

Turkey's Withdrawal from the Istanbul Convention: An Unconstitutional Decision Requiring Global Attention

 14 May 2021


(In the photo, women holding placards that read, "There is no coming back from our feminist struggle" and "No to intervention to our lives". Photo credit: Center on Conflict and Development (ConDev) at Texas A&M University published on Flickr licensed CC-BY-NC-ND 2.0, <https://www.flickr.com/photos/condevcenter/33397033076/sizes/h>)

Turkey has a long history of femicide. The rate of femicide continues to rise each year. According to the organization called [We will Stop Femicides](#), 300 women were murdered in 2020 alone and 179 women were found dead under suspicious circumstances. Women rights organizations have been calling for better protection for a long time. In 2018, the Group of Expert on Action against Violence against Women and Domestic Violence (GREVIO) highlighted in its [Baseline Evaluation Report on Turkey](#) that, there was a need for efficient measures and gender-sensitive policies ensuring the implementation of legal norms and practical concretization of gender equality. Further, due to the COVID-19 protective measures, particularly domestic violence against women and girls has intensified, which is expressed as the "[shadow pandemic](#)" by the United Nations. Despite these circumstances, however, the shocking midnight Turkish Government's withdrawal from the Istanbul Convention has added a new backlash against gender equality in Turkey.

Indeed, on Saturday 20 March 2021, President Erdogan issued a decision declaring that Turkey was leaving the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, better known as the "[Istanbul Convention](#)" as it was open for signature in

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Istanbul: "It is decided that the Council of Europe Treaty on Preventing and Combating Violence against Women and Domestic Violence signed on 11/5/2011 and ratified on 10/2/2012 with the Council of Ministers Decision No 2012/2816 is to be terminated based on Presidential Decree No 9 Paragraph 3" ([📄 Presidential Decision 3718](#)). The Decision has entailed – at least – three crucial issues – namely the social context endangering the women's rights despite the leading role of Turkey in the creation of the Convention, validity of the Decision that is usurping the powers of legislation, and the cross-references of gender backlash to the European countries. The blog post aims at providing an overview of these issues.

The Social Context

Although Turkey played a leading role during the negotiations of the Convention and became the first signatory state, the Convention has been under attack by conservative and progovernment sides since its ratification. They have repeatedly claimed that it is a threat to the traditional family structure and it advocates for LGBT rights as it legitimizes and normalizes same-sex partnership, that conflicts with the Islamic understanding of family. Despite such discrediting efforts, however, there had been no public support for the withdrawal. According to the recent statistics conducted by [📄 KONDA in August 2020](#), the majority of people who are aware of the existence and the content of the Istanbul Convention, which is 84 %, support the Convention.

Validity of the Withdrawal Decision

The validity of the decision presents a significant legal issue under domestic law. The [Istanbul Convention](#) was unanimously ratified by the Turkish Grand National Assembly on 24 November 2011 and approved by the Council of Ministers on 10 February 2012 with no reservations. Subsequently, on 8 March 2012 Law No. [6284](#) was passed with the aim of incorporating the Istanbul Convention into domestic law. Its Article 2(a) states that it is "based on the Turkish Constitution and international treaties to which Turkey is a state party, in particular the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence".

The withdrawal decision got tremendous attention and protests from women rights activists. Thousands of women took to the streets over the weekend. Many constitutional lawyers and bar associations in Turkey repeatedly stated that the withdrawal decision is against the Turkish Constitution.

[Article 90\(1\) of the Turkish Constitution](#) requires the Parliament to ratify human rights treaties by legislation: "The ratification of treaties concluded with foreign states and international organizations on behalf of the Republic of Turkey shall be subject to adoption by the Grand National Assembly of Turkey by a law approving the ratification." Furthermore, once coming into effect, according to

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[Article 90\(5\)](#) of the Turkish Constitution, human rights treaties have the force of statutory law, and in the case of conflict with statutory laws, their provisions prevail.

Article 90 of the Constitution does not regulate any procedure for withdrawal from international agreements. However, considering the parallelism of competence and procedure principle, administrative acts must be dissolved by the same mode in which they are founded (*Unumquodque eodem modo quo colligatum est dissolvitur*). Therefore, the Turkish Parliament must pass a domestic law to amend or repeal an international treaty concerning fundamental rights and freedoms. It then becomes constitutionally possible for the President to complete this process as the executive organ.

The withdrawal decision of the President is based on Article 3 of his own prior  [Presidential Decree](#) that allows him to “terminate” an international agreement. However, [Article 104 of the Constitution](#) concerning the duties and powers of the President states that “the President of the Republic may issue presidential decrees on the matters regarding executive power.” The scope of the executive power is regulated under [Article 8](#) of the Constitution, states that “executive power and function shall be exercised and carried out by the President of the Republic in conformity with the Constitution and laws.” Further, according to [Article 104](#), fundamental rights, individual rights and duties of the Constitution shall not be regulated by a presidential decree.

The Istanbul Convention is a human rights treaty considered as the “[gold standard](#)” guaranteeing the right to life and the right to protect corporal and spiritual existence. In the light of those provisions of the Constitution, it is clear that the President has no right to withdraw from the Convention. Given that the ratified human rights treaties are in the force of statutory laws under the Constitution, only the Parliament has the authority to enact, amend and repeal an international agreement ([Article 87](#)). Thus, the withdrawal decision is unconstitutional under national law and violating the principle of separation of power as it usurps the powers of the Parliament.

There is likely a long path ahead for supporters of the Convention to challenge the decision before domestic courts. Considering the recent erosion of [judicial independence and impartiality in Turkey](#), the successful outcome of such efforts remains doubtful.

The Cross-References of Gender Backlash to the European Countries

On 22 March 2021, Turkey's Communication Directorate further published a statement, where the reasons for the withdrawal decision were provided as follows:

“The Istanbul Convention, originally intended to promote women's rights, was hijacked by a group of people attempting to normalize homosexuality- which is incompatible with Turkey's social and family values. Hence the decision to withdraw.

Turkey is not the only country who has serious concerns about the Istanbul Convention. Six members of the European Union (Bulgaria, Hungary, Latvia, Lithuania and Slovakia) did not ratify the Istanbul Convention. Poland has taken steps to withdraw from the Convention, citing an attempt by the LGTB community to impose their ideas about gender on the entire society."

The statement further raises crucial concerns. As also stated by the Association of Research on Constitutional Law ([ANAYASA-DER](#)), this statement alone is an example of hate speech against which many international conventions aim to struggle.

Further, the statement puts a sort of example of transnational network of conservative movements. Among the exemplified European Countries, Bulgaria's Constitutional Court [ruled](#), in 2018, the Istanbul Convention is not in line with the Constitution of the Republic of Bulgaria on the basis of the Convention's definition of "gender". In May 2020, the Hungarian Parliament [refused](#) to ratify the Convention. And in July 2020, the Polish Justice Minister [announced](#) that the government would start the formal withdrawal process due to the reason that it contains the elements of an "ideological nature". Right after, the Council of Europe [issued](#) a statement finding the Polish intentions "highly regrettable" and stating that the sole objective of the Istanbul Convention is to combat violence against women and domestic violence. It is also worth noting that the statement of Turkish Communication Directorate includes European countries such as Latvia and Lithuania, where the highest rates of femicides [reported](#) in 2015.

Concluding Remarks

Turkey's withdrawal from the Istanbul Convention constitutes a process that requires global attention. As already discussed [here](#), the decision is the first for the Council of Europe organs, member states and the state parties to the Istanbul Convention. It is unprecedented. Therefore, consequences of the unconstitutional withdrawal decision under international law are at the present moment unknown.

The Council of Europe organs indicated their concerns finding the decision "[devastating](#)" and "[deeply regretted](#)". The concern is deep. However an adequate legal response is highly significant due to the increased gender-based discrimination in European countries and violence against women as a result of the "[shadow pandemic](#)" all around the world. It requires urgent attention not only for Turkey but also for other countries where gender backlashes have intensified.

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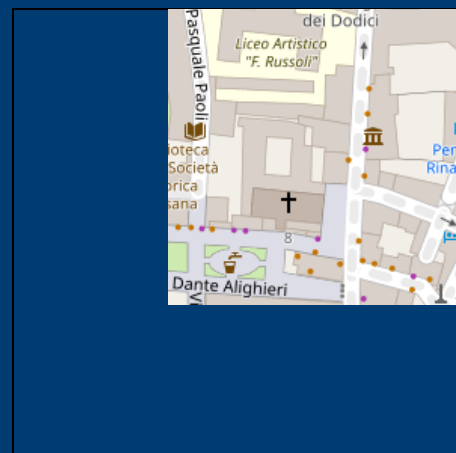
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