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Withdrawal from the Istanbul Convention: War on Gender Equality in Turkey

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After being elected for the third consecutive time as the ruling party in Turkey, the AKP started to impose its conservative policies on gender relations. Attacks on women's rights and gender equality have become systematic through policies that do not consider women as equal citizens and control women's participation in economic and social life by confining women to traditional gender roles and motherhood. This brief aims to unpack the AKP's anti-gender policies, with a specific focus on the attempted withdrawal from the Istanbul Convention, while reflecting on recommendations towards relevant stakeholders.

Background of the Destructive Policies against Women's and LGBTIQ Rights under the AKP's Rule

Since the AKP came to power in 2002, it adopted pronatalist policies through family-oriented programs, limiting the provision of sexual and reproductive health and rights services, such as access to information on sexuality, contraception, and abortion. Meanwhile, existing legislation was reformed to promote gender equality under the AKP's rule as part of the European Union accession negotiations. However, amendments to the Penal Code to protect women from domestic violence were made despite the AKP's attempted blockages to the draft law prepared by the feminist movement.¹

As the AKP became more powerful by securing votes to remain the only ruling party and securing its position vis-à-vis the EU, attempts to prevent and disrupt the positive developments to advance women's rights manifested itself through discourses of high-ranked politicians within the AKP. The party has inscribed the image of the woman as a mother and a wife, through media and public speeches.² Erdoğan himself started to demonstrate his essential thoughts on gender equality and women's status at the discursive level too by urging women to have at least three children.³ In 2010, at a meeting held with women's organizations, he declared that he did not believe in inequality between men and women, as they are complementary to each other.⁴ In 2011, the same year Turkey signed the Istanbul Convention, Erdoğan said that

violence against women is exaggerated by the opposition, and the Ministry of Women and Family Affairs was shut down and replaced with the Ministry of Family and Social Services. Erdoğan justified this move by claiming that the AKP is a conservative, democratic party and the family is an important element for the party.⁵ In 2012, the legal right to abortion, which is legal for up to 10 weeks in Turkey, was attempted to be restricted to four weeks by amending the law, which failed thanks to the strong reaction from women inside the country. However, the AKP *de facto* restricted abortion rights, as the procedure is only implemented in ten out of 295 public hospitals, according to research conducted by Kadir Has University.⁶

In 2016, the Parliamentary Investigation Commission on Preventing Negative Effects on Family Unity, Factors for Divorce, and Measures for Strengthening the Family was established under the auspices of the Turkish Grand National Assembly and prepared a report, known as the “Divorce Commission Report”.⁷ The suggestions in the report, developed with the participation of government-organized non-governmental organizations (GONGOs), include the decriminalization of child, forced, and early marriages, restriction to women’s alimony right, establishing compulsory family mediation in divorce cases, and imposing serious limitations on issuing protection orders in cases of violence. The report is brought up frequently by the government on different occasions and can be considered as the government’s action plan on gender and women’s rights.

The attacks on women’s rights continued with several attempts to amend the gender-related provisions of the Turkish Penal Code, Civil Code, and Law no. 6284 (the main domestic law on preventing violence against women and domestic violence) and other issues highlighted in the report. These attempts to annul women’s and children’s rights in the legal framework have not fully succeeded thanks to the efforts of the feminist movement, however, women’s rights are still restricted.

The proliferation of GONGOs and Closing Space for Civil Society

Since 2013, the AKP has started creating its own civil society, namely GONGOs, to shrink the civic space and prevent independent feminist organizations from participating in the policy and legislation-making process with regards to women’s issues. KADEM (Women and Democracy Association) was established on March 8, 2013, on International Women’s Day, by President Erdoğan’s daughter, Sümeyye Erdoğan. KADEM was specifically established to create and disseminate the AKP’s conservative discourse on gender. During the opening ceremony of KADEM in 2013, it was clearly stated that the objective of the association is “to cultivate a consciousness of traditional values and their practice in real life among

Turkish women”.⁸ Through GONGOs, the AKP tried to coopt and manipulate concepts such as gender equality, claiming that the term “equality” makes the differences between men and women invisible. According to this view, no equality can be instigated between genders since women and men are not created equal.

Alongside GONGOs working on women’s rights, other GONGOs started to proliferate, defending “men’s rights”, and “family rights” such as Divorced Fathers, Alimony Victims, and Family Councils. These groups have constantly advocated for misogynistic and homophobic policies and the disruption of women’s hard-won legal rights, such as the withdrawal from the Istanbul Convention. They also use the same rhetoric of anti-gender, far-right groups who have been contesting the Istanbul Convention in Europe, such as in Poland, and Hungary, with arguments that the Convention is a threat to the family union, traditional family values, and promotes homosexuality and same-sex marriages. Gender has become the target of these groups who insist on the fundamentalist and religious understandings of gender roles. Using discourses and tactics of rights-based organizations, these organizations support the establishment of authoritarian regimes based on discrimination and exclusion to oppress the most disadvantaged groups; namely women, children, and the LGBTIQ community.

Furthermore, the space for civic participation in marches or independent organizations shrunk under the AKP’s rule. In 2015, the LGBTIQ Pride March was banned by the Governor’s Office of Istanbul, with police brutally attacking and detaining people who attended the parade.⁹ Women’s marches on November 25, International Day for the Elimination of Violence against Women, and the March 8 Feminist Night March on İstiklal Street were banned in recent years by the Ministry of Interior for arbitrary reasons. However, feminists and LGBTIQ activists found alternative routes to march, although activists attending various marches were detained for insulting the president, for shouting slogans such “Tayyip flee, flee, flee, the women are coming”.¹⁰ The LGBTIQ community and feminists are constantly targeted by state authorities, stigmatized as “perverts” or “terrorists”.

Furthermore, under the state of emergency regulations, which were declared after the failed coup attempt in 2016, Kurdish women’s organizations were shut down. The government appointed trustees to pro-Kurdish HDP municipalities while elected mayors were arrested. Women’s counseling and solidarity centers established under these municipalities were transformed into municipal offices for officiating weddings, following accusations of being affiliated with terrorism. State institutions have also been co-opted by anti-gender bureaucrats, such as the Human Rights and Equality Institution of Turkey (TİHEK), which was established as a state institution to safeguard human rights. TİHEK played a crucial role in undermining the concept

of human rights, by promoting anti-gender propaganda against the Istanbul Convention. The government and fundamentalists have adopted global anti-gender strategies to subvert human rights concepts, using the same instruments human rights defenders use to advance and safeguard human rights.

Attempt to withdraw from the Istanbul Convention

The Istanbul Convention is the most holistic and progressive human rights convention that aims to eliminate violence against women and domestic violence by suggesting a road map known as the four pillars system: prevention, protection, prosecution, and integrated policies. The Istanbul Convention recognizes that violence against women is both the result and reason of unequal and historical power relations between men and women. Turkey was active in the preparation and drafting process of the Istanbul Convention and was the first country to sign the Convention in 2011 and hosted its launch in Istanbul when Turkey held the Chairmanship of the Council of Europe.

The withdrawal attempt from the Istanbul Convention in 2021 took place in an environment in which the rule of law is heavily attacked, the separation of powers is eroded, and the state is governed by arbitrary and unilateral presidential decisions without any parliamentary and constitutional review under the new presidential system. Indeed, this arbitrariness and war on gender equality reached a climax with the withdrawal attempt from the Convention by a Presidential Decision on March 20, 2021. It was shocking that such a Presidential Decision was issued without consulting or informing the public or even the Ministers, given the fact that the Minister of Family had organized a side event at the 65th session of the Commission on the Status of Women and hosted the Council of Europe (CoE) Director of Human Dignity, Equality, and Governance, who talked about the effective enforcement of the Istanbul Convention and coordination between the Council and Turkey, just three days before the decision. Turkey notified the General Secretariat of the CoE regarding the withdrawal decision on March 22, 2021, and the notification of the withdrawal date from the Convention (as of July 1, 2021) was released on the CoE's website.¹¹ Thus, Turkey, the first member state to ratify the Istanbul Convention, became the first member state to declare its intention to withdraw from the Convention.

Reactions in Turkey, in Europe, and beyond

Following the decision, women and the LGBTIQ community started mass demonstrations all over the country to protest the decision. On March 20, 2021, CoE Secretary-General described Turkey's withdrawal as "devastating"¹² and UN Women urged Turkey to reconsider its withdrawal.¹³ In their joint statement, the President of the CoE's Parliamentary Assembly and the Chair of the Committee of Ministers announced that they deeply regret the decision to withdraw from a "widely supported" convention without any parliamentary debate.¹⁴ Similarly, the UN Special Rapporteur on violence against women, the Chair of the Committee on the Elimination of Discrimination against Women, and more than forty UN and regional human rights experts called on Turkey to reconsider its decision.¹⁵ Later, 27 member states of the CoE released a joint statement and said that "Turkey's withdrawal constitutes a disappointing signal from common rules-based multilateral order."¹⁶ On April 21, 2021, the Parliamentary Assembly of the Council of Europe requested the Venice Commission to prepare a comparative study and possible guidelines about the modalities concerning the need to acknowledge standards that should govern the ratification and withdrawal from international treaties in democratic societies.¹⁷ Several bar associations, women and LGBTIQ organizations, unions, political parties, and individuals have appealed to the Turkish Council of State for the stay of execution of the presidential decision, by claiming it is "null and void" under the Turkish Constitution.

The legality of the attempted withdrawal

Legal experts emphasize that the withdrawal decision is unlawful both under domestic law and international law. The arguments regarding domestic law can be summarized as follows:

1. According to Article 90/1 of the Turkish Constitution, "*the ratification of treaties concluded with foreign states and international organizations on behalf of the Republic of Turkey shall be subject to adoption by the Grand National Assembly of Turkey by a law approving the ratification.*" Turkey ratified the Istanbul Convention on November 24, 2011, through Law no. 6251, by unanimous vote at the Grand National Assembly and the ratification law no. 6251 is still in force. In other words, the law approving the ratification of the Istanbul Convention is not abolished, therefore, still in force.
2. The Presidential Decision is an administrative act, based on Presidential Decree number nine. Under the Turkish Constitution, the authority to ratify an international treaty is the legislative branch, namely the Grand National Assembly of Turkey. Therefore, Turkey cannot withdraw from an international treaty by any administrative act because the authority to ratify is the legislature.

3. Even if it is argued that the President has the authority to issue a Decision on withdrawal from international conventions, the Istanbul Convention is not just an international treaty but also a human rights treaty. According to Article 13 of the Constitution, “*fundamental rights and freedoms may be restricted only by law.*”¹⁸ Similarly, according to Article 104/17 of the Constitution, “*the fundamental rights listed in the Constitution shall not be regulated by a presidential decree. ... No presidential decree shall be issued on the matters which are stipulated in the Constitution to be regulated exclusively by law.*” Since fundamental human rights can only be limited by law but not presidential decrees, the Presidential Decision is unconstitutional and “null and void” under Turkish domestic law as if it is “non-existent” in the legal realm.

The arguments regarding illegality under international law can be summarized as follows:

1. According to Article 46 of the Vienna Convention on the Law of Treaties (“VCLT”),¹⁹ “a State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent *unless that violation was manifest and concerned a rule of its internal law of fundamental importance.*” The reasoning underlying the VCLT should favour applying the same approach to treaty withdrawals, as acknowledged in the International Court of Justice’s Cameroon v. Nigeria judgment.²⁰ Since Presidential Decree no. 3718 is manifestly in violation of the Turkish Constitution, the withdrawal should be deemed also unlawful and invalid under international law.

The Government’s unsubstantial and false justification of the withdrawal

According to a statement made by the Directorate of Communications on March 21, 2021, the reason for the withdrawal is that “the Istanbul Convention was hijacked by a group of people attempting to normalize homosexuality – which is incompatible with Turkey’s social and family values.”²¹ In the same statement, it is also noted that existing legal mechanisms are effective enough to uphold and promote women’s rights. Those legal mechanisms include the Turkish Constitution as well as civil law, penal code, and Law no. 6284 on the Protection of the Family and the Prevention of Violence Against Women. However, the existing legal mechanisms are also not well implemented and violence against women in all forms is highly prevalent in Turkey.²² According to a survey conducted in 2014, only seven in one hundred women who are subjected to violence report it to the police. In 29% of the applications made to the police, women reconciled with their husbands, and in 13% of the applications, no action was taken.²³ Consequently,

public prosecutors only respond to four out of 100 cases in which women have been subjected to physical and/or sexual violence. Of the cases that become lawsuits, only in 49% of cases is the perpetrator convicted.²⁴ And even then, the penalties are often lenient.²⁵

The justification connecting the withdrawal decision with the LGBTIQ community is highly dangerous in a country like Turkey where hate crimes against LGBTIQ individuals are awarded either impunity or a reduced sentence. Although Turkey is a party of the European Convention on Human Rights (“ECHR”), the Istanbul Convention has much more practical importance for the LGBTIQ community in Turkey for two reasons. First, the prohibition of discrimination on grounds of sexual orientation and gender identity in enjoying rights and freedoms is not explicitly stipulated in the text of the ECHR. Although the case-law of the European Court of Human Rights does defend these rights, the Istanbul Convention names grounds of sexual orientation and gender identity explicitly in its text. Second, while the ECHR has a subsidiary function which refers to the “margin of appreciation” of the State Party, the Istanbul Convention has a direct effect on the domestic law since Law no. 6284, the main domestic law on preventing violence against women and domestic violence, states that the Istanbul Convention shall prevail in applying the principles of Law no. 6284 itself.²⁶ Thus, withdrawal from the Convention means that no legal protection based on sexual orientation and/or gender identity will exist in Turkish law, especially in combating domestic violence. Moreover, it is even more worrisome that the government targets the very existence of the LGBTIQ community in its reasoning since it is a clear indication that hate and discrimination towards LGBTIQ individuals have now become official state policy.

On the other hand, it is true that Law no. 6284 is a very important legal tool in combating violence against women and domestic violence. It was enacted just after the ratification of the Istanbul Convention to make domestic law comply with the Istanbul Convention thanks to the enormous efforts of the feminist movement in Turkey. The problem is, however, that Law no. 6284 is not fully compliant with the Istanbul Convention. First, it focuses on “protection of the family” and does not acknowledge violence from former or current spouses or partners as domestic violence. This difference was deliberately made to exclude homosexual relations and other unmarried individuals living together. The methods to combat violence is another essential point where Law no. 6284 differs from the Istanbul Convention.²⁷ While the Istanbul Convention imposes the obligation to produce comprehensive, coordinated, and integrated policies that include education, media, and the private sector to eliminate prejudices based on gender roles in combating violence, Law no. 6284 has a much more narrow perspective which focuses on the protection of the victim through individual and separate protection orders to be issued on a case-by-case basis.

Both differences derive from the fact that Law no. 6284 deliberately does not focus on “gender equality”. The term “gender equality” is not even mentioned as a concept, instead, the term “equality of man and woman” is used repeatedly. However, the Istanbul Convention affirms that violence against women is a manifestation of historically unequal power relations between women and men, which have led to domination over, and discrimination against women by men. The Istanbul Convention has been targeted exactly because of this comprehensive perspective recognizing the structural and systematic nature of violence against women as gender-based violence as well as ensuring the right to live free from violence for all. Therefore, the withdrawal from the Istanbul Convention implies an open lack of commitment to protecting all people from violence and a clear refusal to ensure gender equality, including equality in rights and dignity.

In such a political atmosphere in which the lack of motivation to ensure gender equality has become a state policy, the argument that Turkey already has effective domestic mechanisms to uphold and promote women’s rights is far from convincing. Indeed, since the withdrawal decision was announced, it has been reported that even the protection orders under Law no. 6284 are not issued or effectively enforced. The Istanbul Bar Association has made an open call to lawyers to collect information and data regarding the negligence of police officers who already stopped executing Law no. 6284 in the field. Within just a few days of the withdrawal decision, the Coordination Office for Preventing Sexual Assault at Boğaziçi University was shut down, and the Ministry of Interior has started interrogating municipalities led by the opposition on whether they have LGBTIQ commissions. All these developments show that we are now in a new phase of the struggle for gender equality.

The withdrawal from the Istanbul Convention is as unlawful as it is unacceptable. The Presidential decision would still be illegitimate, even if all legal procedures had been followed since fundamental human rights are rights inherent to every individual without discrimination; and cannot be taken away by governments. The Istanbul Convention is widely accepted by society²⁸ and is “crucial” for millions of women and the LGBTIQ community. Therefore, it should not be subject to any unilateral decision.

Recommendations

Recommendations to opposition parties, European Institutions, local governments, and the women’s movement:

- Opposition parties are captured by populist discourses and strategies. Following the change from a parliamentary democracy to the presidential system, Turkey’s multi-party system has been dramatically divided into two polarized sides. Parties with different

political agendas must seek alliances to tackle the new presidential system, which requires %50+1 of total votes for a presidential candidate to be elected. The withdrawal from the Istanbul Convention and attacks against gender equality and LGBTIQ rights have generally not been challenged effectively by the opposition parties which prioritize the survival of the alliances. The opposition parties should prioritize human rights with more bold and inclusive approaches, rather than the survival of alliances with mild and safe strategies.

- This withdrawal attempt is the culmination of global attacks against human rights in general, and women’s and LGBTIQ rights, and equality in particular. Turkey’s attempt to withdraw from the Convention will have a domino effect in some countries where the Convention is already being contested. For instance, in Poland, there is a pending request by the Prime Minister to the Constitutional Tribunal to assess the constitutionality of the Convention. A bill was proposed in the Parliament calling on the President to withdraw Poland from the Istanbul Convention and to create a new convention on the “rights of the family”.²⁹ Thus, the future of the Istanbul Convention and the fight for gender equality, especially LGBTIQ rights, in Council of Europe member states are at stake. To uphold and protect fundamental human rights, human dignity, and rule of law, concrete steps are required, rather than “condemnations”. Therefore, international and regional actors and organizations, notably the CoE, and its institutions namely the Parliamentary Assembly of the Council of Europe, and the Committee of Ministers of the Council of Europe, should use all possible legal and political means to put pressure on the President of Turkey to revoke the withdrawal decision and to support women’s and LGBTIQ organizations working in Turkey. In this regard, it is a positive step that the Parliamentary Assembly of the Council of Europe has already requested the Venice Commission to investigate possible guidelines for modalities that should govern withdrawal from international treaties in democratic societies. Such a study will mainly be significant as an advocacy tool, given that studies of the Venice Commission are not binding.
- Also, the European Union (EU) should recognize that Turkey’s withdrawal attempt and related anti-gender attacks in Turkey and beyond are part of a larger anti-rights and anti-democracy alliance that sharply contradicts international human rights instruments. The EU must work toward deterring these attacks in member states by also putting all legal and political measures into force. Hence, the EU should prioritize and promote the implementation of the Convention in countries where it is ratified and urge other European countries to sign and ratify the treaty. The EU should also ratify the Istanbul Convention itself.

- Municipalities led by opposition parties should be encouraged to keep on fulfilling their obligations under the Istanbul Convention as it is in force. Municipalities should continue implementing the provisions under the Convention, such as establishing shelters for survivors of gender-based violence, sexual violence crisis centers, 24/7 hotlines, and equality units to ensure gender equality and social inclusion. They should also take these actions to eliminate discrimination and disseminate rights awareness through training and producing promotional materials. These municipalities should collaborate more with independent women and LGBTIQ organizations. The municipality staff should be given gender equality trainings, and the municipalities should prepare strategic plans with a gender mainstreaming approach. Opposition parties should support the municipalities that are upholding their obligations to implement the Convention.
- The public opposition, including the women's movement, failed to develop effective public narratives on the intersections of the misogynist and anti-LGBTIQ agendas of the government. The women's movement should refrain from using populist discourses and adopt more inclusive messages and strategies by highlighting the violence and discrimination reproduced at the intersections of gender, race, sexuality, ethnicity, disability, age, etc., and resisting the heightened attacks against gender equality.

Endnotes

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