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Law, Rights, and Society: A Woman's Place

A case study into the historical injustice experienced by unmarried mothers
in The Netherlands and Ireland

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Abstract

This thesis examines whether the treatment of unmarried mothers in The Netherlands and Ireland in the 20th century, as an example of historical injustice, could qualify as a redressable injustice under the European legal system. Using doctrinal research, comparative historical analysis and normative analysis grounded in transitional justice theory, this thesis analyses the development of the rule of law, effective access to justice and women's rights in the European legal framework and applies these principles to the case of unmarried mothers in both countries.

The analysis shows that the rights that could have protected the women only existed on paper, while the social and political context of the 20th century meant that state-facilitated institutionalisation and forced relinquishment of children went unchallenged. Both the Dutch and Irish situations, though condoned at the time, reflect a systemic failure to extend European rule of law protections to this specific group of women.

The recent responses of both governments to victims' demands for justice have reproduced this pattern of dismissiveness. Applying transitional justice theory in its pluralistic conceptualisation demonstrates that victim-centered redress produces satisfaction, while departures from it generate continued discontent. The EU's transitional justice policy framework, however, currently lacks recognition of non-conflict historical injustices. This thesis concludes that it is possible to qualify the case of unmarried mothers in The Netherlands and Ireland as an injustice based on a violation of their enjoyment of the rule of law as European citizens, making it possible to provide suitable redress through the European transitional justice policy, in a way that could satisfy the victims' search for redress.

Table of Contents

1. Introduction.....	- 5 -
1.1 Relevance of the research	- 7 -
1.2 Methodology	- 9 -
2. How did the European system against abuse of state power develop?	- 12 -
2.1 Constitutionalisation of the European community	- 13 -
2.2 Effective access to justice in the European legal framework.....	- 18 -
2.2.1 Effective access to justice before the Lisbon Treaty	- 19 -
2.2.2 Effective access to justice after the Lisbon Treaty.....	- 20 -
2.3 Effective access to justice and women's rights	- 23 -
2.3.1 The right to non-discrimination on the grounds of sex.....	- 24 -
2.3.2 The reality of European women's rights	- 25 -
2.4 Conclusion	- 28 -
3. The treatment of unmarried mothers in The Netherlands and Ireland	- 30 -
3.1 The experience of unmarried mothers in The Netherlands.....	- 31 -
3.1.1 Institutionalisation of unmarried mothers	- 32 -
3.1.2 Access to information for the unmarried mother	- 33 -
3.1.3 Discrimination.....	- 34 -
3.1.4 The end of institutionalisation of unmarried mothers	- 36 -
3.2 Irish Mother and Baby Homes	- 37 -
3.2.1 Institutionalisation of unmarried mothers	- 37 -
3.2.2 Access to information	- 39 -
3.2.3 Discrimination.....	- 41 -
3.2.4 The end of Mother and Baby Homes	- 43 -
3.3 Comparing The Netherlands to Ireland.....	- 45 -
3.3.1 Infringements of procedural rights.....	- 47 -
3.3.2 Infringements of substantive rights.....	- 48 -
4. A Redressable Injustice	- 50 -
4.1 Unmarried mothers in the 21st century	- 50 -
4.1.1 The Netherlands	- 50 -
4.1.2 Ireland	- 55 -
4.1.3 Comparing The Netherlands and Ireland	- 59 -
4.2 A redressable injustice according to the victims	- 61 -

4.2.1	Legalism.....	- 61 -
4.2.2	Restorative justice	- 62 -
4.2.3	Reparative justice	- 64 -
4.2.4	Transitional justice as overarching theory	- 66 -
4.3	A redressable injustice in the European legal system?	- 67 -
4.3.1	Application of transitional justice policy	- 71 -
4.4	Conclusion	- 72 -
5.	Conclusion	- 74 -
7.	Bibliography and tables	- 77 -

1. Introduction

The inspiration for this thesis comes from the academic discussion on historical injustice. The concept of historical injustice can be defined in many ways, yet there are several characteristics recognised in every definition.¹ Firstly, the ‘historical’ element; historical injustices are wrongs that took place in the past.² The second element, the definition for the ‘injustice’, is a more contested topic but often characterised by the same normative framework; human rights.³

“Historical injustice is when there is a wrongdoing or multiple wrongdoings with a widespread effect consisting of human rights violations or contributing to an unjust state of affairs or structure that goes beyond individual cases.”⁴

The question of which normative framework to use for historical injustice is the basis for academic debate originating from the question addressed by the historical injustice debate: how to handle historical practices, possibly condoned in their days, as potentially redressable injustices.⁵ The fact that the contested practices could be condoned in their days makes it difficult to determine if there is a redressable injustice today. Many of the cases discussed as historic injustice involve discrimination against many individuals.⁶ This thesis researches the case of unmarried mothers in The Netherlands and Ireland, a case of long-term neglect of women’s human rights, according to the issues posed by the historical injustice debate.

The case of unmarried mothers in The Netherlands and Ireland refers to two separate cases. Firstly, the case of the *Afstandsmoeders* (translation: relinquishing mothers) in The Netherlands. Secondly, the case of Mother and Baby Homes in Ireland. These events are characterised by their similar timeframe and the similar treatment of unmarried mothers: after

¹ Katrina Wyman, ‘Is There a Moral Justification for Redressing Historical Injustices?’ (2008) 61 *Vanderbilt Law Review* 127, 133.

² Eric L Muller, ‘Fixing a Hole: How the Criminal Law Can Bolster Reparations Theory’ (2006) 47 *Boston College Law Review* 659, 664.

³ Santiago Trucone, ‘Legacies of Historical Injustice: What Is Owed to the Victims of Past Injustices? Introduction to the Special Issue’ (2024) 30 *Res Publica* 643, 645; Wyman (N 1).

⁴ *ibid.*

⁵ Muller (N 2) 669.

⁶ Wyman (N 1).

the Second World War, pregnant women who were not married were seen as a threat to decent society, unfit to be a mother and had to be rehabilitated.⁷ This meant that the women and their children were to be institutionalised, often accompanied by forced adoption of the baby.⁸ The practice lasted in both countries until the end of the 20th century.⁹

Whether an act qualifies as a redressable injustice is decided by the applicable normative framework. For this thesis, the normative framework is determined by European law throughout the century. The fact that the institutionalisation of the unmarried mothers by state powers, with all the consequences this entailed, had a considerable influence on the injustice suffered by the victims, determines the start of the normative research.¹⁰ The victims of the case of unmarried mothers in The Netherlands and Ireland were subjected to state power which decided if, when and how long they had to be institutionalised, the women were unable to challenge this power.¹¹ The provisions against abuse of state power by the European legal system is thus relevant to determine if these acts should be allowed.

Important to note, as this thesis researches the European system, is that there are multiple similar cases to the case of unmarried mothers in The Netherlands and Ireland across Europe. This thesis focuses on the cases in Ireland and in The Netherlands because these states had a similar political system, unlike the government in Spain being a dictatorship where there is a case of ‘stolen babies’.¹² The German case is excluded in this thesis because here, the classification of who had to be subjected to forced adoption was different, this was based on the skin colour of the baby.¹³ The Netherlands and Ireland had a similar classification of women who had to be subjected to the treatment, which is further explained

⁷ Micha de Winter and others, ‘Schade door schande: Rapport van de Commissie onderzoek Binnenlandse Afstand en Adoptie 1956–1984’ (Committee of Inquiry into Domestic Relinquishment and Adoption 2025) 16.

⁸ See chapter 3.

⁹ *ibid.*

¹⁰ Irish unmarried mothers were returned by local police to the Mother and Baby Home which were subjected to governmental policy and funding: Ellen O’Riordan, ‘Findings of Mother and Baby Homes Report ‘at Odds’ with Testimony, High Court Hears’ *The Irish Times* (17 November 2021)

<https://www.irishtimes.com/news/crime-and-law/courts/high-court/findings-of-mother-and-baby-homes-report-at-odds-with-testimony-high-court-hears-1.4731252> accessed 21 June 2026; Commission of Investigation into Mother and Baby Homes, Final Report (2021) para 12.40 12.58-12.63 12.76-12.77 12.125; In The Netherlands the homes for unmarried mothers were managed by a state body, namely, the Child Protection Council and subject to governmental policy: Jan Kok and others, ‘Beklemd in de scharnieren van de tijd. Beleid, praktijk en ervaringen van afstand ter adoptie door niet-gehuwde moeders in Nederland tussen 1956 en 1984’ (WODC-onderzoek 2707, WODC/Radboud Universiteit 2017) 32.

¹¹ See chapter 3.

¹² Antonio Alonso and others, ‘Stolen Babies in Spain: The Long and Winding Search for an Illegally Adopted Daughter’ (2026) 82 *Forensic Science International: Genetics* 1, 2.

¹³ Heide Fehrenbach, *Race after Hitler: Black Occupation Children in Postwar Germany and America* (Princeton University Press 2005).

in the second chapter of this thesis. Notably, in Belgium and Italy stories on similar treatment of unmarried mothers are known, but because there is no extensive or state-commissioned research project into these situations, they are excluded from this thesis.¹⁴ It is to be noted, however, that it is likely that the legal and societal grounds for the historical injustice suffered in the situations researched in this thesis, were very similar for the European women in these excluded situations.

The research question that this thesis aims to answer is whether the case of unmarried mothers in The Netherlands and Ireland, as case of historical injustice, can be qualified as redressable injustice according to the European legal system? To answer this question, the discussion on historical injustice is leading; the first sub-question is whether the treatment of unmarried mothers in The Netherlands and Ireland was condoned at the time of the events according to the European legal system. The second sub-question is whether the treatment of unmarried mothers in The Netherlands and Ireland can be qualified as a redressable injustice in the current European legal system.

Since the Second World War, the European countries have developed an inter-governmental body. This development comes with many treaties, providing the collaboration of European countries many different names which eventually became the European Union (hereafter: EU) we have now. To limit complications, the term EU will be used for all preceding collaboration between European countries.

1.1 Relevance of the research

This thesis challenges the conventional understanding of transitional justice as a theory and as a policy. This starts with a possible ground for transitional justice; a rule of law violation. Scholarship on the development of the rule of law in Europe is well-developed and established, for example in Craig and De Búrca's '*EU Law: Text, Cases and Materials*'.¹⁵ The framework is extensively applied in external European policy, however, there seems to be a caveat: the upholding of the rule of law for specific individuals or specific groups within the

¹⁴ Belgium: Cisse Michiels, 'Regering erkent dat illegale adopties hebben plaatsgevonden in België' *VRT NWS* (8 May 2024) <https://www.vrt.be/vrtnws/nl/2024/05/08/erkenning-regering-illegale-adopties/> accessed 21 June 2026; Italy: Camillo Barone, 'Stolen Children: How the Vatican Sent Babies of Unwed Mothers to US for Adoption' *National Catholic Reporter* (New York, 6 December 2024) <https://www.ncronline.org/news/stolen-children-how-vatican-sent-babies-unwed-mothers-us-adoption> accessed 21 June 2026.

¹⁵ Paul Craig and Gráinne de Búrca, *EU Law: Text, Cases, and Materials* (8th edn, OUP 2024) 215.

EU.¹⁶ The analyses of the rule of law principle in the context of the development of women's rights, based on scholars like Sonia Mazey and Catherine Hoskyns, reflects this caveat in the context of women in Europe.¹⁷ This thesis researches the gap between the rule of law provisions and women's rights policy, in the context of the case of unmarried mothers in The Netherlands and Ireland.

Based on state-commissioned reports from the respective countries, this thesis formulates a historical analysis of the events.¹⁸ Notable is that research on these two situations is often siloed within one national context, resulting in two similar histories never being compared against each other, let alone against the international legal system that failed to deliver respect for the victims' experience of the rule of law. The lack of research into unmarried mothers as European citizens is visible in the research available on the Council of Europe resolution on unmarried mothers, established in 1970.¹⁹ This research could be a highly relevant source of information for the normative chapter of this thesis, but it is only mentioned briefly in academia on children's rights, and never analysed thoroughly.²⁰

Transitional justice theory partly offers a solution for the gap between rule of law provisions and women's reality in The Netherlands and Ireland; scholars like James Gallen have increasingly moved the field beyond its post-conflict origins, applying it to non-violent historical injustices.²¹ Besides this theoretical development, European policy on transitional justice also leaves room for transitional justice to be the correct form of redress for the victims of the historical injustice against unmarried mothers in The Netherlands and Ireland; transitional justice aims to restore and protect the rule of law.²² This thesis applies the

¹⁶ James A Sweeney, 'The EU's Promotion of Transitional Justice: External and Internal Dimensions of a Patchwork of Policies' (2026) *The International Journal of Human Rights* 1 <https://doi.org/10.1080/13642987.2026.2619973> accessed 8 July 2026.

¹⁷ Sonia Mazey, 'The European Union and Women's Rights: From the Europeanization of National Agendas to the Nationalization of a European Agenda?' (1998) 5 *Journal of European Public Policy* 131; Catherine Hoskyns, *Integrating Gender: Women, Law and Politics in the European Union* (Verso 1996).

¹⁸ The Netherlands: De Winter and others (N 7); Kok and others (N 10); Saskia Bultman and Marian van der Klein, 'Verslag van het kranten- en literatuuronderzoek: persoonlijke ervaringen met binnenlandse afstand en adoptie' (Working Paper, Verwey-Jonker Instituut 2022); Marian van der Klein and Saskia Bultman, 'Verslag van archief- en literatuuronderzoek rond regels en toezichthouders bij binnenlandse afstand en adoptie, 1956–1984' (Working Paper, Verwey-Jonker Instituut 2022); Ireland: Commission of Investigation into Mother and Baby Homes (N 10).

¹⁹ Council of Europe, Resolution (70) 15 on the social protection of unmarried mothers and their children, 15 May 1970, <https://rm.coe.int/native/09000016804c3355>.

²⁰ Kateřina Čilečková and others, 'Socio-legal Protection of Children in the Czech Republic' in Juha Hämäläinen and others (eds), *Evolution of Child Protection and Child Welfare Policies in Selected European Countries* (University of Ostrava – ERIS with Albert 2012) 51.

²¹ James Gallen, 'Institutions and Ireland: Mother and Baby Homes and Transitional Justice' (2022) 52(1) *Irish University Review* 103.

²² EU External Action, "Policy Framework on support to transitional justice", 26 February 2026.

broadening development in justice theory to European policy on transitional justice by applying it to the case study of the unmarried mothers in The Netherlands and Ireland. This places the Dutch and the Irish cases on unmarried mothers side by side, both historically and in recent years, and evaluates the resulting justice gap against transitional justice theory and European policy, connecting bodies of scholarship that have, so far, remained in separate conversations.

1.2 Methodology

Can the case of unmarried mothers in The Netherlands and Ireland, as case of historical injustice, qualify as redressable injustice according to the European legal system? This is the question that the thesis aims to find an answer to. To formulate an answer to this question, multiple qualitative research methods are used. Inherent to this type of research methods is its interpretative nature. To ensure a high standard of scientific validity, each interpretation is well-evidenced and transparently argued. Each claim made in this thesis is grounded in identifiable sources, leaving its reasoning open to scrutiny.

The first sub-question of this thesis is whether the treatment of unmarried mothers in The Netherlands and Ireland was condoned at the time of the events according to the European legal system. The answer to this question starts with primarily doctrinal legal research to define the European legal system applicable to the case study; primary sources like the Lisbon Treaty and other European treaties are analysed together with case law.²³ The European human rights system is not only based on laws from the European Union and its predecessors, but also on the treaties drafted by the Council of Europe and the European Court of Human Rights (ECtHR), which is based on a Council of Europe treaty. To find an answer to the question, Council of Europe treaties and ECtHR case law are analysed, together with EU legislation and case law from the Court of Justice of the European Union. The development of the legal system is analysed with the theoretical lens of the distinction between substantive and procedural rights to have a clear reflection of how the rights function in practice. Besides this, the legislation is analysed from a historical and contextual perspective based on legal-historic and socio-legal literature. The primary legal texts are

²³ Terry Hutchinson & Nigel Duncan, “*Defining and describing what we do: Doctrinal legal research*”, *Deakin Law Review* 17-1, 1 October 2012, 83-119.

sourced from the European database EUR-Lex and the supplementary literature is sourced from the Queen's University library.

The third chapter of this thesis provides the second part of the first sub-question; the case study itself. This chapter entails a comparative historical analysis based on the documentary analysis of state-commissioned research, which is then applied to the applicable legislation at the time.²⁴ The facts of the case are based on state-commissioned research projects on the events that happened in the 20th century regarding unmarried mothers. This means there is a double interpretation; The research project published their interpretation of the facts, which subsequently are interpreted in this thesis. In this third chapter, the factual events are reconstructed, compared to each other and tested against the legal principles established in the second chapter. For the information on the treatment of unmarried mothers in The Netherlands, the primary sources are the report from the state-commissioned research project from 2017, the published working papers from the failed research project from 2022 and the report on the state-commissioned research project published in 2025.²⁵ For the information on the treatment of unmarried mothers in Ireland, the primary source is the report of the state-commissioned research project published in 2021, with most information coming from chapter 12 on the treatment of unmarried mothers and their children in the late twentieth century.²⁶ These sources form the basis for the thematic analysis of what happened to the unmarried mothers in the second half of the 20th century. The themes highlighted are as followed: the institutionalisation of unmarried mothers, the access to information for unmarried mothers, discrimination of unmarried mothers and how the institutionalisation of unmarried mothers ended. The thematic analyses of both countries are followed by a comparison of the two situations. The situations are well suited for a comparative analysis because they are both European countries, the stigmatisation and institutionalisation of unmarried mothers was similar, and both situations have been subjected to state-commissioned research. The differences between the countries, Ireland joining the EU in the 1970's and the secularity of The Netherlands, make this comparison even more relevant. The

²⁴ James Mahoney & Dietrich Rueschemeyer (eds), *"Comparative Historical Analysis in the Social Sciences"*, Cambridge University Press 2003.

²⁵ De Winter and others (N 7); Kok and others (N 10); Bultman and Van der Klein, 'Verslag van het kranten- en literatuuronderzoek' (N 18); Van der Klein and Bultman, 'Verslag van het archief- en literatuuronderzoek' (N 18).

²⁶ Commission of Investigation into Mother and Baby Homes (N 10).

chapter is concluded with a comparison between the legal framework explained in chapter 2, and the events described in chapter 3 to formulate an answer to the first sub-question.

The second sub-question of this thesis is whether the treatment of unmarried mothers in The Netherlands and Ireland can qualify as a redressable injustice in the current European legal system. This question is answered using a normative analysis, the statements by the victims of the treatment of unmarried mothers forming the basis for the normative framework, supplemented with justice theory.²⁷ Finally, application of the normative theoretical framework of transitional justice is compared to the EU transitional justice policy framework. The answer to the sub-question is an argued evaluation grounded in the theoretical framework on justice and the statements made by unmarried mothers from the 20th century, it is not a neutral description. The theoretical framework of transitional justice is based on the pluralistic conceptualisation of transitional justice theory as described by Anita Ferrara.²⁸ The description of the unmarried mothers' opinion on their sense of justice is based on official statements made by organisations that represent this group, interviews with specific unmarried mother and news articles where they are directly quoted. The analysis of the EU transitional justice policy framework is mostly based on the eponymous document published by the EU.

²⁷ Sanne Taekema, 'Theoretical and Normative Frameworks for Legal Research: Putting Theory into Practice' (2018) Law and Method 1.

²⁸ Anita Ferrara, 'Reconceptualising Transitional Justice as a Pluralistic Theory of Justice' (2026) Social & Legal Studies 2.

2. How did the European system against abuse of state power develop?

This chapter analyses the European legal framework against abuse of state power.

“The only reliable bulwark against the arbitrary exercise of power.”²⁹

That is what the President of the European Court of Justice, the highest court of the CJEU, said about the rule of law in 2019. According to the President, the rule of law in the European Union means that neither the EU institutions nor the Member States are above European law. With this, he emphasized the importance of the rule of law for the functioning of the EU.³⁰ The legal framework on the rule of law is what prevents arbitrary exercise of state power. As explained in the introduction and more extensively in chapter 3, the institutionalisation of unmarried mothers in the 20th century were a result of state power and the lack of possibilities for the women to challenge this. For these reasons, this chapter is focused on how the rule of law and its element of effective access to justice as defined in European law and policy. Since there is no legal source that identifies a comprehensive or exhaustive definition of the rule of law, this chapter provides a historical analysis of the development of the rule of law in the European legal system. With this, the right to effective access to justice for European citizens is contextualised in order to clarify what significance is attributed to this right in the European legal system. Since this thesis applies the rule of law framework to specific events experienced by women, legal documents relating to access to justice and women’s rights are also analysed.

Important to note in advance of the analysis of the rule of law in the European legal system, is the direct effect of European law. Direct effect means that the European treaties confer rights directly upon individuals.³¹ A national law is not needed for an individual to invoke the European treaties. This direct effect was established in 1963 by the Van Gend en Loos case.³² With this, it was established that European law creates individual rights which national courts must protect. The subject of European law is, according to this principle, not

²⁹ Koen Lenaerts, ‘Upholding the Rule of Law within the EU’ (2nd RECONNECT Conference, Brussels, 5 July 2019) 20 <https://reconnect-europe.eu/wp-content/uploads/2019/08/RECONNECT-GA-report-web.pdf> accessed 14 March 2026.

³⁰ *ibid.*

³¹ Case 26/62 *Van Gend en Loos v Nederlandse Administratie der Belastingen* [1963] ECR 1, 12.

³² *ibid.*

only the Member States, but it also includes individuals within the Member States.³³ This determination on what the subject of European law is, also shows another integral element of European law: the vertical effect.³⁴ Vertical effect means that the rights can be invoked in court against the state or a public entity.³⁵ The vertical character of European law ensures that the Member States can be held accountable before a court, subsequently ensuring that the state is controlled in their exercise of power. The European legal system ensures that its rights can be invoked directly by individuals against the Member States.

2.1 Constitutionalisation of the European community

As stated above, in 2019 the rule of law was mentioned as the only reliable bulwark against arbitrary use of power. This thesis researches arbitrary use of power in the case of unmarried mothers from the events in the 20th century, until now. To formulate a comprehensive analysis of the European system against abuse of state power relevant to the case study, it is thus necessary to find an answer to the question how the rule of law has developed in the European legal system. This paragraph answers this question using doctrinal legal research with a historical approach.

The European legal system dates back as far as the 1940's, with the emergence of international treaties like The Brussels Treaty in 1948, closely followed by the Statute of the Council of Europe in 1949 and the European Convention on Human Rights (hereafter: ECHR) in 1950.³⁶ These treaties were established as a reaction to the authoritarian regime and the human rights violations of the Second World War, highlighting and encouraging European integration of human rights and rule of law commitments.³⁷ This thesis analyses the rule of law commitments, started by these first European treaties. The principle of the rule of law has been in place for a long time and has taken many different forms over the decades of development of the EU and its legal system, it is part of the contested development of

³³ *ibid.*

³⁴ Craig and De Búrca (N 15).

³⁵ *ibid* para 5.

³⁶ Treaty of Economic, Social and Cultural Collaboration and Collective Self-Defence [Brussels Treaty] (Brussels, 17 March 1948), 19 U.N.T.S. 51, entered into force 25 August 1948; Statute of the Council of Europe (London, 5 May 1949), Europ. T.S. No. 1, entered into force 3 August 1949; Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950), Europ. T.S. No. 5, entered into force 3 September 1953.

³⁷ Daniel C Thomas, 'Constitutionalization through Enlargement: The Contested Origins of the EU's Democratic Identity' (2006) 13 Journal of European Public Policy 1190, 1193.

constitutionalisation of the EU.³⁸ This constitutionalisation, similar to the rule of law, is relevant for the democratic legitimacy of the European system: governmental action (in case of the EU this would entail both the Member States' government and the EU governmental system) is subjected to a constitutional legal instrument, namely, the principles and values as agreed upon in a constitution.³⁹ Constitutionalisation is a means to keep political governments accountable according to long agreed (constitutional) norms, the rule of law in the constitutionalisation of the EU being the relevant norm in this thesis.

The first European document that mentions the rule of law was the Brussels Treaty of 1948:

“As the Governments of European countries which are likeminded and have a common heritage of political traditions, ideals, freedom and the rule of law...”⁴⁰

This commitment, however, was not maintained for long; in 1951, with the treaty establishing the European Coal and Steel Community (hereafter: ECSC), the political leaders of the Member States at the time did not include the commitment of having a likeminded heritage of the rule of law.⁴¹ With this, the focus of the European collaboration and integration changed to a free-market vision, instead of the earlier focus on human rights and rule of law.⁴² This shift in focus is also visible in the abandonment of a draft treaty from 1953. This Treaty was supposed to establish a supranational guarantee and intervention system, which would be able to hold Member States more accountable; a framework that could strengthen the rule of law.⁴³ Member States found this too dictatorial, thus the Treaty was abandoned.⁴⁴ This rapid change of significance attributed to constitutional norms shows the vulnerability of rule of law integration in relation to prevailing political views. The focus

³⁸ Martin Loughlin, ‘What Is Constitutionalisation?’ in Petra Dobner and Martin Loughlin (eds), *The Twilight of Constitutionalism* (OUP 2010).

³⁹ *ibid.*

⁴⁰ ECHR (N 36).

⁴¹ Treaty Establishing the European Coal and Steel Community [ECSC Treaty] (Paris, 18 April 1951), 261 U.N.T.S. 140, entered into force 23 July 1952.

⁴² Thomas (N 37) 1193-1194.

⁴³ Council of Europe, ‘Draft Treaty embodying the Statute of the European Community’ (Council of Europe 1953).

⁴⁴ Anne Boerger-De Smedt, ‘Negotiating the Foundations of European Law 1950–57: The Legal History of the Treaties of Paris and Rome’ (2012) 21 *Contemporary European History* 339, 341.

on human rights and the rule of law shifted towards an economic focus with the emergence of the EU.

In 1957, a new, weakened version of the abandoned treaty from 1953 was signed; the Treaty of Rome. With this, the European Economic Community (hereafter: EEC) was established.⁴⁵ The EEC differed from the ECSC on the broader conception of economic European integration, beyond just coal and steel.⁴⁶ This did not mean the rule of law was integrated in the legal framework; the only provision relating to the meaning of the rule of law was in Article 164, which stated that the Court of Justice had the task to ensure that in the interpretation and application of the Treaty, the law had to be observed.⁴⁷ This article is seen as encapsulating the core legal meaning of the rule of law, namely, the scrutiny of decisions by public authorities by independent courts.⁴⁸ The lack of provisions relating to the rule of law are a sign that the principles on which the Member States of the EEC wanted to base their European collaboration deviated greatly from the first European treaties.

This deviation from the rule of law and human rights affected the admission to the EEC; even the dictatorship of Spain, a government which inherently opposed the rule of law, was almost admitted as an associate and member of the EEC.⁴⁹ Interestingly, the reason that the Spanish dictatorship did not become an EEC associate/member was because of the resistance in the European Parliamentary Assembly of the Council of Europe, a non-state body. This non-state body of the Council of Europe went against the political conviction of the Member State's governments and made it thus impossible for the Member States to allow Spain at that time.⁵⁰ In 1961, a parliamentarian wrote a report on the admission criteria for potential new members of the EEC; the Birkelbach Report.⁵¹ By using the reference to '*liberty*', and the aspiration to an '*ever closer union*' in the preamble of the Rome Treaty, he argued that there were strict political conditions on membership of the EEC.⁵² These conditions consisted of a democratic form of state, a free political order and respect for human rights, which is

⁴⁵ Treaty Establishing the European Economic Community [Treaty of Rome] (Rome, 25 March 1957), 298 U.N.T.S. 3, entered into force 1 January 1958.

⁴⁶ Boerger-De Smedt (N 44) 350.

⁴⁷ Treaty of Rome (N 45) Article 164; Laurent Pech, 'The Rule of Law as a Well-Established and Well-Defined Principle in EU Law' (2022) 14 Hague Journal on the Rule of Law 107, 110.

⁴⁸ Francis Jacobs, *The sovereignty of law: The European way* (CUP 2007) 35.

⁴⁹ Thomas (N 37) 1195-1205.

⁵⁰ Thomas (N 37) 1197.

⁵¹ Willi Birkelbach, 'Rapport fait au nom de la commission politique de l'Assemblée parlementaire européenne sur les aspects politiques et institutionnels de l'adhésion ou de l'association à la Communauté' (Assemblée parlementaire européenne 1961).

⁵² Ronald Janse, 'The Evolution of the Political Criteria for Accession to the European Community, 1957–1973' (2018) 24 European Law Journal 57, 66.

explained as to include the principles of rule of law, human rights and fundamental freedoms.⁵³ The 1961 Birkelbach Report brought the importance of constitutional principles back to attention and overruled the prevailing political opinions which held little regard for the rule of law.

The legal position of the constitutional principles and the rule of law changed in 1973 with the adoption of the Declaration on European Identity by the heads of state and governments of the EEC Member States.⁵⁴ In this declaration, the Member States expressed their determination to defend the fundamental elements of the European Identity, including the principle of the rule of law.⁵⁵ European integration was now linked with parliamentary democracy, the rule of law and respect for human rights again, like it was with the founding treaties from the 1950's.⁵⁶ In 1986, the importance of the rule of law for the legal system beyond politics was established. In the *Les Verts* case, the judges of the Court of Justice of the European Communities (now Court of Justice of the European Union, hereafter: CJEU) described the EU as a “community based on the rule of law”.⁵⁷ To this day, this case is referred to as the first recognition of the rule of law and the legal implications of this principle in the European legal system.⁵⁸ 6 years later, in 1992, with the Maastricht Treaty (also: the Treaty on European Union, hereafter: TEU), the rule of law became an even more prominent concept in European law because of Article 2 TEU stating that the rule of law is a value on which the EU is founded.⁵⁹ The thus far largely symbolic mentions of the rule of law became more influential with the Amsterdam treaty in 1997 (also: Treaty on the Functioning of the European Union, hereafter: TFEU): the Member States established the rule of law as one of the EU's foundational principles.⁶⁰ Since the Declaration on European Identity, the rule of law has developed from a symbol of European identity and democratic legitimacy towards an influential principle, but how influential is a topic of discussion.

⁵³ *ibid.*

⁵⁴ European Communities, ‘Declaration on European Identity’ (Bulletin of the European Communities, No 12/1973)

⁵⁵ *ibid* 118.

⁵⁶ Emma De Angelis and Eirini Karamouzi, ‘Enlargement and the Historical Origins of the European Community's Democratic Identity, 1961–1978’ (2016) 25 Contemporary European History 439, 455.

⁵⁷ Case 294/83 *Les Verts v Parliament* [1986] 1339, para 23.

⁵⁸ Herwig CH Hofmann, ‘A Commentary on the Right to an Effective Remedy in the Case Law of the CJEU’ (2019) University of Luxembourg Law Working Paper No 2019-016, 6 <https://ssrn.com/abstract=3503540> accessed 21 June 2026.

⁵⁹ Laurent Pech, ‘The Rule of Law’ in Paul Craig and Gráinne de Búrca (eds), *The Evolution of EU Law* (3rd edn, OUP 2021) 314.

⁶⁰ Consolidated Version of the Treaty on European Union [1997] OJ C340/173, art 6(1).

It is because of the recent realisation of EU bodies that a threat to the rule of law within the EU has emerged, that both the CJEU and the European Commission have defined the foundational principles more clearly. This started in 2012 with a speech by the President of the European Commission. President Barroso stated that the Union should strengthen the foundation consisting of the respect for our fundamental values, the rule of law and democracy.⁶¹ New instruments, like the regulation authorising the European Commission to suspend payments to Member States for breach of the principles of the rule of law, emerged to strengthen the rule of law in Europe “*in situations where there is a serious, systemic risk to the rule of law*”.⁶² This raises the question what a serious and systemic risk to the rule of law might constitute and if this might be applicable to the case study in this thesis?

In 2014, the European Commission confirmed that the consensus on the core meaning of the rule of law consists of six legal principles: legality, legal certainty, prohibition of arbitrariness of the executive powers, independent and impartial courts, effective judicial review including respect for fundamental rights and equality before the law.⁶³ The Commission stated that these elements stem from the constitutional traditions common to most European legal systems.⁶⁴ This constitutional value of the rule of law is confirmed by the CJEU. In 2022, the Court held the following on the TEU article stating that the rule of law is a foundational value of the EU:

*“Article 2 is not merely a statement of policy guidelines or intentions but contains values which are an integral part of the very identity of the EU as a common legal order.”*⁶⁵

⁶¹ José Manuel Durão Barroso, ‘State of the Union Address 2012’ (European Commission, SPEECH/12/596, Strasbourg, 12 September 2012) https://ec.europa.eu/commission/presscorner/detail/en/speech_12_596 accessed 21 June 2026.

⁶² Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget [2020] OJ L433I/1; José Manuel Durão Barroso, ‘State of the Union Address 2013’ (European Commission, SPEECH/13/684, Strasbourg, 11 September 2013) https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_13_684 accessed 21 June 2026.

⁶³ Commission, ‘A New EU Framework to Strengthen the Rule of Law’ (Communication) COM (2014) 158 final/2, 4.

⁶⁴ *ibid.*

⁶⁵ Case C-156/21 *Hungary v Parliament and Council* [2022] ECLI:EU:C:2022:97, para 232.

The explanation of the rule of law as stated by the European Commission, shows how the constitutionalisation of the European legal system has been highly influential on the determination of a rule of law definition.

The development of the rule of law within the EU has seen many difficulties. When analysing the development against the theory of constitutionalisation as a means to keep political governments accountable according to long agreed norms, it is clear that the significance attributed to the rule of law as a constitutional norm is the reason that it has been upheld in the EU Member States. This was first noticeable in the rejection of the Spanish dictatorship from the EEC and most recently in the confirmation by the CJEU of the rule of law as a constitutional norm as a response to the recent threats to the rule of law within the EU. Despite the difficulties in the development of the rule of law, it has always acted as a provision against abuse of state power.

To respect the rule of law, citizens must have full access to justice.⁶⁶ Effective access to justice and the rule of law are thus two interlinked principles.⁶⁷ The CJEU has developed many specific requirements that fall under effective access to justice, the key requirements being effective application of EU law and effective judicial protection, like mentioned by the European Commission in its 2014 definition of the rule of law.⁶⁸ To understand how the general principle of the rule of law can be invoked by individual European citizens, the next paragraph analyses the development of the principle of effective access to justice.

2.2 Effective access to justice in the European legal framework

This paragraph aims to formulate a clear analysis of how the rule of law can be invoked by individual European citizens in the form of effective access to justice. Because it is an individual application of the rule of law, European case law has a prevalent role in the development of effective access to justice; it is invoked by individuals, through a lawsuit before the court. The similarity between the principle of the rule of law and the development of the principle of effective access to justice is that they developed over the span of decades from a symbolic feature to a highly influential principle. The difference, however, is that the

⁶⁶ Nathy Rass-Masson and Virginie Rouas, 'Effective Access to Justice' (European Parliament, Policy Department for Citizens' Rights and Constitutional Affairs, PE 596.818, 2017) 21.

⁶⁷ *ibid.*

⁶⁸ Peter Van Elsuwege and Femke Gremmelprez, 'Protecting the Rule of Law in the EU Legal Order: A Constitutional Role for the Court of Justice' (2020) 16(1) European Constitutional Law Review 8, 20.

first developed through legislation, and the latter developed through case law. A pivotal moment in the development of both principles is the Lisbon Treaty of 2007.⁶⁹ This treaty reformed European law to have prevalence above national law, making all existing treaties within the European legal framework legally binding.⁷⁰ Notably, even though the two principles developed parallel to each other through different legal mechanisms, the Lisbon Treaty codified both principles into the same legislation, with the same legal value. Because of the significant influence of the Lisbon Treaty, this chapter is divided into the principle of effective access to justice before, and after the Treaty. Using doctrinal legal research with a historical approach, an answer is formulated for the question how the principle of effective access to justice, as a handle for individuals to prevent abuse of state power against themselves, has developed since the emergence of the EU.

2.2.1 Effective access to justice before the Lisbon Treaty

The development of the principle of effective access to justice consists of multiple judgements spreads across decades, starting in 1968 with the *Salgoil* case.⁷¹ In this judgement, the CJEU put an obligation on the national courts of the Member States to protect the rights arising from European law.⁷²

*“The provisions... require ... the relevant courts of the Member States to protect the interests of those persons subject to their jurisdiction who may be affected by any possible infringement of the said provision, by ensuring for them direct and immediate protection...”*⁷³

Remarkably, the discussion on effectiveness of European law is heavily influenced by lawsuits based on a directive on women’s rights, namely, the Equal Treatment Directive.⁷⁴ In their judgement, the CJEU held that a sanction chosen by the Member State based on this

⁶⁹ Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community [2007] OJ C306/1.

⁷⁰ Anthony Arnall, ‘Article 47 CFR and national procedural autonomy’, E.L. Rev. 2020 45(5) 681, 683.

⁷¹ Case 13/68 *Salgoil SpA v Italian Ministry for Foreign Trade* [1968] ECR 453.

⁷² *ibid* 463.

⁷³ *ibid* 462-463.

⁷⁴ Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions [1976] OJ L39/40.

directive had to “*guarantee real and effective judicial protection*”.⁷⁵ Important to note is that this judgement was based on a directive provision that imposed an obligation on Member States to let anyone whose rights arising from specifically this directive were breached, pursue their claims by judicial process. The statement made by the Court that real and effective judicial protection had to be guaranteed, was thus not applicable to all European legislation, but only to this directive. This changed 2 years later with the Johnston case.⁷⁶ In this judgement the Court held that the required guarantee of real and effective judicial protection was not only based on the directive, but also on Article 6 and 13 ECHR.⁷⁷ The Court held that the directive article on real and effective judicial protection reflects a general principle of law, thus going beyond the provision from the directive.⁷⁸ The development of effective access to justice as European general principle was sealed with the Heylens case.⁷⁹ In this case from 1987, the Court recalls the right to effective access to justice as general principle without the need for a specific provision attributing this right.⁸⁰ In this case, the Court also mentioned access to information for the first time:

*“[the individual] must be able to defend [their] right under the best possible conditions...with full knowledge of the facts whether there is any point in their applying to the Courts.”*⁸¹

Based on case law, the principle of effective access to justice transformed from a directive-specific right to a European general principle of law.

2.2.2 *Effective access to justice after the Lisbon Treaty*

With the introduction of the Lisbon Treaty in 2007, effective access to justice was not only recognised by the Court, the European Commission (the European legislator) had now also established it as an element of the principle of the rule of law, merging the parallel

⁷⁵ Case 14/83 *Von Colson and Kamann v Land Nordrhein-Westfalen* [1984] ECR 1891 para 430.

⁷⁶ Case 222/84 *Marguerite Johnston v Chief Constable of the Royal Ulster Constabulary* [1986] ECR 1651.

⁷⁷ *ibid* para 17-19.

⁷⁸ *ibid*.

⁷⁹ Case 222/86 *Georges Heylens v Unectef* [1987] ECR 4097.

⁸⁰ *ibid* para 14.

⁸¹ *ibid* para 15.

development mentioned in the introduction of this paragraph. Article 47 of the Charter of Fundamental Rights of the European Union (hereafter: CFR), the article that states that everyone whose rights and freedoms guaranteed by the law of the Union are violated, has the right to an effective remedy before a tribunal, became directly invocable by European citizens. This means that a national court has the obligation to disapply any provisions of national law that is contrary to EU law.⁸² The link between Article 47 CFR and all previous case law was confirmed in the 2018 ASJP case.⁸³ In this case, the CJEU established the principle of effective judicial protection in a formula:

“The principle of the effective judicial protection of individuals’ rights under EU law, referred to in the second paragraph of Article 19(1) TEU, is a general principle of EU law stemming from the constitutional traditions common to the Member States, which has been enshrined in Articles 6 and 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ... and which is now reaffirmed by Article 47 of the Charter.”⁸⁴

Even though The Lisbon Treaty reaffirmed the significance of the principle of effective access to justice, it also heightened the level of protection provided by the principle; Article 6 and 13 ECHR require only a domestic remedy before a national court, whereas Article 47 CFR grants respect of rights before both European courts as well as national courts. Claimants thus have more courts to make their claim. The claim can also be based on more legislation: the ECHR grants protection of rights as they arise from the Convention, but Article 47 CFR grants protection of any rights and freedoms guaranteed by the law of the Union. Effectively, the ECHR articles are the minimum level of protection that should be granted to the right to an effective judicial remedy, and the CFR expands this for European citizens.⁸⁵ Also in the 2018 ASJP case, the link between the right to an effective remedy and

⁸² Article 6(1) TEU; Case C-414/16 *Egenberger v Evangelisches Werk für Diakonie und Entwicklung eV* ECLI:EU:C:2018:257, para 78.

⁸³ Case C-64/16 *Associação Sindical dos Juizes Portugueses v Tribunal de Contas (ASJP)* ECLI:EU:C:2018:117.

⁸⁴ *ibid* para 35.

⁸⁵ Sacha Prechal, ‘The Court of Justice and Effective Judicial Protection: What Has the Charter Changed?’ in Christophe Paulussen and others (eds), *Fundamental Rights in International and European Law: Public and Private Law Perspectives* (TMC Asser Press 2015) 154.

the rule of law is made.⁸⁶ The Court explains that Article 19 TEU gives expression to the rule of law as stated in Article 2 TEU.⁸⁷

“The very existence of effective judicial review designed to ensure compliance with European law is of the essence of the rule of law.”⁸⁸

With this statement, the Court has made the principle of effective access to justice a vehicle for enforcement of the rule of law at the national level.⁸⁹ The 2018 ASJP case underscores the significance of the principle of effective access to justice in the European legal framework as an element of the rule of law and gives the legal handles for it to be applied in national courts.

Nowadays, effective access to justice has two functions: it works as a fundamental right, and it serves as the normative basis for the protection of standards of the rule of law at both EU and at national level.⁹⁰ In other words; effective access to justice covers both procedural and substantive rights. A procedural right being a right on how a case can be brought to a court and a substantive right being the right on which the case is based.⁹¹ This dual function is clearly visible in the analysis of the Kadi cases.⁹² In these cases, the Court found a violation of effective access to justice, the principle thus functioned as a substantive right.⁹³ The Court then stated procedural requirements for EU institutions to implement effective access to justice, thus the principle functioned as a procedural right.⁹⁴ These requirements derived from the principle later evolved further to incorporate additional procedural rights like the equality of arms, the principle of judicial independence and the right to proportionate court fees.⁹⁵ To explain the tension between procedural rights and substantive rights more

⁸⁶ ASJP (N 83) 31.

⁸⁷ ASJP (N 83) 32.

⁸⁸ ASJP (N 83) 36.

⁸⁹ Giulia Gentile, ‘Effective Judicial Protection: Enforcement, Judicial Federalism and the Politics of EU Law’ (2023) 2 European Law Open 128, 130.

⁹⁰ *ibid* 128.

⁹¹ Michael D Bayles, *Procedural Justice: Allocating to Individuals* (Kluwer Academic Publishers 1990) 3.

⁹² Joined cases C-104/05 and C-415/05 *Kadi and Al Barakaat International Foundation v Council and Commission* [2008] ECR I-6351.

⁹³ *ibid*.

⁹⁴ Gentile (N 89) 130.

⁹⁵ *ibid*; Case C-580/12 P *Guardian Industries v Commission* ECLI:EU:C:2014:2363; ASJP (N 46); Case C-61/14 *Orizzonte Salute v Azienda Pubblica di Servizi alla Persona San Valentino* ECLI:EU:C:2015:655.

detailed; the claimant was not able to address a case to their national court, so they raised a claim at the CJEU based on the right to effective access to justice, using the principle as a substantive right. The judgement that followed explained the procedural rights that the right to effective access to justice entails, so the claimant can go back to the national court to make their original claim based on the original substantive right, using the procedural rights stemming from the principle of effective access to justice. This case also shows the vertical effect of EU law, as explained at the start of this chapter: the claimant was able to challenge the state both in the national case and in the European case.⁹⁶ The principle of effective access to justice is thus able to be applied as a procedural right and as a substantive right, both with vertical effect.

In summary, the principle of effective access to justice has developed since 1968 through CJEU case law based on equal rights between men and women. It started as a directive-specific provision and has developed into a general principle of law based on the ECHR with both a substantive element and a procedural element. The European general principle of effective access to justice is reaffirmed, deepened and strengthened in the 2007 Lisbon Treaty. The general principle of effective access to justice inherently has a vertical effect, regulating citizens' rights vis-à-vis the state. The principle of effective access to justice prescribes procedural requirements EU Member States have to uphold in their legislation and policy. Because of this, citizens are able to make a substantive claim without restrictions imposed by the state from its powerful position as legislator. The general principle of effective access to justice has developed into a procedural right for citizens to hold their state accountable to substantive rights, thus limiting abuse of state power. To comprehensively analyse how the norm of effective access to justice could apply to the case study in this thesis, it is necessary to determine the substantive rights that could accompany effective access to justice as a procedural right.

2.3 Effective access to justice and women's rights

In the first two paragraphs of this chapter, the significance of the rule of law and the element of effective access to justice in the European legal system is analysed. This shows that these principles have a procedural character which needs to be accompanied with

⁹⁶ Craig and Búrca (N 15).

substantive rights to be able to make a legitimate claim. In this paragraph, substantive rights that could be applicable to the case of the unmarried mothers in The Netherlands and Ireland, as discussed in chapter 3, are analysed. Firstly, the fundamental right of non-discrimination is analysed. This is followed by an analysis of specific European policy on women's rights relating to the case study. This paragraph answers the question what substantive rights could accompany the procedural right of effective access to justice in the case of the unmarried mothers in The Netherlands and Ireland, using legal doctrinal research supplemented with political history.

2.3.1 The right to non-discrimination on the grounds of sex

As previously mentioned, fundamental human rights in the EU first emerged in 1950 with the adoption of the ECHR by the Council of Europe.⁹⁷ The rights derived from this treaty are the first source of substantive rights that could apply in combination with effective access to justice as a procedural right. The first relevant right in this convention is Article 14 ECHR:

“The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any grounds such as sex...”⁹⁸

A few important notes must be made on the applicability of this article by European citizens. Firstly, the ECHR is not an original EU treaty, its applicability for the EU legal system is established through CJEU case law.⁹⁹ The first important case on this is the Stauder case from 1969.¹⁰⁰ This judgement held the first mention of fundamental rights as general principles of EU law.¹⁰¹ This is seen by academics as the Court compensating for the lack of provisions on substantive principles in the original EU treaties which are supposed to fill in

⁹⁷ ECHR (N 36).

⁹⁸ *ibid* Article 14.

⁹⁹ Adam Lazowski and Ramses Wessel, ‘When Caveats Turn into Locks: Opinion 2/13 on Accession of the European Union to the ECHR’ (2015) 16(1) German Law Journal 179.

¹⁰⁰ Case 29/69 *Stauder v City of Ulm* [1969] ECR 419.

¹⁰¹ *ibid* para 7; Lazowski and Wessel (N 99) 181.

the formalistic conception of the rule of law.¹⁰² In 1974, the significance of fundamental rights was strengthened: the ECHR was named by the Court as a source of ‘*guidelines to be followed within the framework of [EU] law*’.¹⁰³ In the years that followed, many CJEU judgements included references to specific ECHR articles, for example, in the *Rutili* case mentioning the right to respect for private and family life, the freedom of thought, conscience and religion, the right to freedom of expression and the freedom of assembly.¹⁰⁴ Even though Article 14 on non-discrimination has not been mentioned in a specific case before the EU legal system was reformed by the TEU and the TFEU (as described in the earlier paragraphs), it could be seen as one of the fundamental rights of the EU as it is mentioned in the ECHR. The fundamental rights codified in the ECHR in 1950 became EU law through CJEU case law in the 1970’s.

The second note on the applicability of the non-discrimination provision is its accessory character. This means that it only prohibits discrimination in the enjoyment of other ECHR rights, it has no independent existence.¹⁰⁵ It was only in 2000, with the adoption of Protocol 12, that the right to non-discrimination became a self-standing right.¹⁰⁶ The right to non-discrimination based on Article 14 ECHR is considered a general principle of EU law since the 1970’s and, until 2000, had to be accompanied by another ECHR right to form a claim.

2.3.2 *The reality of European women’s rights*

An interesting angle on the right to non-discrimination on the grounds of sex, as explained above, is the political system in which this general principle had to function. As explained in the first paragraph of this chapter, the Member States distanced themselves from the fundamental rights deriving from the ECHR with the establishment of the EEC. Yet, women’s rights were still mentioned: the EEC treaty included a provision of equal pay for

¹⁰² *Stauder* (N 100) para 7; Koen Lenaerts and José Gutiérrez-Fons, ‘The Constitutional Allocation of Powers and General Principles of EU Law’ (2010) 47 CML Rev 1629, 1632.

¹⁰³ Case 4/73 *Nold v Commission* [1974] ECR 491; Sonia Morano-Foadi and Stelios Andreadakis, ‘The Convergence of the European Legal Systems in the Treatment of Third Country Nationals in Europe: The ECJ and ECtHR Jurisprudence’ (2011) 22 European Journal of International Law 1071, 1073.

¹⁰⁴ Case 36/75, *Rutili v. Ministre de l’intérieur* [1975] ECR 1219; Morano-Foadi and Andreadakis (N 103).

¹⁰⁵ Sandra Fredman, ‘Emerging from the Shadows: Substantive Equality and Article 14 of the European Convention on Human Rights’ (2016) 16 Human Rights Law Review 273.

¹⁰⁶ *ibid*; Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 Nov. 2000), Europ. T.S. No. 177, entered into force 1 April 2005.

both men and women.¹⁰⁷ This attention on the economic value of women was the starting point of European political action on equality between the sexes, but the focus on the economic value of women never really expanded.¹⁰⁸ The political tension arising from the progressive view on women's rights conveyed by the article on equal pay is clear in how the article was realised: it was only because of the pressure by the French delegation, a country that was ahead in their equal treatment of male and female workers, that traditional Member States like The Netherlands compromised and agreed on Article 119 on equal pay.¹⁰⁹ The treaty article had a narrow scope: it solely applied to the equal pay of women and men. Policies on, for example, education and welfare, which heavily influences women's labour participation, did not have a European basis so the Member States were able to implement their national political and ideological legislation.¹¹⁰ Any social progress based on the EEC Treaty would come as a by-product of the economic integration.¹¹¹ The support from the European system for gender equality in the form of equal pay became clear in 1976 with the Defrenne case.¹¹² In this case, the CJEU established direct applicability of Article 119.¹¹³ Since the Defrenne case, it is certain that women can demand equal pay within the EU. The 1957 EEC Treaty included a provision on women's rights, providing for equal economic value of women and men, but because of the narrow scope and lack of social policies, conservative Member States were able to bypass the promotion of women's rights.

Even though there was no legal basis to make legally binding policies, the Commission still made recommendations and programs to support women's rights.¹¹⁴ The social programs that complemented the directives were able to go beyond economic interest. Topics like housework, childcare, women's health and sexual harassment were part of these European funded programs.¹¹⁵ These programs made it possible to increase the impact of European equality laws by using European funding to promote the directives, even though this did not bring any obligations for the Member States.

¹⁰⁷ Treaty of Rome (N 45) Article 119.

¹⁰⁸ Andrea Pető and Ian Manners, 'The European Union and the Value of Gender Equality' in Sonia Lucarelli and Ian Manners (eds), *Values and Principles in European Union Foreign Policy* (Routledge 2006) 98; Mazey (N 17).

¹⁰⁹ Hoskyns (N 17) 55.

¹¹⁰ Mazey (N 17) 133.

¹¹¹ Hoskyns (N 17) 48.

¹¹² Case 43/75 *Defrenne v Sabena* [1976] ECR 455.

¹¹³ *ibid* para 24.

¹¹⁴ Mazey (N 17) 141

¹¹⁵ *ibid*.

In the decade before the adoption of the Lisbon Treaty, the principle of gender mainstreaming became prevalent.¹¹⁶ Gender mainstreaming aims to include female experience and a gender perspective into the whole political process: by including a gender perspective and thus including both women and men into policy making, issues on inequality between sexes will become visible in mainstream society.¹¹⁷ The principle of gender mainstreaming was the next step towards recognising the need to treat women differently to men to obtain equal outcomes between the sexes and was incorporated as such into the Amsterdam Treaty of 1997.¹¹⁸ The strategy on which the following treaty, the Lisbon Treaty, is based, aimed to make the EU the most competitive and dynamic knowledge-based economy by 2010 and included the need for action in the field of equal opportunities for female work.¹¹⁹ Thus, women's rights in EU legislation were still seen as an economic benefit, instead of a fundamental right for women. Noteworthy; data shows that there was a lack of female representation in the drafting and adoption of the Lisbon Treaty even though the principle of gender mainstreaming was already accepted into the European policy framework.¹²⁰ In the Treaty, multiple rights on achieving equality and eliminating inequalities were incorporated.¹²¹ Notable is the incorporation of provisions relating to the trafficking of women, the problem of domestic violence against women and the right to paid maternity leave.¹²² It shows that the legislator is aware of sexist social issues (women being overrepresented in victim data on human trafficking and domestic abuse) and wants to improve these issues, but establishing policy on education and health, which can have a major influence on the societal system that makes women overrepresented in the previously mentioned issues, is neglected.¹²³

¹¹⁶ Sara Preti and Enrico di Bella, 'Gender Equality as EU Strategy' in Enrico di Bella and others (eds), *Measuring Gender Equality* (Social Indicators Research Series, vol 87, Springer 2023) 90.

¹¹⁷ *ibid.*

¹¹⁸ *ibid.*

¹¹⁹ Preti & di Bella (N 116).

¹²⁰ Alazne Irigoien, 'The Treaty of Lisbon and the Gender-Blind Responses to the EU Crises: Impact on the Quality of European Democracy' (2021) 58(1) *Política y Sociedad* 1, 4.

¹²¹ Article 2, 3, 8, 10 TFEU.

¹²² Article 8, 33, 79 TFEU.

¹²³ Irigoien (N 120) 5.

“Legal provisions do not implement themselves, they have to be effectuated. And herein lies the challenge.”¹²⁴

Since the 1970's, the right to non-discrimination can be regarded as a general principle of EU law, making it a sufficient substantive right to accompany the procedural right of effective access to justice. Because of its accessory character, however, it needed to be accompanied by another right from the ECHR, if one wants to apply it to a case before the year 2000. After 2000, the right to non-discrimination became a self-standing right. The reality of non-discrimination based on sex, however, only served an economical purpose; the only EU provision on women's rights was about equal pay of men and women. Even though there was a movement within the EU to adopt legislation expanding non-discrimination of women, this legislation was often only related to the economic value of women. Based on case law, the general principle of non-discrimination on the grounds of sex can be used as substantive right to accompany the procedural right of effective access to justice. Within EU law there is only legislation on equal pay for men and women.

2.4 Conclusion

This chapter aims to provide an answer to the question: how did the European system against abuse of state power develop? Firstly, the element of the EU legal system that aims to prevent abuse of state power is analysed, namely, the development of the rule of law as a constitutional norm. It is because of the constitutional value of the rule of law, that it is established a mean to keep political governments accountable. This was first noticeable in the rejection of the Spanish dictatorship from the EEC and most recently this constitutional value is confirmed by the CJEU as a response to the recent threats to the rule of law within the EU.

Based on the statement by the European Commission in 2014, the principle of effective access to justice is confirmed as an element of the rule of law to protect fundamental rights. Effective access to justice started as a directive-specific provision and has developed through case law into a general principle of law with both a substantive element and a procedural element, and always with vertical effect regulating citizens' rights vis-à-vis the state. The

¹²⁴ Elisabeth Holzleithner, 'Subversion from Within: Opposition to Gender Equality in the Court of Justice of the European Union' in Mieke Verloo (ed), *Varieties of Opposition to Gender Equality in Europe* (Routledge 2018) 136.

European general principle of effective access to justice is reaffirmed, deepened and strengthened in the 2007 Lisbon Treaty. The general principle of effective access to justice has developed into a procedural right for citizens to hold their state accountable to substantive rights, thus limiting abuse of state power.

Since this thesis analyses a specific case, it is relevant to research substantive rights that could be applicable to the case study. The right to non-discrimination on the grounds of sex is the most relevant substantive right to the case study. Since the 1970's, this right can be regarded as a general principle of EU law, making it a sufficient substantive right to accompany the procedural right of effective access to justice. Because of its accessory character, however, it needs to be accompanied with another right from the ECHR, if one wants to apply it to a case before the year 2000. After 2000, the right to non-discrimination became a self-standing right. The reality of non-discrimination based on sex in EU legislation, however, only served an economical purpose; the only EU provision on women's rights was about equal pay of men and women. Even though there was a movement within the EU to adopt legislation expanding non-discrimination of women, this legislation was often only related to the economic value of women. Based on case law, the general principle of non-discrimination on the grounds of sex can be used as substantive right to accompany the procedural right of effective access to justice. Within EU law there is only legislation on equal pay for men and women.

The EU system of abuse of state power has had a long development characterised by political turmoil and powerful case law. Abuse of state power is prevented by general principles of law which constitute mostly procedural rights that can be invoked when accompanied by substantive rights. The substantive rights are decided by the facts of the case. In the next chapter, the case study into the treatment of unmarried mothers in The Netherlands and Ireland is analysed. This way, the facts of the case become clear and the substantive rights that could accompany the procedural rights against abuse of state power can be analysed together with the case to give an answer to the question if the treatment of unmarried mothers in The Netherlands and Ireland constitute a redressable injustice under European rule of law provisions at the time of the events.

3. The treatment of unmarried mothers in The Netherlands and Ireland

The practice of institutionalising unmarried mothers has existed long before the emergence of the events discussed in this thesis; in The Netherlands, for example, homes for unmarried mothers can be traced back to the year 1848.¹²⁵ The homes acted from both a religious, and non-religious motivation, but all with the same substantiation: women had acted immoral by getting pregnant without being wed and, with this, they were a threat to decent society.¹²⁶ The homes had the task to rehabilitate these “*fallen women*” so they could re-enter society in a decent manner.¹²⁷ The decades after the Second World War are characterised by a strong social emphasis on the traditional marriage ideal; society at the time of the war was labeled as bewildered and this had to be restored by holding on to traditions and social structures.¹²⁸ The ideals that came out of this philosophy were that marriage meant the start of adulthood, which subsequently was a prerequisite to starting a family and getting pregnant.¹²⁹

“My pregnancy was a shame for the church and the family.”

~ 16 year old Dutch mother that relinquished her baby in the 1960's¹³⁰

In this chapter, the facts of the case of unmarried mothers in The Netherlands and Ireland are explained. This analysis, together with the analysis of the second chapter, answers the first sub-question; did the treatment of unmarried mothers in The Netherlands and Ireland constitute a redressable injustice under European rule of law provisions at the time of the actions? To articulate the answer to this question, this chapter is divided into three paragraphs. Firstly, the case of unmarried mothers in The Netherlands is explained. Secondly, the case of unmarried mothers in Ireland is explained. Lastly, the two cases are compared

¹²⁵ Kok and others (N 10) 8.

¹²⁶ Lindsey Earner-Byrne, ‘Reinforcing the Family: The Role of Gender, Morality and Sexuality in Irish Welfare Policy, 1922–1944’ (2008) 13(4) *The History of the Family* 360, 361; Kok and others (N 10) 14.

¹²⁷ Kok and others (N 10) 14; Catholic Protection and Rescue Society of Ireland, ‘36th Annual Report’ (Catholic Protection and Rescue Society of Ireland 1949) 2.

¹²⁸ De Winter and others (N 7) 16.

¹²⁹ Kok and others (N 10) 17.

¹³⁰ Bultman and Van der Klein, ‘Verslag van het kranten- en literatuuronderzoek’ (N 14) 15.

with each other. This comparison is framed by the European law provisions explained in chapter 2; the European rule of law provisions, the specific application to individuals, and the incorporation of women's rights in this framework. The first two paragraphs of this chapter consist of an historical analysis based on the state-commissioned research projects in the respective countries, supplemented with articles on first-hand experiences.¹³¹ The last paragraph is a comparative analysis of the historical analysis framed by the normative framework from the previous chapter.

3.1 The experience of unmarried mothers in The Netherlands

The research project the historical analysis of this paragraph is based on focuses on the time between 1956 and 1984.¹³² It starts in 1956 because this year the Adoption Law was established, which made adoption of minors a legal possibility.¹³³ The research ends in 1984 because this year a law was adopted that legalised induced abortion.¹³⁴ For this chapter, the reports on newspaper, archive and literature research provide real-life examples of the treatment of unmarried mothers, while the more in-depth research reports by the Verwey-Jonker Institute and by the research committee on national relinquishment and adoption 1956-1984 provides an interdisciplinary view of the situation, forming the historical grounds to answer the question how were unmarried mothers treated in The Netherlands from 1956 until 1984?¹³⁵ Important to note regarding the real-life examples is that these are published as short anecdotes, there are no extensive interviews published with the Dutch Afstandsmoeders, this thesis is thus unable to elaborate on personal experiences.

¹³¹ The Netherlands: Kok and others (N 10); De Winter and others (N 7); Bultman and Van der Klein, 'Verslag van kranten- en literatuuronderzoek' (N 18); Van der Klein and Bultman, 'Verslag van archief- en literatuuronderzoek' (N 18); Ireland: Commission of Investigation into Mother and Baby Homes (N 10).

¹³² Kok and others (N 10) 8.

¹³³ Carolus van Nijmegen and Willibrord de Graaf, 'The Legal Management of (Social) Parenthood: Adoption and Dutch Family Policy' (2002) 24 Journal of Social Welfare and Family Law 163, 164.

¹³⁴ Henry P David and Jany Rademakers, 'Lessons from the Dutch Abortion Experience' (1996) 27(6) Studies in Family Planning 341.

¹³⁵ Kok and others (N 10); Bultman and Van der Klein, 'Verslag van kranten- en literatuuronderzoek' (N 18); Van der Klein and Bultman, 'Verslag van archief- en literatuuronderzoek' (N 18).

3.1.1 Institutionalisation of unmarried mothers

In the 1950's, the care for unmarried mothers consisted of a fragmented practice distributed over regional offices and homes.¹³⁶ The women received external support through conversations with social workers, and internal care in so-called 'transitional homes' in which mothers could bear their children and receive guidance.¹³⁷ During the 1960's, the care for unmarried mothers became centralised: a national office opened to manage the different regional offices and homes.¹³⁸ Psychiatrists and psychologists were now involved with the homes, broadening available the level of care and leaving behind the religious aspect of the organisations.¹³⁹ Research into the experience of unmarried mothers in these transitional homes shows that the institutionalisation did not provide a dignified treatment; social workers painted the women's future as a single mother to be a nightmare.¹⁴⁰ A clear example of the catastrophising guidance Afstandsmoeders received is the experience of a woman in 1963, she was 33 during the adoption process.¹⁴¹ She told her general practitioner (hereafter: GP) about her pregnancy, who told her employer, who subsequently fired her. She lost her income and, as a result, also her house. Her social worker told her she had to relinquish her child because she could not provide a safe home for it.¹⁴² A mother would be institutionalised during the last months of her pregnancy and when the baby was born, she would be separated from it almost immediately and return to her home.¹⁴³ In the 1950's and 1960's, care for unmarried mothers is characterised by centralised institutionalisation, psychological review, and catastrophising of the future of an unmarried mother.

Based on the State's commissioned research, it is unclear how women ended up in the institutions.¹⁴⁴ Because the GP medically confirmed pregnancies, they had a prominent role in the referral of women to the homes, but for over half of the researched files it is unclear who referred the women to a home.¹⁴⁵ The state-commissioned research focuses on the forced adoption aspect during the institutionalisation of the unmarried mothers, for this reason it is undefined how many women exactly lived in the homes.¹⁴⁶ The research only discloses a

¹³⁶ Kok and others (N 10) 32.

¹³⁷ *ibid.*

¹³⁸ *ibid.*

¹³⁹ *ibid.*

¹⁴⁰ Bultman and Van der Klein, 'Verslag van het kranten- en literatuuronderzoek' (N 14) 18.

¹⁴¹ *ibid.* 16.

¹⁴² *ibid.*

¹⁴³ Kok and others (N 10) 68; De Winter and others (N 7) 42.

¹⁴⁴ De Winter and others (N 7) 32.

¹⁴⁵ *ibid.*

¹⁴⁶ De Winter and others (N 7) 9; Kok and others (N 10) 8.

rough estimate of women that experienced forced adoption, which goes hand in hand with institutionalisation, being 13.000 to 14.000 women.¹⁴⁷ Because of the scope of the state-commissioned research, it is unclear how many women were institutionalised.

3.1.2 Access to information for the unmarried mother

An element that returns often in the commission's report on the treatment of unmarried mothers through the 20th century, is the lack of information provided to the mothers. This started as soon as the mother consulted a GP; the GP is labeled as a gatekeeper because they were the first and only people to inform the woman and her family about the next possible steps.¹⁴⁸ Almost exclusively, adoption was offered as the only option if marriage was not possible.¹⁴⁹

“[the GP’s] influence was very significant for the mostly minor Afstandsmoeders”¹⁵⁰

Another source of information for the Afstandsmoeders were the social workers.¹⁵¹ According to the institution's policy, they were supposed to give guidance to the mothers during the adoption process by having conversations with both the mothers and her family.¹⁵² The social workers that participated in the state-commissioned research project repeatedly mentioned the influence of the mothers' family during these conversations, which resulted in the mothers not having much influence on the decision-making process of the adoption themselves, even though they were always seen as the only one responsible.¹⁵³ Interviews with social workers show that it was often the decision of the parents that the child had to be relinquished.¹⁵⁴

¹⁴⁷ Kok and others (N 10) 65.

¹⁴⁸ Kok and others (N 10) 41.

¹⁴⁹ *ibid.*

¹⁵⁰ Kok and others (N 10) 70.

¹⁵¹ Kok and others (N 10) 46; De Winter and others (N 7) 32.

¹⁵² *ibid.*

¹⁵³ Kok and others (N 10) 71.

¹⁵⁴ *ibid.* 41.

“I would very much have liked to speak to her alone but that was impossible, the parents were always there.”¹⁵⁵

Based on the institution’s policy, social workers had the responsibility to provide information on the legal process of adoption.¹⁵⁶ Research shows that this did not happen sufficiently; the Afstandsmoeders confuse different contracts that were used during the adoption process, and even reference contracts that were legally invalid.¹⁵⁷ This invalid contract named ‘deed of acquiescence’, also known as a waiver, held that the mother waives her right to recall her decision on the relinquishment of her baby.¹⁵⁸ Meanwhile, in reality, the mother would be able to invoke her decision of relinquishment up until the moment the child would be placed for adoption which, on average, took multiple months and sometimes years.¹⁵⁹ The custom of making the unmarried mothers sign this invalid contract was criticised by lawyers working for the Child Protection Council in 1975, but it did not change the practice.¹⁶⁰ Instead, it reflects the confusion and lack of information brought upon the unmarried mothers by the institutions, which is confirmed by the testimony of the mothers: approximately half of the interviewed mothers wanted to keep their child but did not know it was possible.¹⁶¹ Even though social workers were tasked with the responsibility to explain the legal process to the unmarried mothers, the custom of making mothers sign invalid contracts prevented the mothers from understanding their (legal) situation.

3.1.3 Discrimination

The government based their policy on the scientific reasoning that the indecent act of becoming pregnant without being married by unmarried mothers was a mental illness, as stated by leading psychologists.¹⁶² According to governmental policy, unmarried pregnant

¹⁵⁵ *ibid* 48.

¹⁵⁶ Bultman and Van der Klein, ‘Verslag van kranten- en literatuuronderzoek’ (N 18) 27-28.

¹⁵⁷ De Winter and others (N 7) 38-40.

¹⁵⁸ De Winter and others (N 7) 38-39.

¹⁵⁹ *ibid* 40 and 42.

¹⁶⁰ *ibid* 39-40.

¹⁶¹ *ibid* 33 and 40.

¹⁶² Han Heijmans and Kees Trimpos, *De niet-gehuwde moeder en haar kind* (Brand 1964). Reinsk Swelheim-de Boer, *Ongehuwd moederschap* (Stichting Uitgeverij NVSH 1968) vol 2.

women were subjected to psychological reviews and regarded as a problematic case.¹⁶³ Women who had become pregnant outside of wedlock were a problematic case for psychologists, while the men who had made a woman pregnant outside of wedlock experienced no shame or responsibility because of it.¹⁶⁴ This degrading view on women by the government is best visible in the laws on parental authority; both minor and adult mothers almost always lost the parental authority over their child to the Child Protection Council, even when it was unsure if the mother planned to relinquish her child.¹⁶⁵ If a mother was below 21, the law granted her no parental authority; the parental authority would go to her parents, or to an institution like the Child Protection Council.¹⁶⁶ Adoption files show that designating the parental authority to the Council was often the first step towards adoption.¹⁶⁷ The social workers in the transitional homes would then decide with the mother if she wanted to relinquish her child, but as discussed earlier in this paragraph, that this decision was often not up to the mother.¹⁶⁸ A mother above 21, regarded as of legal age, would automatically have parental authority but because relinquishment did not exist by law, the relinquishment of parental authority had to be requested by the Child Protection Council in court based on inability or unsuitability of the mother.¹⁶⁹ Since every unmarried mother was seen as a problematic case based on governmental policy, it is likely that every request would be granted, making the situation of mothers of legal age very similar to the situation of minor mothers. It is clear that the governmental policy that every unmarried mother was a problematic case had a considerable influence on the degrading treatment of women in relation to the possibility of relinquishment of their child.

It is estimated that between 13.000 and 14.000 mothers have experienced adoption through this process.¹⁷⁰ An exception that proves the rule of the way women's views were invalidated is the story of Afstandsmoeder Joke.¹⁷¹ Joke was determined to put her baby up for adoption. During this process, a social worker told her that she was "*an exception because*

¹⁶³ Letter from the director of 7th department B, Ministry of Justice, to Ministry of Social Work, regarding homes for unmarried mothers (31 March 1955), National Archive, The Hague (NL-HaNa), CRM, 2.27.19, inv nr 668; Van der Klein & Bultman, 'verslag van archief- en literatuuronderzoek' (N 14) 12.

¹⁶⁴ Kok and others (N 10) 36; De Winter and others (N 7) 20.

¹⁶⁵ Van der Klein and Bultman, 'Verslag van archief- en literatuuronderzoek' (N 18) 19-20; Child Protection Council, 'Annual Report 1969–1970' (Child Protection Council 1971) 43.

¹⁶⁶ De Winter and others (N 7) 38.

¹⁶⁷ *ibid.*

¹⁶⁸ *ibid.*

¹⁶⁹ *ibid.* 37.

¹⁷⁰ Kok and others (N 10) 34.

¹⁷¹ Bultman and Van der Klein, 'Verslag van het kranten- en literatuuronderzoek' (N 14) 12.

of her outlook on the whole situation”.¹⁷² Despite Joke’s determination during the entire process, she still felt like she was treated condescendingly by the matriarchal institutions.¹⁷³ This condescending, matriarchal way of treating unmarried mothers by the institutions is confirmed by large-scale research into women’s care at the time.¹⁷⁴

3.1.4 *The end of institutionalisation of unmarried mothers*

In the most recent report on the state-commissioned research, the events around unmarried mothers are described as a ‘*perfect storm*’; an accumulation of factors that, combined, had the effect described in this paragraph.¹⁷⁵ This ‘*perfect storm*’ stopped, according to the researchers, because of the change in sexual morale, psychology theories and availability of contraceptives.¹⁷⁶ Besides this, more financial aid for single parents became available through the governments social system.¹⁷⁷ Yet, also stated by the researchers, this did not change the stigmatisation of unmarried mothers.¹⁷⁸ It is confirmed that the possibilities for unmarried mothers did not expand evenly across The Netherlands and that, also in the end of the researched time frame, children were adopted through similar systems as discussed in this paragraph.¹⁷⁹ When and how the unjust treatment of unmarried mothers ended is thus not specified in the available research reports, the research ends with the moment abortion is legalised.¹⁸⁰

Unmarried mothers in The Netherlands were seen as psychological problem cases which was the basis for the forced adoption practice. Through the GP and other advisory people in the community, unmarried mothers would be referred to a home where they were in contact with social workers that helped them through the adoption process. Because the first step in this process was releasing the mother from parental authority, and because of the influence of the woman’s family, the adoption was often out of her control. The lack of control on the adoption process was strengthened because of the legally misleading contracts

¹⁷² *ibid* 13.

¹⁷³ *ibid*.

¹⁷⁴ *ibid*.

¹⁷⁵ De Winter and others (N 7) 82.

¹⁷⁶ *ibid*.

¹⁷⁷ *ibid* 18.

¹⁷⁸ *ibid*.

¹⁷⁹ *ibid*.

¹⁸⁰ *ibid* 18; Kok and others (N 10) 8.

unmarried mothers had to sign. Based on the research reports, it is unclear when and how this treatment of unmarried mothers in The Netherlands stopped.

3.2 Irish Mother and Baby Homes

In this paragraph, the facts of the case of unmarried mothers in Ireland are explained. As explained in the introduction of this chapter, this paragraph is based on the state-commissioned research projects in the respective countries.¹⁸¹ Important to note is that the Commission's report has been the subject of much debate because, according to survivors, it did not incorporate the experience of the survivors themselves enough resulting in an inaccurate description of the events.¹⁸² This thesis researches how to handle the situation of unmarried mothers in The Netherlands and Ireland as historical injustice cases, which includes both the past and the present handling. The handling of the situation by the states' commissions is thus a component of this research. It needs to be acknowledged that the description by the commission's report might not accurately reflect the facts of the case, but it is the source most comparable to the source used for the analysis of the Dutch case and thus most relevant to this comparative chapter. Other sources, though detailed and interesting in general, are often anecdotal, making them inconclusive for this chapter. In the 3rd chapter of this thesis the backlash on the Irish commission report is discussed, explaining the possible inaccuracies in the commission's report. This paragraph answers the question, how were unmarried mothers treated in Ireland in the second half of the 20th century?

3.2.1 Institutionalisation of unmarried mothers

In post-Second World War Ireland, Mother and Baby Homes were already an established phenomenon.¹⁸³ Originating from workhouses (institutions housing destitute people, known for their harsh living environment), homes specifically for the care of

¹⁸¹ Commission of Investigation into Mother and Baby Homes (N 10).

¹⁸² Mairead Enright and others, 'Mother and Baby Homes Commission of Investigation Report: Alternative Executive Summary' (2025) 14(1) *feminists@law*; Eimear Flanagan, 'Irish Mother-and-Baby Homes: Survivors Angered by Inquiry Findings' BBC News NI (16 February 2021) <https://www.bbc.com/news/world-europe-56083615> accessed 26 June 2025.

¹⁸³ Commission of Investigation into Mother and Baby Homes, 'Executive Summary of the Final Report' (2021) 50.

unmarried mothers emerged in the first half of the 20th century.¹⁸⁴ The organisation was locally managed; unmarried mothers were not discussed at national level until the 1970's.¹⁸⁵ As in other countries, the women were shamed by society because of their pregnancy:

“If we had heard that you had cancer it would have been easier to accept.”¹⁸⁶

Because of this stigma, women had to choose between institutionalisation in Ireland, or travel to England to deal with their pregnancy in private.¹⁸⁷ However, traveling to England did not always evade the institutionalisation into a mother and baby home; so-called PFIs (Pregnant from Ireland) were repatriated by Catholic institutions and transferred to a mother and baby home.¹⁸⁸ Mother and baby homes in Ireland put the stigmatisation of unmarried mothers into practice, institutionalising them even when the women had traveled to England.

The length of a woman's stay inside a home is a contested topic in the Commission's report; according to the Official Commission Report from 2021, the length of the stay in a mother and baby home was determined by the time it took for the baby to be adopted.¹⁸⁹ This differs from the public perception in the 1960's and 1970's; unmarried mothers were unwilling to admit themselves to a mother and baby home because they were scared to be “shut away” for two years or more.¹⁹⁰ The Commission Report states that the average length of a woman's stay in the 1950's had already decreased to an average of a year and decreased even further in the decades that followed; from the 1970's, the women's stays were about three months.¹⁹¹ The length of the stay of a woman in a mother and baby home decreased as the decades went on, but the public perception of lengthy stays remained prominent.

¹⁸⁴ Lewis Darwen, ‘Workhouse Labour, Less Eligibility and the New Poor Law’ (2026) 141 The English Historical Review 136, 138; Commission of Investigation into Mother and Baby Homes, ‘Executive Summary’ (N 40) 52.

¹⁸⁵ Commission of Investigation into Mother and Baby Homes, ‘Executive Summary’ (N 183) 63.

¹⁸⁶ Lorraine Grimes, “‘We Did What Needed to Be Done’: Cherish, the First Support Group for Unmarried Mothers in Ireland” (2023) 32(1) Women's History Review 21, 22; Commission of Investigation into Mother and Baby Homes (N 7) 12.1.

¹⁸⁷ Commission of Investigation into Mother and Baby Homes (N 7) 12.8.

¹⁸⁸ Commission of Investigation into Mother and Baby Homes, ‘Executive Summary’ (N 183) 45 and 170; Commission of Investigation into Mother and Baby Homes (N 7) 12.7.

¹⁸⁹ Commission of Investigation into Mother and Baby Homes (N 7) 12.9.

¹⁹⁰ *ibid* 12.9 and 12.20.

¹⁹¹ Commission of Investigation into Mother and Baby Homes, ‘Executive Summary’ (N 183) 92.

3.2.2 Access to information

Inspired by the resolution on Social Protection of Unmarried Mothers and their Children by the Council of Europe, a conference was organised on the community services for the unmarried parent in Ireland in 1970.¹⁹² This conference attempted to establish a non-denominational publicity/referral agency but was rejected because of reservations of two bishops.¹⁹³ Over-publicity of information for unmarried mothers could damage the care for unmarried mothers by robbing it of the quiet, controlled and discreet manner in which it should be carried out; it would differ substantially from the Catholic objectives.¹⁹⁴ The only source of information on the services available to unmarried mothers came from advice columns in newspapers.¹⁹⁵ The lack of information reached as far as biological information about giving birth, but also about the legal rights of a mother.¹⁹⁶ European policy inspired conversation on the care for unmarried mothers, but Catholic influence prevented that national policy on information provision arrangements would be changed accordingly.

The influence of the Catholic Church on the care for unmarried mothers expanded in the 1970's; the Catholic organisation CURA was established to prevent unmarried mothers from seeking abortion in England.¹⁹⁷ The popularity of this possibility was also visible in the occupation numbers of Mother and Baby Homes:

“Numbers in the Irish Mother and Baby Institutions are falling to 40 compared with 90, six or seven years ago.”¹⁹⁸

The primary purpose of CURA was to reduce the numbers of Irish women traveling to England for abortion by providing them practical assistance.¹⁹⁹ With CURA, more social

¹⁹² Commission of Investigation into Mother and Baby Homes (N 7) 12.44-12.45; Council of Europe, Resolution (70) 15 on the social protection of unmarried mothers and their children, 15 May 1970, <https://rm.coe.int/native/09000016804c3355>.

¹⁹³ Commission of Investigation into Mother and Baby Homes (N 7) 12.57.

¹⁹⁴ *ibid* 12.58.

¹⁹⁵ *ibid* 12.19.

¹⁹⁶ *ibid* 12.25, 12.12.27.

¹⁹⁷ *ibid* 12.124-12.125.

¹⁹⁸ Letter from Cecil Barrett, Catholic Social Welfare Bureau, to John Charles McQuaid (17 June 1960), Dublin Diocesan Archives, LII/A/40/9/1.

¹⁹⁹ Commission of Investigation into Mother and Baby Homes (N 7) 12.124-12.125.

organisations tasked with the care for unmarried mothers emerged.²⁰⁰ Notable is the founding of the organisation Cherish in 1972.²⁰¹ Cherish distinguishes itself because it was founded by two single mothers, instead of the Church or professionals.²⁰² Their work consisted of providing information and emotional and financial support to the unmarried mothers.²⁰³ Information for unmarried mothers was limited because it would interfere with Catholic objectives. Instead, multiple organisations emerged to advise unmarried mothers in line with Catholic views and to refer them to Mother and Baby Homes.

The lack of information for unmarried mothers changed somewhat in 1973, when a brochure written by social workers was published that listed the services available for unmarried mothers.²⁰⁴ At the same time, social workers started to visit Mother and Baby Homes to suggest alternative options about the future of the mother and her child than those presented by the people working in the homes.²⁰⁵ The productivity of this provision of information, however, can be contested because ten years later, in 1983, a report of a social worker shows the lack of access to information unmarried mothers had; mothers would still abandoned their jobs, unaware of their entitlement to maternity leave.²⁰⁶ Notable is that the social worker blamed this lack of knowledge on the unmarried mothers, labeling them as handicapped girls.²⁰⁷ Even though there were more efforts to provide information to unmarried mothers by professionals in the second half of the 1970's, women still missed valuable information on their practical and legal situation. The women themselves were blamed for this lack of knowledge by the social workers.

The stance of the Irish government on the provision of information to unmarried mothers became clear with their reaction to a 1976 Irish Supreme Court ruling; the Court voided an adoption because the mother had not been made aware of her legal right to change her mind at the time she consented to the adoption.²⁰⁸ The government's response was to change the Adoption legislation which retrospectively validated the consents and adoption

²⁰⁰ *ibid* 12.75, 12.76

²⁰¹ *ibid* 12.83.

²⁰² *ibid*.

²⁰³ *ibid* 12.84-12.96.

²⁰⁴ *ibid* 12.41.

²⁰⁵ *ibid*.

²⁰⁶ Commission of Investigation into Mother and Baby Homes (N 7) 12.116.

²⁰⁷ *ibid* 12.115.

²⁰⁸ *M and M v An Bord Uchtála* [1977] 1 IR 287.

orders, even if the mother was unaware of her rights.²⁰⁹ In words of the Northern Area Health Board:

“The problem of a mother that had placed a child with prospective adopters but subsequently failed or refused to execute the consent to adoption had now been cured.”²¹⁰

This chain of events shows that when the government was confronted with the insufficient provision of information for unmarried mothers during the adoption process, they decided to implement legislation that circumvents the consent of mothers, because their refusal to do so was seen as a problem.²¹¹ Instead of providing more and better information to unmarried mothers, there was now legislation that left them completely left in the dark on the adoption process of their child.

3.2.3 Discrimination

A characteristic that shows the discriminatory and sexist views that form the basis for the treatment of unmarried mothers is the fact that the women are solely blamed for the pregnancy out of marriage.²¹² This is visible in the justification of the widow’s allowance; this allowance was justified according to governmental policy because, unlike unmarried mothers, these widows were not at fault for their circumstances.²¹³

“The fathers of these babies were free whereas the mothers were trapped”²¹⁴

²⁰⁹ Adoption Act 1976 (No 29 of 1976); Commission of Investigation into Mother and Baby Homes (N 7) 32.107.

²¹⁰ *Northern Area Health Board, WH and PH v An Bord Uchtála* [2002] 4 IR 252.

²¹¹ Commission of Investigation into Mother and Baby Homes (N 7) 32.110.

²¹² Commission of Investigation into Mother and Baby Homes (N 7) 12.24 and 12.26.

²¹³ Howard Glennerster, *British Social Policy Since 1945: Making Contemporary Britain* (Wiley 1995) 148.

²¹⁴ Commission of Investigation into Mother and Baby Homes (N 7) 12.26.

Even though the Church had a monopoly on the services for unmarried mothers, a movement was arising to change the way unmarried mothers were treated.²¹⁵ Through the contact with the earlier discussed organisation Cherish, bishops spoke up about the empowerment of single mothers:

“Since the right of an unborn child are paramount particularly in a Christian community ... we seek to win support for the mother who is courageous enough to welcome her baby into the world.”²¹⁶

Sadly, this support for single mothers to keep their unborn child was met with resistance by the Archbishop of Dublin who stated that ‘one must deplore and resist the tendency to glamorise the so-called “one parent family”’.²¹⁷ Even though these religious figures did not agree, these statements show the layers of discontent the Church had with unmarried mothers and their efforts to take control over their decision-making; women were not supposed to get pregnant outside of wedlock, but abortion of the pregnancy is an even bigger sin.

The previously mentioned 1970 conference on community services for unmarried parents did not only talk about information provision arrangements, but there were also discussions on alternatives to Mother and Baby Homes, namely, the Irish National Council for the Unmarried Mother and her Child.²¹⁸

“It was a fundamental human right that a mother should be given all assistance to keep her child ... we in Ireland offer little real alternative to adoption and in doing so we violate the basic human right enshrined in the Council of Europe document”²¹⁹

²¹⁵ Lorraine Grimes, “‘We Did What Needed to Be Done’: Cherish, the First Support Group for Unmarried Mothers in Ireland” (2023) 32 Women’s History Review 21, 24.

²¹⁶ ‘Speech at Cherish Conference’ (2 November 1975), Box 3, Cherish Records, One Family Archive.

²¹⁷ Irish Catholic Bishops’ Conference, ‘Human Life Is Sacred’ (Pastoral Letter, 1975) 24, Cherish Papers, One Family Archive.

²¹⁸ Commission of Investigation into Mother and Baby Homes (N 7) 12.44.

²¹⁹ *ibid* 12.53.

The proposal for the Irish National Council was dismissed because the Catholic hierarchy had actively blocked the proposal; influential Catholic figures argued that a non-denominational body would threaten the Catholic rehabilitation of the unmarried mothers, since the neglect of her religious duties were the cause of the woman's fall.²²⁰ The Catholic figures were influential because of the power the Church had over Irish welfare policy. In the case of care for unmarried mothers, the influence came from the Catholic Protection and Rescue Society of Ireland, which existed since the 1910's.²²¹ Since Ireland has a long-standing tradition of leaving welfare matters to be decided by the Catholic church, the opposition of the Church to a non-religious council on the welfare for unmarried mothers was easily accepted.²²² The government decided that such a council should be acceptable to all religious beliefs and, since the Church objected, the proposal was denied.²²³ Even though the violation of the human rights of the unmarried mother was recognised in the conference of 1970, under pressure of the Catholic Church the government did not take action to stop the violation.

3.2.4 *The end of Mother and Baby Homes*

From the 1980's onward, the decline of adoptions and the habitation of Mother and Baby Homes started to show. Where in 1975 57.4% of the illegitimate births resulted in adoption, this figure was reduced to 8.5% by 1990.²²⁴ Figures from Mother and Baby Homes declined accordingly: in 1990 only 2% of unmarried births were associated with a home.²²⁵ The first closure of Mother and Baby Homes originated from medical concerns.²²⁶ Doctors were concerned with the level of prenatal and postpartum care provided in Mother and Baby Homes and wanted to close the facility because of it.²²⁷ This was met with resistance by the Eastern Health Board; they were concerned that closure would enable women to keep their pregnancy a secret.²²⁸ In 1980, the first maternity ward of a mother and baby home closed,

²²⁰ *ibid* 12.58-12.59.

²²¹ Patsy McGarry, 'Catholic Adoption Agency Cúnamh Closes Its Dublin Doors after 106 Years' *The Irish Times* (20 December 2019) <https://www.irishtimes.com/news/social-affairs/catholic-adoption-agency-cunamh-closes-its-dublin-doors-after-106-years-1.4122025> accessed 21 June 2026.

²²² JH Whyte, *Church and State in Modern Ireland 1923–1979* (2nd edn, Gill and Macmillan 1980); Tom Inglis, *Moral Monopoly: The Catholic Church in Modern Irish Society* (Gill and Macmillan 1987).

²²³ Commission of Investigation into Mother and Baby Homes (N 7) 12.77.

²²⁴ *ibid* 12.2

²²⁵ *ibid* 12.102.

²²⁶ *ibid* 12.112.

²²⁷ *ibid* 12.112.

²²⁸ *ibid*.

but it took until 1985 for the last maternity ward in a mother and baby home to close.²²⁹ Notable is that the medical policy was not imposed; the mother and baby home had to agree to discontinue the dangerous practice of in-house deliveries. With extensive efforts by doctors, the medical concerns resulted in closure of the maternity wards in Mother and Baby Homes in 1985.

Because of the closure of the maternity wards in the 1980's, Mother and Baby Homes became an increasingly social service, providing mothers with counseling and accommodation.²³⁰ The homes were now increasingly used by students, women with special needs, addiction issues or difficult family circumstances.²³¹ The discussion arose on the funding of Mother and Baby Homes; the minister of health was debating on closing multiple homes to release funds that could be redistributed into community-based services like support for single-parent families.²³² This proposal was not enthusiastically received by the health boards and homes; there was a wish to continue the work of the homes because, according to a health board official, it "*operates as a small acute hospital with sick patients*".²³³ The health boards would not agree with the closure of the homes, as long as there are no alternative activities established to care for unmarried mothers and their babies.²³⁴ But in the years that followed, Church-led homes were closed down and replaced by state-led facilities focused on independent living for the mother and her child.²³⁵ After the closing of maternity wards in the 1980's, Mother and Baby Homes provided more specialised care, the funds that became available were redistributed towards state-led facilities.

A pivotal change in the treatment of unmarried mothers was the legal reform by the Status of Children Act of 1987.²³⁶ This legislation abolished the legal status of 'illegitimacy' but also provided the father of the child with more rights.²³⁷ Interestingly, this legislation originated from legal pressure of the European Court which held that the existing legislation did not take enough steps to equalise the treatment of children.²³⁸ After this legislation was implemented, there is a clear change in adoption visible: in 1986, only 28% of the adoptions

²²⁹ *ibid* 12.113.

²³⁰ *ibid* 12.114.

²³¹ *ibid* 12.102.

²³² *ibid* 12.119.

²³³ *ibid* 12.119.

²³⁴ Department of Health, CCL/INA/0/488268.

²³⁵ Commission of Investigation into Mother and Baby Homes (N 7) 12.117.

²³⁶ Status of Children Act 1987 (No 26 of 1987).

²³⁷ *ibid* Article 3; Commission of Investigation into Mother and Baby Homes (N 7) 12.161.

²³⁸ *Johnston v Ireland* (1986) Series A no 122; Enright and others (N 182) section 2.2.

involved family members which was most commonly the mother and her new partner.²³⁹ In 1995, 68% of adoptions was by the mother and her partner.²⁴⁰ Notably, the Diocese of Cork framed this the following way:

“If the father was granted guardianship a mother could not place the child for adoption without his consent.”²⁴¹

This statement suggests mothers wanted to put their child up for adoption, against the fathers will. When compared to the number of adoptions of mothers of their children born outside of wedlock, this is not an accurate reflection of the will of the unmarried mothers. Sadly, there is no further research available into the will of unmarried mothers in Ireland to put their child up for adoption.

After the Mother and Baby Homes started closing their maternity homes the purpose of the homes started to shift towards helping mothers with specific characteristics. This resulted in less occupancy of the homes, slowly letting them close. With a change in legislation that normalised that couples kept their baby even if it was born out of wedlock, the last Mother and Baby Homes closed in the 1990's.²⁴²

3.3 Comparing The Netherlands to Ireland

In this paragraph, the two national situations are compared with each other and with the European legal framework as discussed in the previous chapter. With this, an answer can be formulated to the question: did the treatment of unmarried mothers in The Netherlands and Ireland constitute a redressable injustice under European rule of law provisions at the time of the actions?

When comparing the case of unmarried mothers in The Netherlands with the case of unmarried mothers in Ireland, as described in the previous chapters, it is clear that there were significant differences in the motivation and development of the treatment of unmarried

²³⁹ Finola Kennedy, *Cottage to Crèche: Family Change in Ireland* (Institute of Public Administration 2001) 44.

²⁴⁰ *ibid.*

²⁴¹ St Anne's Adoption Society Records (Cork Diocesan Archives, box 4).

²⁴² Commission of Investigation into Mother and Baby Homes (N 7) 12.121.

mothers by authorities. But it is also clear that there is an overlap in the cultural basis behind the treatment of unmarried mothers, namely the traditional marriage ideals. Something that must be taken into account when comparing both situations, is the difference in research available regarding the treatment, policy and experience of unmarried mothers in The Netherlands and Ireland; the projects had a different approach. In The Netherlands, the research clearly focused on providing information on the lived experience of the unmarried mothers, supported with some insights into policy development. In Ireland, the research heavily focused on the policy development describing communications between authorities, supported by some personal stories to show the influence of the described policies. Also, the topics that are researched differ; the Dutch reports mostly focus on the forced adoption aspect of the treatment of unmarried mothers, the Irish report is focused on the institutionalisation of women and not how they were treated inside the homes. Because of this difference, there are details in one study that are missing in the other, making the comparison sometimes uneven. That a report does not elaborate on a certain aspect of the treatment of unmarried mothers does not mean it did not happen, it just has not been researched. An example of a research gap is seen in paragraph 12.119 of the Irish study. In this chapter, the process of closure of the Mother and Baby Homes is described. In earlier paragraphs it is established based on policy-maker documents that the homes no longer had a maternity ward. But in paragraph 12.119, based on later documents by the policymakers on possible closure of the homes, a home is described as a hospital for sick patients. The study labels this as “*a strange description*” but does not provide any more research into this divergence of policy and practice. There are clear research gaps in the state-commissioned research projects. An explanation for the research gaps could be that it is unwanted by the research commission that the Church is put in a bad light or to avoid legal claims of victims.

Another note on the framing of the reports: in the Irish research, it is clear that the experience in the second part of the 20th century is heavily contextualised by the information known about the treatment of unmarried mothers in the first part of this century. The change from prenatal and postpartum care to a social function is framed as a significant improvement in the treatment of unmarried mothers. But, at the same time, the mothers only felt comfortable to speak up decades later in the 2010's, which suggests continuation of the shame put on the women.²⁴³ When comparing the facts of the Irish case with the Dutch case, there are many similarities in the social function of the care for unmarried mothers, but the

²⁴³ See chapter 4.

Dutch reports never mention this as a positive element. When comparing the Dutch reports with the Irish reports, the influence of the broader context available in the Irish report becomes clear. Even though the treatment of unmarried mothers was similar in both situations, the Irish events are portrayed in a more favourable light.

3.3.1 Infringements of procedural rights

Based on the events discussed in the earlier paragraph, it is clear that the procedural right of access to information for the unmarried mothers was infringed during the practices in both countries. As explained in chapter 2, this right is formulated in the 1987 Heylens case to include full knowledge of the relevant facts of an individual's case.²⁴⁴ In the Dutch case, there was a custom of using legally invalid contracts to misguide the women into thinking they have waived their right to invoke the relinquishment of their child. It was a custom to deliberately misguide women on their legal position as a mother which prevented the women to invoke the relinquishment of their child. Because the women had no access to information, she was unable to make a legal claim to stop the unjust treatment. The Irish research report has more extensive information on the access unmarried mothers had to information than the Dutch reports. Social organisations provided information for unmarried mothers, but because of the absence of information on the lived experience of the women in the report, it is unclear how much the women actually knew about their situation, both practical and legal. The 1976 lawsuit on consent in the adoption process, and the following change in governmental policy shows that the women were left out of the adoption process as much as possible. Access to information was very limited for the Irish women.

Compared to the requirement of access to information, an element of effective access to justice and thus an element of the rule of law, the situation for the Dutch and Irish mothers infringes on the European legal framework. However, this is when the case is judged from a retroactive perspective, meaning to apply the current law to past actions.²⁴⁵ But this is legally not defensible; it goes against the principle of non-retroactivity which prohibits the application of law to events that took place before the law was introduced.²⁴⁶ Since the element of access to information was only established in 1987 for the first time, it would not

²⁴⁴ Heylens (N 79) 15.

²⁴⁵ Yarik Kryvoi and Shaun Matos, 'Non-Retroactivity as a General Principle of Law' (2021) 17(1) Utrecht Law Review 46.

²⁴⁶ *ibid.*

be applicable to the Dutch events discussed since the situations discussed in the reports were before 1984. Also, many of the Irish cases would not be able to apply the right to access to information based on the existing case law at the time. The analysis of the right to access to information as an element of effective access to justice in the case of unmarried mothers in The Netherlands and Ireland only tells us that nowadays, these events would be an infringement.

3.3.2 *Infringements of substantive rights*

A substantive right under the European framework that could be argued to be infringed through the treatment of unmarried mothers by The Netherlands and Ireland, is the fundamental right to non-discrimination.²⁴⁷ According to the Dutch reports it is clear that the care for unmarried mothers was belittling and degrading for the women. The treatment in the homes was degrading, discriminatory and a reflection of the stigma around unmarried pregnancy at the time. For the case of Ireland there was a conference in 1973 on the rights of unmarried mothers inspired by the Council of Europe, which inspired conversations about the human rights situation of unmarried mothers. There were policymakers in Ireland that specifically reference European human rights treaties when discussing the need for more suitable care for unmarried mothers. This movement within the Irish policymakers did not actually influence the policy on the treatment of unmarried mothers; the women were solely to blame for the sinful act of getting pregnant as an unmarried woman. The European principles on rule of law and non-discrimination were discussed but never actually implemented into policy in Ireland. Documents like the Birkelbach Report and the Declaration on European Identity, which emphasised the importance of human rights and the rule of law, gave promises of human rights, dignity and equality but even when policymakers discussed these as had happened in Ireland, these parts of European legislation could not prevent the injustice against unmarried mothers.²⁴⁸

Another substantive right is related to the institutionalisation of unmarried mothers. In The Netherlands, women were sent to the homes by advisory people of the community, in Ireland this was the role of the Church. In The Netherlands, the institutionalisation came from a scientific rationale, which resulted in the women being projected to psychological review.

²⁴⁷ ECHR (N 36) Article 14.

²⁴⁸ Birkelbach 1961 (N 51); Declaration on European Identity (N 54).

In Ireland this differed; women were judged on Catholic morals, and thus had to rehabilitate into good, God-loving women again. Both rationales had as result that the unmarried mothers were shamed for their problematic and immoral behaviour of becoming pregnant without being married. The women did not have a say in their placement into homes which could qualify as deprivation of liberty, a fundamental right under the European legal framework.²⁴⁹

²⁴⁹ ECHR (N 36) Article 5.

4. A Redressable Injustice

Unlike the last chapter, this chapter goes into the current state of the case of unmarried mothers in The Netherlands and Ireland. This chapter explains how, even though the events happened in the previous century, they still have an impact on the lives of the victims today. The chapter aims to answer the second sub-question of the thesis: can the treatment of unmarried mothers in The Netherlands and Ireland be qualified as a redressable injustice in the current European legal system? To answer this question, the first paragraph analyses the search for redress by both the Dutch *Afstandsmoeders* and the Irish victims of the Mother and Baby Homes since the emergence of the testimonies about the historical situation. In the second paragraph, it is analysed how redress could look like for the victims of the historical injustice. As explained in the introduction of the thesis, this reflects the issue in the historical injustice discussion; what normative framework is able to provide redress to historical injustices? This thesis chooses to follow the expressions of the victims of the historical injustice to determine what redress could look like. This is analysed according to justice theory since, in the end, the goal is to make a historical injustice just again. The last paragraph brings together the analysis of what has happened in the women's search for redress, contextualised by justice theory, from chapter 4.2, with the findings of chapter 3.3 on the violations of rule of law provisions to answer the main research question; is it possible for the case of unmarried mothers in The Netherlands and Ireland, as a case of historical injustice, to be qualified as redressable injustice according to the European legal system?

4.1 Unmarried mothers in the 21st century

This paragraph analyses the current search for redress by both the *Afstandsmoeders* and the victims of Mother and Baby Homes for the injustice they suffered. The paragraph aims to find an answer to the question of what redress could look like for the historical injustice the unmarried mothers suffered in both countries.

4.1.1 The Netherlands

In 1984, the last year included in the research report, the first information on the experience of *Afstandsmoeders* was published by the Dutch Federation of Institutions for the

Unmarried Mother and Her Child.²⁵⁰ They published a report in which seven Afstandsmoeders talked about their experience.²⁵¹ While this prompted newspapers to interview more women, inspiring more psychological research into the treatment for the women, there is no further information on what influence this had on the situation of unmarried mothers.²⁵² It was not until 10 years later that a lawsuit related to the system of forced adoption by unmarried mothers started; a child that was put up for adoption by an unmarried mother in 1935, demanded access to her file.²⁵³ The decision by the Dutch High Court on this lawsuit became a landmark case, but not because of the insights it gave into the unjust situation of unmarried mothers and their children; it became the first judicial ruling on the right to ancestry information, which started the development of this area of law in The Netherlands.²⁵⁴ The fact that there was no attention for the unjust situation the unmarried mother had experienced, could be a sign of the shame felt by the unmarried mothers; they did not see the events around their pregnancy as an injustice perpetrated against them, at least not enough to hold the perpetrator accountable. Between 1984 and 1994, a wave of information on the treatment of unmarried mothers in the decades before emerged, but after the landmark case relating to access to information for adopted children, the topic lost traction again without recognition of the unjust events the women had suffered under.

20 years later, in 2014, a documentary on the concealed suffering of unmarried mothers aired on national television which prompted discussions in the Dutch government.²⁵⁵ The documentary was part of a series that discussed a different topic every week, it is unclear why the makers decided to make the documentary on Afstandsmoeders at that moment except that it followed another project by the maker on abuse by the Catholic Church.²⁵⁶ Based on the documentary, the government decided to start an exploratory research project to gain more insight into the problems of the events, which finished in 2017.²⁵⁷ The conclusion of this report is that the voice of Afstandsmoeders, either consciously or unconsciously, had

²⁵⁰ Bultman and Van der Klein, 'Verslag van kranten- en literatuuronderzoek' (N 18) 9.

²⁵¹ FIOM, 'Moeders op afstand. Persoonlijke ervaringen van zeven moeders die afstand deden van hun kind. De achtergronden en motieven van hun beslissingen en de doorwerking daarvan in hun verdere leven, daarover vertellen zij' (FIOM 1984).

²⁵² Bultman and Van der Klein, 'Verslag van kranten- en literatuuronderzoek' (N 18) 9.

²⁵³ HR 15 April 1994, ECLI:NL:HR:1994:ZC1337 (*Valkenhorst*) para 3.1.

²⁵⁴ AJ Verheij, 'The Right to Be Forgotten – A Dutch Perspective' (2016) 30(1–2) *International Review of Law, Computers & Technology* 32, 35.

²⁵⁵ Hof Den Haag 23 March 2025, ECLI:NL:GHDHA:2025:353 (*Afstandsmoeders v The Netherlands*) para 3.1.

²⁵⁶ KRO Brandpunt, 'Moederziel alleen' (Brandpunt, KRO, 5 October 2014)

<https://www.brandpunt.kro.nl/seizoenen/2014/afleveringen/05-10-2014/fragmenten/moederziel-alleen> accessed 21 June 2026.

²⁵⁷ Kok and others (N 10).

been ignored in the societal dialogue on relinquishment and adoption.²⁵⁸ When the minister of legal protection initiated a more in-depth research project, this was cut short because of problems with the protection of privacy of respondents.²⁵⁹ During this time, awareness around the treatment of unmarried mothers started to grow and victims opened up in public:

“My whole file is filled with lies. Not only did [the Child Protection Council] lie to me, they also lied to my mother.”²⁶⁰

One of the most detailed testimonies comes from an Afstandsmoeder named Trudy Scheele-Gertsen; she was forced to relinquish her child in 1968 but got access to her file in 2018, making her able to read what the social workers and the Child Protection Council had written about the relinquishment of her child.²⁶¹ She was shocked; the file was filled with inaccurate statements about the adoption process and Trudy’s opinions during it.²⁶² For example, it was written that she willingly distanced herself from her child.²⁶³ The file also showed that the Council had collected insurance money that was intended for her, the mother.²⁶⁴ Trudy decided to hold the Dutch State liable for the damages she and her child had endured during and as a result of the adoption process.²⁶⁵ Started by a documentary in 2014, the public awareness on the experience of Afstandsmoeders grew, prompting both governmental action and a lawsuit from an Afstandsmoeder who was able to access her file in the years after 2014.

In her lawsuit, Trudy was assisted by a lawyer and by an organisation that advocates for women’s rights in The Netherlands called Bureau Clara Wichmann. The organisation

²⁵⁸ *Afstandsmoeders* (N 255) para 3.2.

²⁵⁹ ‘Onderzoek naar binnenlandse adoptie en afstand stopgezet’ (www.wodc.nl, 9 November 2021) <<https://www.wodc.nl/actueel/nieuws/2021/11/09/onderzoek-naar-binnenlandse-adoptie-en-afstand-stopgezet>> accessed 6 July 2026.

²⁶⁰ Phaedra Werkhoven, ‘Voor afstandsmoeder Trudy Scheele-Gertsen houdt het verdriet nooit op’ De Stentor (25 July 2020) <https://www.destentor.nl/epe/voor-afstandsmoeder-trudy-scheele-gertsen-houdt-het-verdriet-nooit-op~aa3550f6/> accessed 6 July 2026.

²⁶¹ *ibid.*

²⁶² *ibid.*

²⁶³ *ibid.*

²⁶⁴ *ibid.*

²⁶⁵ Prakken d’Oliveira Human Rights Lawyers, ‘Moeder die kind moest afstaan stelt Staat aansprakelijk’ (Prakken d’Oliveira Human Rights Lawyers) <https://www.prakkendoliveira.nl/en/?view=article&id=863:moeder-die-kind-moest-afstaan-stelt-staat-aansprakelijk&catid=96> accessed 6 July 2026.

represented the 13.000 - 15.000 women that were victim to the forced adoption practice between 1956 and 1984, making the lawsuit a class action against the Dutch State.²⁶⁶ Formally, the claim entailed that, due to the wrong or incomplete information the Afstandsmoeders received about the adoption process, they involuntarily relinquished their child, resulting in material and immaterial damages.²⁶⁷ The first claim by Trudy was made in 2019 and, after an appeal, the final judgement was published by the Court of Appeal in 2025.²⁶⁸ In their verdict, the Court found that the claim of Trudy had expired under the statute of limitations and the class action claim was inadmissible because the experiences of the women in the class action differed too much.²⁶⁹ Under Dutch law, Trudy had 20 years to hold the state liable before the statute of limitations had expired, this period had run out by 1994.²⁷⁰ The Court did not agree that there were extraordinary circumstances that outweigh the interest of the statute of limitations.²⁷¹ Notable for both the claim by Trudy and the class action claim is that the Court never mentions the term discrimination. One can wonder if the outcome of the lawsuit would have been different if the Court had included the aggravating circumstance of discrimination in their application of the legal test of extraordinary circumstances that could outweigh the statute of limitations. The same can be said for the inclusion of discrimination in the assessment of similarity in the experience of the women for the judgement on the class action claim. The Court of Appeal rejected every claim made by the Afstandsmoeders, which, notably, never mentions discrimination in their verdict.

Days after the disappointing verdict by the Court of Appeal, the Dutch parliament unanimously accepted a motion to officially recognise the suffering of unmarried mothers and their children as a result of the actions of the State.²⁷² Included in this motion is also the request of the parliament to the government to put in the utmost effort to make sure that mothers and their children will be able to access their adoption files and make it possible for the mothers to add a new document to the file so she can explain the mistakes made in the old files.²⁷³ With this motion, the Afstandsmoeders received some recognition but there was still no mention of an official apology or reparations for the injustice they suffered. This changed

²⁶⁶ Bureau Clara Wichmann, 'Afstandsmoeders' (Bureau Clara Wichmann, 15 May 2020) <https://clara-wichmann.nl/rechtszaak/afstandsmoeders/> accessed 6 July 2026.

²⁶⁷ *Afstandsmoeders* (N 255) para 1.4.

²⁶⁸ *ibid.*

²⁶⁹ *ibid* para 3.6.

²⁷⁰ *ibid* para 6.23.

²⁷¹ *ibid* para 6.25.

²⁷² Ministerie van Justitie en Veiligheid, 'Voortgangsbrief afstand- en adoptiedossiers' (12 June 2025) 6465877.

²⁷³ *ibid* para 3.

in April 2026: the government officially expressed their intention to apologise for the role of the government within the practice of forced adoption in the past.²⁷⁴ In the explanation of their intention, the government confirms that the events of the past should never have happened, and they recognise that there was not enough attention for the vulnerable and dire position the mothers and children had in society.²⁷⁵ Also in April 2026, an organisation representing Afstandsmoeders told a newspaper that they expected a formal apology from the Catholic and the Protestant church in The Netherlands.²⁷⁶ A month later, an organisation of 30 church denominations in The Netherlands published a statement as a response, recognising the suffering inflicted on the women by the whole situation of forced adoption, but they did not apologise in their statement.²⁷⁷ In contrast to the Dutch State, the Church does not take its responsibility for the suffering the women endured.

On 2 July 2026, the government in the form of the State Secretary for Justice and Security formally apologised to the victim of the treatment of unmarried mothers in The Netherlands:

“There was woefully insufficient regard for the vulnerable and distressing situation in which the Afstandsmoeders and -dads found themselves.”²⁷⁸

The State Secretary also expressed the intention to provide reparations to the victims.²⁷⁹ The apology was met with some discontent; two weeks before the apology, the Dutch Prime Minister apologised for the role of the Dutch government in the historical injustice against the Moluccan community, but the Afstandsmoeders only received an

²⁷⁴ Ministry of Justice and Safety, Nota Excuses voor het verleden van afstand en adoptie, 13 April 2026, 7482175.

²⁷⁵ *ibid.*

²⁷⁶ Rianne Oosterom and Jelmer Mulder, ‘Afstandsmoeders en kinderen willen ook excuus van kerken’ *Trouw* (19 April 2026) <https://www.trouw.nl/binnenland/afstandsmoeders-en-kinderen-willen-ook-excuus-van-kerken~b3b93a1a/?referrer=https%3A%2F%2Fwww.google.com%2F> accessed 6 July 2026.

²⁷⁷ CIO, ‘Reflectie van het CIO op het handelen rond binnenlandse afstand en adoptie 1956–1984’ (13 May 2026) <https://www.cioweb.nl/reflectie-van-het-cio-op-het-handelen-rond-binnenlandse-afstand-en-adoptie-1956-1984/> accessed 17 May 2026.

²⁷⁸ Abel Bormans, ‘Staatssecretaris Van Bruggen biedt excuses aan voor binnenlandse adoptie: overheid heeft “steken laten vallen”’ *De Volkskrant* (2 July 2026) <https://www.volkskrant.nl/binnenland/staatssecretaris-van-bruggen-biedt-excuses-aan-voor-binnenlandse-adoptie-overheid-heeft-steken-laten-vallen~b8d70b088/> accessed 8 July 2026.

²⁷⁹ Kim Einder, ‘Kabinet biedt 15.000 afstandsmoeders en hun afgestane kinderen excuses aan’ *NU.nl* (2 July 2026) <https://www.nu.nl/binnenland/6401626/kabinet-biedt-15000-afstandsmoeders-en-hun-afgestane-kinderen-excuses-aan.html> accessed 8 July 2026.

apology from a State Secretary, giving the victims the feeling that they were not taken seriously.²⁸⁰ Notable in the coverage of the apology, the people that were interviewed are 3 male children and only one Afstandsmoeder. This could be a sign that there is still shame on side of the women; they did not feel comfortable enough to speak to the newspaper. Since the moment the Court confirmed that the State was unable to be held liable for the damages of the Afstandsmoeders, the government took action to recognise the hurt the Afstandsmoeders have experienced, with most recently, an official state apology and the intention to provide reparations.

Inspired by a 2014 documentary, research and awareness emerged for the Dutch Afstandsmoeders, influenced by governmental action. It became clear that there was incorrect information in the adoption files from the past. The personal experience of an Afstandsmoeder started a lawsuit including a class action claim, aiming for state liability against the Afstandsmoeders. Even though the Afstandsmoeders lost this case, the state formally apologised to the victims of national adoption in the past on 2 July 2026, just days before this thesis is submitted.

4.1.2 Ireland

The awareness for the victims of Mother and Baby Homes in Ireland started in 2014; an amateur historian called Catherine Corless received international recognition for her research into one of the Mother and Baby Homes in Ireland because of the disturbing facts it highlighted, forming a pivotal moment for the recognition of the experience of unmarried mothers in Ireland.²⁸¹ The research by Corless was inspired by her childhood; she had been in school with children that were born and raised in a home.²⁸²

“People remember being told by the nuns that they would be put beside a home baby if they didn’t behave themselves.”²⁸³

²⁸⁰ Bormans (N 278).

²⁸¹ Amelia Gentleman, ‘The Mother behind the Galway Children’s Mass Grave Story: “I Want to Know Who’s Down There”’ The Guardian (13 June 2014) <https://www.theguardian.com/world/2014/jun/13/mother-behind-galway-childrens-mass-grave-story> accessed 15 May 2026.

²⁸² *ibid.*

²⁸³ *ibid.*

In 2011, inspired by a bone discovery by local children around the old home, and her childhood memories, Corless requested the death certificates of the children that died in the home.²⁸⁴ She found out there were 796 certificates of deceased children, way more than the few bones that were found by the local children.²⁸⁵ Between 2011 and 2013, Corless tried alerting the nuns, the local clergy and the police but with no response except a local newspaper publishing a small article.²⁸⁶ It was not until 2014 that the story received national and international attention.²⁸⁷ When the story broke, the government and church responded quick; both called for a thorough investigation into Mother and Baby Homes in Ireland.²⁸⁸ In February 2015, the 'Commission of Investigation into Mother and Baby Homes and certain related matters' was established.²⁸⁹ Even though the Commission originally had a deadline of three years to finish their report, it took until October 2020 for the final report to be published.²⁹⁰ After years of effort, amateur historian Catherine Corless was able to publish information on Mother and Baby Homes, which resulted in the first recognition of the suffering of unmarried mothers in Ireland, namely, a state-commissioned research project.

The publishing of the final report by the Commission was met with a lot of discontent within the Irish society, to the extent that 25 scientists published an alternative executive summary of the report, because according to them; "*the original report underplayed State responsibility for most abuses*".²⁹¹ The conclusion by the Commission that there was no evidence found that women were forced into the homes by Church or state authorities, and the finding that there was very little evidence of forced adoptions was the main reason for the

²⁸⁴ 'Claim of 800 Children's Remains Buried at Irish Home for Unwed Mothers' *The Guardian* (4 June 2014) <https://www.theguardian.com/world/2014/jun/04/claim-of-800-childrens-bodies-buried-at-irish-home-for-unwed-mothers> accessed 15 May 2026.

²⁸⁵ *ibid.*

²⁸⁶ Saidhbh O'Callaghan, 'Amateur Historian Catherine Corless Honoured with Human Rights Award for Tuam Mother and Baby Work' *Irish Independent* (26 October 2017) <https://www.independent.ie/irish-news/amateur-historian-catherine-corless-honoured-with-human-rights-award-for-tuam-mothers-and-baby-work/36264783.html> accessed 15 May 2026.

²⁸⁷ Alison O'Reilly, 'A Mass Grave of 800 Babies' *The Irish Mail on Sunday* (25 May 2014) https://web.archive.org/web/20140712060821/http://www.abc.net.au/mediawatch/transcripts/1422_irishmailtua.m.pdf accessed 15 May 2026.

²⁸⁸ 'Tuam Babies: Babies Born Out of Wedlock Treated as "Sub-Species" Says Enda Kenny' *BBC News* (10 June 2014) <https://www.bbc.com/news/world-europe-27775763> accessed 15 May 2026.

²⁸⁹ Commission of Investigation (Mother and Baby Homes and Certain Related Matters) Order 2015, SI 57/2015.

²⁹⁰ Commission of Investigation into Mother and Baby Homes (N 7).

²⁹¹ *feminists@law*, "Mother and Baby Homes Commission of Investigation Report, Alternative Executive Summary", Vol 14, no.1 (2025).

discontent.²⁹² One of the most notable discussions around the final report regards the involvement of mothers as victims of the Mother and Baby Homes. For starters, the Commission received 550 statements given by survivors but chose not to integrate these because it would have taken too much time and cost too much money.²⁹³ This is criticised by scholars as a rejection of a victim-based approach to the injustices.²⁹⁴

*“What were women’s stories except evidence?”*²⁹⁵

Also notable is that the statements made by victims of the Mother and Baby Homes mention very different treatment in the homes than is described in the final report by the Commission of Investigation. For example, victims repeatedly mention the practice of forced adoption and forced labour by the people working in the Mother and Baby Homes.²⁹⁶ These omissions by the Commission resulted in a lawsuit of eight victims against the Commission of Investigation because they were not consulted in the drafting of the report, which the women won.²⁹⁷ Because the report from the Commission had omitted to include victim statements, the report was met with a lot of discontent resulting in a lawsuit which confirmed that the victims should have been more integrated in the drafting of the report.

One of the consequences of the report by the Commission was an apology from the government for the ‘*profound and generational wrong*’ they had experienced.²⁹⁸ Many women rejected the apology of the state because they did not agree with the descriptions in

²⁹² Eimear Flanagan, “Irish mother-and-baby homes: Survivors angered by inquiry findings”, *BBC News NI*, 16 February 2021, <https://www.bbc.com/news/world-europe-56083615> accessed 15 May 2026.

²⁹³ The Clann Project, ‘Dr Deirdre Foley and Professor Ian McBride in Conversation with Professor Mary Daly’ (Oxford University, 2 June 2021) <http://clannproject.org/commission-report/oxfordtranscript/> accessed 15 May 2026.

²⁹⁴ Gallen (N 21)

²⁹⁵ Rosita Boland, ‘Stories of Concealed Pregnancy in Ireland: 1973–2013’ *The Irish Times* (6 February 2021) <https://www.irishtimes.com/life-and-style/people/stories-of-concealed-pregnancy-in-ireland-1973-2013-1.4476255> accessed 15 May 2026.

²⁹⁶ Aodhan O’Faolain, ‘Woman Set to Sue over Time in Bessborough Mother and Baby Home’ *The Irish Times* (22 January 2021) <https://www.irishtimes.com/news/crime-and-law/courts/high-court/woman-set-to-sue-over-time-in-bessborough-mother-and-baby-home-1.4465490> accessed 15 May 2026.

²⁹⁷ *Harney v Minister for Children, Equality, Disability, Integration and Youth* [2021] (High Court, No 180 JR, 17 December 2021).

²⁹⁸ Dáil Éireann Deb 13 January 2021, vol 1003, no 1 (Report of the Commission of Investigation into Mother and Baby Homes: Statements).

the final report by the Commission, the document on which the apology was based.²⁹⁹ The apology did induce legislation on a redress scheme for victims of the Mother and Baby Homes.³⁰⁰ The redress scheme was based on an action plan that was published together with the state's apology.³⁰¹ While the action plan contained 22 actions the Irish government aimed to take, one of the most visible is the payment scheme for survivors of Mother and Baby Homes.³⁰² This, because it received backlash based on the scheme's limitations to who is able to apply for the scheme. The scheme provides financial payments, free health services and support services.³⁰³ For people that lived in a mother and baby home as a 'baby', they are only able to apply for the scheme if they were resident for 180 days.³⁰⁴ One of the advocacy groups for survivors of Mother and Baby Homes labels this limitation as "*inherently discriminatory*".³⁰⁵ Even though the research report's findings were met with backlash, the report was the cause for a redress scheme which tries to compensate victims for their suffering, which was subsequently met with more backlash. Both attempts at restoration for victims were deemed insufficient because they did not incorporate enough recognition of the experience of the victims.

To improve engagement with survivors, the Irish government instated a Special Advocate in November 2022.³⁰⁶ The Special Advocate herself explained that the creation of the role was a direct response to the discontent of the victims of Mother and Baby Homes to the exclusion of their testimonies in the research report of 2021.³⁰⁷ With an annual report, the Special Advocate gives a summary of her engagement with survivors and survivor groups as an advice for the government, which subsequently is able to change legislation and policy based on the report.³⁰⁸ Since the establishment of the role, one report has been published.

²⁹⁹ Caelainn Hogan, "Mother and baby homes report contradicts survivors' lived experiences", *The Irish Times* (14 January 2021) <https://www.irishtimes.com/opinion/mother-and-baby-homes-report-contradicts-survivors-lived-experiences-1.4457411> accessed 16 May 2026.

³⁰⁰ Department of Children, Disability and Equality, 'State Apology and Action Plan' (16 November 2021) <https://www.gov.ie/en/department-of-children-disability-and-equality/publications/state-apology-and-action-plan/> accessed 16 May 2026.

³⁰¹ *ibid.*

³⁰² *ibid* 62; Mother and Baby Institutions Payment Scheme Act 2023 (No 20 of 2023).

³⁰³ Mother and Baby Institutions Payment Scheme 2023 (N 302) 5.

³⁰⁴ *ibid* 18.

³⁰⁵ The Clann Project, "Mother and baby institutions redress scheme" (The Clann Project) https://clannproject.org/redress_scheme/ accessed on 16 May 2026,

³⁰⁶ Department of Children, Disability and Equality, 'Government Approves Proposals for New Role of Special Advocate for Survivors of Institutional Abuse and Publishes Collaborative Forum Report' (15 November 2022).

³⁰⁷ David Hennessy, 'Making Survivors' Voices Heard' *The Irish World* (30 October 2024) <https://www.theirishworld.com/making-survivors-voices-heard/> accessed 16 May 2026.

³⁰⁸ Patricia Carey, Special Advocate for Survivors of Institutional Abuse, 'Annual Report 2024' (June 2025).

The public awareness of the suffering of unmarried mothers and their children in the Mother and Baby Homes started in 2014 because of the effort of amateur historian Catherine Corless. Based on Corless' findings, the government commissioned a research project which presented its findings in 2020 and was followed by an action plan by the government to acknowledge and restore justice for the victims of Mother and Baby Homes. This subsequently was met with backlash by the victims and its representatives because of the lack of incorporation of their experiences. To amend this mistake, the Irish government instated a Special Advocate whose task it is to engage with the victims and publish an annual report to advise the government

4.1.3 Comparing The Netherlands and Ireland

The reactions of society and the governments of Ireland and The Netherlands when the injustice of the 20th century was rediscovered share similarities, but also some significant differences. In both countries, the stories of the unmarried mothers emerged in the 2010's because of media coverage on personal stories, instigating both governments to commission research projects. Interestingly, both situations re-emerged in 2014. Based on the information that is available, however, it seems like this is a coincidence; the Irish situation received international attention after numerous efforts by Catherine Corless, and the Dutch situation became a topic in the representative body because of a documentary that followed a documentary series on abuse by the Catholic Church.³⁰⁹

One of the differences lies in the way the mothers seek redress. The Afstandsmoeders decided to start a lawsuit, both as an individual and as a class action. It is a possibility that this legal action by the victims is connected to the reaction by the Dutch government after the first research project published their findings; there was no mention of an apology, only the commissioning of further research and improving access to information and support for victims.³¹⁰ The government did not act but through the expanded access to information through the report, the Afstandsmoeders were able to file the lawsuit. The fact that the government did not take more action after the first report on the Afstandsmoeders can be seen as an expression of their unwillingness to take the women seriously; the women received

³⁰⁹ KRO Brandpunt, 'Moederziel alleen' (Brandpunt, KRO, 5 October 2014) <https://www.brandpunt.kro.nl/seizoenen/2014/afleveringen/05-10-2014/fragmenten/moederziel-alleen> accessed 21 June 2026.

³¹⁰ Kamerstukken II 2016/17, 33836, nr 20; Kamerstukken II 2018/19, 33836, nr 33.

confirmation of the unjust events they experienced but the Dutch government was not going to provide redress.

The Irish mothers never filed a general lawsuit on the harm they experienced in the Mother and Baby Homes. Possibly because the research project about their situation was treated differently; in Ireland, there was only one research project and when the findings were presented, the government immediately formulated an official apology and started the legislative process to establish a redress scheme for victims. It could be said that the Irish victims did not have the time to think about if and how they wanted to receive redress for their experience; the government acted as soon as in-depth information became available to the victims. But notably, the actual suffering from the victims, as reflected in the 550 statements, was not incorporated in the report. In the same way as it happened in the past, the women and their opinions and thoughts were sidelined, the government made the decision on redress for the women without regard of the women. Where the Dutch victims had the time to process the research-findings into their experiences and were able to start a lawsuit to hold the State accountable, the Irish victims received an apology and redress scheme from their State immediately after the in-depth information about their experiences was published. In both situations, the way the government treated the women in the past decade shares similarities with the way the unmarried mothers were treated in the 20th century.

Another interesting comparison lies in the way the mothers were incorporated into the research projects followed by the government's reaction. In The Netherlands, the research projects heavily incorporated, almost focused entirely, on the experience of the mothers during the adoption process, explaining the systemic treatment of unmarried mothers according to anecdotes from victims. This is a stark difference from the way Irish mothers were incorporated in the Irish research projects; 550 victims explained their experience to the research team, but this was not incorporated into the report. As explained in the previous paragraph, this instigated backlash from the victims which was subsequently also directed at the redress scheme that followed the report and state-apology. The Irish government acted faster than the Dutch government but received more backlash. Where the Dutch mothers received redress through the more accurate reflection of their experience in the report, the Irish mothers received redress through a state apology and a redress scheme.

4.2 A redressable injustice according to the victims

Redress for the victims of past violations of rule of law provisions, as described in the chapter 3.3, is characterised by ambiguity since the provisions were still underdeveloped. It has become clear that there are hundreds of thousands of victims of the historical injustice against unmarried mothers. This paragraph discusses the attempts at seeking redress by the victims of the treatment of unmarried mothers in the 20th century to formulate a possible normative framework that can provide redress of the historical injustice. To structure the analysis, multiple justice theories are applied to the case of unmarried mothers to accommodate for the complexity of redress for victims of historical injustice. The end goal is to find a way to make the injustice just again.

4.2.1 *Legalism*

As explained in the previous paragraph, the Dutch Afstandsmoeders held a liability claim to the Dutch State. This is an example where legalism is applied to historical injustice, legalism being the rigid application of legal rules that disregards individual circumstances and special attributes.³¹¹ The class action claim of the unmarried mothers had to fit the procedural requirement of being similar enough to classify as the same wrongdoing.³¹² The individual case of Trudy Scheele-Gertsen did not qualify as special enough to circumvent the statute of limitations. Notable here is that the Court often highlighted how unjust the situation must feel and how horrible the situation is/was for the mothers, but because of the rigid application of legal rules, the claim did not hold up. As mentioned before, a less rigid way of applying the legal rules could have been to incorporate the aggravating circumstance of discrimination into the verdict, but the Court decided to not apply this. According to justice theory scholars, a remedy for the issues arising from legalism is the application of transitional justice beyond the rigid application of legal rules.³¹³ The Dutch liability lawsuit against the

³¹¹ RA Kagan, 'Rules in the Legal Process', International Encyclopedia of the Social & Behavioral Sciences (2001) 13408 <https://www.sciencedirect.com/science/chapter/referencework/abs/pii/B0080430767028151> accessed 8 July 2026.

³¹² See paragraph 3.1.

³¹³ Kieran McEvoy, 'Beyond Legalism: Towards a Thicker Understanding of Transitional Justice' (2007) 34 Journal of Law and Society 411; Happy David Pradhan, 'A Critical Analysis of Transitional Justice and Rule of Law in Post-Authoritarian Democracies' (International Conference on Law Reform (INCLAR 2019), Atlantis Press 2019) 225.

State shows the inability of strict application of legal rules, also known as legalism, to function as a remedy to the historical injustice against the Dutch Afstandsmoeders.

4.2.2 *Restorative justice*

The theory of restorative justice is based on the idea that repairing trust and relationships between the victims and the offenders can help reintegrate offenders into society, leading to reconciliation and restoration societal harmony.³¹⁴ This process of reconciliation demands the active participation of the victims.³¹⁵ Restorative justice is put into practice with truth commissions, amnesties and traditional justice mechanisms like the one discussed in paragraph 4.2.1. The practice of restorative justice became a widely respected form of justice because of the success of a truth commission active in South-Africa in the 1990's, which had the task to report on human rights abuses that had happened during the Apartheid regime.³¹⁶ In general, truth commissions' goals include uncovering the truth, documenting atrocities, making recommendations for reparations and institutional changes, preventing recurrence of past abuses and promoting reconciliation.³¹⁷ Within justice theory, it is thus stated that truth commissions function as a restorative justice mechanism because the commission could have a focus on both reconciliation and relationship rebuilding. There are also situations where a truth commission does not fall under restorative justice; namely, when the commission focuses on accountability and punishment.³¹⁸ Restorative justice is when a practice is focused on restoring relationships and societal harmony and includes active participation of victims, this is possible through a truth commission, but not every truth commission entails restorative justice.

When comparing this theory to the efforts of the Irish and the Dutch state in the case of the Mother and Baby Homes and the Afstandsmoeders, one can recognise clear attempts at practices of restorative justice. In The Netherlands there is one clear attempt at restorative

³¹⁴ Anita Ferrara, 'Reconceptualising Transitional Justice as a Pluralistic Theory of Justice' (2026) *Social & Legal Studies* 1, 5; Jennifer Llewellyn, 'Truth Commissions and Restorative Justice' in Gerry Johnstone and Daniel W Van Ness (eds), *Handbook of Restorative Justice* (Willan 2007).

³¹⁵ Mark B Scholl and Christopher B Townsend, 'Restorative Justice: A Humanistic Paradigm for Addressing the Needs of Victims, Offenders, and Communities' (2024) 63 *Journal of Humanistic Counseling* 184, 187.

³¹⁶ Ruti Teitel, "Transitional Justice Genealogy", *Harvard Human Rights Journal*, Vol. 16 (2003) 69, 78; Tama Koss, 'South Africa's Truth and Reconciliation Commission: A Model for the Future' (2002) 14 *Florida Journal of International Law* 517.

³¹⁷ Ferrara (N 314) 6.

³¹⁸ Adam Kochanski, 'Mandating Truth: Patterns and Trends in Truth Commission Design' (2020) 21 *Human Rights Review* 113, 125.

justice; the research project into the adoption process. Researchers were commissioned to report on the adoption issues from 1956-1984 with extra attention to all parties involved (the biological parents, the children and the adoptive parents), and the impact the events had on them, with the goal of attaining recognition and creating awareness for the issues.³¹⁹ This commission was expanded in 2022 to include a report on the findings and recommendations by the commission.³²⁰ The commission on this research project incorporated active participation of the victims to discover the truth on the events, document them in the report and conclude with recommendations, which is a clear sign of restorative justice. During the lawsuit of the Afstandsmoeders against the State, the findings of the commission were used to attain accountability and punishment for the State, which is not a part of restorative justice because it is focused on accountability and punishment.³²¹ After the lawsuit, the official announcement of the intention to apologise by the State was based on the reports by the commission.³²² Based on the intention of the research commission and the actions by the Dutch government following the report, it can be concluded that restorative justice for the Afstandsmoeders is put into practice by the Dutch state.

Analysing restorative justice in the case of Irish Mother and Baby Homes is more complicated. It starts with the establishment of the Commission of Investigation into Mother and Baby Homes and certain related matters in 2015.³²³ Notably, the scope of the research project is described in much more detail than the Dutch research commission; beside the time frame given, the government makes detailed requests for research on the living situation of the mothers and children in the homes.³²⁴ Also, the participation of victims is mentioned to be assigned to a confidential committee that should provide a forum for the victims.³²⁵ As explained in the previous paragraph, the participation of victims was a contested part of the truth commission; even though the commission had received 550 statements by victims these were not integrated in the report.³²⁶ There was an attempt at incorporating the victims, but in the end this inclusion was abandoned. When comparing these actions to the theory of restorative justice, it is clear that an attempt is made to uncover the truth and document the

³¹⁹ Kamerstukken II 2018/19, 33836, nr 33, 6.

³²⁰ Instellingsbesluit Commissie Onderzoek naar binnenlandse afstand en adoptie in de periode 1956–1984, art 12.

³²¹ Afstandsmoeders (N 255).

³²² Ministry of Justice and Safety (N 274).

³²³ Commission of Investigation (Mother and Baby Homes and Certain Related Matters) Order 2015, SI 57/2015.

³²⁴ *ibid* 3-5

³²⁵ *ibid*.

³²⁶ The Clann Project (N 305).

atrocities, but there is no active participation of victims. To repair the trust and relationship between the victims and the Irish state, the Irish state published an official apology based on the research days after it was published.³²⁷ The victims rejected this apology because they were not involved in the research project.³²⁸ The theory on restorative justice that victims need to be an active participant in the process of reconciliation is clearly visible in the Irish handling of the historical injustice.

It is to be noted that following the backlash on the lack of victim participation, the Irish state appointed a Special Advocate to improve the engagement with survivors of the Mother and Baby Homes, a promising step towards restorative justice in Ireland.³²⁹

4.2.3 *Reparative justice*

Reparative justice theory holds that justice is realised when harm is acknowledged and addressed.³³⁰ This goes further than the strictly legal perspective that wrongs have to be redressed and that victim's situation must be restored to its pre-violation state.³³¹ This advancement is also visible in the case of unmarried mothers; it is impossible to restore the mothers' situation to its pre-violation state because the women cannot get the time spent in the homes back and the children born in the homes have grown up. Recently, scholars have argued that there needs to be greater attention to collective harms, recognition of the need for systemic change and restoring dignity.³³² The scholars argue that restorative justice practice includes victims' needs, suffering and dignity to empower the victims and acknowledge their suffering.³³³ Practices like clear acknowledgement of responsibility, apologies, truth revelation and intention to change the previous unequal power relationship are argued to be included in reparative justice theory.³³⁴ Reparative justice are practices that acknowledge

³²⁷ Department of Children, Disability and Equality (N 306).

³²⁸ The Clann Project (N 305)

³²⁹ Department of Children, Disability and Equality (N 306).

³³⁰ Ferrara (N 314) 8.

³³¹ *ibid.*

³³² Antonio Buti, 'The Notion of Reparations as a Restorative Justice Measure' in Jorge Costa Oliveira and Paulo Cardinal (eds), *One Country, Two Systems, Three Legal Orders – Perspectives of Evolution* (Springer 2009); Margaret Urban Walker, 'Restorative Justice and Reparations' (2006) 37 *Journal of Social Philosophy* 377.

³³³ Jo-Anne Wemmers, Isabelle Parent and Marika Lachance Quirion, 'Restoring Victims' Confidence: Victim-Centred Restorative Practices' (2023) 29(3) *International Review of Victimology* 466; Ana M Nascimento, Joana Andrade and Andreia de Castro Rodrigues, 'The Psychological Impact of Restorative Justice Practices on Victims of Crimes—A Systematic Review' (2023) 24 *Trauma, Violence, & Abuse* 1929.

³³⁴ Ferrara (N 314) 9.

harm beyond the legal perspective of redress and restoration by focusing on the victims' needs. Recent theory development has argued that the victims' needs are to be at the center of the practice to bring systemic change and restore dignity. Interestingly, there is an international legal framework for reparations based on the UN Basic Principles and Guidelines on the Right to Remedy and Reparations and expanded by international courts and UN bodies.³³⁵ According to this framework, reparative justice in practice includes restitutions, compensation, satisfaction and guarantees of non-repetition.³³⁶ There are different forms in which reparations could be adopted; it could be material or symbolic, but also in the form of physical or psychological rehabilitation.³³⁷ Reparative justice theory has a strong connection to the legal system of redress and the international framework but, especially based on recent discussions by scholars, goes beyond this legal perspective to integrate the needs of victims.

The tension between the narrow legal perspective and the needs of victims is visible in the Irish case. The Irish government set up a redress scheme for survivors of Mother and Baby Homes which includes legal requirements, as any governmental payment scheme.³³⁸ The scheme was met with a lot of backlashes by survivors and their representatives. This, because of the limitations in the requirements to whom the redress scheme applied.³³⁹ What makes this discussion painful is that a system where a state awards money to a specific group of people, it is necessary for the state to formulate the legal boundaries on who can receive this money. Without taking a stance in the discussion on the redress scheme the Irish state set up, it is clear that there is tension between acknowledgement of suffering and legal necessities.

When analysing the Dutch case against the reparative justice theory, there has been some progress recently. The liability claims by the mothers against the State can be seen as an attempt at reparative justice but, as the theory suggests, a strictly legal perception of reparations does not work in the case of systematic human rights violations; the court held that there were too many differences in the individual cases of the mothers to form a class action suit to claim reparations.³⁴⁰ In the case of the *Afstandsmoeders*, the Court held that

³³⁵ UNGA Res 60/147 (16 December 2005) UN Doc A/RES/60/147.

³³⁶ *ibid.*

³³⁷ Elizabeth Lira, 'The Reparations Policy for Human Rights Violations in Chile' in Pablo de Greiff (ed), *The Handbook of Reparations* (OUP 2006).

³³⁸ Mother and Baby Institutions Payment Scheme Act 2023, Numer 20 of 2023.

³³⁹ *ibid* 18.

³⁴⁰ *Afstandsmoeders* (N 255) para 6.4.

there is no legal obligation to repair the consequences of the State's actions.³⁴¹ When comparing the recent scholarly views on reparative justice to the case of the Afstandsmoeders, more similarities can be found; the need for acknowledgement of responsibilities, apologies and truth revelation by the Afstandsmoeders is clearly communicated, for example in their request for an apology from the church.³⁴² With the apology by the Dutch state on 2 July 2026 and their expressed intention to set up a redress scheme, it is clear that the Dutch government puts reparative justice into practice. Even though there was backlash on the specific person that gave the apology, the Dutch attempts at restorative justice have generally been accepted by the victims of the treatment of unmarried mothers in The Netherlands.

4.2.4 *Transitional justice as overarching theory*

Traditionally, transitional justice has been applied and researched in the context of post-conflict situations.³⁴³ However, there is a movement in justice theory that applies transitional justice to other systematic human rights violations.³⁴⁴ The acts by the Irish government in case of the Mother and Baby Homes is often used as an example of this.³⁴⁵ The comparison of different justice theories, with the case of unmarried mothers in The Netherlands and Ireland shows that transitional justice as a pluralistic justice theory (incorporating multiple justice theories into the framework of the victim-centered approach of transitional justice), lets different justice theories coexist and interact as described above.³⁴⁶ This matches perfectly with the wishes for redress by the victims of the treatment of unmarried mothers in The Netherlands and Ireland, as described in paragraph 3.1. It is relevant for the case of unmarried mothers to be aware of the different justice theories when deciding on how to act towards the injustice the victims endured, because only when you understand the reason for certain justice practices will it be possible to implement them sufficiently. The transitional justice focus on justice for a group and community beyond the individual is the most important characteristic that makes this framework applicable in the

³⁴¹ *ibid.*

³⁴² Oosterom and Mulder (N 276).

³⁴³ Teitel (N 316); Brigitte Weiffen and Júlia Battistuzzi Penachioni, 'Interrogating Transitional Justice: The Multiple Meanings of a Concept' (2025) 15 *Societies* 123.

³⁴⁴ *ibid.*

³⁴⁵ Gallen (N 21).

³⁴⁶ Ferrara (N 314) 11-12; Nao Shimoyachi, 'Between Accountability and Reconciliation: The Making of "the Victim-Centered Approach" at the International Criminal Court' (2024) *Global Studies Quarterly* 4.

case of the unmarried mothers.³⁴⁷ The only way to achieve justice for the gross human rights violation of systematic and systemic discrimination of unmarried pregnant women, is by applying different justice theories to achieve reconciliation between the perpetrators and the women. Subsequently, this understanding is necessary to understand the discrimination women experience currently, and to understand discrimination people in a vulnerable position experience now and in the future.

4.3 A redressable injustice in the European legal system?

This paragraph brings together the analysis of what the women's search for redress in the context of justice theory discussed in the previous paragraph, with the findings of chapter 3.3 on the violations of rule of law provisions to answer the main research question; is it possible for the case of unmarried mothers in The Netherlands and Ireland, as a case of historical injustice, to be qualified as redressable injustice according to the European legal system?

In 2015, the EU published their policy framework on transitional justice based on the EU Action Plan on Human Rights and Democracy for 2015-2019.³⁴⁸ Interesting for this thesis is the 4th objective of this policy framework; strengthening the rule of law. In this passage, it is established that transitional justice should contribute to re-establishing and strengthening the rule of law, not only in the strict sense of reforming laws and institutions, but also as ensuring that nobody is above the law and that people have effective access to justice.³⁴⁹ Not only does transitional justice theory best fit the expectations for redress by victims, as concluded in the previous paragraph, but the European policy on transitional justice also has as objective to re-establish the rule of law, making up for the violations described in the previous chapter.

The EU follows the definition of transitional justice as described by the UN Secretary-General:

³⁴⁷ *ibid.*

³⁴⁸ EU External Action, "Policy Framework on support to transitional justice", 26 February 2026.

³⁴⁹ *Ibid* 2.

“Transitional justice is the full range of processes and mechanisms associated with society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation.”³⁵⁰

Even though the UN Secretary-General explains that transitional justice can include both judicial and non-judicial mechanisms, with differing levels of international involvement and individual prosecution, reparations, truth-seeking, institutional reform and/or vetting and dismissals, the EU decides to explain it in just four essential elements.³⁵¹ Beside the elements of truth, reparations and guarantees of non-recurrence/institutional reform, the EU makes criminal justice the first essential element.³⁵² This framing of transitional justice has the potential to exclude justice for unmarried mothers from the European framework of transitional justice because this incorporation enforces the notion that there is a sudden moment of transition, as it would be in the situation of a regime change. Regime change makes the classification of the acts by the previous regime as criminal acts a sudden, obvious moral choice. In the case of unmarried mothers, however, the view on the injustice these women suffered changed over time, together with the change in social (moral) norms over time. There is no specific pivotal moment that classifies the first system as criminal, and the later system as morally right, if it would even be possible to speak of a first and a later system.

What makes the EU framing of transitional justice even more difficult in the context of unmarried mothers, is the fact that the discriminatory philosophy on which the injustice the unmarried mothers suffered in the 20th century under is based, still affects the current view on women: where single, sexually active women in the 20th century were put into Mother and Baby Homes, today single, sexually active women are still seen as inferior and shameful (known as the Sexual Double Standard).³⁵³ Putting women in a home because they are pregnant without being married is not a part of the social norms anymore, but unmarried

³⁵⁰ UN Secretary-General, ‘The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies’ (Report) (24 August 2004) UN Doc S/2004/616.

³⁵¹ *ibid.*

³⁵² EU External Action (N 348) 2.

³⁵³ Charlotte Wesson, ‘A Mixed-Methods Exploration of Young Adults’ Views of the Sexual Double Standard’ (2022) 26 *Sexuality & Culture* 1314; Joyce Endendijk and others, ‘He Is a Stud, She Is a Slut! A Meta-Analysis on the Continued Existence of Sexual Double Standards’ (2020) 24 *Personality and Social Psychology Review* 163.

mothers are, generally, also not seen as equal to an unmarried father.³⁵⁴ A little less obvious materialisation of these norms could be recognised in the lawsuit between the *Afstandsmoeders* and the Dutch state: the treatment of unmarried mothers is not recognised by the Court as a consequence of the sexist discriminatory system.³⁵⁵ This is a sign that the social norms have not developed far enough to recognise that the level of injustice the unmarried mothers suffered under, namely, the systemic discrimination that underlies the events discussed in the third chapter, is the same level of injustice that the EU recognises in criminal cases to which it applies their transitional justice theory. Even though the theory of transitional justice is highly applicable to the case of unmarried mothers, the EU demands a criminal act for a situation to fall under their transitional justice framework. The EU transitional justice framework thus limits itself to situations that experience a sudden change in condemnation of contentious acts, excluding the injustice suffered by the victims of the treatment of unmarried mothers.

The EU transitional justice framework explicitly mentions that it is based on the existing international instruments on transitional justice.³⁵⁶ The four elements described above, including the element of criminal justice, are based on a report on the rule of law and transitional justice in conflict and post-conflict societies by the Secretary-General in 2004.³⁵⁷ This report is also the basis for the inaugural report of the UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence from 2012 which is referenced by the EU framework document.³⁵⁸ Even though the broad explanation of the transitional justice system and its aims leaves room for implementation of the policy in a case like the unmarried mothers, it is clear that post-conflict application of transitional justice was the focus of the UN Special Rapporteur; for example, when describing the normative concept of transitional justice, the Special Rapporteur exclusively references documents on post-conflict societies.³⁵⁹ The chapter on the historical context shows the tension between this limited normative framework and the similarities when compared to the situation of unmarried mothers. Firstly, it is acknowledged that transitional justice practices emerged first

³⁵⁴ Sarah Dejean and Christi McGeorge, 'Attitudes toward Never-Married Single Mothers and Fathers: Does Gender Matter?' (2012) 24 *Journal of Feminist Family Therapy* 121; Catherine Jones and others, 'Solo Fathers and Mothers: An Exploration of Well-Being, Social Support and Social Approval' (2022) 19 *International Journal of Environmental Research and Public Health* 9236.

³⁵⁵ See chapter 4.1.

³⁵⁶ EU External Action (N 348) 2

³⁵⁷ UNSC, 'Rule of Law and Transitional Justice' (N 350).

³⁵⁸ UN Human Rights Council, 'Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, Pablo de Greiff' (9 August 2012) UN Doc A/HRC/21/46.

³⁵⁹ *ibid* para 19-21.

in post-authoritarian settings.³⁶⁰ This is then expanded to post-conflict settings, and in the last paragraphs of this chapter linked to democratic transitions in the Middle East and North Africa.³⁶¹ Notably, the practices and experiences of transitional justice described to be used in these post-conflict situations, mirror the practices and experiences of justice for unmarried mothers exactly; the Special Rapporteur mentions that the existing national legal system regulating the relationship between citizens and State institutions which could not prevent a gross human right violation to happen, the violation being an abusive exercise of State power through its institutions.³⁶² This can all be applied to the treatment of unmarried mothers by state institutions as described in chapter 3 of this thesis. The international policy framework on transitional justice originally has a limited scope but leaves the door ajar for implementation of transitional justice on situations beyond post-conflict.

Over the years, the concept of transitional justice has been developed, as is visible in the reports by the Special Rapporteur, most notably the 2020 report on the gender perspective in transitional justice processes.³⁶³ The report starts with the acknowledgement of systemic and structural discrimination against women which is fostered by patriarchy and impacts all women and particularly women in vulnerable positions, the exact foundation of the injustice suffered by the unmarried mothers as explained in chapter 3.³⁶⁴ The rest of the report goes into the different areas where a gender perspective needs not be implemented in transitional justice practice. Sadly, the use of examples by the Special Rapporteur shows that the transitional justice policy is still focussed on post-conflict situations like the Argentina truth commission and the Ghana Reconciliation Commission.³⁶⁵ The Special Rapporteur on truth, justice and reparation recognises the impact of discrimination on women in vulnerable positions but does not apply this beyond post-conflict situations.

With the 10th anniversary of the EU policy framework on transitional justice, the EU commissioned a report to assess how the EU and its Member States have supported transitional justice processes.³⁶⁶ Notable is how most of this report focuses on EU implementation of transitional justice beyond EU borders, and even the chapter on

³⁶⁰ *ibid* para 15.

³⁶¹ *ibid* para 17.

³⁶² *ibid* para 16.

³⁶³ UN General Assembly, 'The Gender Perspective in Transitional Justice' (17 July 2020) UN Doc A/75/174.

³⁶⁴ *ibid* para 5.

³⁶⁵ *ibid* para 8 and 11.

³⁶⁶ Team Europe Democracy Initiative, 'Supporting Implementation of the 2015 EU Transitional Justice Policy Framework' (December 2025).

transitional justice in Member States themselves mostly mentions Member States' participation in transitional justice for post-conflict situations beyond EU borders.³⁶⁷ Ironically, this latter chapter starts with an explanation that Member States should obtain a more comprehensive and less formalistic understanding of transitional justice.³⁶⁸ The EU policy framework on transitional justice policy is not expanded beyond post-conflict situations.

4.3.1 Application of transitional justice policy

Even though its limitations make EU policy on transitional justice not explicitly applicable in the situation of unmarried mothers, it is still interesting to look at the implementation of the policy. Regulation (EU) 2021/629 establishing the Citizens, Equality, Rights and Values Programme (CERV) for example. This regulation makes funding available to foster a sense of belonging to the EU and of a common citizenship under a European identity;

“Based on a shared understanding of our common European values, culture, history and heritage”³⁶⁹

The CERV programme provides funding for local remembrance projects that underline this goal in the context of totalitarian regimes and the injustice those systems brought.³⁷⁰ As discussed in the previous paragraph, support for remembrance projects is an important part of transitional justice and has the potential to make a substantial impact on the justice experienced by the victims of the treatment of unmarried mothers. The EU had no part in the historic totalitarian regime but is making efforts to achieve transitional justice.³⁷¹ The EU as an intergovernmental body had no part in the historical injustice against unmarried mothers, but why would it not make an effort for transitional justice in this situation?

³⁶⁷ *ibid* 10-28.

³⁶⁸ *ibid* 29.

³⁶⁹ Regulation (EU) 2021/692 of the European Parliament and of the Council of 28 April 2021 establishing the Citizens, Equality, Rights and Values Programme [2021] OJ L156/1, recital 8.

³⁷⁰ *ibid* recital 9.

³⁷¹ Sweeney (N 16) 11-12.

Remembrance projects contribute to more general knowledge about the situations, and with this more acknowledgement. This is one of the most influential parts of transitional justice still missing in the experience of unmarried mothers. For example, the Irish state's reason to not incorporate the 550 statements by victims of Mother and Baby Homes was because they did not have enough funding.³⁷² This exclusion of victim's experience by the Irish commission invalidated the research report on which the State apology was based. Not only the truth commission thus failed, but the state apology was also rejected by victims, showing the chain reaction that the lack of funding could have in the transitional justice process. EU funding for remembrance projects on the gross human rights violations experienced by the unmarried mothers could be a catalyst to achieve transitional justice for the victims.

When analysing the international transitional justice policy system, the biggest problem arises from the definition of "transition". The policies by the UN and the EU assume there is a sudden moment of change which morally condemns the injustice at once. The implementation of transitional justice is thus only clearly possible when a regime change or conflict has taken place. Because of the implication of a sudden transition in the international policies in transitional justice, it is only with analogical application that transitional justice could be used in a situation like the unmarried mothers.

4.4 Conclusion

When analysing justice theory, it is clear that the different justice theories combined in transitional justice theory as a pluralistic concept are highly applicable in the case of the unmarried mothers and their suffering. When comparing the theory to the case itself, it is clear that whenever governments follow the transitional justice theory, the victims are satisfied and whenever the government does not follow the transitional justice theory, there is discontent on the victims' side, making the government attempt to follow the theory closer. For example, the mistake in Ireland to not incorporate victims in the truth commission but then, following the backlash, set up a special advocate focused on participation of victims.

Interestingly, when zooming out and analysing transitional justice policy on an international level, there is no recognition of transitional justice beyond post-conflict situations. Within the EU, there are even limitations on transitional justice policy that exclude

³⁷² The Clann Project (N 305).

situations like the unmarried mothers. The most abstract analysis of transitional justice; the justice theory perspective, and the most concrete analysis of transitional justice; the application by the Irish and the Dutch government, show great potential and satisfaction of justice. The middle category; the international policies on transitional justice, lack incorporation of historic injustice in their transitional justice framework. This could be because of the lack of knowledge on the level of injustice suffered as a result of systemic discrimination.

When analysing how the EU implements their transitional justice policy, it mostly contributes to the knowledge and awareness about the injustices included in the policy. Expensive endeavors like truth commissions could be funded through this policy, which would highly contribute to the realisation of justice for the victims of the maltreatment. The strict limitations in the EU transitional justice policy framework hinder this productive implementation. The conclusion of this research would be to challenge the EU to apply transitional justice theory as a proactive, more broad policy. The framework allows for a broader application; the implementation shows that funding is available and it could have a significant influence on many victims. The expansion of the transitional justice policy to be implemented as a basis for funding for truth commissions, would be the catalyst for transitional justice for many painful events like the case of unmarried mothers in the 20th century because, as this thesis shows, transitional justice starts with knowledge about the events.

5. Conclusion

In this thesis, an answer is researched to the question whether the case of unmarried mothers in The Netherlands and Ireland, as case of historical injustice, can qualify as redressable injustice according to the European legal system.

The answer to this question is based on two steps; firstly, the historical part of the main question. The research in chapter 2 and 3 answers the question whether the treatment of unmarried mothers in The Netherlands and Ireland was condoned at the time of the events according to the European legal system. This starts with the rule of law as the general principle of European law. As described in the second chapter, this principle is established as a constitutional norm in the European legal system, making it a means to keep political governments accountable. This was first noticeable in the rejection of the Spanish dictatorship from the EEC and is most recently confirmed by the CJEU as a response to the recent threats to the rule of law within the EU. Notable for the answer to the main research question is the remark made by the president of the European Commission: the rule of law in Europe needs to be strengthened “*in situations where there is a serious, systemic risk to the rule of law*”.³⁷³ In this thesis, a systemic risk to the rule of law is portrayed, the question is whether the European Commission would regard the issue of unmarried mothers as serious enough.

To examine whether there is a risk to the rule of law, its element of the principle of effective access to justice, compared to the case study of the unmarried mothers in The Netherlands and Ireland, provides handles. Chapter 2 reflects how the general principle of effective access to justice has developed into a procedural right for citizens to hold their state accountable to realise the substantive rights of citizens. The general principle of non-discrimination on the grounds of sex can be used as substantive right to accompany the procedural right of effective access to justice.

Chapter 3 applies the normative framework of the rule of law in the European legal system to the case of unmarried mothers in The Netherlands and Ireland. The analysis of the procedural right to access to information as an element of effective access to justice in the case of unmarried mothers in The Netherlands and Ireland tells us that nowadays, these events would be an infringement of effective access to justice. But, because of the principle

³⁷³ José Manuel Durão Barroso (N 62).

of non-retroactivity prohibiting the application of law to events that took place before the law was introduced, it has to be concluded that, even though there was a general European principle of rule of law which includes effective access to justice, the events were condoned at the time. When analysing the substantive rights of the unmarried mothers, documents like the Birkelbach Report and the Declaration on European Identity, which emphasised the importance of human rights and the rule of law, gave promises of human rights, dignity and equality. But even when policymakers discussed these, as had happened in Ireland, the European provisions could not prevent the injustice against unmarried mothers, the events experienced by the unmarried mothers were condoned at the time.

Chapter 4 examines the second sub-question of this thesis; whether the treatment of unmarried mothers in The Netherlands and Ireland can qualify as a redressable injustice in the current European legal system. Firstly, it needs to be determined what redress could look like. The starting point for this is the expressions of the victims of the historical injustice; the victims of the treatment of unmarried mothers in the 20th century. When the testimonies re-emerged after 2014, the two governments both commissioned a research project to uncover the facts about the events. The actions that followed differed between the countries; the Dutch government commissioned more in-depth research, the Irish government immediately published an apology and a redress scheme when the research report was published. This meant that the Dutch victims had the time to process the research findings into their experiences and were able to start a lawsuit to hold the State accountable. The Irish victims received an apology and redress scheme from their State immediately after the in-depth information about their experiences was published but this was based on a report which excluded the 550 testimonies by the victims. In both situations, the pattern of dismissiveness by the government towards the women can be recognised in the way the unmarried mothers were treated in the 20th century: the Dutch government's actions can be seen as an expression of their unwillingness to take the women seriously, the Irish government's actions shows how the women and their opinions and thoughts were sidelined. Where the Dutch mothers received redress through the more accurate reflection of their experience in the report, the Irish mothers received redress through a state apology and a financial redress scheme. But neither redress situations sufficiently incorporated the victims' expressions.

The analysis of how the victims of the treatment of unmarried mothers in The Netherlands and Ireland are treated in the last decade, reflects both positive and negative answers to their search for redress. The final two paragraphs of this thesis research what

redress could look like when the expressions by the victims of the treatment of unmarried mothers in The Netherlands and Ireland are followed. The comparison of multiple justice theories with the case of unmarried mothers in The Netherlands and Ireland, shows that transitional justice as a justice theory that incorporates multiple justice theories into the framework of the victim-centered approach of transitional justice. This thesis shows that whenever governments follow the transitional justice theory, the victims are satisfied and whenever the government does not follow the transitional justice theory, there is discontent on the victims' side, leading to the government attempting to follow the theory closer.

Lastly, this thesis connects back to the European legal system as described in the second chapter by researching the European policy framework on justice after rule of law violations; the transitional justice policy framework. The research shows there is no recognition of transitional justice beyond post-conflict situations in the European framework. Even though many parts of the policy could be applied to a non-violent historical injustice, the requirement of a sudden transition moment hinders the application of transitional justice policy to the case of unmarried mothers in The Netherlands and Ireland. The most abstract analysis of transitional justice; the justice theory perspective, and the most concrete analysis of transitional justice; the application by the Irish and the Dutch government, show great potential and satisfaction for sufficient redress for the victims. The middle category; the international policies on transitional justice, lack incorporation of historic injustice in their transitional justice framework.

Can the case of unmarried mothers in The Netherlands and Ireland, as a case of historical injustice, qualify as redressable injustice according to the European legal system? The answer to this question is yes, based on a broad and pro-active application of the existing European transitional justice policy framework, it is possible to qualify the case of unmarried mothers in The Netherlands and Ireland as an injustice based on a violation of their enjoyment of the rule of law as European citizens, making it possible to provide suitable redress through the European transitional justice policy, in a way that could satisfy the victims' search for redress.

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