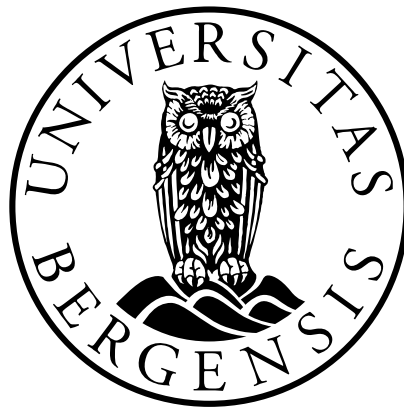


Withdrawing from the Istanbul Convention

De jure and de facto consequences

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1 Introduction

1.1 Background

The Council of Europe Convention on preventing and combating violence against women and domestic violence, also known as the Istanbul Convention, (hereafter the Istanbul Convention or the Convention) was adopted in Istanbul, the fifth of May 2011 and entered into force the first of August 2014. At the time of writing, the Convention has been signed by 44 member states to the Council of Europe, whereas only 34 have succeeded in ratifying and incorporating the Convention into their respective national legal systems.¹

The Istanbul Convention is the most recent and innovative of existing conventions concerning the rights of women, as it represents the first legally binding standard to prevent violence against women and domestic violence. It puts gender-based violence in a larger context, by recognizing that violence against women is a form of discrimination. The protection of women against violence, is a necessary component in achieving substantive equality between women and men.²

Although the Istanbul Convention is considered a milestone in the fight for the rights of women, it is still greeted with scepticism and criticism. This has resulted in several countries failing to ratify it, and Turkey denouncing the Convention in July 2021.

1.2 Importance

The 20th century proved a milestone for the fight for women's rights across the world. Women were allowed the right to vote in several countries, as well as granted the right to self-determined abortion. An increasing number of women were allowed a higher education, the opportunity for economic independence and freedom to choose their own future.

As female participation and impact on society still increases, women's rights are facing a "backlash". Laws that limit women's rights are entering into force in several countries, limiting their rights to education, self-determined abortions, and life outside the family role. The interpretation of the law that initially protect women's rights is just as important, as

¹ Council of Europe, "Chart of signatures and ratifications of Treaty 210", Updated 23.11.2021. <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210/signatures?module=signatures-by-treaty&treaty=210> [accessed 23.11.2021]

² Council of Europe, "*Explanatory Report to the Council of Europe Convention on the prevention of violence against women and domestic violence*", Istanbul 2011, paragraph 21

solely defining violence as a criminal act is not sufficient. Sleep sex and marital rape are both examples of diffuse acts that do not qualify as a criminal act in several countries.

Violence against women has also increased, and this has particularly become apparent during the COVID-19 pandemic. An overview of surveys conducted across Europe illustrate that one-fifth to one-quarter of all women experience physical violence at least once during their adult life.³ If all forms of violence are included in the data, the number is as high as 45%.⁴ Since the outbreak of COVID-19 and the subsequent lock-down, domestic violence and violence against women has intensified. Countries experienced an increase in cases concerning domestic violence during the first twelve months of the pandemic.⁵

The Istanbul Convention is an armed weapon in fighting this backlash, by clearly addressing the issue and providing tools for both the implementation, regulation and monitoring of the Convention's provisions. The Istanbul Convention emphasizes that violence against women is a human rights issue with particular specificities than solely violence against a human being. It is because a woman is a woman, that the violence is directed at her.

1.3 Thesis topic

This Master's thesis will address the implications of withdrawing from the Council of Europe Convention on preventing and combating violence against women and domestic violence. It will first look into member states' opportunity to withdraw from the Convention. The thesis will further discuss the possible legal (de jure) and factual (de facto) consequences withdrawal may pose for member states and its inhabitants.

The thesis topic will be as follows, according to the following research questions:

1. *What are the opportunities for withdrawal from the Istanbul Convention?*
2. *What are the de jure and de facto consequences of withdrawal?*

³ Council of Europe Explanatory Report paragraph 2

⁴ Council of Europe Explanatory Report paragraph 2

⁵ UN Women, "Issue Brief: COVID-19 and ending violence against women and girls" (2020). *Gender-based violence*, 1. Available at <https://digitalcommons.wcl.american.edu/wlpviolence/1/> [accessed 18.09.2021]

2 Method

2.1 Sources

The sources used to answer the thesis topic is primarily the Istanbul Convention and the Vienna Convention on the Law of Treaties (Vienna Convention). These two will be supplied by explanatory reports and handbooks explaining the workings of treaties. The Conventions and preparatory works will be supplied by relevant literature from the field of law concerning international law, human rights, and women's rights law.

Three judgements from the European Court of Human Rights (ECtHR) have been chosen to shed light on how the court has interpreted violence against women into the provisions of the European Convention on Human Rights (ECHR). The judgements were among the first that undertook this broad interpretation, paving the way for several similar judgments in the years to follow.

The foundation of the Istanbul Convention is mainly set by two regional treaties and a universal one: the Maputo Protocol and the Convention of Belém do Pará, as well as the Convention on the Elimination of Discrimination against Women (CEDAW) and its General Recommendation no. 19. CEDAW General Recommendation no. 35 issued in 2017, will not be discussed as it was issued after the adoption of the Istanbul Convention.

The research questions will be answered using a formal-dogmatic approach, concerned with the objective meaning of positive legal orders. This method consists in clarifying the meaning and significance of the rule of law, proceeding from its own content.⁶

2.2 Presentation of the structure

As the topic thesis consists of two separate research questions, the thesis will seek to answer them accordingly.

To answer the first question at hand, the thesis will start with an account of the legal framework of international law. The thesis will further narrow down to human rights law, as the Istanbul Convention falls under this area of law. To illustrate the development of the area of women's rights, leading up to the adoption of the Istanbul Convention, the thesis will review the preceding human rights documents; CEDAW and its General Recommendation no.

⁶ Alexander V. Petrov and Alexey V. Zyryanov, "Formal-Dogmatic Approach in Legal Science in Present Conditions", *Journal of Siberian Federal University, Humanities & Social Sciences* 6, (2018): 968-973 on p. 968

19. Other regional instruments will be discussed, serving as a base for the Istanbul Convention.

Part of the State's treaty making capacity is entering into a treaty, as well as the act of withdrawal. The process of entering and withdrawing is not analogous for the different states.

With the legal and factual background in place, the thesis will answer the second part of the thesis topic. To enlighten the reader on the consequences of withdrawal, the legal status of a state after withdrawal will be discussed, as well as the factual consequences: how does withdrawal affect the rights of women in these states. This will be analysed in relation to the withdrawing State being party to the ECHR and CEDAW. Because the Istanbul Convention is a rather new convention, and the issue of withdrawal even more recent, the issues being analysed are hypothetical.

2.3 Limitations

The thesis will not discuss the process of withdrawing from treaties, as this may differ between member-states, but rather focus on the consequences withdrawal may pose for member states and its inhabitants. Causes for withdrawal as stated in the Vienna Convention articles 60 to 62: material breach, impossibility of performance, and fundamental change of circumstances, will not be discussed. The same goes for the question whether the withdrawal of human rights conventions should be possible or not. The Maputo Protocol and the Convention of Belém do Pará, will not be discussed beyond their function of being a contribution to the development of the Istanbul Convention.

3 Legal frameworks

3.1 International Law Framework

International Law is an independent order of law that regulates matters of international interest, separate from national law. This order of law establishes normative guidelines and frameworks relating to several issues of international concern; war, diplomacy, trade, international crime, and human rights to name a few. The subjects are mainly states, but also include international and armed organisations as well as individuals. The framework and guidelines are expressed through treaties, conventions, and standards.

International law was not established as a legal society created to impose regulations and laws on its member states but presumed to be a corporation between these states. This corporation

is best reflected by the United Nations (UN), and the ideals of the UN are presumed to be the ideal goals of international law. The UN was created to be the centre for harmonizing the actions of nations in the attainment of common ends.⁷ These common ends are based on the objectives of existing communities, and do not arise from itself or any moral, religious, or political notions.⁸ The ideal goals of the UN are stated in the UN Charter art. 1 and are as follows: international peace and security, friendly relations among nations, and international cooperation.

3.1.1 Principles of international law

International law is focused on primary rules and secondary rules. The primary rules set out the rights and obligations of States and other international actors, while the secondary rules establish the sources of international law.⁹ These secondary rules include the rules that are applied to determine the existence and content of the primary rules. The sources of international law are international conventions, international customs, general principles of law recognized by civilized nations, and judicial decisions and teachings.¹⁰

The Vienna Convention codified the regulation of international agreements. It encompasses states' treaty making capacity, as well as the scope, application, and interpretation of treaties. Several of the provisions codify customary law.¹¹

A treaty is defined by the Vienna Convention as “an international agreement concluded between states in written form and governed by international law (...)”.¹² A treaty may vary in form and structure, but this does not affect the legal obligations established between the parties. The intention of the member parties may clarify if the document is to be considered a binding agreement.¹³ Customary law on the other hand, is established by customs and practices being recognised over a long period of time, until perceived as legally binding. Customary law may bind non-member subjects, as opposed to other law-making instruments.

⁷ Charter of the United Nations, San Francisco, 26.06.1945, art. 1

⁸ Martti Koskenniemi, «What is international law for?», Chapter 2 in *International Law*, (5. ed), edited by Malcolm D. Evans, Oxford University Press 2018, pp. 28-50 on p. 29

⁹ Anthea Roberts and Sandesh Sivakumaran, “The theory and reality of the sources of International Law”, Chapter 4 in *International Law*, (5. ed), edited by Malcolm D. Evans, Oxford University Press 2018, pp. 89-118 on p. 89

¹⁰ Sources listed in the International Court of Justice Statute art. 38 (1) a) to d) are presumed sole sources of international law, see Roberts and Sivakumaran (2018) p. 90-91.

¹¹ Malgosia Fitzmaurice, “The practical working of the law of treaties,” in *International Law* (5. ed), edited by Malcolm D. Evans, Oxford University Press 2018: 138-176 on p. 143

¹² Vienna Convention on the Law of Treaties, Vienna 23.05.1969. United Nations, Treaty Series, vol. 1155, p. 331. (Vienna Convention) art. 2 (2)

¹³ Fitzmaurice (2018) p. 139-140

3.1.1.1 *Soft law v. hard law*

The instruments of international law are characterised by their functions, by being “soft” or “hard”. Soft law is defined, from a law-making perspective, as a variety of non-legally binding, but normatively worded instruments used in contemporary international relations by states and international organisations.¹⁴ This encompasses inter-State conference declarations, United Nations General Assembly instruments, codes of conducts, resolutions, guidelines, and recommendations stemming from international organisations. Hard law on the other hand, is always binding. Treaties that have entered into force, are characterised as hard law.

The distinction between hard law and soft law is not always easily distinguished, as soft-law agreements may be established by the same mechanism as binding treaties. The treaties are negotiated between state parties and are often carefully drafted statements with normative significance. They show good faith-commitment, expressing some measure of law-making intention and progressive developments.¹⁵

A hard-law instrument will be binding for its member-states, while soft-law are instruments with a character of guidance. In this case the Istanbul Convention, the Convention of Belém do Pará, the Maputo Protocol and CEDAW are all hard-law instruments, while the CEDAW General Recommendation no. 19 is a soft-law instrument. The UN Charter is also considered a hard-law instrument. The categorisation of hard and soft law gives guidance as to how the instruments are to be interpreted and enforced in domestic law. However, a state’s national sovereignty will ultimately affect how the international instrument is perceived in the domestic legal system.

3.1.1.2 *National Sovereignty*

Based on customary international law, a state as a person of international law should possess a permanent population, a defined territory, government, and the capacity to enter into relations with other states.¹⁶ Another qualification of being a state, is sovereign rule over its territory and its population. A sovereign state is independent of the intervention by other states. However, this sovereignty is limited by obligations and responsibilities under international law.

¹⁴ Alan Boyle, “Soft law in international law-making”, Chapter 5 in *International Law* (5. ed), edited by Malcolm D. Evans, Oxford University Press 2018: 119-137 on p. 121

¹⁵ Boyle (2018) p. 122

¹⁶ The criteria have been codified in the Montevideo Convention on the Rights and Duties of States, Montevideo, 26.12.1933 art. 1. Only a handful states have ratified the Convention, but the recognized elements of a state are considered reflected in it.

National sovereignty means that a state may implement rules and regulations to govern its population as it sees fit, the idea dating back to the Peace of Westphalia of 1648. A more modern view of national sovereignty is not that absolute, as a state bears responsibility towards its population, as well as enjoying the rule of power. Part of this responsibility is the signing and ratification of treaties and other sources of international law, as well as the incorporation into their national legal systems. Conventions between states regulate rights and duties in relation to one another, while human rights conventions provide individuals rights in relation to the states.

3.1.1.3 Interpretation of treaties

A treaty should be interpreted in “good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in light of its object and purpose”.¹⁷ The context of the treaty embraces any instrument of relevance to the conclusion of a treaty, as well as a treaty’s preamble and annexes pursuant to art. 31 (2). A treaty should also be interpreted in light of its object and purpose. This is an ill-defined term,¹⁸ as the object and purpose of a treaty may be clearly stated in the treaty but may still be interpreted differently by state parties. The principle of effectiveness further complicates the issue, as the principle decides that the interpretation with the most appropriate effects and that occurs in good faith, shall be adopted.

3.1.1.4 Pacta sunt servanda

The idea that a treaty must be interpreted in good faith, reflects the principle of pacta sunt servanda. Pacta sunt servanda is a Latin expression meaning “agreements must be kept”.¹⁹ The expression is codified in the Vienna Convention article 26. A treaty that has entered into force is “binding upon the parties” and must be performed “in good faith”. In terms of implementation, international law imposes an obligation of result, rather than an obligation of means in accordance with the principle.²⁰ How the treaty becomes binding is irrelevant: the important thing is that it becomes binding for the State.

¹⁷ Vienna Convention art. 31 (1)

¹⁸ Argued by Fitzmaurice (2018) on p. 157

¹⁹ Harald Benestad Anderssen, «Pacta sunt servanda» in Store Norske Leksikon, 02.01.2019 https://snl.no/pacta_sunt_servanda [accessed 04.11.2021]

²⁰ Committee of Legal Advisers on Public International Law of the Council of Europe (CAHDI), *Treaty Making – Expression of Consent by States to be Bound by a Treaty*, (2001) ISBN: 978-90-04-50298-7 (e-book) p. 20

The principle remains a core content of the law governing the denunciation of a treaty.²¹ Entering into agreements creates a binding effect for the member States and withdrawing from one requires a separate legal basis.

3.2 Human Rights Framework

Human rights are defined as those rights and freedoms every human being possesses by virtue of being human.²² This applies to everyone, regardless of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status.²³

The promotion and protection of human rights is a principal and perpetual obligation of States. Human rights jurisprudence is built on the basis of respect for the principles of good faith, universality, interdependence and inseparability.²⁴

The United Nation's Universal Declaration of Human Rights on 10th of December 1948, serves as a foundation for the international rule of human rights law. It is considered the first legal document protecting universal human rights. The UN Declaration is not a legally binding document, but several articles are considered customary international law.

3.2.1 The European Convention on Human Rights and the European Court of Human Rights

The Convention for the Protection of Human Rights and Fundamental Freedoms, also known as the European Convention on Human Rights²⁵ is a regional convention regarding human rights amongst the European countries that are member states to the Council of Europe. Its preamble states that European countries shall take the first steps for the collective enforcement of certain rights stated in the Universal Declaration of Human Rights, based on their like-mindedness and common heritage. The Convention mainly focuses on civil and political rights, and parallel other UN treaties.

With the purpose of securing member states' obligations according to the ECHR and its protocol, the ECHR established the ECtHR as a permanent court of law pursuant to article 19. The ECtHR has argued that the ECHR should be interpreted as a "living instrument",

²¹ Yogesh Tyagi, "The Denunciation of Human Rights Treaties", *British Yearbook of International Law*, 79 no. 1, (2008): 86-193 p. 153

²² Vibeke Blaker Strand, "Menneskerettigheter" in Store Norske Leksikon, 07.01.2019 <https://snl.no/menneskerettigheter> [accessed 01.11.2021]

²³ Universal Declaration of Human Rights, Paris, 10.12.1948, art. 2

²⁴ Tyagi (2008) p. 87-88

²⁵ Convention for the Protection of Human Rights and Fundamental Freedoms, Roma, 04.11.1950. (The European Convention on Human Rights, ECHR)

resulting in its provisions being interpreted in a dynamic manner.²⁶ The stated rights of the instrument should correspond to the societal development.

3.2.3 Margin of appreciation

A state's national sovereignty is also expressed through the principle of margin of appreciation. Human rights treaties grant states a margin of appreciation to exercise functional flexibility in normal circumstances; states are allowed to determine the direction, speed, and priority of their implementation measures.²⁷

4 Violence against women and domestic violence as a human rights issue

Historically, human rights laws were consistently formulated in terms of the situation and problems of males, as men dominated the UN and other international organisations. Women's problems, such as domestic violence, sexual harassment, and gender-based discrimination, were seen as peripheral.²⁸ The idea of human rights was also largely viewed as a counter-factor towards politically motivated abuse and state intervention in private lives. Several international human rights organisations were established during the Cold War, as a response to the increasing anti-democratic views of Eastern Europe.

A women's status as an international subject has evolved, as The Universal Declaration of Human Rights article 2 provides that "all are equal before the law", and that everyone is entitled to all rights and freedoms "without distinction of any kind". The Declaration clearly protects women, but a woman in her role as a wife and a mother, in comparison to a man. She is not considered an independent autonomous individual, outside a heteronormative family.²⁹

Still, addressing violence against women as an international law and human rights issue, sets an international standard for the matter at hand. International law and human rights norms are how nation states are held accountable by other nation states and individuals for the harm they

²⁶ Njål Høstmælingen. *Internasjonale Menneskerettigheter*. Oslo: Universitetsforlaget 2013 (2. ed) p. 95 and Jackie Jones, "The European Convention on Human Rights (ECHR) and the Council of Europe Convention on Violence Against Women and Domestic Violence (Istanbul Convention) Chapter 5 in *The Legal Protection of Women from Violence: Normative Gaps in International Law*, edited by Jackie Jones and Rashida Manjoo, Routledge, Abingdon, Oxon and New York, NY (2018): 139-165 on p. 159

²⁷ Tyagi (2008) p. 107

²⁸ Martha C. Nussbaum "Women's Progress and Women's Human Rights", *Human Rights Quarterly* 38 no. 3 (August 2016): 589-622 on p. 599-600

²⁹ Jackie Jones, "The importance of international law and institutions" Chapter 1 in *The Legal Protection of Women from Violence: Normative Gaps in International Law*, edited by Jackie Jones and Rashida Manjoo, Routledge, Abingdon, Oxon and New York, NY (2018) pp. 9-39 on p. 13

cause. These obligations are binding, through their adoption and ratification by the community of nations and through direct or indirect transposition into the domestic legal systems.³⁰ States are obligated to implement measures for the protection from and the prevention of violence against women, when this is considered a breach of human rights and international law. International law sets a normative standard of what is right and wrong. According to the International Covenant on Economic, Social and Cultural Rights, the State parties undertake “to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant”.³¹ If the rights and safety of women are not guaranteed, how can women be expected to realise their economic, social, and cultural rights?

On the other hand, domestic violence as a human rights issue, is also contradictory to the function of human rights. International law regulates states’ violations of human rights law, whereas domestic violence is a common crime committed by individuals towards other individuals. To illustrate, human rights law is the smaller part of the UN’s work and is focused mainly on actions taking place in the public sphere, traditionally only intervening in situations where the State has directly violated the law concerning an individual or a group. Acts between private individuals or by non-state actors against individuals have traditionally been excluded, being viewed as domestic actions.³² The consequence of this approach is that such systematic violence goes unnoticed, lost in the big picture. If perpetrators are to be treated as appropriate subjects of international human rights law, the State itself needs to be held responsible for the violence. Harshly put, when a State makes little or no effort to stop a certain form of private violence, it condones that violence.³³

In conclusion, violence against women and domestic violence are clear breaches of international human rights law. Although the problem runs deeper, as women still struggle to be equal subjects of international human rights law; the prevention of and the commitment to end violence against women is a huge step towards a more equal world. This is one of the purposes of the Istanbul Convention, as it seeks to prevent future acts of violence against

³⁰ Jones (2018b) p. 10

³¹ International Covenant on Economic, Social and Cultural Rights, New York, 16.12.1966, art. 3

³² Jones (2018b) p. 12

³³ Kenneth Roth. "Domestic Violence as an International Human Rights Issue." Chapter 13 in *Human Rights of Women: National and International Perspectives*, edited by Rebecca J. Cook, Philadelphia, Pennsylvania: University of Pennsylvania Press, 1994: 326-340 on p. 329-331

women as well as ending the violence that exists today. The need for a convention focusing on the protection of women from this type of violence will be discussed next.

5 A Convention for the protection of women and prevention of violence

Conventions securing human rights are an essential part of international law. Conventions and treaties that have entered into force are considered hard law, as they are binding to the member States. The Istanbul Convention is considered the first legally binding document that requires the member states to implement provisions in their respective legal systems regarding the prevention of violence and the protection of women.

A framework securing the protection of women against violence as well as domestic violence has been on the human rights agenda for several years but has yet to be fully achieved. The Istanbul Convention is the latest in a series of attempts to address the issues women are facing today, while drawing upon former treaties and other regional conventions as well as ECtHR judgments.

5.1 Historic background

The Istanbul Convention is the most recent of several conventions attempting to protect women's rights. Since the creation of the Convention on the Elimination of All Forms of Discrimination against Women in 1979, and until the creation of the Istanbul Convention in 2011, the world had seen a positive development in addressing violence against women as a breach of human rights, while implementing regulations and monitoring mechanisms to prevent this type of violence. The following chapter will address relevant conventions that has led to the adoption of the Istanbul Convention: The CEDAW and its General Recommendation no. 19 in part. 5.1.1 and 5.1.2, the Convention of Belém do Pará in 5.1.3 and the Maputo Protocol in 5.1.4. Part 5.1.5 will illustrate relevant case law from the ECtHR.

5.1.1 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

The Convention on the Elimination of All Forms of Discrimination Against Women was adopted by the United Nations in 1979 and entered into force in 1981. The purpose of the

Convention was to contribute to the abolishment of all forms of discrimination against women.

Discrimination against women is defined as any “distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women”.³⁴ Member parties to the Convention obligate themselves to condemn discrimination against women in all forms, and to immediately pursue all appropriate means to eliminate this type of discrimination.³⁵

Article 17 of the CEDAW establishes a Committee on the Elimination of Discrimination Against Women (CEDAW Committee), which monitor member states based on required reports received from the concerned States. The Committee consists of 23 experts of “high moral standing and competence in the field covered by the Convention”.³⁶ The experts are elected by the State Parties among their nationals. However, the states are not sanctioned if they fail to implement legislation and submit reports on the progress. The issue was partly fixed by the Optional Protocol adopted in 2000, but still lacks authority and enforcement power.³⁷

The CEDAW tackles violence indirectly by confronting gendered stereotypes, practices and laws that fails to protect women against gender inequality. The CEDAW does not contain specific provisions on violence against women and/or domestic violence, nor does it define gender or gender-based violence.

5.1.2 General Recommendation No. 19 on Violence against Women (1992)

In order to fill this loophole, the CEDAW Committee issued its General Recommendation no. 19 in 1992 which clearly states that “The full implementation of the Convention requires States to take positive measures to eliminate all forms of violence against women.”³⁸ The recommendation relies on the notion that it is a state responsibility to protect and fulfil human rights, while introducing the idea that a state may be held accountable for abuses by non-state actors.³⁹

³⁴ The Convention on the Elimination of All Forms of Discrimination against Women, New York, 18.12.1979 (CEDAW) article 1.

³⁵ See CEDAW art. 2

³⁶ CEDAW art. 17

³⁷ See Nussbaum (2016) p. 604

³⁸ General Recommendation adopted by the Committee on the Elimination of Discrimination Against Women, U.N. Doc A/47/3 (1992) paragraph 4 (General Recommendation no. 19)

³⁹ Alice M. Miller, “Sexuality, Violence against Women, and Human Rights: Women Make Demands and Ladies Gets Protection”, *Health and Human Rights*, Vol. 7 no. 2 (2004) pp. 16-47 on p. 24

It further states that the definition of discrimination in CEDAW, encompasses gender-based violence, which is further defined as “violence that is directed against a woman because she is a woman or that affects women disproportionately”.⁴⁰ The same paragraph states that these positive measures apply whether the provision expressly mentions violence. The General Recommendation no. 19 goes further than the CEDAW in reference to family violence and abuse, forced marriage, dowry deaths, acid attacks, female genital mutilation, and other forms of violence against women.

The CEDAW Committee may make “suggestions and general recommendations based on the examinations of reports and information received by state parties”, see CEDAW art. 21. Recommendations are considered “soft-law”, and hence not legally binding for the member States. However, recommendations are considered authoritative statements, clarifying the meaning of the relevant articles of the Convention while requiring the State to adopt the recommendation alongside the Convention.

5.1.3 The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará)

The Convention of Belém do Pará is a regional convention adopted in 1994 by the Organisation of American States (OAS) to combat violence in North and South America. The Convention of Belém do Pará functions as a legally binding mandate for the 32 Latin-American Countries and Caribbean States that have ratified it.⁴¹ Latin America, in particular, struggles with high femicide rates, steep rates of intimate partner violence directed at women and unresponsive justice systems regarding the issues.⁴²

It is notably the first binding instrument to acknowledge the issue of violence against women specifically.⁴³ Violence against women is defined as a human rights violation consisting of “any act or conduct based on gender, which causes death or physical, sexual, or psychological harm or suffering to women, whether in the public or the private sphere”. This definition also includes domestic violence, but it is not explicitly mentioned.⁴⁴

⁴⁰ General Recommendation no 19, paragraph 6

⁴¹ Status of signatures and ratifications to the Convention of Belém do Pará <https://www.oas.org/en/mesecvi/docs/Signatories-Table-EN.pdf> [accessed 18.09.2021]

⁴² Meredith Kimelblatt. “Reducing Harmful Effects of Machismo Culture on Latin American Domestic Violence Laws: Amending the Convention of Belém do Pará to resemble the Istanbul Convention, *The George Washington International Law Review*, 49 (2016): 405-439 on p. 406

⁴³ Kimelblatt (2017) on p. 417

⁴⁴ Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, Belém do Pará, 09.06.1994 (Convention of Belém do Pará) art. 1 and art. 2.

In 2004, the OAS further established the Follow-up Mechanism to the Belém do Pará Convention (MESECVI). The MESECVI works through evaluation and follow-up rounds based on reports submitted by the member states and a follow-up of the implementation of recommendations given by a Committee of Experts. It is the first system to monitor women's rights to a life free of violence.⁴⁵

5.1.4 The Protocol to the African Charter on the Rights of Women in Africa (Maputo Protocol)

The Maputo Protocol was adopted by the African Union in 2003 and entered into force in November 2005. The African Charter for Human and People's Rights adopted in 1981 did not sufficiently address human rights issues facing women, and the Maputo Protocol was adopted to focus on the specific violent actions that were directed at women primarily. The Maputo Protocol is considered the first binding human rights document to expressly address violence against women, as it proscribes all harmful cultural practices⁴⁶ as well as domestic violence. These provisions are absent under CEDAW.

At the time of writing, 49 African States have signed the Protocol whilst 42 have ratified it.⁴⁷ The Protocol is considered an extensive instrument for the protection of women's rights, providing tools to protect women from all sorts of violence. However, the enjoyment of rights will rely largely on the integration of regional and national frameworks for the protection of women.

5.1.5 ECHR Case law

The Istanbul Convention is also largely inspired by rulings from the ECtHR. The first case of domestic violence was directly addressed by the ECtHR in 2007.⁴⁸ As the ECHR itself does not explicitly address violence against women nor domestic violence, violations regarding this type of violence had to be interpreted into the provisions of the ECHR. Today, the offences are considered clear violations in respect to articles 2, 3, 8 and 14.⁴⁹

⁴⁵ Organization of American States, "A life free of violence"

<https://www.oas.org/en/mesecevi/docs/FollettoMESECVI2012-EN.pdf> [accessed 07.10.2021]

⁴⁶ Harmful practices encompass «all behaviour, attitudes and practices that adversely affects women's rights, especially the right to life, health, dignity, education and bodily integrity», see Maputo Protocol art. 1 f).

⁴⁷ List of signatures and ratification to the Maputo Protocol, <https://au.int/en/treaties/1170> [accessed 01.11.2021]

⁴⁸ Ronagh J.A. McQuigg, *The Istanbul Convention, Domestic Violence and Human Rights*. Routledge Research in Human Rights Law, Abingdon, Oxon and New York, NY 2017 on p. 61

⁴⁹ ECHR art. 2 stating that the right to life shall be protected by law, art. 3; prohibiting torture and degrading treatment, art. 8; the right to respect for private life and family life, art. 14; prohibiting discrimination.

The following ECtHR cases illustrate that domestic violence and violence against women are being addressed as violations of human rights, verifying the ECHR as a “living instrument”⁵⁰, in line with societal development.

5.1.5.1 The case of Kontrová v. Slovakia

The case of *Kontrová v. Slovakia* in 2007⁵¹ was the first case that addressed domestic violence.⁵² The complaint concerned the local police force’s failed measures to protect the applicant and her children from an abusive husband and father, which ultimately resulted in her children’s deaths.

The local police force was aware of the abuse and threats from the applicant’s husband, due to a filed criminal complaint, two emergency calls, and a physical visit by the applicant where she inquired about the complaint and filed a new one based on the incidents regarding the emergency calls.

The court ruled in favour of the applicant, holding that there had been a violation of art. 2, art 8, art. 13 and art. 6. Regarding art. 2 of the ECHR, the Court ruled that there had been a clear breach as the local police force had a positive obligation to protect the children as they were aware of the former threats made by the father.

5.1.5.2 The case of Opuz v. Turkey

The case of *Opuz v. Turkey*⁵³ declared pioneeringly that gender-based violence constitutes discrimination under the ECHR.⁵⁴

In summary, the applicant brought a suit on behalf of her mother, who was killed by the applicant’s husband. The husband was charged with murder and the illegal possession of a firearm and sentenced to life in prison. However, as the accused had committed the offence as the consequence of provocation, the original sentence was reduced to 15 years.⁵⁵ The Turkish Criminal Code considers this type of criminal act an “honour killing”, resulting in lighter sentences for the accused.⁵⁶

⁵⁰ Argued by Jackie Jones (2018a) p. 158-159

⁵¹ *Kontrová v. Slovakia* [J] no. 7510/04, ECHR 2007-IV

⁵² McQuigg (2017) p. 62

⁵³ *Opuz v. Turkey* [J] no. 33401/02, ECHR 2009-III

⁵⁴ Sarah Murphy. “Domestic Violence as Sex Discrimination: Ten Years since the Seminal European Court of Human Rights Decision in *Opuz v. Turkey*”, *New York University Journal of International Law and Politics*, 51 no. 4 (Summer 2019): 1347-1358 on p. 1347

⁵⁵ *Opuz v. Turkey* paragraph 57

⁵⁶ *Opuz v. Turkey* paragraph 178

The Court held that Turkish law on domestic violence was discriminatory as it treated a woman's life as inferior to that of a man in the name of the family unity.⁵⁷ This constituted a breach of ECHR article 14.

In addition to the case being a breach of art. 14, the Court held that the State of Turkey had violated the rights after art. 2 (right to life) and art. 3 (right to be free from torture and inhuman degrading treatment). The ECtHR also rejected the Turkish Government's argument that the intervention in the family affair would constitute a breach of the Convention's art. 8. The ECtHR held that the State must encounter a balance between the rights of the perpetrator and those of the victim.

5.1.5.3 The Case of Bevacqua and S. v. Bulgaria

The applicants of *Bevacqua and S. v Bulgaria*⁵⁸ were the victim of domestic violence and her young son. The applicants alleged that the Bulgarian authorities had failed to protect both herself and her son from her husband's violent behaviour, by failing to take necessary measures to protect them. The complaint concerned the State's positive obligation to "respect family life" by intervening in cases of domestic violence.

The Court ruled in favour of the applicants, arguing that the local authorities had a positive obligation under article 8 of the ECHR to secure respect for their private and family life.

The case illustrates that domestic violence falls within the scope of article 8 which constitutes the respect for family life. This means that the State may interfere in the inhabitants' private affairs if it is a response to domestic violence. The Court noted that even though compliance with art. 8 in the sphere of relations of individuals in principle is a matter that falls within domestic authorities' margin of appreciation, the behaviour of the authorities amounted to a failure to secure the applicants' security after art. 8.⁵⁹

In summary, even though the ECHR does not explicitly contain provisions on domestic violence and violence against women, the interpretation that the ECtHR has given ECHR enables the Court to apply the provisions in cases regarding violence against women. The fact that domestic violence now is considered a violation of human rights, as opposed to just being a criminal offence, proves great symbolic value. States can no longer argue that the respect for family life prohibits them from interfering in domestic affairs.

⁵⁷ *Opuz v. Turkey* paragraph 202 and paragraph 178

⁵⁸ *Bevacqua and S. v Bulgaria* (2009) [J], no. 71127/01, ECHR-2008-V

⁵⁹ *Bevacqua and S. v Bulgaria* (2009) paragraph 83 and 84

5.2 The Istanbul Convention

The Istanbul Convention complements and expands the standards set by the Convention of Belém do Pará, Maputo Protocol and CEDAW, as well as encompassing the ECtHR case laws that have emerged in the previous years. The result is the most comprehensive convention on preventing and coping with violence against women as well as domestic violence.

The Convention is based upon a human rights framework,⁶⁰ and following article 4 paragraph 1 of the Convention, member parties “... shall take the necessary legislative and other measures to promote and protect the rights for everyone, particularly women, to live free from violence in both the public and the private sphere”. The purpose of this chapter is to illustrate women’s rights as a human rights issue that requires the attention of international and regional institutions.

5.2.1 Institutional setting

The Istanbul Convention is created by the Council of Europe, a treaty-bound intergovernmental organisation with 47 European member states. The organisation’s main purpose is the protection of human rights, democracy, and the rule of law. The rights and interests of individuals is a primary aim.⁶¹ Since the 1990s, the Council of Europe has undertaken a series of initiatives to promote the protection of women against violence.⁶²

Founded in 1949, it originally served as an opposing power to the increasing anti-democratic development in eastern Europe during the Cold War. Today, being a member state implies satisfying the Council of Europe’s strict requirements regarding the organisation’s main purpose; human rights, democracy, and rule of law.⁶³

At the time of writing, 44 Council of Europe member states have signed the Istanbul Convention, whereas only 34⁶⁴ have ratified it, resulting in the Convention entering into force

⁶⁰ McQuigg (2017) on p. 10

⁶¹ Høstmælingen (2013) p. 385

⁶² See Council of Europe, Explanatory Report paragraph 7

⁶³ Sten Lundbo, «Europarådet» in Store Norske Leksikon, 30 august 2021, <https://snl.no/Europar%C3%A5det> [accessed 15.09.2021]

⁶⁴ The Convention is currently ratified by 34 member states, as Turkey has withdrawn from the Convention. The withdrawal entered into force 01.07.2021.

in the respective member States.⁶⁵ The Convention is open for signature by non-member states, and the European Union signed the Convention on the 13th of June 2017.⁶⁶

5.2.2 Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO)

In contrast to other human rights treaties,⁶⁷ the Istanbul Convention implements a control-mechanism for monitoring the implementation of the Istanbul Convention, following article 66 paragraph 1 of the Convention. The control-mechanism consists of an expert group of 10-15 members known as GREVIO. These members are elected by the Parties among party nationals. Eligible GREVIO-members are persons of high moral character, known for their competence on human rights, gender equality, violence against women and domestic violence. Persons who assist and protect victims of the Convention, or have demonstrated professional experience in the areas covered, are also eligible.⁶⁸

The function of GREVIO is to consider reports submitted by the member parties to the Secretary General of the Council of Europe, based on a questionnaire prepared by the group of experts. This report shall contain legislative and other measures to the provisions of this Convention and will be considered by GREVIO in conjunction with representatives of the State party in question.⁶⁹ GREVIO may receive information on the implementation of the Convention from non-governmental organizations and the civil society, as well as national institutions for the protection of human rights.

GREVIO shall then prepare a draft containing its analysis concerning the implementation of provisions on which the evaluation is based, as well as suggestions and proposals for how the Party concerned may deal with the problems the Party may be facing. The member Party shall have the opportunity to comment on this draft, before it is adopted into a conclusive report.⁷⁰

⁶⁵ See full list of signatures and ratifications <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210/signatures?module=signatures-by-treaty&treatyid=210> [23.11.2021]

⁶⁶ At the time of writing, seven non-members to the Council of Europe have been invited to join the Convention: Canada, the Holy See, Japan, Kazakhstan, Mexico, Tunisia, and the United States of America.

⁶⁷ The Convention of Belém do Pará did not have a control mechanism at the time of adoption but has since established a follow-up mechanism called MESECVI.

⁶⁸ Council of Europe Convention on preventing and combating violence against women and domestic violence, Istanbul, 11.05.2011. (The Istanbul Convention) article 66 paragraph 2 in accordance with paragraph 4a)

⁶⁹ The Istanbul Convention article 68 paragraph 1 in accordance with paragraph 2.

⁷⁰ The Istanbul Convention article 68 paragraph 10-11

5.3 Violence against women in the Istanbul Convention

The Istanbul Convention divides the problem of violence directed at women into two separate components: violence against women and domestic violence. Characterizing domestic violence as a separate component of violence against women, emphasises that it is a stand-alone problem and should be treated likewise.

The Istanbul Convention also applies the term “gender-based violence” as a supplement to the notion that is violence against women. This is in line with the evolving terminology. Gender-based violence is a social-construct and is now used by human rights treaties. Gender-based violence does not only affect “biological women” but also persons who identify as women.⁷¹ The purpose of using “gender” is not to replace the biological definition of sex, but to emphasise how much inequalities, stereotypes and violence that originates from the social construct of how men and women are and should be in a society. Violence against women and domestic violence cannot be addressed without looking at gender equality issues. The Convention acknowledges that violence does not necessarily stem from biological differences, but prejudices, customs, traditions, and harmful practices.⁷² Gender-based violence also means violence directed at women because she is a woman, and being a woman means being affected disproportionately.

The Convention defines violence against women as: psychological violence, stalking, physical violence, sexual violence, including rape, forced marriage, female genital mutilation, forced abortion, forced sterilisation and sexual harassment.⁷³ In other words, the Convention explicitly define a series of acts covered by the term “violence against women”, going further than CEDAW and its General Recommendation no. 19. While the General Recommendation no. 19 recognises that poor and unemployed women, prostitutes and women and girls from rural communities are at higher risks of violence, the Istanbul Convention cover all women and girls from any background, regardless of age, race, religion, social origin, migrant status, gender identity or sexual orientation.⁷⁴

⁷¹ Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention): Questions and answers. Available at <https://rm.coe.int/istanbul-convention-questions-and-answers/16808f0b80> [accessed 30.09.2021]

⁷² Ibid.

⁷³ The types of violence are listed accordingly in the Istanbul Convention articles 33 through 40.

⁷⁴ See General Recommendation no. 19 art. 14 and the Istanbul Convention art. 4 paragraph 3

5.4 Domestic violence in the Istanbul Convention

The Istanbul Convention is directed at both violence against women and domestic violence, illustrating that domestic violence is a separate component from the more general term “violence against women”. This term, although gender-neutral, is mainly aimed at protecting those who identify as women, and experience violence by virtue of being a woman. Those who experience domestic violence in line with the Convention, are defined as “victims”. A victim of domestic violence may be both male and female, a child, or an elderly. The Convention art. 3 (b) in correspondence with art. 2 paragraph 2, encourages the member parties to “(...) apply this Convention to all victims of domestic violence (...). Parties shall pay particular attention to women victims of gender-based violence”.⁷⁵ Member states may choose to extend the scope of the Convention to include all who are affected by domestic violence, while noting that domestic violence against women requires considerable attention.

Domestic violence has been addressed in both the Convention of Belém do Pará and the Maputo Protocol⁷⁶, but solely as violence happening in the “private sphere”. The Istanbul Convention goes further, by addressing domestic violence as an independent case, separate from violence against women in general. The Istanbul Convention also includes “economic violence” as part of the definition of domestic violence. This broadens the understanding of domestic violence; from being mainly physical or psychological abuse, to a more complex form of violence in close relations.

6 Participating in treaties

Every State possess a capacity to participate in treaties.⁷⁷ Participation means the act of a State that establishes on the international plane, its consent to be bound by a treaty. This occurs through the process of signature to ratification.⁷⁸ This part of the thesis will illustrate the various aspects of participating in a treaty.

⁷⁵ Council of Europe Explanatory Report paragraph 37.

⁷⁶ Domestic violence is not mentioned in CEDAW, see McQuigg (2017) p. 10

⁷⁷ Vienna Convention art. 6

⁷⁸ Vienna Convention art. 2b

6.1 Signature and ratification

The Istanbul Convention is open for signature to the Council of Europe member states as well as the European Union and non-members of the Council of Europe.⁷⁹

When member states sign a convention, they express the intention of being bound.

Nevertheless, when a convention requires further ratification, the signature is not considered legally binding.⁸⁰ The distinction between ratification and signature, illustrates the distinction between government and national assembly. The signature demonstrates a state's positive expression towards becoming a member party, while ratification leads to the State becoming a member party, and therefore limiting sovereignty regarding the matters of the Convention. More specifically put; the signature is the intention, while the ratification is the act of entering into agreement.⁸¹ The treaty is signed by a representative to the State party, before being submitted to the government for examination and approval in accordance with national Constitutional law and practices.⁸² With the Head of State lies the powers of formal ratification, including the acceptance and approval of the treaty. Members of Government sign the treaty, sometimes upon the express or implicit authorisation by the Head of State.⁸³

A signature may have the effect to bind a member state in certain circumstances, see art. 12 of the Vienna Convention. This constitutes a simpler, and increasingly more common process, especially regarding bilateral treaties and multilateral treaties with few parties. It avoids the need to seek Parliamentary approval, which often is the constitutional requirement prior to ratification. While resulting in a more speedy and efficient treaty ratification, it does so at the expense of transparency and debate at the national level.⁸⁴

A state that signs the Istanbul Convention expresses its intention to be bound. It is a strong indication that ratification will follow the signature.

Providing signature subject to ratification allows States time to seek approval for the treaty at the domestic level. The period between signature and ratification also implies obligations for the member parties. The Vienna Convention art. 18 obligates the member states "to refrain from acts which would defeat the object and purpose of a treaty (...)". This is relevant during the period between signature and ratification, until the member State has made it clear not to

⁷⁹ The Istanbul Convention art. 1

⁸⁰ Vienna Convention art. 14

⁸¹ Høstmølingen (2013) p. 115

⁸² CAHDI (2001) p. 17

⁸³ CAHDI (2001) p. 22

⁸⁴ CAHDI (2001) p. 17

become a party to the treaty. This also applies when a member party has expressed its consent to be bound by the treaty, pending the entry into force and providing that such entry into force is not unduly delayed.⁸⁵

Ratification is the concrete act, by which the State expresses its consent to be bound by a treaty.⁸⁶ Ratification at the national level enacts any legislation necessary to implement the treaty domestically, prior to undertaking the legal obligations of the treaty at the international level. The treaty requires ratification at the national level, to engage this international responsibility.⁸⁷ Expression of consent to be bound by a treaty differs from the treaty entering into force. Consent to be bound is the willingness to undertake the legal rights and obligations, while entry into force is the moment when the treaty becomes legally binding for the State – when the State becomes party to the treaty.⁸⁸

Once a State has become party to a treaty at the international level, its international responsibility commences. Some treaties are automatically integrated into domestic law, while others require a domestic legislative or administrative act. In several states, certain treaties possess a higher position than national law, although subject to Constitutional provisions. Other states may choose the ranking of treaties within the hierarchy of municipal sources, although sometimes bound by the legal requirements of the treaty.⁸⁹

Ratification of the Istanbul Convention enables the State to become a member-state to the Convention. Membership to the Convention implies legal obligations in line with the Convention's provisions.⁹⁰

The Vienna Convention art. 27 states that “a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty”. Art. 73 of the Istanbul Convention states that “the provisions of this convention shall not prejudice the provisions of internal law and binding national instruments”. According to the Council of Europe Explanatory Report⁹¹, this article safeguards the provisions of internal law and binding international instruments which provides additional protection to women victims of violence.

⁸⁵ The Vienna Convention art. 18 a) and b)

⁸⁶ United Nations Treaty Section of the Office of Legal Affairs, “*Treaty Handbook*”, Sales No. E. 12.V.1 (2012) p. 8 (UN Treaty Handbook)

⁸⁷ UN Treaty Handbook (2012) p. 9

⁸⁸ UN Treaty Handbook (2012) p. 8

⁸⁹ See CAHDI (2001) p. 21

⁹⁰ The Istanbul Convention allows reservations following art. 78 paragraph 1, with the purpose of enabling the largest possible ratification of the Convention, while permitting parties to preserve some of their fundamental legal concepts, see Council of Europe Explanatory Report paragraph 381.

⁹¹ Council of Europe Explanatory Report paragraph 369

6.2 Denunciation⁹²

When a member-state denounces a treaty, it expresses its intention to withdraw from the treaty. Denouncement is also part of a state's treaty-making capacity.⁹³ The Vienna Convention states clearly in art. 56 paragraph 1, that a treaty neither containing a provision regarding its termination or provides for denunciation or withdrawal, is not subject to denunciation or withdrawal. This general rule has two exceptions; when it's established that the parties intended to admit the possibility of denunciation or withdrawal, or this right may be implied by the nature of the treaty.⁹⁴

A treaty may include a provision that allows denunciation, following certain formal requirements. The Istanbul Convention permits denunciation by any member states at any time, by notification addressed to the Secretary General of the Council of Europe.⁹⁵ This is in accordance with the Vienna Convention art. 56 paragraph 1b).

The consequences of withdrawal from a treaty, is the member party being released from any further obligation to perform the treaty pursuant to the Vienna Convention art. 70 paragraph 1 a). However, withdrawal does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination. This means that the State is obligated to perform according to the treaty from the point of ratification to the point of withdrawal.

It should be noted that denunciation of human rights treaties is rare. These treaties normally recognize the margin of appreciation of state parties to exercise functional flexibility in normal circumstances, allowing them to determine the direction, speed, and priority of their implementation measures.⁹⁶

6.3 The principle of non-retrogression

Denunciation of a treaty may in some cases be viewed as a retrogressive step, especially if the treaty obligates the State to respect human rights. The principle of non-retrogression is a principle that bars a state from moving backwards or “regressing” once it has taken steps to

⁹² The terms “denunciation” and “withdrawal” will be used interchangeably, as they imply the same thing: non-participation in a treaty. For a discussion on terminology, see Tyagi (2008) pp. 88-90.

⁹³ Vienna Convention art. 6

⁹⁴ Vienna Convention art. 56 paragraph 1 a) and b)

⁹⁵ Istanbul Convention art. 80

⁹⁶ Tyagi (2008) p. 107

realise a right.⁹⁷ The principle is expressed through the UN Committee on Economic, Social, and Cultural Rights General Comment no. 19.⁹⁸ Retrogressive measures are presumed to be prohibited under the International Covenant on Economic, Social, and Cultural Rights. In other words, it guarantees that once a right has been recognised, the very least the State can do is maintain that new standard of protection.⁹⁹

The principle may be understood in both normative and empirical terms.¹⁰⁰ Normative retrogression means the adoption of a legal measure that takes “a step back” regarding present measures, while empirical retrogression means the State’s failure to act in a situation where the implemented measures result in rights no longer being fully enjoyed.¹⁰¹

The principle of non-retrogression may be seen in connection with the *pacta sunt servanda* principle following art. 26 of the Vienna Convention. Treaties must be performed in good faith by the parties. Even though this is applicable when the treaty is in force, it may also transfer to the period after withdrawal. If legislation is implemented in good faith in accordance with the treaty, it may be considered the opposite of good faith to revoke this legislation. This is especially relevant regarding treaties that affirm human rights.

The Istanbul Convention does not directly address the issue of retrogression. However, by signing and ratifying the Convention, member states are taking progressive steps to fulfil the object and purpose of the Convention. By further implementing legislation and governance, it sets a standard of rights for its inhabitants. Member states to the Istanbul Convention would clearly be taking retrogressive steps if they were to revoke the protection that the Convention provides, by altering the progressive legislation after withdrawal.

7 Consequences of non-participation

If a member-state to a convention no longer wishes to participate in the treaty, it may withdraw using the formal mechanism of denunciation set by the Convention. As noted earlier, member states to the Istanbul Convention may withdraw from the Convention at any

⁹⁷ Sanya Samtani, “International Law, Access to Courts and Non-Retrogression: *Law Society v. President of the Republic of South Africa*, *Constitutional Court Review*, Vol. 10 (2020): 197-225 on pp. 217-218

⁹⁸ UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 19: The right to social security (Art. 9 of the Covenant), 4 February 2008, paragraph 42.

⁹⁹ Samtani (2020) on p. 218

¹⁰⁰ Samtani (2020) on p. 218 and Warwick, Ben. T. C. “Unwinding Retrogression: Examining the Practice of the Committee on Economic, Social and Cultural Rights”, *Human Rights Law Review* Vol. 19 (2019): 467-490 on p. 471

¹⁰¹ Author’s definition, based on Samtani (2020) p. 218 and Warwick (2019) p. 471

time. The effect of the withdrawal will enter into force the first day of the month following the expiration of a period of three months after notification to the Secretary General.¹⁰² Denunciation is therefore not a breach of the State's legal obligations by the treaty. It is also worth noting that the withdrawal of member-states does not affect the remaining parties to the Convention, nor will it result in the termination of the Convention. The Convention is not dependent on ratification, as it already has entered into force.¹⁰³ Lack of signature, ratification and even withdrawal, will not prevent states from re-joining the treaties should that be pertinent later.

This chapter will examine the de jure and de facto consequences of withdrawing from the Istanbul Convention. The chapter is divided into three different scenarios: whether the State has become a signatory state to the Convention or not, and whether the Convention has been ratified by the State. This part will focus on the legal consequences of and the legal status after withdrawal. The de facto consequences will be discussed lastly.

All the Council of Europe member states are party to the ECHR and the CEDAW. The Istanbul Convention is open for signature and ratification by non-members to the Council of Europe.¹⁰⁴ As these states have yet to sign the Convention, the following scenarios are hypothetical.

7.1 The State neither signs nor ratifies the Convention

If a state neither signs nor ratifies the Convention, it is not legally bound by the provisions of the Convention. The absence of signature means an absence of a consent to be bound. The active process of withdrawal in this case does not exist, as the State never expresses its intention to be bound by the treaty.

If the State has failed to become a member to the Istanbul Convention, the protection of women and the prevention of violence will need to stem from other legislation. A state cannot be bound by a treaty without agreeing to it. Failure to sign and ratify the treaty does not prevent the State from entering into the agreement later. A treaty that is neither signed nor ratified by the State is not considered hard law by that state.

The Russian Federation and Azerbaijan are the only two Council of Europe member states that have yet to sign the Convention. Russia decriminalized domestic violence in 2017, and

¹⁰² Istanbul Convention art. 80 paragraph 2

¹⁰³ See Istanbul Convention paragraph 75

¹⁰⁴ See footnote 66 for a list of non-Council of Europe members to the Istanbul Convention

“moderate violence within families is seen as an administrative rather than a criminal offence.”¹⁰⁵ It is worth noting that this would be incompatible with the Istanbul Convention.

7.1.1 The State is party to the ECHR/CEDAW

In this scenario, the non-member State to the Istanbul Convention is a member state to the ECHR and CEDAW. The State will still need to adapt to the rulings of ECHR and CEDAW, that both secure women’s rights in their own way.

Even though several of the articles of CEDAW correspond to the Istanbul Convention and the ECtHR has interpreted violence against women into several articles of the ECHR, one cannot ignore the fact that these instruments are not “hard-law” instruments for every State. The ECtHR rulings obligate the concerned state to comply with its decisions. Other states are presumed to pursue the decisions in their respective legislation but are not obligated.

The CEDAW, although a binding treaty, does not contain provisions on domestic violence. Its recommendations, as well as other UN documents, are regarded as “soft law” instruments.¹⁰⁶ Therefore, de jure consequences of the State would vary depending on if it is a party to a case before the ECtHR or being monitored by CEDAW.

7.1.2 The State is not party to the ECHR/CEDAW

In this scenario, the State is neither a member-state to the Istanbul Convention, the ECHR or the CEDAW. As a result, the State is not legally bound by the provisions of these Conventions.

It should be noted that in this scenario the State has never been a member to the Conventions, and therefore has not withdrawn their consent to be bound. States in this category have simply refrained from consenting to the convention by signature.

Withdrawal does not pose any legal obligation for the states, nor does it alter the legal consequences. The legal status will not differ, as there has been no act in line with the Istanbul Convention. The protection of women and the prevention of violence in this scenario is purely based on domestic legislation or other human rights documents that the states may have adopted. The States are still bound by international customary law.

¹⁰⁵ Gokten Doğangün, “Gender Climate in Authoritarian Politics: A Comparative Study of Russia and Turkey,” *Politics & Gender*, 16 (2020): 258-284 on p. 278

¹⁰⁶ McQuigg (2017) p. 141

7.2 The State signs the Convention, then withdraws

This scenario regards the situation where a state has signed the Convention, but later withdraws. Although the signature expresses a state's intent to be bound by the Convention, the Convention cannot be considered legally binding for the signatory state. The withdrawal in this case does not imply withdrawal from the Convention itself, as the State is not party to the treaty, but withdrawal of the State's consent to be bound by the treaty.

According to the Vienna Convention art. 18 a), after a State has signed the treaty, and hence expressed its consent to be bound, the State is required to act according to the object and purpose of a treaty, until it has made its intention clear not to be part of the treaty. The purpose of the Vienna Convention art. 18 is to protect the negotiated agreement between the future parties to the treaty, so that at the time of ratification, the rationale of the agreement is still in place.¹⁰⁷ Basically, art. 18 is a principle of good faith.¹⁰⁸

The legal implication of a signature is thus a requirement to act in keeping with the object and purpose of the treaty. The object and purpose of the Istanbul Convention is to protect women from all forms of violence, as well as preventing, prosecuting, and eliminating violence against women and domestic violence.¹⁰⁹ It is not a positive obligation, in terms of requiring the State to implement regulations and adapt to the provisions of the Istanbul Convention, but a negative obligation prohibiting acts that contradict the object and purpose of the Convention. Therefore, by signing the Convention, the State assumes the de jure obligations of not acting against the object and purpose of the Convention.

Hungary signed the Convention in 2014 but has yet to ratify the Convention. The Hungarian Parliament refused to ratify the Istanbul Convention in 2020, as its definition of gender is deemed "socially constructed".¹¹⁰ The same goes for several other states,¹¹¹ and these remain signatory states until the process of ratification has been completed.

¹⁰⁷ Oliver Dörr, "Art. 18: Obligation not to defeat the object and purpose of a treaty prior to its entry into force", in *Vienna Convention on the Law of Treaties: A commentary*. Edited by Oliver Dörr and Kristen Schmalenbach, Berlin Heidelberg: Springer-Verlag, 2012: 219-238 (e-book) e-ISBN 978-3-642-19291-3 on p. 220

¹⁰⁸ Dörr (2012) p. 220

¹⁰⁹ Istanbul Convention art. 1 paragraph 1a)

¹¹⁰ International Justice Resource Center, "Turkey, Poland consider leaving Istanbul Convention on violence against women", Available at <https://ijrcenter.org/2020/08/06/turkey-poland-consider-leaving-istanbul-convention-on-violence-against-women/> [accessed 29.11.2021]

¹¹¹ Bulgaria, Slovakia, Latvia, Lithuania, the Republic of Moldova, Ukraine, and the United Kingdom.

An additional nuance can be made. The control and enforcement mechanisms mentioned above, GREVIO and ECtHR, will vary provided the State being party to the ECHR and CEDAW, or not. This will be addressed next.

7.2.1 The signatory state is party to the ECHR/CEDAW

In this scenario, the State that has signed the Istanbul Convention is party to the ECHR and CEDAW. It is not legally bound by the Convention but required to act according to its object and purpose.

The monitoring mechanism GREVIO may only monitor the implementation of the Istanbul Convention by the “Parties”.¹¹² This does not include states that are solely signatory to the treaty. However, the CEDAW Committee combined with the Optional Protocol allows the Committee to monitor states based on reports from the states itself and other organisations and individuals.

As noted earlier, the ECtHR has interpreted several provisions of the ECHR to include domestic and gender-based violence. The ECHR is considered a “living instrument” and may therefore be dynamically interpreted. The ECtHR will continue to interpret the ECHR in accordance with the developing society, presumably drawing upon the provisions of the Istanbul Convention.

Therefore, a signatory state being party to the ECHR/CEDAW will be monitored by both GREVIO and ECtHR. A breach of the obligation to act in accordance with the object and purpose of the Convention will be more apparent in these cases.

7.2.2 The signatory state is not party to the ECHR/CEDAW

The fact that the signatory State is not a member to the ECHR or CEDAW does not alter the requirements of art. 18 of the Vienna Convention. The State is required to act according to the object and purpose of the treaty. The opportunity to withdraw its signature; its intention to be bound, is also present.

By expressing its intention to be bound by the Istanbul Convention, the State has expressed an intention to become a member state to other conventions. Even though the State is not a member of the ECHR or the CEDAW, the withdrawal does not exclude membership to these two or other similar conventions. However, the lack of membership to other conventions, leaves the withdrawing State without legislation to fall back upon. Acting in accordance with

¹¹² Istanbul Convention art. 66 paragraph 1

the object and purpose of the treaty until the withdrawal is finalized, is not sufficient for the protection of women's rights.

Therefore, the international institutions will not have a formal manner of monitoring the states. Although the State is bound by the object and purpose of the Convention, there is no manner of controlling its compliance. This also illustrates the interconnectedness between human rights instruments. Human rights treaties are not stand-alone treaties, but supplement and complement one another to create a human rights framework.

7.3 The State signs and ratifies the Convention, then withdraws

When a state has signed and ratified the Convention, it is legally bound by the Convention.¹¹³ However, withdrawal is allowed in keeping with article 80 of the Convention.¹¹⁴

The issue at hand, therefore, is not the opportunity to withdraw which has been settled above, but the consequences the withdrawal entails – both legally and factually. The Istanbul Convention does not regulate this issue. The Vienna Convention, however, regulates the consequences of withdrawing from a treaty, unless the treaty itself contains a similar provision. Following art. 70 paragraph 1, the State party is released from further obligation, and the withdrawal does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination. The provision seeks to strike a balance between the disappearance of the effects of a treaty and the continuance of the legal situation established by the treaty.¹¹⁵

According to art. 70 paragraph 1, there is no obligation to unwind or undo the treaty and the legal and factual acts carried out during the period the treaty remained in force.¹¹⁶ It may be argued that art. 70 does not include a duty to continue the acts carried out during the period of the treaty being in force. The principle of non-retrogression dismisses this argument, as a state cannot revoke a right once enforced.

Turkey is the only state that has withdrawn from the Convention, after ratifying it in 2011. The Law on the Protection of the Family and Prevention of Violence against Women was

¹¹³ Istanbul Convention art. 75 in accordance with the Vienna Convention art. 14.

¹¹⁴ Also following Vienna Convention art. 56

¹¹⁵ Stefan Wittich, "Article 70: Consequences of the termination of a treaty", in *Vienna Convention on the Law of Treaties: A commentary*. Edited by Oliver Dörr and Kristen Schmalenbach, Berlin Heidelberg: Springer-Verlag, 2012: 1195-1210 (e-book) e-ISBN 978-3-642-19291-3 on p. 1195

¹¹⁶ Wittich (2012) p. 1203

enacted to officially ratify the Convention in 2012. However, femicide rates have continued to increase despite several legal improvements and campaigns.¹¹⁷

7.3.1 The State is party to the ECHR/CEDAW

Withdrawal from the Istanbul Convention is not considered a breach of the principle of *pacta sunt servanda*, as the opportunity to withdraw is permitted following the Convention. The principle of good faith encapsulated in *pacta sunt servanda* requires the State to maintain the standard of rights implemented during the period the treaty was in force.

According to the principle of non-retrogression, a state that has put into effect a right for its citizens, cannot revoke this right later. Revoking an established right would be seen as a retrogressive measure, in conflict with the progression of human rights.

Whatever the reason for withdrawal, member states to the ECHR and CEDAW will still be bound by these two and the obligations they entail in respect to women's rights. The *de jure* consequences of withdrawal would vary depending on the ECtHR and the monitoring of CEDAW. As noted earlier, the ECtHR has gone far in interpreting violence against women into the provisions of the ECHR. This is further reflected in the CEDAW and its General Recommendation no. 19 that obligates states to take positive measures to eliminate all forms of violence against women.

7.3.2 The State is not party to the ECHR/CEDAW

In this scenario, the withdrawing State is no longer member to the Istanbul Convention, nor a member to the ECHR and CEDAW. The legal obligations are similar: the State may withdraw according to the denunciation clause, and thus the act is not a breach of the principle of *pacta sunt servanda*. The principle of non-retrogression impedes the states from revoking laws and rights that were implemented in line with the Istanbul Convention while remaining in force.

The issue in this scenario is that the withdrawing State does not have the ECHR or CEDAW to expose or prevent domestic or gender-based violence. The states are not bound by the rulings of ECtHR, nor monitored by the CEDAW Committee.

If a party withdraws from a convention, the withdrawal does not in any way impair the duty of any State to fulfil any obligation embodied in the treaty to which it would be subject to international law independently of the treaty.¹¹⁸ According to this article, the State is bound

¹¹⁷ Doğangün (2020) p. 278

¹¹⁸ Vienna Convention art. 43

by customary law and other international regulations that protect women and prevent violence independent of the Istanbul Convention.

To summarize, the legal consequences will differ dependent on if the State has signed or ratified the Convention, or neither. The Russian Federation, that has yet to sign the Convention, has decriminalised and privatised domestic violence. Turkey on the other hand, has achieved significant legal advances in combating domestic violence, in line with the ratification of the Istanbul Convention and other conventions.¹¹⁹ These examples illustrates that no matter how criticised the Convention is, its impact on prevention of violence against women is apparent.

7.4 De facto consequences

As the previous part has discussed the legal consequences of withdrawal, this part will discuss the factual consequences: how is society affected by the act of withdrawal? The above discussion divides the de facto consequences in two main scenarios: whether the withdrawing state is party to the ECHR and CEDAW, or not.

As concerns the first scenario, the State party may fall back on the ECHR and CEDAW to fill the gap that withdrawal from the Istanbul Convention entails.

The Istanbul Convention emphasises that violence against women seriously violates and impairs the enjoyment by women of their human rights, in particular their fundamental rights to life, security, freedom, dignity, and physical and emotional integrity.¹²⁰ Violence against a woman is clearly a breach of human rights. Treating the issue as a regular case of violence, fails to emphasise that the problem is structural and disproportionately affecting women.

This helps support the argument that the Istanbul Convention is a paramount document, and CEDAW and ECHR are not adequate options for a holistic framework regarding the protection of women against violence. To illustrate, out of 270 reports of domestic violence reported for all UN treaties, only 24 were entered under CEDAW.¹²¹ This illustrates that the framework is inadequate in relation to its requirement. The CEDAW itself is a binding hard-law instrument, while its recommendations are not. As the CEDAW does not contain a

¹¹⁹ Doğangün (2020) p. 278-279

¹²⁰ Council of Europe Explanatory Report paragraph 26

¹²¹ Rashida Manjoo, "Closing the Normative Gap in International Law on Violence Against Women: Developments, Initiatives and Possible Options, Chapter 7 in *The Legal Protection of Women from Violence: Normative Gaps in International Law*, edited by Jackie Jones and Rashida Manjoo, Routledge, Abingdon, Oxon and New York, NY (2018): 199-214 on p. 200

provision on domestic violence, its preventive effect is minimal in comparison to the Istanbul Convention.

However, being legally bound by the provisions of ECHR and CEDAW is preferable to not being bound by any conventions regarding the rights of women. As the ECHR is a dynamic instrument, building on the same grounds as the Istanbul Convention, it will seek to continue evolving in line with women's rights. A member-state to the ECHR will be subject to comply by the rulings of the court. For example, the ruling in favour of the applicant in *Opuz v. Turkey* has led to several cases regarding domestic violence being addressed under art. 14 of the ECHR.¹²² The ECtHR has a leading role in providing guidance on states' obligations regarding acts of domestic violence and violence against women, that violate the provisions of the ECHR. The Court has interpreted cases of violence against women as breaches of ECHR and has reflected decisions and recommendation from CEDAW through its jurisdiction.¹²³ In cases of conflict between national law and international law, the international law prevails.¹²⁴

As concerns the second scenario, the withdrawal from the Istanbul Convention leaves a vacuum. The State does not have an extensive women's rights framework to fall back upon. States not bound by ECHR, will not be bound by its provisions nor its dynamic interpretation. The States' inhabitants may not appeal to the Court in cases concerning breaches of women's rights. The same goes for CEDAW and its general recommendations. The women in these states will have to rely on the State applying other international treaties, like the UN, and customary law to secure their protection against violence.

If a state that has ratified the Istanbul Convention later withdraws, the control mechanism GREVIO will no longer be able to monitor the States' obligations by the Convention. A control mechanism will not be present if the State is neither a member party to the CEDAW nor its Optional Protocol. The importance of the control mechanisms is clearly visible in our modern society. States may no longer allow the use of violence against women without it being noticed by activists, non-governmental or other international organisations. These organisations are also invited to supply the control organs with reports on the status of violence in each state, alongside the State itself.

¹²² Murphy (2019) p. 1358

¹²³ Jones (2018b) p. 158-159

¹²⁴ Eileen Denza, "The relationship between international and national law", Chapter 13 in *International Law* (5. ed), edited by Malcolm D. Evans, Oxford University Press 2018: 386-411) on p. 384. See also Vienna Convention art. 27

To summarize, the de facto consequences of withdrawing from the Convention are apparent in both scenarios. However, they will be more apparent in states that have ratified the Convention, before withdrawing as opposed to states that have only signed it. This will be the case independent of the State being member to the ECHR and CEDAW, or not. If a state has ratified the Convention, it may have done so by implementing domestic legislation in line with the Convention. The principle of non-retrogression should limit the State's opportunity to revoke any legislation implemented during the Convention's entry in force. However, a state may revoke enforced rights in line with its national sovereignty.

Effective enforcement of the Istanbul Convention requires a unified Europe, standing unified behind the provisions of the Convention. This sends a strong signal that the Convention is a paramount document, ensuring the protection of women's rights against violence.

Consequently, it is important for the Convention to be ratified by most European states, if not all member states to the Council of Europe.¹²⁵ Withdrawal may therefore not only affect women in the given state, but potentially all women.

8 Discussion

The status of women's rights is experiencing a backlash, illustrated by statistics and the criticism the Istanbul Convention is facing. There is a wide gap between being considered a milestone achievement for women's rights and a severe threat to traditional family values on the other hand. In some ways, the Istanbul Convention fails to unify countries in Europe in the fight against domestic and gender-based violence, illustrated by the member States failing to ratify it and denouncing it.

The Istanbul Convention is essentially a regional treaty, based on European case law that draws on the various European legal systems. Although the Istanbul Convention is an innovative instrument, inspired by other regional and global treaties, it is not an international framework. Former UN Special Rapporteur Rashida Manjoo argues for two solutions to the problem.¹²⁶ The first solution is adopting a new optional protocol to the CEDAW, with a monitoring system that would hold states accountable for failure to effectively implement the treaty's obligations. The other solution is a stand-alone treaty addressing violence against women as a human rights violation, and in itself a form of discrimination. This would be in

¹²⁵ McQuigg (2017) p. 147

¹²⁶ Manjoo (2018) p. 210-211

line with the ongoing development in the field of women's rights that has been discussed in this thesis.

Part of the problem the Convention is facing is the lack of ratification by the member States. Article 26 of the Vienna Convention implies that international law poses an obligation of a result, rather than an obligation of means. The method of international obligation is seen as an internal affair, as states are free in implementing treaty obligations.¹²⁷ One could argue that the Istanbul Convention goes further than this principle allows, placing immediate substantial duties on its member states. States may experience an interference of their national sovereignty, limiting their margin of appreciation.

On the other side of the coin, member states may withdraw from the Convention at any time, in line with the formal requirements. This is in accordance with the withdrawal provision of the Convention itself, as well as the Vienna Convention. Withdrawal is not a breach of the principle of *pacta sunt servanda*, as it is part of a state's treaty making capacity, reflecting its national sovereignty in international affairs.

The solution to the problem is not without concern. Should the Istanbul Convention prohibit denunciation, the withdrawing states would breach the agreement and act in discord with the treaty. Denunciation would be a clear breach of the principle of *pacta sunt servanda*. The downside of this absolute solution would be that fewer states would seek to bind themselves to the provisions of the treaty, by signature and ratification.¹²⁸ As several states have failed to sign and ratify the Convention containing a denunciation clause, the number may potentially be lower if the signature would be eternally binding. In the hypothetical case that the Istanbul Convention should be silent on the issue, the Vienna Convention would be applicable.¹²⁹

The withdrawal of Turkey may create a domino-effect, encouraging other States to withdraw from the Convention as well. This may already be the case, as several other states already have expressed their intention to withdraw from the Convention.¹³⁰ As other states are hesitant to ratify the Convention, withdrawal by some states may encourage signatory states

¹²⁷ Denza (2018) p. 386 and Fitzmaurice (2018) p. 151

¹²⁸ The CEDAW contains no denunciation clause but allows reservations to a large extent. This may result in more states ratifying the convention, but also decrease its effectiveness. See McQuigg (2017) p. 150-151

¹²⁹ See Vienna Convention art. 42-45

¹³⁰ Poland, Croatia, and Serbia are considering withdrawing from the Convention. Bulgaria, Slovakia, Hungary, Latvia have expressed that the Convention is not compatible with domestic legislature. See <https://ijrcenter.org/2020/08/06/turkey-poland-consider-leaving-istanbul-convention-on-violence-against-women/> [accessed 29.11.2021]

to withdraw their intention to be bound. It may also encourage the remaining states to consider the option of withdrawal.

The necessity for the Istanbul Convention is clearly apparent. However, laws that prevent violence is not necessarily the tool for ending that violence. The purpose of the Istanbul Convention is to supplement and adapt domestic legislation to correspond to the international standard set by the Convention. To illustrate, rape is considered a criminal act by law, but what constitutes rape will differ between states. In some cases, rape requires the victim to physically resist the perpetrator, resulting in sleep rapes or sex without clear consent not being included. In other cases, rape does not embody marital rape, afflicted in the domestic sphere between a married couple.¹³¹ This example proves that the Istanbul Convention is dependent on the dynamic interpretation of the ECHR and CEDAW to regulate the depth of the issues it regulates.

9 Concluding remarks

This thesis set out to answer two research questions regarding the Istanbul Convention: the opportunity to withdraw from the Convention and the de jure and de facto consequences that withdrawal may entail. The questions were answered using a dogmatic approach, reviewing relevant legal norms regarding the issue at hand.

The Istanbul Convention contains a provision that allows for denunciation by the member state at any time, with the withdrawal entering into force after an extent of time. The legal consequences will differ whether the State, at the time of denunciation, has either signed or ratified the treaty. The consequences will vary depending on the member state being party to the ECHR and CEDAW as well.

If the State has neither signed nor ratified the Convention, it is not legally bound by the Convention as it has not expressed its consent nor intention to be bound. If the State is a member to the CEDAW and ECHR, it will be bound by the provisions of these two.

If the State has signed the Convention, it is bound by the object and purpose of the Convention until the time the denunciation has entered into force. In this case, the State may not be monitored by GREVIO, as this only applies to member parties. By being a member to

¹³¹ Nussbaum (2016) p. 595

the CEDAW and the ECHR, it will however be bound by these two conventions and the monitoring mechanism of the CEDAW and the ECtHR.

If a State has ratified the Convention, it is legally bound by the provisions of the Convention until denunciation. Withdrawal is allowed according to art. 80 of the Convention. The consequences of withdrawal are not addressed by the Istanbul Convention. According to the Vienna Convention art. 70, the withdrawing party is released from further obligation to the treaty. This, however, may not affect obligations implemented when the treaty remained in force. Article 70 does not convey any obligation to continue the acts carried out during the period the treaty remained in force. Although the provision does not address the obligations or rights implemented in line with the Convention during this period, revoking these rights will be in clear breach of the principle of non-retrogression. The principle of *pacta sunt servanda*, stated in the Vienna Convention art. 26, requires the member state to act in accordance with good faith. If legislation is implemented in good faith following the Istanbul Convention, it would be the opposite of good faith to revoke this legislation.

The legal consequences are only one side of the coin, as the withdrawal will have factual consequences as well. Turkey's withdrawal from the Convention, as well as widespread criticism and scepticism regarding the implementation of the Convention, reflect a greater problem. The problem here is the consistent "backlash" of women's rights that is occurring all over the world. Withdrawal from the Istanbul Convention may result in women being denied the protection of the Convention's provisions, but also hinder the future development of women's rights. Becoming a member party to the Convention is seen as a progressive step regarding women's rights, as ratification obligates the State to prevent and combat violence to ensure equality between men and women. Withdrawal from the Istanbul Convention may be seen as a retrogressive step as it means withdrawing from the most comprehensive convention on preventing and coping with violence against women and domestic violence.

In all scenarios, the withdrawal poses a threat to women's human rights. Lack of protection and fear of violence may intervene in women's ability to enjoy their rights as human beings. The Istanbul Convention is the last in a line of documents intending to address the issues facing women today, focusing on the threat that gender-based and domestic violence poses. Withdrawal may not only affect women in the withdrawing states, but all women.

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