

VIOLENCE AGAINST WOMEN IN THE EU AND THE ISTANBUL CONVENTION

EU GENDER EQUALITY LAW ONLINE SEMINAR
FOR MEMBERS OF THE JUDICIARY 8-9 March 2021



Funded under the Rights, Equality and Citizenship Programme
2014-2020 of the European Commission

ELISABETTA ROSI, JUDGE
SUPREME COURT OF CASSATION, ITALY

VIOLENCE AGAINST WOMEN

- Systemic (widespread) phenomenon that has its roots in sexual discrimination
- Violation of human rights
- Multidisciplinary approach
- Challenge for judiciary (shared knowledge: specialized preparation must become collective skills)

EUROPEAN GENDER-EQUALITY STRATEGY AND EU LEGAL INSTRUMENTS

- **Procedure of EU accession to the Istanbul Convention**
- **Legal instruments on victims' rights**, among others:
 - Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime
 - Directive 2004/80/EC relating to compensation to crime
 - Directive 2011/99/EU on the European protection order
 - Regulation (EU) No 606/2013 on mutual recognition of protection measures in civil matters.....etc.....

ELISABETTA ROSI

EU GENDER EQUALITY LAW ONLINE SEMINAR
FOR MEMBERS OF THE JUDICIARY 8-9 March 2021 3

ISTANBUL CONVENTION 2011 (ON PREVENTING AND COMBATING VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE)

- Human Rights Treaty, Gender-based, Criminal Law Treaty.
- Definitions (art. 3) – civil remedies- criminal offences
- Access to justice for victims: right to be informed
- Prevention: Identify “the signs” of violence
- Protection: Risk assessment
- Prosecution: prompt proceeding and effective punishment

ELISABETTA ROSI

EU GENDER EQUALITY LAW ONLINE SEMINAR FOR
MEMBERS OF THE JUDICIARY 8-9 March 2021 4

ISTANBUL CONVENTION 2011 (DEFINITIONS)

- Violence against women: acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.
- Domestic violence: acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim
- Collective professionalism of judges and multidisciplinary (civil / criminal) approach (especially in domestic violence).

ELISABETTA ROSI

EU GENDER EQUALITY LAW ONLINE SEMINAR
FOR MEMBERS OF THE JUDICIARY 8-9 March 2021 5

ISTANBUL CONVENTION CRIMINAL OFFENCES

- Psychological violence; Stalking; Physical violence;
- Sexual Violence - rape;*
- Forced Marriage; Female genital mutilation; Forced abortion and forced sterilization;*
- Sexual harassment (any form of unwanted verbal, non-verbal or physical conduct of a sexual nature with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment), criminalization is not mandatory
- *prosecution must be initiated not only following the reporting by the victim (art.44, par.4)= *mandatory prosecution* – statute of limitation (art.58)

ELISABETTA ROSI

EU GENDER EQUALITY LAW ONLINE SEMINAR
FOR MEMBERS OF THE JUDICIARY 8-9 March 2021 6

ISTANBUL CONVENTION CRIMINAL OFFENCES 2

- Culture, custom, religion, tradition or so-called “honour” shall not be regarded as justification for crime (art. 42)
- Offences shall apply irrespective of the nature of the relationship between victim and perpetrator.(art. 43)
- Aggravating circumstances
- Prohibition of mandatory alternative dispute resolution processes or sentencing.(art.48)
- Sexual violence: art.36,par. 2 “*Consent must be given voluntarily as the result of the person’s free will assessed in the context of the surrounding circumstances.*”

ELISABETTA ROSI

EU GENDER EQUALITY LAW ONLINE SEMINAR
FOR MEMBERS OF THE JUDICIARY 8-9 March 2021 7

ISTANBUL CONVENTION VICTIMS AND ACCESS TO JUSTICE

- Right to be informed
- Right to legal aid (*free* – if it’s possible under national law - art. 57)
- Victims blaming
- Report and interview

*disclosure of violence by victim and its evaluation
(evidence issue)*

ELISABETTA ROSI

EU GENDER EQUALITY LAW ONLINE SEMINAR
FOR MEMBERS OF THE JUDICIARY 8-9 March 2021 8

ISTANBUL CONVENTION 2011 (ON PREVENTING AND COMBATING VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE)

.....*following*

- **Prevention:** Identify “the signs” of violence
- **Protection:** Risk assessment
- **Prosecution:** prompt proceeding and effective punishment

ELISABETTA ROSI

EU GENDER EQUALITY LAW ONLINE SEMINAR FOR
MEMBERS OF THE JUDICIARY 8-9 March 2021 9

ISTANBUL CONVENTION PROTECTION

- Immediate response
- RISK ASSESSMENT
- Specialized social service or Shelters
- Protection measures in criminal proceedings (art. 56)
- Protection of children
- Residence status and Gender-based asylum claims

ELISABETTA ROSI

EU GENDER EQUALITY LAW ONLINE SEMINAR
FOR MEMBERS OF THE JUDICIARY 8-9 March 2021 10

ISTANBUL CONVENTION PROSECUTION / LAW IN ACTION

- Risk assessment and risk management
- Emergency barring orders and Restraining or protection orders
- Evidence (art. 54).
- Jurisdiction (art. 44)

ELISABETTA ROSI

EU GENDER EQUALITY LAW ONLINE SEMINAR
FOR MEMBERS OF THE JUDICIARY 8-9 March 2021 11

EUROPEAN LEGAL INSTRUMENTS ON VICTIMS' RIGHTS

Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime.

1. scope and definitions;
2. access to information;
3. procedural rights;
4. access to support services;
5. restorative justice;
6. right to protection.

ELISABETTA ROSI

EU GENDER EQUALITY LAW ONLINE SEMINAR
FOR MEMBERS OF THE JUDICIARY 8-9 March 2021 12

DIRECTIVE 2012/29/EU

(17) Gender-based violence form of discrimination and a violation of the fundamental freedoms of the victim and includes violence in close relationships, sexual violence (including rape, sexual assault and harassment), trafficking in human beings, slavery, and different forms of harmful practices, such as forced marriages, female genital mutilation and so-called 'honour crimes'.

(18) Violence committed in a close relationship (physical, sexual, psychological or economic violence) ; need of special protection measures.

ELISABETTA ROSI

EU GENDER EQUALITY LAW ONLINE SEMINAR
FOR MEMBERS OF THE JUDICIARY 8-9 March 2021 13

DIRECTIVE 2012/29/EU PROTECTION RIGHTS

Art.22 (Individual assessment of victims to identify **specific protection needs**) par.3 «particular attention shall be paid to victims who have suffered considerable harm due to the severity of the crime; victims who have suffered a crime committed with a bias or discriminatory motive which could, in particular, be related to their personal characteristics; victims whose relationship to and dependence on the offender make them particularly vulnerable. In this regard, victims of terrorism, organised crime, human trafficking, gender-based violence, violence in a close relationship, sexual violence, exploitation or hate crime, and victims with disabilities shall be duly considered.»

ELISABETTA ROSI

EU GENDER EQUALITY LAW ONLINE SEMINAR
FOR MEMBERS OF THE JUDICIARY 8-9 March 2021 14

DIRECTIVE 2012/29/EU PROTECTION RIGHTS

- **Art.19** Right to avoid contact between victim and offender
- **Article 20** Right to protection of victims during criminal investigations - Without prejudice to the rights of the defence and in accordance with rules of judicial discretion): a) no delay in interview; b) limitation of numbers of interviews; c) be accompanied by a person chosen by victim; d) limited medical examination.
- **For victims with specific protection needs:** (art. 23) a) in premises designed; b) c) preferable conducted by the same person trained for this purpose; d) in case this person isn't a prosecutor or judge, preferable a person of the same sex as the victim)

ELISABETTA ROSI

EU GENDER EQUALITY LAW ONLINE SEMINAR
FOR MEMBERS OF THE JUDICIARY 8-9 March 2021 15

DIRECTIVE 2012/29/EU RIGHTS FOR VICTIMS WITH SPECIFIC PROTECTION NEEDS

Art. 23, par.3. During court proceedings:

- avoid visual contact between victims and offenders including;
- possibility that the victim may be heard in the courtroom without being present, through the use of appropriate communication technology;
- measures to avoid unnecessary questioning concerning the victim's private life not related to the criminal offence;
- measures allowing a hearing to take place without the presence of the public.

ELISABETTA ROSI

EU GENDER EQUALITY LAW ONLINE
SEMINAR FOR MEMBERS OF THE
JUDICIARY 8-9 March 2021 16

EUROPEAN LEGAL INSTRUMENTS ON VICTIMS' RIGHTS

- **Directive 2004/80/EC relating to compensation to crime victims.**

Crime victims in the European Union should be entitled to fair and appropriate compensation for the injuries they have suffered, regardless of where in the European Community the crime was committed.

Art. 12, par.2: «All Member States shall ensure that their national rules provide for the existence of a scheme on compensation to victims of violent intentional crimes committed in their respective territories, which guarantees fair and appropriate compensation to victims.» (as interpreted by judgment of the European Court, 16 July, 2020, C-129/19, PCM v. B.V. , that is, including victims residing in the Member State, on the territory of which the violent intentional crime was committed.)

ELISABETTA ROSI

EU GENDER EQUALITY LAW ONLINE SEMINAR
FOR MEMBERS OF THE JUDICIARY 8-9 March 2021 17

EUROPEAN LEGAL INSTRUMENTS Compensation of victims of sexual violence

- **Judgment of the Court (Grand Chamber), 16 July 2020, Case C-129/19**, requested for a preliminary ruling under Article 267 TFEU from the Italian Supreme Court of Cassation, Italy.
- Article 12(2) of Directive 2004/80 must be interpreted as meaning that a fixed rate of compensation awarded to victims of sexual violence under the national scheme of compensation to victims of violent intentional crime cannot be classified as 'fair and appropriate', within the meaning of that provision, if it is fixed without taking into account the seriousness of the consequences, for the victims, of the crime committed and does not therefore represent an appropriate contribution to the reparation of the material and non-material harm suffered.

ELISABETTA ROSI

EU GENDER EQUALITY LAW ONLINE SEMINAR
FOR MEMBERS OF THE JUDICIARY 8-9 March 2021 18

EUROPEAN LEGAL INSTRUMENTS ON VICTIMS' RIGHTS

- Directive 2011/99/EU on the European protection order - Mutual legal recognition instrument. (cons. 4)
- Conditions: 1) existing protection measure under national law
- 2) when the protected person decides to reside (or stay) or already resides (or stays) in another Member State.

ELISABETTA ROSI

EU GENDER EQUALITY LAW ONLINE SEMINAR
FOR MEMBERS OF THE JUDICIARY 8-9 March 2021 19

WHICH EUROPEAN INSTRUMENT COULD BE PROVIDED?

- Harmonization of definition of violence against women
- Penalties – Aggravating circumstances – issue of proportionality of sanctions
- Protection of victims in criminal investigations and proceedings
- Evidence
- Compensation /Reparation .

(taking into account, for example, the Directive 2011/36/EU of the European parliament and of the council on preventing and combating trafficking in human beings and protecting its victims)

ELISABETTA ROSI

EU GENDER EQUALITY LAW ONLINE SEMINAR
FOR MEMBERS OF THE JUDICIARY 8-9 March 2021 20

PROTECTION VICTIMS AND FAIR TRIAL

- Cross– examination of victims and fair trial. Which balance?
- Evidence (“Women in the witness box”) - corroboration or not?
- Survivors’ needs.....
- Restorative justice services (cons. 46-2012/12/EU) versus Prohibition of mandatory alternative dispute resolution processes or sentencing.(art.48 Istanbul convention)

JUDICIARY AGENDA

- Eliminate gender-blind data
- Break down bias on victims (ex: culturally motivated crimes)
- Training of judiciary (and Law-enforcement)
- Multidisciplinary approach

THANK YOU



Funded under the Rights, Equality and Citizenship Programme
2014-2020 of the European Commission

ELISABETTA ROSI, JUDGE
SUPREME COURT OF CASSATION, ITALY