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Allyssa Myers

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A NOT-SO TURKISH DELIGHT: THE IMPLICATIONS OF TURKEY'S UNPRECEDENTED WITHDRAWAL FROM A GROUNDBREAKING WOMEN'S RIGHTS TREATY AND THE NEED FOR INTERNATIONAL REFORM

INTRODUCTION

Violence against women—particularly crimes of sexual violence—is one of the most pressing and important human rights issues in international law today.¹ The World Health Organization defines sexual violence as “any sexual act, attempt to obtain a sexual act, or other acts directed against a person’s sexuality using coercion, by any person regardless of their relationship to the victim, in any setting.”² Global estimates report that about one in three women worldwide have experienced some form of physical and/or sexual violence in their lifetime.³ Sexual violence stems from a variety of aggravating risk factors at the “individual, family, community, and wider society levels that interact with each other to increase” the likelihood of sexual violence.⁴ Risk factors include low education levels, community norms that perpetuate imbalanced power dynamics between women and men, and weak legal sanctions for sexual violence.⁵ Collateral to crimes of sexual violence are a multitude of public health issues: fatal outcomes such as homicide or suicide, unintended pregnancies, contraction of sexually transmitted infections, and mental health disorders.⁶

The first international instrument to explicitly address violence against women and provide a legal framework for how to combat such violence was the 1993 Declaration on the

1. Phumzile Mlambo-Ngcuka, *Violence Against Women and Girls: The Shadow Pandemic*, UN WOMEN (Apr. 6, 2020), <https://www.unwomen.org/en/news/stories/2020/4/statement-ed-phumzile-violence-against-women-during-pandemic>.

2. *Violence Against Women*, WORLD HEALTH ORG. (Mar. 9, 2021), <https://www.who.int/news-room/fact-sheets/detail/violence-against-women>.

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

Elimination of Violence Against Women (DEVAW).⁷ DEVAW called on countries to “condemn violence against women” by taking affirmative measures to develop sanctions to punish wrongs caused to women and ensuring that women affected by sexual violence have support networks available to them.⁸ DEVAW fell short of its ambitious goals, however, because it had no binding legal authority on countries and thus was incapable of holding state actors accountable.⁹

In 2011, the “world’s leading international human rights treaty that specifically targets gender-based violence” was created.¹⁰ The Council of Europe Convention on Preventing and Combatting Violence Against Women and Domestic Violence (Istanbul Convention)¹¹ sought to provide an international legal framework for how states should work toward eradicating gender-based violence.¹² The Istanbul Convention is legally binding

7. *Global Norms and Standards: Ending Violence Against Women*, UN WOMEN, <https://www.unwomen.org/en/what-we-do/ending-violence-against-women/global-norms-and-standards> (last visited Mar. 11, 2023).

8. G.A. Res. 48/104, Declaration on the Elimination of Violence Against Women (Dec. 20, 1993).

9. Nigel Chidombwe, *Violence Against Women and International Law: A Robust Approach is Needed*, HUM. RTS. PULSE (Oct. 7, 2020), <https://www.humanrightspulse.com/mastercontentblog/violence-against-women-and-international-law-a-robust-approach-is-needed>.

10. Özlem Altan-Oclay & Bertil Emrah Oder, *Why Turkey’s Withdrawal from the Istanbul Convention is a Global Problem*, OPEN DEMOCRACY (June 2, 2021), <https://www.opendemocracy.net/en/can-europe-make-it/why-turkeys-withdrawal-from-the-istanbul-convention-is-a-global-problem/>.

11. Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, May 11, 2011, C.E.T.S. No. 210 [hereinafter “Istanbul Convention”].

12. *Here’s Why the Istanbul Convention Saves Lives*, AMNESTY INT’L (May 7, 2021), <https://www.amnesty.org/en/latest/news/2021/05/heres-why-the-istanbul-convention-saves-lives/>.

on all states that ratify it;¹³ to date, thirty-four states of the Council of Europe¹⁴ have ratified the Istanbul Convention.¹⁵

With broad sweeping authority, however, comes great resistance.¹⁶ Recently, the Istanbul Convention's influence has been threatened by signatory states withdrawing from the Convention.¹⁷ One such signatory state is Turkey—the first country to sign and to subsequently ratify the Istanbul Convention and the Convention's namesake¹⁸—who withdrew from the Convention in March 2021.¹⁹ This withdrawal, however, is in clear violation of the Turkish Constitution.²⁰ As this Note will later explain, Turkey's constitution grants the Grand National Assembly of Turkey exclusive power over legislative functions such as repealing laws.²¹ For Turkey's withdrawal from the Istanbul Convention to be valid, the Grand National Assembly of Turkey must have approved the withdraw, which it did not.²² Turkish President Recep Tayyip Erdoğan did not go through the proper channels to repeal the Istanbul Convention, thus defining his

13. *Key Facts About the Istanbul Convention*, COUNCIL OF EUR., <https://www.coe.int/en/web/istanbul-convention/key-facts> (last visited Mar. 11, 2023).

14. The Council of Europe is a European organization comprised of 47 countries that “seeks to protect democracy and human rights and promote European unity by fostering cooperation on legal, cultural, and societal issues.” Matthew J. Gabel, *Council of Europe*, ENCYC. BRITANNICA (Feb. 22, 2019), <https://www.britannica.com/topic/Council-of-Europe>. The Council has implemented over 160 international agreements, treaties, and conventions to address pressing human rights issues facing Europe. *Id.*

15. The countries that have ratified the Istanbul Convention are Albania, Andorra, Austria, Belgium, Bosnia and Herzegovina, Croatia, Cyprus, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, Monaco, Montenegro, Netherlands, North Macedonia, Norway, Poland, Portugal, Romania, San Marino, Serbia, Slovenia, Spain, Sweden, and Switzerland. *Chart of Signatures and Ratifications of Treaty 210*, COUNCIL OF EUR., <https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatyenum=210> (last visited Mar. 11, 2023).

16. Altan-Oclay & Oder, *supra* note 10.

17. *Id.*

18. Simone Santi, *10 Things You Need to Know About the Istanbul Convention on Violence Against Women*, LIFE GATE (May 10, 2021), <https://www.lifegate.com/istanbul-convention-10-years>.

19. Altan-Oclay & Oder, *supra* note 10.

20. *Id.*

21. Türkiye Cumhuriyeti Anayasası Madde 87.

22. *Id.*

decision to denounce the Istanbul Convention as unconstitutional.²³ This insubordination poses major problems for the international legal framework of sexual violence, in that it could seriously “undermine the significant efforts invested so far to prevent and combat violence against women,” according to the United Nations in Turkey.²⁴ Such a complete denunciation of efforts to prevent sexual violence places the lives of millions of vulnerable women and girls in serious jeopardy.²⁵

This Note argues that the unconstitutionality of Turkish President Erdoğan’s decision to withdraw from the Istanbul Convention invites detrimental repercussions on vulnerable Turkish women and on the international legal framework of sexual violence.²⁶ Turkey’s withdrawal from the Istanbul Convention invalidates gender-based and sexual violence and further agitates Turkey’s oppression and discrimination against women.²⁷ The withdrawal is also in violation of Turkey’s obligations to both domestic laws and international treaties apart from the Istanbul Convention.²⁸ Therefore, international efforts to protect women’s fundamental human rights must be refined and strengthened to prevent future harm to the international legal framework of sexual violence.²⁹ This solution includes efforts such as building upon the political platform for women to continue to speak out against gender-based violence, expanding school curricula to educate children on gender-based violence, and appealing President Erdoğan’s withdrawal from the Istanbul Convention to the European Court of Human Rights.

23. *Id.*

24. *UN Joint Statement in Response to Turkey’s Withdrawal from Istanbul Convention*, U.N. TURK. (Mar. 20, 2021), <https://turkey.un.org/en/122727-un-joint-statement-response-turkeys-withdrawal-istanbul-convention>.

25. AMNESTY INT’L, *supra* note 12.

26. *See generally* U.N. TURK., *supra* note 24.

27. *Id.*

28. *See generally* Convention on the Elimination of All Forms of Discrimination Against Women, *opened for signature* Mar. 1, 1980, 1249 U.N.T.S. 13 (entered into force Sept. 3, 1981) [hereinafter CEDAW]; *see also* Ailenin Korunması ve Kadına Karsi Siddetin Önlenmesine Dair Kanun Madde 1 fıkra 2(a); G.A. Res. 2200A (XXI); International Covenant on Economic, Social and Cultural Rights (Dec. 16, 1966); *European Convention on Human Rights*, COUNCIL OF EUR. (1952), https://www.echr.coe.int/documents/convention_eng.pdf.

29. *See generally* U.N. TURK., *supra* note 24.

Part I of this Note will discuss the purpose and structure of the Istanbul Convention and will examine how it has made tremendous strides in shaping the international legal framework of sexual violence. Part II will discuss Turkey's increasing authoritarianism over the last decade, which will provide a framework for Turkey's ultimate decision to withdraw from the Istanbul Convention. Part III will introduce the domestic laws and international treaties to which Turkey is a party and explain how Turkey's withdrawal from the Istanbul Convention is in direct contradiction with its obligations thereunder. Part III will also examine the unconstitutionality of the withdrawal and will posit potential damaging social and legal effects of that decision on Turkey's citizens and on the international effort to prevent sexual violence as a whole. Finally, Part IV will propose potential solutions to combat noncompliance among parties to international human rights treaties and to strengthen the effort to eradicate international gender-based and sexual violence.

I. BACKGROUND ON THE ISTANBUL CONVENTION

A. Goals of *The Istanbul Convention*

The Istanbul Convention had been in development long before its creation in 2011.³⁰ The Council of Europe (Council), founded in 1949, established idea for the Convention in the 1990s as a way to address gender-based violence.³¹ The Council set up a task force in 2008 to draft a convention that would “establish criteria to be applied at the global level to combat the phenomenon” of gender-based violence.³² National responses to gender-based and sexual violence varied greatly among the European Union, and the Council recognized the need to harmonize the legal standard for dealing with such crimes across all nations.³³ What resulted was the first ever binding international instrument specifically designed to protect women against sexual violence, prevent violence against women, prosecute perpetrators

30. Santi, *supra* note 18.

31. *Id.*

32. *Id.*

33. *What Is the Istanbul Convention? Who Is It For? Why Is It Important?*, COUNCIL OF EUR., <https://ec.europa.eu/justice/saynostopvaw/downloads/materials/pdf/istanbul-convention-leaflet-online.pdf>.

of sexual violence, and implement policies to ensure effective implementation by the Convention's signatories.³⁴

The goals of the Convention are known as the four "Ps": protection, prevention, prosecution, and coordinated policies.³⁵ "Protection" serves to establish medical and psychological support to victims and their families, free twenty-four-hour telephone helplines, and a sufficient number of shelters for victims.³⁶ "Prevention" focuses in on the cultural aspect of gender-based violence: changing attitudes on gender roles and stereotypes through education.³⁷ "Prosecution" guarantees that no act of gender-based violence goes unpunished.³⁸ "Coordinated Policies" ensure that the Convention's guidelines "fall within a package of coordinated and global policies that offer a fully comprehensive response to violence against women and domestic violence."³⁹

The Istanbul Convention takes a victim-centered approach⁴⁰ toward recognizing women's experiences with gender-based violence.⁴¹ Gender-based violence in this context refers to "violence directed against women because they are women or violence affecting [women] disproportionately."⁴² The Convention's use of the word 'gender' aims to highlight how "harmful attitudes and

34. COUNCIL OF EUR., *supra* note 13.

35. *Id.*

36. Santi, *supra* note 18.

37. *Id.*

38. Santi, *supra* note 18.

39. *Id.*

40. The United States Department of Justice's Office for Victims of Crime Training and Technical Assistance Center defines victim-centered approach as "the systemic focus on the needs and concerns of a victim to ensure the compassionate and sensitive delivery of services in a nonjudgmental manner." *Victim-Centered Approach*, OFF. FOR VICTIMS OF CRIME TRAINING & TECH. ASSISTANCE CTR., <https://www.ovcttac.gov/taskforceguide/eguide/1-understanding-human-trafficking/13-victim-centered-approach/> (last visited March 27, 2023). The European Public Law Organization has asserted that the victim-centered approach seeks to personalize the experience of crime survivors through prioritizing their needs, rights, and overall wellbeing. Vasiliki Artinopoulou et al., *Towards a Victim-Centered Police Response Training Manual*, EUR. PUB. L. ORG. (2018), http://www.eurocrime.eu/wp-content/uploads/2019/01/PROTASIS_Training-Manual.pdf. To reach that goal, efforts to train professionals to be aware of and sensitive to crime survivors' special needs must be put in place. *Id.*

41. COUNCIL OF EUR., *supra* note 13.

42. *Id.*

perceptions about roles and behavior expected of women in society play a role in perpetuating violence against women.”⁴³ This is what makes the Istanbul Convention so groundbreaking: its tool for eradicating violence against women is breaking down the stereotypes that separate women and men and advancing equality between women and men.⁴⁴ It takes the approach of educating its signatories on “gender equality, sexuality, and healthy relationships.”⁴⁵

The Istanbul Convention has a wide scope of crimes it seeks to punish, including, but not limited to, stalking, physical and sexual violence, forced marriage, female genital mutilation, forced abortion, and forced sterilization.⁴⁶ Some of these were new types of crimes that could not previously be prosecuted in many countries’ jurisdictions.⁴⁷

The Convention also seeks to protect victims of sexual violence in a non-discriminatory way.⁴⁸ This means that regardless of disability, residence status, age, marital status, gender identity, or sexual orientation, protection and support must be available to every woman.⁴⁹ This non-discrimination policy is one of the Istanbul Convention’s driving forces to ending gender-based violence.⁵⁰ The Council of Europe recognized that intersectionality⁵¹ plays a prominent role in the hardships that certain groups of

43. *Id.*

44. *Id.*

45. AMNESTY INT’L, *supra* note 12.

46. COUNCIL OF EUR., *supra* note 13.

47. Santi, *supra* note 18.

48. COUNCIL OF EUR., *supra* note 13.

49. *Id.*

50. *Id.*

51. Merriam-Webster defines intersectionality as “the complex, cumulative way in which the effects of multiple forms of discrimination (such as racism, sexism, and classism) combine, overlap, or intersect especially in the experiences of marginalized individuals or groups.” *Intersectionality*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/intersectionality> (last visited Mar. 11, 2023). Kimberlé Crenshaw first coined the term intersectionality in 1989 in a paper published in the University of Chicago Legal Forum titled “Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics.” *Kimberlé Crenshaw on Intersectionality, More than Two Decades Later*, COLUM. L. SCH. (June 8, 2017), <https://www.law.columbia.edu/news/archive/kimberle-crenshaw-intersectionality-more-two-decades-later>.

women face and made sure not to overlook such intersectional groups of women's needs in drafting the Convention.⁵²

B. Monitoring Mechanism to Achieve the Istanbul Convention's Goals

Once a nation-state has signed⁵³ and ratified the Istanbul Convention, it is legally bound to the Convention's mandates and must take measures to implement its policies and practices.⁵⁴ Enforcement provisions are not put in place in international human rights conventions,⁵⁵ but the Convention put a monitoring mechanism into place to track the progress of ratifying countries as they attempt to conform to the Convention and to provide guidance to authorities.⁵⁶ The mechanism consists of two bodies: The Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) and the Committee of the Parties.⁵⁷ GREVIO is an independent body in charge of tracking the success of the parties to the Convention in implementing the Convention provisions.⁵⁸ Its responsibilities include conducting on-site visits to countries to evaluate their progress and publishing reports that consolidate GREVIO's findings.⁵⁹ GREVIO exists to offer "tailor-made guidance to increase the level of implementation" among the signatories of the Convention.⁶⁰

The Committee of the Parties is comprised of representatives of each party to the Convention.⁶¹ The Committee assesses the findings of GREVIO and then adopts recommendations to

52. COUNCIL OF EUR., *supra* note 13.

53. A state merely signing an international treaty does not make it legally binding on that state; signing a treaty signals that the state is supportive of the treaty's substance and that the state has the intention of ratifying. A state must officially ratify a treaty for the state to be bound by the treaty's contents. *Frequently Asked Questions Regarding the Convention on the Rights of Persons with Disabilities*, U.N., <https://www.un.org/esa/socdev/enable/convinfofaq.htm#q1> (last visited Mar. 11, 2023).

54. COUNCIL OF EUR., *supra* note 13.

55. "[T]he implementation of [human rights] conventions depends on the commitment of each country." U.N., *supra* note 53.

56. COUNCIL OF EUR., *supra* note 13.

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.*

comply with GREVIO's conclusions, suggestions, and proposals.⁶² The Committee tailors these recommendations to each country, and each country is given three years to implement the Committee's recommendations and report back.⁶³

In place of an enforcement provision, Article 68 of the Istanbul Convention dictates that GREVIO, upon "receiv[ing] reliable information indicating a situation where problems require immediate attention to prevent or limit the scale or number of serious violations of the Convention," may request that the Party concerned of violating the Convention submit a report outlining the measures it intends to take to remedy the violation.⁶⁴ After the Party has submitted their report, GREVIO "may designate one or more of its members to conduct an inquiry [into the Party] and to report urgently to GREVIO," which "may include a visit to [the Party's] territory."⁶⁵ Once the investigation has been completed, GREVIO is required to communicate its findings with the Party concerned "and, where appropriate, to the Committee of the Parties and the Committee of Ministers of the Council of Europe together with any comments and recommendations."⁶⁶ Article 68, however, does not act as a strict enforcement provision of the Istanbul Convention, indicated by the permissive language "may" as opposed to any mandatory language.⁶⁷ This means that the Istanbul Convention itself does not hold countries legally accountable if they break or otherwise go against the provisions of the Convention.⁶⁸

II. CONTEXTUALIZING TURKEY'S WITHDRAWAL FROM THE ISTANBUL CONVENTION

A. Turkey's Shocking Withdrawal from The Istanbul Convention

Turkey was one of the Istanbul Convention's most fierce advocates at its inception in 2011—the Turkish prime minister was the first ever signatory of the Convention.⁶⁹ A case of domestic

62. *Id.*

63. *Id.*

64. Istanbul Convention, *supra* note 11, at art. 68 ¶ 13.

65. *Id.* ¶ 14.

66. *Id.* ¶ 15.

67. *See id.* ¶¶ 13-15.

68. *See id.*

69. Altan-Oclay & Oder, *supra* note 10.

violence that occurred in Turkey leading up to and in 2002 was seemingly a monumental catalyst for Turkey's strong involvement in the Convention.⁷⁰ Huseyin Opuz, a Turkish citizen, repeatedly beat and brutalized his wife, Nahide Opuz, throughout their entire marriage.⁷¹ One time, Huseyin attempted to run Nahide over with a car; another time, he stabbed Nahide seven times.⁷² As punishment for attempting to run over Nahide, Huseyin received three months imprisonment, and as punishment for stabbing Nahide, Huseyin was issued a fine.⁷³ Finally, during a separate event in 2002, as Nahide's mother's attempted to get Nahide to safety, Huseyin fatally shot Nahide's mother.⁷⁴ Huseyin received a life sentence but was released from custody pending appeal.⁷⁵ Nahide, attempting to get justice for her and her mother, went through the Turkish legal system to no avail.⁷⁶ Finally, she brought her case before the European Court of Human Rights.⁷⁷ In a groundbreaking⁷⁸ unanimous decision, the Court found that Turkey had failed Nahide and her mother in its duty to protect them from Huseyin's continuous abuse.⁷⁹

Turkey also initiated sexual and reproductive health training for its young male soldiers as a display of support for shining

70. Marc Santora, *Turkey Considers Leaving Domestic Violence Treaty Even as Abuse Surges*, N.Y. TIMES (Aug. 25, 2020), <https://www.nytimes.com/2020/08/25/world/europe/turkey-domestic-abuse-treaty.html?action=click&module=RelatedLinks&pgtype=Article>.

71. *Opuz v. Turkey*, LSE CTR FOR WOMEN, PEACE, & SEC., <https://blogs.lse.ac.uk/vaw/landmark-cases/a-z-of-cases/opuz-v-turkey/> (last visited Mar. 25, 2023).

72. *Id.* Nahide survived both attacks; the stabbing attack resulted in Nahide's hospitalized and she sustained life-threatening wounds. *Id.*

73. Santora, *supra* note 70.

74. *Id.*

75. *Opuz v. Turkey*, *supra* note 71.

76. Santora, *supra* note 70.

77. *Id.*

78. This was the European Court of Human Rights' first ruling related to domestic violence. *Id.* The Court discussed that domestic violence perpetrators receive disproportionate punishment for their crimes due to courts' inclination to impose lower sentences when a defendant asserts that they committed the crime "in the name of so-called 'honour'." *Opuz v. Turkey*, *supra* note 71. The Court also directly condemned Turkish police officers for their failure to act in response to crimes of domestic violence and acknowledged that there was a "general and discriminatory judicial passivity in Turkey' that denied women equal protection under the law." *Id.*

79. *Id.*

light on gender issues.⁸⁰ In 2002, the Turkish Ministry of Health and the Turkish Armed Forces teamed up with the United Nations Population Fund⁸¹ to educate Turkish soldiers on gender equality and ways to prevent gender-based violence.⁸² The project had wide-sweeping reach: three million men received the training by 2009 and it became a permanent part of military training by a decree from the armed forces.⁸³ Many of the men who received the training reported that their beliefs about women's rights had changed drastically in a more understanding and accepting direction.⁸⁴

In March of 2012, the Turkish parliament officially ratified the Istanbul Convention "in a symbolic display of political support to mark International Women's Day."⁸⁵ At the same time that Turkey ratified the Convention, it also passed Law No. 6284 on Protection of the Family and Prevention of Violence Against Women (Law No. 6284).⁸⁶ The law's aim is to "protect the women, the children, the family members and the victims of stalking, who have been subject to the violence or at the risk of violence, and to regulate procedures and principles with regard to the measures of preventing the violence against those people."⁸⁷ Law No. 6284 was intended to work in tandem with the Istanbul Convention.⁸⁸

The Istanbul Convention seemed to garner positive results in Turkey after its ratification.⁸⁹ Polls conducted by KONDA⁹⁰ to

80. Marianne Hester & Sarah-Jane Lilley, *Preventing Violence Against Women: Article 12 of the Istanbul Convention* (Sep. 2014), COUNCIL OF EUR., <https://rm.coe.int/168046e1f0>.

81. The United Nations Population Fund is a sexual and reproductive health agency that "calls for the realization of reproductive rights for all and supports access to a wide range of sexual and reproductive health services – including voluntary family planning, maternal health care and comprehensive sexuality education." *About Us*, U.N. POPULATION FUND (Jan. 2018), <https://www.unfpa.org/about-us>.

82. Hester, *supra* note 80, at 33.

83. *Id.*

84. *Id.*

85. Altan-Oclay & Oder, *supra* note 10.

86. U.N. TURK., *supra* note 24.

87. Ailenin Korunmasi ve Kadina Karsi siddetin Önlenmesine Dair Kanun Madde 1 fıkra 1.

88. *Id.* at fıkra 2.

89. Altan-Oclay & Oder, *supra* note 10.

90. KONDA is a Turkish research and consultancy company that "tries to understand and explain Turkish society through research and thus to make it

measure the societal changes regarding women's rights issues concluded that there has been a sizeable decrease, from 45 percent to 21 percent, in public support for *namus*, "the belief that women's behavior and public presence should be controlled in order to protect 'family honour.'"⁹¹ Additionally, in the last five years the acceptance rate of domestic violence in Turkey has drastically fallen from 20 percent to 6 percent.⁹²

Nine years after its ratification, in a shocking turn of events, Turkish President Recep Tayyip Erdoğan—the same president who was in office when Turkey ratified the Istanbul Convention in 2012— "signed a decree marking Turkey's withdrawal" from the Istanbul Convention.⁹³ This is the first time in history that a Council of Europe member has withdrawn from an international human rights convention.⁹⁴ To explain why Turkey decided to withdraw from the Convention, the president stated that the Convention was being used to "normalize homosexuality"⁹⁵ and that it was "damaging to the family unit and encourages divorce."⁹⁶ President Erdoğan seemingly made this tactical move in an effort to regain popularity among Turkish conservatives after losing support during Turkey's economic downturn.⁹⁷ On March 22, 2021, Turkey's Communication Directorate published an official statement explaining the reasons for Turkey's withdrawal:

understandable." *About Us*, KONDA, <https://konda.com.tr/en/about-us/> (last visited Mar. 11, 2023). KONDA uses various qualitative and quantitative research methods to "observe[] the changing dynamics of [Turkey] and provide[] analysis on social transformation." *Id.*

91. Altan-Oclay & Oder, *supra* note 10.

92. *Id.*

93. Santi, *supra* note 18.

94. *Turkey's Withdrawal from the Istanbul Convention Rallies the Fight for Women's Rights Across the World*, AMNESTY INT'L (June 30, 2021), <https://www.amnesty.org/en/latest/news/2021/07/turkeys-withdrawal-from-the-istanbul-convention-rallies-the-fight-for-womens-rights-across-the-world-2/>.

95. *Id.*

96. Simone Santi, *Turkey Withdraws from the Istanbul Convention on Violence Against Women*, LIFE GATE (Mar. 25, 2021), <https://www.lifegate.com/turkey-istanbul-convention-violence-against-women>.

97. Carlotta Gall, *Erdogan Pulls Turkey from European Treaty on Domestic Violence*, N.Y. TIMES (Mar. 20, 2021), <https://www.nytimes.com/2021/03/20/world/europe/turkey-erdogan-women-violence.html?searchResultPosition=2>.

The Istanbul Convention, originally intended to promote women's rights, was hijacked by a group of people attempting to normalize homosexuality – which is incompatible with Turkey's social and family values. Hence the decision to withdraw. Turkey is not the only country who has serious concerns about the Istanbul Convention. Six members of the European Union (Bulgaria, Hungary, Czechia, Latvia, Lithuania and Slovakia) did not ratify the Istanbul Convention. Poland has taken steps to withdraw from the Convention, citing an attempt by the LGBT community to impose their ideas about gender on the entire society.⁹⁸

President Erdoğan draws on Turkey's conservative, far right ideologies on gender inequality that claim “that there is a natural division of labour between men and women in families, and that [the country] should try to protect families and Turkish culture.”⁹⁹ Erdoğan believes that the route toward women's rights consists of an emphasis on women being meant to be child caretakers and an installation of deep familial values¹⁰⁰ in the women of Turkey.¹⁰¹ The president of Turkey had harbored these views for many years prior to the withdrawal; at a summit in Istanbul in 2014, President Erdoğan stated that men and women being equal “is against nature.”¹⁰² The following section will explain how President Erdoğan began to adopt these radical ideologies into his political platform.

B. The Historical Framework for Turkey's Withdrawal

When President Erdoğan decided to sign the Istanbul Convention in 2011, the Turkish government, led by the Adalet ve Kalkınma Partisi (AKP), was promoting a modern era of “soft

98. Carola Cerami, *Turkey, Europe and Women's Rights: The Controversial Debate on the Istanbul Convention*, *Nuovi Autoritarismi e Democrazie: Diritto, Istituzioni, Società* 187, at 192 (2021), <https://riviste.unimi.it/index.php/NAD/article/view/15644/345>.

99. Altan-Oclay & Oder, *supra* note 10.

100. Huseyin Opuz, the man who shot and killed Nahide Opuz's mother, argued in his trial for murder that he committed the murder to protect his family's honor. *Opuz v. Turkey*, *supra* note 71.

101. Gall, *supra* note 97.

102. Lizzie Dearden, *Turkish President: 'Equality Between Men and Women is Against Nature.'* INDEP. (Nov. 24, 2014), <https://www.independent.co.uk/news/world/europe/turkish-president-equality-between-men-and-women-is-against-nature-9879993.html>.

power.”¹⁰³ “Soft power” is a term that identifies a dimension of power where a country may “obtain desired political outcomes because other countries—admiring its values, emulating its example, and aspiring to its level of prosperity—want to follow it.”¹⁰⁴ A country’s soft power is based on their culture, political values, and foreign policies, and the success of a country’s soft power lies within that country’s “ability to create credibility, trust, and attraction.”¹⁰⁵ In this era of soft power, the AKP intended to be a democratic and secularized¹⁰⁶ country.¹⁰⁷ This power ideology provided the perfect climate in which the Turkish government could confidently sign the Istanbul Convention to provide proof of Turkey’s dedication to defending women’s rights.¹⁰⁸

Years later, however, after the AKP’s third electoral victory, there were major shifts in the Turkish government’s political ideology.¹⁰⁹ The party’s interest in promoting secularism and democracy waned as President Erdoğan became more authoritarian.¹¹⁰ In 2016, a small group of Turkish soldiers attempted to launch a coup against the AKP.¹¹¹ They accused the AKP of “eroding the democratic order and damaging the rule of law in Turkey.”¹¹² The coup attempt failed, however, and Erdoğan was able to convince his supporters to overtake the coup members.¹¹³ The failed coup had the backhanded effect of giving Erdoğan even more political power by allowing him to take greater control of “the armed forces, the economy, the bureaucracy, the judiciary and the media.”¹¹⁴

103. Cerami, *supra* note 98, at 191.

104. Carola Cerami, *Rethinking Turkey’s Soft Power in the Arab World: Islam, Secularism, and Democracy*, 3 JLS 129 (2013) at 131.

105. *Id.*

106. Secularism is defined as “indifference to or rejection or exclusion of religion and religious considerations.” *Secularism*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/secularism> (last visited Mar. 11, 2023).

107. Cerami, *supra* note 98, at 191.

108. *See id.*

109. *See id.*

110. *Id.*

111. Malcolm Edward Yapp, *An Emboldened Erdoğan and the AKP Face Resistance*, ENCYC. BRITANNICA, <https://www.britannica.com/place/Turkey/An-emboldened-Erdogan-and-the-AKP-face-resistance>.

112. *Id.*

113. *Id.*

114. Cerami, *supra* note 98, at 192.

In 2017, Turkish citizens voted on and approved a constitutional referendum that further expanded presidential powers.¹¹⁵ Provisions of the new amendments eliminated the office of prime minister and made the president the head of government.¹¹⁶ This allowed the president to be able to appoint people to government and to pass presidential decrees that would have the force of law.¹¹⁷ The amendments were to take effect after the next election, which was held in 2018.¹¹⁸ President Erdoğan won the majority vote and was free to benefit from the new constitutional amendments.¹¹⁹

Economic downturn further agitated the political climate within Turkey that had already been growing since before President Erdoğan won the election.¹²⁰ There was a currency crisis in Turkey where the value of its currency, the lira, had fallen by “about 40% against the [United States] dollar since the beginning of 2018.”¹²¹ With this collapse in the value of lira came difficulty in paying back debts and a loss of investor confidence.¹²² In July, the central bank declined to raise interest rates.¹²³ At the beginning of August, the United States issued tariffs against Turkish steel and aluminum exports.¹²⁴ This series of events led to the lira losing a quarter of its value by mid-August of 2018 and an economic recession in Turkey by 2019.¹²⁵ In response to this economic crisis, President Erdoğan pushed “an increasingly authoritarian, Islamist and conservative agenda.”¹²⁶

As President Erdoğan and the AKP became more socially conservative, they began speaking out more publicly of their disdain for the Istanbul Convention.¹²⁷ Numan Kurtulmuş, the deputy

115. Yapp, *supra* note 111.

116. *Id.*

117. *Id.*

118. *Id.*

119. *Id.*

120. *Id.*

121. Rebecca M. Nelson, *Turkey's Currency Crisis*, CONG. RSCH. SERV. (Aug. 30, 2018), <https://sgp.fas.org/crs/mideast/IF10957.pdf>.

122. *Id.*

123. Yapp, *supra* note 111.

124. *Id.*

125. *Id.*

126. Cerami, *supra* note 98, at 192.

127. See generally Bethan McKernan, *Murder in Turkey Sparks Outrage Over Rising Violence Against Women*, THE GUARDIAN (Jul. 23, 2020), <https://www.theguardian.com/world/2020/jul/23/turkey-outrage-rising-violence-against-women>.

chairman of the AKP, announced in an interview in 2020 that the Istanbul Convention was “very wrong” and “played into the hands of LGBT” in Turkish society.¹²⁸ President Erdoğan sought to maintain support of Islamic and conservative religious groups by pushing conservative views on family dynamics and women’s rights through his political platform.¹²⁹ It was this series of events—from the country’s dominant political party’s shift in ideologies, to the economic downturn, to President Erdoğan’s attempt to maintain his political prowess—that led to President Erdoğan taking another look at the Istanbul Convention and ultimately deciding to withdraw from it.¹³⁰

C. The Instillation of Erdoğan’s Familial Values in Turkey’s Legal Framework

The far right has made many efforts to instill the outdated family values that President Erdoğan mounts his political stance upon into Turkey’s legal framework.¹³¹ For example, in 2016 the Turkish government proposed a bill that aimed to suspend the sentences of perpetrators of child sex offenses on the condition that the perpetrator and the child victim “get married and the age difference between them is less than 10 years.”¹³² The bill was quashed after an outburst of protest from activist groups,¹³³ but a similar bill was proposed four years later in 2020 that would, “in effect[,] legitimi[ze] child marriage and statutory rape in a country where the legal age of consent is 18.”¹³⁴

Perpetrators of sexual and domestic violence against women often receive extremely lenient sentences.¹³⁵ Through a phenomenon coined by the Turkish people as “tie reduction,” “men who wear neckties and suits during their court appearances get their sentences reduced.”¹³⁶ This judicial practice serves only to

128. *Id.*

129. Cerami, *supra* note 98, at 193.

130. *Id.*

131. Altan-Oclay & Oder, *supra* note 10.

132. Bethan McKernan, *Turkish Activists Oppose Amnesties for Child Rapists*, THE GUARDIAN (Jan. 23, 2020), <https://www.theguardian.com/world/2020/jan/23/turkish-activists-oppose-amnesties-for-child-rapists>.

133. Altan-Oclay & Oder, *supra* note 10.

134. McKernan, *supra* note 132.

135. Beril Eski, *The Murder of a Ballerina*, N.Y. TIMES (Feb. 4, 2020), <https://www.nytimes.com/2020/02/04/opinion/turkey-women-murders.html>.

136. *Id.*

exacerbate the prevalence of sexual violence against women in Turkey, as perpetrators do not have to fear harsh or long sentences for their crimes.¹³⁷

Another example of how the Turkish legal system has failed women's rights by instilling misguided familial values into the legal framework comes from the trial of Melek Ipek, a Turkish woman charged with murdering her husband in January 2021 after enduring "beatings, sexual assault and death threats" from him.¹³⁸ Melek's husband, Ramazan Ipek, forced her into her marriage with him after he had sexually assaulted her while she was in high school.¹³⁹ She endured his abuse throughout their entire marriage.¹⁴⁰ On the night before the murder, Ramazan had threatened to kill Melek and her two daughters, ages seven and nine, with a rifle.¹⁴¹ The next morning, Ramazan left the house and told Melek "he would return to kill the two children and then her."¹⁴² Upon returning to the house an hour later, Melek shot Ramazan with his rifle after a struggle.¹⁴³

Much political controversy has surrounded Melek's detention and indictment following the incident.¹⁴⁴ Melek's supporters have advanced her position of self-defense, and the Antalya Feministic Collective¹⁴⁵ has stood on the platform that had Melek received better mental health care following the assault, she would not have even gotten to the point of feeling like she needed to shoot her husband.¹⁴⁶ On the other end of the support

137. *Id.*

138. Carlotta Gall, *Trial of Woman Who Killed Her Husband Highlights Domestic Abuse in Turkey*, N.Y. TIMES (Mar. 16, 2021), <https://www.nytimes.com/2021/03/16/world/europe/turkey-melek-ipek-domestic-violence.html?searchResultPosition=1>.

139. *Id.*

140. *Id.*

141. *Id.*

142. *Id.*

143. *Id.*

144. *Id.*

145. The Antalya Feminist Collective is a women's rights advocacy group formed in 2017 "to produce feminist policy, fight[] for gender equality and follow[] cases of violence against women and femicide." KD Söyleşi, *Interview with Antalya Feminist Collective*, KADIN DAYANISMASI (Feb. 5, 2021), https://www-kadindayanismasi-net.translate.google/index.php/2021/02/05/antalya-feminist-kolektif-ile-soylesi-baski-somuru-siddet-nereden-gelirse-gelsin-yan-yana-mucadele-etmeye-devam-ede-cegiz/?_x_tr_sl=tr&_x_tr_tl=en&_x_tr_hl=en&_x_tr_pto=nui,sc.

146. Gall, *supra* note 138.

spectrum, Melek's criminal indictment charging her with the murder of her husband described Ramazan as a "family man" and essentially victim-blamed¹⁴⁷ Melek by stating that she had "chosen to shoot her husband rather than seek help from the police or neighbors."¹⁴⁸ Melek's indictment bolsters Turkish sexual assault perpetrators' strategies of victim-blaming to evade prosecution, a move that comes with grave concerns for women's rights in Turkey.¹⁴⁹

Melek's trial was held in April 2021, at which Melek gave heart-wrenching testimony recounting Ramazan's final assault on Melek and the moments leading up to Ramazan's death.¹⁵⁰ On April 26, 2021, the Antalya 3rd Heavy Penal Court concluded that Melek "committed the act due to the tension, fear and panic that could be considered excusable as the defendant was acting in defense against an attack on her life, bodily integrity and sexual freedom before and after the incident."¹⁵¹ Accordingly, the court found that there were no reasonable grounds for penalization and released Melek of the charge.¹⁵² This case coming about

147. Canada's Sexual Assault Centre of Edmonton defines victim-blaming as "someone saying, implying, or treating a person who has experienced harmful or abusive behavior ([e.g.]: a survivor of sexual violence) like it was a result of something they did or said, instead of placing the responsibility where it belongs: on the person who harmed them." *Victim Blaming*, SEXUAL ASSAULT CTR. OF EDMONTON, <https://www.sace.ca/learn/victim-blaming/> (last visited Mar. 11, 2023).

148. Gall, *supra* note 138.

149. *Id.*

150. Melek testified that the night before she fatally shot her husband, Ramazan entered the room where she was putting her children to bed, armed with a hunting rifle, and told Melek that he was going to kill her. Naz Oke, *Melek Ipek Killed the Husband Who Tortured Her*, KEDISTAN (Jan. 12, 2021), <https://www.kedistan.net/2021/01/12/turkey-melek-ipek-kill-husband/>. Ramazan aimed the rifle at her and she pushed it away, begging him not to fire. *Id.* Ramazan then aimed the rifle at their two children and again threatened Melek's life, as well as the children's' lives. *Id.* The next morning, Ramazan was walking up the steps, shouting that he was going to kill Melek and her children, and Melek saw a small shotgun in the corner of the room. *Id.* She and Ramazan got into an altercation over the shotgun, at which point a shot rang out, killing Ramazan. *Id.* Melek testified that she regretted everything that happened, but "if such a misfortune had not occurred, [she] and [her] two daughters would be dead." *Id.*

151. *Exercising Her Right of Self-Defense, Melek Ipek Released*, BIANET (Apr. 27, 2021), <https://m.bianet.org/english/male-violence/243114-exercising-her-right-of-self-defense-melek-ipek-released>.

152. *Id.*

just months before Turkey withdrew from the Istanbul Convention certainly is merely an unfortunate coincidence, and while the outcome for Melek was ultimately favorable, it served as a premonition and a warning for the dire consequences of abandoning the Istanbul Convention.¹⁵³

III. IMPLICATIONS OF TURKEY'S WITHDRAWAL FROM THE ISTANBUL CONVENTION

A. Public Outcry in Response to Turkey's Withdrawal

Once Turkey announced its withdrawal from the Istanbul Convention, there was an outpour of protesting and resistance.¹⁵⁴ President Erdoğan stated in a televised speech in March 2021 that “[Turkey’s] battle against violence against women did not start with the Istanbul Convention and it will not come to an end with [Turkey’s] withdrawal.”¹⁵⁵ The president’s words did not resonate well with the women of Istanbul.¹⁵⁶ Hundreds of protesters joined together in the streets of central Istanbul after the president’s speech and declared their disdain for the president’s promises.¹⁵⁷ The protesters marched for over two hours, all the while chanting “We won’t be silent, we won’t be afraid, we won’t obey,” among other chants.¹⁵⁸

Turkey’s withdrawal from the Istanbul Convention struck a deep chord with women’s rights activists who had been speaking out against injustices toward women and Turkey’s shocking femicide¹⁵⁹ rates.¹⁶⁰ In 2019, 474 women were murdered in Turkey,

153. *Id.*

154. Altan-Oclay, *supra* note 10.

155. Kareem Fahim, *Women Protest in Turkey After Government Withdraws from Treaty Combating Gender-Based Violence*, THE WASH. POST (July 1, 2021), https://www.washingtonpost.com/world/istanbul-convention-turkey-erdogan-protests-women-domestic-violence/2021/07/01/3cd93ac8-daa1-11eb-8c87-ad6f27918c78_story.html.

156. *Id.*

157. *Id.*

158. *Id.*

159. Femicide is defined as the intentional killing of women because they are women. *Femicide*, WORLD HEALTH ORG. (2012), https://apps.who.int/iris/bitstream/handle/10665/77421/WHO_RHR_12.38_eng.pdf (last visited Mar. 11, 2023). Perpetrators of femicide are usually men who have personal relationships with their victims, i.e., they are either the partner or ex-partner of their victim. *Id.* Femicide can be the end result of ongoing domestic abuse, threats or intimidation, or sexual violence. *Id.*

160. *See* McKernan, *supra* note 127.

mostly by people with personal connections to them.¹⁶¹ According to the World Health Organization, as of March 2021, approximately 40 percent of women in Turkey had experienced domestic violence.¹⁶² Withdrawing from the Istanbul Convention “sends a reckless and dangerous message to perpetrators who abuse, maim and kill: that they can carry on doing so with impunity,” says Amnesty International’s¹⁶³ Secretary General, Agnès Callamard.¹⁶⁴

Not to mention that the threat of domestic violence surged in the wake of the COVID-19 pandemic with increased “movement restrictions, social isolation, and economic insecurity.”¹⁶⁵ According to the Istanbul Security Directorate, as of March 2020 there had been a 38.2 percent increase in domestic violence cases since just one year earlier.¹⁶⁶ Director of the We Will Stop Femicide Platform, Gulsam Kav, stated that during the pandemic lockdown, “significantly more” women were calling the organization’s help hotline.¹⁶⁷ Before the lockdown, men were not at home as often and thus women and children were less susceptible to violence; however, because of pandemic protocols, women and children were forced to spend increased time with their abusive domestic partners.¹⁶⁸

The International Commission of Jurists, an advocacy group comprised of lawyers dedicated to the protection of human rights, also spoke out against the Turkish government’s withdrawal from the Istanbul Convention.¹⁶⁹ Massimo Frigo, ICJ’s

161. *Id.*

162. Cerami, *supra* note 98, at 193.

163. Amnesty International is a non-governmental organization that campaigns for human rights on a global scale. See *Who We Are*, AMNESTY INT’L, <https://www.amnesty.org/en/who-we-are/> (last visited Mar. 11, 2023).

164. AMNESTY INT’L, *supra* note 94.

165. Cerami, *supra* note 98, at 193.

166. Ayushi Singh, *Turkey’s Withdrawal from the Istanbul Convention: Is It Justified?*, JURIST (Apr. 15, 2021), <https://www.jurist.org/commentary/2021/04/ayushi-singh-turkey-istanbul-convention/>.

167. Pelin Ünker & Daniel Bellut, *Domestic Violence Rises in Turkey During COVID-19 Pandemic*, DEUTSCHE WELLE (Oct. 4, 2020), <https://www.dw.com/en/domestic-violence-rises-in-turkey-during-covid-19-pandemic/a-53082333>.

168. *Id.*

169. See generally *Turkey’s Withdrawal from Istanbul Convention a Setback for Women and Girls’ Human Rights*, INT’L COMM’N OF JURISTS (Jul. 1, 2021), <https://www.icj.org/turkeys-withdrawal-from-istanbul-convention-a-setback-for-women-and-girls-human-rights/>.

Senior Legal Adviser for its Europe and Central Asia Program, stated that “this decision denies women and girls in Turkey access to the Group of experts on action against violence against women and domestic violence – the specific monitoring and accountability mechanism established under the Convention.”¹⁷⁰ Frigo was referencing GREVIO, the independent body in charge of tracking the success of the parties to the Convention in implementing the Convention provisions.¹⁷¹ Because Turkey has withdrawn from the Istanbul Convention, Turkish women no longer can rely on the support of the international experts that were ensuring that Turkey was taking preventative measures to eradicate sexual violence.¹⁷²

B. Turkey’s Withdrawal is in Violation of the Turkish Constitution

In addition to public outcry in the form of street protests, women’s rights activists have taken legal action against President Erdoğan’s decision.¹⁷³ Several non-governmental organizations (NGO), bar associations, and Turkish citizens have filed lawsuits with the Council of State, Turkey’s highest administrative court, alleging that Erdoğan’s withdrawal went against the Turkish Constitution and demanding its annulment.¹⁷⁴

The lawsuits undoubtedly hold water.¹⁷⁵ While Presidential Decree No. 9 grants the president of Turkey the power to enter into and withdraw from international treaties, Article 90 of the Turkish Constitution declares that such a decision to withdraw from an international treaty can only be done following a parliamentary decision to do so.¹⁷⁶ The only forms of international treaties that can be exempt from this requirement are “economic, trade, technical, and administrative treaties.”¹⁷⁷ The

170. *Id.*

171. COUNCIL OF EUR., *supra* note 13.

172. INT’L COMM’N OF JURISTS, *supra* note 169.

173. Aynur Tekin, *Activists, Lawyers Take Erdoğan’s Decision to Withdraw from Istanbul Convention to Court*, DUVAR (Mar. 27, 2021), <https://www.duvarenglish.com/turkish-activists-lawyers-take-erdogans-decision-to-withdraw-from-istanbul-convention-to-court-news-56824>.

174. *Id.*

175. *See id.*

176. Nazlicicek Semercioglu, *Turkey’s Withdrawal from the Istanbul Convention*, INT’L J. CONS. L. BLOG (Apr. 22, 2021), <http://www.iconnectblog.com/2021/04/turkeys-withdrawal-from-the-istanbul-convention/>.

177. *Id.*

Istanbul Convention, which is a human rights treaty, does not fall into any of those categories.¹⁷⁸ Moreover, Article 7 of Turkey's Constitution states that "[l]egislative power is vested in the Grand National Assembly of Turkey on behalf of the Turkish Nation," and makes clear that "[t]his power *shall not* be delegated."¹⁷⁹ Article 87 of the Constitution clearly designates the duty of repealing laws to the Grand National Assembly of Turkey (Parliament).¹⁸⁰ Article 90 also lays out the "institutional balance of powers and associated normative hierarchy" within the Turkish government,¹⁸¹ making clear that "the Presidency is not given [] authority to cancel international agreements."¹⁸² It is evidenced throughout the entire Turkish Constitution that the power over international agreements rests solely with Parliament.¹⁸³

In addition to Turkey's withdrawal from the Istanbul Convention being in violation of the Turkish Constitution, there is evidence that Presidential Decree No. 9 is itself unconstitutional.¹⁸⁴ Article 104 of the Turkish Constitution states that the president "may issue presidential decrees on the matters regarding executive power."¹⁸⁵ The Article does not, however, list such executive powers.¹⁸⁶ This ambiguity was the subject of an invalidity action being brought in the Council of State against President Erdoğan's decision to withdraw.¹⁸⁷ The claim was that his decision was "unconstitutional on the grounds that termination of a treaty requiring preapproval from the legislature was a matter that was not 'related [solely] to the executive power' but also to the legislature."¹⁸⁸

178. *See generally* Istanbul Convention, *supra* note 11.

179. Türkiye Cumhuriyeti Anayasası Madde 7.

180. *Id.* at Madde 87.

181. Altan-Oclay, *supra* note 10.

182. Tekin, *supra* note 173.

183. Altan-Oclay, *supra* note 10.

184. Semercioglu, *supra* note 176.

185. Türkiye Cumhuriyeti Anayasası Madde 104.

186. *Id.*

187. Kayahan Cantekin, *Turkey: Council of State Upholds President's Decision to Withdraw Turkey from Istanbul Convention*, LIBR. OF CONG. (2021), <https://www.loc.gov/item/global-legal-monitor/2021-07-26/turkey-council-of-state-upholds-presidents-decision-to-withdraw-turkey-from-istanbul-convention/>.

188. *Id.*

Because only the Turkish Constitutional Court can decide on the constitutionality of presidential decrees,¹⁸⁹ the plaintiff in the case requested the Council of State to “invalidate the president’s decision, issue a preliminary injunction to stop the execution of the decision, and refer the constitutionality question ... to the Constitutional Court.”¹⁹⁰ In its majority opinion, the Council of State rejected the plaintiff’s argument.¹⁹¹ It held that termination of treaties is a matter relating to the executive powers referred to in Article 140 of the Turkish Constitution.¹⁹² A persuasive dissenting opinion from two judges argued that since Article 90 of the Turkish Constitution gives provisions of international treaties the force of law, such provisions cannot be “terminated by a president’s decision on the basis of a presidential decree, and a presidential decree that authorizes the president to issue such a decision would be unconstitutional.”¹⁹³

Yet another layer of unconstitutionality to this situation is that Turkey’s withdrawal is also in violation of Turkey’s Law No. 6284.¹⁹⁴ Article 1(2)(a) of Law No. 6284 stipulates that the law—which was put into effect to protect women who have been subject to or are at the risk of violence—shall be a prevailing source of power to effectuate the law.¹⁹⁵ Because Turkey withdrew from the Istanbul Convention, that provision of Law No. 6284, and consequently all provisions of Law No. 6284, are rendered inapplicable and moot because the law does not have the Istanbul Convention supporting its enforcement.¹⁹⁶

Therefore, in the absence of legislative approval by Parliament, President Erdoğan had no constitutional authority to

189. “If a court hearing a case finds that the law or the presidential decree to be applied is unconstitutional...it shall postpone the consideration of the case until the Constitutional Court decides on the issue.” Türkiye Cumhuriyeti Anayasası Madde 152.

190. Cantekin, *supra* note 187.

191. *Id.*

192. *Id.*

193. *Id.*

194. Ailenin Korunmasi ve Kadina Karsi siddetin Önlenmesine Dair Kanun Madde 1 fıkra 2(a).

195. “The Constitution of Republic of Turkey, the international agreements to which Turkey is a party, especially the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, and other current regulations shall prevail (emphasis added).” *Id.*

196. Semercioglu, *supra* note 176.

withdraw from the Istanbul Convention.¹⁹⁷ To draw on the sentiments of the United Nations in Turkey, President Erdoğan's withdrawal decision, if left unaddressed and not remedied, sets a dangerous precedent to other ratifiers of the Istanbul Convention that overriding constitutional authority to withdraw from international human rights conventions is an acceptable practice.¹⁹⁸

C. Turkey's Collateral Noncompliance with Other International Treaties

According to Turkey's constitution, "international agreements duly put into effect have the force of law."¹⁹⁹ As such, the Turkish government must comply with the provisions put forth in those international agreements.²⁰⁰ The decision to withdraw from the Istanbul Convention created collateral consequences of noncompliance with the other international treaties to which Turkey is a party. Some of the international human rights agreements and treaties to which Turkey is a party are the Convention on the Elimination of All Forms of Discrimination Against Women, the International Covenant on Economic, Social and Culture Rights, and the European Convention on Human Rights.²⁰¹

The United Nations General Assembly adopted the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1979, and it became an international treaty in 1981 after receiving its twentieth ratification.²⁰² CEDAW plays an important role in bringing the concerns of women's rights to the forefront of international law.²⁰³ The Convention establishes "an agenda for action" for all of its ratifying countries to ensure that women are afforded equal rights.²⁰⁴ Ratifying countries of CEDAW are expected to take all appropriate

197. *Id.*

198. *See* U.N. TURK., *supra* note 24.

199. Türkiye Cumhuriyeti Anayasası Madde 90.

200. *Id.*

201. *Ratification Status for Turkey*, OHCHR, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=179&Lang=EN (last visited Mar. 11, 2023); *see also* COUNCIL OF EUR., *supra* note 15; *Chart of Signatures and Ratifications of Treaty 214*, COUNCIL OF EUR., <https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=214> (last visited Mar. 11, 2023).

202. CEDAW, *supra* note 28.

203. *Id.*

204. *Id.*

measures to eliminate discrimination against women, including “adopt[ing] appropriate legislative and other measures, ... establish[ing] legal protection of the rights of women,” and “refrain[ing] from engaging in any act or practice of discrimination against women.”²⁰⁵

Turkey ratified CEDAW in 1985, requiring the Turkish government to conform with CEDAW’s provisions by taking all necessary measures to protect women’s rights.²⁰⁶ Article 5 of the Convention states that ratifying countries shall

modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.²⁰⁷

Article 5 very clearly exemplifies that CEDAW aims to eradicate sexual violence by targeting and changing gendered stereotypes that perpetuate societal gender hierarchies.²⁰⁸

Additionally, Article 15 of the Convention states that ratifying countries “shall accord to women equality with men before the law.”²⁰⁹ As previously stated, one of the reasons for Turkey’s withdrawal from the Istanbul Convention was that President Erdoğan believes that the Istanbul Convention impedes on the deep familial values of Turkish culture, namely the role of women as child caretakers.²¹⁰ This archaic view of women as caretakers and homemakers is exactly what perpetuates gender imbalances and contributes directly to sexual and gender-based violence.²¹¹ Such gendered stereotypes are used to “excuse and justify abuses of human rights.”²¹² In promoting these kinds of harmful ideologies through its withdrawal from the Istanbul Convention, Turkey is in violation of the provisions of CEDAW

205. *Id.*

206. OHCHR, *supra* note 201.

207. CEDAW, *supra* note 28.

208. *Id.*

209. *Id.*

210. Santi, *supra* note 96.

211. See generally Laura Duhan Kaplan, *Woman as Caretaker: An Archetype That Supports Patriarchal Militarism*, 9 *Hypatia* 123 (1994).

212. *Sexual Violence Against Women: Eradicating Harmful Gender Stereotypes and Assumptions in Laws and Practice*, INT’L COMM’N OF JURISTS (2015), <https://www.icj.org/wp-content/uploads/2015/04/Universal-GenderStereotypes-Publications-Thematic-report-2015-ENG.pdf>.

that explicitly compel its state parties to eliminate prejudices against and stereotypes of women.²¹³

The International Covenant on Economic, Social and Cultural Rights (ICESCR) was entered into force in 1976 with the recognition that “the ideal of free human beings enjoying freedom from fear . . . can only be achieved if conditions are created whereby everyone may enjoy [their] economic, social, and cultural rights.”²¹⁴ ICESCR prohibits all forms of discrimination and promotes equality among men and women in economic, social, and cultural settings.²¹⁵ Similarly, the European Convention on Human Rights (ECHR), entered into force in 1950, binds ratifying countries to prohibit discrimination based on sex.²¹⁶ As a ratifying country of these treaties, Turkey has a duty to take the necessary measures to abide by the provisions of these treaties and ensure that women and men are treated equally within its borders.²¹⁷ The Istanbul Convention was one such measure to comply with the ICESCR and the ECHR, as it promotes equality among men and women and aims to eradicate disproportionate violence against women.²¹⁸ Turkey’s withdrawal from the Istanbul Convention is therefore a violation of the obligations imposed upon Turkey by these international treaties.²¹⁹

IV. STRENGTHENING THE INTERNATIONAL LEGAL FRAMEWORK OF SEXUAL VIOLENCE TO PROTECT WOMEN’S FUNDAMENTAL HUMAN RIGHTS

This section will explore three proposed solutions to strengthen the international legal framework of sexual violence in an attempt to fix the damage President Erdoğan created when he unconstitutionally withdrew from the Istanbul Convention. The first solution is for women’s rights movements and international human rights organizations to continue to speak out against injustices done toward women. The second solution is an increased focus on educating the public on the root causes of

213. CEDAW, *supra* note 28.

214. International Covenant on Economic, Social and Cultural Rights, *supra* note 28, at 3.

215. *Id.*

216. *The European Convention on Human Rights*, *supra* note 28, at sec. 1, at art. 14.

217. *Id.*

218. Istanbul Convention, *supra* note 11, at arts. 1 ¶ 1(a)-(e), art. 4 ¶ 1.

219. *See generally supra* note 28.

sexual violence and how to stop sexual violence before it occurs. The third solution is for opponents of President Erdoğan's withdrawal to submit a complaint to the European Court of Human Rights to obtain judgment against Turkey's actions.

A. Women's Rights Movements Should Continue to Make Waves

While the unconstitutionality of President Erdoğan's withdrawal from the Istanbul Convention cannot be undone, women's rights movements both in Turkey and internationally should continue to persist in their efforts to raise awareness of the harmful effects of gender-based violence and of the injustice that the president has committed.²²⁰ "Violence against women is pervasive, but it's not inevitable—unless we stay silent."²²¹ If history has told us anything, it is that social movements have the power to effectuate drastic political and legal change.²²² Women in England gained the right to vote in 1928 after an organization called the Women's Franchise League in England took extreme measures, like hunger strikes, to protest their lack of the right to vote.²²³ The LGBTQIA+ rights movement campaigned for marriage equality for years through vigorous legal battles and successfully got the United States Supreme Court to legalize same-sex marriage in the landmark case *Obergefell v. Hodges*.²²⁴ And, of course, Nelson Mandela successfully led the resistance against South Africa's apartheid state and became the country's first democratically elected president in 1994.²²⁵

Silence surrounding gender-based violence only provides perpetrators with a curtain behind which they can hide as they continue to inflict harm on the women around them.²²⁶ Because of

220. See generally Madeline Schwartz & Erica Sánchez, *Social Movements—and Their Leaders—That Changed Our World*, GLOB. CITIZEN (June 30, 2016), <https://www.globalcitizen.org/en/content/movements-social-change-apartheid-civil-rights-suf/>.

221. *Push forward: 10 ways to end violence against women*, UN WOMEN, (Nov. 18, 2022), <https://www.unwomen.org/en/news-stories/feature-story/2022/11/push-forward-10-ways-to-end-violence-against-women>.

222. See generally Schwartz, *supra* note 220.

223. *Id.*

224. Angela Li, *Human Rights Hero: The LGBTQ Rights Movement*, AM. BAR ASS'N (Jan. 11, 2021), https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/civil-rights-reimagining-policing/human-rights-hero/.

225. Schwartz, *supra* note 220.

226. UN WOMEN, *supra* note 221.

this, it is of the utmost importance that women's rights groups in Turkey and internationally keep working toward building safe spaces for Turkish women to speak out against their abusers.²²⁷ There are many ways in which this advocacy can manifest itself, both on a microlevel and a macrolevel.²²⁸ Advocacy efforts on a microlevel, such as enhanced education on gender-based violence, getting involved with other social and political activists, and calling out sexual harassment, can be implemented into Turkish peoples' everyday lives.²²⁹ Macrolevel advocacy, such as lobbying for a stronger legal framework against sexual violence, supporting and electing women representatives, and setting up response services for women, will take some time to implement but will ultimately make for a safer environment for everybody.²³⁰

Microlevel, grassroots advocacy for women's rights is all about taking steps to change the way women are seen in society.²³¹ As evidenced by President Erdoğan's views, Turkish society is driven by toxic masculinity— "a cultural concept of manliness that glorifies stoicism, strength, virility, and dominance, and that is socially maladaptive or harmful to mental health."²³² Because toxic masculinity highlights and lifts up those traditional masculine traits, it necessarily "disparage[s] ... traits traditionally associated with femininity" such as "sensitivity, empathy, [and] vulnerability."²³³ These kinds of strict social constructs contributes to men feeling empowered to abuse their women counterparts, which is why women's rights organizations must take steps to change the way society thinks about women.²³⁴

There are many ways in which women's rights organizations can effectuate this change. One way is to enhance education in schools on gender-based violence, discussed *infra* Part IV(b). Another step that women's rights organizations can take is to partner with other advocacy groups to "build solidarity" and

227. *Id.*

228. *Id.*

229. *Id.*

230. *Id.*

231. *Id.*

232. *Toxic Masculinity*, DICTIONARY.COM, <https://www.dictionary.com/browse/toxic-masculinity> (last visited Mar. 25, 2023).

233. UN WOMEN, *supra* note 221.

234. *Id.*

“strengthen the fight against gender-based violence.”²³⁵ As discussed in Part I of this Note, the intersecting experience of many different marginalized groups played a major role in the drafting of the Istanbul Convention. The Istanbul Convention, as well as many other international treaties that address domestic violence, protects women of all ages, races, sexual orientations, abilities, and income levels from harm.²³⁶ Therefore, women’s rights organizations should mirror that framework by partnering with other advocacy groups, such as groups that fight racism, ableism, homophobia, and transphobia.²³⁷ There is strength in numbers, and once all of these groups come together to fight the many injustices that plague the country of Turkey, the Turkish government will no longer be able to ignore their voices.²³⁸

None of this microlevel change will matter unless the government supports these efforts, as well.²³⁹ Women’s rights movements in Turkey have made tremendous strides to fix the injustices they have suffered as a result of Turkey’s withdrawal from the Istanbul Convention, including fighting the legal battle that President Erdoğan’s withdrawal from the Convention was unconstitutional.²⁴⁰ But Turkish women’s rights organizations should also focus more of their efforts on searching for women candidates to run for national and local government positions.²⁴¹ “Women’s representation in decision-making spaces helps to ensure that the needs of women and girls are front and center—in crisis responses, humanitarian and peace agreements and policies of all kind.”²⁴² In addition to supporting women representatives, the women’s rights groups in Turkey should also be

235. *Id.*

236. *See generally* Istanbul Convention, *supra* note 11; CEDAW, *supra* note 28; International Covenant on Economic, Social and Cultural Rights, *supra* note 28; *European Convention on Human Rights*, *supra* note 28.

237. UN WOMEN, *supra* note 221.

238. *See generally id.*

239. *Id.*

240. *See* Tekin, *supra* note 173.

241. *Leadership and political participation*, UN WOMEN, <https://eca.unwomen.org/en/where-we-are/turkey/leadership-and-political-participation> (last visited Mar. 25, 2023). “As of 2022, one of 17 government ministers [in Turkey] is a woman, and only 17.38 percent of parliamentarians in the Turkish Grand National Assembly (TGNA) are women, well below the global average of 25.5 percent. Women are also significantly under-represented in local politics. As of 2019, only 3 percent of mayors, 11 percent of municipal councillors and just over 2 percent of *muhktars* (village heads) are women.” *Id.*

242. UN WOMEN, *supra* note 221.

pushing for stronger laws against domestic violence and setting up more expansive and widely accessible services for women in need.²⁴³

These efforts are not easy tasks and will likely take many years and a lot of funding to put into effect.²⁴⁴ Women face incredible barriers that impede their ability to succeed in politics, including, but not limited to, “lack of access to financing; weaker professional networks; and outside responsibilities that make it harder to take on punishing and unpredictable working conditions.”²⁴⁵ This last obstacle is especially true in Turkey because President Erdoğan has already made it abundantly clear that he believes that a woman’s role is to be the caretakers of the household.²⁴⁶ Women’s rights organizations need to keep pushing for change, continue to lobby their local and national representatives, and make their voices heard. All of these micro and macro-level efforts will hopefully continue to empower women to speak out against sexual harassment and abuse when they see it or experience it themselves.²⁴⁷

B. Increased Focus on Gender-Based Violence Education

One of the main goals of the Istanbul Convention is preventing sexual violence from happening by combatting the cultural norms that lead to sexual violence.²⁴⁸ The Istanbul Convention strives to achieve this goal by raising the public’s awareness of the different kinds of violence against women and their impact.²⁴⁹ Article 14 of the Istanbul Convention binds parties to take necessary steps to incorporate issues such as gender inequality, gender stereotypes, violence against women, and the right to personal integrity into the school curricula at all education levels.²⁵⁰

Survivors of domestic violence have expressed why education of violence against women is a crucial part of preventing future

243. *Id.*

244. *See generally* Anne-Marie Slaughter & Francesca Binda, *How do we get more women in politics?*, WORLD ECON. FORUM, (Sep. 28, 2018), <https://www.weforum.org/agenda/2018/09/closing-the-political-gender-gap>.

245. *Id.*

246. Santi, *supra* note 96.

247. UN WOMEN, *supra* note 221.

248. Santi, *supra* note 18.

249. *Id.*

250. Istanbul Convention, *supra* note 11, at art. 14.

violence.²⁵¹ Those survivors note that education on violence against women allows women to recognize patterns in their own lives and enables them to identify the factors that heighten their risk of experiencing abuse.²⁵² Education can show women the differences between their abusive situation, a situation that may seem normal to them, and a situation that is actually safe for them.²⁵³ This is important because it can empower women to break the cycle of abuse that they are experiencing, or at least take the necessary steps to achieve that ultimate goal.²⁵⁴ As a result of increased education and public awareness for both men and women, the rates of domestic violence could likely decrease and real change could occur to advance women's fundamental human rights.²⁵⁵

President Erdoğan's reasoning for withdrawing from the Istanbul Convention was because it threatened the traditional roles of men and women in society.²⁵⁶ Rather than fighting the Turkish president on the battle field with ancient and outdated gender norms, Turkish citizens should change the battle field altogether through increased education on how to shift the cultural attitude surrounding gender norms and equality.²⁵⁷ Such education should begin at the grade-school level and should persist throughout the schooling system and beyond.²⁵⁸

As it stands now, however, the education system in Turkey is far from being amenable to incorporating education on gender-based violence.²⁵⁹ The Ministry of National Education in Turkey executed drastic changes to the national education curriculum

251. Christine Murray, *In the Words of Survivors: The Importance of Education About Domestic Violence*, TRIUMPH (Oct. 4, 2013), <http://www.seethetriumph.org/blog/this-october-educate-yourself-and-others-about-domestic-violence>.

252. *Id.*

253. *Id.*

254. *Id.*

255. *Id.*

256. See Gall, *supra* note 97.

257. See generally Santi, *supra* note 18.

258. Michele Lloyd, *Domestic Violence and Education: Examining the Impact of Domestic Violence on Young Children, Children, and Young People and the Potential Role of Schools*, 9 FRONTIERS IN PSYCH., art. 2094, 5 (Nov. 13, 2018).

259. See generally Funda Karapehliyan, *Constructing a "New Turkey" through Education*, HEINRICH BÖLL STIFTUNG (Oct. 1, 2019), <https://tr.boell.org/en/2019/10/01/constructing-new-turkey-through-education>.

in 2017 that increased religious teachings in schools.²⁶⁰ At the same time, the teaching of evolution has been cut from the curriculum—“education officials said the subject was too complicated for students and would therefore be deferred to university.”²⁶¹ One teacher in Turkey commented, “Erdoğan said he wanted a religious, devout generation, and these changes are made for this wish.”²⁶² This change in the Turkish public education system has serious “implications for women’s education in particular and gender equality in general.”²⁶³ There seems to be no room in the Turkish education curriculum for teachings on gender-based violence, which is why it is of pressing importance that the Turkish people begin to elect more women into government positions.²⁶⁴ With more women in elected positions, hopefully the government can begin to reverse many of these detrimental changes to Turkey’s education system in order to strengthen protections for women and girls around the country.

To illustrate the importance of beginning education at an early age and sustaining it, consider one study that was conducted on United Kingdom high school students in 2016 where the students were put through a six-week domestic violence prevention program.²⁶⁵ In a comparison of pre- and post-test questionnaire responses about student perceptions of domestic violence, the findings revealed that both boys and girls “became less accepting of domestic violence and were more likely to seek help for abuse.”²⁶⁶ The trend of indicating “a higher likelihood of engaging in help-seeking behavior from pre- to post-test,” however, did not persist at a three-month follow-up evaluation of the same students.²⁶⁷ Thus, it is imperative that education on domestic violence and gender-based violence persist and be sustained throughout a person’s life to actually contribute toward any positive progress.²⁶⁸

260. *Id.*

261. Kareem Shaheen & Gözde Hatunoğlu, *They want a devout generation: how education in Turkey is changing*, THE GUARDIAN (Sep. 20, 2017), <https://www.theguardian.com/world/2017/sep/20/devout-generation-education-turkey-changing>.

262. *Id.*

263. Karapehlivan, *supra* note 259.

264. *See generally id.*

265. Lloyd, *supra* note 258, at 6.

266. *Id.*

267. *Id.*

268. *Id.*

C. Appeal to the European Court of Human Rights

The European Court of Human Rights (ECtHR) is a human rights judicial body created by the Council of Europe that began operating in 1959.²⁶⁹ The ECtHR only has jurisdiction to decide complaints dealing with violations of the ECHR.²⁷⁰ Applicants can be individual persons or non-governmental organizations, and notably they do not have to be citizens of the state party against which they are filing the complaint.²⁷¹ The complaint must assert that a party to the ECHR has committed a violation of the ECHR that “directly and significantly affected the applicant.”²⁷²

Because Turkey is a state party of the ECHR, a logical next step in the fight against President Erdoğan’s withdrawal from the Istanbul Convention would be to appeal to the ECtHR that Turkey violated the provisions of the ECHR.²⁷³ While this solution does not directly appeal Turkey’s withdrawal from the Istanbul Convention, if the ECtHR rules in the applicant’s favor, Turkey would be bound by the decision and would have to execute it accordingly.²⁷⁴ This could mean that Turkey would have to amend its legislation to comply with the decision, or, alternatively, the applicant could suggest that Turkey re-sign the Istanbul Convention to prevent future harm to the applicant.²⁷⁵ This outcome, however, is not guaranteed, but every possible avenue must be explored to valiantly advocate for women’s fundamental human rights.²⁷⁶

CONCLUSION

Violence against women is an international human rights crisis that is detrimentally impacting millions of women. Turkey’s unconstitutional withdrawal from the Istanbul Convention sheds light on the immense amount of work that must be done, starting from the ground up, to combat further injustices against women who identify as victims of gender-based violence.

269. *European Court of Human Rights*, INT’L JUST. RES. CTR., <https://ijr-center.org/european-court-of-human-rights/> (last visited Mar. 11, 2023).

270. *Id.*

271. *Id.*

272. *Id.*

273. COUNCIL OF EUR., *supra* note 28, sec. 1, at art. 14.

274. INT’L JUST. RES. CTR., *supra* note 269.

275. *See id.*

276. *See id.*

This Note found that Turkey has failed to protect its women from unmeasurable harm as it promised to do when it became a signatory to the Istanbul Convention and numerous other international treaties. Turkey's withdrawal from the Istanbul Convention not only violated its country's own constitution, but it directly violated other international treaties to which Turkey was a party, as well as contradicted one of its own country's laws. In order to ensure the safety of Turkish women and women on an international scale, an overhaul of the international curriculum on how to approach gender norms, gender stereotyping, and gender-based violence is essential. Additionally, women's rights organizations should work to appeal President Erdoğan's withdrawal from the Istanbul Convention to the ECtHR to continue the legal battle and keep this issue at the forefront of the Turkish government's agenda. Advocates both in Turkey and internationally must come together in a united front to effectuate the necessary change to end domestic violence once and for all.

*Allyssa Myers**

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