

# EU GENDER EQUALITY LAW

## Session 26.04.2022: **The Istanbul Convention: *origin, general guidelines and legal-institutional provisions***

María Barbancho, lawyer.



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



1

## Structure of the session

- **Convention: background and basic features**
- **Basic Content**
- **Direct effectiveness and the principle of due diligence.**
- **Greio Committee**



2

## Introduction: The price of violence

1. The European Institute for Gender Equality has estimated that gender-based violence against women generates **costs of approximately 226 billion euros per year** in the European Union.
2. **Reducing violence by just 10% would save approximately 7 billion euros each year.**
3. According to a study (Fundamental Rights Agency published in 2014) 1 in 3 women in the EU have experienced physical or sexual violence since the age of 15.
  - 1 in 20 women have been raped.
  - 75% of women in skilled professions have experienced stalking and/or sexual harassment.
  - 1 in 3 women have suffered psychological harassment by their partner.



3

## Gender Equality: Legal Background

### UNITED NATIONS:

- CEDAW (Convention on the Elimination of All Forms of Discrimination against Women) (1979).
- Developed by (i) General Recommendation No 19 (1992) and (ii) General Recommendation No 35 of 2017.

### EUROPEAN UNION

- Directive 2011/99/EU on the European Protection Order.
- Victims rights Directive 2012/29/EU.
- EU Regulation 606/2013 on mutual recognition of civil protection measures

### COUNCIL OF EUROPE

- **Istanbul Convention on preventing and combating violence against women and domestic violence (2011). Entry into force 01.08.2014 with 10 ratifications (including 8 MS). Currently 32 ratifications (not ratified by Russia, Azerbaijan and Turkey). The rest with reservations.**
- EU signed the Convention on 13 June 2017: Article 216(1) TFEU grants EU competence to approve agreements provided they serve the purposes of the Union.

4

## What is exactly the Istanbul Convention?

- **The first binding international treaty in the European area that establishes a legal and political framework to advance women's rights.** It is a legally binding for the ratifying States.
- The convention advocates violence against women as a violation of human rights. It has as its objectives the 4 "P's": Prevention, Protection, Prosecution and Integrated Policies.
- The Convention adopts a ***broad concept*** of the definition of gender violence which stipulates that it is not only circumscribed to violence within a present or past affective relationship (STS 217/2019, of 25 April, where the gender perspective approach is expressed in the cases of concurrence of violence and its treatment based on the IC + General Recommendation 35 of the CEDAW).

## Effectiveness

- **Direct effectiveness:** it is part of our domestic law (for example, in Spain, Articles 96 EC, 5 CC, and 10.2 EC) and is hermeneutic for the development of any domestic rule in relation to this rule.
- **It is also part of EU law:** gender equality and crime prevention are part of the *acquis communautaire*. Each new MS tacitly accepts the provisions of the EC:
  - Article 19 TFEU on preventing and combating discrimination based on gender.
  - Article 157(4) TFEU: *Each Member State shall ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied.*
- ECtHR: Application for violation of the ECHR (art. 2,3,8 and 14 ECHR)

## Content

- Preamble
- Chapter I: Purposes, definitions, equality and non-discrimination, general obligations.
- Chapter II: Integrated policies and data collection.
- Chapter III: Prevention.
- Chapter IV: Protection and support.
- Chapter V: Substantive law.
- Chapter VI: Investigation, prosecution, procedural law and protective measures.
- Chapter VII: Migration and asylum.
- Chapter VIII: International Cooperation.
- Chapter IX: Monitoring mechanisms

## Due diligence principle

- Article 49.2 of the IC
- Undue delay in the criminal treatment of offences covered by the convention is prohibited.
- It is a reinforced canon in the investigation of these crimes: it is necessary to go deeper, more in-depth and exhaustive in their investigation and in their legal motivations.
- The ECtHR has precedents in which this principle can be glimpsed, sanctioning the failure to adopt measures to protect the victim and institutional passivity, including judicial passivity:

## Effectiveness

- i. **ECHR, 9 June 2009, Opuz v Turkey:** Consolidates positive obligations on Member States to take the necessary measures to provide effective protection for those who suffer gender-based violence, including criminal sanctions, civil remedies against all types of violence (S 74).
- i. **ECHR, 2 March 2017, Talpis v Italy:** Reiterates the duty of diligence in dealing with complaints of domestic violence. It recalls that children and other vulnerable persons in the family environment "are entitled to effective prevention, preserving them from particularly serious forms of offence to the integrity of their person. This implies the duty to establish an effective and independent judicial system to determine the causes of the offence committed, as well as those responsible for it.
- i. **ECHR of 19 March 2019 EB v Romania:** The Court found a violation of Articles 3 and 8 of the ECHR and the IC for the lack of investigation and judicial response in the rape of a vulnerable woman suffering from mental illness by a man. The ECtHR considers that it is not possible in such cases to conclude the investigation and close the case on the basis of the contradictory versions of the parties. Among the measures to be taken under the Convention are protection of privacy, avoidance of reprisals against the victim, compensation, as well as adequate information about the victim's rights and support services (Articles 19, 20 and 56).

9

## GREVIO Committee

- <https://www.coe.int/en/web/istanbul-convention/grevio>
- Independent body of experts responsible for monitoring the implementation of the IC.
- It publishes reports assessing the legislative measures taken by the countries that have adopted them.
- Can adopt general recommendations on matters and issues relating to the convention (how to interpret the law, *soft law*, usable in proceedings).

10

Thank you for your attention

[mariabarbancho@icab.cat](mailto:mariabarbancho@icab.cat) / [info@strafverteidiger.es](mailto:info@strafverteidiger.es)

