



18.06.2021

Turkey's withdrawal notification dated 22.03.2021 has been accepted and published on the CoE website. As WWHR, Mor Çati Women's Shelter Foundation and Kaos GL we have drafted and sent a letter to the CoE Secretary General on 23.03.2021 to give information on the current legal situation and invite CoE to reject Turkey's withdrawal notification which is manifestly unconstitutional. We called for immediate action to take all necessary measures, both in legal and political manner. We are sharing some highlights from the letter and reiterate our urgent call for action to reverse this decision.

The attacks on women's rights and gender equality in Turkey have become systematic and institutionalized through policies which do not consider women as equal citizens by controlling and limiting their participation in economic and social life. These policies and discourses have confined women into traditional and conservative gender roles that center around marriage and motherhood.

- **The withdrawal from the Istanbul Convention through a Presidential decision**

At the midnight of 20th March 2021, Saturday, however, we saw the climax of the systematic attacks against gender equality and LGBTI+ rights which fully increased in recent years. We have read the Presidential Decision numbered 3718 on withdrawing from the Council of Europe (CoE) Convention on Preventing and Combating Violence Against Women and Domestic Violence in the Official Gazette in the middle of a Saturday night. Turkey, the first member State to ratify the Istanbul Convention, became the first member State declared its intention to withdraw from the Convention, which was opened up for signatures in Istanbul during the Turkish Chairmanship of the CoE. It seems the Presidential Decision has been issued without consulting or informing no one, even the Ministers, given the fact that the Minister of Family had organised a side event in the CSW65 and invited the Director of Human Dignity, Equality and Governance, Claudia Luciani, to talk about effective enforcement of the Istanbul Convention and coordination between the Council and Turkey just 3 days before the Decision was issued.

- **Legality of the withdrawal under the Turkish domestic law**

First and foremost, it must be made clear that the Presidential Decision is manifestly **unlawful and unconstitutional**. It is "null and void" under the domestic law, as follows:

1. According to the Article 90 of the Turkish Constitution, the ratification of international treaties shall be subject to adoption by the Grand National Assembly of Turkey by a law approving the ratification. Turkey ratified the Istanbul Convention on 24th November 2011 through the Law numbered 6251, by unanimous vote at the Grand

National Assembly. No annulment decision has yet been made by the Grand National Assembly of Turkey on the Law 6251. Put another way, the law numbered 6251, therefore **the Istanbul Convention is still in force**.

2. The Presidential Decision is an administrative act. Under the Turkish Constitution, an international human rights treaty cannot be withdrawn by any administrative act, since the authority to ratify and withdraw international human rights treaties is not the executive, but the legislature. In other words, the President does not have an authority to issue an administrative act to withdraw from the Istanbul Convention. Since there is an obvious illegality at the main components of the Presidential Decision numbered 3718, such decree is “**null and void**” under Turkish domestic law as if it is “non-existent”.

- **Legality of the withdrawal under the international law**

The Presidential Decree numbered 3718 declaring the withdrawal, is manifestly unlawful not only under the domestic law but also international law.

1. According to the Article 46 of the Vienna Convention on the Law of Treaties (“VCLT”), if a state becomes a party to an international treaty by clearly violating a fundamental rule in their domestic law, it is possible to invalidate the consent to become a party to the treaty in question. Although article 46 seems to apply essentially to the act of joining a treaty, as articulated in the International Court of Justice’s 2002 judgment in Land and Maritime Boundary ([Cameroon v. Nigeria](#)), the rationale behind the article 46 envisages applying the same approach to withdrawals from treaties. Since the Presidential Decision numbered 3718 is manifestly in violation of the Turkish Constitution, the withdrawal is **unlawful** under international customary law.
2. Turkey has been a member of the Council of Europe since 1950. According to the Article 1 of the Statute of the Council of Europe, “the aim of the Council of Europe is to achieve a greater unity between its members for the purpose of safeguarding and realizing the ideals and principles which are their common heritage and facilitating their economic and social progress. This aim shall be pursued through the organs of the Council by common action in economic, social, cultural, scientific, legal and administrative matters and in the maintenance and further realization of human rights and fundamental freedoms.” According to the Article 3 of the Statute, “every member of the Council of Europe must accept the principles of the rule of law and of the enjoyment of human rights and fundamental freedoms, and collaborate sincerely and effectively in the realization of the aim of the Council.” It must be emphasized that the Istanbul Convention is the most fundamental human rights convention on combating gender-based violence. Withdrawal from the Istanbul Convention, by breaching its own Constitution, refers to an **obvious back-sliding from rule of law and fundamental human rights**. Therefore, it is clearly contrary to Article 1 and 3 of the Statute of the Council of Europe.

- **Call for immediate action to take all necessary measures, both in legal and political manner**

There is no other example, neither in the world nor in the Council of Europe, of withdrawing from such a fundamental human rights convention, in a manner that is both manifestly contrary to domestic and international law. The Istanbul Convention aims to protect every person subjected to domestic violence. Withdrawal from the

Istanbul Convention, by breaching its own Constitution as well as international law is an explicit **separation from the fundamental values of the Council of Europe**. It must be noted that withdrawal of Turkey will highly likely have an encouraging **effect** to act similarly for the State Parties with populist and authoritarian governments, notably Poland, Hungary, and other countries where the Convention has been contested. Thus, any hesitation to take necessary steps will endanger the **future of the Istanbul Convention** and gender equality, especially LGBTI+ rights, all over the Council.

As Of 22.03.2021, lot of Bar Association including Istanbul, Izmir and Ankara Bar Association, lot of women's organizations as well as individuals **HAVE APPEALED TO THE TURKISH CONSEIL D'ETAT FOR THE STAY OF EXECUTION OF THE PRESIDENTIAL DECISION**.

We, therefore, call the Secretary General,

- **To reject the withdrawal notification by the government given the fact that such withdrawal has been brought to the court under unconstitutionality claim.**
- **To take all necessary actions to reverse this Presidential Decision.**