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An Assessment of Turkey's Legal Situation on Combating Violence Against Women After Withdrawing From the Istanbul Convention

İstanbul Sözleşmesi'nden Çekilmesinden Sonra Türkiye'de Kadına Yönelik Şiddetle Mücadeleye İlişkin Hukuki Durum Üzerine Bir Değerlendirme



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Abstract

The issue of violence against women has emerged as a central subject in the realm of contemporary law, prompting the establishment of numerous international conventions and legal regulations aimed at addressing it. The Istanbul Convention, a pivotal international convention focused on violence against women, remains a subject of ongoing legal discourse. Notably, Turkey has distinguished itself as a pioneering nation in this regard, being the first state to both ratify and subsequently withdraw from the Convention. This article undertakes a comprehensive examination of Turkey's withdrawal from the Convention, assessing its legality and legal ramifications. In this regard, the article first provides a thorough analysis of the Istanbul Convention and its significance. It then turns its attention to the legal landscape in Turkish law in the aftermath of Turkey's withdrawal from the Convention. Within the framework of this examination, the article engages in a critical discussion of whether Turkey's withdrawal from the Convention has resulted in a lacuna in its legal framework for combating violence against women. It is determined that withdrawal is not an effective course of action, as the national legislation does not contain provisions that go beyond those specified in the Istanbul Convention. The article recommended that Turkey should again become a party to the Convention.

Öz

Kadına yönelik şiddet, çağdaş hukukun önemli ve tartışmalı konularından biri olarak çok sayıda uluslararası sözleşme ve yasal düzenlemeye konu olmuştur. Kadına yönelik şiddete odaklanan en önemli uluslararası sözleşmelerden biri olan İstanbul Sözleşmesi, süregelen bir hukuki tartışmanın konusu olmaya devam etmektedir. Türkiye, Sözleşme'yi hem ilk onaylayan hem de Sözleşme'den ilk çekilen devlet olarak bu tartışmalar açısından önemli bir ülke haline gelmiştir. Bu makalede, Türkiye'nin Sözleşme'den çekilmesinin kapsamlı bir incelemesi yapılmakta, bunun yasalılığı ve hukuki sonuçları değerlendirilmektedir. Bu bağlamda makalede, öncelikle İstanbul Sözleşmesi'nin önemi ve kapsamlı bir analizi sunulmakta; ardından Türkiye'nin Sözleşme'den çekilmesinden sonra Türk hukukunda ortaya çıkan hukuki durum tespit edilmektedir. Bu inceleme çerçevesinde, Türkiye'nin Sözleşme'den çekilmesinin kadına yönelik şiddetle mücadeleyle ilişkin yasal durumda bir boşluğa yol açıp açmadığına dair eleştirel bir tartışma yürütülmektedir. Sonuç olarak ulusal mevzuatın İstanbul Sözleşmesi'nde belirtilenlerin ötesine geçen hükümler içermemesi nedeniyle çekilmenin hukuken isabetli olmadığı tespit edilerek Türkiye'nin Sözleşme'ye yeniden taraf olması savunulmaktadır.

Keywords

Domestic violence · Gender · Gender equality · Istanbul Convention · Violence against women

Anahtar Kelimeler

Ev içi şiddet · Toplumsal cinsiyet · Toplumsal cinsiyet eşitliği · İstanbul Sözleşmesi · Kadına yönelik şiddet



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I. Introduction

The Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence was¹ opened for signature during the Committee of Ministers of the Council of Europe meeting on May 11, 2011, in Istanbul; hence, the Istanbul Convention is its namesake. Turkey was the first state to sign and ratify the Convention.² However, through Presidential Decision No 3718, dated March 19, 2021,³ Turkey officially announced its withdrawal from the Convention in accordance with Article 80.⁴ Subsequently, through another Presidential Decision No 3928, dated April 29, 2021,⁵ it was declared that the Convention, which had been in effect since August 1, 2014, would be repealed as of July 1, 2021.

Turkey's withdrawal from the Convention has garnered support from conservative factions, asserting that the Convention, perceived as a product of feminist ideology, undermines the institution of the family and challenges the moral values upheld by society, standing in significant opposition to Islamic law.⁶ However, this stance has not resonated with most populace. In a recent public opinion poll that posed the question, "Do you approve of the government's decision to withdraw from the Istanbul Convention?", 52.3% of participants expressed disapproval, while 26.7% expressed approval. A fraction of 3.3% remained undecided, 7.5% were unaware of the Convention, and 10.2% lacked knowledge or chose not to respond to the question.⁷ Remarkably, even within the legal community, there are voices contending that the procedure for withdrawing from the Convention does not align with legal provisions, arguing that the Convention remains in effect.⁸

Following Turkey's withdrawal from the Convention, the Ministry of Family and Social Services asserted that this decision, which has sparked societal divisions, should not be misconstrued as a regression or compromise regarding women's rights. The Ministry highlighted that the Convention remains a contentious subject in other Council of Europe countries. They further emphasised that the Convention is not the sole instrument in addressing violence against women, citing the sufficiency of Turkish legislation in this regard.⁹ Notably, the cornerstone of the legislative framework in question is Law No 6284 on the Protection of the Family and the Prevention of Violence against Women,¹⁰ enacted on March 8, 2012, accompanied by its Implementing Regulation.

¹The Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) (adopted May 11, 2011, entered into force August 1, 2014) ECS < <https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatynum=210> > Accessed December 30, 2024.

²The Council of Ministers, empowered by Law No 6251 Approving the Ratification Council of Europe Convention on Preventing and Combating Violence against Women and Family Members (Official Gazette No 28127, dated November 29, 2011), formally endorsed the Convention through Decree No 2012/2816 (Official Gazette No 28227, dated March 8, 2012).

³Official Gazette No. 31429, dated 20 March 2021.

⁴Article 80: "1 Any Party may, at any time, denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.2 Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the Secretary General."

⁵Official Gazette No. 31470, dated 30 April 2021.

⁶Akif Dursun, 'İstanbul Sözleşmesi'nin İslâm Hukukuna Göre Değerlendirilmesi' (2020) 10(19) The Journal of Gumushane University Faculty of Theology 41, 63.

⁷Metropoll, 'Türkiye'nin Nabzı: Ayın Beş Rakamı' (March 2021) < <http://www.metropoll.com.tr/upload/content/files/1893-ayin-5rakami-mart21.pdf> > Accessed 23 March 2023.

⁸Presidency of Istanbul Bar Association, 'İstanbul Sözleşmesi, Cumhurbaşkanlığı Kararı ile Neden Feshedilemez?' (April 2, 2021) < <https://www.istanbulbarosu.org.tr/HaberDetay.aspx?ID=16262> > Accessed March 24, 2023.

⁹CNN Türk, 'Bakan Zehra Zümrüt Şelçuk'tan İstanbul Sözleşmesi Açıklaması' (March 24, 2021) < <https://www.cnnturk.com/turkiye/bakan-zehra-zumrut-selcuktan-istanbul-sozlesmesi-aciklamasi> > Accessed 24 March 2023.

¹⁰Official Gazette No. 28239, dated 20 March 2012.



This article aims to assess the implications of Turkey's withdrawal from the Convention on women's rights and the battle against violence inflicted upon them. Specifically, the examination will delve into whether Law No 6284 can effectively substitute the Convention. Before embarking on this analysis, a succinct overview of the Convention will be provided, underscoring its significance.

II. The Istanbul Convention and Its Significance

A study conducted by the World Health Organisation (WHO) estimated that one out of every three women aged 15 and over in the world was exposed to physical and/or sexual violence at some point in their life.¹¹ In a study conducted on some mummies at the University of Virginia, it was determined that women were exposed to violence 3000 years ago.¹² Although these studies reveal that violence against women is a global problem with a long history, the emergence of international texts specific to combat violence against women has a very short history. So much so that although violence against women is a form of discrimination based on gender, this issue was not directly mentioned even in the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)¹³ adopted by the United Nations General Assembly in 1979. The initial document adopted by the United Nations General Assembly with the objective of preventing violence against women was the Declaration on the Elimination of Violence against Women of 1993.¹⁴

The Istanbul Convention holds a significant distinction as the first legally binding international instrument dedicated specifically to addressing violence against women within the Council of Europe. Prior to the establishment of this pivotal Convention, only non-binding recommendations concerning violence against women were put forth, and this issue often fell under the purview of the European Convention on Human Rights, which, while comprehensive in nature, did not solely focus on women's rights and violence against women.

Moreover, the Istanbul Convention acknowledges and makes reference to several other international instruments that possess varying degrees of relevance to women's rights and violence against women. Notably, the Preamble of the Convention emphasises the importance of considering not only the Convention itself but also the European Convention on Human Rights and its Protocols, along with other conventions within the Council of Europe,¹⁵ along with the recommendations issued by the Committee of Ministers of the Council of Europe.¹⁶ Furthermore, the Istanbul Convention acknowledges the relevance of other international texts, including the CEDAW and its Optional Protocol,¹⁷ which, although not originating from the Council of Europe, are deemed significant in addressing the issue at hand.¹⁸ The Convention highlights

¹¹WHO, 'Violence against women prevalence estimates, 2018: global, regional and national prevalence estimates for intimate partner violence against women and global and regional prevalence estimates for non-partner sexual violence against women' (2021) 16 < <https://apps.who.int/iris/bitstream/handle/10665/341337/9789240022256-eng.pdf?sequence=1&isAllowed=y> > Accessed February 24, 2023.

¹²Leah J Dickstein, 'Spouse Abuse and Other Domestic Violence' (1988) 11(4) *Psychiatric Clinics of North America* 611.

¹³The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (adopted December 18, 1979, entered into force September 3, 1981) 1249 UNTS 13 < <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women> > Accessed December 30, 2024.

¹⁴The Declaration on the Elimination of Violence against Women of 1993 (adopted December 20, 1993) UN Doc. A/RES/48/104 < <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-elimination-violence-against-women> > Accessed 30 December 2024.

¹⁵The European Social Charter, the Council of Europe Convention on Action against Trafficking in Human Beings, and the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.

¹⁶Recommendation Rec(2002)5 on the protection of women against violence, Recommendation CM/Rec(2007)17 on gender standards and mechanisms, Recommendation CM/Rec(2010)10 on the role of women and men in preventing and ending conflict and peacebuilding, and other relevant recommendations.

¹⁷Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (adopted October 6, 1999, entered into force December 22, 2000) 2131 UNTS 83 < <https://documents.un.org/doc/undoc/gen/n99/774/73/pdf/n9977473.pdf> > Accessed December 30, 2024.

¹⁸The International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the United Nations Convention on the Rights of the Child and its Optional Protocols, the United Nations Convention on the Rights of Persons with Disabilities, the



the importance of considering the fundamental principles of international human rights, as well as the jurisprudence established by the European Court of Human Rights, which has played a crucial role in setting standards concerning violence against women. By incorporating these international texts, principles, and legal precedents, the Convention ensures their use in the interpretation and implementation of its provisions, thereby enhancing the effectiveness and comprehensive nature of the Convention's objectives.¹⁹

Despite being a Council of Europe initiative, the Istanbul Convention strives to broaden its reach by enabling states that are not Council of Europe members to accede.²⁰ Currently, as of December 2024, 38 member states of the Council of Europe have become parties to the Convention. Also, the European Union has signed and ratified the Convention. However, it is worth noting that there are Council of Europe member states that have either not yet signed the Convention or have signed but not yet ratified or accepted it. Notably, Turkey, a member of the Council of Europe, withdrew from the Convention in 2021. Among non-Council of Europe states, there are currently no parties to the Convention.²¹

By firmly establishing violence against women as a violation of human rights and a manifestation of gender-based discrimination, the Istanbul Convention provides a comprehensive and detailed definition of this issue, aligning with its significance and complexity.²² The Convention defines violence against women as any act of gender-based violence that results in, or is likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life (Article 3-a). Gender-based violence against women refers to violence that targets women solely because of their gender or that disproportionately affects women (Article 3-d). Crucially, the Convention appropriately frames the definition of violence against women within the concept of gender (Article 3-c), which encompasses the socially constructed attributes, roles, behaviours, and activities that society deems appropriate for both women and men. As underlined in the Preamble to the Convention, the defining characteristic of violence against women is its gendered nature.²³ Besides, the Convention's provision on non-discrimination, Article 4, paragraph 3²⁴, is also satisfactory.²⁵

Upon examining the initial paragraph of Article 1 in the Istanbul Convention, it becomes evident that the Convention encompasses not only women's rights and violence against women but also addresses the

Rome Statute of the International Criminal Court, the Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War and Additional Protocols I and II, and General Recommendation No 19 of the CEDAW Committee on violence against women.

¹⁹In addition, Article 71 of the Convention includes the following provision: "This Convention shall not affect obligations arising from other international instruments to which Parties to this Convention are Parties or shall become Parties and which contain provisions on matters governed by this Convention. The Parties to this Convention may conclude bilateral or multilateral agreements with one another on the matters dealt with in this Convention, for purposes of supplementing or strengthening its provisions or facilitating the application of the principles embodied in it." Article 73 goes on as follows: "The provisions of this Convention shall not prejudice the provisions of internal law and binding international instruments which are already in force or may come into force, under which more favourable rights are or would be accorded to persons in preventing and combating violence against women and domestic violence."

²⁰The first paragraph of Article 75 of the Convention states that: "This Convention shall be open for signature by the member States of the Council of Europe, the non-member States which have participated in its elaboration and the European Union." The first paragraph of Article 76 stipulates that: "After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may, after consultation of the Parties to this Convention and obtaining their unanimous consent, invite any non-member State of the Council of Europe, which has not participated in the elaboration of the Convention, to accede to this Convention by a decision taken by the majority provided for in Article 20.d of the Statute of the Council of Europe, and by unanimous vote of the representatives of the Parties entitled to sit on the Committee of Ministers."

²¹The Council of Europe Treaty Office, 'Chart of signatures and ratifications of Treaty 210' < <https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatyid=210> > Accessed 30 December 2024.

²²Lisa Grans, 'The Istanbul Convention and the Positive Obligation to Prevent Violence' (2018) 18(1) Human Rights Law Review 133, 136.

²³Martina Bosak and Maja Munivrana Vajda, 'The reality behind the Istanbul convention: Shattering conservative delusions' (2019) 74 Women's Studies International Forum 77, 79 et seq.

²⁴The third paragraph of Article 4 of the Convention states that: "The implementation of the provisions of this Convention by the Parties, in particular measures to protect the rights of victims, shall be secured without discrimination on any ground such as sex, gender, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, sexual orientation, gender identity, age, state of health, disability, marital status, migrant or refugee status, or other status."

²⁵Olga Jurasz, 'The Istanbul Convention: a new chapter in preventing and combating violence against women' (2015) 89(9) Australian Law Journal 619, 623.



issue of domestic violence.²⁶ The Convention presents a comprehensive definition of domestic violence, reflecting the breadth and complexity of this phenomenon, as it should.²⁷ Accordingly, domestic violence encompasses all forms of physical, sexual, psychological, or economic violence that transpire within the family or household, as well as between former or current spouses or partners, regardless of whether the perpetrator and victim share the same residence (Article 3-b).

Research indicates that domestic violence is the most prevalent form of violence experienced by women.²⁸ While women are predominantly the victims of domestic violence, men can also be victims.²⁹ Under Article 2 of the Convention, this Convention applies to all forms of violence against women, including domestic violence, which disproportionately affects women (paragraph 1). While state parties are required to prioritise female victims of gender-based violence in implementing the Convention (paragraph 2, sentence 2), it is not obligatory for them to apply the Convention to all victims of domestic violence. The provision only encourages parties to extend the application of the Convention to all victims of domestic violence (paragraph 2, sentence 1).

According to the general template provided in Article 4, parties are obligated to enact the necessary legislative and other measures to promote and protect the right of all individuals, especially women, to live free from violence in both the public and private spheres (paragraph 1). Furthermore, the parties must incorporate the principle of gender equality into their national constitutions or relevant legislation to condemn and prevent all forms of discrimination against women and ensure the practical implementation of this principle. They should also prohibit discrimination against women and take legislative and other measures, including the repeal of laws and practices that discriminate against women (paragraph 2). Article 5 of the Convention imposes an obligation on state parties to refrain from committing any act of violence against women. Additionally, it explicitly states that these states are required to take the necessary legislative and other measures to exercise utmost care and diligence in preventing, investigating, punishing, and providing compensation for acts of violence committed by non-state actors. In Article 6 of the Convention, parties must adopt a gender perspective in the implementation of its provisions and evaluate its effects. They are also required to promote and effectively implement policies of gender equality and women's empowerment. These provisions underscore the Convention's commitment to comprehensively addressing violence against women and promoting gender equality.

Chapter 2 of the Convention (Article 7-11) outlines the obligations of state parties to implement comprehensive policies to combat acts of violence and collect data on such acts. Chapter 3 (Article 12-17) focuses on the obligations of state parties to prevent violence, while Chapter 4 (Article 18-28) covers their responsibilities in protecting and supporting victims of violence. Chapter 5 of the Convention (Article 29-48) requires states parties to take legislative or other measures to ensure that deliberate acts of psychological violence (Article 33), stalking (Article 34), physical violence (Article 35), sexual violence (Article 36), forced marriage (Article 37), female genital mutilation (Article 38), forced abortion and sterilisation (Article 39), and sexual

²⁶Article 1, paragraph 1: "The purposes of this Convention are to: a protect women against all forms of violence and prevent, prosecute and eliminate Violence against women and domestic violence; b contribute to the elimination of all forms of discrimination against women and promote substantive equality between women and men, including by empowering women; c design a comprehensive framework, policies and measures for protecting and assistance to all victims of violence against women and domestic violence; d promote international co-operation with a view to eliminate violence against women and domestic violence; e provide support and assistance to organisations and law enforcement agencies to effectively co-operate in order to adopt an integrated approach to eliminating violence against women and domestic violence."

²⁷Ronagh J A McQuigg, 'What potential does the Council of Europe Convention on Violence against Women hold as regards domestic violence?' (2012) 16(7) The International Journal of Human Rights 947, 948.

²⁸Çiğdem Sever, 'Kadına Karşı Ev İçi Şiddette Devletin Sorumluluğu ve Avrupa İnsan Hakları Mahkemesi'nin Opuz v. Türkiye Kararı' (2012) 1(2) Atılım Social Sciences Journal 19, 20.

²⁹Patricia Tjaden and Nancy Thoennes, 'Prevalence and Consequences of Male-to-Female and Female-to-Male Intimate Partner Violence as Measured by the National Violence Against Women Survey' (2000) 6(2) Violence Against Women 142.



harassment (Article 40) are punishable. This Chapter also highlights the important obligation of parties to prevent the use of culture, custom, religion, tradition, or so-called honour as justifications in criminal cases (Article 42, paragraph 1). Chapter 6 of the Convention, titled “*Investigation, prosecution, procedural law, and protective measures*” (Article 49-58), addresses the obligations of state parties in these areas. Chapter 7 (Article 59-61) focuses on migration and asylum, while Chapter 8 (Article 62-65) covers international relations and imposes various obligations on the parties regarding these matters. These Chapters provide a comprehensive framework for addressing violence against women and promoting a coordinated response among state parties.

The Convention establishes the creation of a Group of Experts on Combating Violence Against Women and Domestic Violence (GREVIO) (Article 66, paragraph 1). GREVIO consists of a minimum of 10 and a maximum of 15 members, who are elected by the Committee of the Parties from the individuals nominated by the parties (Article 66, paragraph 2). The primary role of GREVIO is to monitor the implementation of the Convention by the parties. Based on GREVIO’s report on a specific state party, the Committee of the Parties can issue recommendations to that state regarding measures to be taken to implement GREVIO’s findings. The recommendations may also focus on improving cooperation with the state to ensure effective implementation of the Convention (Article 68, paragraph 12). Furthermore, GREVIO has the authority to issue general recommendations for the implementation of the Convention when deemed appropriate and necessary (Article 69). These general recommendations serve as guidelines to assist states in fulfilling their obligations under the Convention. GREVIO plays a crucial role in monitoring and promoting the effective implementation of the Convention by providing guidance and making recommendations to the parties.

The Convention is considered the most comprehensive³⁰ and advanced³¹ international instrument for combating violence against women in Europe. It should be noted, however, that the Convention only sets out the obligations and measures that state parties should undertake to address and prevent violence against women and does not explicitly provide for sanctions for non-compliance.

³⁰Dubravka Šimonović, ‘Global and Regional Standards on Violence Against Women: The Evolution and Synergy of the CEDAW and Istanbul Conventions’ (2014) 36(3) *Human Rights Quarterly* 590, 604-605; Valentine Berthet, ‘Norm under fire: support for and opposition to the European Union’s ratification of the Istanbul Convention in the European Parliament’ (2022) 24(5) *International Feminist Journal of Politics* 675, 676.

³¹Sara 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’ (2017) 9(2) *European Journal of Legal Studies* 69, 70.

³²The legality of Turkey’s withdrawal from the Istanbul Convention has sparked serious legal debate. A legal petition was lodged at the Council of State seeking the nullification of Presidential Decision No. 3718, which resulted in Turkey’s withdrawal from the Istanbul Convention. The basis of the petition revolved around the contention that Presidential Decree No 9 (Official Gazette No 3049, dated July 15, 2018) Article 3, paragraph 1, conferring authority upon the President to withdraw from international conventions, is in violation of constitutional principles. Based on the first paragraph of Article 90 of the Constitution (Official Gazette No 17863, dated November 9, 2018), the ratification of treaties made with foreign states and international organisations on behalf of the Republic of Turkey requires the approval of the Turkish Grand National Assembly, which is the legislative body, through a law. Additionally, according to the fifth paragraph of Article 90, duly ratified international agreements have the force of law. Furthermore, Article 104 of the Constitution states that the President, as the head of the State, possesses executive power. The President is authorised to issue Presidential decrees related to matters within the scope of executive power. However, it is explicitly stated that fundamental rights, personal rights, and duties cannot be regulated by a Presidential decree. Moreover, a Presidential decree cannot be issued on matters that are expressly regulated by law. It is argued that in light of these constitutional provisions, the President’s decision to withdraw from the Istanbul Convention, which is related to fundamental rights and freedoms and was approved by the Grand National Assembly of Turkey, without the approval of the Assembly, constitutes an overstepping of authority and violates the principle of parallelism in authority and procedure. Contrary to the aforementioned argument, there is another viewpoint that considers Presidential Decree No 9 Article 3, paragraph 1, which grants the President the authority to withdraw from international conventions, as lawful. This argument is based on the long-standing application—for 55 years—of Law No 244 on the Concluding, Enforcement, and Publication of International Agreements and Authorisation of the Council of Ministers for the Concluding of Certain Agreements (Official Gazette No 11425, dated June 11, 1963), which was in force in Turkey from 1963 to 2018. This law granted the authority to withdraw from international agreements to the Council of Ministers as the executive body during that period. The transfer of the authority from the Council of Ministers to the President took place with the transition from a parliamentary system to a presidential system of government with the amendment of the Constitution by Law No 6771 on the Amending the Constitution of the Republic of Turkey (Official Gazette No 29976, dated February 11, 2017) in 2017. Despite the recommendation put forth by the Prosecutor of the Council of State,



III. The Legal Framework After the Withdrawal

In order to assess the outcomes of Turkey's withdrawal from the Istanbul Convention,³² a preliminary examination must be conducted to ascertain whether Turkish legislation offers a more progressive framework than the Convention concerning the rights of women and the prevention of violence against them.

A. Equality Between Men and Women in Turkish Legislation

Article 2 of the Constitution affirms Turkey as a state that upholds human rights. Furthermore, Article 10 of the Constitution stipulates that every individual is equal before the law, regardless of language, race, colour, sex, political opinion, philosophical belief, religion, sect, or any other such criteria (paragraph 1). In 2004 with Law No. 5170,³³ an additional paragraph was included this provision to emphasise the equal rights of men and women, with the State assuming the responsibility of ensuring practical equality (paragraph 2). In 2010, with Law No 5982,³⁴ an amendment clarified that measures taken to uphold this principle should not be interpreted as conflicting with the principle of equality. In 2001, with Law No 4709,³⁵ the assertion that the family is founded on the equality between spouses was appended to the first paragraph of Article 41 of the Constitution, which recognises the family as the bedrock of Turkish society. These legislative provisions collectively demonstrate the constitutional guarantee of equality between men and women in Turkey, a state that is also a party to the CEDAW.³⁶

In the 1990s, significant efforts were made to eliminate provisions that contradicted the principle of equality between men and women in Turkish laws. Emphasis was placed on ensuring equality between men and women in key legislations such as the Turkish Civil Code No 4721 (TCC),³⁷ the Turkish Penal Code No 5237 (TPC),³⁸ and the Labour Code No 4857,³⁹ all of which came into effect during the 2000s. While certain

asserting the annulment of Presidential Decision No 3718 and the subsequent transfer of the pertinent provision in Presidential Decree No 9 to the Constitutional Court for further scrutiny, the case was dismissed by the 10th Chamber of the Council of State (1493/2489, April 28, 2022), with a voting majority of two against three. The grounds for rejection were premised on the notion that the executive branch possesses the power to cause withdrawals from international conventions. In addition, in a ruling (126/32, June 25, 2022) that bears no direct relevance to the matter at hand, the Constitutional Court stated that the legislature's competence with regard to international conventions is limited to ratification of the convention by a law. Prior to the withdrawal from the Istanbul Convention, the question of which body should have the authority to withdraw from international conventions in Turkey had not been the subject of extensive deliberation, and no case had been brought to challenge this authority of the executive. In practice, the Council of Ministers had indeed exercised its authority derived from Law No. 244 by causing withdrawals from various agreements. However, it is evident that the executive presently derives its authority from a Presidential Decree, which holds a lower hierarchical standing compared to law and is formulated by the executive itself. Consequently, while the judicial determination regarding the lawfulness of Turkey's withdrawal from the Convention may invite critique, it also serves to conclusively settle this debate by virtue of its binding nature. See for discussions: Ersan Şen, 'İstanbul Sözleşmesinin Feshinin Hukukiliği Tartışması' (March 20, 2021) < <https://sen.av.tr/tr/makale/istanbul-sozlesmesinin-feshinin-hukukiligi-tartismasi> > Accessed May 20, 2023; Kemal Gözler, 'Cumhurbaşkanının Uluslararası Sözleşmeleri Feshetme Yetkisi Var mıdır? (İstanbul Sözleşmesinin Feshi Hakkında 3718 Sayılı Cumhurbaşkanlığı Kararı Üzerine Eleştiriler)' (March 21, 2021) < <https://www.anayasa.gen.tr/ua-sozlesme-feshi.htm>. > Accessed May 26, 2023; Levent Köker, 'İstanbul Sözleşmesinin İptalinin Anayasaya Aykırılığı Üzerine' (March 24, 2021) < <https://birikimdergisi.com/guncel/10531/istanbul-sozlesmesini-sona-erdirmeye-kararının-anayasaya-aykırılığı-uzerine> > Accessed June 15, 2023; Mesut Gülmez, 'İstanbul Sözleşmesinin Feshi Kararı, Soy Zinciri ve Anayasa'ya Aykırılık Sorunu' (April 1, 2021) < <http://arastirma.disk.org.tr/?p=5392> > Accessed June 18, 2023; Ali Dursun Ulusoy and Ülkü Halatçı Ulusoy, 'Kadınları Şiddete Karşı Korumaya Yönelik Uluslararası İstanbul Sözleşmesi'nin Türkiye Açısından Feshine Dair Karar Hukuka Uygun mudur?' (2021) 16 (182) Terazi Hukuk Dergisi 2009, 2015-2018; Ali Osman Karaoğlu, 'Türk Hukukunda Milletlerarası Andlaşmalardan Tek Taraflı Çekilme' (2021) 16(203) Bahçeşehir Üniversitesi Hukuk Fakültesi Dergisi 1083, 1096-1097; Mustafa Taha Durmuş, 'Cumhurbaşkanının Uluslararası Sözleşmeler Üzerindeki Tasarruf Yetkisi ve Türkiye'nin İstanbul Sözleşmesi'nden Ayrılmasının Hukuki Analizi' (2021) 29(3) Selçuk Law Review 1969, 1977; Ceren Zeynep Pirim, 'The Legal Effects of the New Presidential System on Turkey's Treaty-Making Practice' (2022) 33(2) *European Journal of International Law* 579, 592-596; Lider Bal, 'Uluslararası Hukuk Açısından Uluslararası Antlaşmalardan Çekilme Yetkisine ve Usulüne İlişkin Tartışmalar' (2023) 43(2) Public and Private International Law Bulletin 639, 645-673.

³³Official Gazette No. 25469, dated 22 May 2004.

³⁴Official Gazette No 27580, dated 13 May 2010.

³⁵Official Gazette No. 24556, dated 17 October 2001.

³⁶The Council of Ministers, empowered by Law No 3232 Approving the Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women (Official Gazette No 18792, dated June 25, 1985), formally endorsed the Convention with reservations on some articles through Decree No 85/9722 (Official Gazette No 18898, dated October 4, 1985).

³⁷Official Gazette No. 24607, dated 8 December 2001.

³⁸Official Gazette No 25611, dated 12 October 2004.

provisions of the TCC, such as Article 321, which stipulates that the child shall bear the father's surname if the parents are married, remain in force despite their inconsistency with equality between men and women, they stand as exceptions to the prevailing trend. Apart from these exceptions, the TCC embraced a marriage model founded on spousal equality, asserting that the management of the marital union shall be jointly undertaken by the spouses (Article 186, paragraph 2).

B. Combating Violence Against Women in Turkish Legislation

1. In general

The majority of violent acts, which are deemed crime according to the 5th part of the Istanbul Convention, are already classified as crimes in the TPC.⁴⁰ However, there are no explicitly specific provisions addressing women's circumcision, forced marriages, and psychological violence. Turkey does not have a tradition of women's circumcision,⁴¹ and perpetrators of such acts would be prosecuted under the offense of intentional injury (Article 86 et seq). Furthermore, if the victim's sexual organ becomes dysfunctional as a result, the penalty imposed on the perpetrator would be doubled (Article 87, paragraph 2, sub-paragraph b). In cases of forced marriages, the offender may be charged with various crimes, including injury (Article 86 et seq), threat (Article 106), blackmail (Article 107), coercion (Article 108), and deprivation of liberty (Article 109). Certain acts that constitute psychological violence may also be criminalised under injury (Article 86 et seq) or torture (Article 96).

Within the TPC, the commission of intentional killing based on traditional motives is addressed as a qualified form of crime (Article 82-k). Also, it is explicitly stated that for the perpetrator to avail themselves of the reduction of unjust provocation, the offense must be committed under the influence of anger or violence provoked by an unjust act (Article 29). This provision serves to prevent the incorrect application of the reduction of unjust provocation, particularly in cases such as honour killings.

In May 2022, with Law No 7406,⁴² several amendments were introduced to the TPC, resulting in the categorisation of certain offenses committed against women either as qualified forms of the crime (eg Article 82-f) or the imposition of a specific minimum penalty (eg Article 94, paragraph 1, sentence 2).

The TCC contains several provisions relating to violence against women and, in particular, to violence within the family. First, it contains the general rule on the protection of personality (Article 23-25). Article 195 of the TCC grants spouses the right to jointly or separately seek the intervention of a judge in cases where obligations arising from the marriage (TCC Article 185 et seq) remain unfulfilled or significant disputes arise concerning the marital union (paragraph 1). In such instances, the judge may caution the spouses about their obligations, attempt reconciliation, and seek assistance from experts with the consent of both parties (paragraph 2). If necessary, upon the request of one spouse, the judge may implement the measures prescribed by law (paragraph 3). Spouses have a legal obligation to ensure the happiness of the marital union (TCC Article 185, paragraph 2), and any act of violence against each other constitutes a breach of this obligation. In such cases, intervention by a judge is permitted under this provision. Disagreements between spouses regarding significant marital issues may also lead to violence. However, the intervention of a judge can prevent such acts of violence by mediating the dispute. According to the TCC, each spouse has the right to file for divorce against the other due to attempts against life, abominable treatment, or degrading

³⁹Official Gazette No. 25134, dated 10 June 2003.

⁴⁰Berrin Akbulut, '6284 sayılı Kanunda Şiddet ve İstanbul Sözleşmesinin TCK Açısından Değerlendirilmesi' (2014) 5(6) Türkiye Adalet Akademisi Dergisi 141, 157 et seq.

⁴¹For countries and regions where FGM (female genital mutilation) is common, see WHO, 'Female genital mutilation: An overview' (1998) 9 et seq < https://apps.who.int/iris/bitstream/handle/10665/42042/9241561912_eng.pdf?sequence=1 > Accessed June 29, 2023.

⁴²Official Gazette No 31848, dated 27 May 2022.



treatment (Article 162). Furthermore, if one spouse abandons the other, with the intention of not fulfilling the obligations arising from the marriage or without valid justification for not returning to the matrimonial home, the deserted spouse can initiate divorce proceedings (Article 164). Similarly, if one spouse commits violence not specified in these provisions, resulting in a severe disruption of the marriage that makes it unreasonable for the aggrieved spouse to continue a shared life, the affected spouse can file for divorce (Article 166, paragraph 1). In addition to the right to dissolve the marriage, the victimised spouse has the option to seek financial compensation, moral damages, and alimony from the abusive spouse (Article 174 et seq). TCC Article 322 states that parents and children are obliged to support and respect each other, maintaining the peace and integrity of the family while upholding its dignity. However, it should be noted that the TCC encompasses numerous regulations of the reciprocal rights and obligations within a family comprising mother, father, and children, which cannot be fully enumerated here. For instance, the financial obligations concerning the care, education, and protection of the child are assumed by the parents (Article 327, paragraph 1). The maintenance obligation of the parents persists until the child attains adulthood. In cases where the child has reached adulthood but is still pursuing their education, the parents are obligated to provide support until the completion of their education, to the extent that can be expected from them according to the circumstances and conditions (Article 328). In instances where parents neglect to allocate funds for their daughter's education, they may be subject to an alimony lawsuit under the provisions outlined (Article 329). The TCC even contains provisions dealing with the mutual rights and obligations of individuals living together as a family. For instance, according to paragraph 2 of Article 368, each member of the household is entitled to the liberties necessary for their education, religious beliefs, profession, and art, among other aspects.

The majority of provisions in Turkish legislation aimed at combating violence against women, particularly within the TPC and TCC, primarily entail sanctions imposed after acts of violence have been perpetrated. Nonetheless, it is of utmost importance to not only punish such acts but also proactively prevent violence against women while directly safeguarding and supporting female victims. In recognition of this imperative, Law No 6284 was enacted to address this gap.

2. Combating violence against women within the framework of Law No 6284

The purpose of Law No 6284, as stated in the opening paragraph of Article 1, is to regulate the procedures and principles regarding the measures to be taken for the protection of women, children, family members and victims of stalking who have been subjected to violence or are at risk of being subjected to violence, and for the prevention of violence against such persons.

Law No 6284 defines that violence includes all types of physical, sexual, psychological, verbal or economic attitudes and behaviours that occur in the social, public or private sphere, including acts that cause or are likely to cause physical, sexual, psychological or economic harm or suffering to the person, threats and pressure or arbitrary prevention of freedom. (Article 2-d). It clarifies that violence against women encompasses all forms of attitudes and behaviours defined as violence within the scope of this law, which specifically target women based on their sex or have an impact on women, thus constituting a violation of women's human rights (Article 2-ç).

While protective measures for victims of violence can be decided by the judge as a rule, some of them can be decided by the local authority and even by the relevant law enforcement chiefs in cases where delay is inconvenient. Although it is claimed that giving the authority to give some protective injunctions to civil and

⁴³Hüsamettin. Uğur, 'Kadın ve Aile Bireylerine Yönelik Şiddete Karşı 6284 sayılı Kanun'un Getirdikleri' (2012) 101 Union of Turkish Bar Associations Review 333, 350.



even law enforcement chiefs, as well as judges, may cause confusion,⁴³ this regulation seems appropriate in the face of the necessity of urgent intervention in order to prevent violence.⁴⁴

The protective measures that can be taken by the local authority are listed in the first paragraph of Article 3 of Law No 6284 as follows:

“a) To provide an appropriate shelter to the person and, if necessary, to the person’s children in the vicinity or in some other location.

b) To provide temporary financial aid to the person, without prejudice to other assistance provided within the scope of other laws.

c) Provide psychological, professional, legal and social guidance and counselling services.

ç) To provide temporary protection upon the request of the relevant person or ex officio in the event of a life-threatening danger for the person.

d) If necessary, when the protected person has children, to provide day care facilities limited to a period of four months to support the protected person's participation in the labour force, or two months if the protected person works, [...]”

The inclusion of the statement “*similar measures deemed appropriate shall be decided*” in this provision signifies that the range of measures is not confined to a specific number. The absence of a numerical limit is fitting considering the unique nature of each circumstance, allowing for flexibility in determining the appropriate course of action.

As stipulated in paragraph 2 of Article 3 of Law No 6284, law enforcement chiefs are granted the authority to implement the measures outlined in sub-paragraphs (a) and (ç) in cases where delays would be inconvenient.

The protective measures that can be taken by the judge are listed as follows in Article 4 of Law No 6284:

“a) To change the work place.

b) To determine a settlement different from the shared one if the person is married.

c) To add a family residence annotation to the title deed in the presence of the conditions in the Turkish Civil Code No 4721 [...] and upon the request of the protected person.

ç) To change identity and other relevant information and documents in accordance with the provisions of the Witness Protection Law No 5726 [...] based on the informed consent of the person concerned, if there is a life-threatening danger for the protected person and it is understood that other measures to prevent this danger are inadequate.”

In this provision, there is no limitation on the number of measures that can be implemented. The judge holds the authority to proactively determine the protective measures to be taken by the local authority. Additionally, the judge may also decide on other measures deemed appropriate based on the specific circumstances of the case at hand.

An essential aspect explicitly addressed in Law No 6284 is the absence of a requirement for evidence or documentation when issuing a protective injunction in cases of violence (Article 8, paragraph 3, sentence

⁴⁴Ebru Ceylan, ‘Türk Hukukunda Aile İçi Şiddet ve Kadına Karşı Şiddetin Önlenmesiyle İlgili Yeni Düzenlemeler’ (2013) 109 Union of Turkish Bar Associations Review 13, 29.



1). Despite the potential for misuse, this regulation can be deemed highly appropriate given the challenges associated with providing evidence often of violence.

In the first paragraph of Article 5 of Law No 6284, the potential preventive measures that a judge may take against an individual who has perpetrated violence or exhibits a tendency to commit violence are enumerated in the following illustrative way:

“ a) Not to exhibit an attitude and behaviours including the threats of violence, insult and humiliation against the victim of violence.

b) Move from the shared residence or the vicinity immediately and allocate the shared dwelling to the protected person.

c) Not to approach the protected persons and their residences, schools and workplaces.

ç) If there is a previous decision to establish personal contact with the children, either the personal contact might be accompanied by a guardian or the personal contact might be limited or eliminated.

d) If deemed necessary, not to approach the protected person’s, even not having been subjected to violence, relatives, witnesses and children, without prejudice to the circumstances regarding establishing personal relations.

e) Not to damage the personal belongings and household goods of the protected person.

f) Not to disturb the protected person with communication or otherwise.

g) To hand over weapons that are legally permitted to be possessed or carried to law enforcement officials.

ğ) To hand over the embezzled gun to his institution, even if he is performing a public duty where it is mandatory to carry a gun.

h) Not to use alcohol, drugs or stimulants in places where the protected people are present or not to approach the protected people and their whereabouts while under the influence of these substances and to ensure to have a medical examination and treatment including in-patient treatment in case of the addiction.

ı) To apply to the health center for examination or treatment and to ensure that the patient receives a treatment.”

In accordance with the specific circumstances of each case, it is appropriate that the measures that may be taken are not limited. Furthermore, apart from the measures outlined within this Law, the judge is granted authority to make decisions concerning protective and preventive measures in accordance with the Child Protection Law No 5395,⁴⁵ as well as issues pertaining to guardianship, custody, alimony, and personal contacts as stipulated in the TCC (Article 5, paragraph 3). The fourth and final paragraph of this Article establishes that if the perpetrator of violence is also the provider or contributor to the family’s financial support, the judge may, without prior request and taking into account the victim’s living standards, decide on temporary alimony, provided that no prior maintenance decision has been rendered according to the provisions of the TCC.

In situations where there is a perceived risk in delaying the implementation of measures, the law enforcement chiefs are empowered to implement the measures outlined in clauses (a), (b), (c), and (d) of the first paragraph (Article 5, paragraph 2).

⁴⁵Official Gazette No. 25876, dated 15 July 2005.



While Law No 6284 explicitly states that no evidence or documentation is required to obtain a protective injunction, a similar provision has not been established for preventive injunctions. It is emphasised that timely decisions must be made regarding preventive measures, ensuring that the purpose of the Law is not compromised (Article 8, paragraph 3, sentence 2-3). This distinction arises from the fact that preventive injunctions involve significant interference with the personal rights of individuals accused or suspected of committing violence. However, in order to issue a preventive injunction, conclusive evidence is not required; instead, the presence of indicators suggesting the existence or likelihood of violence should suffice.⁴⁶ In cases where only warning measures are to be implemented, the evidence is not necessary.⁴⁷

In the event of violence or the imminent threat of violence, any individual has the right to report the situation to the official authorities. It is the duty of public officials who receive such notifications to promptly fulfil their obligations as outlined in Law No 6284 and inform relevant authorities about the necessary measures to be taken (Article 7).

IV. Evaluation

Despite Law No 6284 being enacted to fulfil Turkey's obligations arising from the Istanbul Convention,⁴⁸ it does not entirely substitute the Convention. To begin with, the Law exhibits a significant conceptual confusion. Although the law defines domestic violence, it does not protect those who have been or are at risk of being subjected to domestic violence, but only person who have been or are at risk of being subjected to violence in the family. Therefore, the definition of domestic violence in the Law is only a token definition. Moreover, despite the original title of the Convention being the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, its Turkish translation renders it as the Council of Europe Convention on Preventing and Combating Violence against Women and Family Members.

The act of producing a translation that contradicts the essence of the Convention and the exclusion of certain victims of domestic violence from the protection provided by Law No 6284 can be regarded as a political decision.⁴⁹ The Law deliberately excludes male victims of domestic violence occurring in relationships that do not fit the definition of a family according to Turkish law. This choice seems to primarily aim at excluding incidents of violence between homosexual men, who are legally unable to form a family through marriage under Turkish law, from the scope of Law No 6284. While women and children who are victims of domestic violence occurring in relationships not recognised as families under Turkish law are protected by Law No. 6284, discriminatory practices regarding alimony arise among female victims depending on whether the violence occurs within a family context or not. According to Law No 6284, if the perpetrator is the person responsible for or contributes to the family's financial support, the victim may be eligible for alimony (Article 5, paragraph 4).

Although Law No 6284 states that one of the purposes of this law is the protection of individuals facing violence in the family, the title of the Law (Law on the Protection of the Family and Prevention of Violence against Women) emphasises the protection of the family. While the protection of individuals facing violence in the family does indeed contribute to safeguarding the family indirectly, the chosen name of the Law might

⁴⁶Necla Öztürk, 'Ailenin Korunması ve Kadına Karşı Şiddetin Önlenmesine Dair Kanunun Getirdiği Bazı Yenilikler ve Öneriler' (2017) 8(1) Inonu University Law Review 1, 18.

⁴⁷Nalan Kahveci, '6284 sayılı Kanun Kapsamında Tedbir Kararları' in Sema Uçakhan Güleç and Necdet Basa (eds), *Yeni Yasal Düzenlemeler Işığında Bedensel Zararların Tazmini Esasları ve Usulü Kongresi* (Ankara Bar Association 2013) 451, 461.

⁴⁸Fusun Sokullu Akıncı, 'Şiddetin Normalleştirilmesi Süreci ve Aile İçi Şiddet' in Adem Sözüer (ed), 2. *Uluslararası Suç ve Ceza Film Festivali: Kadına Yönelik Şiddet ve Ayrımcılık: Tebliğler* (Adalet 2014) 651, 660.

⁴⁹Kadriye Bakırcı, 'İstanbul Sözleşmesi' (2015) 73(4) Ankara Bar Review 133, 137; Seher Kırbaş Canikoğlu, 'Kadınlara Yönelik Şiddetin ve Ev İçi Şiddetin Önlenmesine Dair Ulusal ve Uluslararası Mevzuat (İstanbul Sözleşmesi ve 6284 sayılı Kanun)' (2015) 73(3) Ankara Bar Review 355, 366.



create the perception that the primary goal is to safeguard the family, rather than prioritising the protection of violence victims as an end in itself. Another concern regarding the Law's name is the positioning of the phrase "*prevention of violence against women*" after "*protection of the family*", which may create an erroneous sense that preventing violence against women is of secondary importance compared to protecting the family. This ordering contradicts the primary objective of the Law, which should be centred on preventing violence against women, and instead gives the impression that women are protected solely as members of the family.⁵⁰ Naturally, protecting the family is also very important. In fact, the first two paragraphs of Article 41 of the Constitution state that the family, based on the equality of men and women, is the foundation of Turkish society and that the state is obliged to take the necessary measures and establish the necessary organisation for the peace and welfare of the family and especially for the protection of the mother and children. However, contrary emphasised in the Constitution and in the title of Law No 6284, it is clear that women should be protected as individuals other than the titles of mother or family member. Unfortunately, despite the name of the Law being the "*Proposal on the Protection of Women and Family Members from Violence*", it was altered to the "*Proposal on the Protection of the Family and Prevention of Violence against Women*" when it was presented to the Grand National Assembly of Turkey.⁵¹ Law No 6284 also conspicuously lacks the concept of gender, which is directly relevant to the law, despite the repeated and unnecessary references to the concepts of family and family protection.

There are other areas where Law No 6284 falls short compared to the Convention. Notably, while the Convention provides detailed regulations regarding the right of victims of violence to obtain compensation for the harm they have suffered (Article 30),⁵² Law No 6284 lacks adequate regulations in this regard. The Law only addresses the payment of temporary financial aid to the victim of violence (Article 3, paragraph 1, sub-paragraph b; Article 17) and partially covers the treatment expenses of the victim (Article 19, paragraph 1), which only offer some alleviation for the harm experienced. However, beyond these provisions, the victim can only seek compensation from the perpetrator within the general legal framework, which may lead to new incidents of violence between the parties. Another significant shortcoming is the absence of specific responsibility imposed on the state in cases where the perpetrator is unable to pay the awarded compensation or evades payment.⁵³

The aforementioned shortcomings in Law No 6284 did not present a significant issue during the period when the Convention was in effect. This is because, according to the Constitution, the Convention on fundamental rights and freedoms held the force of law, and any disputes arising from conflicting provisions between the Convention and domestic laws were required to prioritise the Convention's provisions. Moreover, it was not possible to challenge the Convention's constitutionality before the Constitutional Court (Article 90, paragraph 5). Therefore, the problems and deficiencies within Turkish domestic legislation, particularly in Law No. 6284 concerning the combating against violence against women, could be addressed

⁵⁰Tutku Ayhan, 'Protecting the Woman or the Family?' Contradiction Between the Law and Its Practice in Violence Against Woman Cases in Turkey' (2017) 5(1) Marmara University Journal of Political Science 137, 147.

⁵¹Nazan Moroğlu, 'Kadına Yönelik Şiddetin Önlenmesi 6284 sayılı Yasa ve İstanbul Sözleşmesi' (2012) 99 Union of Turkish Bar Associations Review 357, 374-375.

⁵²Article 30: "1 Parties shall take the necessary legislative or other measures to ensure that victims have the right to claim compensation from perpetrators for any of the offences established in accordance with this Convention. 2 Adequate State compensation shall be awarded to those who have sustained serious bodily injury or impairment of health, to the extent that the damage is not covered by other sources such as the perpetrator, insurance or State-funded health and social provisions. This does not preclude Parties from claiming regress for compensation awarded from the perpetrator, as long as due regard is paid to the victim's safety. 3 Measures taken under paragraph 2 shall ensure the granting of compensation within a reasonable time."

⁵³Ayşe Havutçu, 'Mukayeseli Hukuktaki Gelişmeler Işığında Aile İçi Şiddet Yönünden Bedensel Zararların Tazmini' in Sema Uçakhan Güleç and Necdet Basa (eds), *Yeni Yasal Düzenlemeler Işığında Bedensel Zararların Tazmini Esasları ve Usulü Kongresi* (Ankara Bar Association 2013) 403, 409 et seq.



through the application of the Convention.⁵⁴ For instance, the Ankara 2nd Family Court previously issued a ruling that the man who physically abused and threatened his pregnant girlfriend during the Convention's enforcement period should be removed from their shared residence for three months and provided financial support to his partner during the precautionary measure. As previously mentioned, in cases of violence between individuals who are not married and therefore do not constitute a family according to Turkish law, although a protection order can be issued in favour of the woman under Law No 6284, it is not possible to order the payment of alimony. In the court's decision reasoning, it was stated that such a provision was established based on the understanding that these individuals also constitute a family within the scope of the Convention.⁵⁵ Presently, courts do not have the opportunity to make a similar decision that would rectify the discrimination created by Law No 6284 concerning alimony for women who are victims of domestic violence.

Turkey's withdrawal from the Convention also deprived Turkey of the valuable recommendations of GREVIO. In addition, the opportunity for international co-operation in combating violence against women in line with the standards set by the Convention was also missed.

Accordingly, it can be argued that Turkey's decision to withdraw from the Convention, which represents the most progressive framework in combatting violence against women in contemporary times, was not appropriate. Regrettably, this action, seemingly motivated by domestic political considerations to appease conservative voters who staunchly opposed the Convention,⁵⁶ has had adverse implications for women's rights and the ongoing struggle against violence targeting women.⁵⁷ Furthermore, even this course of action failed to satisfy the conservative faction. This particular group has now begun to voice the necessity of repealing Law No 6284.⁵⁸

Despite its withdrawal from the Convention, Turkey remains bound by its obligations under the case law of the European Court of Human Rights, beginning with the *Opuz v. Turkey* case.⁵⁹ Consequently, any failure to fulfil the duty to combat violence against women may lead to Turkey facing sanctions from the European Court of Human Rights. Furthermore, despite its various shortcomings, the implementation of Law No 6284 in its current form can still serve to mitigate violence against women and domestic violence to some extent. However, even the most impeccable enforcement of Law No 6284 can be likened to attempting to eradicate mosquitoes in a swamp. The ultimate solution lies in eradicating the mindset that perpetuates the notion of women's inferiority to men and establishing genuine legal and practical gender equality. The reapproval and effective implementation of the Istanbul Convention would play a significant role in achieving this objective.

V. Conclusion

While violence against women has been a pervasive global issue with a longstanding history, the development of international texts targeting the eradication of such violence is a relatively recent phenomenon.

⁵⁴Cansu Kaya Kızılırmak, 'İstanbul Sözleşmesi'nin Genel İlkeleri Işığında 6284 sayılı Kanun'un 4. Maddesi Uyarınca Hâkim Tarafından Verilebilecek Koruyucu Tedbirler' (2020) 40(2) Public and Private International Law Bulletin 625, 636-637.

⁵⁵Hukuki Haber, 'Emsal nafaka kararı; Birlikte yaşayan sevgililer aile sayıldı' (May 23, 2021) < <https://www.hukukihaber.net/gundem/emsal-nafaka-karari-birlikte-yasayan-sevgililer-aile-sayildi-h194845.html> > Accessed 24 August 2023.

⁵⁶Merve Kütük Kuriş, 'The rise and fall of support for the Istanbul Convention: Understanding the case of KADEM' (2022) 93 Women's Studies International Forum 1, 10.

⁵⁷Nuray Kanbur, 'Istanbul Convention: Commitment to Preventing Gender-Based Violence' (2021) 69(2) Journal of Adolescent Health 354.

⁵⁸Yeniçağ, 'Tarikatlar AKP'ye teşekkür için sıraya girdi. İstanbul Sözleşmesi feshedildi şimdi hedeflerinde 6284 var' (March 21, 2021) < <https://www.yenicaggazetesi.com.tr/tarikatlar-akpye-tesekkur-icin-siraya-girdi-istanbul-sozlesmesi-feshedildi-simdi-hedeflerinde-6284-var-435313h.htm> > Accessed 4 September 2023.

⁵⁹App No 33401/02 (ECHR, June 9, 2009).



The Istanbul Convention stands as the inaugural international legal instrument within the Council of Europe that possesses a binding force and is specifically designed to combat violence against women. Despite being the most progressive international framework in this regard, the failure of parties to fulfil their obligations under the Convention has not been met with any punitive measures or sanctions. Turkey holds the distinction of being both the first state to ratify the Convention without reservation and the first state to withdraw from it.

The question of whether Turkey's withdrawal from the Istanbul Convention was legally justified remains a subject of debate. To evaluate this matter, it is necessary to ascertain whether Turkish legislation offers more comprehensive regulations regarding women's rights and the combating of violence against women than the Istanbul Convention. Following a thorough comparison, it has been determined that Turkish legislation, particularly Law No 6284 enacted to fulfil Turkey's obligations under the Istanbul Convention, does not present a more advanced regulatory framework for combating violence against women in comparison to the Convention. In fact, Law No 6284 exhibits a notable conceptual confusion. Furthermore, there are significant gaps within Law No 6284 when compared to the Convention, the issue of compensating victims of violence for the damages they have suffered.

The issues and shortcomings present in Law No 6284 did not present a significant challenge during the period when the Istanbul Convention was in effect. In accordance with the Constitution, the Convention was a force of law, and any disputes arising from conflicting provisions between the Convention and domestic laws were to be resolved by prioritising the Convention's provisions. Consequently, the problems and deficiencies within Turkish domestic legislation, particularly Law No 6284, which aimed to combat violence against women, could be effectively addressed through the implementation of the Convention. Therefore, it is evident that Turkey's withdrawal from the Convention was a legal misstep, and the state should reinstate its status as a party to the Convention.



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