

THE ISTANBUL CONVENTION KEEPS ALIVE

The Council of Europe Convention on preventing and combating violence against women and domestic violence, also known as the Istanbul Convention, was signed by Turkey on 11 May 2011. A landmark treaty for women's rights, the Convention designated gender inequality as the source of violence against women, defining violence as not solely a domestic issue but one of a larger societal problem. Despite being the most comprehensive legal framework that strives to combat domestic violence and gender inequality to date, Turkey withdrew from the treaty with a Presidential Decree at midnight on 20 March 2021. While providing an overview of the domestic dynamics that led to Turkey's withdrawal, this article shines a light on the collective struggle for gender equality in Turkey, arguing that society is now aware of violence more than ever.

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The Council of Europe Convention on preventing and combatting violence against women and domestic violence, widely known in Turkey and the world as the “Istanbul Convention,” opened for signature on 11 May 2011 in Istanbul. Turkey was the first country to sign the treaty. The obligation to implement the Convention began in 2014, following its ratification by The Great National Assembly of Turkey. According to the 90th article of the Constitution of the Republic of Turkey, international treaties and conventions have the force of law. Even further, when the law and international conventions contradict with each other on an issue, the articles of international conventions are taken as the basis. In this respect, international conventions are binding.

The Istanbul Convention was signed by the parliament by unanimous vote with great pride. Indeed, the first penalization of Turkey by the European Court of Human Rights in a case of violence against a woman (Opuz/2009) has led Turkey to find solutions to this issue. The fundamental meaning of the Opuz verdict was that violence against women is not solely a domestic issue, but a social problem at large; thus, the state has to take all kinds of measures to prevent violence against women. The Convention was signed under the Justice and Development Party (AKP) government, which is still the ruling party.

The most important feature of the Istanbul Convention is that it bases the source of violence against women on gender inequality. In the Convention, it is accepted that the current understanding of gender determines social roles for women and men, and it is emphasized that these roles, produced by society, have a share in violence against women. The Convention defines “gender-based violence” as “violence against women because of being a woman and that disproportionately affects women.” From this point of view, the Convention stipulates that the mentality that produces violence should be educated and that gender equality be ensured. The provision that best describes this purpose is Article 12 of the Explanatory Report on the Istanbul Convention:

The obligations...are based on the conviction of the drafters that existing patterns of behaviour of women and men are often influenced by prejudices, gender stereotypes and gender-biased customs or traditions. Parties to the Convention are therefore required to take measures that are necessary to promote changes in mentality and attitudes. The purpose of this provision is to reach the hearts and minds of individuals who, through their behaviour, contribute to perpetuate the forms of violence covered by the scope of this Convention.¹

¹ The Council of Europe, *Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, CETS No. 210 opened for signature in Istanbul (Turkey) on 11 May 2011 and explanatory report* (Strasbourg: Council of Europe, 2012).

In addition, the Convention describes the forms of violence against women: psychological, physical and sexual violence, rape, genital mutilation, forced marriage, forced abortion, and forced sterilization. The Convention also defines concepts that have entered our lives in recent years, such as stalking and violence registered through information systems (digital violence), and produces solutions. Furthermore, the Convention clearly states that violence against women cannot be justified through culture, tradition, religion, customs, or so-called honor, and adds that violence against women cannot be justified by allegations such as victims not complying with cultural, religious, social, or traditional rules and customs.

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The 4P Rule

In terms of ending violence against women, the Convention bases its structure on four obligations called the 4P rule:

- Prevention
- Protection
- Prosecution
- Policy (acting through holistic policies)

Undoubtedly, preventive measures are much more important than criminal sanctions. No matter how much you punish the perpetrator after the violent incident occurs, it is of no use in terms of removing the traces of the violence from the victim. Therefore, preventive measures are essential. Since this is the fundamental point of view of the Istanbul Convention, the treaty has placed a significant emphasis on preventive measures, such as awareness raising, data retention, gender equality training within the compulsory curriculum, training of experts, allocation of financial resources, supporting non-governmental organizations, preventive intervention and treatment programs, and media participation.

Protective measures are also widely covered: post-violence psychological, legal, and social support services, the establishment of shelters as well as coordination centers for combating sexual violence, access to emergency hotlines, and prohibition of the compulsory alternative dispute resolution.

The third pillar stipulates that when violence occurs, the perpetrator shall be investigated and, on a case basis, prosecution shall be started. If a punishment is to be imposed for violence, it indicates that an effective criminal sentence should be applied. For example, unjust provocation or good conduct abatement should not be applied, or traditional situations such as “honor” concerns and customs should not be justified. In summary, practices that could create a perception of impunity, encourage perpetrators of violence, and legitimize violence should not be included.

The principle of acting with holistic policies represents a tenet of the Convention. It gives the signatory state the obligation to develop and quickly implement policies to prevent violence. The signatory state should do whatever it takes to prevent violence against women and observe gender equality in all areas, attitudes, and discourses. This principle emphasizes the necessity of a signatory state to be sincere in preventing violence.

Turkey and the Istanbul Convention

The European Council mechanism that controls whether the Istanbul Convention is implemented in the signatory countries is GreVio. Every two years, GreVio prepares a report that determines whether the Convention is implemented in the signatory countries and makes recommendations according to the level of urgency to the signatory country. In the 2018 report on Turkey, GreVio had determined a complex and alarming situation with regard to violence against women in Turkey. 65 suggestions, 47 of which were urgent, were made.

The women’s movement in Turkey especially often stressed effective implementation of the Istanbul Convention since it entered into force. In addition, the women’s movement also struggled for the effective implementation of the Protection Law No. 6284, which was prepared based on the Istanbul Convention and entered into force in 2012. Meanwhile, femicides and violence against women continued to increase. Upon the increase in divorces, the ruling political power (AKP) established a commission, known as the “Divorce Commission,” in the Turkish Grand National Assembly in order to prevent divorces. This commission prepared a report in 2016. Unfortunately, the report seemed to be a project of all the legislative initiatives that constitute an attack on the vested rights of women in Turkey; it essentially planned to keep women married and not divorce, despite all kinds of violence, murders, and isolation from public life and employment. There was even a suggestion that the perpetrator’s punishment would be partially forgiven or postponed if the abused child and the perpetrator marry, which paved the way for child marriages and garnered severe public reaction. This report also included the proposal for the law that muftis could registerate civil marriage, the suggestion that alimony should

be restricted, the compulsory mediation proposal in divorce cases, the opinions that attack the principle of “the statement of the woman is essential,” and many other findings. While some of the recommendations in this report have been implemented despite all the reactions of the public, others are pending implementation.

So, why are women sought to be locked up at home? President Erdoğan gives the advice of “at least 3 children” at every opportunity because they need a young population. It does not concern Erdoğan whether the young population is qualified to participate in the workforce or vote; the survival of his political power is above all. In short, he sees political power and the female body as a means for the survival of his power. Of course, beneath all this is the desire to continue the masculine hegemony. Considering that it is one of the pioneers of the right-wing populist trend in the world, the AKP administration is one of the most affected by the crisis of masculinity. However, where gender equality exists, there is also democracy, and democracy is not a method adopted by the AKP. They prefer to use democracy only as a tool to abolish democracy.

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The Istanbul Convention was a serious obstacle in terms of all these plans of the ruling political power. For this reason, they have frequently expressed the need to withdraw from the Istanbul Convention during the last two years. Before the denial of the Istanbul Convention, the media in favor of the ruling political power initiated a smearing campaign regarding Law No. 6284. They defined the Istanbul Convention as a law that “destroys the traditional household structure” since it kept the perpetrator away from the victim and their home. However, both Law No. 6284 and the Istanbul Convention were lifesaving legal regulations. The media, together with AKP officials, spread the discourse that the Istanbul Convention spread homosexuality, destroyed families, and contradicted our values.

Especially during the summer of 2020, a great effort was made by everyone who believed in equality and freedom, especially women, to eliminate this baseless and ridiculous discourse and to enlighten society about the Istanbul Convention. It has been repeatedly stated that the Convention does not have a special purpose such as spreading homosexuality or destroying the family, and that its only purpose is to prevent violence against women. It was announced that Article 4, in which the phrase “sexual

orientation” was included, was an article on the prohibition of discrimination, and stated that individuals who were subjected to violence regardless of gender, language, religion, color, race, sexual orientation, or any other factor should be protected by the state.

All women, especially the women’s movement, including women who were AKP voters, embraced the Istanbul Convention and the Law No. 6284 with their hearts and souls. The smearing of Law No. 6284 was subsequently suspended. We think that the Istanbul Convention was the target mainly and primarily. Later, in the Official Gazette dated 20 March 2021, published in the middle of the night, the Presidential Decree on the withdrawal from the Istanbul Convention was published. The whole country stood up against this decision. Although the ruling political power had signalled this for a long time, no one predicted that it would happen this way at midnight, by the decision of a single person.

Article 80 of the Istanbul Convention states that party states can withdraw from the Istanbul Convention with a notification to the General Secretariat of the Council of Europe. Then it adds that the termination of the contract becomes effective three months after this notification. Although a notification has been made to the General Secretariat of the Council of Europe in line with the said Presidential Decree, the constitutionality of the president’s decision is in question. In essence, therefore, a decision that actually does not exist has been notified to the Council.

The first paragraph of Article 90 of the Constitution states that the approval of treaties and conventions with foreign states and international organizations on behalf of the Republic of Turkey is subjected to the Grand National Assembly of Turkey finding the decision suitable with law. Since the Istanbul Convention was signed by a law of approval issued by the Turkish Grand National Assembly, in accordance with the principle of “Parallelism in Authority and Procedure,” which is one of the important principles of Turkish Law, the Convention must be exited by the same procedure. That is, by issuing a law, with the approval of the Parliament; yet this condition is not complied with. In addition, Article 104 of the Constitution clearly states that fundamental rights and freedoms cannot be regulated by presidential decree. The Istanbul Convention, in this context, is about the fundamental rights, especially the right to life, and freedoms of everyone who is subjected to violence. It is also stated in the same article that presidential decrees cannot be issued on matters clearly regulated in the law. The Protection Law No. 6284 explicitly refers to the Istanbul Convention. In other words, it is clear that it will not be possible to withdraw from the Istanbul Convention even with a presidential decree.

As the reason for the withdrawal from the Istanbul Convention, it was stated by the

ruling political power that the Convention normalized homosexuality and harmed family values. This statement was absolutely unlawful and an unrealistic justification that pushes the boundaries of logic. European countries such as Hungary and Bulgaria, which have not ratified the Convention, and Poland that is discussing withdrawal from the Convention, were cited as examples. It is interesting that the common side of the aforementioned countries is that they are governed by governments who have adopted authoritarian populist regimes. However, the *Mecelle*, the legal framework that regulated civil law in the late Ottoman Empire, which the AKP has taken as an example, says: A bad example is not an example.

Some opposition parties, bar associations, women's organizations, and individuals have applied to the Council of State for the annulment of the withdrawal decision. However, as citizens of a country where judicial independence and impartiality are in doubt, everyone is worried about the decision to be made.

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What Now?

The EU and the US have declared Turkey's withdrawal from the Istanbul Convention as “unfortunate.” In Turkey, opposition parties and many civil society organizations have contacted the Council of Europe. It is obvious that this undemocratic and unlawful interference has further weakened Turkey's already poor human rights record. However, it does not look like the ruling political power will take a step back in this regard. For President Erdoğan, winning the next elections and staying in power is the most important goal. The Istanbul Convention was an issue of bargaining in domestic politics. Part of the opposition's “Nation Alliance,” the Saadet Party from the national vision tradition was the party that opposed the Istanbul Convention the most from the very beginning. It is a well-known fact that President Erdoğan has made serious efforts to split the Nation Alliance, especially since the local election defeat. The Istanbul Convention has been the diet of these division efforts and some political negotiations. Consequently, what happened has happened to women and everyone who was subjected to violence due to gender inequality. Six women were killed in 12 hours after the decision to withdraw from the Convention was issued. Withdrawing from the Istanbul Convention created a perception of impunity in itself. Leaving a

comprehensive convention that protects women and those subjected to violence due to gender inequality gave perpetrators the idea that they were protected.

Women's organizations, bar associations, and legal organizations that combated violence against women used the explicit provision of the Istanbul Convention as a basis for violence cases. Now we have concerns about what will happen in such cases. However, even though the ruling political power seems to support the Law No. 6284 on Protection, people are concerned that they will be able to abolish the Law No. 6284 in the future, just like they withdrew from the Istanbul Convention, which they had signed with pride. In addition, people are also worried that they will continue to increase violence to take away our vested rights through attempts such as limiting alimony, abuse amnesty, and compulsory mediation in divorce cases.

Despite all these negativities, in the global world and in the digital age, it is no longer easy to restrain people's thoughts, especially women's. The inevitable end cannot be avoided forever through repression, prohibition, authoritarianism, populism, and devised perception. Indeed, a "reaction" is developing against all this "action." As a result of adverse events, people's awareness of violence is increasing. For instance, the Istanbul Convention, which only a limited number of people knew of before, has now been heard by all. Women are getting organized as the collective struggle grows rapidly. The resistance continues to grow stronger. When you look at history, you will see that the women's movement has always progressed with gains. It will be so again. No matter how many obstacles the patriarchy creates, women will overcome these obstacles and continue to progress on the road to equality. After all, the "Future is Female."