URGENT APPEAL TO THE COUNCIL OF EUROPE

THE WITHDRAWAL OF TURKEY FROM THE ISTANBUL CONVENTION BY A DECISION OF THE PRESIDENT CONTRADICTS THE LEGAL FRAMEWORK OF THE REPUBLIC OF TURKEY AND VIOLATES THE CONSTITUTION.

On 20th March 2021, a Decision of the President was issued in the Official Gazette[1] announcing the withdrawal[2] of Turkey from the Istanbul Convention. Since that day, Turkey has been in an ever-growing tumult. The withdrawal has been highly criticised and found to violate the Constitution, not only by women's and LGBTI+ organisations, but also by the majority of opposition political parties, 77 of the 79 bar associations in Turkey[3], human rights organisations, numerous trade and labour unions, municipalities, corporations, universities, sports clubs and civil society organizations (CSOs) from different fields, various corporate sector organisations (including the largest, the Turkish Industry and Business Association)[4], numerous prominent professors of law, and many others.

To date, bar associations, opposition parties, and many CSOs have either already applied, or are in the process of applying, to the Council of State demanding the overruling of this Decision. The detailed explanation and justifications regarding the legal framework in Turkey and why this withdrawal violates the Constitution are annexed to this letter.

Many protests have been organised by women's organisations all around Turkey since 20th March, with the participation of tens of thousands of people; numerous press releases and statements have been made denouncing the withdrawal, exposing the Decision's illegality, and demanding the Convention's full implementation. The Women's Platform for Equality (EŞİK), a joint platform consisting of over 340 women's and LGBTI+ organisations, denounced the withdrawal, underlining the fact that the Decision of the President is null and void, and that the Convention remains in force. EŞİK called on everyone who wishes to exercise their fundamental rights and liberties and live in a democratic state based on the rule of law as free and equal individuals free from violence, to uphold the Istanbul Convention! The Platform called on the Parliament to do its part![5]

THERE IS NO PUBLIC SUPPORT FOR SUCH A WITHDRAWAL; ON THE CONTRARY, PUBLIC SUPPORT FOR THE ISTANBUL CONVENTION IS VERY HIGH.

As the Decision of the President did not offer any basis for the "withdrawal", originally the reasons of such a Decision were not known to the public. The justification was provided later, on 21st March, by the Directorate of Communications of the Presidency of the Republic of Turkey[6].

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1 https://www.resmigazete.gov.tr/eskiler/2021/03/20210320-49.pdf

2 The term used in the Decision of the President published in the Official Gazette is "annulment" (fesih). The statement used in the Decision is as follows: "Kadınlara Yönelik Şiddet ve Aile içi Şiddetin Önlenmesi ve Bunlarla Mücadeleye İlişkin Avrupa Konseyi Sözleşmesi'nin Türkiye Cumhuriyeti bakımından feshedilmesine…" (...Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence to be annulled in terms of the Republic of Turkey).

3 https://www.evrensel.net/haber/428589/77-barodan-ortak-aciklama-istanbul-sozlesmesi-yururluktedir

4 https://tusiad.org/tr/basin-bultenleri/item/10738-i-stanbul-sozlesmesi-nin-feshedilmesi-kadina-yonelik-her-turlu-siddeti-besleyen-carpik-zihniyeti-cesaretlendirir

5 https://esikplatform.net/the-convention-remains-in-force/

6 https://www.iletisim.gov.tr/english/haberler/detay/statement-regarding-turkeys-withdrawal-from-the-istanbul-convention

The statement claimed that "*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*."

This was not surprising for the women's and LGBTI+ movements in Turkey, as similar statements have continuously been made in the past few years by some government representatives. In fact, contrary to this claim, the decision to withdraw from the Istanbul Convention lacks public support. According to the Metropoll Strategic and Social Research Center's survey, "Turkey's Pulse," conducted in July 2020[7], 64% of respondents disapprove withdrawing from the Istanbul Convention, 19% express no opinion, and only 17% express clear support. A month later, the latter figure declined to 7%, largely due to the awareness-raising campaigns led by the women's movement[8].

A CRUCIAL AND HISTORIC DEFINING POINT FOR HUMAN RIGHTS, RULE OF LAW, AND DEMOCRACY IN TURKEY, WITH POSSIBLE SEVERE IMPLICATIONS AT INTERNATIONAL LEVEL

As pointed out in EŞİK's statement, this act could pave the way for Turkey's renunciation of other critical conventions, such as the Lanzarote Convention, CEDAW, or even the European Convention on Human Rights, and consequently the fundamental human rights protected by these instruments. Indeed, the same small but politically effective circles that have been instrumental in this Decision to withdraw from the Istanbul Convention, have also been advocating against the Lanzarote Convention and CEDAW. Clearly, such action would not only be a devastating blow to the rule of law, and the future of democracy in Turkey but it could also have a serious negative impact, on member states' allegiance to the foundational principles of the Council of Europe and the international human rights regime.

Withdrawals from multilateral international conventions must follow the national legal procedures and processes that were followed when signing and ratifying those conventions. Thus, Turkey's action may be without precedent: a state withdrawing unilaterally from an international treaty that concerns fundamental human rights, in clear violation of its own Constitution. Furthermore, based on consultations with prominent international law professors, the provisions foreseen in Part V of the Vienna Convention on the Law of Treaties, which make it difficult for any state to unilaterally renounce vital international human rights treaties such as the Istanbul Convention, could be invoked.

We are disappointed to see that the Council of Europe accepted the withdrawal notification of Turkey without investigating into the legality of this Decision, which was done without the approval of the Grand National Assembly of Turkey. We urge the Council of Europe, to look into the process and to investigate the legality of this act, as well as its implications regarding international law.

Yours sincerely,

EŞİK - The Women's Platform for Equality Turkey

23 March 2021

7 https://tr.euronews.com/2020/07/25/metropoll-anketi-halk-n-yuzde-64-u-hukumetin-istanbul-sozlesmesi-nden-cekilmesini-onaylam
8 https://konda.com.tr/tr/rapor/istanbul-sozlesmesi/

ANNEX – INFORMATIVE NOTE ON THE LEGAL FRAMEWORK IN TURKEY WITH REGARD TO INTERNATIONAL TREATIES

The legal justifications why the said withdrawal is not possible under the legal framework of the Republic of Turkey are as follows:

INTERNATIONAL TREATIES HAVE THE FORCE OF LAW AND WITHDRAWING FROM THEM FALLS UNDER THE AUTHORITY OF THE GRAND NATIONAL ASSEMBLY OF TURKEY.

Article 90 of the Constitution: … "*The ratification of treaties concluded with foreign states and international organisations 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*."

RATIFICATION OF INTERNATIONAL TREATIES, AS WELL AS ENACTING, AMENDING, AND REPEALING LAWS, FALLS WITHIN THE AUTHORITY OF THE GRAND NATIONAL ASSEMBLY OF TURKEY.

Article 87 of the Constitution: … "*The duties and powers of the Grand National Assembly of Turkey are to enact, amend, and repeal laws … to approve the ratification of international treaties…*"

Thereby, according to Articles 87 and 90, international treaties are under the authority of the Grand National Assembly of Turkey and have the force of law. A law cannot be changed or "annulled," neither by a Presidential Decree nor a Decision of the President. Withdrawal from the Istanbul Convention requires a decision of the Grand National Assembly of Turkey.

IT IS NOT POSSIBLE TO ENACT A PRESIDENTIAL DECREE ON THE ISTANBUL CONVENTION.

Article 104 of the Constitution: … "*The President of the Republic may issue presidential decrees on the matters regarding executive power. The fundamental rights, individual rights and duties included in the first and second chapters and the political rights and duties listed in the fourth chapter of the second part of 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. No presidential decree shall be issued on the matters explicitly regulated by law. In the case of a discrepancy between provisions of the presidential decrees and the laws, the provisions of the laws shall prevail.*"

The Istanbul Convention is about fundamental rights and individual rights; it lays down the rights of victims of violence. Hence, it is directly related with the rights stipulated in Articles 15 and 17 of the Constitution: "*…the individual's right to life, the integrity of his/her corporeal and spiritual existence shall be inviolable*", "*everyone has the right to life and the right to protect and improve his/her corporeal and spiritual existence*", "*no one shall be subjected to torture or maltreatment*".

According to Article 104 of the Constitution, as the Istanbul Convention is related to the fundamental rights laid down in the Constitution, it cannot be regulated by Presidential decrees. Furthermore, **as the Istanbul Convention has the force of law, a Presidential Decree cannot be enacted on this issue.**

As clearly explained, such a withdrawal by way of a Presidential Decree is contrary to a set of Constitutional Articles. It is also noted that the form used for this withdrawal, was not even a Presidential Decree, but a Decision of the President, which can only be administrative in nature.

LEGAL RIGHTS CANNOT BE NARROWED OR LIMITED BY DECISONS OF THE PRESIDENT.

According to Council of State decisions regarding the hierarchy of norms, administrative regulations such as the Decisions of the President, which are below the Constitution and laws, cannot contain provisions that contradict the latter. When there is a contradiction, it is the laws in force that prevail. The purpose of administrative regulations is to clarify provisions governing the implementation of laws. As such, they cannot narrow or limit the practice of a right in a way that is not foreseen by existing laws. It is only the Grand National Assembly of Turkey that has the authority to enact, amend, and repeal laws.

RATIFICATION OR WITHDRAWAL FROM THE ISTANBUL CONVENTION BY WAY OF DECISIONS OF THE PRESIDENT CONTRADICTS THE LEGAL PROCEDURE IN TURKEY.

The information provided by the Republic of Turkey to a Secretariat Memorandum Prepared by the Directorate General of Legal Affairs of the Council of Europe, "*according to Turkish law, signing of an international treaty is subject to ratification by the President of the Republic. This ratification is subject to adoption by the Grand National Assembly of a law authorising the ratification, with the exception of those treaties made for the implementation of a previous treaty or those treaties of economic, commercial, technical or administrative nature concluded on an authorisation given by law,*"[9] is still relevant in the Presidential system that came into force in 2018.

The justification of the government of Turkey regarding the legality of the Decision of the President for withdrawal is based on a Presidential Decree dated 15 August 2018[10]. It relies for justification on Article 3 (1) of this Decree which stipulates: "*Approval of, extending their validity period by not reporting their annulment, making necessary notices for the implementation of specific articles of an international treaty that Turkey is bound with, identifying the changes in an execution area of an international treaty, suspending the execution of their articles and terminating them are being done by Decision of the President.*[11]"

However, as explained above, based on the hierarchy of legal norms, the Constitution has precedence, and article 90 of the Constitution lays down three different treaty regimes. Withdrawal from treaties that are ratified by the adoption of a law by the Grand National Assembly of Turkey authorising this ratification, can only be possible by following the same procedure. A Decision of the President alone is not enough; such an act is against the Constitution and does not bear legal consequences.

9 https://rm.coe.int/168004ad95 (page 214)

10 https://www.mevzuat.gov.tr/MevzuatMetin/19.5.9.pdf

11 This is the unofficial translation of the relevant article. The original article in Turkish: (1) Milletlerarası andlaşmaların onaylanması, bunların feshini ihbar etmemek suretiyle yürürlük süresini uzatma, Türkiye Cumhuriyetini bağlayan bir milletlerarası andlaşmanın belli hükümlerinin yürürlüğe konulması için gerekli bildirileri yapma, milletlerarası andlaşmaların uygulama alanının değiştiğini tespit etme, bunların hükümlerinin uygulanmasını durdurma ve bunları sona erdirme, Cumhurbaşkanı kararı ile olur.