

CJEU CASE LAW: POSSIBLE INTERSECTIONS OF JUDICIAL COOPERATION IN CRIMINAL MATTERS AND GENDER LAW¹

Abstract: Gender equality is a fundamental principle enshrined in European Union (EU) law. The Court of Justice of the European Union (CJEU) has played a significant role in interpreting and enforcing these principles, ensuring that gender considerations are integrated into legal assessments and judicial outcomes. From a gender law perspective, the CJEU's interpretations lead towards incorporation of gender equality principles into judicial cooperation, especially concerning issues such as gender-based violence and human trafficking. The Court's rulings have increasingly recognized the vulnerabilities faced by women and gender minorities in legal contexts, affirming that gender considerations must be integral to the assessment of justice in criminal matters. This evolution reflects a broader commitment to uphold equality within the EU's legal framework. Both judicial cooperation in criminal matters and gender law are dynamic areas of EU jurisprudence. Recent developments in CJEU case law show that the court is actively steering EU law in both of these areas. Plotting possible intersections of CJEU case law in these two areas therefore does not only need to account for present principles guiding CJEU in each of these two areas, but also the probable course of development thereof in near future.

Keywords: EU law; gender law; judicial cooperation in criminal matters; the European Arrest Warrant; the European Protection Order

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1 This paper has resulted from research conducted as part of strategic project for 2025 titled “Problems of creating, interpreting and applying law” (subtopic: “Contemporary challenges to the judiciary”, topic of the research group: “Reform of the judiciary from the perspective of international criminal law and criminal law”), financed by the University of Belgrade, Faculty of Law.

1. INTRODUCTION

Gender equality is a fundamental principle enshrined in European Union (EU) law, particularly under Article 23 of the Charter of Fundamental Rights, which mandates that equality between women and men must be guaranteed in all areas, including employment and justice. The Court of Justice of the European Union (CJEU) has played a significant role in interpreting and enforcing these principles, ensuring that gender considerations are integrated into legal assessments and judicial outcomes.²

The interpretation of EU law in the realm of judicial cooperation in criminal matters by CJEU is a significant area of legal discourse. The CJEU plays a crucial role in shaping the legal frameworks that govern cross-border judicial collaboration among EU Member States, focusing on both the effectiveness of justice and adherence to principles of gender equality. This intersection highlights the increasing importance of gender considerations in legal proceedings, reflecting broader societal changes and the EU's commitment to combating gender-based discrimination and violence.

Judicial cooperation within the EU is primarily framed by the Treaty on the Functioning of the European Union (TFEU), which emphasizes mutual trust and recognition among Member States in the enforcement of criminal law. Several legal instruments have been developed as embodiment of such cooperation. If, for example, a domestic violence survivor flees from Spain to Germany, Spanish authorities may issue the European Protection Order (EPO), which then German authorities recognize and enforce. Also, if an abuser is arrested in Poland under a European Arrest Warrant (EAW) from Italy, Polish courts must assess if extradition would endanger the abuser's rights. Finally, if a woman trafficked across EU borders is granted victim status under the Victims' Rights Directive (2012/29/EU) and the Anti-Trafficking Directive (2011/36/EU, as amended by Directive 2024/1712), she must receive gender-sensitive support and protection from re-trafficking.

While the European Arrest Warrant (EAW) serves as a pivotal tool for judicial cooperation in criminal matters, enabling the arrest and transfer of individuals across borders. However, the application of the EAW has raised critical discussions, particularly regarding the adequacy of detention conditions and the fundamental rights of accused persons, underscoring the principle that mutual trust is contingent upon the respect for human rights standards in all Member States.

From a gender law perspective, the CJEU's interpretations lead towards incorporation of gender equality principles into judicial cooperation, especially concerning issues such as gender-based violence and human trafficking. The Court's rulings have increasingly recognized the vulnerabilities faced by women

2 K. Liu, C. O'Cinneide, *The ongoing evolution of the case-law of the Court of Justice of the European Union on Directives 2000/43/EC and 2000/78/EC: A legal analysis of the situation in EU Member States*, Publications Office of the EU, Luxembourg, 2019, 36.

and gender minorities in legal contexts, affirming that gender considerations must be integral to the assessment of justice in criminal matters. This evolution reflects a broader commitment to uphold equality and combat impunity within the EU's legal framework.

The topic is notable not only for its legal implications but also for the ongoing debates about the adequacy of current frameworks in protecting gender rights within the justice system. Critics argue that despite progress, substantial challenges remain in ensuring that the legal responses to gender-based violence and discrimination are adequately addressed in EU judicial cooperation mechanisms. The CJEU's role in navigating these complexities is pivotal, as its decisions set important precedents that can either enhance or undermine the rights of individuals affected by gender-based crimes.

2. HISTORICAL CONTEXT

The evolution of gender equality law within the European Union (EU) has been a progressive journey, beginning with the Treaty establishing the European Economic Community (EEC) in 1957. This foundational treaty contained only a single provision related to gender equality, specifically Article 119, which established the principle of equal pay for equal work between men and women. This early acknowledgment laid the groundwork for further developments in gender equality legislation.

With the Treaty of Lisbon, which came into force on December 1, 2009, the European Community and the EU were merged into a single legal framework. The current legal order is governed by two primary treaties: the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU). The TEU outlines the fundamental structures and overarching provisions of the Union, while the TFEU provides detailed elaborations on various policy areas, including gender equality. Furthermore, the Charter of Fundamental Rights of the EU, also enacted in 2009, holds equal legal value to the TEU and TFEU, reinforcing the commitment to uphold gender equality across member states.

Judicial cooperation in criminal matters in the EU was formally initiated with the Treaty of Amsterdam in 1999, which introduced the framework for mutual recognition of judicial decisions. This shift emphasized the need for cohesive legal standards across Member States, thereby enhancing the protection of individual rights, including gender-related issues.

The establishment of the Area of Freedom, Security, and Justice (AFSJ) further solidified the commitment to cooperation, leading to the development of legal instruments such as the Framework Decision on the European Arrest Warrant (EAW) in 2002.³

3 See more in: I. Goldner Lang, "Europsko pravo kao okvir pravosudne suradnje u kaznenim stvarima", *Hrvatski ljetopis za kazneno pravo i praksu*, 2/2014.

3. NORMATIVE FRAMEWORK

3.1. Judicial Cooperation In Criminal Matters

Judicial cooperation in the EU encompasses mechanisms designed to facilitate collaboration among Member States in civil and criminal matters. The framework is essential for promoting the rule of law and ensuring the independence of judicial systems across the EU. The CJEU plays a significant role in asserting and shaping these cooperative frameworks, particularly in criminal matters, where mutual trust among Member States is foundational.⁴

Judicial cooperation is presently prescribed by Articles 82-86 TFEU, with the principle of mutual recognition of judgments and judicial decisions of Member States as pivotal for the entire area of law. The principle of mutual recognition is crucial in the context of judicial cooperation, allowing for decisions made in one Member State to be recognized and enforced in others. This principle is underpinned by the expectation that all Member States uphold certain standards of justice, including those related to human rights. However, the increasing number of cases brought before the European Court of Human Rights concerning violations of Article 3 of the European Convention on Human Rights—primarily due to poor detention conditions—has prompted Member States to scrutinize these conditions more rigorously when assessing requests for judicial cooperation.

Relevant provisions of the TFEU outline the competencies of the EU in the area of judicial cooperation, focusing on enhancing mutual trust among Member States in the administration of justice. Under the TFEU, the greatest part of legislation for judicial cooperation in criminal matters is adopted under the ordinary legislative procedure and is subject to judicial review by the CJEU. However, judicial cooperation in criminal matters, together with police cooperation, has retained some features of the manner in which it was regulated before the Treaty of Lisbon: the Commission shares the power of initiative with the Member States, provided they represent a quarter of the members of the Council (Article 76 TFEU); and the Parliament is merely consulted on specific measures for judicial cooperation in criminal matters, which are then adopted unanimously by the Council.⁵ In the absence of unanimity in the Council, it is still possible for nine or more Member States to work together within the enhanced cooperation mechanism. More than two dozen legislative acts have been adopted in the subject

4 Mitsilegas points out that the system of judicial cooperation within the EU is not a static one, but that it instead presupposes a dynamic towards “earned trust”: “Ensuring effective and real compliance with fundamental rights leads to a transformation of the operation of the principle of mutual recognition in criminal matters, on the basis of a shift from blind to earned trust in Europe’s area of criminal justice”, V. Mitsilegas, “The European Model of Judicial Cooperation in Criminal Matters: Towards Effectiveness based on Earned Trust”, *Revista Brasileira de Direito Processual Penal*, 2/2019, 592.

5 See more in Z. Đurđević, “Lisabonski ugovor: prekretnica u razvoju kaznenog prava u Europi”, *Hrvatski ljetopis za kazneno pravo i praksu*, 2/2008.

area, covering the topics of common minimum standards for criminal proceedings, the fight against terrorism, the fight against corruption, cybercrime, fraud and money laundering, the exchange of information between the Member States and EU agencies, and the protection of victims. There are two principal bodies at EU level charged with tasks within this area: Eurojust, the EU Agency for Criminal Justice Cooperation, and EPPO, the European Public Prosecutor's Office.⁶

In addition to various directives aimed at harmonizing criminal law across Member States, the key instrument that has emerged from this framework is the European Arrest Warrant (EAW). The EAW has become the central mechanism for cooperation among Member States in criminal matters, facilitating the arrest and surrender of individuals to face charges or serve sentences.⁷ It should be noted that since the introduction of the EAW, the case-law of the CJEU has materially affected the interpretation of grounds of non-recognition of the EAW, namely in relation to violation of fundamental rights by the issuing state. The EAW Framework Decision, in Art. 1(3) entails a general provision allegiance to fundamental rights of the EU: "This Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union".⁸ It is on the grounds of this provision that the CJEU has developed a two-step test, commonly referred to as the "exceptional circumstances doctrine", which the executing authority should perform when faced with a prospect that a violation of a fundamental right may occur in issuing state. Only a positive finding of the test may rebut the presumption of mutual trust. The steps comprise, first, a finding of systemic deficiencies in respect of a certain fundamental right in the issuing state, such as prison conditions, lack of independence of the judiciary etc, and, second, a finding that in the particular circumstances of the case said fundamental right of the person subject to EAW would be violated.⁹ Thus, the CJEU has ruled on cases where concerns about material detention conditions led to the refusal of EAW requests, indicating that the principle of mutual trust is not absolute, but also narrowing the scope of grounds for refusal, by requiring that refusal is possible only in exceptional cases, where detention conditions in the very facilities in which the suspect would be held are found to pose a real risk for the suspect.¹⁰

6 European Parliament, Judicial Cooperation in Criminal Matters, <https://www.europarl.europa.eu/factsheets/en/sheet/155/judicial-cooperation-in-criminal-matters>, 19 April 2025.

7 See more in: A. Klip, "European Criminal Law, An Integrative Approach", *Reforma Evropske unije – Lisabonski ugovor* (eds. S. Rodin, T. Čapeta, I. Goldner Lang), Narodne novine, Zagreb 2009.

8 Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, Art. 1(3), *Official Journal* L 190, 18/07/2002 P. 0001 – 0020.

9 L. Mancano, "The Systemic and the Particular in European Law—Judicial Cooperation in Criminal Matters", *German Law Journal*, 24/2023, 967–969.

10 Case C-220/18 PPU, ML (Conditions of detention in Hungary), Judgment of 25 July 2018, paras. 67 – 107; See also B. Martins, J. Pinho, J. Gomes, "How can prison architecture

Another important instrument of cooperation is the European Protection Order (EPO), introduced by virtue of EC Directive 2011/99/EU. The EPO is issued and executed by judicial authorities to address protection needs of individuals who already benefit from national protection measures. The EPO allows a victim of crime, particularly survivors of gender-based violence (GBV), who is under protection in one Member State (e.g., through a restraining order) to transfer that protection to another Member State if they move. The EPO has been designed primarily for cases of domestic and gender-based violence, in order to ensure that victims are not forced to re-apply for protection when relocating within the EU. The EPO implements the principle of continuity of protection across borders. It is often underutilized – the barriers to resorting to it include lack of awareness, procedural complexity, and uneven implementation.

The Victim's Rights Directive (2012/29/EU), although not a judicial cooperation instrument per se, underpins both the EAW and the EPO with minimum standards for victim treatment across the EU. Its gender-relevant provision ensure recognition of women and girls affected by GBV as vulnerable victims, and entitles them to specialized support services, protection from intimidation or retaliation, and privacy safeguards during criminal proceedings. This directive pushes Member States and EU institutions to consider gender impacts when implementing judicial cooperation.

3.2. Gender Law Perspective

Over time, the EU has developed a robust legislative framework aimed at promoting gender equality. Equality between women and men is enshrined in Art. 23 of the Charter of Fundamental Rights. A number of legislative acts, all directives, were adopted on equality between women and men, both in relation to employment and beyond the workplace (with respect to access to and supply of goods and services). An important policy strategy was the Gender Equality Strategy 2020-2025, aiming at achieving a Union of Equality by 2025. The Strategy outlined key objectives such as ending gender-based violence, challenging gender stereotypes, and closing gender gaps in the labor market.

As part of the Strategy, the Pay Transparency Directive was adopted in May 2023, the Directive on Gender Balance in Corporate Boards (November 2022). In October 2023, the Commission became a party to the Council of Europe Convention on preventing and combating violence against women and domestic violence - the Istanbul Convention.¹¹ The EU's accession to the Istanbul Convention

affect judicial cooperation in criminal matters – the case of detention conditions”, *Justice Trends*, March 2025, <https://justice-trends.press/how-can-prison-architecture-affect-judicial-cooperation-in-criminal-matters-the-case-of-detention-conditions/>, 19 April 2025.

11 European Commission, Gender Equality Strategy, https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/gender-equality/gender-equality-strategy_en, 19 April 2025.

marks a significant advancement in the legislative framework concerning gender-based violence and discrimination. This convention is the first international instrument specifically aimed at eliminating violence against women, thereby reinforcing the EU's commitment to gender equality and enhancing judicial cooperation in combating gender-based violence across Member States.¹² As result, the EU adopted a commensurate legislative act – Directive (EU) 2024/1385 of the European Parliament and of the Council, of 14 May 2024, on combating violence against women and domestic violence.¹³

The body of EU gender legislation also includes the Equality Bodies Directives, which were adopted in May 2024 (Council Directive (EU) 2024/1499 and Directive (EU) 2024/1500 of the European Parliament and of the Council). The directives set standards for equality bodies concerning equal treatment and opportunities for women and men, particularly in the workplace.

A comparative analysis of gender equality law across the EU Member States, as well as Iceland, Liechtenstein, Norway, and the United Kingdom, highlights the various approaches adopted by countries in implementing EU gender equality directives into their domestic laws. The analysis was broken down into segments, namely general concepts, equal pay and equal treatment at work, work-life balance, issues, pension and social security schemes, status of self-employed workers, access to goods and supply of services, violence against women and domestic violence, and compliance and enforcement aspects. While significant developments have been noted, the report presented a number of general problems, such the gender pay gap, lack of paternity leave, structural difficulties with respect to social security which put women at a disadvantage, reinforcement of gender stereotypes, traditional family values and traditional gender roles, increasing number of instances of sexual harassment, domestic and gender-based violence. In addition, a low number of instances of litigation indicates low level of practical effectiveness of the described legal framework.¹⁴ The need for judicial cooperation is particularly evident in this context, as national standards and practices are crucial for effective enforcement and compliance with EU law.

12 For a thorough analysis of the Istanbul Convention from the gender law perspective, see: M. Acale Sánchez, I. Marković, S. Strand, "Gender Competent Criminal Law", *Gender Competent Legal Education* (eds. D. Vujadinović, M. Fröhlich, Th. Giegerich), Springer, Cham 2023, 423–466.

13 The relevance of gender-based violence in refugee and asylum law is growing in importance in the EU context. For an outline of international instruments on refugee status of women, see: I. Krstić, "The Recognition of Refugee Women in International Law", *Legal Issues of International Law from a Gender Perspective* (eds. I. Krstić, M. Evola, M. I. Rilbes Moreno), Springer, Cham 2023, 113–132.

14 B. Böök, M. De la Corte Rodgiguez, A. Timmer, *A comparative analysis of gender equality law in Europe 2024*, Luxembourg Publications Office of the EU, Luxembourg, 2025, 227–229.

4. INTERSECTION OF JUDICIAL COOPERATION IN CRIMINAL MATTERS AND GENDER LAW IN CJEU CASE LAW

The CJEU has played a significant role in shaping EU gender law through its rulings in various landmark cases. These cases often address the intersection of gender recognition, personal identity, and national legislation, influencing the rights and recognition of individuals across Member States.

As has been noted, the CJEU case law substantially limited the grounds of refusal of EAW on the grounds of violation of fundamental rights, due process, detention conditions etc. in the issuing state, by requiring that such refusal may be granted only exceptionally, following a two step test, which finds both a general systemic deficiency on the part of the issuing country (first step), but also specific, concrete and real risk for the suspect's rights be determined (second step). With respect to the degrading or otherwise unsuitable detention conditions, the latter means that CJEU requires that such grounds may be relied upon only exceptionally and only if detention conditions pose a concrete imminent risk for the suspect, in so far as that they exist in the actual detention facilities in which the suspect would be detained.¹⁵

The CJEU has addressed issues concerning the intersection of gender rights and family status within the context of EU law. In case *Coman*, the Court ruled that Romania was obliged to recognize a same-sex marriage for the purpose of granting residency to a third-country national married to an EU citizen.¹⁶ Similarly, in *Pancharevo* case, the Court mandated that Bulgarian authorities recognize a birth certificate issued in Spain listing two women as parents to facilitate the issuance of a Bulgarian identity card for the child, ensuring the effective enjoyment of freedom of movement and residence across the EU.¹⁷

From a gender law perspective, specifically involving gender-based violence, in a recent case a landmark ruling has been rendered.¹⁸ The case involved a Turkish woman who sought international protection in Bulgaria. She alleged forced marriage, abuse, and threats from her family, as well as that she feared for her life if she were to return to Turkey. The CJEU clarified that gender-based violence represented a form of persecution endured by women, recognizing women as a “particular social group” under Directive 2011/95, and in line with Istanbul Convention, which is exposed to structural gender-based violence. This landmark ruling expands eligibility for refugee status to women facing gender-based violence, including physical, mental, sexual, and domestic abuse in their home countries.

15 Case C-220/18 PPU, ML (Conditions of detention in Hungary), Judgment of 25 July 2018, paras. 67–107.

16 Case C-673/16 *Coman*, Judgment of 5 June 2018, paras. 40–56.

17 Case C-490/20 *Pancharevo*, Judgment of 14 December 2021, paras. 65–69.

18 Case C-621/21, Judgment of 16 January 2024.

The CJEU ruled that women are entitled to protective measures afforded by EU law for individuals residing in a third country. In effect, this decision opened pathways for refugee status or subsidiary protection for women fleeing gender-based violence, recognizing the specific vulnerabilities they face.¹⁹

In recent years, the CJEU greatly developed its case law related on gender identity, advancing further from previous jurisprudence on gender identity discrimination.²⁰ In the *Mirin* case, which addresses the rights of individuals seeking legal gender recognition within the EU, the CJEU imposed upon the Member States an obligation of mutual recognition of gender identity, in connection with the freedom of movement. The case originated with a Romanian citizen who transitioned from female to male while residing in the United Kingdom. Following the legal recognition of this gender change by UK authorities, the individual requested an update to their birth certificate from Romanian authorities. However, in 2021, the Romanian government denied this request despite the individual holding dual British and Romanian citizenship, raising questions about the recognition of gender changes post-Brexit while EU laws were still applicable during the transition period.²¹

Other important recent judgments have been brought to life in relation to processing of personal data under the General Data Protection Regulation (GDPR). First, in *Mousse* the CJEU ruled that a practice of collecting data on person's gender may lead to discrimination, namely that mandatory choice between masculine and feminine title when purchasing train tickets online is contrary to the data minimization principle under the GDPR.²²

In another significant ruling, in the case *Deldits*, the CJEU addressed the implications of gender identity recognition in the context of the General Data Protection Regulation (GDPR). This case involved an Iranian national in Hungary who sought to change her registered gender from female to male but faced denial due to the lack of surgical gender reassignment. The CJEU ruled that while national authorities can require evidence of gender identity, they cannot mandate surgical procedures as a condition for changing one's registered gender. In other words, the CJEU has mandated that Member States must recognize the legal completion of gender transitions that occur in other Member States, thereby obliging them to rectify identity documents accordingly. This ruling effectively established the right to change registered gender identity across EU member states without the necessity for surgical intervention, influencing public registries and personal data recognition more broadly. Thus, the CJEU explicitly abandoned

19 *Ibid.*, paras. 44–62.

20 For an overview of the state of relevant CJEU jurisprudence before the most recent case-law presented herein, see M. Mirisch-Krueger, "Filling the Legal Void in Interstate Legal Gender Recognition in the European Union: a US-Style Full Faith and Credit Clause and Coman-Based Approach", *Southwestern Journal of International Law*, 1/2022, 210–229.

21 Case C-4/23 *Mirin*, Judgment of 4 October 2024, paras. 56–71.

22 Case C-394/23, *Mousse*, Judgment of 9 March 2025, paras. 46–64.

the medicalised understanding of transgender identity, basing the rights of applicant under the General Data Protection Regulation (GDPR) solely on his “gender identity”.²³ Such position underscores the CJEU’s role in promoting gender rights across the EU and ensuring that national laws do not discriminate against individuals based on their gender identity.

The implications of these rulings extend beyond individual cases; they challenge existing national legislations that do not conform to EU law on gender identity. The court’s decisions compel member states to reassess their legal definitions of gender, particularly in contexts like marriage and civil status, where definitions can significantly affect rights and recognition. For instance, rulings have clarified that gender recognition must reflect an individual’s lived experience, thereby calling for an inclusive approach to gender identity within legal frameworks.

5. PERSPECTIVE ON THE FUTURE

Both judicial cooperation in criminal matters and gender law are dynamic areas of EU jurisprudence. Recent developments in CJEU case law show that the court is actively steering EU law in both of these areas. An endeavor to plot possible intersections of CJEU case law in these two areas therefore does not only need to account for present principles guiding CJEU in each of these two areas, but also the probable course of development thereof in near future.

While the CJEU has not issued a high volume of gender-specific judgments, its framework jurisprudence (especially on fundamental rights, mutual trust, and proportionality) is laying the groundwork for more nuanced gender-sensitive judicial cooperation. Considering the existing fact patterns and tendencies, it appears that one should expect CJEU to rule on matters which would involve compatibility of domestic violence and EAW, as well as intersectionality in judicial protection, such as cumulative presence of gender and race or immigration status. The integration of a gender perspective in the judicial cooperation framework is essential to address the disparities faced by women, especially in the context of crises such as the COVID-19 pandemic, the rising cost of living, and the war in Ukraine. The CJEU’s landmark decisions, including the 2024 ruling mandating recognition of gender and name changes across member states, underscore the Court’s role in upholding fundamental rights and addressing contemporary gender issues within a cross-border legal framework. However, challenges persist regarding the consistency of applying CJEU interpretations in national jurisdictions, leading to debates over the definitions of gender and the adequacy of protections against gender-based violence. Critics highlight the necessity for clearer legal definitions and enforcement mechanisms to ensure uniformity and effectiveness in combating gender discrimination across the EU.

23 Case C-247/23, *Deldits*, Judgment of 13 March 2025, paras. 39–50.

As judicial cooperation continues to evolve, the CJEU remains at the forefront of shaping gender law, reflecting the complex dynamics of member states' sovereignty, individual rights, and the ongoing quest for gender equality. The dialogues stemming from CJEU case law are essential for fostering a comprehensive legal environment that safeguards the rights of all individuals, particularly those at the intersection of gender identity and judicial processes.

The establishment of robust monitoring and evaluation mechanisms will be essential for assessing the effectiveness of judicial cooperation in relation to gender law. This includes analyzing the outcomes of CJEU rulings and their impact on national policies. Ongoing assessments will help identify gaps in implementation and ensure that Member States are held accountable for their commitments to combat gender-based violence and discrimination within their jurisdictions.

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Summary

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