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Fighting gender-based violence in the EU

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1

Structure of the presentation

- The background: The Istanbul Convention (IC)
 - The jurisprudence of the ECtHR. Some key cases. The Istanbul Convention as a means of interpretation
- The EU accession to the Istanbul Convention (June 2023):
 - The long way to Istanbul
 - The signature of the Convention in 2017
 - The CJEU's opinion
 - Issues of legal bases regarding the decisions for the accession
- The EU proposal for a directive on countering violence against women and domestic violence
- The way ahead
- Conclusion

2

The Istanbul Convention (IC)

Some insights on the Istanbul Convention: ratifications, reservations, prejudices.

Structure of the Convention and definitions.

Legal obligations.

The 4 pillars of the Convention.

The monitoring mechanism: GREVIO

3

The ECtHR: jurisprudence

- Cases on domestic violence, in particular:
 - *Opuz v. Turkey* (2009)
 - *Talpis v. Italy* (2017)
- And the recent ones that confirm a trend towards the affirmation of a «due diligence test» in domestic violence cases (*Kurt v. Austria* in 2021 [Grand Chamber], *Landi v. Italy* in 2021, *De Giorgi v. Italy* in 2022).
- However, in a case of intimate partner violence that did not involve minors, *Germano v. Italy* (2023), the Court has not shown gender sensitiveness in the evaluation of the escalation of violence.
- Importance of using the Istanbul Convention as a means of interpretation.

4

EU policies on countering violence against women

The absence of violence against women in founding treaties.

The focus on equality between men and women.

Starting points in the treaties.

The Declaration annexed to the Lisbon treaty.

The EU action on countering violence against women: the role of soft law.

5

The signature of the Convention in 2017

Two decisions adopted in 2017 on the signature:

One on migration issues: Decision (EU) No. 2017/866 asylum and non-refoulement

One on criminal law issues: Decision (EU) No. 2017/865 on cooperation in criminal justice.

The issue of the legal basis.

The options at that time: a comprehensive directive or directives on different forms of violence?

6

The role of the EU Parliament

- Dozens of resolutions on the topic (soft law). Examples:
 - EP Resolution of 12 September 2017 on the proposal for a Council decision on the conclusion, by the European Union, of the Council of Europe Convention on preventing and combating violence against women and domestic violence.
 - EP Resolution of 28 November 2019 on the EU's accession to the Istanbul Convention and other measures to combat gender-based violence.
 - EP Resolution of 16 September 2021 with recommendations to the Commission on identifying gender-based violence as a new area of crime listed in Article 83(1) TFEU (2021/2035(INL)).

7

The CJEU 1/19 opinion on the ratification

- Three questions:
 - choice of legal basis;
 - whether and, if yes, under what conditions, the Council may or even has to split a Council decision to conclude an international agreement into several separate decisions;
 - whether it is permissible for the Council to wait for a common accord among the Member States to crystallize before adopting the Council decision to conclude the agreement on behalf of the EU.
- Not contrary to the ratification, but not helpful at the same time.
- Some general notes on the opinion.

8

The European Union accession to the Istanbul Convention in 2023

- All EU Member States signed the Istanbul Convention, but Bulgaria, Czechia, Hungary, Latvia, Lithuania and Slovakia have not ratified it yet.
- Two European Parliament resolutions:
 - European Parliament legislative resolution of 10 May 2023 on the draft Council decision on the conclusion, on behalf of the European Union, of the IC with regard to institutions and public administration of the Union
 - European Parliament legislative resolution of 10 May 2023 on the draft Council decision on the conclusion, on behalf of the European Union, of the IC with regard to matters related to judicial cooperation in criminal matters, asylum and non-refoulement
- Two acts for the accession:
 - Decision No. [2023/1076](#) with regard to matters related to judicial cooperation in criminal matters, asylum and non-refoulement and Decision No. [2023/1075](#) with regard to institutions and public administration of the Union, published in the official journal on the following day. Entered into force on 22. June 2023.

9

- Limiting our scope to judicial cooperation in criminal matters, asylum and *non-refoulement*, Council Decision No. 2023/1076 is based on Articles 82(2), 84 and 78(2) of the Treaty on the Functioning of the EU (TFEU). Compared to the decisions on the signature back in 2017:
 - (i) the legal matters related to judicial cooperation in criminal matters, asylum and *non-refoulement* have been combined in the same decision;
 - (ii) the legal basis Article 83(1) TFEU has been removed in the Decision on accession (the legal basis of Decision 2017/865 was composed of both Articles 82(2) and 83(1) TFEU).

Legal bases of the decisions for the accession

10

Consequences of the ratification

- Reporting to GREVIO: Code of Conduct laying down the arrangements regarding the exercise of rights and obligations of the European Union and Member States under the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), 9 February 2023 <https://data.consilium.europa.eu/doc/document/ST-6087-2023-INIT/en/pdf>
- Even for EU MS that have not ratified the Convention, its provisions will be binding for all MS inasmuch as they fall under the competences of the EU as defined in the treaties. This is true also for the provisions of the Convention on migration.
- For EU MS which are not party to the IC, the IC can be used as a means of interpretation of provisions of EU law in force.

11

The EU
proposal for a
Directive on
countering
violence
against
women and
domestic
violence

12

The EU proposal for a Directive on countering violence against women and domestic violence

- Several studies preceded the adoption of the proposal.
- European Commission, on 8. March 2022, presented the proposal.
- Legal bases: Article 83(1) and 82(2) TFEU.

13

The reason behind the legal basis

Why Article 83(1) and 82(2) TFEU?

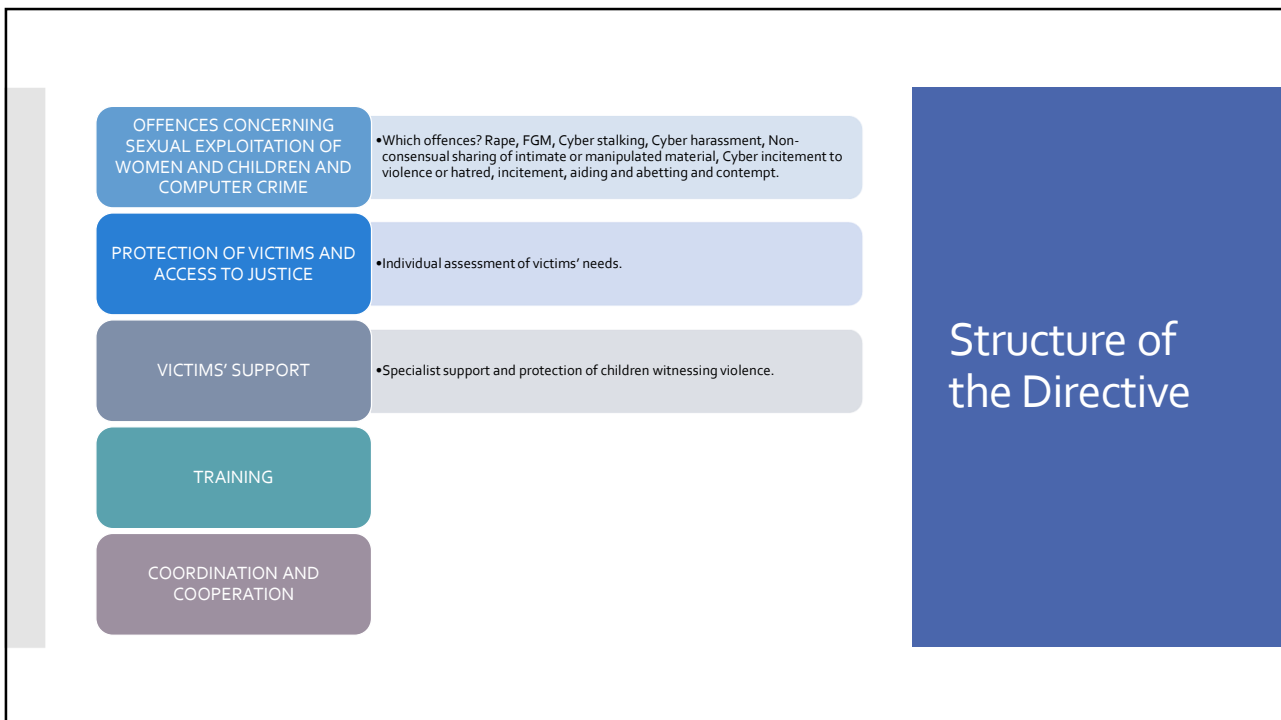
Other options: Article 19 TFEU and/or Article 83(2) TFEU.

The definition of sexual exploitation and computer crime.

14



15



16

What is in the proposal for a directive

- Criminalisation of some (not all) behaviours contemplated by the Istanbul Convention.
- Protection and the importance of risk assessment.
- Witnessing violence.
- Training of professionals.
- Multiagency cooperation.

IN LINE WITH THE ISTANBUL CONVENTION AND THE ECtHR JURISPRUDENCE.

Even broader: ICT-facilitated violence

17

ICT-facilitated violence.

The coordination of this directive with a future directive on countering hate speech (when included as eurocrime).

The impact of the so-called revenge porn and of sexist hate speech on victims. The reasons for action.

Reflecting on cyber violence

18

What is not in the proposal

A broader definition of gender.

The chapter on migration of the Istanbul Convention.

What about forced marriages, forced abortion, stalking and others?

19

The evolution of the EU proposal: state of the art

The amendments of the European Parliament and the Council to the European Commission's proposal.

The provision on rape has been removed.

The gender-neutrality of the proposal as it stands now: a critical assessment

20

Could the EU do more?

- The option of a Eurocrime of Gender-Based Violence against Women (failed).
- The option of other legal bases.
- Has the Commission asked too much from Article 83(1) TFEU?
- The ongoing debate.

21

Should we need both: the accession and a Directive?

My personal opinion: YES

For multiple reasons, in particular:

- Infringement procedure
- Broadening the scope of the IC itself
- Focus on the coordination between legal instruments

22

Conclusions

The EU legal constraints.

The risk of stretching too much the legal basis.

A satisfactory though perfectible proposal.

QUESTION: Should we need perfection considering the environment in which the proposal is discussed?

23

Thank you for your attention

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- *Violence against women's health in international law*, MUP, 2020
<https://www.manchesteropenhive.com/view/9781526124982/9781526124982.xml?rskey=zvLU3l&result=1>
- S. De Vido, L. Sosa, report on the criminalisation of violence against women, including ICT-facilitate violence in 31 European States
<https://www.equalitylaw.eu/downloads/5535-criminalisation-of-gender-based-violence-against-women-in-european-states-including-ict-facilitated-violence-1-97-mb>
- Forthcoming: S. De Vido and M. Frulli (eds), *Combating and preventing violence against women and domestic violence: a Commentary on the Istanbul Convention*, Elgar, 2023.

24