

VIOLENCE AGAINST WOMEN: PERSISTING DISCRIMINATION IN EUROPE?

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I. Introduction

There are many definitions of citizenship across various disciplines, however, the essence of citizenship is that it confers rights, obligations and responsibilities for the individuals who enjoy membership of a community within a societal and/or political structure.

The practice and interpretation of citizenship may change according to the historical, political or cultural context. It may also change according to the point of reference, i.e. whether citizenship is exercised at local, national or even international level.

International organisations, especially regional organisations in Europe, have produced many instruments, whether legal or political, in an effort to guarantee an inclusive citizenship for all individuals, based primarily on the promotion of gender equality and non-discrimination, and the protection of human rights. After all, gender equality and the protection of human rights are integral parts to the functioning of democracy, the respect for the rule of law, economic growth and sustainable development.

Legislation, administrative policies and other measures are being taken at the national and international level to address the inequalities that lead to some persons being excluded from an inclusive citizenship on the basis of their difference. Yet, complex factors or aggravating circumstances often lead to certain groups of persons not being able to enjoy citizenship; that means that despite the efforts to address inequalities, whether economic, societal or other, the reality may prove more intriguing and as a result some individuals will still be excluded from the enjoyment and practice of an inclusive citizenship.

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The distribution of unequal power on the basis of race, class, ethnicity and gender, can render particular groups of individuals, i.e. women, subjects to intersectional discrimination and social exclusion. Human history reveals that women present the predominant group that is usually marginalized due to lack of gender equality, or to put it simply, due to the gap between men's and women's life chances.

Gender inequality is often bound up with the phenomenon of violence which, as a phenomenon itself, severely limits the ability of women and girls to enjoy their rights and to participate in an inclusive society, thus enjoy citizenship on an equal footing. The concept of citizenship is relying heavily on the formation of identity amidst expressions of power. Violence against women is rooted in women's unequal status in society, and that status reflects the unbalanced distribution of social, political, and economic power among women and men in society.

Violence against women is both a cause and a consequence of gender inequality. Phenomena such as domestic violence or gender-based violence (and their impact on the victims) can be barriers hindering the enjoyment and practice of full citizenship. It is not only horizontal and vertical segregation in the labour market or the lack of equal access to economic and political decision-making that are responsible for the women's exclusion but also gender and sexist stereotypes embedded in our individual, societal, community or institutional structures that hinder women from living free from violence and from being full active citizens in our societies.² As the Committee on Equality and Non-Discrimination of the Council of Europe notes "violence is at the very core of the patriarchal system, and the key to eradicate violence lies in changing the paradigm and deconstructing the patriarchal system. Empowerment is also about this: women (and also men) gaining control over their lives, setting their own agendas and acquiring new skills."³

It is from this perspective that this contribution discusses the legal framework on violence against women in Europe which, if implemented, would considerably advance women's rights and bring states closer to real gender equality and to inclusive citizenship for women and girls.

2. P. Damonti, Can gender-based violence result in a process of social exclusion? A quantitative-qualitative analysis, *Procedia - Social and Behavioral Sciences* 2014 161, 41 – 47.

3. Council of Europe, Committee on Equality and Non-Discrimination, Report Doc. 14907, 08 June 2019, para. 61, available at <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=27721&lang=en> [all online sources were last accessed at 08.06.2019].

II. Violence against women: The dimensions of the problem

Over the past two decades, there has been an unprecedented human rights advocacy. Yet women and girls have been disproportionately left behind. Despite policy changes and the progress that individual women and girls have made, gender inequalities, traditional gender roles (i.e. in patriarchal or sexist societies) and gender stereotypes persist in all walks of life, notably at home, in education, at the workplace, in the media, in the judicial system and across all regions all over the world. They continue to face systemic barriers and discrimination that violate their basic human rights, inhibit their access to resources, and increase their vulnerability to gender-based and domestic violence and exploitation. Some of the violations that women experience in their everyday life range from trafficking, domestic violence and inequality in remuneration (pay gap), to harmful practices such as child marriage, early and forced marriage and female genital mutilation, lack of access to sexual and reproductive health and reproductive rights. Women may even experience sexist behaviour and sexism that can escalate to maintaining gender stereotypes or even incite illegal acts, such as sexual abuse or violence. All these are heavily gender-based phenomena which contain several strong references to gender inequality. Furthermore, all forms of discrimination and violence against women and girls are deemed major obstacles to the enjoyment of women and girls' rights and to the ultimate achievement of the 2030 Agenda for Sustainable Development.⁴

There are numerous studies as to the causes of violence against women. During the past few years and as more and more countries have experienced austerity measures, the phenomenon of violence against women has significantly increased. A recent study exploring this issue has come to the conclusion that:

“violence against women is thus seen not just as an expression of male powerfulness and dominance over women, but also as being rooted in male vulnerability, stemming from social expectations of manhood that are unattainable because of factors such as poverty experienced by men. Violence is frequently used to resolve a crisis of male identity, at times caused by poverty or an inability to control women”.⁵

As the phenomenon of violence against women is cascading, it becomes more obvious that violence against women is not only a crime but also a

4. See for example Goal No. 5 – Achieve gender equality and empower all women and girls, available at www.un.org/sustainabledevelopment/sustainable-development-goals/.

5. G. Malgesini, L. Cesarini Sforza, M. Babović, *Gender-based Violence and Poverty in Europe EAPN Gender and Poverty WG*, Briefing # 2, 2019, p.10.

manifestation of deeply rooted inequality between men and women. Despite all national and international legislation, there is still a gap between normative-setting standards and practices, between de jure and de facto gender equality worldwide, and especially in Europe. Hence, there is the need to address not only the causes of the phenomenon but also the impact on the victims and prepare preventive measures that will eliminate any form of violence against women, and especially domestic violence.

One has to remember that the repercussions of domestic violence are multiple and they affect not only the victims themselves but also their children, relatives, etc. This has been acknowledged by the European Court of Human Rights whereby it has rightly stated:

“... [T]he issue of domestic violence, which can take various forms ranging from physical to psychological violence or verbal abuse, ... is a general problem which concerns all member States and which does not always surface since it often takes place within personal relationships or closed circuits and it is not only women who are affected. The [European] Court [of Human Rights] acknowledges that men may also be the victims of domestic violence and, indeed, that children, too, are often casualties of the phenomenon, whether directly or indirectly. ...”⁶

It should also be noted that women who have experienced domestic violence have three times the risk of developing mental illnesses, including severe conditions such as schizophrenia and bipolar disorder, compared with those who have not.⁷ Moreover, it is also the case that victims of domestic violence can be socially excluded by the perpetrator, but they can also find themselves overlooked or ignored by the national authorities,⁸ law-enforcement, social agencies, and the community from which they seek support, protection, prosecution, justice, and prevention.⁹ Moreover, a common feature among victims of violence is that they usually are in fear of reporting their abuse.

6. ECHR, *Opuz v. Turkey*, No. 33401/02, Judgment 09.06.2009, para. 132.

7. E. Mahase, Women who experience domestic abuse are three times likely to develop mental illness, *BMJ* 2019, 365:14126.

8. See for example the number of cases filed against Turkey concerning the lack of action on the part of the national authorities to investigate incidents of domestic violence against women. In *Durmaz v. Turkey*, the Court noted that with regard to previous cases on domestic violence “there existed a *prima facie* indication that domestic violence affected mainly women and that the general and discriminatory judicial passivity in Turkey created a climate that was conducive to domestic violence”; moreover, the Court noted that “the prosecutor’s above-mentioned serious failures are part of that pattern of judicial passivity in response to allegations of domestic violence”. ECHR, *Durmaz v. Turkey*, No. 3621/07, Judgment 13.11.2014, Final Judgment 13.02.2015, para. 65.

9. See for example Inter-American Commission on Human Rights, *Jessica Lenahan*

Whereas violence against women has always existed, it is only in the last two decades or so that the international community has begun to highlight and systematically define the problem. It is increasingly addressed as 'gender-based violence' in many of the legal and policy instruments of international organizations and nowadays it is recognised as a form of a human rights violation¹⁰ and a form of gender-based discrimination; in 1992, the General Recommendation of the United Nations (UN) Committee on the Elimination of Discrimination against Women (CEDAW Committee) defined gender-based violence as "violence that is directed against a woman because she is a woman or that affects women disproportionately" (Article 6) and noted that it "is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men" (Article 1). In many reported cases, violence against women is a form of intersectional discrimination too. Women often face multiple and intersecting forms of discrimination and violence, because they are women while they also belong to a specific social group. For example, they can be young or elderly women; women with disabilities;¹¹ lesbian/bisexual/transgender women; women survivors of violence; migrant women (including refugees, asylum seekers and undocumented women), women living in poverty or living in countries under austerity measures,¹² single mothers, women from minorities or from various religious or other social origins, etc. Women in different situations, irrespective of their age or background, and from different walks of life may be subjected to violence; the message sent by all international organisations is that no woman can be immune from violence.

(Gonzales) v. United States of America, Report No. 80/11, Case 12.626, 21.07.2011. This was the first domestic violence case to be brought against the USA before an international body. In this case the claimant's daughters were abducted by her estranged husband in 1999 and killed after the police repeatedly refused to enforce her domestic violence restraining order against him. The claimant challenged the principle of US law that government generally has no duty to protect individuals from private acts of violence and the Inter-American Commission on Human Rights found that the rights to life, nondiscrimination, family life/unity, due process, petition the government, and the rights of domestic violence victims and their children to special protections had been violated. The decision called for changes to U.S. law and policy pertaining to domestic violence.

10. *Ibid.*

11. See L. Ozemela, D. Ortiz, A.-M. Urban, *Violence against Women and Girls with Disabilities*, March 2019, [Inter-American Development Bank](#).

12. G. Malgesini, L. Cesarini Sforza, M. Babović, *Gender-based Violence and Poverty in Europe EAPN Gender and Poverty WG*, Briefing # 2, 2019, available at <https://www.eapn.eu/wp-content/uploads/2019/07/EAPN-Gender-violence-and-poverty-Final-web-3696.pdf>.

III. Council of Europe: Legal and soft-law instruments on violence against women

A. Legal instruments: The Instambul Convention on Preventing and Combating Violence against Women and Domestic Violence

The Council of Europe presents perhaps one of the most successful regional organisations with regard to the protection of human rights. Since its creation the Council of Europe has created an *acquis* in the area of the protection of human rights that has been a point of reference and inspiration even for other regional organisations and third states. For more than seventy years, it has set its target on the elimination of discrimination, including on the grounds of sex, and has developed emblematic legal human rights instruments, such as the Council of Europe Convention *on Preventing and Combating Violence against Women and Domestic Violence* [hereinafter “Istanbul Convention”] and the Council of Europe Convention *on Action against Trafficking in Human Beings*, as well as soft-law and non-binding instruments that complement the organisation’s efforts to achieve the effective realisation of gender equality. In this spirit, the Council of Europe has also adopted the *Gender Equality Strategy 2018-2023* which sets out the priorities through six strategic objectives, one of which is the prevention and combating of violence against women.

The Council of Europe Convention *on Preventing and Combating Violence against Women and Domestic Violence* was signed on 11 May 2011 and it entered into force on 1 August 2014. As of 2019, 34 out of 47 member states of the Council of Europe and 21 member states of the EU have ratified the Istanbul Convention.¹³ It is noteworthy that albeit a regional instrument, the Istanbul Convention is open to non-member states of the Council of Europe and the EU (see Article 75 of the Istanbul Convention). The EU signed the instrument on 13 June 2016 but has not ratified it yet.

The Istanbul Convention is the most comprehensive legal instrument that not only purports to protect women against all forms of violence, and prevent, prosecute and eliminate violence against women and domestic violence, but to promote gender equality and eliminate discrimination against women. Article 3 contains several definitions concerning various forms of violence, i.e.:

“Violence against women” is “understood as a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in,

13. Bulgaria, Czech Republic, Hungary, Latvia, Lithuania, Slovakia and the United Kingdom have not yet ratified the Istanbul Convention.

physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life”.

“Domestic violence” includes “all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim”; and

“Gender-based violence against women” constitutes “violence that is directed against a woman because she is a woman or that affects women disproportionately”.¹⁴

The Istanbul Convention has a bifurcate monitoring mechanism, the Group of Experts on Action against Violence against Women and Domestic Violence [hereinafter “GREVIO”] and the Committee of the Parties. The former is a body of 15 independent experts appointed by the Committee of the Parties. Its mandate is to monitor the implementation of the Convention by the Parties. Much alike the UN human rights treaty-based Committees, GREVIO may adopt recommendations on key issues covered by the Istanbul Convention. GREVIO conducts country-by-country evaluations starting with a first assessment which is then followed by evaluation rounds. After an exchange of views between GREVIO and the country under study, GREVIO adopts its final report which is made public. GREVIO may also conduct a special inquiry evaluation in order to prevent a serious, massive or persistent pattern of violence. The Committee of the Parties consists of the representatives of the Parties to the Convention and its mandate is to adopt specific recommendations to state parties acting upon the reports of GREVIO. An unofficial but very vital aspect of the monitoring mechanism is the contribution of information by NGOs active in preventing and combating violence against women. Article 9 of the Istanbul Convention creates a legal obligation on the state parties to co-operate and assist the NGOs in their work.

14. See also EU Fundamental Rights Agency, *Women as Victims of Partner Violence*, 2019, available at https://fra.europa.eu/sites/default/files/fra_uploads/fra-2019-justice-for-victims-of-violent-crime-part-4-women_en.pdf.

B. Soft-law instruments of the Council of Europe tackling violence against women

In order for the Council of Europe to tackle violence against women, there is a need for co-ordinated action at policy, legislative and institutional level. This kind of co-ordination is served by a number of soft-law instruments, such as Recommendations and Resolutions, of the organs of the Council of Europe (i.e. the Parliamentary Assembly or the Committee of Ministers). Since 2000, such instruments have been adopted calling member states to tackle various dimensions of the phenomenon of violence against women.

With Resolution 2294 (2019) *Ending violence against children: a Council of Europe contribution to the Sustainable Development Goals*,¹⁵ the Parliamentary Assembly calls member States to make combating violence against children a national priority, adopt national action plans, ratify all relevant Council of Europe Conventions, including the Istanbul Convention, and to increase the funding and “resources to poorer countries in order to provide support for programmes to combat violence against children worldwide”.

With Recommendation 2159 (2019) *Ending violence against children: a Council of Europe contribution to the Sustainable Development Goals*,¹⁶ the Parliamentary Assembly calls the Committee of Ministers to accelerate progress towards reaching Sustainable Development Goal 16.2 to end abuse, exploitation, trafficking and all forms of violence against and torture of children in member States, and to keep the issue as priority in the agenda of the Council of Europe’s political and monitoring bodies.

In Recommendation CM/Rec(2019)1 *On preventing and combating sexism*,¹⁷ the Committee of Ministers provides member states of the Council of Europe with a list of measures to address sexist behaviour in the public or private sphere. ‘Sexism’ is defined here as:

“any act, gesture, visual representation, spoken or written words, practice or behaviour based upon the idea that a person or a group of persons is inferior because of their sex, which occurs in the public or private sphere, whether online or offline, with the purpose or effect of: violating the inherent dignity

15. Available at <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=28058&lang=en>.

16. Available at <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=28059&lang=en>.

17. Available at <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168093b26a>.

or rights of a person or a group of persons; or resulting in physical, sexual, psychological or socio-economic harm or suffering to a person or a group of persons; or creating an intimidating, hostile, degrading, humiliating or offensive environment; or constituting a barrier to the autonomy and full realisation of human rights by a person or a group of persons; or maintaining and reinforcing gender stereotypes”.¹⁸

In Resolution 2290 (2019) *Towards an ambitious Council of Europe agenda for gender equality*,¹⁹ the Parliamentary Assembly calls on the Council of Europe member and observer States to take gender-sensitive measures concerning gender stereotypes and sexism, violence against women and domestic violence, women’s political representation, women’s economic empowerment, access to justice, sexual and reproductive health and rights, and the rights of migrant, refugee and asylum-seeking women and girls.

With Recommendation 2152 (2019) *Promoting parliaments free of sexism and sexual harassment*,²⁰ the Parliamentary Assembly calls GREVIO to address the issue of violence against women in politics in its country visits, reports and recommendations and to collect data and information on violence against women in politics.

In Resolution 2274 (2019) *Promoting Parliaments free of sexism and sexual harassment*,²¹ the Parliamentary Assembly calls inter alia:

“on the parliaments of Council of Europe member and observer States, as well as on the parliaments who enjoy observer or partner for democracy status with the Parliamentary Assembly to... consider reviewing immunity rules which afford immunity from prosecution to members of parliament for sexual harassment and violence against women, introduce complaint mechanisms to prevent and sanction sexual harassment, sexual violence and misconduct, ... and to consider introducing specific legislation on sexism and violence against women in politics”.

With Recommendation CM/Rec(2019)1 *On preventing and combating sexism*,²² the Committee of Ministers calls the governments of member States

18. *Ibid.*

19. Available at <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=28018&lang=en>.

20. Available at <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=27615&lang=en>.

21. Available at <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=27614&lang=en>.

22. Available at https://search.coe.int/cm/pages/result_details.aspx?objectid=090000168093b26a.

“to take measures to prevent and combat sexism and its manifestations in the public and private spheres, and encourage relevant stakeholders to implement appropriate legislation, policies and programmes, drawing on the definition and guidelines appended to this Recommendation”. This is the first instrument of the Council of Europe offering a definition of “sexism” and it is complemented by an appendix with guidelines for preventing and combating sexism and measures for implementation.

With Resolution 2233 (2018) *Forced marriage in Europe*,²³ the Parliamentary Assembly calls states *inter alia* to ratify the Istanbul Convention and:

“to criminalise, as a specific offence, intentional conduct forcing an adult or a child to enter into a marriage, as well as luring an adult or a child abroad for the purpose of forcing him or her to enter into a marriage, and provide for effective sanctions against the perpetrators and those who aid, abet, or attempt to commit such offences”, “to recognise forced marriage as a ground for international protection”, to “provide detailed training for professionals working in the social and education services, the police and the justice system and health-care professionals” who are working with the victims of forced marriage.

In Resolution 2159 (2017) *Protecting refugee women and girls from gender-based violence*,²⁴ the Parliamentary Assembly calls *inter alia* to ratify the Istanbul Convention and adds:

“with regard to women’s safety in transit and reception facilities: ensure the presence of female social workers, interpreters, police officers and guards in these facilities; provide separate sleeping areas for single women with or without children, and separate, well-lit bathrooms for women; create safe spaces in every transit and reception facility; when needed, ensure access for refugee and asylum-seeking women to shelters for women victims of gender-based violence; organise training programmes on identifying and assisting victims of gender-based violence for social workers, police officers and guards working in the facilities; provide information material in languages of the countries of origin on assistance services for victims of gender-based violence, including on reporting and complaint mechanisms;... ensure the same access to affordable and adequate health services

23. Available at <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=25016&lang=en>.

24. Available at <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=23700&lang=en>.

for all women and girls as for the general population, regardless of whether they are defined as migrants, immigrants, refugees or asylum seekers;... ensure that girls are free to decide for themselves, that their voluntary and informed consent is always obtained, and that they do not require authorisation from a spouse, parent/guardian or hospital authority to access sexual and reproductive health services.”

What is noteworthy is that this instrument is adding a social obligation on the societies and the governments of the hosting states to “invest in social and economic integration programmes specifically targeting women refugees...by informing women refugees of the rules of good conduct in the host country, particularly with respect to gender equality”, and to “launch awareness-raising campaigns on the positive contribution of refugees and asylum seekers to our societies”.

In Resolution 2177 (2017) *Putting an end to sexual violence and harassment of women in public space*,²⁵ the Parliamentary Assembly calls on Council of Europe member and observer States to: ratify the Istanbul Convention and to include sexual violence and harassment in public space in national criminal codes, “to put an end to impunity by prosecuting perpetrators of sexual violence and harassment in public space;...and to conduct inquiries into sexual violence and the harassment of women in public space in order to gain a better understanding of the magnitude of the phenomenon and initiate action that may help eliminate the taboos surrounding this issue”, including the training of teachers so that they can do early-detecting of potential victims.

In Resolution 2101 (2016) *Systematic collection of data on violence against women*,²⁶ the Parliamentary Assembly calls on Council of Europe member States to collect data on all forms of violence covered by the Istanbul Convention and “on the causes of violence against women, on its consequences, on its prevalence and frequency and on the efficiency of policies and legislation” and to “analyse the causes of under-reporting of violence against women”.

Resolution 2128 (2016) *Violence against migrants*²⁷ is a briefly-worded instrument that aims at bringing to the fore the human rights dimension of migrants irrespective of their status and the obligation of the member states to combat racism, discrimination and hate speech, which lead to violence against

25. Available at <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=23977&lang=en>.

26. Available at <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=22555>.

27. Available at <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=22980&lang=en>.

migrants, especially women who are particularly vulnerable. The Resolution calls inter alia for the ratification of the Istanbul Convention. It is noteworthy that under this Resolution states have to “ensure that the perpetrators of violence against migrants are prosecuted regardless of the victims’ status” and “provide the necessary care for victims (medical treatment, psychological and social assistance) without discriminating against the migration status of victims and paying special attention to vulnerable groups (women, children, and lesbian, gay, bisexual and transgender (LGBT) people)”.²⁸

With Resolution 2135 (2016) *Female genital mutilation in Europe*,²⁹ the Parliamentary Assembly clarifies the following:

“female genital mutilation is not an issue of honour but an act of violence against women and girls, and an act against the human right to health” and calls states to “recognise female genital mutilation as violence against women and children and systematically include this issue in national procedures and policies to combat violence, as well as to publicly condemn female genital mutilation, including through relevant legislation”. It is interesting that the Assembly boldly recognises that female genital mutilation is linked to other harmful practices such as early marriages and calls states to “recognise female genital mutilation, or the well-founded fear of female genital mutilation, as persecution within the meaning of the 1951 Geneva Convention relating to the Status of Refugees”.³⁰

Resolution 2120 (2016) *Women in the armed forces: promoting equality, putting an end to gender-based violence*³¹ is an instrument much inspired by the UN Security Council Resolution 1325 on Women, Peace and Security. The purpose behind Resolution 2120 is to encourage the recruitment of women in the armed forces as well as their safety from any form of gender-based violence. For example, the Resolution seeks to “establish mechanisms... to enable victims to make informal complaints confidentially and anonymously” and to make states adopt legislation that “explicitly prohibits all forms of gender-based violence and is both comprehensive and effectively implemented; also ensure that internal codes of conduct include strict provisions in this connection, which are widely known and applied at all levels”.³² Naturally, states are called on to ratify the Istanbul Convention and to provide effective penalties for such illegal

28. *Ibid.*

29. Available at <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=23176&lang=en>.

30. *Ibid.*

31. Available at <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=22939&lang=en>.

32. *Ibid.*

acts, “as simply transferring the victim of a sexual assault is not an appropriate response”.³³

With Resolution 2093 (2016) *Recent attacks against women: the need for honest reporting and a comprehensive response*,³⁴ the Parliamentary Assembly calls on member states of the Council of Europe to “protect the women’s right to physical integrity and the right not to be harassed in the public space and private sphere;...ensure, by prosecuting perpetrators, that there is no impunity for violence against women”.³⁵ Interestingly, the Resolution also draws attention to the importance of education in preventing violence against women in order to foster appropriate attitudes from an early age among children.

Resolution 2027 (2014) *Focusing on the perpetrators to prevent violence against women*³⁶ was adopted with the purpose of addressing the persisting high number of victims of domestic, physical, sexual or psychological violence. The Assembly calls on the member States, their national parliaments and non-governmental organisations to promote the ratification of the Istanbul Convention, design the setting up of preventive intervention and treatment programmes for perpetrators of domestic violence as well as “put the safety of victims and respect for their human rights at the centre of programmes for perpetrators of violence”.³⁷

Resolution 1963 (2013) *Violence against women in Europe*³⁸ is an outright reminder of the urgent need to ratify the Istanbul Convention and the Assembly particularly requests from states not to make declarations and reservations to the Istanbul Convention or not to renew them.

With Resolution 1962 (2013) *Stalking*,³⁹ the Parliamentary Assembly recognises that the “repetition of acts intruding into a person’s life which increase in intensity over time”,⁴⁰ including cyberstalking, is a form of violence often linked to other forms of violence. Not only the Assembly calls states to criminalise stalking in line with the Istanbul Convention but it also requests

33. *Ibid.*

34. Available at <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=22494&lang=en>.

35. *Ibid.*

36. Available at <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=21325&lang=en>.

37. *Ibid.*

38. Available at <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=20301&lang=en>.

39. Available at <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=20299&lang=en>.

40. *Ibid.*

measures to assist victims of stalking as well as to prevent acts of stalking. It is noteworthy that hereby the Assembly encourages states to conduct research on the prevalence of violence against women, including stalking.

Resolution 1861 (2012) *Promoting the Council of Europe Convention on preventing and combating violence against women and domestic violence*⁴¹ is an instrument that was adopted in the midst of conflicting political debates occurring in various member states of the Council of Europe (see discussion below). The Assembly calls upon member states of the Council of Europe to ratify the Istanbul Convention without reservations, to apply it not only to women but also to other victims of domestic violence, and also calls states with observer status and the EU to sign and ratify it.

Resolution 1852 (2011) *Psychological violence*⁴² calls states to ratify the Istanbul Convention and to “consider introducing the notion of psychological violence in their criminal law” as well as to “ensure that, in all cases, the sanctions against perpetrators of psychological violence are effective, proportional and dissuasive”.⁴³ The lack of data on domestic violence and its link to psychological violence and the impact of this form of violence on the victims and their relatives is an issue that is tackled by this Resolution as states are requested to conduct “surveys on domestic violence among the population, with a view to collecting information on the number of victims, broken down by gender; the type of violence (psychological or physical) and its manifestations; the presence of children in the household concerned; the estimated number of murders and suicides due to domestic violence”.

Resolution 1853 (2011) *Protection orders for victims of domestic violence*⁴⁴ is an instrument that introduces measures for the immediate and long-term protection of victims of domestic violence. It is apparent from the text of the Resolution that the lack of understanding of the phenomenon of violence against women on the part of the law enforcement authorities is one of the causes due to which we witness such a high number of victims. The measures that are proposed include *inter alia* “civil injunctions, restraining orders in the context of a criminal procedure, and emergency barring orders, as well as specific protection orders for victims of domestic violence”, and the “training for law

41. Available at <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=18067&lang=en>.

42. Available at <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=18052&lang=en>.

43. *Ibid.*

44. Available at <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=18053&lang=en>.

enforcement officials on violence against women and domestic violence, in all its forms, including psychological violence and so-called “honour crimes”.⁴⁵

Resolution 1811 (2011) *Protecting migrant women in the labour market*⁴⁶ presents a sober approach with regard to the integration of migrant women in the host member states of the Council of Europe. The Parliamentary Assembly calls member states to adopt:

“immigration policies based on human rights that are gender sensitive and empowering, and which prevent irregular migration, exploitation and trafficking”; furthermore, to “grant migrant women in an irregular situation full access to health care, education and fair working conditions, and ensure that they are able to report violence and exploitation without fear of deportation” and to “provide suitable assistance, including psychological and rehabilitation assistance, and other services, such as free legal aid, interpretation services, housing and childcare facilities, to victims of domestic violence and violence in the workplace, discrimination, exploitation and trafficking”.⁴⁷

With Resolution 1835 (2011) *Violent and extreme pornography*⁴⁸, the Parliamentary Assembly’s effort to address the impact of this form of violence on women’s dignity and their right to live free from sexual violence is more than commendable. The text of the Resolution offers a multidimensional approach that ultimately aims at the elimination of violent and extreme pornography as the latter diminishes the conditions for achieving effective gender equality and perpetuates negative gender stereotypes. The Assembly calls upon states to criminalise the production and use of violent and extreme pornography and draws attention to the links between pornography, prostitution and trafficking.

With Recommendation 1905 (2010) *Children who witness domestic violence*⁴⁹ the Parliamentary Assembly asks from the Committee of Ministers to provide for the protection of children as indirect victims of domestic violence within the then newly drafted Convention on violence against women. It is noteworthy that the Recommendation is drawing attention to the education of children on non-violence as a preventive intergenerational measure.

45. *Ibid.*

46. Available at <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=17990&lang=en>.

47. *Ibid.*

48. Available at <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=18028&lang=en>.

49. Available at <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17825&lang=en>.

Resolution 1714 (2010) *Children who witness domestic violence*⁵⁰ recognises that children can be indirect or ‘secondary’ victims of domestic violence, thus they can be subjected to “a form of psychological abuse which has potentially severe consequences”.⁵¹ This is an instrument that is much inspired from the legal framework on the protection of children’s rights, especially the UN Convention on the Rights of the Child, yet it rightly links domestic violence against women with the abuse children experience when they live in an environment that women are subjected to violence.

Resolution 1765 (2010) *Gender-related claims for asylum*⁵² is an inspiring instrument as it sets out a gender-sensitive asylum law framework. The Assembly hereby requests from states *inter alia* to:

“ensure that gender-based violence is taken into account under the five different grounds of persecution (race, religion, nationality, membership of a particular social group or political opinion) in any asylum determination process and that “gender” is specifically included in the notion of a “particular social group” under the refugee definition set out in the 1951 UN Convention relating to the Status of Refugees (Geneva Convention), preferably by law, or at least in practice; to take into account that not only women and girls face gender-based violence and gender-related persecution, but that men and boys may also be victims; and to take into account that gay, lesbian, bisexual or transgender persons are increasingly facing gender-based violence and gender-related persecution”.⁵³

It is noteworthy that the Resolution provides that trafficking, female genital mutilation and the risk of female genital mutilation, and forced sterilisation should be treated as potential grounds for asylum claim.

Recommendation 1881 (2009) *Urgent need to combat so-called “honour crimes”*⁵⁴ is a request of the Assembly directed to the Committee of Ministers in order to include in the then “future Council of Europe convention the severest and most widespread forms of violence against women, including domestic

50. Available at <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17826&lang=en>.

51. *Ibid*

52. Available at <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=17915&lang=en>.

53. *Ibid*.

54. Available at <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=17767&lang=en>.

violence and so-called “honour crimes”.⁵⁵ It is interesting that the Assembly is hereby also requesting the drafting of an additional protocol to the European Convention on Human Rights protecting gender equality as a human right.

With Recommendation 1891 (2009) *Migrant women: at particular risk from domestic violence*,⁵⁶ the Parliamentary Assembly calls the Committee of Ministers to broaden the definitions of violence against women to be included in the then newly drafted Convention, and particularly to include domestic violence, so-called “honour crimes” and female genital mutilation. The Assembly is also asking to take into consideration migrant women’s needs and vulnerabilities in the context of combating violence against women.

With Recommendation 1868 (2009) *Action to combat gender-based human rights violations, including the abduction of women and girls*,⁵⁷ the Parliamentary Assembly notes the vulnerability of women, especially migrant women, against phenomena of forced marriages, female genital mutilation and other human rights violations they experience because of their gender. This Recommendation is used once again as a step to reiterate the need for the drafting of a convention to combat the most serious and widespread forms of violence against women, including forced marriages. It is noteworthy that the Assembly asks for the setting up of a data collection system for gender-based human rights violations.

Resolution 1662 (2009) *Action to combat gender-based human rights violations, including the abduction of women and girls*⁵⁸ sets the parameters for collecting data on forced marriages and other gender-based human rights violations and developing a framework for the assistance of victims of such violations. It is particularly asking from states to amend their national legislation:

“so as to prohibit and penalise, without any difference in treatment, all forced marriages, female genital mutilation and any other gender-based violations of human rights, including those performed in the name of cultural or religious relativism; [and] to prosecute abductions, illegal confinements and forced returns of women or girls when there is a known risk of their being subjected to practices such as forced marriage or female genital mutilation, which are contrary to human rights and Council of Europe values”.⁵⁹

55. *Ibid.*

56. Available at <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17792&lang=en>.

57. Available at <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17730&lang=en>.

58. Available at <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17732&lang=en>.

59. *Ibid.*

Recommendation 1873 (2009) *Sexual violence against women in armed conflict*⁶⁰ is an instrument adopted under the normative influence of UN Security Council Resolution 1325 on Women, Peace and Security. The Parliamentary Assembly hereby asks from the Committee of Ministers to “address a recommendation on the role of women and men in conflict prevention, resolution and in peace building to Council of Europe member states without further delay, paying due attention to the prevention and effective combating of sexual violence against women in armed conflict”.⁶¹

Resolution 1681 (2009) *Urgent need to combat the so-called “honour crimes”*⁶² is an early step for a call for the drafting of a convention on combating violence against women. The Parliamentary Assembly hereby calls for the inclusion of domestic violence, so-called “honour crime” and female genital mutilation in the forms of violence against women that need to be addressed and also stresses out the vulnerability of migrant women to such forms of violence.

Recommendation 1847 (2008) *Combating violence against women: towards a Council of Europe Convention*⁶³ serves as a reminder on the need to develop a framework convention on the severest and most widespread forms of violence against women, which should:

“encompass the gender dimension and address the specific nature of gender-based violence; cover the severest and most widespread forms of violence against women, in particular domestic violence against women (partners or former partners, cohabiting or not), sexual assaults (including rape and “marital rape”) and harassment, forced marriages, so-called “honour crimes” and female genital mutilation; include provisions requiring states to take the necessary measures to protect victims and prevent and prosecute acts of violence against women; include an independent monitoring mechanism capable of controlling the effective implementation of the convention.”⁶⁴

Resolution 1635 (2008) *Combating violence against women: towards a Council of Europe convention*⁶⁵ asks from national parliaments to step up the

60. Available at <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17743&lang=en>.

61. *Ibid.*

62. Available at <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=17766&lang=en>.

63. Available at <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17683&lang=en>.

64. *Ibid.*

65. Available at <http://www.assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17682&lang=en>.

protection of women from violence by making amendments to their national legislation and particularly by complying with the following minimum standards, namely:

“making domestic violence against women, including marital rape, a criminal offence; regarding violence perpetrated between (former) partners as an aggravating circumstance; setting up sufficient numbers of safe emergency shelters; making provision to remove violent spouses or partners and take out protection orders against perpetrators; guaranteeing effective access to the courts and to protection measures for victims; allocating sufficient budgetary resources for the implementation of the law; monitoring the application of laws on violence against women passed by parliament”.⁶⁶

National parliaments were also asked by the Parliamentary Assembly to implement the above described standards with national measures with the Recommendation 1817 (2007) *Parliaments united in combating domestic violence against women: mid-term assessment of the Campaign*.⁶⁷

Resolution 1512 (2006) *Parliaments united in combating domestic violence against women*⁶⁸ calls on national parliaments of Council of Europe member states and parliaments having observer status with the Parliamentary Assembly to support the Council of Europe’s pan-European campaign to combat violence against women, including domestic violence.

With Recommendation 1759 (2006) *Parliaments united in combating domestic violence against women*,⁶⁹ the Parliamentary Assembly calls for the Committee of Ministers to allocate resources for the running of the campaign on domestic violence against women at international, institutional, local and regional level.

Resolution 1468 (2005) *Forced marriages and child marriages*,⁷⁰ the Parliamentary Assembly calls the parliaments of the Council of Europe member states to adopt relevant legal instruments that prohibit forced marriages, and most importantly to “regard the coercive sexual relations that victims are subjected

66. *Ibid.*

67. Available at <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17596&lang=en>.

68. Available at <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17464&lang=en>.

69. Available at <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17461&lang=en>.

70. Available at <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17380&lang=en>.

to within forced marriages and child marriages as rape”... and “to consider the possibility of dealing with acts of forced marriage as an independent criminal offence, including aiding and abetting the contracting of such a marriage”.⁷¹

Recommendation 1681 (2004) *Campaign to combat domestic violence against women in Europe*⁷² is an attempt to set up a pan-European campaign against domestic violence which will encourage member states to take the urgent measures needed and which will set up the issue on the agenda of all stakeholders, including EU institutions.

Recommendation 1663 (2004) *Domestic slavery: servitude, au pairs and mail-order brides*⁷³ calls for the Committee of Ministers to instruct “member states [of the Council of Europe] to combat domestic slavery in all its forms as a matter of urgency” and to criminalise any form of slavery and prosecute perpetrators.

Resolution 1337 (2003) *Migration connected with trafficking in women and prostitution*⁷⁴ is an instrument that calls states to adopt legislation on trafficking crimes and related offences with harsh penalties for perpetrators of such crimes and adopts a holistic approach proposing general and legal measures, measures to improve migration policies, preventive measures, and victim protection measures.

Recommendation Rec(2002)5 *on the protection of women against violence*⁷⁵ is an emblematic instrument of the Committee of Ministers to member states of the Council of Europe. It contains a comprehensive list of measures on the subject area, ranging from measures concerning violence in conflict and post-conflict situations, violence in institutional environments, measures concerning failure to respect freedom of choice with regard to reproduction, measures concerning killings in the name of honour, female genital mutilation, sexual harassment and forced marriages, measures with regard to violence within the family, to measures on information awareness and assistance to victims. The Committee of Ministers under this Recommendation calls member states to amend their criminal and civil law to ensure that women enjoy their human

71. *Ibid.*

72. Available at <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17273&lang=en>.

73. Available at <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17229&lang=en>.

74. Available at <http://www.assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17124&lang=en>.

75. Available at https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805e2612.

rights and freedom from violence as well as and judicial proceedings. The Recommendation offers a definition of ‘violence against women’ which is “to be understood as any act of gender-based violence, which results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion, or arbitrary deprivation of liberty, whether occurring in public or private life”.⁷⁶

Recommendation 1582 (2002) *Domestic violence against women*⁷⁷ is one of the first steps of the Council of Europe to deal with this form of violence and it contains a number of measures, including national legislation which:

“should prohibit all forms of domestic violence and introduce effective legal provisions, including the immediate removal of the violent partner from the common household and the environment of the woman and her children, without prior evidence of violence, and on the first complaint without waiting for the court order” ...and that “the concept of domestic violence should be defined in national legislation in such a way that it is treated as a serious criminal offence, whatever its form”.⁷⁸

At the time of the adoption of Recommendation 1523 (2001) *Domestic slavery*,⁷⁹ the member states of the Council of Europe had not outlawed domestic slavery. This Recommendation is an effort to “make slavery and trafficking in human beings, and also forced marriage, offences”⁸⁰ in the national criminal codes. It is interesting the Assembly proposes that embassies and other relevant authorities provide domestic workers with information about the risks of working abroad.

With Recommendation 1450 (2000) *Violence against women in Europe*,⁸¹ the Parliamentary Assembly calls member states to ratify the United Nations Convention on the Elimination of All Forms of Discrimination against Women and its protocol and recommends the Council of Ministers “to draw up a European programme to combat violence against women, with the aim of... bringing in legislation outlawing all forms of domestic violence; establishing legal recognition of marital rape and making it a criminal offence...”.⁸²

76. Appendix to Recommendation (2002) 5, *Ibid.*

77. Available at <http://assembly.coe.int/nw/xml/xref/Xref-XML2HTML-en.asp?Fileid=17055>.

78. *Ibid.*

79. Available at <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=16924&lang=en>.

80. *Ibid.*

81. Available at <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=16783&lang=en>.

82. *Ibid.*

IV. Concluding Remarks

The value of the legal and soft-law instruments of the Council of Europe –as discussed above– concerning the elimination of violence and discrimination against women is immense. Normative and standard-setting developments within a regional human rights system, such as the Council of Europe, can be transportable into other regional legal systems, such as the EU. This has been witnessed also with international judicial bodies speaking to one another when they cite the judgments of courts of other regional organisations. The Council of Europe (along with its organs, such as the Committee of Ministers, the European Court of Human Rights⁸³ and the Parliamentary Assembly) is deemed to be the regional organisation with the ‘most teeth’ concerning the effective implementation and enforcement mechanism of human rights in its member states. The existing legal and soft-law framework is more than adequate to tackle the causes and the manifestations of this phenomenon in Europe; if implemented, it would considerably advance women’s rights and bring member states of the Council of Europe and the EU closer to real gender equality and inclusive citizenship for women and girls. Yet, a gap still exists between normative-setting standards and practice, between *de jure* and *de facto* gender equality in Europe, and as a consequence the number of victims of violence still persists.

One reason for this is that there are some states that are reluctant to commit themselves to the ratification of the Istanbul Convention, or to the implementation of the Resolutions and the Recommendations of the organs of the Council of Europe. Some of the states that have not ratified the Istanbul Convention yet are entangled in feisty national debates over the wording of certain provisions and their compatibility with their national constitutional provisions.⁸⁴ Campaigns have been run throughout Europe against the Istanbul Convention as it is perceived to challenge ‘traditional families’ and to impose

83. See for example European Court of Human Rights, *Factsheet-Domestic Violence*, June 2019, available at https://www.echr.coe.int/Documents/FS_Domestic_violence_ENG.pdf.

84. See for example, the case of Armenia. While Armenia has signed the Istanbul Convention is far from ratifying it; the reason behind the reluctance of Armenia is that the Istanbul Convention is deemed incompatible with the Armenian Constitution as the latter makes it clear that ‘a man and a woman of marriageable age shall have the right to marry and found a family.’ It is not surprising that in 2019 Armenia requested the opinion of the Venice Commission on the constitutional implications of the ratification of the Istanbul Convention for Armenia. Council of Europe, *Armenia requests an opinion from Venice Commission*, Strasbourg, 30.07.2019, available at <https://www.coe.int/en/web/istanbul-convention/-/armenia-requests-an-opinion-from-venice-commission>.

'gender' ideologies. For example, in the case of Bulgaria, strong opposition from various sources and a judicial decision from the Supreme Court on the concept of "gender" found the Istanbul Convention to be unconstitutional; in the words of the Court: "despite its undoubtedly positive sides, the Convention is internally incoherent and this contradiction creates a second layer in it", shifting its meaning beyond its declared aims – protection of women from violence.⁸⁵ Other states are not prepared to ratify the Convention because of the lack of available resources, whether institutional, budgetary or other, to implement the provisions of the Istanbul Convention. Such is the case of the UK, where despite the UK's advanced protection of women's rights, it is believed that the country is not prepared for its effective implementation. As it was reported:

"The [Istanbul] Convention is at loggerheads with an ideology that does not think investing in women's services is a priority. We are living with a mismatch between stated aims and what happens on the ground for women...The UK's policies towards migrant women would also make it incompatible with the Istanbul Convention...Lots of rape crisis centres have closed their waiting lists – they are comically underfunded and underinvested."⁸⁶

In other cases, where states have ratified the Istanbul Convention, there are not enough financial resources to comply with all their legal obligations, i.e. funding for rape crisis centres, 24/7 helplines, domestic violence shelters, etc.

A solution would be offered through the EU, a *sui-generis* supranational organisation, that has set its targets right from its inception towards the promotion of gender equality and the protection of human rights; Had the EU ratified the Istanbul Convention, it would have significantly advanced the protection of human rights within the EU legal order and accelerated the elimination of violence against women. At the same time, the monitoring process of the implementation of the Istanbul Convention would subject the EU itself to outside monitoring.

Furthermore, it would have given the Court of Justice of the EU the opportunity to put its stamp on the protection of human rights case law as well as to give a uniform interpretation of the Istanbul provisions within the EU legal order. After all, it should be remembered that the protection of women from vio-

85. R. Smilova, Promoting 'Gender Ideology': Constitutional Court of Bulgaria Declares Istanbul Convention Unconstitutional, *Oxford Human Rights Hub* 22.08.2018, available at <https://ohrh.law.ox.ac.uk/promoting-gender-ideology-constitutional-court-of-bulgaria-declares-istanbul-convention-unconstitutional/>.

86. M. Oppenheim, Austerity cuts blamed for UK failure to ratify pan-European convention combatting violence against women, *The Independent*, 18.02. 2019, available at <https://www.independent.co.uk/news/uk/home-news/uk-ratify-istanbul-convention-women-girls-rights-european-a8768606.html>.

lence is not provided *ad hoc* in any of the provisions of the EU treaties. While the EU has embarked on a number of initiatives and strategies in tackling inequalities between men and women and even if there are dispersed legal instruments promoting gender equality and covering aspects of violence against women (such as Directive 2012/29/EU on establishing minimum standards on the rights, support and protection of victims of crime;⁸⁷ Directive 2011/36/EU on trafficking in human beings;⁸⁸ Directive 2004/81/EC on the residence permit issued to TCN who are victims of human trafficking;⁸⁹ Directive 2011/99/EU on the European Protection Order (EPO);⁹⁰ Regulation (EU) No 606/2013 on mutual recognition of protection measures in civil matters;⁹¹ Directive 2006/54/EC on equal opportunities and equal treatment of men and women in matters of employment and occupation (recast);⁹² Directive 2004/113/EC on equal treatment between men and women in the access to and supply of goods and services),⁹³ yet these efforts remain far from setting up a solid framework on the eradication of violence against women. On the 4th of April 2019, the European Parliament adopted a resolution seeking an opinion from the Court of Justice on the compatibility with the Treaties of the proposals for the accession by the European Union to the Istanbul Convention and on the procedure for that accession. In 2017, the Council had already signed the Istanbul Convention. It is noteworthy, that the EP's resolution is rather a justified reaction to the inertia of the Council and the Commission concerning the ratification of the Istanbul Convention. However, the European Parliament disagreed with the legal basis upon which the Council acted. Specifically, the Council had acted upon two different decisions: one with regard to asylum and non-refoulement, and the other with regard to matters related to judicial cooperation in criminal matters. The European Parliament is of the view that the EU has overall competence to protect fundamental rights; accordingly, the EU should seek a broad accession to the Istanbul Convention without any limitations.

Hence, the European Parliament took the following view:

“that there is legal uncertainty as to whether the accession to the Istanbul Convention as proposed by the Council is compatible with the Treaties, in particular as regards the choice of the appropriate legal basis for the decisions

87. OJ L 315, 14.11.2012, p. 57–73.

88. OJ L 101, 15.4.2011, p. 1–11.

89. OJ L 261, 6.8.2004, p. 19–23.

90. OJ L 338, 21.12.2011, p. 2–18.

91. OJ L 181, 29.6.2013, p. 4–12.

92. OJ L 204, 26.7.2006, p. 23–36.

93. OJ L 373, 21.12.2004, p. 37–43.

on the signing and on the conclusion by the European Union of the convention, and as regards the possible split into two decisions on the signing and on the conclusion of the convention as a consequence of that choice of legal basis⁹⁴; furthermore, the EP noted that “there is also legal uncertainty as regards the compatibility with the Treaties of the practice of a ‘common accord’ by the Council in its decision-making, which is applied in addition to or alternatively to the relevant decision-making procedure in the Treaties, and, in this context, as regards the application of the principle of sincere cooperation in the light of the expressed objective of the Union to conclude the Istanbul Convention.”⁹⁵

The decision as to the ratification will be finalised once the Court of Justice issues its Opinion on the subject matter.

In conclusion, one may observe that -if nothing at all- the political debates and heated discussions surrounding the wording of certain provisions of the Istanbul Convention have opened up the space, in the public and private sphere, online and offline, to explore old and new perceptions about ‘discrimination’, ‘citizenship’, ‘gender’, the role of women in our societies, and even ‘violence’, something expected in democratic societies. However, we should not forget that the issue at stake is that the elimination of discrimination and violence against women is not a programmatic goal; it is a *human right entitlement*. To resist the ratification of Istanbul Convention is another form of persisting discrimination that women face across Europe today. Case law from international courts has now affirmed that illegal acts, such as violence against women and domestic violence, that violate human rights, including the right to human dignity, the right to life, freedom from torture, etc., are imputable to states.⁹⁶ Accordingly, “states have international obligations associated with the occurrence of domestic violence within their borders; the duty to prevent, investigate, punish, and, when possible, repair the harm. All of these duties may be referred to as the general duty to ensure human rights”.⁹⁷

94. European Parliament Resolution 2019/2678(RSP) of 4 April 2019 seeking an opinion from the Court of Justice on the compatibility with the Treaties of the proposals for the accession by the European Union to the Council of Europe Convention on preventing and combating violence against women and domestic violence and on the procedure for that accession, available at http://www.europarl.europa.eu/doceo/document/TA-8-2019-0357_EN.html.

95. *Ibid.*

96. See *Jessica Lenahan (Gonzales) v. United States of America*, Inter-American Commission on Human Rights, *Maria da Penha Maia Fernandes v. Brazil*, Case 12.051, Report No. 54/01, OEA/Ser.L/V/II.111 Doc. 20 rev. at 704 (2000).

97. P. T. Moser, *Duty to Ensure Human Rights and its Evolution in the Inter-American*

With these in mind, and irrespective of whether the Istanbul Convention will be ratified and implemented, it is the duty of states -under international law- to ensure women's rights to live free from any form of violence within their territories. Should they fail in doing so, they will incur state responsibility over their inactions or omissions.