



EU Gauges Pathways to Accession to the Istanbul Convention

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On 10 May, the European Parliament (EP) voted in favour of the EU's accession to the 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention). In addition to strengthening prevention and improving the situation of victims, the ratification of the Convention may contribute to reinvigorating discussions on the Union's accession to other international agreements on the protection of human rights adopted by the Council of Europe and the UN.

Impact of the Convention. According to the EU Agency for Fundamental Rights, more than half of women in the Union have experienced harassment, physical, or sexual violence. Accession to the Convention aims to strengthen their protection in the EU also against discrimination, persecution, and forced marriage by introducing universal and legally binding standards. The Convention is the most far-reaching international agreement in this field and chronologically, the third in the world after the Inter-American (1994) and the African (2003) conventions. The Istanbul Convention also contains particularly precise solutions, including unlawful acts that should be prosecuted by its parties, forms of prevention (e.g., educational campaigns), and protection and support for victims.

The Convention has already contributed to improving legal protection against violence in the countries that have acceded to it through helplines, referral centres, psychological support for victims, and in other ways. After its ratification in Poland, a ban on an offender approaching and contacting the victim and an order to leave the house were introduced. Finland, in turn, has included the creation of shelters for victims in the scope of public tasks. In Sweden, on the other hand, the number of court cases concerning sexual violence has increased due to the broadening of the definition of this crime (Greece, Croatia, Malta and Denmark have also introduced changes in their legislation).

Despite this progress, EU accession to the Convention is needed to achieve better results, for example in situations of cross-border crime and involving persons who have been granted residence in the EU as family members and therefore fear leaving their offender. It will make it possible, among others, to adopt common strategies to combat violence and mechanisms to monitor their implementation and to harmonise the definition of certain crimes. An important problem, however, remains the concentration of the political debate not so much on the role of the Convention in counteracting violence but on issues related to the definition of gender, included in the document in socio-cultural categories. As a result, its content has become the subject of numerous overinterpretation, for example the suggestion that ratification will lead to the legalisation of same-sex marriage.

Procedural Complexities. Both the Member States and the EU can accede to the Convention. The EC already launched this process in 2016. From the perspective of EU procedures, the Convention is a mixed agreement—it requires ratification by the EU and its members. Some of its provisions that fall within the competence of the Union concerning refugee protection and judicial cooperation in criminal matters will be automatically applied in the Member States once ratified by the EU. This does not replace, however, their need for independent accession to include the remaining aspects. This is problematic because Bulgaria, Czechia, Hungary, Lithuania, Latvia, and Slovakia have signed the Convention but not ratified it yet. The

Bulgarian Constitutional Court ruled that it was unconstitutional, in Slovakia and Hungary its ratification was opposed by the respective parliaments, and in Czechia it is disputed between the ruling coalition. Some politicians, in particular in Czechia, Hungary, and Latvia, also claim there exists sufficient protection at the national level. In turn, the Polish authorities in mid-2020 suggested the intention to withdraw from the Convention.

After the EU signed the Convention in 2017, the last step at that level—a decision on ratification by the Council—was blocked by the opposition of some countries. The EU has approached this problem in two ways. On 8 March 2022, the EC presented a draft Directive on combating violence against women and domestic violence, which is still being worked on. At the same time, the Union decided to accede to the Convention only on matters in which it has competence. In an opinion issued last October, the Court of Justice of the EU (CJEU) confirmed that it is the practice of the states to agree on a common position but that formally the Council will decide by qualified majority. This will set a precedent, however, as so far countries have sought consensus on key issues even when it was not required (Czechia, for example, has already announced it will abstain).

An additional variable that the EU had to take into account was the limited participation of Denmark and Ireland in cooperation in the area of freedom, security, and justice. It required splitting the vote in the EP into two parts: on cooperation in criminal matters and asylum policy, and on the EU institutions and bodies being bound by the Convention. In view of the ratification of the Convention by both countries in 2014 and 2019, respectively, it can be assumed that any differences in the application of the Convention by them and the EU will be procedural, but not substantive.

Seeking solutions to procedural problems is also important in the context of the EU's potential accession to other international human rights agreements. To date, the Union has only acceded to the 2006 UN Convention on the Rights of Persons with Disabilities. Its accession to similar agreements concluded under the aegis of the UN would in most cases require adapting their content to the membership of an international organisation, and greater involvement on the part of the EC, for which this is not currently a priority. At the same time, the ongoing negotiations on the EU's accession to the European Convention on Human Rights (ECHR) of the Council of Europe were not so smooth either. In 1996, the CJEU ruled that the Union lacked competence to act in this area. Following

the introduction of this possibility in the Treaty of Lisbon, the court issued a negative opinion on the draft agreement on the EU's accession to the ECHR in 2014 as infringing the EU treaties. In its opinion, this would affect the competences of the EU institutions, for example it would subject some of their actions or disputes so far resolved by the CJEU to the jurisdiction of the European Court of Human Rights (ECtHR).

Perspectives and Conclusions. The accession of the EU to the Convention is important for Sweden, which currently holds the rotating presidency, so it can be expected that a vote in the Council will take place before the end of June when its mandate expires. EU accession to the Convention, even to a limited extent, may motivate the EU Member States to ratify it and potentially also hinder the possible withdrawal of the remaining ones. It will therefore be particularly important for the Union to conduct an adequate information campaign on the Convention. The EU has an opportunity to contribute to promoting the standards contained in the document, but the challenge will be the overlapping ideological discussion that complicates reaching agreement. The lack of cooperation from all Member States, while formally acceptable, will make it difficult to strengthen and standardise protection at the Union level.

In addition to improving standards for preventing violence against women and helping victims, the EU's ratification of the Istanbul Convention could have wider implications. Above all, it will strengthen the legitimacy of the Union's external action, which encourages its partners, such as Ukraine, to accede to conventions protecting human rights, but has itself little track record in this regard. In the longer term, and provided that there is a political will to extend membership of the agreements adopted within the framework of the UN to an international organisation, it can also revive the debate on the Union's accession to them. Their ratification would bring benefits to the EU in terms of access to new forums to promote its standards and influence third countries, for instance as part of reporting mechanisms for compliance with conventional obligations. It would also entail smaller changes for the EU itself than accession to the ECHR (on the basis of which quasi-judicial bodies function, and the condition for accepting the case is the consent of the parties, usually expressed separately). Swift accession of the EU to the ECHR is in the interest of those Member States, including Poland, that are already within its jurisdiction, so joining the Union to it would potentially reduce the number of complaints against them as some of the cases would be directly against the EU.