

A S S E D E L



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United Kingdom's compliance with the Istanbul convention regarding the protection of transgender women's rights

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MARCH 2026

United Kingdom's compliance with the Istanbul convention regarding the protection of transgender women's rights

Between 2024 and 2026 two judgments in British courts have endangered women's safety and the protection of their rights.

The first issue arose from the term "sex" as used in the Equality Act 2010. Following an appeal in November 2024 to the Supreme Court by the not-for-profit company For Women Scotland, the aforementioned term as well as the term "woman" and the term "man" was reinterpreted as referring exclusively to biological sex assigned at birth. The judgment, excludes therefore, trans people from the definition and consequently prevents them from receiving a full access to public services endangering their health and security.

A second judgment this time issued by the British High Court of Justice in London, further amplified the matter in question. The Court following a claim brought by the not-for-profit campaign Good Law Project and three individual claimants who believed that the EHRC had published a "legally flawed" and "transphobic" guidance issued a verdict dismissing the claim entirely based on the previous judgment of the supreme court, that acts now as legal base.

I. Introduction

The United Kingdom has ratified the Council of Europe Convention on preventing and combating violence against women and domestic violence on July 21st 2022¹, and it is therefore bound to comply with the legal provisions inscribed in it.

Considering the next thematic evaluation round procedure, which the United Kingdom must submit to GREVIO by March 2027², this report will argue how following two judgments by the Supreme Court and the British High Court of Justice in London, the United Kingdom is failing to act in accordance with the convention, specifically breaching Article 4 “*Fundamental rights, equality and non-discrimination*” and Article 40 “*Sexual harassment*”.

The women whose rights are at risks are trans women whom, following the Supreme Court Judgment, are being excluded from the term women as used in *the* Equality Act 2010:

*“An Act to make provision to require Ministers of the Crown and others when making strategic decisions about the exercise of their functions to have regard to the desirability of reducing socio-economic inequalities; to reform and harmonise equality law and restate the greater part of the enactments relating to discrimination and harassment related to certain personal characteristics; to enable certain employers to be required to publish information about the differences in pay between male and female employees; to prohibit victimisation in certain circumstances; to require the exercise of certain functions to be with regard to the need to eliminate discrimination and other prohibited conduct; to enable duties to be imposed in relation to the exercise of public procurement functions; to increase equality of opportunity; to amend the law relating to rights and responsibilities in family relationships; and for connected purposes”.*³

Trans people are still being included in the act but under the term gender reassignment⁴, meaning that whenever they try to access public services such as hospitals, they would be admitted under their biological sex assigned at birth, preventing trans women to access “women only areas”. We will argue that this outcome endangers trans women, outing them and raising the risk of being exposed to discrimination rather than protecting them from it, like the Equality Act 2010 is supposed to do.

A second issues arose after the Judgment of the British High Court of Justice in London on the *R (Good Law Project and others) v EHRC [2026] EWHC 279* cases, following which trans people are now at risk of involuntary outing on the workplace this action further violates the right to privacy and creates a new foundation for discrimination.

¹ Council of Europe, Chart of signatures and ratifications of Treaty No. 210 (Status as of 13 March 2026).

² Council of Europe (GREVIO), *Provisional timetable for the 1st thematic evaluation round procedure*, Doc No 1680aa0e4c (Strasbourg: Council of Europe, 2024) <https://rm.coe.int/provisional-timetable-for-the-1st-thematic-evaluation-round-procedure-/1680aa0e4c>.

³ Equality Act 2010, Long Title.

⁴ Equality Act 2010, s 4.

II. The legal path to the Supreme Court: FWS1

In 2018, the Scottish Parliament passed the Gender Representation on Public Boards (Scotland) Act, “an Act of the Scottish Parliament to make provision about gender representation on boards of Scottish public authorities”.⁵ Seeing that women represent over half of the Scottish population, the goal was to ensure that at least 50% of non-executive members on public boards were women, ultimately creating an environment in which new creative thinking and ideas can flourish.⁶

The original text of the bill as presented to the Scottish Parliament on 15 June 2017 defined the term “woman” as: “a person who has the protected characteristic of gender reassignment (within the meaning of section 7 of the Equality Act 2010) if, and only if, the person is living as a woman and is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of becoming female”.⁷

Following this depiction, transgender women (regardless of whether they had a GRC) and people “living as a woman” or intending to undergo gender reassignment were also included in the mandatory 50% women quota which was meant to be included on public boards.

The legal question was first raised in 2020 by For Women Scotland, a not-for-profit company that was created in 2018 with the aim to protect women’s rights from the “*Scottish Government’s plans to reform the Gender Recognition Act to allow for self-declaration of sex*”⁸. The members of Women Scotland believe in the existence of only two sexes, arguing that a person cannot choose to change their sex that remains the one that has been assigned to them at birth.

The not-for-profit company decided therefore to submit a petition to challenge the definition of the term “woman” as intended in section 2 of the Gender Representation on Public Boards (Scotland) Act and to argue that the Scottish Parliament was disapplying certain provisions of the Equality Act 2010 included in section 11.

On 31st July 2020, a pre-action letter was sent to the Scottish government from For Women Scotland accusing the government of having overstepped their authority in re-defining the term “woman” and endangering women’s rights rather than protecting them as the newly adopted act aimed to⁹. The Scottish government responded on 19th August rejecting the claims expressed in the letter and stating that “*Scottish Ministers are satisfied that the Gender Representation on Public Boards (Scotland) Act 2018 and subordinate legislation made and statutory guidance published under it are within legislative and devolved competence. Scottish Ministers do not consider that the Act is in breach of*

⁵ Gender Representation on Public Boards (Scotland) Act 2018, Long Title.

⁶ Scottish Government, Gender Representation on Public Boards (Scotland) Act 2018: statutory guidance (2022) paras 1.1–1.6

⁷ Gender Representation on Public Boards (Scotland) Act 2018 (As Enacted), s 2.

⁸ For Women Scotland, ‘Gender Recognition Reform Bill – Call for Views’ (10 May 2022) available at:

<https://forwomen.scot/10/05/2022/gender-recognition-reform-bill/>

⁹ For Women Scotland, ‘News Release – Judicial Review’ (28 August 2020) available at:

<https://forwomen.scot/28/08/2020/news-release-judicial-review/>

any EU law obligations and are satisfied that it complies with their obligations under the Equality Act 2010 and any subordinate legislation made under it."¹⁰

After the rejection the not-for profit organization decided to submit the aforementioned petition to proceed with a judicial review in which other than the claims contained in the letter the petitioners contended also that "*certain provisions of the 2018 Act are incompatible with EU law and the UN Convention on the Elimination of All Forms of Discrimination Against Women("CEDAW")*".¹¹

The judgment was then ruled on in first instance by the Outer House of the Court of Session in Edinburgh which expressed itself against the claims of the applicants stating: "*I have concluded that none of the challenges to the 2018 Act advanced by the petitioner can succeed for the reasons given in relation to each one. The Act was within the legislative competence of the Scottish Parliament and does not offend against the fundamental principle of equality of treatment. I will dismiss the petition and reserve meantime all questions of expenses*".¹²

Because the Inner House judgment on 23 March 2021 was a "final interlocutor" (it disposed of the whole case), the petitioners had an automatic right to reclaim without needing the judge's permission. For this reason, For Women Scotland were able to enrol a reclaiming motion that brought the case to the Inner House of the Court of Session, and the case had a second hearing in November 2021.

The Inner House revoked the judgment of the Outer House resulting in a victory for the not-to-profit company. The three judges stated that the Scottish Parliament had exceeded its powers, arguing that "Equal Opportunities" is a reserved matter, meaning only the UK Parliament in London can change the fundamental definitions in the Equality Act 2010. The definition of "woman" had therefore to revert back to the one used in the Equality Act 2010, at the same time the Judges dismissed the parts of the act in section 11 that claimed to dismiss the provisions included in the Equality Act 2010, arguing that the Scottish parliament could not just disregard anti-discrimination provisions inscribed in UK law.¹³

The Scottish Government accepted the decision of the court amending the law and agreeing that writing a new definition of the term "woman" was out of their legislative powers¹⁴. They although argued that the Equality Act 2010 already included trans-women holding Gender Recognition Certificates in its definition.¹⁵

¹⁰ Letter from the Scottish Government Legal Directorate to Balfour+Manson LLP (19 August 2020) available at: <https://forwomen.scot/wp-content/uploads/2020/08/Letter-from-ScotGov-19Aug2020.pdf>

¹¹ For Women Scotland Ltd, Petitioner [2021] CSOH 31, [4].

¹² *ibid*, [153].

¹³ For Women Scotland Ltd v The Lord Advocate [2022] CSIH 4, [40].

¹⁴ Gender Representation on Public Boards (Amendment) (Scotland) Act 2024.

¹⁵ For Women Scotland Ltd v The Scottish Ministers [2022] CSOH 90, [11].

III. The Supreme Court Judgment: FWS2

*“Thus where the acquired gender is female that person’s sex becomes that of a woman and they will share that protected characteristic with other women. For completeness, they would also share the protected characteristic of gender reassignment, and indeed any other relevant protected characteristics depending on their individual circumstances”.*¹⁶

*“...the UK parliament can and should be presumed to have enacted the 2010 Act in the full knowledge that the 2004 Act permitted people to obtain a GRC with the legal effect that their sex became that acquired on the strength of the GRC. The 2010 Act does not, as it could have done, provide that “sex” in section 212 means biological sex or some other descriptor, or sex registered at birth, or explicitly exclude those who have the sex recognised in their GRC”.*¹⁷

These two quotes clearly demonstrate the Scottish Government’s stance: individuals who have obtained a Gender Recognition Certificate (GRC) must be fully considered as women, possessing the same rights and protections as those who have not changed their legal sex. Consequently, the Government argued that if a person holding a GRC is appointed to a board to comply with the Gender Representation on Public Boards (Scotland) Act 2018, the appointment cannot be considered unlawful, as it supposedly acts in accordance with both the 2004 and 2010 Acts.

Following the decision in FWS1, the Scottish Government issued revised statutory guidance in April 2022. In this document, the Government maintained that the Gender Recognition Act 2004 operates to change a person’s sex “for all purposes,” meaning a person holding a female GRC is a “woman” under the Equality Act 2010¹⁸. For Women Scotland (FWS) argued that this interpretation created a backdoor to the same issue found in FWS1 as for example the displacement of biological women in favour of a legal certificate. For this reason, they started a new lawsuit.

The not-for-profit organisation challenged the lawfulness of the Respondent’s statutory guidance in the Outer House. On 13 December 2022, the Outer House dismissed the Appellant’s petition. The Appellant appealed. On 1 November 2023, the Inner House upheld the decision of the Outer House and dismissed the Appellant’s appeal¹⁹.

*“When the EA was passed in 2010 it must be assumed that Parliament was fully cognisant of the purpose, terms and effect of the GRA.”*²⁰

“The legislation achieved that change in strong, clear and unequivocal terms in section 9(1) by providing that where a certificate has been issued the person's gender becomes "for all purposes" the acquired gender so that if the acquired gender is the male gender, "the person's sex becomes that of

¹⁶ *ibid* [26]

¹⁷ *ibid* [28]

¹⁸ Scottish Government, Gender Representation on Public Boards (Scotland) Act 2018: Statutory Guidance (Revised April 2022).

¹⁹ For Women Scotland Ltd v Scottish Ministers [2025] UKSC 16, case summary, Supreme Court of the United Kingdom, available at: <https://supremecourt.uk/cases/uksc-2024-0042>

²⁰ For Women Scotland Ltd v Scottish Ministers [2023] CSIH 37 (Inner House, Court of Session), para 33, available at: https://www.bailii.org/scot/cases/ScotCS/2023/2023_CSIH_37.html

*a man" and if it is the female gender, "the person's sex becomes that of a woman." It could hardly be more clearly stated that in this connection there is no distinction between sex and gender, and that reference to sex within the GRA is not a reference to biological determinants.*²¹

Following the loss in the Inner Court, For Women Scotland decided to appeal to the Supreme Court which delivered its judgment on 16 April 2025.

The new judgment overthrew the Inner House decision, accepting the interpretation of For Women Scotland. In its reasoning, the Supreme Court sought to reconcile the Gender Recognition Act 2004 with the Equality Act 2010 by emphasising the need for coherence in statutory interpretation. While acknowledging that a Gender Recognition Certificate changes a person's legal sex "for all purposes", the Court held that this effect must be read considering the specific structure and objectives of the Equality Act. In particular, the Court highlighted that provisions relating to sex discrimination, as well as exceptions permitting single-sex services under Schedule 3, rely on a binary and stable understanding of sex. It concluded that interpreting "sex" as including legal gender acquired through a GRC would render these provisions unworkable. Consequently, the Court determined that "sex" within the meaning of the Equality Act refers to biological sex, while transgender individuals remain protected under the separate characteristic of gender reassignment.²²

*"in relation to sex discrimination (for the purposes of sections 11 and 212(1)), a person with the protected characteristic of sex has the characteristic of their biological sex only".*²³

As a result, the definition of "woman" in the Gender Representation on Public Boards (Scotland) Act 2018 must also be limited to biological women. While the Court emphasises that this interpretation does not preclude the appointment of transgender individuals to public boards, it establishes that such appointments do not count towards statutory targets aimed at ensuring female representation. This reasoning effectively separates transgender women from the legal category of "women" in equality law.²⁴

IV. The Supreme Court's judgment's social implications

The implications of the Supreme Court's judgment extend beyond legal interpretation and affect the practical application of equality law in the United Kingdom. According to the UK Parliament, the ruling establishes that references to "sex" under the Equality Act 2010 must be understood as biological sex. Following the Supreme Court's judgment, the Equality and Human Rights Commission issued an interim update on 24 April 2025 outlining its understanding of the ruling. The

²¹ Ibid, para 37

²² For Women Scotland Ltd v Scottish Ministers [2025] UKSC 16, para 265, available at: <https://supremecourt.uk/cases/judgments/uksc-2024-0042>

²³ Ibid, para 264

²⁴ Ibid, para 267

document stated that the judgment has implications for many organisations, including workplaces, services open to the public, sporting bodies, schools and associations.

“These require suitable and sufficient facilities to be provided including toilets and sometimes changing facilities and showers. Toilets, showers and changing facilities may be mixed-sex where they are in a separate room lockable from the inside. Where changing facilities are required under the regulations, and where it is necessary for reasons of propriety, there must be separate facilities for men and women or separate use of those facilities such as separate lockable room”.

In practice, this may allow service providers to restrict access to spaces such as shelters, hospitals, and changing facilities based on biological sex, thereby excluding transgender women from spaces designed to ensure safety and privacy²⁵. This argument has been supported by many civil society organizations that have further elaborated that forcing trans women to use spaces that do not correspond to their gender identity, increases the risk of harassment, humiliation, and violence.

*“Following the Supreme Court Judgement in April, the EHRC’s ‘interim guidance’ and draft code of practice mandated the exclusion of trans people from single sex spaces in line with their gender, and in certain circumstances from spaces that align with their sex assigned at birth. This approach would leave trans people, and some cis people, at greater risk of violence and discrimination and would violate international human rights protections relating to human dignity and freedom”.*²⁶

Therefore, this interpretation raises concerns under Article 4(3) of the Istanbul Convention, which requires that the implementation of its provisions be secured without discrimination on grounds including gender identity. As clarified by GREVIO, this obligation entails ensuring effective access to protection and support services for all women, including transgender women.

*“In addition to the prohibition of discrimination contained in Article 4, paragraph 3, this paragraph requires positive action to ensure that any preventive measures specifically address and take into account the needs of vulnerable persons. Perpetrators often choose to target such persons because they know that they are less likely to be able to defend themselves, or seek prosecution of the perpetrator and other forms of reparation, because of their situation. For the purpose of this Convention, persons made vulnerable by particular circumstances include: pregnant women and women with young children, persons with disabilities, including those with mental or cognitive impairments, persons living in rural or remote areas, substance abusers, prostitutes, persons of national or ethnic minority background, migrants – including undocumented migrants and refugees, gay men, lesbian women, bi-sexual and transgender persons as well as HIV-positive persons, homeless persons, children and the elderly”.*²⁷

²⁵ UK Parliament, *The Supreme Court ruling on the meaning of “sex” in the Equality Act 2010*, available at: <https://commonslibrary.parliament.uk/research-briefings/cbp-10259/>

²⁶ UK: *Amnesty and other key rights organisations challenge the Equality and Human Rights Commission for violating its human rights obligations* (Press Release, 24 October 2025) available at: <https://www.amnesty.org.uk/latest/uk-amnesty-and-other-key-rights-organisations-challenge-equality-and-human-rights/>

²⁷ GREVIO, *Baseline Evaluation Report* (Council of Europe, 2023) para 87, available at: <https://rm.coe.int/1680a48903>

This update was subsequently withdrawn, but the underlying legal interpretation it reflected namely that “sex” under the Equality Act refers to biological sex, remained and its validity was brought to court by the not-for-profit campaign organisation Good Law Project.

V. EHRC under Judicial Scrutiny: R (Good Law Project) v EHRC [2026] EWHC 279

In early 2026 the not-for-profit organisation Good Law Project contested before the High Court of Justice the lawfulness of guidance issued by the Equality and Human Rights Commission following the Supreme Court’s judgment.

The claimants challenged the lawfulness of the Commission’s guidance, arguing that it misinterpreted the legal position and risked undermining the rights of transgender individuals under the Equality Act 2010. They contended that the adoption of a definition of “sex” based on biological characteristics could lead to the exclusion of transgender women from protections and services designed for women, thereby conflicting with broader principles of equality and non-discrimination. The High Court, however, rejected these arguments and upheld the position of the Commission. It found that the EHRC was entitled to rely on the interpretation of “sex” established by the Supreme Court and to reflect that interpretation in its guidance to public authorities and service providers.

The Court emphasised that the Commission’s role includes providing clarity on the application of equality law and that its approach was consistent with the statutory framework. In doing so, the judgment effectively confirmed that, for the purposes of the Equality Act 2010, the concept of “sex” may be understood in biological terms, even in cases involving individuals holding a Gender Recognition Certificate.

While the Court did not deny that transgender individuals remain protected under the separate ground of gender reassignment, it accepted that this does not equate to inclusion within the legal category of “women” for all purposes of equality law. The significance of this judgment lies not only in its immediate outcome but also in its broader implications: it consolidates the interpretation adopted by the Supreme Court and validates its practical implementation by a key regulatory body.

*“That approach had been restated in the consultation conducted at the end of 2024. One clear consequence of the conclusion reached in For Women Scotland was that if, for example, a service provider provided a service to be used both by women and transsexual women, that service would not be a single-sex service”.*²⁸

The Court downplayed the potential harm associated with involuntary disclosure of gender identity, stating that *“being the subject of comment by others is a burden that anyone can expect to bear from time to time”*²⁹. This characterisation risks trivialising the specific vulnerabilities faced by transgender

²⁸ R (Good Law Project and others) v Equality and Human Rights Commission, High Court of Justice (Administrative Court), AC-2025-001953, 13 February 2026, para 5, available at: <https://www.judiciary.uk/wp-content/uploads/2026/02/good-law-project-EHRC-AC-2025-1953-judgment-13Feb26.pdf>

²⁹ Ibid, para 73

individuals, for whom “comment” or “gossip” may in practice amount to forced outing, with well-documented consequences in terms of discrimination, harassment, and exposure to violence.

As a result, the exclusionary effects identified in the aftermath of the Supreme Court’s ruling are reinforced at the level of administrative practice and judicial oversight. This development contributes to the entrenchment of a legal framework in which transgender women may face barriers in accessing spaces and protections intended for women, raising serious concerns regarding the compatibility of domestic law with international human rights obligations, including those arising under the Istanbul Convention, particularly in relation to non-discrimination and access to protection from gender-based violence.

VI. Legal assessment under the Istanbul Convention

The developments afore outlined raise significant concerns regarding the United Kingdom’s compliance with the Istanbul Convention. Under Article 4(3), States Parties are required to secure the implementation of the Convention without discrimination on grounds including gender identity:

“The implementation of the provisions of this Convention by the Parties, in particular measures to protect the rights of victims, shall be secured without discrimination on any ground such as sex, gender, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, sexual orientation, gender identity, age, state of health, disability, marital status, migrant or refugee status, or other status”³⁰.

This obligation has been interpreted by GREVIO as requiring that all women, including transgender women, have effective access to protection and support services.

The interpretation adopted by the UK Supreme Court in *For Women Scotland Ltd v Scottish Ministers* and subsequently reinforced through administrative guidance and *judicial review in R (Good Law Project and others) v Equality and Human Rights Commission*, establishes a legal framework in which the concept of “sex” is limited to biological sex. While transgender individuals remain protected under the separate ground of gender reassignment, this distinction may result in their exclusion from services and spaces designed specifically for women, including those intended to ensure safety and protection.

Such exclusion has practical consequences. As illustrated by the guidance issued by the Equality and Human Rights Commission, service providers may restrict access to single-sex spaces based on biological sex. This may place transgender women in situations where they are either denied access to appropriate facilities or required to use spaces that do not correspond to their gender identity. In turn, this creates a risk of involuntary disclosure of gender identity, exposing individuals to harassment, discrimination, and potential violence.

³⁰ Council of Europe, Convention on Preventing and Combating Violence against Women and Domestic Violence (2011) CETS No 210, art 4(3).

The High Court's characterisation of such exposure as "*a burden that anyone can expect to bear*" suggests a limited recognition of the specific vulnerabilities faced by transgender individuals. However, GREVIO has emphasised that States must consider the particular risks faced by vulnerable groups, including transgender persons, and ensure that protective measures are accessible in practice. The failure to adequately consider these risks may undermine the effectiveness of the Convention's protective framework.

Considering these developments, the current legal and administrative framework in the United Kingdom may amount to differential treatment based on gender identity and risks limiting access to protection mechanisms designed to prevent gender-based violence. As such, it raises serious concerns as to the United Kingdom's compliance with Article 4(3) of the Convention. Furthermore, by increasing the likelihood of exposure to harassment in everyday settings, these measures may also engage Article 40, which requires States to take the necessary steps to prevent and address sexual harassment:

*"Parties shall take the necessary legislative or other measures to ensure that any form of unwanted verbal, non-verbal or physical conduct of a sexual nature with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment, is subject to criminal or other legal sanction"*³¹.

VII. Conclusion and recommendations

Considering that the United Kingdom has ratified the Council of Europe Convention on preventing and combating violence against women and domestic violence in 2022 the country has the duty to comply with the provisions included in all its articles, ensuring that women are allowed to live free and at the best of their capabilities without having to cope with discrimination and violence.

In light of what explained and argued in this report ASSEDEL believes that sequent to the 2025 Supreme Court judgment the United Kingdom is failing to comply with article 4(3) and article 40 of the convention and we recommend the states to solve the issue by taking the following steps:

- The United Kingdom should ensure that the interpretation and application of the Equality Act 2010 are consistent with its obligations under Article 4(3) of the Istanbul Convention.
- Public authorities, including the Equality and Human Rights Commission, should adopt guidance that guarantees non-discriminatory access to protection and support services for transgender women.
- Measures should be implemented to prevent involuntary disclosure of gender identity in the provision of services, particularly in contexts involving safety and privacy.

³¹ Ibid, para 40

- The government should ensure that all policies relating to single-sex spaces are assessed for their impact on vulnerable groups, including transgender individuals.