



Gender-based violence


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ECtHR - gender-based violence cases

- 1) Domestic violence/femicide**
 - *Jankovic g. Croatia* (38478/05, 2009)
 - *Opuz g. Turkey* (33401/02, 2009)
 - *Talpis g. Italy* (41237/14, 2017)
 - *Volodina g. Russia* (41261/17, 2019)
- 2) Forced sterilisations**
 - *V.C. g. Slovakia* (18968/07, 2011)
- 3) Rape/sexual assault**
 - *X and Y g. Netherlands* (8978/80, 1985)
 - *M.C. g. Bulgaria* (39272/98, 2003)
 - *Y. g. Slovenia* (41107/10, 2015)
- 4) Female genital mutilation (resolutions)**
 - *Collins and Acaciabie g. Sweden* (23944/05, 2007)
 - *Omeredo g. Austria* (8969/10)
- 5) Human trafficking**
 - *Rantsev g. Cyprus and Russia* (25965/04, 2010)
 - *S.M. g. Croatia (GK)* (60561/14, 2020)



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Previous EU action in the field of combating gender-based violence

1) Guidelines

- Equality Directive(s) (e.g. : 2004/113/EC)
- **Directive on compensation to crime victims (2004/80/EC)**
- Trafficking in Human Beings Directive (2011/36/EU)
- European Protection Order Directive (2011/99/EU)
 - **Victim Protection Directive (2012/29/EU)**

2) ECJ case law

- **Case C-483/09 and 1/10, Magatte Gueye, 15 Sept. 2011.**
- **Case C-122/13, Paola C. g. Presidenza del Consiglio dei Ministri, 30.01.2014 (Order)**
 - Case C-115/15, NA, 30 June 2016
 - Case C-930/19, X g. Belgium, 22 March 2021 (GA Opinion)

3) Soft law and external action

- EU Guidelines on violence against women and girls and combating all forms of discrimination against them (2008)
 - Daphne Programme(s)
- EU Action Plans on Gender Equality and Women's Empowerment in Development (External Action) (CAP I-III)
 - ⇒ BUT no comprehensive & gender-sensitive Measures



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Measures for the pre-signing of the Istanbul Convention

- 1) 11 May 2011: Opening for the signing of the Istanbul Convention (IC) on preventing and combating violence against women (CoE)
- 2) 1 August 2014: Entry into force of the IC
- 3) Various EP resolutions calling on the Commission to add VAW to the list of serious crimes in Article 83(1) TFEU and to initiate an accession procedure.
- 4) 11 May 2017: Council Decisions (EU) 2017/865 and 2017/866 respectively on the signing of the IC in relation to matters of judicial cooperation in criminal matters and on the signing of the IC in relation to asylum and non-refoulement (Art. 60 + 61).
- 6) **13 June 2017: EU signs IC (IC and TFEU allow the EU to sign and ratify international treaties).**
- 7) April 2021: signed by all EU MS; ratified by 21 MS (not BG, CZ, HU, LT, LV, SK).



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Istanbul Convention - Overview

- 1) Characterisation of violations as an equality and non-discrimination issue (Chapter 1 - Art. 1-6)
- 2) Guidelines 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 - Arts. 29-48)
 - 6) Procedure (Chapter 6 - Artt. 49-58)
 - 7) Migration and asylum (Arts. 59-61)
- 8) International cooperation (Artt. 62-65)
- 9) Monitoring mechanism (Artt. 66-70)



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What are the obstacles in the current EU ratification process?

1) Legal aspects

- **Internal responsibilities:** which legal basis?
 - Commission proposed: Art. 19 (sex discrimination); Art. 78 (asylum); Art. 79 (immigration); Art. 81 (judicial cooperation in civil matters); Art. 82 (judicial cooperation in criminal matters); Art. 83 (definition of serious cross-border crime); Art. 84 (assistance to MS in combating crime); Art. 159 (equal treatment in employment)
 - Under the **EU's external competences**, so-called mixed agreements on issues that do not fall under the exclusive competence of the EU **must be** signed by all EU countries.

2) Political aspects

- Backlash against IC on gender in MS that have not yet ratified.



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Further steps/actions

1) Legal

- Challenging of Council decisions by the EP due to wrong/limited legal basis => Opinion 1/19, 11 March 2021, GA Hogan
- Proposes Artt. 78(2), 82(2), 84 and 336 TFEU as legal basis for ratification, but rejects Art. 19; sees no obstacles to using two decisions for ratification of IC; and sees no legal problems if EU decides to ratify Istanbul Convention without all MS having ratified, or if ratification takes place only after such a joint convention has been established

2) Political

- EU urges all MS to ratify => Joining the IC is one of the priorities in the European Commission's new EU Gender Equality Strategy 2020-2025, adopted on 5 March 2020.
- If not possible, similar provisions are to be taken over by other instruments