



This training session is funded under the 'Rights, Equality and Citizenship Programme 2014-2020' of the European Commission.



The Istanbul Convention and the legal implications of a possible accession of the EU

Mathias Möschel
Associate Professor
Prague, 17 September 2019

Precedent actions by EU in the domain of combating gender-based violence (GBV)

1) Directives

- Gender Equality Directive(s) (e.g.: 2004/113/EC)
 - *Victim's Rights Directive (2012/29/EU)*
 - *Trafficking Directive (2011/36/EU)*
- Directive on European Protection Order (2011/99/EU)
- *Compensation of Victims of Crimes Directive (2004/80/EC)*

2) CJEU Case Law

- *Case C-483/09 and 1/10, Magatte Gueye, 15 Sept. 2011*
- *Case C-122/13, Paola C. v. Presidenza del Consiglio dei Ministri, 30 Jan. 2014 (order)*
 - *Case C-115/15, NA, 30 June 2016*

3) Soft law and external action

- EU Guidelines on violence against women and girls and combatting all forms of discrimination against them (2008)
 - Daphne Programme(s)
- EU Plan of Action on Gender Equality and Women's Empowerment in Development (external action)

=> BUT no comprehensive & gender sensitive action



Pre-signature of Istanbul Convention actions

- 1) 11 May 2011: Opening for signature of Istanbul Convention (IC) on preventing and combating violence against women (CoE)
- 2) 1 August 2014: entry into force of IC
- 3) Various EP Resolutions calling on Commission to add VAW to list of serious crimes in Article 83(1) TFEU and to launch accession proceedings (e.g. 25 Feb. 2014, 9 June 2015, 24 Nov. 2016)
- 4) 11 May 2017: Council Decision (EU) 2017/865 on signing IC with regard to matters related to judicial cooperation in criminal matters
- 5) 11 May 2017: Council Decision (EU) 2017/866 on signing IC with regard to asylum and non-refoulement (Art. 60 + 61)
- 6) **13 June 2017: EU signs IC (IC and TFEU allow EU to sign and ratify international treaties)**
- 7) As of 3 September 2019: signed by all EU MS; ratified by 21 MS (not BG, CZ, HU, LT, LV, SK, UK)



Istanbul Convention - overview

- 1) Characterisation of violences as an issue of equality and non-discrimination (Chapter 1 – artt. 1-6)
- 2) Policies and data collection (Chapter 2 – artt. 7-11)
 - 3) Prevention (Chapter 3 – artt. 12-17)
 - 4) Protection and support (Chapter 4 – artt. 18-28)
 - 5) Substantive law (Chapter 5 – artt. 29-48)
 - 6) Procedures (Chapter 6 – artt. 49-58)
 - 7) Migration and asylum (artt. 59-61)
- 8) International co-operation (artt. 62-65)
- 9) Monitoring mechanism (artt. 66-70)



What obstacles in current ratification procedure?

1) Legal aspects

- Competence: on which legal basis to adopt the instrument?
- Commission proposed: Art. 19 (gender discrimination); **Art. 78 (asylum)**; Art. 79 (immigration); Art. 81 (jud. cooperation in civil matters); **Art. 82 (jud. cooperation in criminal matters)**; **Art. 83 (definition of serious transnational crimes)**; Art. 84 (supporting MS in crime prevention); Art. 159 (equal treatment in employment)
- Reasons for two Council decisions: IRL & UK have specific status with regard to area of freedom, security and justice meaning their status on asylum is different than for other MS
 - Questions about limited and partial scope of EU ratification (e.g. prevention measures)?
 - Under external EU competences, so-called mixed agreements on subject matters which do not fall under the exclusive competence of the EU also need to be signed by all EU countries.

2) Political aspects

- Backlash against IC on the issue of gender in MS that did not ratify yet



What does it mean for MS and for legal practitioners?

1) For EU and Member States

- EU pushes all MS to ratification (=> UNCRPD)
- For EU, it could/would mean that its own institutions are bound by the provisions of the IC
- Could help the CJEU in interpreting certain secondary law provisions but also of EU Charter of Fundamental Rights
 - Participation in monitoring mechanism of IC
- Different effect for MS: IRL & UK; DK; non-ratifying MS (only with regard to EU law domain); ratifying MS
 - Challenge of Council decisions by EP for wrong/limited legal basis?
- => EP Resolution of 4 April 2019 seeking an opinion from the CJEU on compatibility with EU Treaties of proposals for accession by the EU to IC

2) For legal practitioners & advocates

- Push to ratify and do something about GBV
 - Persuasive invocation of IC in cases dealing with GBV
- Direct binding effect of IC in cases depends on states and their approach to international law
- Preliminary reference procedures to CJEU to determine direct effect of IC or other issues?
- Infringement procedures if MS do not implement in the domain of EU law?



