

Disrupting (Feminist) Canons: On the Feminist Judgments in Central and Eastern Europe

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Positionality

I want to open this piece by situating myself within these words and within the project I write about. I move through academia – and the world – as an Eastern European, Balkan woman, specifically from Bosnia and Herzegovina. This identity carries deep personal meaning for me, but it also shapes how I see academia and the world, and how both of those, in turn, see me.

The part of Europe I come from has long been written about through an Orientalising gaze – one that oscillates between fascination and dismissal. In the case of the Balkans, this often takes the form of what has been called *Balkanism*:¹ a discourse that constructs the region as Europe's internal "other". For some, this space is simply a peripheral part of a privileged continent; for others, it marks the boundary between Europe and its imagined outside.

I approach the *Feminist Judgments in Central and Eastern Europe* project (FJP-CEE) from within this tension. As a researcher whose work engages with feminist and critical perspectives, I am acutely aware of how scholarship about Central, Eastern and Southeastern Europe can reproduce hierarchies of knowledge – treating the region less as a site of theoretical production and more as a case study of "pathologies".² These reflections, then, are informed by that positionality: by a desire to engage with feminist theory from the so-called margins of Europe, and to ask what it means to read, write, and judge from there.

Feminist Judging under the Conditions of Democratic Backsliding

Feminist legal theory has historically been shaped by Anglo-American contexts. As Kimberlé Crenshaw famously observed, "feminist theory remains white"³ – and, one might add,

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¹ See Maria Todorova, *Imagining the Balkans: Updated Edition* (Oxford University Press 2009); Katarina Luketić, *Balkan: Od Geografije do Fantazije* (Pelago 2020).

² See *inter alia* Aleksandra Lewicki, 'East-West Inequalities and the Ambiguous Racialisation of "Eastern Europeans"' (2023) 49(6) *Journal of Ethnic and Migration Studies* 1481-1499; Dominika Blachnicka-Ciacek and Sylwia Urbańska, 'Eastern Europe's "Peripheral Whiteness": Class and Gender Racialization among Polish Migrants and Returnees' (2025) *Identities* online, 1-20; Elissa Helms, 'East and West Kiss: Gender, Orientalism and Bakanism in Muslim-Majority Bosnia-Herzegovina' (2008) 67(1) *Slavic Review* 88-119.

³ Kimberlé Crenshaw, 'Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics' (1989) 1989(1) *University of Chicago Legal Forum* 139-167, 154.

Western.⁴ Although feminist theory has long been committed, at least in principle, to anti-essentialism, its dominant frameworks have tended to emerge from particular legal, political, and institutional settings, often treating other regions as sites of application rather than sources of theory. This asymmetry has structured not only feminist legal scholarship more broadly, but also the development of feminist judgment projects.

It is against this background that the *Feminist Judgments in Central and Eastern Europe project* (FJP-CEE) must be situated. The project appears, on the one hand, as a proud continuation of the feminist judgments tradition that has reshaped how scholars think about judging, neutrality, and legal reasoning. On the other hand, it represents a departure from that tradition by relocating feminist jurisprudential production to legal systems that have rarely been treated as sites of feminist theoretical innovation.⁵

The FJP-CEE creates space for feminist scholars from Central and Eastern Europe to articulate critiques grounded in their own legal cultures. These cultures are shaped by a complex constellation of factors: the legacies of socialism, including the proclaimed emancipation of women under communist regimes; the persistence of patriarchal and heteronormative structures;⁶ unacknowledged and structural racism, particularly affecting Roma minorities;⁷ and processes of (post-)accession legal Europeanisation that have often prioritised formal compliance over substantive equality.⁸ By rewriting judgments within these contexts, the project situates feminist jurisprudence rather than abstracting it. It asks what feminist judging means in societies where equality was once proclaimed from above, where “emancipation” coexisted with repression, and where contemporary politics blend liberal constitutional language with nationalist and exclusionary agendas.

Crucially, the FJP-CEE is being written *in the midst* of democratic backsliding. The project unfolds under conditions of imperfect democratic consolidation, where judicial independence is increasingly fragile and where courts are often drawn into broader struggles over national identity, morality, and belonging.⁹ In this setting, feminist judgment writing cannot be

⁴ See *inter alia* Farnush Ghadey, *Transnational Legal Feminism – Beyond Western Hegemonies in Cross-border Feminist Research and Practice in International Law* (Doctoral thesis, King’s College London 2023).

⁵ At the same time, the project does not seek to replace one centre of knowledge with another. Its strength lies in fostering intra-regional and transnational dialogues – between scholars working across Central and Eastern Europe, but also in conversation with feminist scholars from the Global North and South. The project has developed in active exchange with feminist scholars such as Rosemary Hunter, Ruth Houghton and Julie McCandless, while also learning from experiences of feminist judgment writing elsewhere, including the Brazilian FJP. These exchanges reveal both shared challenges and points of convergence, such as undertaking feminist reimagining under conditions of imperfect democratic consolidation.

⁶ See e.g. Elena Brodeală, ‘Gender Roles and the Family Under Romania’s Post-Socialist Constitution: Between Progress and Restraint’ (2025) 23(2) *International Journal of Constitutional Law* 582-603; Barbara Havelková, *Gender Equality in Law: Uncovering the Legacies of Czech State Socialism* (Bloomsbury Publishing 2017); Barbara Havelková, Mathias Möschel and Anna Śledzińska-Simon, ‘Women, Gender, and Constitutionalism in Central and Eastern Europe: Introduction to the Symposium’ (2025) 23(2) *International Journal of Constitutional Law* 486-500, 498.

⁷ E.g. ‘Fast-track Democratic Backsliding in Slovakia: Bad for All, but Worse for Roma’, *ERRC*, 28 January 2025, <https://www.errc.org/news/fast-track-democratic-backsliding-in-slovakia-bad-for-all-but-worse-for-roma> (accessed 16 January 2026); Chelsi West Ohueri, *Encountering Race in Albania: An Ethnography of the Communist Afterlife* (Cornell University Press 2025).

⁸ Kristen Ghodsee, Lavinia Stan and Elaine Weiner (eds), ‘Compliance Without Commitment? The EU’s Gender Equality Agenda in the Central and East European States’ (2010) 33(1) *Women’s Studies International Forum*.

⁹ See e.g. Lídia Balogh and Tímea Drinóczi, ‘Women, Sexual Orientation, Gender Identity, and Constitutional Developments in Hungary’ (2025) 23(2) *International Journal of Constitutional Law* 560-581, 562-563; Ivo

understood merely as an academic exercise or as a retrospective correction of doctrinal error. It is undertaken at a moment when law itself is frequently mobilised to legitimise gendered and sexual hierarchies,¹⁰ and when “gender” has become a legally and politically charged and contested concept.¹¹

Before turning to the FJP-CEE in more detail, it is therefore necessary to briefly situate feminist judgment projects as a genre and to recall the ideas that underpin them. As the FJP-CEE remains an evolving project, this article does not aim to offer a comprehensive account of all its contributions.¹² Instead, after introducing the project’s structure and scope, it focuses on two interrelated issues that the FJP-CEE engages with, both directly and indirectly, through its rewritings.

First, it returns to a question that has accompanied feminist judgment projects from their inception: what does “feminism” mean in the context of feminist judging? While feminist judgment projects have consistently resisted imposing a singular understanding of feminism – embracing intersectional, inclusive approaches attentive to gender, class, race, sexuality, religion, and disability – the FJP-CEE confronts this question under conditions of explicit gender backlash. The project thus inherits the commitments of its predecessors while also grappling with the political obstacles that arise when feminism itself is cast as a threat to national and constitutional order.

Second, while the FJP-CEE is firmly rooted in the Central and Eastern European (CEE) context, this contribution situates the project within a broader landscape of democratic and gender backsliding. In Europe, democratic erosion has often been regionally fixed to the “East”, obscuring parallel developments elsewhere and reinforcing familiar hierarchies between a supposedly progressive West and a backward periphery.¹³ By placing the FJP-CEE in dialogue with gender backsliding at both national and supranational levels – and beyond the European continent – this article seeks to resist that narrative and to highlight the global nature of contemporary attacks on gender and sexual equality.

Gruev and Anna Śledzińska-Simon, ‘Patriarchalism, Ethno-nationalism, or Self-determination? Explaining the Backlash Against the Istanbul Convention in Central and Eastern Europe’, in Wojciech Burek and Katarzyna Sękowska-Kozłowska and Andreas Zimmermann (eds), *The Istanbul Convention in Action: Case Studies from Selected States Parties* (Edward Elgar Publishing 2025); Ivo Gruev, ‘Constitutionalizing Gender: Deterrence Instead of Equality’ *International Journal of Constitutional Law* (forthcoming), referenced in Havelková et al. (n 6); Andrea Krizsán and Conny Roggeband, *Politicizing Gender and Democracy in the Context of the Istanbul Convention* (Springer 2021).

¹⁰ Havelková et al. (n 6).

¹¹ Barbara Havelková, ‘The Struggle for Social Constructivism in Postsocialist Central and Eastern Europe’ (2020) 18(2) *International Journal of Constitutional Law* 434-440; Havelková et al. (n 6) 497-498; Silvia Suteu, ‘The Rule of Law Crisis Was Always Gendered: The Anti-Gender Playbook in Europe’ (2025) 21(1) *European Constitutional Law Review* 58-89.

¹² This piece was written following a workshop at which the contributors to the project presented their work in progress and reflected on the obstacles encountered, the insights gained during the rewriting process, and the commonalities emerging across the contributions. As both a participant in the workshop and a Research Assistant on the project, my knowledge of the project is derived from these two roles. For the workshop see ‘Feminist Judgments in Central and Eastern Europe: A Response to Gendered Democratic Backsliding’ (*EUI*) <<https://www.eui.eu/events?id=577884>> (accessed 21 January 2026).

¹³ Silvia Suteu, ‘Democratic Backsliding and Comparative Constitutional Soul-Searching in Europe’ (2025) 11(1) *Constitutional Studies* 115-145, 116.

Read in this light, the FJP-CEE is not only a regional feminist intervention but also a timely jurisprudential response to a broader moment of democratic uncertainty.

Feminism and Judging: Working Within the Law

Feminist legal scholarship has long sought to expose the politics of law's operation – to reveal the biases of its agents and to deconstruct the systems and discourses that present ideology as neutral legal rationality.¹⁴ One of the most vivid embodiments of this critical tradition can be found in the feminist judgment projects that have emerged across different jurisdictions.¹⁵

In these projects, scholars take on the role of “feminist judge”, revisiting landmark cases using the rules and precedents available at the time to ask: *how might this case have been decided differently through a feminist lens?*¹⁶ These rewritings adopt law's own reasoning – its reliance on precedent and inductive reasoning – yet, as Vanessa E Munro notes, they also “provide a powerful counter-illustration of the malleability of legal forms”, exposing how power, privilege, and partiality operate beneath the façade of neutrality.¹⁷

As Rosemary Hunter reminds us, while feminist judgment projects do not decentre law itself, they do decentre “the iconic figure of the judge”, showing that judging is never disembodied but always shaped by positionality.¹⁸ Feminist judgment projects thus seek to go beyond the critique and to engage with law in a self-reflective and normative way. Moreover, they ask what justice might look like from within law's own borders, without presuming that the answer will be singular, complete, or universally satisfactory.¹⁹

Diana Majury, in her ‘Introducing the Women's Court of Canada’, wrote how the idea of their feminist judgments project came about one evening as feminist scholars sat around a table

¹⁴ See for instance: Katharine T Bartlett, ‘Feminist Legal Scholarship: A History Through the Lens of the California Law Review’ (2012) 100 *California Law Review* 381-430; Catharine A Mackinnon, ‘Gender in Constitutions’, in Michael Rosenfeld and András Sajó (eds), *The Oxford Handbook of Comparative Constitutional Law* (Oxford University Press 2012); Dragica Vujadinović, Antonio Álvarez del Cuvillo and Susanne Strand (eds), *Feminist Approaches to Law: Theoretical and Historical Insights* (Springer 2023).

¹⁵ Vanessa E Munro et al., ‘Feminist Judgments Projects at the Intersection’ (2021) 29(2) *Feminist Legal Studies* 251-262. For some of those projects see e.g. Máiréad Enright, Julie McCandless and Aoife O'Donoghue (eds), *Northern/ Irish Feminist Judgments: Judges' Troubles and the Gendered Politics of Identity* (Bloomsbury Publishing 2017); Loveday Hodson and Troy Lavers (eds), *Feminist Judgments in International Law* (Bloomsbury Publishing 2019); Sharon Cowan, Chloe Kennedy and Vanessa E Munro (eds), *Scottish Feminist Judgments: (Re)Creating Law from the Outside In* (Bloomsbury Publishing 2021); Heather Douglas, Francesca Bartlett, Trish Luker and Rosemary Hunter (eds), *Australian Feminist Judgments: Righting and Rewriting Law* (Hart Publishing 2014).

¹⁶ For more on the FJ methodology see e.g. Máiréad Enright, Julie McCandless and Aoife O'Donoghue, ‘Introduction: Troubling Judgment’, in Enright et al. (eds) (n 15) 8-10; Mary Shine Thompson, ‘Doing Feminist Judgments’, in *ibid*; Kate Webber Nuñez, ‘Persuasive or Pipe Dream? The Potential Influence of the Feminist Judgments Project on Future Judicial Decision Making’ (2020) 9(2) *British Journal of American Legal Studies* 323-366, 327-330.

¹⁷ Munro et al. (n 15).

¹⁸ Rosemary Hunter, ‘Critical Legal Feminism’, in Emiliós Christodoulidis, Ruth Dukes and Marco Goldoni (eds), *Research Handbook on Critical Legal Theory* (Edward Elgar Publishing 2019) 56-57.

¹⁹ Enright et al., ‘Introduction: Troubling Judgment’ (n 15).

discussing the “backsliding of equality” and in a moment teetering on the edge of despair someone shouted: “So why don’t we show them how it could have been done, what substantive equality would look like in those cases? Why don’t we rewrite these decisions that are so wrong?”.²⁰ While none of us are privy to exactly knowing the details of how every feminist judgment project came to be, in my imagination, I can picture every project starting in a very similar fashion. The Women’s Court of Canada project, where ‘judges’ rewrote Canada’s Supreme Court judgments on the equality clause, inspired others such as the Feminist Judgments Project in England and Wales that, as the project puts it, centred around “important decisions that would benefit from a feminist analysis”.²¹ The mentioned projects were then followed by those in other jurisdictions, such as Australia and India, or specific areas of law, such as queer rights and indigenous rights.²²

The Feminist Judgments in Central and Eastern Europe: A New Voice in a Familiar Conversation

The FJP-CEE, as previously mentioned, is both a proud continuation of feminist judgment projects and introduces a distinct regional emphasis. Scholarship on CEE has too often been confined to the “post-communist transition” paradigm – democracy, rule of law, Europeanisation – leaving feminist and queer perspectives marginalised or subsumed under the broader socio-legal categories.²³

Feminist scholars from the region have long engaged with questions of gender and equality,²⁴ but their work is frequently overlooked. The FJP-CEE intervenes in this gap. It offers scholars from the region the chance to rewrite judgments that reflect the legal, social, and political complexities of CEE societies – marked by post-socialist legacies, resurgent nationalism, patriarchal continuities, and fragile rule-of-law structures.

²⁰ Diana Majury, ‘Introducing the Women’s Court of Canada’ (2006) 18(1) *Canadian Journal of Women and the Law* 1-26, 2.

²¹ Rosemary Hunter, Clare McGlynn and Erika Rackley, ‘Feminist Judgments: An Introduction’, in Rosemary Hunter, Clare McGlynn and Erika Rackley (eds), *Feminist Judgments: From Theory to Practice* (Hart Publishing 2010) 4.

²² Aparna Chandra, Jhuma Sen and Rachna Chaudhary, ‘Introduction: The Indian Feminist Judgements Project’ (2021) 5(3) *Indian Law Review* 261-264; Nuno Ferreira, Maria Federica Moscati and Senthoran Raj (eds), *Queer Judgments* (Counterpress 2025); Nicole Watson and Heather Douglas (eds), *Indigenous Legal Judgments: Bringing Indigenous Voices into Judicial Decision Making* (Routledge 2021).

²³ See *inter alia* Norbert Petrovici, ‘Framing Criticism and Knowledge Production in Semi-Peripheries: Post-socialism Unpacked’ (2015) 1(2) *Intersections: East European Journal of Society and Politics*.

²⁴ E.g. Lejla Hadžiahmić, ‘Žene Borci u Odbrani Sarajeva: Činioci ili Žrtve’ (2011) 19 *Bezbednost Zapadnog Balkana*; Tajma Kapić, ‘The Impact and Enduring Legacy of the Dayton Peace Agreement: Looking Through a Gender Lens’, in Hamza Preljević, Muhidin Mulalić, Emir Hadžikadunić and Mustafa Krupalija (eds), *Shifting Paradigms: Three Decades after the Signing of the Dayton Peace Agreement* (Palgrave Macmillan 2025); Kirsten Campbell and Gorana Mlinarević, ‘A Feminist Critique of Approaches to International Criminal Justice in the Age of Identity Politics: A Case Study of Conflict-Related Sexual Violence Prosecutions Before the International Criminal Tribunal for the Former Yugoslavia’, in Indira Rosenthal, Valerie Oosterveld and Susana SáCouto (eds), *Gender and International Criminal Law* (Oxford University Press 2022); Nela Porobić, ‘Holding onto Nonviolence and Feminism in the Midst of War’ (2022) 49 *DEP – Deportate, Esuli, Profughe*.

The FJP-CEE draws together rewritten judgments from seven jurisdictions – Bulgaria, Croatia, Czechia, Hungary, Poland, Romania and Serbia – showcasing the breadth of issues through which gender, sexuality and inequality intersect with law in the region. The range of topics covered reflects the pervasiveness of gendered reasoning across different branches of law: from constitutional questions of family and identity, to criminal cases on violence and sexual assault, to administrative and equality disputes involving healthcare, education, and migration.

The project's rewritten judgments are organised around several broad legal themes. Under *constitutional and human rights law*, they revisit decisions on same-sex partnership recognition, the definition of family, and the contested ratification of the Istanbul Convention. In the field of *criminal law*, feminist rewritings interrogate judicial reasoning in cases of femicide, domestic violence, and sexual assault, exposing the persistence of rape myths and gender bias in sentencing. Issues of *bodily autonomy and gender justice* emerge in judgments on reproductive rights and human trafficking, while questions of *everyday equality* appear in cases on marital name choices, sexist advertising, and the representation of Roma women. Other rewritings tackle *intersectional discrimination*, addressing educational segregation and access to healthcare for Roma and migrant women. Finally, a set of *trans rights* judgments confronts the constitutional erasure of transgender persons in Czechia and Bulgaria.

The cases chosen include those that might be viewed as feminist just by their subject matter of immediate concern to many women's lives, such as reproduction and gender-based violence. But one of the cases in their original format did not deal with gender issues, the *Oršuš* judgment of the Croatian Constitutional Court, but the 'judge' of the rewrite decided to question this lack of a gender lens in the original judgment.

Consequently, the FJP-CEE follows the path of other feminist judgments projects, where it does not limit itself to cases that are simply gender equality cases.²⁵ Instead, they expand the idea of inequality that has the potential to make a significant difference in the vast array of inequalities that Central and Eastern European women* and others experience.²⁶ Taken together, these diverse rewritings demonstrate that feminist judging is not confined to so-called "women's issues". Rather, it offers a jurisprudential method for reimagining how law constructs and regulates bodies, relationships, and power.

What is "Feminism" in Feminist Judgments Projects?

Early feminist legal theory – emerging largely from the US and UK – centred on the experience of (cisgender) women. Even as its leading scholars insisted on anti-essentialism, cis-women, and most often white cis-women, remained the implied subject. Over time, feminist theory has expanded to encompass more inclusive understandings of gender, identity and intersectionality – recognising how race, class, disability, and sexuality inflect the experience of injustice.

²⁵ See Majury (n 20) 5.

²⁶ Women* is designed to encompass all individuals who live, identify, or are perceived as women.

Thus, today, feminist (legal) theory and with it feminist judgments projects must reject the binary notion of ‘women’ and ‘men’, for, as Valerie Bryson phrases it, “these categories are inevitably coalitions of people who are also members of other groups, producing complex, cross-cutting interests and power relationships”.²⁷ Drawing on queer theory, particularly Judith Butler’s ‘Critically Queer’,²⁸ we can think of feminism as “disallowing any positing of a proper subject or object of the field”, insisting that feminism has no stable referent.²⁹

The FJP-CEE works precisely in this spirit: it grapples with queer and trans subjectivities and the structures of exclusion that law produces for them. Nevertheless, the decision to use gender as a queer- and trans-inclusive term within the project was not incidental. It followed careful deliberation by the authors, undertaken with full awareness of the regional political context in which the very term “gender” has become embattled. In CEE, “gender” has been reframed by conservative movements and state actors as a threat to national identity, morality, and traditional family values,³⁰ with tangible repercussions for academic freedom. Within this climate, adopting an inclusive understanding of gender and gender equality is itself a political act. It signals both resistance to the ongoing attempt to reduce “gender equality” to “women’s rights” – rights which themselves remain under sustained attack – and solidarity with queer and trans communities whose existence continues to be contested in law and public discourse.

In the face of resurgent anti-gender and anti-trans³¹ movements across Europe and the wider World,³² feminist (legal) theory – and the projects that emerge from it – must, as Tavia Nyong’o suggests, investigate “the subject transformed by law that nevertheless exists nowhere within it, the figure of absolute abjection that is, paradoxically, part of our everyday experience”.³³

In April 2025, the same month that the FJP-CEE Workshop took place, the UK Supreme Court delivered its judgment in the *For Women Scotland Ltd v The Scottish Ministers* case.³⁴ The Supreme Court ruled that, under the UK’s equality legislation, the term “sex” refers to biological sex. In practice, this means that, for the purposes of the Equality Act 2010, a transgender woman is considered male and a transgender man is considered female. This

²⁷ Valerie Bryson, *The Futures of Feminism* (Manchester University Press 2021) 93.

²⁸ Judith Butler, ‘Critically Queer’ (1993) 1 *GLQ: A Journal of Lesbian and Gay Studies* 17-32, cited in David L Eng, Judith Halberstam and José Esteban Muñoz, ‘What’s Queer About Queer Studies Now?’ (2005) 23(3-4 (84-85)) *Social Text* 1-17.

²⁹ See *inter alia* Maria Drakopoulou, ‘The Ethic of Care, Female Subjectivity and Feminist Legal Scholarship’ (2000) 8(2) *Feminist Legal Studies* 199-226.

³⁰ See, e.g., Izabela Desperak, ‘The Anti-Gender Movement and Its Central and East European Main Actors’ (2023) 11(3) *Polish Political Science Review* 12-29; Flavia Biroli and Conny Roggeband, ‘Transitional Moments, Conflicts over Gender, and the Meanings of Democracy in Central and Eastern Europe and South America: A Comparative Agenda’ (2025) 32(1) *Social Politics: International Studies in Gender, State & Society* 30-55; Suteu (n 11).

³¹ The term ‘trans’ here is used as an umbrella term for a wider range of non-normative sex/gender identities, such as, but not limited to, intersex, non-binary people, and trans* individuals.

³² See Sandra Duffy, “‘Ideological Colonising’: The Influence of Anti-gender Movements on Domestic and International Human Rights Law”, in Tamsin Phillipa Paige and Claerwen O’Hara (eds), *Queer Encounters with International Law* (Routledge 2024); Aoife O’Donoghue, ‘Power, Gender and Tyranny in Our Time’, *Doing Feminist Legal Work*, <https://dflw.ie/power-gender-and-tyranny-in-our-time/> (accessed 21 January 2026).

³³ Eng et al. (n 28).

³⁴ *For Women Scotland Ltd v The Scottish Ministers* [2025] UKSC 16.

decision marks a significant moment in UK equality jurisprudence, entrenching a biologically determinist interpretation of sex and effectively excluding trans identities from the scope of statutory protection.³⁵ This ruling is not, however, the first to restrict trans rights within the UK.³⁶

Similar anti-trans developments are taking place in the United States, where, as of October 2025, three pending cases before the US Supreme Court may prove decisive for trans individuals: *Chiles v Salazar* (challenging conversion therapy bans), *Trump v Orr* (concerning the reinstatement of anti-trans passport policies), and the joined cases *Little v Hecox* and *West Virginia v BPJ* (on state-level bans on trans participation in sports).

At the supra-national level, for some constitutional scholars, the jurisprudence of transnational courts is seen as a possibility to counter national rule of law backsliding. Others, like Silvia Suteu and Ivana Isailović, argue that the EU, as a supranational body, has had mixed results at best when it comes to attacks on gender equality in its Member States.³⁷ If we take a broader conception of gender equality – one that moves beyond the binary framing of “men” and “women” to include other gendered subjects, such as trans individuals – the EU’s record remains ambivalent. For instance, *Mirin*³⁸ is considered a great advancement for freedom of movement and fundamental rights. Yet, as critics have noted, the case still centres on “the EU citizen who happens to be trans”, rather than on trans rights as such.³⁹ This critique is particularly compelling when we consider that not all individuals enjoy mobility rights in practice. The ability to exercise free movement remains a form of privilege, and thus a right extended only to the mobile, not to all trans people, while fully leaving trans third-country nationals out of the equation.⁴⁰

³⁵ For more on the case see: Rosemary Hunter, ‘For Women Scotland Ltd v The Scottish Ministers: An Error of Judgment’ (2025) 14(2) *feminists@law*; Peter Dunne, Emily Grabham and Flora Renz, ‘How can Critical and Feminist Scholars Respond to the Decision in *For Women Scotland*?’ (2025) 14(2) *feminists@law*.

³⁶ In *Bell v Tavistock NHS Trust* [2020] EWHC 3274, the High Court initially ruled that children under 16 likely lack the capacity to consent to puberty blockers, stating that such consent requires understanding long-term risks, but this decision was later overturned by the Court of Appeal ([2021] EWCA Civ 1363) which emphasized that clinicians, not courts, should assess a child’s competence to consent on a case-by-case basis, generally allowing treatment if the young person understands the implications. See Sandra Duffy, ‘Moral Panics and Legal Projects: Echoes of Section 28 in United Kingdom Transgender Discourse and Law Reform’ (2025) 1(1) *Gender and Justice* 78-99.

³⁷ Suteu (n 13) 123; Ivana Isailović, ‘EU Abortion Law After Dobbs: States, the Market and Stratified Reproductive Freedom’ (2024) 30(1) *Columbia Journal of European Law* 1-51, cited in Suteu (n 13).

³⁸ Case C-4/23, *M-AA v Direcția de Evidență a Persoanelor Cluj and Others* [2024] ECLI:EU:C:2024:845. The CJEU ruled in *Mirin* (C-4/23) that EU Member States must recognize and register a change of name and gender legally acquired by a citizen in another Member State, as failure to do so violates the right to free movement.

³⁹ Fulvia Ristuccia and Alessandro Marcia, ‘Trans* EU citizens: Free beyond movement? The Grand Chamber in Case C-4/23 *Mirin*, EU:C:2024:845 512-513’ (2025) 32(4) *Maastricht Journal of European and Comparative Law* 505-520; Audrey M Plan, ‘Trans Rights and Gender Recognition before the CJEU Reflections on the AG’s Opinion in the *Mirin* Case (C-4/23)’, *Verfassungsblog*, 5 June 2024, <https://verfassungsblog.de/trans-rights-and-legal-gender-recognition/> (accessed 21 January 2026).

⁴⁰ Alina Tryfonidou, ‘The Cross-Border Recognition of Changes in the Legal Sex of Transgender Persons: The Landmark Court of Justice Ruling in the *Mirin* case. ECJ 4 October 2024, Case C-4/23, *M-AA v Direcția de Evidență a Persoanelor Cluj, Serviciul stare civilă and others*’ (2025) 21(2) *European Constitutional Law Review* 333-355.

With regards to the ECtHR, the Court has been praised for its flexible and evolutive approach to discrimination, gender equality and gender identity.⁴¹ Nevertheless, in their respective scholarships, both Isobel Renzulli and Caroline Hansen have argued that gender stereotypes are still present in its jurisprudence.⁴² In *AP, Garçon and Nicot v France*,⁴³ for instance, the ECtHR conditioned gender recognition on a psychiatric diagnosis.⁴⁴ thereby perpetuating the view that trans people “require external validation of their identity for it to be genuine”.⁴⁵ Hansen argues that this reflects a paternalistic approach to trans rights, implying a lack of autonomy and responsibility in self-determination.⁴⁶ Similarly, Sam Chollet’s analysis of recent ECtHR case law shows that, despite efforts to challenge stereotypes, the Court retains a medicalised understanding of gender transition – one that reinforces binary identities and constrains self-definition.⁴⁷

Even if one continues to regard the ECtHR as a progressive defender of rights, as evidenced in cases such as *AM and Others v Russia*⁴⁸ and *WW v Poland*,⁴⁹ recent political pressures on the Strasbourg Court in relation to migration cases raise serious concerns about its institutional autonomy and capacity to uphold a consistently rights-protective approach.⁵⁰

This complex jurisprudential landscape is directly relevant to the FJP-CEE. The contributors have had to grapple with a similar ambivalence towards the case law of the ECtHR. In some areas, such as abortion or reproductive rights, the Strasbourg Court’s earlier jurisprudence was not progressive enough, offering little interpretive space for feminist reasoning. In other instances, ECtHR judgments have been invoked by domestic courts in misleading or selectively distorting ways – producing decisions that formally cite Strasbourg authority while substantively undermining its human rights commitments. The FJP-CEE rewritings aim to confront this tension head-on: exposing how “European standards” can either enable or constrain feminist and queer justice, depending on how those standards are mobilised.

⁴¹ Isobel Renzulli, ‘Discrimination and Gender Stereotypes in Judicial Decisions: The Jurisprudence of the European Court of Human Rights in light of *JL v Italy – A Retreat into the Shadows?*’ (2023) 41(3) *Netherlands Quarterly of Human Rights* 155-173, 156; Caroline Hansen, ‘Dismantling or Perpetuating Gender Stereotypes – The Case of Trans Rights in the European Court of Human Rights’ Jurisprudence’ (2023) 18 *The Age of Human Rights Journal* 143-161, 144-145.

⁴² Ibid.

⁴³ *AP, Garçon and Nicot v France* App nos 79885/12, 52471/13 and 52596/13 (ECtHR 6 April 2017).

⁴⁴ Ibid, para 141.

⁴⁵ Hansen (n 41) 146.

⁴⁶ Ibid 147.

⁴⁷ Sam Chollet, ‘“Sex/Gender” and the Mirage of Non-Binary Identities in the ECtHR’s Case Law’ (2025) *GenIUS - Rivista di studi giuridici sull’orientamento sessuale e l’identità di genere* 4.

⁴⁸ *AM and Others v Russia* App no 47220/19 (ECtHR 6 July 2021). The case concerned the restriction of the applicant’s (a trans woman) parental rights and deprivation of contact with her children on grounds of her gender identity.

⁴⁹ *WW v Poland* App no 31842/20 (ECtHR 11 July 2024). The case concerned the access to hormone replacement therapy in prisons.

⁵⁰ Antoine Buyse, ‘Nine States Call for “Open-Minded Conversation” on ECHR and Migration’, *ECHR Blog*, 23 May 2025, <https://www.echrblog.com/2025/05/nine-states-call-for-open-minded.html> (accessed 21 January 2026).

Who Backslides? Beyond the East-West Binary

The prominence of countries such as Hungary and Poland in discussions of democratic and gender backsliding has made CEE appear as the epicentre of autocratic legalism and authoritarian populism.⁵¹ While democratic degradation is a global phenomenon, the narrative of regression often becomes regionally fixed. In the case of Europe, fixed to Central, Eastern and Southeastern Europe.

Anti-gender and anti-trans movements exist across the globe – from the UK’s judicial debates on gender recognition to Argentina’s “illiberal project committed to dismantling gender equality protections and attacking human rights commitments”⁵² – yet Western European discourse tends to localise illiberalism in the “East”. This reproduces what Jasbir K Puar calls “homonationalism” and Sara R Farris “femonationalism”: the mobilisation of feminist and queer rights to assert Western superiority.⁵³ For example, Israel’s ongoing ethnic cleansing of Palestinians is often framed through a lens that portrays Palestinians as inherently homophobic and opposed to women’s rights.⁵⁴ Meanwhile, Israel’s apartheid regime and persistent rule of law backsliding have not prevented it from being labelled as the “only democracy in the Middle East”.⁵⁵

In the European context, value-based reasoning has been prominently featured in the case law of the CJEU (including the national cases referred to the CJEU). In what are described as “feminist” cases, *K and L*,⁵⁶ and *AH and FN*,⁵⁷ gender equality is framed as a “Western” value. In *K and L*, the Court of Justice considered identifying with “the fundamental value of equality between women and men” as a factor that would render an asylum applicant “perceived as being different by the surrounding society in their country of origin”.⁵⁸ In *AH and FN*, the referring court dismissed the applicants’ appeals as unfounded on the grounds that they had not adopted a “Western lifestyle” that had become such an essential part of their identity that it would be impossible for them to renounce it in order to escape the threat of persecution in their country of origin.⁵⁹ Although both the Court of Justice and the Advocate General agreed that

⁵¹ Suteu (n 13).

⁵² Mariana Brocca, “‘Do(n’t) Cry for Me Argentina’: The Democratic and Feminist Backlash in the Era of Victoria Villarruel”, *Verfassungsblog*, 12 August 2025, <https://verfassungsblog.de/abusive-feminism-argentina/> (accessed 21 January 2026).

⁵³ Jasbir K Puar, *Terrorist Assemblages: Homonationalism in Queer Times* (Duke University Press 2007); Sara R Farris, *In the Name of Women’s Rights: The Rise of Femonationalism* (Duke University Press 2017).

⁵⁴ Jasbir Puar, ‘Citation and Censorship: The Politics of Talking About the Sexual Politics of Israel’ (2011) 19 *Feminist Legal Studies* 133-142. See also Jasbir K Puar and Maxime Cervulle, ‘Homonationalisme et Biopolitique’ (2013) 54(1) *Cahiers du Genre* 151-185.

⁵⁵ To avoid giving a platform to news outlets and other sources that reproduce the claim that Israel is ‘the only democratic country in the Middle East’, I instead refer to Decolonize Palestine, ‘Israel Is a Democracy’ <https://decolonizepalestine.com/myth/israel-is-a-democracy/> (accessed 29 October 2025).

⁵⁶ Case C-646/21, *K and L v Staatssecretaris van Justitie en Veiligheid* [2024] ECLI:EU:C:2024:487.

⁵⁷ Joined Cases C-608/22 and C-609/22, *AH and FN v Bundesamt für Fremdenwesen und Asyl* [2024] ECLI:EU:C:2024:828.

⁵⁸ *K and L* (n 56) para 63.

⁵⁹ *AH and FN* (n 57) para 23.

the treatment of women and girls in Afghanistan, given its cumulative effect and intensity, could amount to persecution,⁶⁰ the prominence of “Western lifestyles and values” as the benchmark for assessing the need for international protection remained unaddressed.⁶¹ These framings simultaneously construct ‘values’ as inherently Western and reinforce the othering of non-Western countries and societies. As Davide Tomasselli and Narin Nosrati argue, value-based reasoning risks opening the door to ideological reinterpretations.⁶² While their work, alongside that of Saniya Amraoui,⁶³ focuses on asylum and migration law, the same concerns can be applied to a wider promotion of gender and queer equality through the language of “Western values”. Such framing risks reinforcing an East–West binary, positioning the “progressive, feminist, and queer-friendly” West – or more broadly, the Global North – against the supposedly “backward” or “barbaric” societies of the Global South and Global East.

The presented arguments do not seek to deny the real democratic erosion happening in Central, Eastern and Southeastern Europe. The regions’ populist movements that embrace a heterosexual and nuclear notion of family, at the same time, chip away at women’s rights and the rights of queer people. Moreover, it has “reinforced gendered stereotypes and moved away from individual autonomy and equality and toward state control of procreation”.⁶⁴ But it is precisely against this backdrop that the FJP-CEE must be read. By producing feminist and queer legal critique from within CEE’s legal cultures, the project resists both the internal dynamics of democratic erosion and the external tendency to frame gender equality as a Western value to be exported.

Conclusion

Finally, returning to Audre Lorde’s famous words, “the master’s tools will never dismantle the master’s house”, feminist judgment projects may not demolish the structure of law, but they transform the way we inhabit it. The Feminist Judgments in Central and Eastern Europe project exemplifies this transformation: it demonstrates that even within law’s inherited frameworks, new spaces of justice can be carved out, however provisional or contested they may be.⁶⁵

In the context of Central and Eastern Europe – where democratic institutions are fragile, where “gender” itself has become a site of political struggle, and where scholarly and judicial independence are under pressure – projects such as this one represent a form of jurisprudential

⁶⁰ Ibid, para 46; Opinion of AG De La Tour, paras 7 and 59.

⁶¹ Ibid, paras 20, 22-23 and 27.

⁶² Narin Nosrati and Davide Tomasselli, ‘Whose Values? Rethinking the Use of Values in EU Law Through the CJEU’s “Feminist” Asylum Cases’, *Verfassungsblog*, 16 June 2025, <https://verfassungsblog.de/ecj-western-values-gender/> (accessed 21 January 2026).

⁶³ Saniya Amraoui, ‘Othering in EU Law: The Case of Migrants’, *Verfassungsblog*, 4 June 2025, <https://verfassungsblog.de/othering-in-eu-law/>.

⁶⁴ Suteu (n 13) 126.

⁶⁵ See *inter alia* Enright et al. (n 19) 7-8.

and academic resistance. They insist that law can still be a site of critique, imagination, and solidarity.

At the same time, the project invites reflection on the limits of that endeavour. Rewriting judgments does not undo the power structures that shape the region's political and legal realities, nor does it erase the enduring Orientalising and pathologising gaze through which the region is still viewed from beyond. Yet, within those constraints, feminist judgment writing performs something vital: it refuses silence, creating a dialogue that reclaims both voice and authority. Perhaps the value of such projects lies precisely in this tension – in acknowledging that there is no single path to justice, but that resisting on multiple fronts, intellectually and institutionally, is itself a form of progress. Feminist judging does not dismantle the master's house, but it offers opportunities where the law might finally begin to speak in different voices.⁶⁶

⁶⁶ See Máiréad Enright, Aoife O'Donoghue and Catherine O'Rourke, 'Prefiguring Feminist Constitutions: An Experimental Legal Writing Method for Northern/Ireland?' (2025) 23(3) *International Journal of Constitutional Law* 693-717.
