

The Ratification of the Istanbul Convention by the European Union and Its Effect on Candidate States: Specific Reference to Turkey

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Bu makale hakem incelemesinden geçmiştir ve TÜBİTAK–ULAKBİM Veri Tabanında indekslenmektedir.

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Date of issue: 8th September 2023 **Date of acceptance:** 27th February 2024

Cite: Şahinoğlu, Belkıs. “The Ratification of The Istanbul Convention By The European Union And Its Effect On Candidate States: Specific Reference To Turkey.” *Journal of Ankara Bar Association* 82, no. 2 (April 2024): 1-42

DOI: 10.30915/abd.1357057.

THE RATIFICATION OF THE ISTANBUL CONVENTION BY THE EUROPEAN UNION AND ITS EFFECT ON CANDIDATE STATES: SPECIFIC REFERENCE TO TURKEY

ABSTRACT

This research evaluates the process and consequences of the European Union's recent ratification of the Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention). The issue of violence against women persists as a global problem, and with the Union ratifying the Convention in June 2023 and its pledge toward actions to curb gender-based violence, this issue has gained ever more traction throughout Europe and its surrounding geographies. Analysing the hurdles within the ratification process, it can be said that ratification was a progressive move for the Union. Thus discussion of the obligations of Member States, particularly those that have not ratified the Convention, is necessitated. As a country historically controversial to gender-based violence, Turkey has gained much international and national notoriety in withdrawing from the Istanbul Convention in 2021. With the recent regeneration of communications with Turkey and the EU reaffirming Turkey's candidate status, an examination of Turkey's standing in fulfilment of its accession obligations is warranted. Consequently, Turkey's legal framework is analysed and future steps are discussed. The findings show that Turkey's lack of political willingness to implement and expand the existing legal infrastructure generates potential hindrance to EU relations.

Keywords:

Turkey

Istanbul Convention

European Union

Violence against women

Women's Rights

İSTANBUL SÖZLEŞMESİ'NİN AVRUPA BİRLİĞİ TARAFINDAN ONAYLANMASI VE ADAY DEVLETLER ÜZERİNDEKİ ETKİSİ: TÜRKİYE ÖRNEĞİ

ÖZ

Bu araştırma, Avrupa Birliği'nin yakın zamanda onaylamış olduğu Kadına Yönelik Şiddet ve Aile İçi Şiddetin Önlenmesi ve Bunlarla Mücadeleye Dair Sözleşmesi'nin (İstanbul Sözleşmesi) onaylama süreç ve sonuçlarını incelemektedir. Kadına yönelik şiddet dünya çapında önemli bir sorun olmaya devam etmektedir. İstanbul Sözleşmesi'nin Haziran 2023'te Avrupa Birliği tarafından onaylanması ve Birliğin toplumsal cinsiyete dayalı şiddeti durdurmaya yönelik eylemlerde bulunma taahhüdü ile bu konu Avrupa ve çevresindeki coğrafyalarda giderek daha fazla ilgi görmeye başlamıştır. AB açısından onaylama sürecindeki engeller incelendiğinde, onaylamanın Birlik açısından ilerici bir hamle olduğu ve bu nedenle, özellikle Sözleşmeyi onaylamayan Üye Devletlerin yükümlülüklerinin tartışılmasının gerekli olduğu söylenebilir. Toplumsal cinsiyete dayalı şiddet konusunda tarihsel olarak tartışmalı bir ülke olan Türkiye, 2021'de İstanbul Sözleşmesi'nden çekilmesiyle uluslararası ve ulusal düzeyde büyük bir üne kavuşmuştu. Yakın zamanda Türkiye ile iletişimin yeniden canlanması ve AB'nin Türkiye'nin aday statüsü yeniden onaylanması ile, Türkiye'nin İstanbul Sözleşmesi'ne göre yükümlülüklerini yerine getirmedeki durumunun incelenmesi zorunludur. Sonuç olarak Türkiye'nin yasal çerçevesi incelenmekte ve geleceğe yönelik adımları tartışılmaktadır. Araştırmanın bulguları, Türkiye'nin mevcut hukuki altyapıyı uygulama ve genişletme konusunda siyasi isteksizliğinin AB ilişkilerine potansiyel engel oluşturduğunu gösteriyor.

Anahtar Kelimeler:

Türkiye

İstanbul Sözleşmesi

Avrupa Birliği

Kadına karşı şiddet

Kadın hakları

INTRODUCTION

Human rights have been a focus within the international arena since the United Nations Declaration on Human Rights. Although general protection mechanisms existed towards vulnerable members of society, it was the early 1990s that saw violence against women, a problem arising from the inequalities of society itself, being recognised as a human rights issue with women identified as the subject of specialised protection in the international arena.^[1] Similarly reflective of the stance within the international community, the importance that the Union gives to fundamental human rights, regardless of the Union's initial economic focus, can first be seen in the Maastricht Treaty.^[2] The Treaty solidifies respect for human rights as a value of the Union, and, while its rights provisions may be few and sporadic, provides for non-discrimination within its social policies and sanctions for breaches of Member States acting against its values.^[3] Further expansion of the Union's mandate to human rights brought about the declaration of the Charter of Fundamental Rights of the European Union, which attained a legally binding status through the Treaty of Lisbon in 2007. With a strong human rights focus, it follows that the EU agenda would swiftly fall upon women's rights. Attention to women's rights was further expected as violence against women was increasingly rife and a common problem experienced

[1] Kevät Nousiainen and Christine Chinkin, *Legal Implications of EU accession to the Istanbul Convention*, (European Commission, Directorate-General for Justice and Consumers, Publications Office, 2016), 7.

[2] Treaty on European Union, No-C 191/1, 29 July 1992.

[3] Sionaidh Douglas-Scott, "The European Union and Human Rights after the Treaty of Lisbon," *Human Rights Law Review* 11, no. 4 (November, 2011): 648, 669.

within the Union's Member States,^[4] with a 2014 study showing that 33% of women in Europe had experienced physical and/or sexual violence.^[5]

Following in the footsteps of many of its Member States, despite objections, the signature and subsequent ratification of the Istanbul Convention by the European Union had been anticipated for many years.^[6] The Convention on Preventing and Combating Violence Against Women and Domestic Violence (The Istanbul Convention), open for signature in 2011, was heralded as the “most far reaching” legally binding and enforceable international convention on gender-based violence.^[7] The ratification of the Convention by the European Union thus has been a “historic” move for the Union and the significance it places on safeguarding women from violence.^[8]

The current research initially analyses the history of signature and ratification of the Convention by the European Union before undertaking an evaluation of the Member States' obligations in this regard. Turkey's relationship with the Union (then named the European Economic Community) dates back to the year 1963, with the agreement to develop relations that would facilitate accession “at a later date.”^[9] Candidacy status followed in 1999, and

[4] “Combatting violence against women: MEPs back accession to Istanbul Convention,” European Parliament, 10 May 2023, accessed 15 July 2023, <https://www.europarl.europa.eu/news/en/press-room/20230505IPR85009/combating-violence-against-women-meps-back-eu-accession-to-istanbul-convention>; Seven Erdoğan, “Avrupa Birliği'nin İstanbul Sözleşmesine Katılım Süreci: Yeni Bir Ulusüstüçülük-Hükümetlerarasılık Rekabeti Mi? [European Union's Accession to the Istanbul Convention: A New Clash of Supranationalism-Intergovernmentalism?],” *Marmara University Journal of Political Science* 9, no. 2 (September, 2021): 313.

[5] FRA, *Violence against Women: An EU-wide survey. Main results*, (Luxemburg, Publications Office of the European Union, 2014), 21.

[6] “MEPs vote for EU to ratify Istanbul Convention against violence for women,” *euronews*, 10 May 2023, accessed 10 July 2023, <https://www.euronews.com/my-europe/2023/05/10/meps-vote-for-eu-to-ratify-istanbul-convention-against-violence-against-women>

[7] Erdoğan, “European Union's Accession,” 311.

[8] *Euronews* “MEPs vote for EU to ratify.”

[9] Preamble, Agreement establishing Association between the European Economic Community and Turkey, No. C 113/2, 24 December 1973.

accession talks were initiated in 2005.^[10] While the accession talks remain dormant, recent actions of the Union and Turkey within the international arena have brought Turkey to the forefront of European discussions^[11] and have paved the way for a reiteration of Turkey's candidate status. With the protection against gender-based violence mandate now a part of EU law, Turkey's actions towards gender-based violence and its legal framework are under the microscope, having been the only country to date to withdraw from the Istanbul Convention. This move was criticised, particularly with Turkey's history of gender-based violence and overall derogation from rights and fundamental freedoms.^[12] Importantly, therefore, as a candidate of the Union, the research will analyse the current status of Turkey's legal framework as it pertains to the required scope vis-à-vis protection of women from violence and, in doing so, lay grounds for evaluating the status of continued future relations between Turkey and the European Union.

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- [10] "Türkiye," European Commission, accessed 17 July 2023, https://neighbourhood-enlargement.ec.europa.eu/enlargement-policy/turkiye_en
- [11] Suzanne Lynch and Jacopo Barihazzi, "Is Turkey joining the EU? No, but the EU is engaging," *Politico*, 13 July 2023, accessed 17 July 2023, <https://www.politico.eu/article/is-Turkey-now-joining-the-eu-no-but-the-eu-is-engaging-nato/>
- [12] CEDAW, *Concluding observations on the 7th periodic report of Turkey*, (New York: UN, July 2016).

I. HISTORY OF THE UNION'S RATIFICATION OF THE ISTANBUL CONVENTION

The European Union's actions combatting violence against women are founded in the Community's history of human rights protection. The Maastricht Treaty, signed in 1992, welcomed the three-pillar structure under which the Community's competencies were enhanced, and recognition of respect for human rights as one of the core values of the Community was seen. The Community's mandate thus expanded to include a commitment towards rights and protection of the principles of dignity, human honour, equality and non-discrimination between men and women.^[13] The development of the Union and the founding Treaties (including, notably, the entry into force of the Charter of Fundamental Rights of the European Union^[14]) further guaranteed the Union's focus on rights.

In principle, therefore, within the overarching aim of protecting human rights, women's rights and protection of women from violence also fell within the Union's direction. This reflected the international recognition that women's rights are a matter of human rights.^[15] Together with a commitment to supportive measures of research and awareness-raising on gender-based violence,^[16] the Union developed policies to further enhance rights and principles necessary for the protection of women as a vulnerable group within society.^[17] While political will for the eradication of gender-based violence can be seen at this time, Union policies did not take violence against women as their specific focus.^[18] Rather, the policies predominantly protected women through the general human rights law and the principles of non-discrimination based on sex, and equality in the area of work and

[13] Please also see Douglas-Scott, "The European Union and Human Rights," 648, 669.

[14] Charter of Fundamental Rights of the European Union, 2010/C 83/02, 30 March 2010.

[15] Nousiainen and Chinkin, *Legal Implications of EU Accession*, 7.

[16] Els Leye, Hayley D'Souza and Nathalie Meurens, "The Added Value of and Resistance to the Istanbul Convention: A Comparative Study in 27 European Member States and Turkey," *Frontiers in Human Dynamics* 3 (November, 2021): 2.

[17] FRA, *Violence against Women*, 10.

[18] Nousiainen and Chinkin, *Legal Implications of EU Accession*, 7.

access to goods and services, reflective of the main historical direction of the Union. Furthermore, policies sought to address specific forms of violence that, consequentially, also had the capacity to affect women.^[19] Notable policies include those against human trafficking,^[20] harassment in employment,^[21] and the Victim's Directive^[22], invoking minimum standards for the safeguarding and support of victims of crime. While this brought a certain level of protection for women within the EU umbrella, it was indirect, and a comprehensive policy addressing violence against women remained absent at the EU level. It has been widely recognised that human rights measures and non-discrimination regulatory structures alone are insufficient to protect women against violence.^[23] The Istanbul Convention is thus of great importance as a resolution to this issue. Membership of the Union to the Convention was therefore warranted and encouraged.^[24] Membership would not merely solidify the Union's stance towards the protection

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- [19] Measures are discussed in detail by Anne Bonewit and Emmanuella DeSantis, *The Issue of Violence against Women in the European Union*, (European Parliament, Policy Department for Citizen's Rights and Constitutional Affairs for the FEMM Committee, 2016), 32-39.
- [20] European Parliament and Council, "Directive 2011/36/EU of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims," Document 32011L0036, 15 April 2011.
- [21] European Parliament and Council, "Directive 2006/54/EC of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation," Document 32006L0054, 26 July 2006.
- [22] European Parliament and Council, "Directive 2012/29/EU of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime," Document 32012L0029, 15 April 2011
- [23] Erdoğan, "European Union's Accession," 316; Olga Jurasz, "The Istanbul Convention: a new Chapter in preventing and combating violence against Women," *Australian Law Journal* 89, no. 9 (September, 2015): 620.
- [24] European Commission, "Proposal for a Council Decision on the conclusion, by the European Union, of the Council of Europe Convention on preventing and combating violence against women and domestic violence," COM/2016/0109, 4 March 2016, accessed 18 July 2023 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52016PC0109>

of women but ensure that a cohesive and extensive legal framework be in place, enhancing existing mechanisms for protection and also making the existing EU policies more efficient in countering violence against women.^[25]

The Convention on Preventing and Combating Violence Against Women and Domestic Violence was open to signatures in 2011. Although non-legally binding, soft international law instruments existed addressing women and gender-based violence (such as the 1993 Declaration on the Elimination of Violence against Women of the United Nations^[26]), the Istanbul Convention is the first within Europe to have legally binding status.^[27] It was heralded as a novel Convention in its approach to the protection of women from violence. It has a tripartite approach in that it is a human rights treaty, a gender-based treaty, and a treaty of criminal law.^[28] The Istanbul Convention generates minimum standards for Member States as a means of protecting victims of gender-based violence. The Convention defines gender as “the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men”.^[29] As such, in establishing protection mechanisms to address gender-based violence, the Convention ensures that women and other victims are protected against an expanded definition of, and forms of, violence experienced on account of their gender. The Convention encompasses violence in the home, psychological violence, stalking, physical and sexual violence, harassment, forced marriage, female circumcision, forced abortion and violence that comes from cultural, religious

[25] Sara De Vido, “The Ratification of the Council of Europe Istanbul Convention by the EU: A Step Forward in the Protection of Women from Violence in the European Legal System,” *European Journal of Legal Studies* 9, no. 2 (April, 2017): 100; Erdoğan, “European Union’s Accession,” 319.

[26] Declaration on the Elimination of Violence against Women, General Assembly Resolution 48/104, 20 December 1993.

[27] Ulla Jürviste and Rosamund Shreeves, *The Istanbul Convention: A Tool for Combatting Violence against Women and Girls*, (European Parliamentary Research Service, 2021), 1.

[28] Nousiainen and Chinkin, Legal Implications of EU Accession, 39.

[29] Council of Europe, “Convention on Preventing and Combating Violence Against Women and Domestic Violence,” CETS No.210, 11 May 2011.

or traditional grounds including honour killings.^[30] Notably, Member States are prohibited from making any reservations to the Convention articles based on culture, tradition, or religion. The Istanbul Convention has four pillars: prevention, protection, prosecution and coordination of policies.^[31] The first pillar of prevention reflects the understanding that gender-based violence is generated from gender inequality,^[32] a social mechanism and construct of subordination,^[33] as also historically noted by the European Parliament.^[34] It thus takes an integrated and multidimensional approach by requiring Member States to engage in actions that would address the inequalities and the foundation of discrimination through a variety of levels and actors (state/non-state actors such as media, NGOs, law enforcement, judicial bodies, private sector etc.).^[35] This obligation includes undertaking legislative reform to eliminate discrimination within policies (Article 4) and requires Member States to address any social and cultural aspects that foster prejudice, bias and gender inequalities (Article 12)^[36] in, for example, education and media coverage.^[37] The protection pillar of the Istanbul Convention requires safety measures such as victim support ser-

[30] Council of Europe, “Convention on Preventing and Combating Violence Against Women and Domestic Violence,” CETS No.210, 11 May 2011.

[31] “Istanbul Convention Infographic”, Council of Europe, <https://rm.coe.int/coe-istanbulconvention-infographic-en-r04-v01/1680a06d0d>

[32] Gizem Güney, “One Step Forward, Two Steps Back: An Analysis of Turkey’s Implementation of the Istanbul Convention in Addressing Gender-Based Domestic Violence,” in *Towards Gender Equality in Law: An Analysis of State Failures from a Global Perspective*, ed. Gizem Güney, David Davies, and Po-Han Lee (Palgrave Macmillan, 2022), 142.

[33] Svetlana Janković, and Zorica Mršević, “Istanbul Convention – Obligation or Needs.” In Proceedings: Life Cycle Engineering and Management ICDQM, June 28-29 2018, Prijedor, Serbia. (Research Center of Dependability and Quality Management), 255.

[34] European Parliament, “Resolution of 11 June 1986 on violence against women,” Doc.A2-44/86, 14 July 1986.

[35] Güney, “One Step Forward,” 135; Jurasz, “Istanbul Convention,” 624.

[36] Please also see Nousiainen and Chinkin, *Legal Implications of EU Accession*, 8.

[37] Janković and Mršević, “Istanbul Convention,” 254.

vices, complaints mechanisms, shelters and emergency legal redress such as protection/restraining orders.^[38] The “Prosecution” pillar mandates law enforcement and judicial obligations upon Member States. This includes, *inter alia*, taking of measures to criminalise violent actions against women, safeguard victims during proceedings and establish mechanisms for effective investigation of crimes.^[39] The final pillar requires Member States to engage in inter-agency cooperation, coordination and collaboration for research and data collection. In this regard, the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) acts as a watchdog, ensuring that the Member States are acting in conformity to their obligations under the Convention.^[40]

Article 216(1) of the Treaty on the Functioning of the European Union (TFEU) denotes that the European Union may accede to international conventions where it is “necessary in order to achieve...one of the objectives referred to in the Treaties”. It is argued that with the protection of fundamental freedoms set out as an express objective of the Union,^[41] the Union thus has a broad competence to conclude and become a member of treaties that have human rights protection as their foundation. It follows that being within the auspices of human rights law, the Union is able to concede to international conventions for the protection of women and promotion of gender equality, particularly as violence against women has wide-ranging consequences and effects on several policy areas of the Union such as crime, asylum, and public administration (as confirmed by the Court of Justice of the European Union, CJEU).^[42]

[38] Council of Europe, “Istanbul Convention Infographic.”

[39] Council of Europe, “Istanbul Convention Infographic,” Nousiainen and Chinkin, *Legal Implications of EU Accession*, 8.

[40] Council of Europe, “Rules of Procedure of the Group of Experts on Action against Violence against Women and Domestic Violence,” 21-23 September 2015.

[41] Treaty on the Functioning of the European Union, C 326/49, 26 October 2012.

[42] Please see below.

In line with the roadmap for accession, the Istanbul Convention was signed by the Union in the year 2017.^[43] For the next stage of enforceability, ratification, the necessary Parliamentary consent (as required by Article 218, TFEU) was delayed. Ratification was stalled, particularly as questions remained unanswered regarding consequences for those Member States who had yet to ratify the Convention. While all EU Member States had signed the Istanbul Convention, some Member States were yet to ratify the Convention and were challenging the Union's accession to the Convention,^[44] with arguments of traditional values and public funding being raised as the cause of resistance.^[45] Erdoğan claims that the various objections and obstructionist views of some of the Member States are reflective of the experiences in regional integration since the 1950s and that the stalling process can be placed within a paradox of the supranationalism-intergovernmentalism perspectives; with those Member States' favourable to the EU's ratification of the Convention being within the former, and those Member States showing resistance to accession falling within the latter perspective.^[46] The ruling of the CJEU indicated that there were no legal barriers to accession and that the European Parliament could consent to the ratification of the Convention without a unanimous majority.^[47] With a positive 472 votes within the European Parliament, the Council of the European Union ratified the Istanbul Convention on 28 June 2023. The entry into force of ratification is identified as 1 October 2023.^[48] In light of the debates and resistance, the ratification of the Istanbul Convention by the European Union is novel and ground-breaking. It thus warrants discussions of Member State obligations, particularly for those States who have not yet ratified the Convention.

[43] Council of Europe, "Chart of signatures and ratifications of Treaty 210," accessed 18 July 2023, <https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=210>

[44] European Parliament, "Combatting violence."

[45] Erdoğan, "European Union's Accession," 319. This is further expanded below.

[46] Erdoğan, "European Union's Accession," 311.

[47] CJEU, Opinion 1/19 of the Court (Grand Chamber), 6 October 2021.

[48] Council of Europe, "Chart of signatures."

II. OBLIGATIONS OF THE MEMBER STATES AND THE UNION FOLLOWING RATIFICATION OF THE ISTANBUL CONVENTION BY THE EUROPEAN UNION

Article 216(2) of the Treaty on the Functioning of the European Union specifies that that agreements concluded by the Union have legally binding status on the Member States. As reiterated by the Court in the case of *R. & V. Haegeman v. Belgian State*,^[49] the contents of agreements concluded by the Union form part of Community law. Being thus integrated into EU law, Member States are bound by international treaties concluded by the EU.^[50] Member States are bound to fulfil these obligations regardless of their varying geographical, social, economic or political virtues^[51] or national interests^[52] and irrespective of whether they themselves are party to the agreement or have ratified it. It follows therefore that this is also the case as it relates to the compliance of the Member States upon ratification of the Istanbul Convention by the Union. With ratification, the provisions set forth within the Istanbul Convention will become part of EU law from 1 October 2023 within the sphere of EU competence.^[53] Member States cannot “ignore” the Convention^[54] and are bound to uphold its provisions.

The requirements and expectations of the Member States regarding compliance, and the steps they must take to fulfil their obligations inevitably vary depending on the contents of the international agreement being discussed. Where contents are imposing substantive legal standards/rights, there may be a determination that the provisions within the international agreement carry direct effect.^[55] This may occur taking into consideration the purpose

[49] CJEU, *Haegeman/Belgium*, No.181/73, 30 April 1973, ECLI:EU:C:1974:41.

[50] De Vido, “Ratification of the Council of Europe Istanbul Convention,” 96.

[51] Marton Varju, *Member States Interests and European Union Law: Revisiting the Foundations of Member States Obligations* (Routledge, 2020), 1.

[52] Varju, *Member States Interests*, 35.

[53] Further expanded below.

[54] De Vido, “Ratification of the Council of Europe Istanbul Convention,” 97.

[55] In line with the precedent of the CJEU, *NV Algemene Transport- en Expeditie Onderneming van Gend & Loos/Netherlands Inland Revenue Administration*, No.26-62, 5 February 1963, ECLI:EU:C:1963:1.

and nature of the agreement itself;^[56] whether its provisions are clearly and precisely worded and, in their construction, do not require any additional subsequent measures for imposition and implementation.^[57] While the Court has found the direct effect of the legal contents of some international agreements, on the basis of the tests above, it has denied direct applicability of others.^[58] Therefore, the contents of international agreements are less likely to have direct applicability than in the context of Community law itself.^[59] Thus, in line with its obligations set out under the international agreement, the Union often undertakes secondary legislative measures.^[60] The obligation of Member States to implement the legal standards found within the international agreements may, therefore, be due to the existence of Union legislation *per se*. Ratification of an international agreement by the European Union may, therefore, require Member States to take action to alter and adapt their national legal and/or policy frameworks to equate with that which is presented within the agreement's contents, as a means of ensuring their compliance with EU law.^[61] For Member States who have signed and ratified the agreement in question, their obligations will be twofold. They will have obligations to adhere to the agreement's contents under international law, in addition to their duty to adhere as a Member of the Union.^[62] As mentioned above, in the context of the Istanbul Convention, while most Member States have signed and ratified the Istanbul Convention, Bulgaria, Czech Republic, Hungary, Latvia, Lithuania and Slovakia have not. When the Union becomes a member of an international agreement, Member States

[56] Francesca Martines, "Direct Effect of International Agreements of the European Union," *European Journal of International Law* 25, no.1 (April, 2014): 139.

[57] CJEU, *Lesoochránárske zoskupenie VLK/Ministerstvo životného prostredia Slovenskej republiky*, no. 240/09, 8 March 2011, ECLI:EU:C:2011:125, para 44.

[58] E.g. the Aarhus Convention, as stated, *ibid*, para 52.

[59] Pierre Pescatore, "The Doctrine of Direct Effect: An Infant Disease of Community Law," *European Law Review* 40, no. 2 (April, 2015): 149.

[60] Mario Mendez, *The Legal Effects of EU Agreements* (Oxford University Press, 2013), 42.

[61] Leye, D'Souza, and Meurens, "The Added Value," 4.

[62] Nousiainen and Chinkin, *Legal Implications of EU Accession*, 9.

of the Union are not obligated to ratify the agreement itself. This is also true for the Istanbul Convention. However, with the Istanbul Convention forming part of EU law, post-ratification, Member States are obligated to observe and ensure their conformity to the provisions of the Convention in pursuit of their obligations to the Union. Therefore, whether ratified by the Member State or not, an analysis of Member States' obligations that follow from the ratification of the Istanbul Convention by the Union – in their status as a Member of the Union—must be undertaken. An evaluation of what is and could be expected of States due to their membership to the Union, upon ratification and subsequently, is presented below.

When an analysis of the Istanbul Convention is undertaken, it can be seen that the Convention does not, for the most part, set out or require legislative measures that could be subject to direct effect, but rather obligates Members to undertake a variety of behaviours that would ensure prevention, deterrence and prosecution of violence against women.^[63] At the least, it generates an underlying obligation to all Member States to act in line with its generalised provisions that seek to protect against gender-based violence. As such—immediately upon ratification—there would be a requirement to implement the positive action of encouraging and promoting change in the national social approach to equality, ensure systematic implementations of preventative measures, etc., as set out within the Convention.^[64] The substantive legal measure contained within the Istanbul Convention relates to criminalisation of certain behaviours. For those EU Member States that have also ratified the Convention, the obligation to implement the Convention provisions also extends to this substantive law implementation. This would, however, be a requirement that is currently only enforceable against such States in the context of their obligations under international law as a separate party to the Convention, and not presently under EU law. It has been argued by some authors and Member States that this requirement cannot be imposed through EU accession to the Convention for those Member

[63] Janković and Mršević, “Istanbul Convention”, 253. Further, De Vido argues that the requirement set out within the Istanbul Convention to compensate victims, as an obligation that affects the legal position of individuals and being clear and precise, could arguably have direct effect. See De Vido, “Ratification of the Council of Europe Istanbul Convention,” 99.

[64] Janković and Mršević, “Istanbul Convention,” 256.

States that have not ratified the Convention. This was noted as being due to harmonisation of the substantive criminal laws of Member States falling outside the scope of EU competence as they are private issues and do not have cross-border effects.^[65] Such a view was nevertheless conflicted, as some authors argued that the Union is capable of adopting secondary legislation requiring harmonisation of the relevant forms of violence against women in Member States.^[66] The latter approach is that which has been taken by the Union, as with the recent Directive initiated by the Commission in March 2022 on combatting violence against women and domestic violence, currently at the first reading in Parliament, the substantive law requirements of the Convention have been addressed.^[67] In this regard, the Commission and Parliament have clarified and confirmed the Union's legal basis of inclusion, identifying not just the serious nature of such offences but their cross border dimension as amongst its primary rationale for undertaking action. Upon its passing, the Directive will thus generate binding obligation on all EU Member States for its implementation. With regard to implementation, a recent study indicates that in addition to keeping statistics (necessitated for cross-border cooperation) and support services, Member States currently fall short of their obligations under the Convention in the context of criminalisation.^[68]

In seeking to understand Member States' obligations and further, Turkey's obligations in its position as a candidate to the Union, as is the primary purpose of this paper, the integrated relationship between the Istanbul Convention, the EU Charter of Fundamental Rights and the ECHR must at this point be expanded, as, in their obligation to implement and align themselves with EU law and policy, it is apparent that Member States, and thus candidates too, have an obligation to implement the provisions of the Istanbul Convention in the context of the commitments of the European

[65] Nousiainen and Chinkin, *Legal Implications of EU Accession*, 9. Please also see European Commission, "Proposal for a Directive on combatting violence against women and domestic violence," COM/2022/105, 8 March 2022.

[66] See Leye, D'Souza, and Meurens, "The Added Value," 3.

[67] COM/2022/105, *supra* note 65. The details of the proposal are discussed below.

[68] Leye, D'Souza, and Meurens, "The Added Value," 4. Please also see Nousiainen and Chinkin, *Legal Implications of EU Accession*, 93.

Union's Charter. Prior to the recent ratification of the Istanbul Convention by the EU, from 2009, the Lisbon Treaty gives binding force to the previous soft law provisions of the Charter. Under Article 53, Member States (ergo, candidates) are expected to provide a level of protection of human rights that are on par with and not lower than the ECHR^[69] and consequentially, the findings of the European Court of Human Rights (ECtHR). In evaluating cases of domestic violence, case-law of the ECtHR developed first under the auspices of Article 8, right to privacy, and later in line with Article 3, the right to be free from torture or inhumane or degrading treatment and Article 14 on discrimination. In its determination of the Convention as a living instrument, in domestic violence cases, the Court has often taken into account and made reference to both international and regional standards in its understanding of the Convention rights. In this regard, particularly in light of understanding the definition of domestic violence, its forms and the positive obligations of States, the ECtHR has consistently made reference to the Istanbul Convention, with domestic violence understood as a violation of human rights and as a form of discrimination against women.^[70] Similarly, the explanatory notes to the Istanbul Convention identify its harmonious co-existence with other treaties on the same matters.^[71] They are therefore

[69] Charter of Fundamental Rights of the European Union, 2010/C 83/02, 30 March 2010.

[70] In relation to Turkey, they include *M.G./Turkey* (Judgement) Application No. 646/10, 22 March 2016 and *Halime Kılıç/Turkey* (Judgement) Application No. 63034/11, 28 June 2016. For a full list of relevant caselaw, please see "List of relevant judgements," Council of Europe, accessed 4 December 2023, <https://www.coe.int/en/web/istanbul-convention/echr-case-law>. Prior to evaluation in the context of the Istanbul Convention, the ECtHR had taken into account CEDAW. Please see ECtHR, *Opuz/Turkey* (Judgement) Application No. 33401/02, 9 June 2009; Gülay Arslan Öncü, "Avrupa İnsan Hakları Sözleşmesi Sisteminde Kadına Karşı Aile İçi Şiddet Olgusu ve Bununla Mücadele Araçları [Violence Against Women in the Family within the European Convention on Human rights System and the Tools to Combat That]," *Public and Private International Law Bulletin* 32, 2 (December 2013): 3.

[71] Council of Europe, "Explanatory Report to the Council of Europe Convention on preventing and combatting violence against women and domestic violence," 11 October 2011, para.363.

complementary of each other.^[72] As such, it is reaffirmed that those Member States also signatory to the Istanbul Convention carry dual obligation to uphold principles of protection, with Member States not having signed the Istanbul Convention and candidates to the Union continuing to bear obligation of implementation through their commitment to the Union.

As with any other State that has ratified the Convention, the European Union, through its legislation and its policies, is legally bound to implement the contents of the Istanbul Convention.^[73] An analysis of the action that could be undertaken by the Union as a means of implementing its own obligations under the Istanbul Convention is undertaken below. This is an important evaluation, as any policy action that the Union takes in pursuit of its own implementation of the Convention would be required to also be implemented by the Member States.^[74]

It is acknowledged that many of the preventative and support measures mandated by the Istanbul Convention are currently observed by the Union through the Victim's Directive.^[75] The scope of the Directive is vast and includes many of the requirements expected under the Istanbul Convention, including laying foundations for support services, imposition of improved investigatory and prosecutorial procedures, actions for eradication of gender stereotypes, training of the judiciary and police etc..^[76] Further, in merit towards its "prevention" obligation under the Convention, the contents

[72] Please see Gizem Güney, "The Group of Experts under the Istanbul Convention on Preventing and Combating Violence against Women and Domestic Violence and the ECtHR: Complementary or Contradictory Tools?," *Blog of the European Journal of International Law*, 31 March 2020, accessed 4 December 2023, <https://www.ejiltalk.org/the-group-of-experts-under-the-istanbul-convention-on-preventing-and-combating-violence-against-women-and-domestic-violence-and-the-ecthr-complementary-or-contradictory-tools/>

[73] Leye, D'Souza, and Meurens, "The Added Value," 3.

[74] Nousiainen and Chinkin, *Legal Implications of EU Accession*, 8.

[75] Directive 2012/29/EU, *supra* note 22.

[76] Please see De Vido, "Ratification of the Council of Europe Istanbul Convention," 100; Leye, D'Souza, and Meurens, "The Added Value," 3; Nousiainen and Chinkin, *Legal Implications of EU Accession*, 133.

of the Audiovisual Media Services Directive^[77] currently provides for the encouragement of the private sector and of the media for the implementation of policies to prevent violence against women.^[78] In further support of the Union's obligations of prevention under the Convention, of notable importance are Directive 2006/54/EC on equality in employment^[79] and Directive 2004/113/EC on equality in access to goods and services.^[80] Directive 2011/99/EU on the European protection order^[81] and additionally Regulation No. 606/2013 on mutual recognition of protection measures^[82] reinforce the system of support to victims of violence and thus are essential to the execution of the Union's obligations under the Convention to provide measures supporting victims of gender-based violence. The Union additionally continues to provide funding to organisations seeking to undertake projects that address gender-based violence^[83] and facilitates the exchange

[77] European Parliament and Council, "Directive 2010/13/EU of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services," Document 32010L0013, 15 April 2010.

[78] Nousiainen and Chinkin, *Legal Implications of EU Accession*, 11.

[79] European Parliament and Council, "Directive 2006/54/EC of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation," Document 32006L0054, 26 July 2006.

[80] European Council, "Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services," Document 32004L0113, 21 December 2004.

[81] European Parliament and Council, "Directive 2011/99/EU of 13 December 2011 on the European protection order," Document 32011L009, 21 December 2011.

[82] European Parliament and Council, "Regulation No 606/2013 of 12 June 2013 on mutual recognition of protection measures in civil matters", L181/4, 29 June 2013.

[83] "Funding and Tender Opportunities," European Commission, accessed 4 December 2023, <https://ec.europa.eu/info/funding-tenders/opportunities/portal/screen/programmes/cerv>

of best practices amongst Member States for eradication of violence against women and attainment of gender equality.^[84]

As noted above, the Union has recently undertaken initiative for a Directive which would align the EU with its obligations under the Convention and its competences with regard to substantive elements of criminalisation. The proposed Directive criminalises certain behaviours (such as rape, female genital mutilation and cyber violence, including stalking and harassment) and brings them within the scope of EU crimes.^[85] As such, the Directive will seek to ensure a minimum level of protection for gender-based violence across the Union.

It should, however be noted that the Victim's Directive nor any other Directive provides for the confidentiality rule or for measures to encourage persons witnessing acts of violence to inform the authorities, as necessitated under the Istanbul Convention. Regardless, the Union's obligations under the Convention in this regard could be fulfilled by other, non-legislative means and/or through its overall capacity and competence to legislate on crime prevention and also matters that fall within the scope of civil law (e.g. forced marriage).^[86] The Union could further fulfil its Convention obligations through coordination and monitoring of the implementation of the Member States' preventative measures.^[87] In this regard, it is suggested that the Union, notably the Commission,^[88] would need to enhance monitoring to fulfil obligations and provide necessary information to the monitoring

[84] "Mutual Learning Program in gender equality," European Commission, accessed 4 December 2023, https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/gender-equality/who-we-work-gender-equality/mutual-learning-programme-gender-equality_en

[85] Nousiainen and Chinkin, *Legal Implications of EU Accession*, 9. Please also see European Commission, "Proposal for a Directive on combatting violence against women and domestic violence," COM/2022/105, 8 March 2022.

[86] Nousiainen and Chinkin, *Legal Implications of EU Accession*, 11.

[87] Nousiainen and Chinkin, *Legal Implications of EU Accession*, 11.

[88] Please see "Ending gender-based violence," European Commission, accessed 4 December 2023, https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/gender-equality/gender-based-violence/ending-gender-based-violence_en

body, GREVIO. Additionally, as a means of enhancing its mandate to ensure implementation of the provision by the Members States (and thus execute its own obligations under the Istanbul Convention), the Union could further engage in the preparation of model laws and guidelines.^[89]

III. TURKEY'S STATUS PRE AND POST-RATIFICATION

Throughout history, Turkey has been progressive in its national framework regarding movements for equality of women; with early examples including the 1934 amendment to the Constitution recognising the right of women to vote and be elected for Parliamentary representation,^[90] notably more advanced than many of the European counterparts at that time. Following the wave within Europe, the feminist movement in Turkey, initiated in Istanbul in the 1980s, recognised that it was no longer acceptable for violence against women to be masked within the private sphere and thus drew light to the issues of violence against women and domestic forms of violence.^[91] Further movements toward gender equality, legislative amendments, and policy actions for combatting violence against women progressed with Turkey's heightened relations with the European Union.^[92] As noted, Turkey's relationship with the European Union was initiated with the 1964 agreement for the development of relations between the European Community and Turkey with the underlying aim that this would lay the

[89] Nousiainen and Chinkin, *Legal Implications of EU Accession*, 13; De Vido, "Ratification of the Council of Europe Istanbul Convention," 100.

[90] Teşkilâtı Esasiye Kanununun 10 ve 11 inci maddelerinin değiştirilmesi hakkında kanun [Law No. 2599 amending articles 10 and 11 of the Constitution], 5 December 1934, S: 2877.

[91] Please see Sirin Tekeli, "The Turkish Women's Movement: A Brief History of Success," *Quaderns de la Mediterrània* 14 (February, 2010): 120; Nazan Moroğlu, "Law No. 6284 on the Prevention of Violence Against Women and the Istanbul Convention [Kadına Yönelik Şiddetin Önlenmesi 6284 Sayılı Yasa ve İstanbul Sözleşmesi]," *Türkiye Barolar Birliği Dergisi* 99, (March-April, 2012): 361-362; Dilek Karal and Elvan Aydemir, *Violence Against Women in Turkey* [Türkiye'de Kadına Yönelik Şiddet] (Ankara, 2012), 49-54.

[92] Marella Bodur Ün and Hakan Arıkan, "Europeanization and De-Europeanization of Turkey's Gender Equality Policy: The Case of the Istanbul Convention," *Journal of Common Market Studies* 60, no. 4 (July, 2022): 948.

foundations for Turkey's accession to the Union in the future.^[93] Candidacy status was awarded in 1999 and accession talks commenced in 2005.^[94] Amongst other notable areas of importance and value to the Union, human rights – and therefore women's rights issues – are at the heart of accession talks. Although Turkey ratified the Convention on the Eradication of All Forms of Discrimination Against Women (CEDAW) in 1985,^[95] the lack of protection afforded to women in Turkey and the absence of legislative endeavours specifically to combat violence against women were apparent. In a bid to comply with the Copenhagen criteria and to move forward with European norms in line with the mandate of accession, Turkey undertook actions in both the national and international arena. Liberal reforms saw equality come to the forefront.^[96] 2001 saw amendment to the Civil Law of 1926 removing the principle that the man is the head of the household,^[97] placing men and women on equal footing with regards to marriage and family assets and children.^[98] The Labour Law of 2003 removed discrimination based on sex, provided for equal pay of sexes and prohibited dismissal based on pregnancy.^[99] Notably the Constitutional amendments of 2001 and 2004, respectively, highlighted that spouses are equal^[100] and that men

[93] Preamble, Agreement No C 113/2, 1973, *supra* note 9.

[94] European Commission, "Türkiye".

[95] "Status of Treaties," United Nations, accessed 18 July 2023, https://treaties.un.org/pages/ViewDetails.aspx?src=IND&cmdtsg_no=IV-8&chapter=4&clang=en

[96] Ün and Arıkan, "Europeanization and De-Europeanization," 948. Please also see Ayşe Güneş and Çağlar Ezikoğlu, "Legal and Political Challenges of Gender Equality and Crimes Against Women in Turkey: The Question of Istanbul Convention." *Women & Criminal Justice* 22, no.1 (February, 2023): 16-17.

[97] This provision previous existed under Article 152 of the 1926 Türk Kanunu Medenisi [Law No. 743 on Turkish Civil Law], 17 February 1926. The 1926 Law also was the first legislative move to remove practices of polygamy.

[98] Türk Medeni Kanunu [Law No. 4721 on Turkish Civil Law], 8 December 2001, S: 24607.

[99] İş Kanunu [Law No. 4857 on Labour], 10 June 2003, S: 25134.

[100] Paragraph added to Article 41 of the Constitution. Türkiye Cumhuriyeti Anayasasının Bazı Maddelerinin Değiştirilmesi Hakkında Kanun [Law No. 4709 on Amendment

and women have equal rights.^[101] However, as noted above, the existence of non-discrimination provisions is insufficient to address the problem of gender-based violence. Law No. 4320 on the Protection of the Family, entering into force in 1998 (subsequently updated by Law 6284), was a significant step in that regard. Although it had a general title, its contents encompassed specific provisions that could address domestic violence and violence in the family home.^[102] It did, however, have its shortcomings not only in implementation but further with its inability to successfully address gender-based violence;^[103] an obligation that subsequently was existent as a result of Turkey's ratification of the Istanbul Convention in 2011.^[104]

Turkish Law No. 6284 on the Protection of Family and Prevention of Violence against Women, entering into force in the year 2012, was generated as a means of aligning the legal regulations with the obligations under the Istanbul Convention.^[105] In this regard, the Law is said to have sufficient measures.^[106] Unlike the preceding enactment (Law No. 4320), Law No. 6284 does not take a gender-neutral approach to violence but rather specifi-

of Some Articles of the Constitution of the Republic of Turkey], 17 October 2001, S:24556.

[101] Paragraph added to Article 10 of the Constitution. Türkiye Cumhuriyeti Anayasasının Bazı Maddelerinin Değiştirilmesi Hakkında Kanun [Law No. 5170 on Amendment of Some Articles of the Constitution of the Republic of Turkey], 22 May 2004, S:25469.

[102] Ailenin Korunmasına Dair Kanun [Law No. 4320 on the Protection of Family], 14 January 1998, S: 23233.

[103] Moroğlu, "Law No. 6284 on the Prevention of Violence", 368-369.

[104] The signing of the Convention was a principal move for Turkey in the protection of women against violence. Being the first signatory to the Convention was furthermore noteworthy.

[105] Ailenin Korunması ve Kadına Karşı Şiddetin Önlemesine Dair Kanun [Law No. 6284 on the Protection of Family and Prevention of Violence against Women], 20 March 2012, S:28239.

[106] Şükran Ünal, "What impact would a Turkish withdrawal from the Istanbul Convention have on EU-Turkey relations?," *Brussels Times*. 29 September 2020, accessed 15 July, 2023. <https://www.brusselstimes.com/133373/on-the-road-to-eu-accession-Turkeys-possible-withdrawal-from-the-istanbul-convention>

cally takes women and violence against women as its subject and protects women on account of being women^[107]— as envisioned by the Istanbul Convention. Law No. 6284 has an extensive scope. Its provisions apply to all women without the need for marriage and, in doing so, views violence against women within a wider context. It thus expands protection that was afforded under previous national laws.^[108] By encompassing all of the four forms of violence set out within the Istanbul Convention (physical, sexual, psychological and economic), the definition of violence within Law No. 6284 is in line with the Convention.^[109] Importantly, the law criminalises certain behaviours, as expected within the obligations of the Convention,^[110] provides for protection mechanisms such as restraining orders, the establishment of victim support mechanisms including helplines,^[111] and imposes duties on persons providing assistance to victims of violence.^[112] While Law No. 6284 confines the criminalisation of forced marriage to situations of human trafficking (such as those involving sexual exploitation),^[113] supplementary legislation exists against forced sterilisation as mandated by the Istanbul Convention. In a study undertaken in 2021, it was seen that Turkey's Law No. 6284 comparatively implemented the Convention requirements significantly more than any current EU Member State.^[114] The law does not

[107] Güney, “One Step Forward,” 139.

[108] Güney, “One Step Forward,” 140.

[109] Leye, D’Souza, and Meurens, “The Added Value,” 11.

[110] Leye, D’Souza, “The Added Value,” 6.

[111] Ayşe Güneş, “Legal Implications of Turkey’s Accession to the Istanbul Convention by Enacting and Refining Its Laws on Violence Against Women,” *Women & Criminal Justice* 31, no. 3 (December, 2021): 213; Natalie Meurens, Hayley D’Souza, Saredo Mohamed, Els Leye, Nazia Chowdhury, Selios Charitakis and Kate Regan, *Tackling Violence against Women and Domestic Violence in Europe: The Added Value of the Istanbul Convention and Remaining Challenges*, (European Parliament, Committee on Women’s Rights and Gender Equality FEMM, 2020), 40; Leye, D’Souza, and Meurens, “The Added Value,” 12.

[112] Güneş, “Legal Implications of Turkey’s Accession” 213.

[113] Leye, D’Souza, and Meurens, “The Added Value,” 6.

[114] Leye, D’Souza, and Meurens, “The Added Value,” 11.

address an important requirement of the Istanbul Convention requiring provisions and regulations for the removal of alternative dispute resolution processes in situations of domestic violence. This requirement was based on the understanding that the benefits that may come from out-of-court resolution do not outweigh the harm that may ensue to victims of violence.^[115] With a police or institutional preference to resolve such issues privately, the victim's ability or desire to make use of support services, or to be referred to support services, would be reduced,^[116] and inevitably, therefore, the rate of resolution of violence would deteriorate. This was addressed in 2012 with an amendment to the Arbitration Law, No. 6325.^[117]

Turkey subsequently withdrew from the Istanbul Convention with a Presidential Decree on 20 March 2021,^[118] with the denunciation's entry into force executed on 1 July 2021.^[119] This was a move Ün and Arıkan argue was an expected consequence of Turkey's policy change towards European values.^[120] In announcing the withdrawal, The Directorate of Communications expressly identified the move as being a response to the "manipulation of the Convention by groups seeking to normalise homosexuality, which is incompatible with Turkey's social and family values".^[121] Withdrawal could thus be understood as reflective of the anti-gender movement seen in the past decade globally in which conservative approaches towards women's rights, derogation from gender equality perspectives and notably activism

[115] Güneş, "Legal Implications of Turkey's Accession," 217.

[116] Güneş, "Legal Implications of Turkey's Accession," 218.

[117] Hukuk Uyuşmazlıklarında Arabuluculuk Kanunu [Law No. 6325 on Arbitration in Civil Matters], 22 June 2012, S: 28311.

[118] Cumhurbaşkanı Kararı [Presidential Decree], 20 March 2021, S: 31429.

[119] Council of Europe, "Chart of signatures."

[120] Ün and Arıkan, "Europeanization and De-Europeanization," 952. See also Güneş and Ezikoğlu, "Legal and Political Challenges," 21-22.

[121] "Statement on Turkey's withdrawal from the Istanbul Convention [Türkiye'nin İstanbul Sözleşmesi'nden Çekilmesine İlişkin Açıklama], Republic of Turkey Directorate of Communications, 21 March 2021, accessed 4 December 2023, <https://www.iletisim.gov.tr/turkce/haberler/detay/turkiyenin-istanbul-sozlesmesinden-cekilmesine-iliskin-aciklama>

against LGBTIQ+ have been seen.^[122] Inevitably this move was heavily criticised both nationally and internationally.^[123] With the ratification of the Convention by the European Union and the recent revitalisation of communication between Turkey and the EU,^[124] evaluation of Turkey's responsibilities as it relates to the Convention are warranted.

In early July 2023, while noting that accession talks are not currently active, the European Parliament reaffirmed Turkey's candidacy status. It reiterated that as a candidate, Turkey is under an expectation to abide by the values of democracy, respect for human rights, the rule of law and to "abide by EU laws, principles and obligations".^[125] It is thus apparent that there would be an expectation for Turkey to place importance on the protection of women against violence – as the EU has. This view is further supported on account of the importance that the Union gave, even before

[122] Haley McEwen and Lata Narayanaswamy, *The International Anti-Gender Movement: Understanding the Rise of Anti-Gender Discourses in the Context of Development* (Switzerland, United Nations Research Institute for Social Development, May 2023), 7. Notably in this regard, the Union has highlighted concern with Poland's approach towards the values of the Union, including women's rights. This is important as Poland has also announced desire to withdraw from the Istanbul Convention. Please see "European Parliament resolution on ongoing hearings under Article 7(1) TEU regarding Poland and Hungary", 2022/2647(RSP), 5 May 2022.

[123] "Council of Europe Leaders React to Turkey's Announced Withdrawal from the Istanbul Convention," Council of Europe, 21 March 2021, accessed 17 July 2023, <https://www.coe.int/en/web/portal/-/council-of-europe-%20leaders-react-to-turkey-s-announced-withdrawal-from-the-istanbul-conventi-1>. See also "Turkey: Withdrawal from Istanbul Convention is a pushback against women's rights, say human rights experts," UN Human Rights Office, 23 March 2023, accessed 17 July 2023, <https://www.ohchr.org/en/press-releases/2021/03/Turkey-withdrawal-istanbul-convention-pushback-against-womens-rights-say>

[124] Matina Stevis-Grindneff, "Will Turkey Become a Member of the E.U. Now? Here's What to Know," *The New York Times*, 11 July 2023, accessed 17 July 2023, <https://www.nytimes.com/2023/07/11/world/europe/Turkey-eu-membership.html>; Lynch and Barihazzi, "Is Turkey Joining the EU?"

[125] "MEPs call on EU and Turkey to look for alternative ways to cooperate," European Parliament, 18 July 2023, accessed 20 July 2023, <https://www.europarl.europa.eu/news/en/press-room/20230717IPR03018/meps-call-on-eu-and-turkiye-to-look-for-alternative-ways-to-cooperate>

their ratification of the Istanbul Convention, to the issue of domestic violence and the existence of protection mechanisms when evaluating some of the candidate countries during their EU accession processes (such as Poland and Romania).^[126] While other candidates may not have been monitored in the same way, it can be argued that Turkey's history with violence against women, the history with the Union's values and particularly the tumultuous relationship Turkey has with the Istanbul Convention itself will necessitate such a monitoring mandate by the Union in the context of accession. The question of whether fulfilment of the obligations in the Istanbul Convention would be a necessity for candidate countries can thus be answered positively. It is argued, therefore, that Turkey will bear the expectation to implement the policies of the Istanbul Convention. Regardless of thoughts that would indicate a requirement for Turkey to re-ratify the Convention,^[127] as it is with Member States that have not yet ratified the Convention, candidates – and thus Turkey in this regard – would not be obligated to ratify the Istanbul Convention. However, as with the obligations placed on Member States, compliance with the contents of the Istanbul Convention and the existence of sufficient national protection mechanisms are expected. As such, in determining Turkey's fulfilment of the EU's expectation to “abide by EU laws” as a candidate country, analysis of the national protection mechanisms must be undertaken to determine the capacity of the legal framework for compliance with the Istanbul Convention and therefore the fulfilment of the expectations as a candidate country.

Turkey's history with gender-based violence is problematic. While legislative reforms can be seen, similar to the experiences of its European counterparts, Turkey has faced implementation challenges in ensuring the

[126] Nousiainen and Chinkin, *Legal Implications of EU Accession*, 85. Please also see Andrea Krizsan and Raluca Popa, “Europeanization in Making Policies against Domestic Violence in Central and Eastern Europe,” *Social Politics* 17, no. 3 (September 2010): 383-385.

[127] “AB Konseyi, İstanbul Sözleşmesi'ne katılımı onayladı: Türkiye aday ülke, yasal mevzuata göre katılmak durumunda [European Council approves accession to Istanbul Convention: Turkey candidate country, required to accede according to legislation],” *T24*, 1 June 2023, accessed 17 July 2023, <https://t24.com.tr/haber/ab-konseyi-istanbul-sozlesmesine-katilimi-onayladi-turkiye-aday-ulke-yasal-mevzuata-gore-katilmak-durumunda,1113246>

protection of women from acts of violence. As noted, societal inequalities breed gender-based violence, and Turkey's traditional and cultural approach toward women can be seen as the notable foundation for this issue's realisation.^[128] The rate of gender-based violence in Turkey is significantly high, with Turkey's failures in this regard being identified by the ECtHR as a breach of the ECHR.^[129] Turkey's legislative provisions should not be understated, as particularly in light of Law No. 6284, the legal framework for protection appears progressive. In this regard, it is also important to note that that subsequent amendments to the Criminal Code, entering into force after enunciation of the Istanbul Convention, created new crimes that could be used in protecting women from violence, such as harassment. Thus desire for protection of women can be seen in the making of the Criminal Code amendments, with many provision carrying increased punishment where the victim is female.^[130] However studies undertaken over the past decade have shown that Turkey's rate of violence against women is not decreasing, and that it is higher than the European average, with 37.5% of women recorded to have been exposed to physical and sexual violence^[131] and 41% noted as having experienced domestic violence.^[132] In the recent Global Gender Gap Report of 2023, Turkey was ranked lowest in the Middle East

[128] Güney, "One Step Forward," 137.

[129] In relation to Turkey, they include *M.G./Turkey* (Judgement) Application No. 646/10, 22 March 2016 and *Halime Kılıç/Turkey* (Judgement) Application No. 63034/11, 28 June 2016. For a full list of relevant caselaw, please see "List of relevant judgements," Council of Europe, accessed 4 December 2023, <https://www.coe.int/en/web/istanbul-convention/echr-case-law>. Prior to evaluation in the context of the Istanbul Convention, the ECtHR had taken into account CEDAW. Please see ECtHR, *Opuz/Turkey* (Judgement) Application No. 33401/02, 9 June 2009; Arslan Öncü, "Avrupa İnsan Hakları Sözleşmesi Sisteminde Kadına Karşı Aile İçi Şiddet," 3.

[130] Türk Ceza Kanunu ve Bazı Kanunlarda Değişiklik Yapılmasına Dair Kanun [Law No. 7406 on Amending the Turkish Criminal Code and Other Laws], 27 May 2022, S: 31848

[131] İlknur Yüksel-Kaptanoğlu, Alanur Çavlin, and Banu Adaklı Ergöçmen, *Research on Domestic Violence against Women in Turkey* (Ankara, 2015), 86.

[132] Fatma Başar and Nurdan Demirci, "Domestic Violence against Women in Turkey," *Pakistan Journal of Medical Sciences* 34, no. 3 (May-June, 2018): 662.

and Eurasia with regards to gender equality, dropping its overall position in global ranking to 129/146^[133] from 124 in 2022. The Union's development report for Turkey in 2023 also denotes regression during the reporting period in relation to gender equality (including gender gaps in employment and social policy), violence against women and killing of women (highlighting need to improve implementation of the legislative framework) and LGB-TIQ+ rights.^[134]

The legislative framework's efficiency in addressing gender-based violence is undermined by various elements. The CEDAW Committee identifies that there has been a failure to address the discriminatory stereotypes that underlie gender-based violence.^[135] With the failure to address the discriminatory social and cultural approach to women, the implementation of the law is problematic. Various legal authorities, including police, do not fulfil their mandate under the laws.^[136] Furthermore, the lack of attention and/or desire to address the foundations of gender-based violence culminates in, as can be seen in recent years, other legislative provisions and/or amendments and proposals that undermine the content of the Law No. 6284—such as proposals regarding amendments to the Criminal Code affecting female rights.^[137] Reflecting a similar approach, Güney highlights that although legislative amendments have been made to remove reduced sentencing for

[133] WEF, Gender Global Gap Report 2023 (Geneva, June 2023), 11.

[134] European Commission, "Türkiye 2023 Report," 8 November 2023, 23-29; 40-42.

[135] CEDAW, *Concluding observations*, 7.

[136] Hamdi Firat Buyuk, "Women Face Rising Violence in Male-Dominated Turkey," *Balkan Insight*. 2 September 2019, accessed 17 July 2023. <https://balkaninsight.com/2019/09/02/women-face-rising-violence-in-male-dominated-turkey/>; GREVIO, *Baseline Evaluation Report on legislative and other measures giving effect to the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention): Turkey*, (Strasbourg, Council of Europe, October 2018), 13–25.

[137] The Advocates for Human Rights, *Turkey's Withdrawal from the Istanbul Convention. A Step Backward for Women's Human Rights. Briefing Paper*, (Minneapolis, 2021), 17; referencing the discussions in the year 2020 to introduce a proposal to Parliament to amend the Criminal Code, as previously had been introduced in 2016, regarding reduction of punishments for rape.

custom killings, the same has not been undertaken for honour killings, a problematic act against women in Turkey. Gender equality, and the foundation of the Convention as a whole, is threatened through the omission of the Turkish law to address honour killings, as necessitated by Article 12 of the Convention.^[138] This can also be shown in the name of the law itself as, while the contents do take women as the focus, the title reflects a desire to prioritise the family.^[139] These are factors reflective of the residual traditional stance towards female gender roles^[140] and show a clear lack of gender equality and thus violation of the fundamental basis of actions required by the Convention on Preventing and Combating Violence Against Women and Domestic Violence.

[138] Güney, “One Step Forward,” 145. This is also importantly highlighted as an issue by the European Commission. European Commission, *Türkiye 2023 Report*, 29.

[139] Güneş, “Legal Implications of Turkey’s Accession,” 215; The Advocates for Human Rights, *Turkey’s Withdrawal*, 14-16.

[140] Ün and Arıkan, “Europeanization and De-Europeanization,” 957.

CONCLUSION

Violence against women is a global problem. While identified as a human rights issue, the international community has recognised the inability of non-discrimination and general human rights policies to sufficiently address it. The European Union, having brought human rights within its mandate since the 1990s, has also highlighted the importance and necessity of taking specific action to protect women from violence and has thus taken measures to bring the issue within the auspices of EU Law. This has notably and fundamentally been fulfilled with the ratification of the Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention), bringing minimum standards for Member States where previously differentiated national applications and mechanisms could be seen. With the European Union's ratification and the introduction of the Convention's provisions to the auspices of EU law, Member States, whether having have ratified the Convention or not, have, under EU legal obligation, expectation of implementation. Furthermore, in pursuit of its own obligations under the Convention, the Union will also need to undertake additional action, with the capacity to, therefore, expand the Member States' alignment burdens. The expectation also applies to candidates, including Turkey. It could be argued that regardless of withdrawal from the Istanbul Convention, Turkey has a progressive legal framework that is advanced in fulfilling the obligation of States that are candidates to EU accession. On paper, Law No. 6284 is more encompassing than many EU Member States' laws. However, it is notably insufficient, with the problems in implementation and efficiency going to the heart of the gender inequality perspective. Turkey will need to address this in order to continue the heightened communication with the Union that has recently been triggered, not merely in the area of women's rights, but overall, to address the deterioration of fundamental freedoms that have led to the standstill of accession talks since 2018. Thus material reforms and actions will be necessitated, the lack of which will further regress Turkey's relations with the Union.

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