how

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² Afghanistan signed the Rome Statute, the founding document of the International Criminal Court, on April 30, 2003. The Statute is an international treaty that provides for prosecuting and trying of persons responsible for the most serious international crimes, such as genocide, crimes against humanity, war crimes and the crime of aggression.

it is related to women's rights in Afghanistan. Next, the historical context of women's rights in Afghanistan is discussed, with special attention given to political changes there. The impact of international interventions on women's rights in Afghanistan from 2001 to 2021 is also presented. The next section is devoted to the EU's actions and strategies employed in response to the violations of women's rights in Afghanistan, analyzing their evolution and impact. The final section of the article summarizes key findings and puts forward possible recommendations made on the basis of the study.

The research methodology used here relies on triangulation using the systemic, comparative, and genetic explanatory methods. In addition, the article takes an interdisciplinary approach that focuses on the social sciences, particularly those related to human rights, international relations and international politics. This combination of methods and the multidimensional nature of the study make it possible to present a holistic view of the problem, taking into account the various aspects and perspectives of the issue.

The principle of equality and non-discrimination in EU legal sources

In his speech celebrating International Women's Day, Kemal Dervis, UNDP Administrator, stated that women failing to fully participate in society entails a loss for all its members. In the 2005 World Summit Outcome – final document, global leaders stated unequivocally that improving the situation of women means improving the situation of all. Equality is more than just a worthy goal, it is a proven instrument for promoting social development.

It is worth noting that gender equality efforts are one of the pivotal priorities of many organizations, including the Council of Europe and the European Union. According to the definition of the Council of Europe, gender mainstreaming policy should be understood as the (re)organization, improvement, development and evaluation of policy processes, so that a gender equality perspective is incorporated in all policies at all levels and at all stages, by the actors normally involved in policy-making (*Gender mainstreaming...*, 1998). From 1999 to 2005, the European Union would draft an annual report with indicators on selected activities of the Beijing Declaration and Platform for Action (BPfA) and EU conclusions. The latter were a political declaration to be later adopted by ministers at the EU Council on Employment, Social Policy, Health and Consumer Affairs (EPSCO). That process was strengthened in 2005. At the EPSCO Council in Luxembourg in 2005, EU states adopted a Ministerial Declaration to intensify efforts to implement the BPfA tenets, and since then, such reports have been prepared during each presidency, that is, twice a year (*Gender mainstreaming...*, 1998). The BPfA supports the Convention on the Elimination of All Forms of Discrimination against Women. Part III of this convention identifies twelve core problem areas including: impoverishment of women, inequalities in education and access to health care, violence, consequences of armed conflicts, inequalities in access to resources, inequalities in access to power, inadequate protection of women's rights, gender stereotypes, discrimination and violation of the rights of the young girls (*Gender mainstreaming...*, 1998).

The principle of equality and non-discrimination is enshrined in the sources of EU primary law, secondary law (directives) and verdicts of the European Court of

Justice. EU policy documents to be indicated here include the Charter of Fundamental Rights, Charter of Fundamental Social Rights of Workers, as well as programs and recommendations. Equality between men and women is one of the fundamental values of the European Union. As early as 1957, the Treaty of Rome enshrined the principle of equal pay for equal work. Although inequalities remain, the European Union has made significant progress in recent decades. This has been achieved primarily through equal treatment legislation, gender mainstreaming (integrating a gender perspective into all other policies), and specific measures to promote women (*Gender mainstreaming...*, 1998).

The fundamental legal act in this respect, and one which is indispensable for our further considerations, is the Treaty on European Union (*Treaty on the Functioning...*, 2012), Article 2 of which states that the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to EU member states with societies in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail (*Treaty on the Functioning...*, 2012). The provisions of Article 3 also refer to non-discrimination and to supporting equality between women and men. Article 6, in turn, affirms the rights, freedoms and principles set forth in the Charter of Fundamental Rights of the European Union of December 7, 2000. Powers identified in the Charter do not extend the EU's competencies. Article 19 of the Treaty on the Functioning of the European Union (TFEU) stipulates that the Council, acting unanimously in accordance with a special legislative procedure and after obtaining the consent of the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation (*Treaty on the Functioning...*, 2012). It is worth noting that by virtue of Article 3 TFEU, the EU is obliged to seek to eliminate inequalities in all its activities, as well as to promote equality between women and men. In this context, the principle of gender mainstreaming and gender budgeting is worth pointing out. Gender budgeting is about constructing budgets with gender equality in mind. Equality between women and men with regard to their labor market opportunities and treatment at work is guaranteed by Article 153 TFEU, which also defines what applying and disseminating positive practical measures to achieve equality is all about. Article 157 TFEU is pivotal to equality, ensuring that the principle of equal pay for male or female employees for equal work or work of equal value be applied. In this sense, equal pay without discrimination based on sex means that the pay awarded for the same work at piece rates is determined on the basis of the same unit of measurement, and that the pay for work at time rates is the same for the same job (*Treaty on the Functioning...*, 2012). Article 157 TFEU also defines 'pay' (wage or salary and any other consideration, whether in cash or in kind, received directly or indirectly in respect of employment from one's employer). The same article also states that in order to ensure full equality between men and women in working life, the principle of equal treatment does not prevent any member state from maintaining or adopting measures providing for specific advantages in order to make it easier for the underrepresented sex to pursue a vocational activity, or to prevent or compensate for disadvantages in professional careers.

In 1996, inspired by the concept adopted in September 1995 at the Fourth World Conference on Women in Beijing, the European Commission issued a communication calling for the mainstreaming of the principle of equality between women and men in all Community strategies and policies, titled: *Incorporating equal opportunities for men and women into all community policies and activities*. The European Commission adopted the proposal for gender mainstreaming as a complement to this principle. Gender mainstreaming includes not only all efforts to promote equality by implementing specific measures to help women, but also mobilizing all general policies and measures specifically for the purpose of achieving equality by actively and openly taking into account possible effects on the respective situations of women and men (gender perspective) at the planning stage. This means systematically examining measures and policies and taking into account such possible effects when defining and implementing them (*Incorporating...*, 1996). The landmark document in this regard is the Treaty of Amsterdam, signed in 1997. Since its entry into force on May 1, 1999, the promotion of gender equality has been one of the basic tasks of the European Union. As part of the implementation of its provisions, member states have been obliged to introduce a new political strategy – gender mainstreaming, which grants the same rights to men and women on many levels. According to Articles 2 and 4, the Community has as its task, by establishing a common market and an economic and monetary union and by implementing common policies or activities referred to in Articles 3 and 4, to promote throughout the Community a harmonious, balanced and sustainable development of economic activities, a high level of employment and of social protection, equality between men and women, sustainable and non-inflationary growth, a high degree of competitiveness and convergence of economic performance, a high level of protection and improvement of the quality of the environment, the raising of the standard of living and quality of life, and economic and social cohesion and solidarity among member states. It is stressed in Article 4 that in all these activities the Community aims to oppose inequality and promote equality between men and women (*Treaty of Amsterdam*, 1999). Equality issues are also addressed in Articles 13 and 141 of the Treaty Establishing the European Community. Article 13 prohibits discrimination on the basis of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. By virtue of this article the Council is conferred the power to take appropriate action to combat discrimination on the basis of sex, among other things, in all areas of Community competence. Article 141 stipulates positive action – introducing legal solutions and measures providing special advantages in favor of the disproportionately underrepresented sex, in order to facilitate its representatives in their vocational activity. This article states that each member state should ensure that the principle of equal pay for male and female workers for equal work, or work of equal value is applied. Interestingly, section 141(3) allows the Council, after consulting the Economic and Social Committee, to adopt measures to ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation. Section 141(4) allows member states to use positive action to ensure full equality between men and women in the practice of working life.

It is worth stressing that compliance with the horizontal principle of equal opportunities for women and men in the European Social Fund (ESF) stems from the

provisions of the Treaty of Amsterdam and the European Council regulations on the implementation of the ESF in all European Union member states. According to Regulation (EC) No 1080/2006 of the European Parliament and of the Council of 5 July 2006, “the ESF shall support actions in Member States under the priorities listed: [...] mainstreaming and specific action to improve access to employment, increase the sustainable participation and progress of women in employment and reduce gender-based segregation in the labour market, including by addressing the root causes, direct and indirect, of gender pay gaps.” Article 6 obliges member states to ensure that operational programs include a description of how gender equality and equal opportunities are promoted in the preparation, implementation, monitoring and evaluation of operational programs.

EU policies provide for the principle of equal opportunities for women and men to be implemented through the simultaneous application of two supportive approaches as defined by the European Commission Communication (*Incorporating...*, 1996):

- 1) Gender mainstreaming policy, whereby a gender perspective is taken into account in all policy processes, priorities and activities, and at all stages, namely planning, implementation and evaluation. The policy of equal opportunities for women and men is the deliberate, systematic and informed evaluation of a given policy and of implemented measures in terms of their impact on the living conditions of women and men, which aim to counter discrimination and achieve gender equality (*Incorporating...*, 1996). In 1997, the United Nations Economic and Social Council recognized that this strategy makes the problems and experiences of women and men an integral part of the planning, implementation, monitoring and evaluation of all policies and programs in all areas of political, economic and social life, so that women and men benefit equally and inequality is not perpetuated (*Incorporating...*, 1996). In the case of the ESF, specific measures are most often implemented through:
 - projects that change the relationship between men and women (e.g., promoting work-life balance through greater involvement of men in family responsibilities),
 - projects promoting equal opportunities for women and men when implementing various aspects of Human Capital Operational Programme (HC OP), e.g., administration, education or judiciary (training for officials on equal opportunities, encouraging breaking stereotypes in curricula or media, etc.) (*Incorporating...*, 1996).
- 2) Specific actions in support of gender equality – positive, compensatory actions to accelerate change for equality by providing specific support to disadvantaged groups. Specific actions are aimed at accelerating real social change, such as:
 - projects targeting only one gender (e.g., support for long-term unemployed rural women, or a cardiovascular disease prevention program targeting only men) (*Incorporating...*, 1996);
 - the principle of equal opportunity for both sexes does not apply only to women, nor is it created by women and discriminatory towards men, nor is it a principle aimed at making women and men the same. The principle of equal opportunities for both sexes curbs the discrimination of women and men which exists in the

labor market, and assigns the same social value, equal rights and equal access to resources (financial resources, development opportunities) to both women and men; it creates the possibility of choosing a life path devoid of the constraints of gender stereotypes while being aware of the differences between the lives of women and men and accounting for the different needs, experiences and priorities of the sexes (*Incorporating...*, 1996).

In Afghanistan, gender mainstreaming has become even more crucial, especially after the Taliban took power in 2021. Despite the Taliban's restrictive laws, which limit women's rights and opportunities, the pursuit of gender equality goals stemming from the Millennium Development Goals (MDGs) as well as the subsequent Sustainable Development Goals (SDGs) and Platform for Action has not lost its relevance. The European Union and other international organizations have maintained their commitment to supporting gender equality and women's rights in Afghanistan, seeking to adapt to the changing political and social situation there.

The evolution of women's rights in Afghanistan

The modern state of Afghanistan lasted from 1880 to 1996, and women's rights were a controversial subject there, related to the process of state power centralization and resistance from local communities. The ensuing conflict caused a rift between reformists and conservatives, which significantly hampered the implementation of change throughout the country.

The ethnic diversity of Afghanistan results in local communities having a significant impact on society as a whole. This mosaic has influenced the structure of marriage, access to justice and the distribution of property, all of which have been shaped by a combination of Islamic law and customary practices where gender divisions have been clearly marked. While women have often played an important role in households and the rural economy, they have been dominated by male local leaders, who imposed severe restrictions on their autonomy and participation in public life.

In the 1880s, Afghanistan's first monarch, Abdur Rahman Khan, launched progressive reforms to improve the status of women in Afghanistan.³ Abdur Rahman, a descendant of the Pashtuns and the founder of the modern state, reigned as emir from 1880 to 1901. During this period, he increased the minimum age of marriage, gave women the right to own the property of their fathers and husbands, and allowed women to file for divorce on certain grounds. His son and successor, Habibullah Khan, continued these changes by opening schools for girls. Unfortunately, the reforms he introduced aroused criticism from conservative groups, which led to his assassination in 1919 (Włodek, 2022, pp. 124–125).

Habibullah Khan's son, Amanullah Khan was another reformer, reigning from 1919 to 1929, who was inspired by Mustafa Kemal Atatürk of Turkey. Following his

³ Abdur Rahman Khan (the Iron Emir) was against the mullahs' excessive influence on politics, but not against religion. He made a name for himself as a reformer of Afghanistan, but his rule claimed many victims, with the genocide of 60 per cent of the Hazara and Nuristani (ethnic groups living in Afghanistan) populations having gone down in history.

mentor's vision, he introduced numerous reforms, such as granting civil rights to men and women alike and granting women the right to vote in 1919, which was one year ahead of the United States (Włodek, 2022, pp. 124–125). In addition, he opened numerous schools for girls, banned forced marriage, openly opposed restrictive dress, and polygamy. Amanullah's wife, Soraya publicly took her burqa off and introduced a women's magazine promoting gender equality. Nevertheless, modernization of Afghanistan once again mobilized conservative groups which led to his overthrow in 1929. Amanullah was briefly replaced by Habibullah Ghazi (Habibullah Kalakani) and then by Nadir Shah. The latter closed girls' schools down, took away girls' right to education, reinstated the order to wear burqas, and canceled many important reforms. This caused discontent on the liberal side, and Nadir Shah was assassinated in 1933. After his death, power was taken by Mohammad Zahir Shah, whose views were quite different from his father's. He had a liberal approach to women's issues, a view he expressed while ruling as emir from 1933 to 1973. During this time he reinstated many of the changes originally introduced by Amanullah Khan. In the larger cities, women began university studies and participated in political and business life. The new constitution, adopted in 1964, again granted women the right to vote and also gave them a possibility to run for office. These transformations were not accepted throughout the country and were enjoyed by middle- and upper-class women to a greater extent (Modrzejewska-Leśniewska, 2010, pp. 119–123). Women living on the outskirts of cities and in villages, and less affluent ones continued to live under customary law (Jureńczyk, 2019, pp. 90–95).

In 1973, resistance from traditional groups was exploited by Mohammad Daud Khan, who became Afghanistan's first president and held office from 1973 to 1978. He shunned conflicts with the opposition, especially with conservative groups. At the same time, he continued to expand women's rights. Under his rule, women won parliamentary seats, and Kubra Noorzai became the first woman in Afghanistan's history to serve as Minister of Public Health (*European Parliament Briefing...*, 2023, pp. 4–5).

The period from 1978 to 1996 was marked by external intervention and civil wars suffered by Afghan society. In 1978, communists ousted President Daud Khan and introduced progressive reforms and a vision of a state based on gender equality, which once again aroused opposition from traditionalists. Later on, the communists developed a rift among themselves, which resulted in the Soviet intervention in 1979 (Włodek, 2022, pp. 26–28).

The Soviet-backed communist government introduced social reforms, such as mandatory education for girls and increasing the minimum age of marriage for girls to 16. These changes led to a national revolt, where guerrillas fighting against the Soviet presence in Afghanistan obtained support from the United States. After Soviet troops withdrew in 1989, Afghanistan descended into a civil war involving various factions and tribal groups, and women's rights were systematically violated. In 1992, the communist government was overthrown, but fighting continued. In 1995, the Taliban, consisting mainly of students of traditional Islamic 'madrasa' schools from the Pashtun regions supported by Pakistan, became the dominant force in the country. Within a year they took control of most of Afghanistan, which resulted in drastic restrictions on women's rights in all aspects of life (*Canadian Women for Women in Afghanistan*, 2020, pp. 1–2).

During the early phase of Taliban rule, now often named the 'Taliban 1.0', many Afghans, especially in conservative provinces, saw the new government as an opportunity to restore law and order. However, over the following months, women were gradually eliminated from social, business and political life. The Taliban prevented girls from attending educational institutions after the age of eight and thus suspended secondary and higher education. Women were also banned from employment in many professions, with the exception of working in health care. Widows who lost their jobs were in a particularly difficult situation. In 1997, there were about 50,000 such women who had between seven and nine children on average. Despite the fact that the number of female heads of households accounted for ca. 25 per cent (due to the high mortality rate of men in the civil war), the acting foreign minister at the time, Mullah Mohammad Ghaus, banned them from running a household without a male guardian (mahram) (Stankiewicz, 2009, pp. 250–260).

At the same time, women were prohibited from seeing a male doctor unless accompanied by a male guardian. This restriction, combined with the reduced number of women working in health care, has had a negative impact on the health of many women. In Kabul, as of September 1997, 24 per cent of hospital beds were designated for women, but after the Taliban imposed restrictions, this was reduced to 20 per cent. The ban on education for women resulted in a decline in the number of teachers. Before Taliban rule, there were about 11,207 teachers, but their number dropped almost to 3,400 due to the lack of female teachers. In response to these restrictions, clandestine schools were established where girls could gain education in fields such as painting, dancing, tailoring, English and others. Unofficial sources claim that there were some 108 such schools in 1998. Their operations were condemned by the then regime, and attending them was punishable by flogging (Stankiewicz, 2009, pp. 225–227).

The Taliban introduced gender segregation, known as 'purdah' or 'parda', which resulted in women's complete isolation from the public sphere, including administration, public transportation and health care buildings. The most restrictive form of dress was the burqa that covered the entire body, except for a small opening at eye level covered by a thick mesh, and was usually black or blue. Women were forbidden from wearing lipstick, and violations could result in having lips cut off. Wearing earrings was punished by cutting off ears, and painting fingernails by cutting off fingers (Jagielski, 2002, pp. 20–30). This was dictated by the attitude of the Taliban, who believed that excessive beautification of the body obscures the natural beauty of women, which defies the Quran.

The Taliban introduced draconian punishments that instilled general fear in society. Fornication was punished with stoning, rape – with decapitation, wearing sandals – with the amputation of feet, theft – with hands cut off.

Despite the claims that Afghan women accepted the restrictions imposed by the Taliban, widespread resistance from the female part of society could be observed as early as 1996. At that time, many women fled to refugee camps in Peshawar, Pakistan, while others joined the Revolutionary Association of the Women of Afghanistan (RAWA). RAWA was a social and political organization that dealt with various aspects of women's lives, including their health, employment and legal services (*About RAWA*, 2023). Importantly, many women in Afghanistan stood up for their rights with extreme

courage, by consistently wearing brightly colored burqas and actively participating in numerous demonstrations where they firmly expressed their conviction that the Taliban's laws did not comply with the principles of Islamic law. These actions evidence that many Afghan women disagreed with the restrictions imposed by the Taliban. Their persistence and determination in seeking equality and justice have been a source of inspiration for many, demonstrating that the struggle for women's rights is a struggle to defend basic human rights and social progress. Every individual, regardless of gender, benefits from the values of a more equal society that respects the dignity and freedom of every person.

International intervention and changes in women's rights introduced between 2001 and 2021

In the wake of the 9/11 terrorist attacks and triggering of Article 5 of the North Atlantic Treaty, the United States and its allies launched military operations in Afghanistan that lasted for about two decades (*European Parliament Briefing...*, 2023, pp. 9–10).

During this time, intensive development aid was provided to build democracy. As early as 2001, the Ministry of Women's Affairs was established with a role to promote the rights of Afghan women. Next, a new legal order was created, based on a 2004 constitution drafted under the supervision of the international community. The constitution guaranteed numerous rights for women, such as the right to vote, to run for government positions, access to education, and the principle of non-discrimination on the basis of sex (Article 22 and Article 44). In addition, Article 83(6) provided for at least two female delegates from each province to the House of People, and Article 84 required the President to appoint at least 50 per cent women to the House of Elders (The Constitution of the Islamic Republic of Afghanistan, 2004).

In 2009, the Law on Prevention of Violence Against Women (EVAW) was enacted, which identified 22 types of violence against women, including domestic violence, rape, forced marriage, ban on education, and preventing women from deciding for themselves, and obtaining the right to own property. Subsequently, the National Action Plan for Women in Afghanistan (NAPWA) was launched to help implement the goals of United Nations Security Council Resolution 1325 on women, peace and security. The NAPWA introduced a number of progressive programs and funding projects to promote women's participation in all spheres of society, such as administration, business, culture, media, sports and others. Despite the potential of the legal changes introduced, their enforcement still posed many difficulties, especially in remote regions of the country.

The document that set back progress on gender equality efforts in Afghanistan and sparked widespread resistance from the international community, including the European Parliament, was the Shiite Personal Status Law of 2009. The law discriminated against the status of Afghan women, obliging them to satisfy their respective husbands' sexual needs, among other things, and banned women from leaving home without a male guardian (*European Parliament Briefing...*, 2023, pp. 6–7).

However, despite the difficulties encountered in enforcing women's rights, statistics showed a dynamic improvement for Afghan women and girls during the first two decades of the 21st century. Comparing the data, women's participation in social, business and political life clearly increased. For example, at the end of 2003, only a small percentage of girls had access to primary education, accounting for less than 10 per cent of the total number of pupils. By 2017, however, that proportion had risen to an impressive 33 per cent. Similarly, the share of girls in secondary education increased from just 6 per cent in 2003 to 39 per cent in 2017. Another indicator attesting to the positive changes that took place was life expectancy. Between 2001 and 2017, female life expectancy increased by 10 years, rising from 56 to 66 years. Importantly, this was accompanied by a significant reduction in the maternal mortality rate, which fell from 1,100 deaths per 100,000 live births in 2000 to 396 per 100,000 live births in 2015 (Stankiewicz, 2009, p. 228).

An increase in women's participation in public life was also observed. By 2020, women accounted for 21 per cent of the total number of government officials, with 16 per cent of them holding managerial positions, and 27 per cent – seats in the Afghan parliament. By comparison, during Taliban rule, women were almost completely excluded from public life and political activity (*European Parliament Briefing...*, 2023, p. 8).

Unfortunately, progress was not evenly distributed, failing to cover most of Afghanistan. Many women living in rural areas, accounting for 76 per cent of the population in 2017, did not experience positive changes. New laws were rarely applied in practice, and many provinces remained marginalized. With the advancement of women's rights, Taliban activism expanded, countering the changes.

Following the United States and the Taliban signing a peace agreement in February 2020, and US President Joe Biden's subsequent decision to withdraw US troops, the Taliban regained control of Kabul on August 15, 2021. Contrary to their promises to respect women's rights, they failed to fulfill these commitments right from the beginning of their rule. The Taliban began to gradually curb civil rights, with a particular focus on women's rights (Lorenz, 2021).

Immediately after taking power, they annulled the 2004 constitution, replacing female civil servants and employees with males. In September, they closed the Ministry of Women's Affairs, replacing it with the Ministry for the Propagation of Virtue and the Prevention of Vice designed to oversee a strict interpretation of Sharia law.⁴ In the same month, they banned secondary education for girls, and the employment of women until further notice. In December, a decree on women was introduced, with no reference to education or employment. In March 2022, the ban on secondary education for girls was further upheld. In addition, women were banned from traveling more than 45 miles, or abroad, without a 'mahram'. Subsequently, women were banned from entering health centers without a male guardian, and in May they were ordered to stay at home, with further restrictions on mobility and dress. In November 2022, women were banned from appearing in public spaces such as parks, gyms and amusement parks,

⁴ Sharia law is a collection of legal and moral principles that lay the foundation for life and law as interpreted by Islam. It is based on the teachings of Islam, including the Quran and hadiths (traditional teachings and stories about the life and teachings of the Prophet Muhammad).

as well as in bathhouses, which were exclusively for women. Importantly, using bathhouses is not only an ancient tradition, but also the only chance to maintain personal hygiene, especially in the absence of running water and heating in many households.⁵ In the months that followed, a series of bans and orders were introduced that further restricted the rights and freedoms of women in Afghanistan. In December 2022, the Taliban banned women from university studies and from working in NGOs. In addition, women were banned from taking advanced courses beyond the elementary level (*European Parliament Briefing...*, 2023, p. 9).

The restrictions imposed have had devastating consequences on the lives of Afghan women. For example, the ban on getting higher education has negatively affected their personal development. This has compromised their ability to support themselves and their families, forcing many of them, especially widows, to beg, as was the case in the 1990s. In general, the ban on gainful employment for women has critically affected the already weakened economy. Even where there are some exceptions, such as health care, many women are abandoning their professions for fear of the brutal authorities, which has resulted in an overall shortage of female health care professionals. The requirement for a guardian to be present when visiting a male doctor has affected the availability and effectiveness of medical treatment. In addition, the ban on visiting public baths has resulted in women being deprived of access to hygiene facilities, especially during the cold winter months. Restrictions on women's access to public facilities have reduced the number of customers, resulting in the demise of numerous businesses, such as those operating in the cosmetics and garment industries.

The Taliban's banning women from working in NGOs at the end of December 2022 has threatened the humanitarian work carried out by these organizations. In the past, women accounted for 30–45 per cent of employees in international NGOs, and as many as 50–55 per cent of employees in domestic NGOs. This restriction has caused conflict within Taliban factions and sparked a debate about the need to retain female employees in humanitarian organizations to address the specific needs and challenges of providing assistance to women. As a result, some exceptions have been made to allow women to work in NGOs in the health and education sectors. In order to publicize this problem of Afghanistan, the UN Group on Gender in Humanitarian Action and the Humanitarian Access Group conducted a survey in January 2023. It showed that as many as 93 per cent of respondents expressed their negative feelings about the ban. In addition, it demonstrated that only 22 per cent of women worked full time, and 81 per cent of them were not employed (United Nations, 2022). The Taliban's restrictions pose both a serious threat to the sense of security and well-being of women and girls, and a huge challenge to the country's economy.

European Union action against violations of women's rights in Afghanistan

The international community has long been interested in the situation in Afghanistan, especially as concerns the security and welfare of the local population. Although

⁵ The UN estimates that some 79 per cent of households do not have direct access to heating and running water.

the European Union does not have any direct interests in Afghanistan, a country located thousands of kilometers away from its external borders, it has been actively involved in initiatives to support the country's development.

In analyzing the broad context of challenges associated with the role Europe is playing in contemporary Afghanistan, it is important to emphasize that they are rooted in the past. This article focuses on three main issues in the relationship between Europe and Afghanistan before and after 2001:

- 1) the impact of US global leadership on the European Union's strategy and autonomy;
- 2) the conflict between urgent security issues and the long-term development of the country;
- 3) limitations on Europe's capabilities in strategic planning and crisis management.

It is worth noting that the above issues affect the efficiency of the EU's humanitarian aid and the effectiveness of programs on equality policies and women's rights in Afghanistan. These aspects have affected the EU's relations with Afghanistan; however, they are not an outcome of 9/11. Mutual relations have been shaped over decades of European engagement at the regional level, initiated by the European Community at the time. They date back to the early 1950s, starting with limited trade that expanded in the 1960s and 1970s when the Common Agricultural Policy was launched, and the strategic interest in the Central Asian region arose. At the time, European involvement consisted primarily of trade, development cooperation and technical assistance.

The 1979 Soviet invasion of Afghanistan had a significant impact on Europe changing its approach to the region. At the time, the European Community became heavily involved in providing humanitarian aid and support for Afghan refugees. However, the invasion met with mixed responses, and the Afghanistan issue became an area of rivalry among member states. While the United Kingdom and Germany were more determined in their opposition towards the Soviet Union, other countries, such as France, were more reserved.

The 1991 collapse of the Soviet Union and the end of the Cold War significantly changed the balance of power in the international arena. The United States became the hegemon, and its global security policy intensified. The geopolitical changes under way facilitated exploring new cooperation models, including the concept of 'comprehensive security', where the security of a state is not guaranteed only by its military power, but also by partnerships in areas such as the environment, health, economy, as well as social development (Modrzejewska-Leśniewska, 2010, pp. 332–333). This model was particularly relevant for Europe, which sought to avoid escalating armed conflicts and promoted stability through cooperation and interdependence instead. The policy of non-involvement resulted in the Community's passivity on many issues, and its conforming to the standards promoted by the United States.

The new millennium has brought new challenges, especially after the 2001 attacks on September 11. Afghanistan became a key area in the fight against terrorism on a global scale. The European Union and its member states supported the efforts of NATO and its operation codenamed International Security Assistance Force (ISAF), conducted to restore stability and security in Afghanistan. At the same time, the European Security and Defense Policy (ESDP) was evolving, with the European Union's

role moving toward increasing involvement in crisis management missions involving both civilian and military security issues (*Brief history of the ESDP*, 2023). Afghanistan became an area where the European Union conducted training missions and supported institutional reconstruction.

The European Union has been financially involved in humanitarian support operations, the value of which has exceeded €1.5 billion since 1994. In the face of a mounting conflict and expanding extensive humanitarian needs, the delivery of life-saving aid has become a priority for EU action. In Afghanistan, this aid has covered a number of key areas, such as emergency food support, emergency education, access to clean water and sanitation facilities, and protection of women and children. Among the EU projects that have been designed to provide aid to Afghan women is the Development Cooperation Instrument (DCI), the EU's largest financial instrument, which focuses on providing external development aid in the areas of security, democracy, and human rights with a particular focus on the rights of women and children (Puspitasari, 2023, pp. 7–8). A budget of €19.6 billion was allocated under the DCI for 2014–2020. More than 7 per cent of this budget was allocated to development cooperation with Afghanistan, an amount of €1.4 billion (about €200 million annually).

The European Instrument for Democracy and Human Rights (EIDHR) is another financial program that supports human rights projects, strengthening the rule of law and democratization in countries outside the EU. A total of about €1.3 billion was allocated from the European Union's budget under the EIDHR for 2014–2020. Of this amount, Afghanistan received €7.5 million (about €1.07 million per year) (Puspitasari, 2023, pp. 7–8).

During the period from 2001 to 2021, the European Union, in cooperation with numerous international organizations, made significant efforts to promote women's rights in Afghanistan. One of the key partners in this was the United Nations Organization for Women (UN Women), which implemented a number of projects and programs in support of gender equality. Other initiatives, such as the UNICEF program, aimed to increase girls' access to education and improve the quality of the education system. Women's Access to Justice, also funded by the UN and EU, focused on ensuring the protection of women's rights and facilitating their access to justice, especially in cases of violence and rape.

The Economic Empowerment of Afghan Women project sought to support women's entrepreneurship, and enable them to take an active part in Afghanistan's economic life through management training and access to micro-credit, and the Strengthening Afghan Civil Society project focused on supporting NGOs promoting women's rights and their role in Afghan society. Through institutional support and training, the program supported the organizations that were pivotal in gender equality efforts.

The importance of the Women, Peace and Security (WPS) program should also be stressed, which is an integral part of the EU's activities in Afghanistan. The WPS is related to the UN Security Council Resolution 1325, which was adopted in 2000 and aims to increase women's participation in peace processes and promote women's rights in the context of armed conflict. The European Union has actively supported the WPS initiative in Afghanistan by funding its projects and programs. One of these involved the establishment of the Feminist Foreign Policy (FFP) in 2014 (Farkhondeh,

True, 2022, p. 1). The FFP is based on a vision of global gender equality and human rights, seeking to broaden its perspective to all international actors and foreign policy fields, including diplomacy, trade, development and humanitarian aid, security, and so on.

Since the return of the Taliban regime in August 2021, the European Union has changed the terms of its involvement. Although it has not recognized the new government, it has continued to emphasize the need to support Afghan society. In January 2022, the minimum presence of EU envoys in Kabul was agreed and the Afghanistan Essential Services and Livelihoods Stabilization Program (2022) was launched, with the EU allocating €150 million to it.⁶ The EU has resolved to suspend development aid, but has continued to provide humanitarian aid, largely targeting the needs of women. EU representatives assure that this aid reaches the Afghan people directly, through international and non-governmental organizations.

In March 2023, the EU Council reaffirmed its intention to continue providing aid on a humanitarian basis, prioritizing women who have become the main beneficiaries. Additionally, in December 2022 and March 2023, the EU Council strongly condemned the restriction of women's rights by the Taliban in Afghanistan and their discriminatory gender policies (*European Parliament Briefing...*, 2023, pp. 10–12). In doing so, the EU Council called on the Taliban to respect international standards, in particular regarding human rights and refugees. The EU was also one of the few international actors to stress that the Taliban's treatment of women may constitute a crime against humanity under the Rome Statute.

On April 7, 2023, the EU High Representative for Foreign Affairs, Josep Borrell, responded to the ban on Afghan women working for UN organizations by stating his strong opposition to this decision. He described it as a flagrant violation of human rights, international humanitarian law and humanitarian principles. The European Union Asylum Agency (EUAA) found that the Taliban's actions negatively affect the rights and freedoms of women and girls in Afghanistan, whereby they suffer persecution entitling them to obtain refugee status. While the EUAA's guidelines are not binding, European Union member states are required to take them into account when assessing asylum claims, as stated in the EUAA's regulations (*European Parliament Briefing...*, 2023, pp. 10–12).

The European Parliament has also responded to events in Afghanistan and issued a series of resolutions condemning restrictions on the rights of women and girls and called for stronger EU action to support them, including the fundamental one – the European Parliament resolution of April 7, 2022 on the situation in Afghanistan, particularly the situation of women's rights. The European Parliament has sought to give a voice to Afghan women through various initiatives, such as organizing days dedicated to them and holding hearings with female civil society representatives. At the same time, it has warned that despite the European Union's efforts to date, the situation of women and girls in Afghanistan could further deteriorate. For this reason, reducing expectations and focusing on minimizing the negative effects of the humanitarian crisis has been recommended.

⁶ The flexibility clause notes that the amount can be increased or decreased by up to €10 million.

Conclusion

This article analyzes the European Union's action in the context of women's rights in Afghanistan. In view of such a research objective, the European Union's gender equality policy is presented, the history of women's rights in Afghanistan is outlined, and the decision-making power of the European Union is analyzed. For the purpose of the article, EU reports, resolutions and regulations, as well as studies by independent researchers are used to develop objective conclusions on the applications of EU equality policy in Afghanistan. In the course of analysis, the decisions and efforts of the European Union are reviewed, using a sophisticated methodological approach. To this end, triangulation is used, where the systemic method makes it possible to analyze the EU's activities in the context of women in Afghanistan as part of a broader system, taking into account interactions between different actors, such as the EU, the Afghan government, civil society and other international organizations. The method of genetic explanation is also used to provide an account of the origins of EU policy towards Afghanistan. The study highlights several key conclusions. First, the EU should take the history of Afghanistan into account and not treat the country as a 'tabula rasa'.⁷ Viewing Afghanistan as a geopolitical tool following the September 11, 2001 attacks should be recognized as a mistake. The country had struggled for decades, and the lack of a lasting solution to the conflict resulted in its long-term instability. For this reason, the EU should prioritize peacebuilding and the protection of women's rights, and its cooperation with NGOs there can play an important role in protecting the rights of women and other vulnerable groups.

Secondly, the EU has to promote its strategic autonomy rather than relying solely on US support in international crises. Developing greater strategic autonomy will allow the EU to be more influential in its involvement in global crisis management. The EU should also enhance regional cooperation, seeking to engage Afghanistan's neighboring countries in addressing regional instability. In addition, the EU has to understand that countering terrorism in Afghanistan may be difficult to achieve. Strengthening intelligence capabilities is essential to deal effectively with problems associated with the spread of terrorism. Improving aid coordination is also pivotal. History has shown that women's rights in Afghanistan were not enjoyed evenly, with changes extending to larger cities, but leaving out villages and remote regions. The concentration of power and the centralization of the state cannot once again obscure the need to resolve deep-rooted internal conflicts.

The examination of the history of women's rights in Afghanistan reveals glaring inequalities, with rights and aid often concentrated exclusively in urban areas, leaving the needs of women living in remote regions in the shadow. This situation clearly illustrates the urgent need for all women to be covered by gender equality efforts, regardless of their geographical location.

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⁷ From Latin, 'clean slate'.

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Summary

In this article, an analysis has been conducted of the European Union's (EU) actions in the context of women's rights, with a particular focus on the situation in Afghanistan. Following the overthrow of the Taliban regime in 2001, the EU actively engaged with Afghanistan, prioritizing the delivery of humanitarian aid, supporting development processes, democratization, and the promotion of human rights. Over the years, the European Union played a significant role as the main financial donor to Afghanistan concerning women's and girls' rights, investing in areas such as education, healthcare, politics, and the economy. The article provides a detailed analysis of the programs and decisions undertaken by the EU to support women in Afghanistan. Additionally, it is based on a long-term perspective, looking at women's rights in the context of changing political situation, taking into account the role of the European Union in this process.

Key words: European Union, women's right, Afghanistan, Taliban, humanitarian aid, economy, politics, healthcare

Zasada równości i zakazu dyskryminacji w unijnych źródłach prawa a sytuacja kobiet w Afganistanie

Streszczenie

W niniejszym artykule dokonana została analiza działań Unii Europejskiej (UE) w kontekście przestrzegania praw kobiet ze szczególnym uwzględnieniem sytuacji w Afganistanie. Po obaleniu reżimu talibów w 2001, UE aktywnie nawiązała współpracę z Afganistanem, skupiając się na dostarczeniu pomocy humanitarnej, wspieraniu procesów rozwojowych, demokracji oraz promowaniu praw człowieka. Przez lata Unia Europejska pełniła istotną rolę jako główny donator pomocy finansowej dla Afganistanu w kontekście praw kobiet i dziewcząt, inwestując w obszary takie jak edukacja, ochrona zdrowia, polityka oraz gospodarka. Artykuł przeprowadza szczegółową analizę programów i decyzji podejmowanych przez UE, mających na celu wsparcie kobiet w Afganistanie. Dodatkowo, opiera się na długoterminowej perspektywie, przyglądając się prawom kobiet w kontekście zmieniającej się sytuacji politycznej, uwzględniając rolę Unii Europejskiej w tym procesie.

Słowa kluczowe: Unia Europejska, prawa kobiet, Afganistan, talibowie, pomoc humanitarna, edukacja, gospodarka, polityka, ochrona zdrowia

