

## A legal basis for the Istanbul Convention

Written by Sylwia Spurek on 20 November 2019 in Opinion  
Opinion

The catalogue of crimes stipulated by the Treaty on the Functioning of the EU (TFEU) should be expanded to include violence against women and domestic violence, writes Sylwia Spurek.



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Violence against women in the EU is a widespread, serious and underestimated phenomenon.

The statistics are terrifying; according to the EU Agency for Fundamental Rights, as many as 43 percent of women have experienced some form of psychological violence by either a current or previous partner, 33 percent physical or psychological violence, and 22 percent psychological or sexual violence.

Around five percent of all women have been raped and 55 percent have experienced some form of sexual harassment.

The Council of Europe's Convention on Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention) is the most comprehensive international treaty on preventing and combating violence against women and domestic violence.

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For years now, the EU has been making efforts to accede to the Convention, but this is no simple process; for the EU to adopt the Convention, all its Member States must also accede.

Yet there is a catch – even though all EU Member States have signed the Convention, six of them are yet to ratify it, while Bulgaria faces constitutional problems with the concept of 'gender.' Another problem concerns the legal basis for the EU's accession to the Convention.

The European Commission, the European Parliament and the Council of the EU are in dispute over which articles from the founding treaties should be used as a legal basis for this step. The discussion has gone all the way to the European Court of Justice (ECJ).

Yet no such disputes on the legal basis would now exist had it not been for the fact that violence against women and domestic violence were not recognised in the Treaty's catalogue of crimes.

"Violence against women in the EU is a widespread, serious and underestimated phenomenon"

The catalogue encompasses terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organised crime - it makes no mention of violence against women or domestic violence.

Despite this, the Treaty makes it possible to have these crimes included. It can be done unanimously by the Council of the European Union after Parliament's consent. This is known as a 'gateway mechanism' or a 'passerelle' clause.

The inclusion of violence against women and domestic violence in the catalogue of the Treaty's crimes by deploying this mechanism would be of enormous importance for the efficacy of the EU's actions in the field of preventing and combating these types of crimes.

Not only would it be a legal basis for accession by the EU to the Istanbul Convention, but the EU could also adopt its own rules; Directives to specify Member States' obligations towards violence against women and domestic violence, prevention of such crimes, collection of data, helping the victims and so forth.

Therefore, initiation of the 'passarelle' procedure and adoption of EU Directives in the area of preventing and combating violence against women and domestic violence render the EU's accession to the Istanbul Convention pointless?

Obviously not; even if we succeeded in adopting, by EU Directive, a solid majority of the solutions stipulated by the Convention, it is an act of international law, one which implies a broader platform for cooperation between countries.

"An EU Directive on preventing and combating violence against women and domestic violence would be a much more effective instrument in terms of holding Member States accountable for fulfilling their obligations"

The EU's accession to the Convention would also imply binding EU institutions and, consequently, create a need to recognise the aspect of violence against women and domestic violence in each EU policy.

At the same time, an EU Directive on preventing and combating violence against women and domestic violence would be a much more effective instrument in terms of holding Member States accountable for fulfilling their obligations.

The Council of Europe's control mechanisms are weaker than the EU's, where the absence of proper implementation of secondary EU law may lead the Commission to instigate an infringement procedure, taking legal action against this country before the ECJ, and imposing heavy financial penalties.

In summary, reinforcing the EU's actions aimed at preventing and combating violence against women and domestic violence requires the EU to adopt the Istanbul Convention on the one hand and to include these crimes in the TFEU's catalogue of crimes.

As an MEP, I met with the European Commission President-elect, Ursula von der Leyen, when she was still a candidate.

We talked about the necessity of actions that the Commission must undertake to prevent and combat violence against women in the EU and particularly about the EU's accession to the Istanbul Convention and the inclusion of violence against women and domestic violence in the TFEU's catalogue of crimes.

## **About the author**

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